PROCUREMENT LAW

SOKOTO STATE PUBLIC PROCUREMENT AND PUBLIC PRIVATE PARTNERSHIP LAW

2016

SOKOTO STATE PUBLIC PROCUREMENT AND PUBLIC PRIVATE PARTNERSHIP LAW 2016

PREFATORY

This law was first enacted in 2013 to establish the Bureau of Public Procurement and Price Intelligence as the Regulatory Agency for the Monitoring and of o v e r sight functions on Public Procurement of good works and services in Sokoto State. The Law further harmonized the existing policies and practices, setting standards, and professional capacity in the state.

Because of the growing needs for the participation of the private sector in the provision of the required infrastructure and other essential services, the Law was amended in 2016, to provide a legal framework for the participation private sector in the development of financing, construction, operation or maintenance of the state infrastructure or development projects through concessions and public private partnership contractual agreements.

For ease reference to the users of this legislation, this publication has incorporated the 2016 amendments into the 2013 Law.

SOKOTO STATE PUBLIC PROCUREMENT AND PUBLIC PRIVATE PARTNERSHIP LAW 2016

Made at Sokoto this 7th day of December 2016

A.

This printed version has been carefully compared by me with the Bill which has been passed by the House of Assembly and found it to be a true and correctly printed copy of the said Bill.

Signed

Sulaiman Muhammad

Clerk to the House

B.

I assent this 8TH day of December 2016

Signed

Aminu Waziri Tambuwal

Governor

Sokoto State of Nigeria

SOKOTO STATE PUBLIC PROCUREMENT AND PUBLIC PRIVATE PARTNERSHIP LAW 2016

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SOKOTO STATE PUBLIC PROCUREMENT AND PUBLIC PRIVATE PARTNERSHIP LAW 2016

A Law to establish the Bureau of Public Procurement and Price Intelligence as the Regulatory Agency for the Monitoring and oversight functions on Public Procurement of good works and services in Sokoto State, harmonizing the existing policies and practices, setting standards, and professional capacity in the state; and for related matters.

Enacted by the Sokoto State House of Assembly—

PART I PRELIMINARY

1 This law-may be cited as the Sokoto State Public Procurement and Public Private Partnership. **Citation**

2 In this Law— **Interpretations.**

"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 the Sokoto State Public Procurement

Board;

"Bureau" means the Bureau of Public Procurement and Price Intelligence, established under this Law;

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

"Contact" 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 and the letters of this Law have been followed;

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

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

"Goods" means object of every kind and description including raw materials, products, and equipment and objects in solid, liquid or gaseous form, and electricity as well as services incidental to

the supply of the Goods;

"Government" means the Government of Sokoto State;
"Governor" means the Governor of Sokoto State;
"House of Assembly" means House of Assembly of Sokoto
State of Nigeria;
"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 evaluated responsive bid is the lowest _price bid amongst the bids that meets all the technical requirements and standard as contained in the tender document;
"Margin of preference" means the extra markup on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;
"Member" Includes 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 domestic contractors and suppliers registered or incorporated to carry on 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 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, Parastatal, Corporations, State University and Colleges, Government Institutions and Local Government Councils and their derivative Units;
"Public Procurement" means the acquisition by any means of goods; works or services by Government;
"Relevant Authority" includes House of Assembly or Sokoto
State;

"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.
"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 its bids or remove any components of the bid.

PART II ESTABLISHMENT OF THE BUREAU

3(1) There is established a Bureau to be known as Sokoto State Bureau for Public Procurement and Public Private Partnership (in this law referred to as "the Bureau).

Establishment of the Bureau.

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

4(1) There is established for the Bureau a body to be known as Sokoto State Public Procurement Bureau Governing Board (hereinafter referred to as 'the Board').

Establishment of the governing Board.

