

A Law to establish the Katsina State Bureau of Public Procurement and for connected matters



Katsina State of Nigeria
Law No. of 2017

() Date of Commencement

BE IT ENACTED by the House of Assembly of Katsina State of Nigeria as follows _____ Enactment

PART I – PRELIMINARY PROVISIONS

1. This Law may be cited as the Katsina State Bureau of Public Procurement (SBPP) Law, 2017. Short title

2. This Law shall come into operation on the.....day of.....2017. Commencement

3. In this Law: Interpretation

“Accounting Officer” means any person charged with the supervision of the conduct of all procurement process;

“Assets” includes tangible and intangible things which have been or may be sold or procured for consideration;

“Board” means Katsina State Public Procurement Board;

“Bureau” means the Bureau of Public procurement, established under Section 4 of this Law;

"Bid Security" means a form of security assuring the bidder that he shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid;

"Commissioner" means the Commissioner of Finance of the State;

"Constitution" means the Constitution of the Federal Republic of Nigeria, 1999 as amended;

"Contract" means an agreement entered in writing;

"Contractor or Supplier" means any potential party to a procurement with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted;

"Certificate of no objection" means the document evidencing and authenticating that due process under this Law have been followed;

"Debar" means the placing of a firm, company or natural person or list of persons ineligible to participate in any procurement proceeding under this Law;

"Due Process" means compliance with the laid down rules and regulations relating to procurement;

"Excessive price" means a monetary value proposed by a bidder for any procurement which in the estimation of the Bureau is unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable computations of cost and profit;

“Goods” means object of every kind and description including raw materials, products, and equipment and object in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the Goods;

“Government” means the Government of Katsina State;

“House” means Katsina State House of Assembly;

“Interim Performance Certificate” means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by a contractor but not meaning completion;

“International Competitive Bidding” means the solicitation of bids from both domestic and foreign contractors and suppliers;

“Lowest evaluation responsive bid” means the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender documents;

“Margin of preference” means the extra markup on price allowed by any domestic contractor or supplier bidding under Inter-national Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

“Member” means a member of the Board and includes the Chairman;

“Minor value” means a monetary value which is not in excess of the monetary threshold set for any approving authority by the Bureau;

“Monetary Threshold” means the value limit in Naira set by this Law as may be prescribed by the Board from time to time;

“National Competitive Bidding” means the solicitation of bids from the domestic contractors and suppliers registered or incorporated to carry out business under Nigerian Law;

“Negotiation” means discussion to determine the terms and conditions of a contract of procurement;

“Open competitive Bidding” means the offer of prices by individuals or firm competing for a contract, privilege or right to supply specified goods, works, construction or services;

“Procurement” means acquisition;

“Procurement Proceeding” means the initiation of effecting a procurement up to award of procurement contract;

“Procuring Entity” means any public body in the State engaged in procurement and includes, Ministries, Departments, Bureau, Offices and Agencies of the State, Extra-Ministerial Offices, Parastatals, Corporations, State University and others tertiary institutions, Government Institutions and Local Government Councils and their derivative Units;

“Public Procurement” means acquisition by any means of goods, works or services by Government;

“Relevant Authority” means the State Government and includes the House;

“Service” means the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction;

“State” means the Katsina State of Nigeria;

“Threshold” refers only to the approving and not actual process of award;

“Validity Period” means the period during which a bidder agrees not to increase the cost of bids or remove any components of the bid.

PART II – ESTABLISHMENT OF THE BUREAU

4.(1) There is established a Bureau to be known as the Katsina State Bureau of Public Procurement (SBPP) (in this Law referred to as “the Bureau”).

Establishment of the Bureau

(2) The Bureau shall be a body Corporate with perpetual succession and common seal with power to sue and be sued in its Corporate name and may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Law.

5.(1) There is established for the Bureau a body to be known as the Katsina State Public Procurement Bureau Governing Board (hereinafter referred to as “the Board”).

Establishment of the Governing Board

(2) The Board shall consist of a Chairman who shall be the Commissioner in charge of Finance in the State and the following members:

Composition of the Governing Board

- (a) Representative of the following:-
 - (i) a representative of Governor's office;
 - (ii) a representative of the Attorney-General and Commissioner of Justice;
 - (iii) a representative of the Office of the Accountant General;
 - (iv) a representative of the Ministry for Local Government and Emirate Affairs and;
 - (v) a representative of the Department of Budget and Economic Planning;
- (b) a representative each of the following professional organizations, to be nominated by their respective bodies:
 - (i) Nigerian Society of Engineers;
 - (ii) Nigerian Institute of Quantity Surveyors;
 - (iii) Nigerian Institute of Architectures;
 - (iv) Katsina State Chamber of Commerce, Industries, Mines and Agriculture;
 - (v) Institute of Purchasing and Supply;
 - (vi) Coalition of Civil Society Organization in the state;
 - (c) three members one each from the three Senatorial zones of the State one of whom shall be a woman; and
 - (d) the Director-General of the Bureau who shall serve as the Secretary.

(3) Notwithstanding the provisions of Sub-Section (2) of this Section, the Board may co-opt any person to attend its meeting but the person so co-opted shall not be entitled to vote on any question or count towards a quorum.

6.(1) The Board shall have power to:

Power of the Board

- (a) consider, set, amend and review prior threshold for the application of the provisions of this Law by procuring entities;
- (b) consider and approve policies on public procurement;
- (c) approve changes in the procurement process to adapt improvements in modern technology;
- (d) approve the appointment of the Directors of the Bureau in consultation with the Office of the Head of Service;
- (e) receive and consider, for approval, the audited accounts of the Bureau;
- (f) give such other directives and perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law.

(2) Members of the Board shall be people of unquestionable character and shall hold office on part-time basis for a period of four years and may be re-appointed for a second term of four years only.

(3) Members of the Board other than ex-officio members shall be appointed by the Governor subject to the confirmation of the State House of Assembly.

