

A LAW REPEALING AND RE-ENACTING THE KOGI STATE PUBLIC PROCUREMENT LAW, 2014 ESTABLISHING THE STATE COUNCIL ON PUBLIC PROCUREMENT AND THE STATE BUREAU OF PUBLIC PROCUREMENT AND OTHER MATTERS CONNECTED THEREWITH, 2020

Enacted by the Kogi State House of Assembly and by the authority of *Enactment* same as follows:

**PART I
PRELIMINARY PROVISIONS**

1. This Law may be cited as the Kogi State Public Procurement (repeal and re-enactment) Law and shall come into operation on _____ day of _____ 2020. *Citation and Commencement*

2. In this Law, unless the context otherwise requires: *Interpretation*

“Accounting Officer” means the person charged with conduct of all procurement processes;

“Approving Authority” means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department, corporations or parastatals;

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

“Bid Security” means a form of security assuring that 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;

“Certificate of No Objection” means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of procurement and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury;

“Contract” means an agreement entered in writing;

“Contractor or Supplier” means any potential party to a procurement contract with the procuring entity and includes any

corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other entity through which business is conducted;

“Debar” means the placing of a firm, company or natural person on a list of ineligible persons from participating in any procurement proceedings under this Law;

“Excessive Price” means a monetary value proposed by a bidder for any procurement which in the estimation of the Bureau is unreasonable and injudicious after value of the item in question plus all of the reasonable imputations of costs and profits;

“Goods” means objects 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;

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

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

“Lowest evaluated bidding” is the lowest price bid amongst the bids that meet the technical requirement and standard as contained in the tender document;

“Margin of preference” means the extra mark up on price allowed any domestic contractor or supplier biddings under international competitive bidding without being otherwise disadvantageous to the bid in the terms of price;

“Minor value” means a monetary threshold set for any approving authority by the Bureau;

“Money threshold” means the value limit in Naira set by the Bureau outside of which an approving authority may not award procurement contract;

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

“Open competitive bidding” means the offer of prices by individual or firm competing for contract, privilege or right to supply specific goods, works, construction or services;

“Person” as defined under the Interpretation Act;

“Procurement” means acquisition;

“Procurement proceedings” means any public body engaged in procurement and includes a ministry, extra-ministerial office, Government Agencies, Parastatals and corporation;

“Procuring Entity” means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Office, Government Agencies, Parastatals and Corporation;

“Public procurement” means the acquisition by any means of goods, works or services by the government;

“Relevant Authorities” includes the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission;

“Restitution” means the complete refund of the amount involved;

“Services” 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;

“Solicitation documents” means the bid solicitation documents or any other documents for solicitation of offers, proposals or quotations;

“State competitive bidding” means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigerian Law;

“Substantially responsive” means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents;

“**Supplier**” means real or legal persons that provide supply of goods, contracting of works or consultants;

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

“**Validity Period**” means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of bid; and

“**Works**” means all works associated with the construction, re-construction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decorations and finishing as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract where the value of those services does not exceed that of the construction itself.

PART II

ESTABLISHMENT OF THE STATE COUNCIL ON PUBLIC PROCUREMENT

3. (1) There is hereby established the State Council on Public Procurement.
- (2) The Council shall consist of:
- (a) a non-executive Chairman who shall be a legal practitioner of not less than ten (10) years post call to bar with relevant and adequate additional experience in procurement matters, to be appointed by the Governor and confirmed by the State House of Assembly for a term of four (4) years;
 - (b) the non-Executive Chairman may be re-appointed by the Governor for a second term of four (4) years subject to the confirmation of the State House of Assembly;