(2) The Board shall consist of:

(a) The Commissioner charged with the responsibility for Finance in the State Chairman;

(b) The Commissioner charged with the responsibility for Budget and Economic Planning in the State Member;

(c) The Attorney General and Commissioner for Justice Member;

(d) a member of a civil society organization in the State Member;

(e) three members, each representing one senatorial District in the State - members;

(f) one Quantity S(g) One Architect Member (h) One engineer Member; (i)The Director General of the Bureau - Member; and

(j) Secretary/Legal Adviser of the Bureau - Secretary Member.

(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 have a casting vote or be counted towards , quorum.

5 The Board shall have power to:

Powers of the Board.

(a) consider, set, amend and review prior threshold f<?r 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 to improvements;

(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 provision of this law, as may be necessary to achieve the objectives of this law.

Appointment of the members of the Board.

6(1) The members of the Board other than ex-officio members shall be appointed by the Governor subject to the confirmation by the House of Assembly.

(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 one further term of four years only,

provided that the ex officio members shall hold membership of the Board by virtue of the respective offices they hold in the State Executive Council.

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) A member of the Board, may in writing addressed to the Governor, resign or withdraw his/her membership.

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

Validation of the proceeding.

(2) The reduction in the composition of the Board as a result of removal or resignation of the a member shall not invalidate any proceedings

or decisions of the Board provided that the Chairman and 6 other members are present at any .meeting of the Board where or when there is such a reduction in the ... composition of the Board.

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

PART III OBJECTIVES, POWERS AND FUNCTIONS OF THE BUREAU

10(1) The objectives of the Bureau are to ensure probity, accountability and transparency in the procurement process. Objective of the Bureau.

(2) The establishment of pricing standards and benchmarks.

(3) Ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement of public assets and services.

(4) The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

11 The Bureau shall: **Function 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 the state contractors and service providers;
(h) undertake procurement research and surveys;
(i) organize training and development programs for procurement professionals;
U) periodically review the socio-economic effect o 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; and

(n) Introduce, develop, update and maintain related database and technology;

(o) coordinate relevant programmes to build institutional capacity;

(p) accelerate investment in State infrastructure through private sector funding by assisting the State Government and its ministries, departments and agencies to implement and establish effective Public, Private Partnership's (PPP) engagement in government procurement activities;

(q) ensuring that robust, transparent, efficient and equitable processes are developed for managing the selection, development, procurement, implementation and monitoring of Public Private Partnerships projects and that this process is applied consistently to all relevant projects;

(r) ensure efficient execution of any concession agreement or contract entered into by the State Government; and

(s) ensure that the advantages and

requirements of Public Private Partnerships are well appreciated by the potential investors and other relevant stakeholders

12(1) The Bureau shall have the power to: **Powers 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 the paragraph .(a) of this subsection, issue certificate of "No Objection" for Contract. Award within the prior review threshold for all procurements within the purview of this law;

(c) from time to time stipulate to all procuring entities, the procedures and documentation prerequisite for the issuance of Certificate or "No Objection" under this Law;

(d) where a reason exists, 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 provision 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 procuring 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 for:

(i) the suspension of officers concerned with the procurement or disposal proceeding in issue,

(ii) the replacement of the head or any of the members of the procuring or disposal

unit of any entity or the Chairperson of the Tenders Board as the case maybe,

(iii) the discipline of the Accounting Officer of any procuring entity,

(iv) the temporary transfer of the procuring function of a procuring entity to a third party procurement agency or consultant, or

(v) 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;

(j) act upon complaints in accordance With the procedures set out in this law;

(k) cause for the nullification of the whole or any part of any procurement proceeding or award which is in contravention of this law;

(l) maintain a data base of contractors and service providers in the state to the exclusion of all procuring entities; and

(m) 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 front any procurement entity information including reports, memoranda and 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.

Director General of the Bureau.

13(1) There shall be for the Bureau, a Director General who shall be appointed by the Governor, on the recommendation of the Board.