7.(1) A member shall be removed from office if he has:

Removal from office

- (a) by reason of infirmity of body or mind becomes incapable of discharging his duties;
- (b) been convicted of an offence involving moral turpitude;

- (c) been involved in any act considered to be inimical to the interest of the Bureau or the State.

(2) The Chairman and members of the Board, may in writing addressed to the Governor, resign or withdraw his/her membership.

8.(1) The removal or resignation of the chairman and a member shall not invalidate any proceedings or discussion of the Bureau provided that the requisite quorum has been formed at any meeting of the Board.

Validation of Proceeding

(2) The reduction in the composition of the Board as a result of removal or resignation of a member shall not invalidate any proceedings or decisions of the Board provided that the Chairman and eight (8) other members are present at any meeting of the Board.

9. The Chairman and Members of the Board may be paid such sitting allowances and other remuneration as the Governor may from time to time approve.

Allowances

PART III – OBJECTIVES, POWER AND FUNCTIONS OF THE BUREAU

10. The objectives of the Bureau are to:

Objectives of the Bureau

- (a) ensure probity, accountability and transparency in the procurement process by harmonizing the existing policies in public procurement;
- (b) establish a pricing standards and benchmarks;
- (c) ensure the application of fair, competitive, transparent, value-for money standards and practices for the procurement of public assets and services; and

- (d) attain the transparency, competitiveness, cost effective and professionalism in the public sector procurement system.

11. The Bureau shall:

Functions of the
Bureau

- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Board;
- (b) publicize and explain the provisions of this Law;
- (c) subject to thresholds as may be set out by the Board, certify all procurement prior to the award of contract;
- (d) supervise the implementation of established procurement policies;
- (e) monitor the prices of tendered items and keep a state database of standard prices;
- (f) publish the details of major contracts in the procurement journal;
- (g) maintain a state database of the particulars and classification and categorization of state contractors and service providers;
- (h) undertake procurement research and surveys;
- (i) organize training and development programmes for procurement professionals;
- (j) periodically review the socio-economic effect of the policies on procurement and advice the Board accordingly;

- (k) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (l) review the procurement and award of contract procedures of every entity to which this Law applies;
- (m) perform procurement audits and submit such report to the Governor bi-annually;
- (n) introduce, develop, update and maintain related database and technology;
- (o) co-ordinate relevant training programmes to build institutional capacity.

12.(1) The Bureau shall have power to:

Power of the Bureau

- (a) enforce the monetary and prior review thresholds set by the Board for the application of the provisions of this Law by the procuring entities;
- (b) subject to paragraph (a) of this Sub-Section, issue a Certificate of "No Objection" for Contract award within prior review threshold for all procurement;
- (c) from time to time stipulate to all procuring entities, the procedures and documentation prerequisite for the issuance of Certificate of "No Objection" under this Law;
- (d) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;

- (e) debar any supplier, contractor or service provider that contravenes any of the provisions of this Law or regulations made pursuant to this Law;
- (f) maintain a list of firms and person that has been blacklisted or banned from participating in the public procurement system and publish same in the state procurement journal;
- (g) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a pro-curing entity or service provider;
- (h) recommend to the Governor where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law to:
 - (i) suspend officers concerned with the procurement or disposal proceeding in issue;
 - (ii) replace the head or any of the members of the procuring or disposal unit of any entity or the Chairman of the Tenders Board as the case may be;
 - (iii) discipline the Accounting Officer of any procuring entity;

- (iv) temporarily transfer the procuring function of a procuring entity to a third party procurement agency or consultant; or
 - (v) take any other sanction that the Bureau may consider appropriate.
- (i) call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding;
 - (w) act upon complaints in accordance with the procedures set out in this Law;
 - (x) cause for the nullification of the whole or any part of procurement proceeding or ward which is in contravention of this Law;
 - (y) maintain a database of contractors and service providers in the state to the exclusion of all procuring entities;
 - (z) do such other things as are necessary for the efficient performance of its functions under this Law.

(2) The Bureau shall, subject to the approval of the Board have power to:

- (a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- (b) request for and obtain from any procurement entity information including reports, memoranda, audited accounts, and other information relevant to its

- functions under this Law; and
- (c) liaise with relevant bodies or institutions in the state, national and/or international for effective performance of its functions under this Law.

13. (1) There shall be for the Bureau, a Director General who shall be appointed by the Governor subject to the confirmation by the House.

Director General
of the Bureau

(2) The Director General shall be:

- (a) the Chief Executive and Accounting officer of the Bureau;
- (b) responsible for the execution of the policy and day to day administration of the affairs of the Bureau;
- (c) a serving or retired civil servant of not less than salary grade level 15 or a retired permanent secretary or its equivalent in the private sector;
- (d) a person of unquestionable character; and
- (e) a person with relevant and adequate professional qualification and shall have been so qualified for a period of not less than 15 years.

(3) The Director General shall hold office:

- (a) for a term of four (4) years in the first instance and may be eligible for re-appointment for a further term of four (4) years and no more; and

- (b) on such terms and conditions as may be specified in his letter of appointment.

(4) Without prejudice to the provisions of this Law, the Director General of the Bureau may be removed from office at the instance of the Governor on the basis of gross misconduct, financial impropriety, fraud or manifested incompetence Proved by the Board subject to a resolution passed by two third (2/3) majority of members of the House.

14.(1) There shall be for the Bureau an Administrative Secretary who shall be of not less than salary grade level 13 and shall be responsible to the Director General of the Bureau for the discharge of his functions.

Administrative
Secretary of the
Bureau

(2) The Secretary shall be the Administrative officer of the Bureau and shall be responsible for the following:

- (a) arranging meetings of the Board and its constituents committees;
- (b) preparation of agenda and the minutes of the meeting;
- (c) conveying decisions of the Board to the members;
- (d) arranging for the payment of sitting allowances and other benefits of the members and other related matters; and
- (e) generally performing such other duties affecting the Agency as may be assigned to him by the Director General.