Establishment of the State Council on Public Procurement and its Membership

Composition

- (c) the Secretary to the State Government (or his representative who shall not be below the rank of a Director) as member of the Council;
- (d) the Head of the Civil Service (or his representative who shall not be below the rank of a Director) as member of the Council;
- (e) the State Attorney-General and Commissioner for Justice (or his representative who shall not be below the rank of a Director) as member of the Council;
- (f) the State Commissioner for Finance and Economic Development (or his representative who shall not be below the rank of a Director) as member of the Council;
- (g) the State Commissioner for Budget and Planning (or his representative who shall not be below the rank of a Director) as member of the Council;
- (h) the Chairman, Forum of Local Government Chairmen, Kogi State as Member;
- (i) part-time members with each of them representing the following:
 - (i) the Honourable Commissioner for Local Government;
 - (ii) the State Auditor General;
 - (iii) the Nigerian Union of Local Government Employees (NULGE);
 - (iv) Nigeria Institute of Purchasing and Supply Management;
 - (v) Nigerian Society of Engineers (NSE);
 - (vi) Nigerian Institute of Quantity Surveyors;
 - (vii) Non-Governmental Organization (NGO) or Civil Society Organization (CSO) with focus on

transparency, accountability and anti-corruption activities;

(viii) a representative of the Directors of Local Government in the State;

(j) The Director-General of the Bureau shall be the Secretary of the Council.

(3) Notwithstanding the foregoing provisions under subsection 2 of this Section, the Council 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 a quorum.

(4) The Governor may remove the non-Executive Chairman or member of the Council on grounds of gross misconduct, financial impropriety, fraud, manifest incompetent or in the interest of the State.

Removal from Office of the non-Executive Chairman.

(5) The removal from office of the non-Executive Chairman shall be subject to the confirmation of the State House of Assembly.

4. The Council shall:

Functions of the Council

(a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Law by procuring entities;

(b) consider and approve policies on public procurement;

(c) receive and consider the audited accounts of the Bureau for Public Procurement;

(d) give such other directions and perform such other functions as may be necessary to achieve the objectives of this Law.

5. (1) At every meeting of the Council, the Chairman shall preside and in his absence, the members present at the meeting shall appoint one of their members to preside at the meeting.

Meetings of the Council

(2) The quorum at a meeting of the Council shall consist of the Chairman or the member presiding at the meeting (pursuant to subsection 1 of this Section) and six (6) other members.

Quorum at Council Meetings

- (3) Pursuant to the provisions of subsection (2) to this Section, aside the Chairman (or the member presiding) the quorum at council meetings shall precisely include two (2) of the public office holders who are members of the Council (or their representatives) and four (4) part-time members, making a total of seven (7).
- (4) The Council shall, for the purpose of this Law, meet not less than three (3) times in each year and subject thereto, the Council shall meet whenever it is summoned by the Chairman and if required to do so, by the notice given to him by not less than five (5) other members, he shall summon a meeting of the Council to be held within fourteen (14) days from the date on which the notice is given.
- (5) Notwithstanding, the provisions of this Section, the Council may make Standing Orders regulating its proceedings at council meetings or the proceedings of any of its committees.

PART III

**ESTABLISHMENT OF THE BUREAU OF PUBLIC
PROCUREMENT**

- 6. (1) There is hereby established the Kogi State Bureau of Public Procurement.
- (2) The Bureau shall:
 - (a) be an Agency of Government, a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued;
 - (c) may acquire, hold or dispose of any property movable or immovable for the purpose of carrying out its functions under this Law.
- 7. The objectives of the Bureau are:
 - (a) the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;

*Establishment of the
Bureau of Public
Procurement*

*Objectives of the
Bureau of Public
Procurement*

- (b) the establishment of pricing standards and benchmarks;
- (c) ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets, services; and
- (d) the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

8. (1) The Bureau shall:

Functions of the Bureau

- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
- (b) perform procurement audits and submit audited report to the House of Assembly annually;
- (c) introduce, develop, update and maintain related database and technology;
- (d) co-ordinate relevant training programs to build institutional capacity.

(2) (a) The Bureau shall design and set up a secure centralized Electronic Government Procurement System which shall be the primary source of information for all public procurement matters and opportunity within the purview of this Law.

- (b) All procuring entities shall by the provisions of this Law use the Government Electronic Procurement System to conduct all their procurement proceedings based on the regulations issued by the Bureau and consider any or all tenders by electronic auction provided that the use of electronic system shall be transparent, efficient and economical.