(2) **The** Director General shall be:

(a) the Chief Executive officer of the Bureau;

(b) responsible for the execution of the policy and day to day administration of the affairs of the Bureau; and

(c) a serving or retired civil servant of not less than grade level 15 or a retired permanent secretary or its equivalent in the private sector;

(d) a person of unquestionable character;

(e) possess 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 4 years in the first instance and may be re-appointed for a further term of 4 years and no more;

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

(c) 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 of financial impropriety, fraud and

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 subsection (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 grade level13.

16 The Director General and staff of the Bureau shall tie place on a special remuneration package and attractive fringe benefits as may be approved by the Governor.

Salaries and allowances.

17 The Bureau shall 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 regulation.

18(1) The Bureau may after consultations with the office of the Head of Service of the State appoint such officers and other employees

Other staff of the Bureau.

manifested incompetence.

14(1) There shall be for the Bureau, a Secretary/ Legal Adviser who shall be a State Counsel of not less than grade level13 and shall be responsible to the Director General of the Bureau for the discharge of his functions.

Secretary/ Legal Adviser of the Bureau.

(2) The Secretary shall be the Chief Accounting 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 of the Board;

(d} arranging for the payment of sitting allowances and other benefit of the members of the Board and other related matters; arid

(e) generally performing such other duties affecting the Bureau as may be assigned to him by the director General.

as may from time to time deem; necessary for the purposes of its duties and responsibilities.

(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 State, Local Government, or Federal Government, such numbers of employees as may be required, to assist the Bureau in the discharge of any of the functions under this law.

Funds of the Bureau.

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

(2) There shall be credited to the fund:

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

Bank account.

20 The Bureau shall cause to open and operate Bank account in which all moneys belonging to

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

Quarterly report.

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

(a) the cause of action;

(b) particulars of the claim;

(c) the name and address of the intending plaintiff or his legal practitioner; and

(d) the relief being sought.

Legal proceedings.

(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 upon the Bureau, its Director General, officers, employees or agents.

(3) A member of the Bureau or 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 and addressed to the director · General at the principal office of the Bureau.

25(1) The provisions of this law shall apply to all procurement of goods 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 other entities outside the foregoing description which derive at least 35% of the funds appropriated or proposed to be appropriated· for any type of procurement described in this Law from the consolidated revenue funds or any other funds of the State by whatever name called.

(2) The Governor shall consider, set, amend and review prior threshold for the applications of the provisions of this law to ·all the Local. Government Councils in the State upon the recommendations of Ministry charged with the responsibility for Local Government in the State.

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 of procurement.

(a) subject to prior threshold as may, from time to time, be set by the Bureau pursuant to section 5(a) of this law;

(b) based only on procurement plan supported by prior budgetary appropriation and 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, has obtained a ."certificate of no objection to contract award" from the Bureau;

(c) by open competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities;

(d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this law and regulations deriving there from;

(e) with the aim of achieving value for money and fitness for purpose;

(f) in the manner which promotes competition, economy and efficiency; and

(g) in accordance with the procedures and timely 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, payments 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 the condition precedent to the award of "certificate of no objection" under this law.

(4) Subject to the prior review threshold as my 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) possess the following:
(i) professional and technical qualifications to carryout particular procurement,
(ij) financial capability,
(iii) equipment and other relevant infrastructure,
(iv) have adequate personnel to perform the obligation of the procurement contract;
(v) legal capacity to enter into procurement contract;

(b) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceeding;

(c) have fulfilled all its obligations to pay taxes, pension and social security contribution.

(d) not have any Director who have been convicted within a period of less than ten years before the date of the bidding in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter; and

(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 confirmed 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 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 promise 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 performed 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 p-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 compromises with their creditor within two ·calendar years prior to the initiation of the procurement proceedings;

(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 deference or deference of such outstanding payment instalment;

(e) the bidder has been convicted for a crime committed in connection with a procurement proceeding, or any 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 within a period of less! than ten years before the date of the bidding; and

(g) the bidder fail 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 excluded under the provision of subsection (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 circumstances and only upon prior 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 driving from this law or proceeding of public procurement shall be in writing or such other from 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 procurement proceedings.