15. (1) The Board may subject to the approval of the Governor appoint the principal officers for the Bureau after competitive selection.

Principal officers of
the Bureau

(2) The principal officers appointed under Sub-Section (1) of this Section shall each be a person of proven integrity and a member of the Federal, State or Local Government Civil Service of not less than salary grade level 13.

(3) For the purpose of this Section: "Principal Officers" means such officers as may be determined from time to time by the Bureau.

16. The Director General and Staff of the Bureau shall paid such salaries and allowances as may be approved by the Governor.

Salaries and allowances

17. The Bureau shall be, in the performance of its duties and responsibilities as well as the general administration of its staff apply the State Government Staff, regulations and any other relevant instrument of the State Government on the condition of service of staff.

Staff regulations

18. (1) The Bureau may appoint such officers and other employees as it may from time to time, deem necessary for the purposes of its duties and responsibilities.

Other staff of the Bureau

(2) Without prejudice to the generality of this Section, the Bureau shall have power to appoint either on transfer or on secondment from any public service of the Federal, State or Local Governments such number of employees as may be required to assist the Bureau in the discharge of any of its functions under this Law.

19. (1) The Bureau shall establish and maintain fund from which shall be defrayed all expenditure incurred by the Bureau.

Funds of the Bureau

(2) There shall be credited to the funds:

- (a) all monies appropriated for the purpose of the Bureau by the State House of Assembly;
- (b) grants, donations, gifts, deposits, royalties and interest which is not incompatible with this Law; and
- (c) such other monies and assets that may accrue to the Bureau.

20. (1) The Bureau shall open and operate a Bank account in which all monies belonging to the Bureau shall be deposited.

Bank Account of the Bureau

(2) The Director General and the Director of Finance of the Bureau shall be the signatories to the Bureau's Bank Account.

Functions of the Bureau

Provided that in the absence of any of them, their designated representatives may sign on their behalf.

21. (1) The financial year of the Bureau shall be the same with that of the State.

Financial year, budgeting and annual report

(2) The Bureau shall not later than four (4) months before the end of each financial year, prepare and present to the Board, an estimate of its income and expenditure of the next ensuing financial year.

(3) The Bureau shall ensure to keep books of Account and records that shall give a true and fair view of its financial transactions and day to day activities.

(4) The Bureau shall within three (3) months after the end of each financial year, prepare an annual financial statement of its financial transactions and activities which shall give a true and fair view of the finances and activities of the Bureau for the financial year reported on.

22. The Bureau shall present for audit, not later than thirty (30) days after preparing the annual financial statement, its annual financial statements. The audit shall be conducted by the Auditor General of the State or by an Auditor appointed by the Auditor General of the State.

Audit

23. The Bureau shall present a quarterly report to the Board on the activities of the Bureau for the quarter reported on.

Quarterly report

24. (1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of thirty (30) days after written notice of an intention to commence the suit shall have been served to the Bureau by the intending plaintiff or his agent and the notice shall clearly and explicitly state:

Legal proceedings

- (a) the cause of action;
- (b) the particulars of the claim;
- (c) the name and address of the intending plaintiff or his legal practitioner; and
- (d) the relief being sought.

(2) The Director General of the Bureau, its officers, employees or agents shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in exercise of any function or power conferred by the Law to the Bureau, its Director General , officers, employees or agents.

(3) A member of the Bureau, the Director General or any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director General, officer or other employee of the Bureau.

(4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Law or any other Law or enactment may be served by delivering it to the Director General or by sending it by registered post addressed to the Director General at the principal office of the Bureau.

25. The provisions of this Law shall apply to all procurement of goods, works, and services carried out by:

Scope of application

- (a) the State Government, Local Government Councils and all procurement entities in the state; and
- (b) all entities outside the foregoing description which derive at least thirty five percent (35%) of the funds appropriated or proposed to be appropriated for any type of procurement described in this Law from the revenue of the State Government's share of Consolidated Revenue Fund;

PART IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

26. (1) Subject to any exemption allowed by this Law, all public procurement shall be governed by the following rules:

Fundamental principles for procurement

- (a) no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligation and subject to the threshold in the regulation made by the Bureau and has obtained a "Certificate of No Objection to contract award" from the Bureau;

- (b) opening competitive bidding using clearly defined criteria and offering to every interested bidder equal information and opportunities in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Law; and
- (c) the procurement shall be with the aim of achieving value for money and fitness for purposes in a manner which promotes competition, economy and efficiency and in accordance with the procedures and timeline laid down in this Law as may be specified by the Bureau from time to time.

(2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the treasury or any bank account of any procuring entity for any procurement falling above the set threshold unless the cheque, payment or other form of request for payments is accompanied by a "Certificate of No Objection" to an award of contract duly issued by the Bureau.

(3) For all cases where the Bureau shall set a prior review thresholds, the Bureau shall prescribe by regulation, guidelines and condition precedent to the award of "Certificate of No Objection" under this Law.

(4) Subject to the prior review threshold as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of No Objection to contract award" duly issued by the Bureau shall be null and void.

(5) A supplier, contractor or service provider may be a natural person, a legal person or combination of the two. Supplier, contractors or service providers acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law and non performance or improper performance of any contract awarded pursuant to this Law.

(6) All bidders in addition to any requirements contained in any solicitation documents shall:

- (a) posses the following:
 - (i) professional and technical qualifications to carry out particular procurement;
 - (ii) financial capability;
 - (iii) equipment and other relevant infrastructure;
 - (iv) adequate personnel to perform the obligation of the procurement contract and;
 - (v) legal capacity to enter into procurement contract;
- (b) not be in a receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
- (c) have fulfilled all its obligations to pay taxes, pension and social security contribution;

- (d) not have any Director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter or;
- (e) accompany every bid with an affidavit disclosing whether any officer of the relevant committee of the procuring entity is a former or present director, shareholder or has any pecuniary interest in the bidder and confirming that all information presented in its bid are true and correct in all particulars.