9. (1) The Bureau shall have the powers to:

Powers of the Bureau

- (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law by the procurement entities;

- (b) subject to paragraph (a) of this Section, 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 prerequisites for the issuance of certificate of “No Objection” under this Law;
- (d) where a reason exists:
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;
 - (ii) review and determine whether any procuring entity has violated any provision of this Law;
- (e) debar any supplier, contractor or service provider that contravenes any provision of this Law and regulations made pursuant to this Law;
- (f) maintains a state database of contractors and service providers to the exclusion of all entities, prescribe classifications and categorization for the companies on the register;
- (g) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;
- (h) publicize and explain the provisions of this Law;
- (i) subject to thresholds as may be set by the Council;
- (j) supervise the implementation of procurement policies;
- (k) monitor the prices of tendered items and keep a database of standard prices;
- (l) publish the details of major contracts in the procurement journal;

- (m) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (n) Maintain a state database of the particulars and classification and categorization of contractors and service providers and in doing so:
 - (i) collate and maintain in an archival system, all state procurement plans and information;
 - (ii) undertake procurement research and survey;
 - (iii) organize training and development programmes for procurement professionals;
 - (iv) periodically review the socio-economic effects of the policies on procurements and advise the Council accordingly;
- (o) prepare and update standard bidding and contract documents;
- (p) review the procurement and award of contract procedures of every entity to which this Law applies;
- (q) prevent fraudulent and unfair procurement and where necessary, apply administrative sanction;
- (r) 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;
- (s) recommend to the Council where there are persistent or serious breaches of this Law (or regulations and guidelines made under this Law):
 - (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 Chairman of the Tenders Board as the case may be;
 - (iii) the discipline of the Accounting Officer of any procuring entity;
 - (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
 - (v) any other sanction that the Bureau considers appropriate;
- (t) call for production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (u) act upon complaints in accordance with the procedures set out in this Law;
 - (v) nullify the whole or any part of any procurement proceedings or award which is in contravention of this Law;
 - (w) do such other things as are necessary for the efficient performance of its functions under this Law.
2. The Bureau shall serve as the Secretariat for the Council.
 3. The Bureau shall, subject to the approval of the Council, have powers to:
 - (a) enter into contract or partnership with any company firm or person, which in its opinion will facilitate the discharge of its functions;
 - (b) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and

(c) liaise with relevant bodies or institutions, national and international, for effective performance of its functions under this Law.

10. (1) There shall be for the Bureau a Director-General whose appointment (and or removal) shall be made by the Governor upon the recommendation of the State Council on Public Procurement, subject to the confirmation of the State House of Assembly.

*Appointment
and Removal of
the Director
General of the
Bureau*

(2) The Director-General shall be:

- (a) the Chief Executive and Accounting Officer of the Bureau;
- (b) responsible for the execution of the policy and day-to-day administration of the affairs of the Bureau; and
- (c) a person who possesses the relevant and adequate professional qualifications and shall have been so qualified for a period not less than 15 years.

(3) The Director-General shall hold office:

- (a) for a term of four (4) years in the first instance and may be re-appointed for a further term of four (4) years and no more;
- (b) on such terms and conditions as may be specified in his letter of appointment.

(4) Without prejudice to the provisions of this Law, the Director-General may be removed from office at the instance of the Governor on the basis of gross misconduct, financial impropriety, fraud and manifested incompetence proven by the Council.

11. (1) The Council may, subject to the provision of this Law, appoint such other employees for the Bureau as may, from time to time, be deemed necessary for the purpose of the Bureau.

*Other Staff of
the Bureau*

(2) The terms and conditions of service including remuneration allowances, benefits and pensions of officers and employees of the Bureau shall be as determined by the Council.

(3) Without prejudice to the generality of subsection (1) of this Section, the Council shall have power to appoint either on transfer or on secondment, from the State Public Service, such number of employees as may be required to assist the Bureau in the discharge of any of its functions under this Law and persons so employed shall be remunerated (including allowances) as the Council may consider appropriate.