(15) All unclassified procurement records shall be open 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 suppliers 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 participation 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 subsection (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 manner that violates the provisions of this law.

(20) Pursuant to subsection (19) of this section the Bureau may direct that the procurement proceedings 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 provision of this law or its regulations.

(23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provision 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 ORGANIZATION 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 Bureau, the following shall be the approving authority for the conduct of public procurement: Approving Authority.

(a) In case of:

(i) a Government Agency, parastatal Corporation Tenders' a parastatal Tenders' Board,

(ii) a Ministry or extra Ministerial entity, the Ministerial Tenders Board, and

(iii) all contracts within a benchmark that shall be set by the Bureau 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: Procurement planning.

(a) preparing a needs assessment and evaluation;

(b) identifying base on (a) above, the goods, works or services 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 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) resolves complaint and dispute if any;

(f) obtained and confirm the validity of any performance guarantee;

(g) execute all contract agreement;

(h) announce and publicize the award in the format stipulated by this law and guidelines as may be issued by the Bureau from time to time;

(I) 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 procurement process but shall have the right to submit their observation report to the Bureau and any other relevant Agency including? Their own organizations 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 officer 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 materials that he had delegated' any function duty or power any person or group of persons;

(b) constituting the procurement committee;

(c) ensuring that adequate appropriation is provided specifically for the 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 IT1ethod;
(f) constituting the Evaluation Committee;
(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 boar

(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 Chair of the Evaluation Sub-committee.

(5) The decision of the Tenders Board shall be communicated to the Chief Executive Officer procuring entity.

Pre-qualification of bidders.

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 prequalification documents and no more.

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

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

PART VI-PROCUREMENT METHODS

34(1) Except as provided by this Law, all procurements 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 entry based on previously define criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods arid 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) Invitation to "bids may be either by way of State Competitive Bidding or National Competitive bidding and the Board shall from 'time to time set the

Invitation to bid.

monetary threshold for which; procurement hall fall under either system.

(2) Every invitation to open competitive bids shall:
(i) in case · of goods and works under State competitive Bidding, the invitations for bids shall be advertise at least in one State newspaper and any ·. official website of the procuring entity and the Bureau as well as the procurement journal not less than two weeks before the dead line for submission of the bids.
(ii) in case of goods and works under National Competitive Bidding, the invitations for bids shall be advertised in at least two national newspapers and any official website of the procuring· entity and the Bureau as well as the procurement journal not less than · three weeks
Before the \deadline for submission of bids.

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 the prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a refutable bank acceptable to the procuring entity. Bid scrutiny.

(2) The Bureau shall from time to time specify the principal terms and condition 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 stipulated in the tender documents signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.

Submission of bid.

(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 which 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 a provided in this Law.

38 A procuring entity may:

Rejection of bid.

(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 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, modifications 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 tempered 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-over to the hearing bf all 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 of the Tenders Board or his delegate in the minutes of the bid opening.

Examination of bids.

41(1) All bids shall be first examined to determine if they:
(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 the examination offenders.

(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) that fact that he is uninvited;

(c) with respect to bid documents an unsigned bid;

(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, bids shall not be considered any further and where unopened, shall be returned as such to the bidder.

(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 be become compliant.

(10) Subject to any prov1s1on to the contrary, the following shall be considered as minor deviations:
(a)the use of codes
(b) alternative design;
(c) alternative 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
(I) any other condition that has little impact on the bid.

(11) in cases not mentioned above and where there exist 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 or contractor and, where applicable, and offer made for the 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 quantified in monetary terms.