(7) The Bureau or the Procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as a proof that the bidder is qualified in accordance with the provisions of this Law and for this purpose any such requirements shall apply equally to all bidders.

(8) A bid or a tender may be excluded from any particular procurement proceeding if:

- (a) there is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the bureau, in an attempt to influence any action, decision making or any procurement activity;

- (b) a supplier, contractor or service provider during the last three years prior to the commencement of the procurement proceeding in issue, failed to perform or provide due care in the performance of any public procurement;
- (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromise with their creditor within two calendar years prior to the initiation of the procurement proceeding;
- (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contribution, unless such bidders have obtained a lawful permit with respect to allowance or difference of such outstanding payment in installment;
- (e) the bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
- (f) the bidder has in its management or is in any portion owned by any person who has been convicted for crime committed in connection with procurement proceeding, or other crime committed to gain financial profit and;
- (g) the bidder fails to submit a

statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and person acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceeding.

(9) Where a bid or tender is executed under the provision of Sub-Section (8) (a) to (g) of this Section, the Bureau shall inform the bidder in writing the ground for the exclusion of the bid and the Bureau shall keep record of same in the file pertaining to the public procurement in question.

(10) All contract prices shall be considered as fixed, and therefore, not subject to any upward variation during the contract implementation, except under extra ordinary circumstance and only upon approval of the Bureau which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variation.

(11) All communications and documents issued by procuring entities and the Bureau shall be in English language.

(12) All communications regarding any matter driven from this Law or proceeding of public procurement shall be in writing or such other form as may be stipulated by the Bureau.

(13) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The record shall be maintained for a period of ten years from the date of the award.

(14) Copies of all procurement records shall be forwarded to the Bureau not later than three months after the end of the financial year and shall show:

- (a) information identifying procuring entity and the contractors;
- (b) the date of the contract award;
- (c) the value of the contract; and
- (d) the detailed records of the procurements proceeding.

(15) All unclassified procurement records shall be opened to inspection by public at the cost of copying and certifying the documents in addition to administrative charges as may be prescribed from time to time by the Bureau.

(16) The criteria stipulated as the basis upon which supplier or contractors would be evaluated shall not be changed in the course of any procurement proceeding.

(17) The burden of proving fulfillment of the requirement for participating in any procurement proceeding shall lie on the supplier or contractor.

(18) A contract shall be awarded to the lowest cost evaluated responsive bid from the bidders substantially responsive to the bid solicitation.

(19) Notwithstanding Sub-Section (18) of this Section, the Bureau may refuse to endorse the award of a contract for public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law.

(20) Pursuant to Sub-Section (19) of this Section, the Bureau may direct that the procurement proceeding be entirely cancelled or that the procuring entity conduct a re-tender.

(21) The Accounting officer of any procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of this Law or its regulations.

(22) The Accounting officer of a procuring entity shall ensure that the provisions of this Law and the regulation made there under are complied with, and approval by the approving authority shall not absolve the Accounting officer from accountability for anything done in contravention of the provisions of this Law or its regulations.

(23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and regulations made from time to time by the Bureau.

(24) Any person who has been engaged in preparing for a procurement or part of the proceeding thereof may not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tender.

(25) A procuring entity shall not request or stipulate that a bidder should engage the service of a particular sub-contractor as a requirement for participating in any procurement proceeding.

(26) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.

(27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the prevailing rate of the Central Bank of Nigeria valid on the day of opening the tender.

(28) All procurement contracts shall contain warrants for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART V – ORGANISATION OF PROCUREMENT

27. Subject to the monetary and prior review threshold for procurement in this Law as may from time to time be determined by the Board, the following shall be the approving authority for the conduct of public procurement: Approving authority

- (a) in case of:
 - (i) a Government Agency, Parastatals or Corporation, a Parastatal's Tender's Board;
 - (ii) ministry or extra Ministerial entity, the Ministerial Tenders' Board and;
 - (iii) all contracts within the benchmark that shall be set by the Board in the regulations, the State Tenders' Board.

28. Subject to the regulations as may be issued by the Bureau, a procuring entity shall plan its procurement by: Bureau to plan its procurement

- (a) preparing a needs assessment and evaluation;
- (b) identifying base on (a) above, the goods, works or service required;
- (c) carrying out appropriate market and statistical surveys and on that basis prepare an analysis or the cost implication of the proposed procurement;
- (d) integrating its procurement expenditure into its yearly budget;

- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (f) ensuring that procurement entity functions stipulated in this Section shall be carried out by a Procurement Planning Committee.

29. Subject to regulations as may from time to time be made by the Bureau under the direction of the Board, a procuring entity shall, in implementing its procurement plans:

Procurement
implementation

- (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (b) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (c) obtain the approval of the approving authority before making the award;
- (d) debrief the bid losers on request;
- (e) resolve complaint and dispute if any;
- (f) obtain and confirm the validity of any performance guarantee;
- (g) execute all contract agreement and;
- (h) invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas and observer shall not intervene in the procu-

rement process but shall have the right to submit his observation report to the Bureau and any other relevant Agency including their own organization or association.

30.(1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministry, the permanent Secretary and in the case of extra ministerial department and corporation the director General or office of coordinate responsibility. Accounting officer

(2) The Accounting officer of every procuring entity shall have overall responsibility for the planning and organizing of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:

- (a) ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of this Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
- (b) constituting the procurement committee;
- (c) ensuring that adequate appropriation is provided specifically for procurement in the State budget;
- (d) integrating his entity's procurement expenditure into its yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the

- use of the appropriate procurement method;
- (f) constituting the Evaluation Committee; and
- (g) liaising with the Bureau to ensure the implementation of its regulations.