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

42(1) For the evaluation and comparison of bids that have been adjudged as valid for the purposes 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 bit 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 of deviations;
(b) checking of omissions with qualification of same;
(c) application of discounts, as applicable;
(d) clarification with bidders of questionable minor deviations;
(e) qualification in monetary terms of such questionable deviations;
(f) conversion to common currency;
(g) calculation and tabulation of bid amount prices with domestic preference where applicable;
(h) determination of the lowest calculated prices in order if rank;
(i) post-qualification of bidders, where applicable;
(j) listing of rejection of bids, where applicable;
(k) decision of rejection of all bids where justifiable;
(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 purposes 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) for 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, environmental benefits or 'losses by damages;

(b) for works, in addition to factors stipulated in Section 44 (1) of this Law, and subject to Section 44 (2) of this Law, if time is a critical factor, the value of early completion; and

(c) the value of early completion under Section 45 (2) of this Law shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in 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 prequalification 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.

Domestic preference

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.

(2) Where a procuring entity intends to allow domestic preferences, 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 the 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 formulae for the computation of margins of preference and determine the contents 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 30% may be paid to a supplier or contractor supported by the following:

Mobilization fees.

(a) in the case of National Competitive Bidding an unconditional Bank guarantee or insurance bond issued by an institution acceptable by a 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 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 delay payment.

(2) Any payment due for more than ninety (90) days from the date of the submission of the invoice, valuation

certificate or confirmation or authentication ;by the Ministry, Extra Ministerial Office, Government Agency, Parastatal or Corporation shall be deem a delayed payment.

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

(4) Notwithstanding anything to the contrary contained in this law all contracts shall include terms specifying the interest for late payment due for more than Six months subject to proven availability of funds.

Record procurement proceedings.

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

(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 pre-qualification, after a tender proposal, offer or quotation has been accepted or procurement proceedings 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

Two stage tendering.

49(1) A procuring entity shall engage in procurement by two stage 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;

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 nondiscriminatory manner of the number of 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.

Request for quotation.

51(1) A procurement entity may carry out procurements by requesting for quotations 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.

(2) Generally, quotations shall be obtained from at least 3

(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 he contract i n c lu des 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 1 open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a procurement contract.

(2) The Bureau shall as soon as practicable after the coming into force of this law issue regulations for a 2 stage tendering ,procedure for all procurement under this law.

Restricted 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:

(a) the goods, works or services are available only from a limited number of suppliers or contractors;

(b) the time and cost required to examine and

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 . the 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 charge 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 regulation, 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;
(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 the 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)

Expression of interest to provide service for ascertain need.

53(1) Where a procurement entity wishes to procure services for its needs which are precise and ascertainable:
(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 2 (two national newspapers and the procurement journal;

(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 3 and not more than 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) a 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 thee 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 entities shall procure the services of consultants by soliciting for expression of interest, by publishing a notice to that effect in 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 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 proposal shall include;
(a) the name and address of the procurement entity;
(b) a requirement that the proposal are to be prepared in the English language;
(c) the manner, place and deadline for the submission of proposals;

Contract of the request for proposal.

(d) a statement to the effect that the procuring entity reserves the right to reject proposals;
(e) the criteria and procedures 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 Nigeria 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.

Clarification and modification of request for proposal

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

(2) A procuring entity may, whether on its initiative 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.

Submission of proposal.

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

(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 secure 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 evaluations including any Tender Boards review are concluded.

Criteria for evaluation of proposal.

58(1) The procuring entity shall establish 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:

(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; and

((d) the effect that the acceptance of the proposal will have on the balance of payments position and financial 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 arrangements offered by consultant or service provider.

(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:
(i) the lowest evaluated price, or
(ii) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

General selection procedure.

(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 subsection (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 the 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

Procedure for selection where the price is a factor.

request for proposals; and then.