31.(1) For each financial year, procuring entity shall establish a Procurement Planning Committee. Procurement Planning Committee

(2) The Procurement Planning Committee shall consist of:

- (a) the Accounting officer of the procurement entity or his representative who shall Chair the Committee;
- (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the Secretary;
 - (ii) the unit directly in requirement of the procurement;
 - (iii) the financial unit of the procuring entity;
 - (iv) the planning, research and statistics unit of the procuring entity;
 - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
 - (vi) the legal unit of the procuring entity.

32. (1) There is hereby established by this Law in each procuring entity a tenders board (in this Law referred to as "the Tenders Board"). Tenders Board

(2) Subject to the approval of the Board, the Bureau shall from time to time prescribe guidelines for the membership of the Tenders Board.

(3) The Tenders Board shall be responsible for the award of procurement of goods, works and services within the threshold set in the regulations.

(4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical sub-committee of the Tenders Board charged with the responsibility for evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chairman of the Evaluation sub-committee.

(5) The decision of the Tenders Board shall be communicated to the Commissioner for implementation.

33.(1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more.

Pre-qualification
of bidders

(2) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or service provider that requests them and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and delivery.

(3) Not later than six (6) months after the coming into force of this Law, the Bureau shall make regulation stipulating the guidelines for the pre-qualification of bidder in any public procurement.

***PART VI – PROCUREMENT METHODS
(GOODS AND SERVICES)***

34.(1) Except as provided by this Law, all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding.

Open competitive bidding

(2) Any reference to open competitive bidding in this Law means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.

(3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard.

35. (1) Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary threshold for which procurement shall fall under either system.

Invitation to bid

(2) Every invitation to an open competitive bid shall:

- (a) in case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers and any of the official websites of the procuring entity and the Bureau as well as the procurement journal not less than four (4) weeks before the deadline for submission of the bids for goods and works; and
- (b) in the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board

of the procuring entity, two (2) national newspapers, and in the procurement journal not less than four (4) weeks before the deadline for submission of the bids for the goods and works.

36. (1) Subject to the monetary and prior review threshold as may from time to time be set by the Bureau, all procurements valued in excess of what is prescribed by the Bureau, shall require a bid security in an amount not more than two percent (2%) of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity. Bid security

(2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

(3) When the procuring entity requires suppliers or contractors submitting tender to provide a bid security, the requirement shall apply to each supplier or contractor.

37. (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other stipulation in the tender documents signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope. Submission of bids

(2) All submitted bids shall be deposited in a secured tamper proof bid box.

(3) All bids submitted shall be in English language.

(4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.

(5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor who submitted it.

(6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.

38. A procuring entity may:

Rejection of bids

- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without thereby incurring any liability to the bidders.

39. (1) The period of validity for a bid shall be the period specified in the tender documents.

Validity period of bids, modification and withdrawal of tender

(2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.

(3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.

(4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.

(5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

40. All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:

Bid opening

- (a) permit attendees to examine the envelope in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) cause all bids to be opened in public, in the presence of the bidders or their representatives and any interested members of the public;

- (c) ensure that the bids opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- (d) ensure that a register is taken of the names and addresses of all those present at the bids opening and the organizations they represent which is recorded by the Secretary of the Tenders Board; and
- (e) call to the hearing of all those present, the names and addresses of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary to the Tenders Board or his delegate in the minutes of the bid opening.

41.(1) All bids shall be first examined to determine if they: Examination of bids

- (a) meet the minimum eligibility requirements stipulated in the bidding documents;
- (b) have been duly signed;
- (c) are substantially responsive to the bidding documents; and
- (d) are generally in order.

(2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

(3) The following shall not be sought, offered or permitted:

- (a) change in prices;
- (b) changes of substance in a bid; and
- (c) changes to make an unresolved bid responsive.

(4) Notwithstanding Sub-Section (3) of this Section, the procuring entity may correct purely arithmetical errors that are discovered during examination of tenders.

(5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

(6) A major deviation shall result in a rejection of bid while a minor deviation shall be subjected to clarification.

(7) (a) The following shall be considered as major deviation with respect to clause in an offer:

- (i) unacceptable sub-contracting;
 - (ii) unacceptable time Schedule if time is of essence;
 - (iii) unacceptable alternative design; and
 - (iv) unacceptable price adjustment.
- (b) with respect to the status of the bidder:
- (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited.
- (c) with respect to bid documents and unsigned bid and;
- (d) with respect to time, date and allocation for submission:
- (i) any bid received after the date and time for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.

(8) In case of major deviation, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.

(9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.

(10) Subject to any provision to the contrary, the following shall be considered as minor deviations:

- (a) the use of codes;
- (b) alternate design;
- (c) alternate workmanship;
- (d) omission in minor items;
- (e) arithmetical errors;
- (f) different method of construction;
- (g) difference in final delivery date;
- (h) difference in delivery schedule;
- (i) completion period where these are not of essence;
- (j) non-compliance with some technical local regulation;
- (k) payment terms; and
- (l) any other condition that has little impact on the bid.

(11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or minor deviation, the following rules shall apply:

- (a) where the impact on the costs is major, it shall be regarded as a major deviation; and
- (b) where the impact on the costs is minor, it shall be regarded as a minor deviation.

(12) In cases of minor deviations, written classification may be obtained from the supplier or contractor and where applicable, an offer made for correction of the minor deviation.

(13) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.

(14) At the stage of evaluation and comparison, all minor deviation shall be qualified in monetary terms.

(15) For the rejection of a bid, a written notice shall be given promptly to the supplier.

42. (1) For evaluation and comparison of bids that have been adjudged as valid for the purpose of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.

Evaluation of bids

(2) The objective of evaluation shall be to determine and select the lowest evaluated responsive bid from bidders that have responded to the bid solicitation.

(3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation the Tenders Board shall, in particular, undertake the following processes as applicable:

- (a) checking the deviation;
- (b) checking of omissions with qualification of same;
- (c) application of discounts, as applicable;
- (d) clarification with bidders of questionable deviations;
- (e) qualification in monetary terms of such questionable deviations;
- (f) conversion of common currency;
- (g) calculation and tabulation of bid amount prices with domestic preference where applicable;
- (h) determination of the lowest calculated prices in order of rank;
- (i) post-qualification of bidders, where applicable;
- (j) listing of rejection of bids, where applicable;
- (k) decision of rejection of all bids where applicable;
- (l) recommendation for award; and

(m) writing up of the bid evaluation report.

(4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

(5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:

- (a) goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety and environmental benefits of losses by damages;
- (b) works in addition to factors stipulated in Sub-Section (1) of Section 44 of this Law, and subject to Sub-Section (2) of Section 44 of this Law; and
- (c) the value of early completion shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalty in the case of late delivery.

(6) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.

(7) If suppliers were pre-qualified, verification provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award

may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

(8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award.

43.(1) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation.

Acceptance of bid

(2) Notwithstanding the provision of Sub-Section (1) of this Section, the selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provision of this Law to that effect.

(3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

44.(1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.

Domestic preference

(2) Where a procuring entity intends to allow domestic preference, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.

(3) Margins of preference shall apply only to tenders under international competitive bidding.

(4) The Bureau shall by regulation from time to time set the limit and the formula for the computation of margins of preference and determine the content of goods manufactured locally.

45.(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than forty 40% may be paid to a supplier or contractor supported by the following:

Mobilization of fees

- (a) in the case of National competitive Bidding an unconditional Bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and
- (b) in the case of International Competitive Bidding – an unconditional Bank guarantee issued by a Banking institution acceptable to the procuring entity.

(2) Once a mobilization fee has been paid to the supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

46. 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 ten percent (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.

Contract performance guarantee

47.(1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.

Interest on delayed payment

(2) Any payment due for more than Ninety (90) days from the date of the submission of the invoice, valuation certificate, confirmation or authentication by the Ministry, Extra-Ministerial office, Government Agency, Parastatals or Corporation shall be deemed a delayed payment.

(3) All delayed payments shall attract an interest at the rate specified in the contract documents.

(4) All contract shall include terms, specifying the interest for late payment of more than Ninety (90) days.

48. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings, in a format as may be prescribed by the Bureau.

Record of
procurement
proceedings

(2) The portion of the records referred to in this Section shall, on request, be made available to:

- (a) any person after a tender, proposal, offer or quotation has been accepted or after procurement contract; and
- (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposal, offer or quotation has been accepted or procurement proceeding have been terminated without resulting in a procurement contract.

(3) A disclosure of procurement proceedings records, prior to award of contract may be ordered by a Court, provided that when ordered to do so by a Court, the procurement entity shall not disclose such information, if its disclosure would:

- (a) be contrary to Law;
- (b) impede Law enforcement; or
- (c) prejudice legitimate commercial interest of the parties.

(4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this Section.

(5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor General upon request and where donor funds have been used for procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

PART VII – SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

49. (1) A procuring entity shall engage in procurement through the following stages: Stages of tendering

- (a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
- (b) where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial

viability or to recover research and development costs, where the procuring entity applies this Law to procurement concerned with national security and determines that the selected method is the most appropriate methods of procurement; or

- (c) where the Open Competitive Bidding have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging a new tendering proceeding will not result in a procurement contract.

(2) Not later than six (6) months after the coming into force of this Law, the Bureau shall issue regulations for the procedure for two stage tendering.

50.(1) Subject to the approval by the Bureau, a procuring entity may for reasons of economy, efficiency, special skills, experience and proven track record of a contractor or service provider over period of time engage in procurement by means of restricted tendering if:

Restricted tendering

- (a) the goods, works or services are available only from a limited number of suppliers or contractors; or
- (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to procure; or

(c) the procedure is used as an exception rather than norm.

(2) Where a procuring entity engages in restricted tendering on the basis that:

(a) the goods, works and services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works and services; and

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services, it shall select in a non-suppliers or contractors to ensure effective competition.

(3) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this Section.

51.(1) A procuring entity may carry out procurements by requesting for quotation from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.

Request for quotation

(2) Generally, quotation shall be obtained from at least three (3) unrelated contractors or suppliers.

(3) Each contractor or supplier from whom a quotation is requested shall:

- (a) be informed whether any factors other than the charges for goods, works or services themselves, such as any applicable transportation and insurance charges, custom duties and taxes are to be included in the price; and
- (b) give only one quotation and shall not be allowed to change or vary the quotation.

(4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to quotation.

(5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest price responsive quotation.

(6) Where the total value of the procurement is not more than a sum that shall be set in the regulations, the procurement entity may not obtain the Bureau's approval.

52.(1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where:

Emergency
Procurement

- (a) the state is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God or;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their value or usefulness; or
- (c) a public project may be seriously delayed for want of an item of a minor value.

(2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.

(3) All procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.

(4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of 'No Objection'.

***PART VIII – PROCUREMENT OF CONSULTANT
(SERVICES)***

53.(1) Where a producing entity wishes to procure services for its needs which are precise and ascertainable:

Expression of intention to provide services for ascertain needs

- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two (2) two national newspapers and the procurement journal and;
- (b) where the value of the service to be procured is less than one million Naira or with the approval of the Bureau, of such a low value that only national consultants would be interested, the procuring entity may without placing any notice request at least three (3) and not more than ten (10) consultants or service providers to make proposal for the provision of the services in a format stipulating:

- (i) a statement of qualifications of the consultant to provide the service;
- (ii) statement of understanding of the procuring entity's needs;
- (iii) the methodology for providing the service;
- (iv) the time frame for providing the service; and
- (v) the cost or fee for the service.

54.(1) A procuring entity wishing to procure service for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.

Request for proposal

(2) The procuring entity shall procure the services of consultants by soliciting for expression of interest by publishing a notice to that effect in two (2) national newspapers and the procurement journal.