(2) The procuring entity shall compare the prices of that proposal 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 nonresponsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 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 proposal 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 minutes 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 subsection (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 consultants with the winning proposal shall be invited for negotiations, which shall focus mainly of the technical proposals.

(8) The proposed unit rates for staff-months and reimbursable 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 or single-source selection, it shall engage in negotiations with consultants in accordance with this Section.

Procedure where the 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 proposal, the Consultant that has attained the best rating in accordance with sub-section (1) of this Section, and
(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 that Consultant, invited under, subsection (2) (ii), 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 negotiations with,-that Consultant do 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 negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

PART IX - PROCUREMENT SURVEILLANCE AND REVIEW

Bureau may demand investigation.

62(1) Bureau may review and 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, recommend for investigation by any relevant authority any matter.

(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 procuring 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:

(i) to explain an entry in the books, records, accounts or documents, and

(ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required;

(f) explain an entry in the books, records, accounts or documents ; and

(g) 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 of award.

(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 provisions 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 for 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 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 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) (b).

(3) The bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Bureau within 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;

(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 comptaint 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 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 tate High Court within 30 days after the 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 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;

(c) acquired on financial instruments (including shares, 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) transfers 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 valuation report for such property by an independent Evaluator, or such professional with the appropriate competence to carry out the valuation. Planning disposal.

(2) The disposal of assets whether or not listed in 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 subsection (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 3 months.

Meetings.

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

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.

(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 favor; and

(f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.

(6) All public 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 completion of a contract.

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

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

(a) divest himself of any interest or relationships 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 of 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) possess 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) entertain 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 here presents or the Government in an equivocal, embarrassing or ethically questionable position;

(e) entertains relationships 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 his hands either in course of his work or otherwise; and

(h) disclose confidential information being either the property of his procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons.

PART XII- OFFENCES

70(1) Any natural person not being a public officer who contravenes any provision of this law commits an offence and is liable on conviction to a term of

Offence relating to public procurement.

imprisonment not less than 5 years or an option of fine which shall not exceed N300, 000.00 in addition to any restitution order which the Court may make in the circumstances.

(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 the State by the Attorney General of the State or such other officer of the State Ministry of Justice as he may authorize so to do.

(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, indirectly or attempting to influence in any manner 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 of 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 provision 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 2 years or N200,000.00 fine; or
(b) termination of appointment from government service.

(6) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:
(a) deprivement from all public procurement for a period not less than 5 years; and
(b) a fine equivalent to 50% of the value of the procurement in issue.

(7) An alteration pursuant to sub-Section (4) (f) of this section
shall include:
(a) insertion of documents such as bid security or tax clearance certificate which were not submitted a 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 of covert under which each person involved reasonably expected that the other would adopt a particular course of an action which would adopt a particular course of an action which would interfere with the faithful and proper application of the provision of this Law.

(9) Bid-rigging pursuant to sub-section (4) 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 to the state treasury.

(10) For the purpose of the presumption under subsection (8), (5) of this Section, consideration shall be given to a suspect's ability to control a solicitation or the conditions of the contract in question whether total or partial.

(11) For the purpose of subsection (2), (5) and (8) of this Section it shall be sufficient to prove that a reasonable business person should have known that

the Bureau shall be deposited.

Financial year budgeting and financial report.

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

(2) The Bureau shall not later than 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 cause to be kept, books of account and records that shall give a true and fair view of its financial transaction and day to day activities.

(4) The Bureau shall within 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 fair view of the finances and activities of the Bureau for the financial year reported on.

Audit.

22 The Bureau shall present for audit, not later than 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.

this action would result in his company or firm having an undue advantage over other bidders to the detriment of the State Treasury.

71 The State Government, Ministries, Department and Agencies may involve private sector participation in the development financing, construction, operation or maintenance of state infrastructure or development projects (by whatever name called) through .concessions, public private partnership or contractual agreement.

Transitional provisions.

UNITY AND FAITH, PEACE AND PROGRESS