(3) A procuring entity may make direct request to a limited number of consultants, requesting proposals for the provision of a service if:

- (a) the services are only available from more than three (3) consultants;
- (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
- (c) it is the interest of national defense and security or similar reason of confidentiality.

55.(1) Request for proposals shall include:

Content of the
request for proposals

- (a) the name and address of the procurement entity;
- (b) a requirement that the proposal are to be prepared in English language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to that effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedure for the evaluation of the qualifications of the consultants;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian currency;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements

apart from the cost of services such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;

- (k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
- (l) a short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.

(2) The procuring entity shall provide the same information to every consultant requested to submit proposals.

56.(1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified.

Clarification and modification of request for proposal

(2) A procuring entity may, whether on its initiatives or as a result of a request for clarification by a consultant, modify the request for proposal by issuing an addendum at any time prior to the deadline for submission of proposals.

(3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

(4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarification.

(5) The minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposal.

57.(1) The procuring entity shall allow sufficient time for the preparation and submission of the request proposals but shall in no case give less than thirty (30) days between the issue of the notice or request and the deadline for submission.

Submission of proposal

(2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.

(3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.

(4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secured bid-box until they are opened publicly.

(5) The technical evaluation committee shall not have access to or insights to the financial proposals until the evaluation including any Tenders' Board review are concluded.

58.(1) The procuring entity shall establish a criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:

Criteria for evaluation of proposal

- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the need of the procuring entity;
- (c) the proposal price, including any ancillary or related cost;
- (d) the effect that the acceptance of the proposal will have on the balance of payments position and foreign reserves of the Government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangement offered by consultant or service provider; and
- (e) the national defense and security considerations.

(2) A procuring entity may accord a margin of preference for domestic consultants or service providers, which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

59.(1) The procuring entity shall select the successful proposals by either choosing the proposal with:

- (a) the lowest evaluated price; or

General selection procedure

(b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

(2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied either of the procedures in Sub-Section (1) of this Section.

(3) Nothing in this Section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

60.(1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposal.

Procedure for selection where price is a factor

(2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.

(3) The procuring entity shall notify the consultants whose proposal did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen(14) working days after decision has been taken by the procurement entity.

(4) The name of the qualifying consultants, the quality scores for the technical component of the proposals shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.

(5) The procuring entity shall prepare the minute of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

(6) The successful proposal shall be:

- (a) the proposal with the best combined evaluation in terms of the criteria established under Sub-Section (1) of this Section from price in the case of quality and cost-based selection;
- (b) the proposal with the lowest price in the case of least cost selection; or
- (c) the highest ranked technical proposal within the budget.

(7) The consultant with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.

(8) The proposed unit rates for staff months and reimbursement shall not be negotiated unless there are exceptional reasons.

61.(1) Where the procuring entity elects to make a quality based selection, based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this Section.

Procedure where price is not a factor

(2) The procurement entity shall:

- (i) establish a weight with respect to quality and price of the proposals;
- (ii) invite for negotiations on the price of its proposals, the consultant that has attained the best rating in accordance with Sub-Section (1) of this Section;

- (iii) inform the consultants that attained ratings above the weight that may be considered for negotiations with the consultant with the best rating do not result in a procurement contract; and
- (iv) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with the consultant, invited under paragraph (ii) of this Sub-Section will not result in a procurement contract.

(3) The procuring entity shall, if negotiations with the Consultant with the best rating fails, invite the Consultant that obtained the second best rating, and if the negotiation with the Consultant does not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

(4) The procuring entity shall treat proposals and any negotiation on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

PART IX – PROCUREMENT SURVEILLANCE AND REVIEW

62.(1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law.

Bureau may demand investigation

(2) The relevant authority may in the course of investigation:

- (a) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts, or documents;
- (b) search premises for any books, records, accounts, or documents;
- (c) examine and make extracts from and copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
- (d) remove books, records, accounts, or documents of the pro-curing entity, bidder, supplier, contractor, or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give detailed receipt for the books, records, accounts or documents removed;
- (e) require an officer, employer or agent of the procurement entity or bidder, supplier, contractor or consultant to:
 - (i) explain an entry in the books, records, accounts or documents; and;
 - (ii) provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.

(3) The Bureau may, pursuant to the advice of the procuring entity, results of its review of a procurement or report of investigation by a relevant Government Agency issue a variation order requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract.

(4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulations in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include:

- (a) nullification of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with any relevant provision of this Law.

(5) On completion of the investigation, the relevant authority shall if offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

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

Administrative review

(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer who shall:

- (a) within fifteen (15) working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier;
- (b) on reviewing a complaint, the accounting officer shall make a decision in writing within fifteen (15) working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision; or
- (c) where the accounting officer does not make a decision within the period specified in Sub-Section (2) of this Section.

(3) Where the bidder is not satisfied with the decision of the accounting officer; the bidder may make a complaint to the Bureau within ten 10 working days from the date of communication of the decision of the accounting officer.

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

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

- (b) unless it dismisses the complaint:
 - (i) prohibit a procuring or disposing entity from taking any further action;
 - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
 - (iii) declare the rules or principles that govern the subject matter of the complaint; and
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.

(5) Before taking any decision on the complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from bidders and from the respective procuring or disposing entity.

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

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

PART X – DISPOSAL OF PUBLIC PROPERTY

64.(1) For the purpose of this Law, every procuring entity shall also be disposing entity.

Disposal of public property

(2) The Open Competitive Bidding shall be primary source of receiving offers for the purchase of any public property offered for sale.

(3) The Board shall, with the approval of the Governor:

- (a) determine the applicable policies and practices in relation to the disposal of all public property;
- (b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
- (c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.

(4) For the purpose of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):

- (a) created through public expenditure;
- (b) acquired as a gift or through deeds; and
- (c) acquired on financial instruments (including share, stocks, bonds etc.).

(5) The means of the disposal of public assets shall include:

- (a) sale and rental;
- (b) lease and hire purchase;
- (c) licenses and tenancies;
- (d) franchise and auction;
- (e) transfer from one government department to another with or without financial adjustment; and
- (f) offer to the public at an authorized variation.

65.(1) Before slating any public property for disposal, the accounting officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a variation report for such property by an independent evaluator, or such professional with the appropriate competence to carry out the valuation.

(2) The disposal of assets whether or not listed in the Assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.

(3) The disposal of assets referred to in Sub-Section (2) of this Section shall be timed to take place when the most advantageous return can be obtained for the asset in order to maximize revenue accruing to the government.

(4) All procuring entities shall distribute responsibilities for the public property between the procurement unit and the Tenders Board.

PART XI - MISCELLANEOUS

66. The Bureau shall meet as regularly as possible but not less than once in every three (3) months.

Meeting

67. The quorum at any meeting of the Bureau shall be a simple majority of the total members, excluding the Chairman, present at the time for the meeting.

Quorum

68. The Chairman of the Bureau may make regulations for the purpose of carrying into effect the provisions of this Law and for each other matters related to the implementation of this Law.

Regulations

69.(1) The Bureau shall stipulate a Code of Conduct for all public officers, suppliers, contractors and service providers with regards to their standards of conduct acceptable in matters involving the procurement.

Code of Conduct for
Public Procurement

(2) The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.

(3) All officers of the Bureau, members of Tenders Board and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by State Executive Council.

(4) All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.

(5) These principles shall apply at all times, particularly when:

- (a) making requisition for or planning of procurements;
- (b) preparing solicitation documents;
- (c) receiving offers in response to any form of solicitation towards a procurement, or disposal;
- (d) evaluating and comparing offers confidentially and in complete neutrality;
- (e) protecting the interest of all parties without fear or favour; and
- (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.

(6) All officers shall handle public procurement by:

- (a) ensuring adequate time for preparing offers;
- (b) complying with this Law and all derivative regulations; and
- (c) receiving strict confidentiality until completion of a contract.

(7) All public officers involved in public procurement shall maintain the highest standards of ethics in their relationship with persons real or Corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such persons.

(8) Every public officer involved directly or indirectly in matters of public procurement shall:

- (a) divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law; and
- (b) not engage or participate in any commercial transaction involving the state government, its ministries, extra-ministerial departments, corporations where his capacity as public officer is likely to confer any unfair advantage pecuniary or otherwise on him or any person directly related to him.

(9) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of

interest, must immediately declare to the authorities any actual or potential interest.

(10) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.

(11) A conflict of interest exists where a person:

- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
- (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed to be or make possible personal gain due to the person's ability to influence dealings;
- (c) entertains relationship which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
- (d) places by acts or omissions the procuring entity he represents or the government in an equivocal, embarrassing or ethically questionable position;
- (e) entertains relationship compromising the reputation or integrity of the procuring entity he represents or the government;

- (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;
- (g) creates a source of personal revenue or advantage by using public property which comes into hands either in course of his work or otherwise; and
- (h) discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons.

PART XIII – OFFENCES AND PENALTY

70.(1) Any natural person not being a public officer who contravenes any provisions of this Law commits an offence and is liable on conviction to a term of imprisonment of not less than 3 years or an option of fine which shall not exceed N200, 000:00 in addition to any restitution order which the Court may make in the circumstances.

Offence and penalty relating to Public Procurement

(2) Any offence in contravention of this Law shall be tried by the State High Court.

(3) Prosecution of offenders under this Law shall be instituted in the name of Katsina State Government by the Attorney General of Katsina State or such other officer of the Katsina State Ministry of Justice as may be authorized to do so.

(4) The following shall also constitute offences under this Law:

- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotation are higher than would have been the case, had there not been collusion between the persons concerned;
- (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful agreement, bribery or corruption;
- (c) directly or indirectly attempting to influence in any matter the procurement process to obtain an unfair advantage in the award of a procurement contract;
- (d) splitting tenders to enable the evasion of monetary threshold set;
- (e) Bid-rigging or altering any procurement documents with intent to influence the outcome of a tender proceeding;
- (f) altering or using fake documents or encouraging their use; and
- (g) willful refusal to allow the Unit or its officers to have access to any procurement records.

(5) Any person who will be carrying out his duties as an officer of the Board or any procuring entity who contravenes any of the provisions of this Law commits an offence and is liable on conviction to a cumulative punishment of:

- (a) a term of imprisonment of not more than three (3) years or N300,000:00 fine; and
- (b) termination of appointment from government services.

(6) Any legal person that contravenes any of the provisions of this Law commits an offence and is liable on conviction to a cumulative penalty of:

- (a) deprivation from all public procurement for a period of not less than five (5) years; and
- (b) a fine equivalent to ten percent (10%) of the value of the procurement in issue.

(7) An alternation pursuant to Sub-Section (4) (f) of this Section include:

- (a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
- (b) request for clarification in a manner not permitted under this Law.

(8) Collusion shall be presumed from a set of acts from which it can be assumed that there was understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of an action which would interfere with the faithful and proper application of the provisions of this Law.

(9) Bid-rigging pursuant to Sub-Section (4) (e) of this Section means an agreement between persons whereby:

- (a) offers submitted have been pre-arranged between them; or

- (b) their conduct has had the effect of directly or indirectly restricting free and open competition distorting the competitiveness of the procurement processes and leading to an escalation or increase in costs or loss of value of the State Treasury.

MADE at Katsina this 9th day of JUNE 2017.


.....
RT. HON. AMINU BELLO MASARI, CFR
GOVERNOR;
KATSINA STATE OF NIGERIA.

EXPLANATORY NOTE

(This note does not form part of this Law and has no legal effect).

The purpose of this Law is to serve as a Regulatory body for the Monitoring and oversight functions on Public Procurement of goods, works and services in Katsina State with a view to harmonizing the existing policies and practices thereby setting standard and professional capacity for procurement in the State.