12. (1) The Council may, subject to the provisions of this Law, make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:

*Staff
Regulations*

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
- (b) appeals by such employees against dismissal or other disciplinary measures.

(2) Until such regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the State shall be applicable.

13. Employees of the Bureau shall be entitled to pensions and other retirement benefits as prescribed under the Pension Law.

*Pensions and Other
Retirement Benefits of
the Employees*

14. (1) The Bureau shall establish and maintain a fund to be approved by the Council into which shall be paid and credited:

*Funds of the
Bureau*

- (a) the sums appropriated by the House of Assembly for the running of the Bureau;
- (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
- (c) all other assets which may from time-to-time accrue to the Bureau.

(2) The Bureau shall charge its fund to meet all its expenditure.

(3) The Council may make regulations for the Bureau:

- (a) specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
 - (b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Bureau may, from time-to-time, apply the proceeds of the fund for:
 - (a) the cost of administration of the Bureau;
 - (b) the payments of salaries, fees and other remuneration of the employees of the Bureau or experts or professionals appointed by the Bureau;
 - (c) the maintenance of any property acquired by or vested in the Bureau;
 - (d) any other matter connected with all or any of the functions of the Bureau under this Law; and
 - (e) any expenditure connected with all or any of the functions of the Bureau under this Law.
- 15.** (1) The financial year of the Bureau shall be the same as that of the State Government. *Financial Year, Budgeting and Annual Report*
- (2) Not later than six months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year, prepare a statement of account in such form as the Council may direct.
- (4) The Bureau shall, within six months after the end of the financial year to which the accounts relate, cause the accounts to be audited in accordance with guidelines supplied by the Auditor General of the State.

- (5) The Bureau shall, at the end of each financial year, prepare and submit to the Council, a copy of which shall be sent to the House of Assembly, a report in such form as shall accurately capture all the activities of the Bureau during the preceding year and shall include in the report, a copy of the audited accounts of the Bureau for that year.
- 16.** (1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of thirty (30) days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending claimant or his agent, and the notice shall clearly and explicitly state:
- Legal Proceeding Against the Bureau.*
- (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of the legal practitioner of the intending claimant; and
 - (d) the relief being sought.
- (2) The Director-General of the Bureau, officers, employees or agents of the Bureau shall not personally be subjected to any claim or demand by, or liable to any person in respect of anything done or omitted to be done, in the exercise of any function or power conferred by this Law upon the Bureau, the Director-General, officers, employees or agents of the Bureau.
- (3) A staff of the Bureau, Council member or the Director-General or officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against 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 of staff, council 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 provision of this Law or any other law or any other enactment may be served by

delivering same to the Director-General or by sending it by registered post and addressed to the Director-General at the Principal Office of the Bureau.

PART IV

SCOPE OF APPLICATION

- 17.** (1) The provisions of this Law shall apply to all public procurement of goods, works and services carried out by the State and the Local Government Areas within the State and all procurement entities. *Scope of Application*
- (2) The provision of this Law shall not apply to the procurement of special goods, works and services involving security, unless the Governor's express approval has been sought and obtained.

PART V

FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

- 18.** (1) Subject to any exemption allowed by this Law, all public procurement shall be conducted: *Fundamental Principles for Procurement*
- (a) subject to the prior review threshold as may from time-to-time be set by the Bureau pursuant to paragraphs (a) and (b) of Section 9 (1) of this Law.
 - (b) based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau has obtained a "Certificate of No Objection" to "Contract Award" from the Bureau.
 - (c) by open competitive bidding;
 - (d) in a manner which is transparent, timely and for ensuring accountability and conformity with this Law and regulations deriving therefrom;

- (e) with the aim of achieving value for money and fitness for purpose;
 - (f) in a manner which promotes competition, economy and efficiency; and
 - (g) in accordance with the procedures and timeline laid down in this Law and as may be specified by the Bureau from time-to-time.
- (2) Where the Bureau has set prior review thresholds in the procurement regulation, no fund shall be disbursed from the treasury or revenue account or any bank account of any procuring entity for any procurement falling above the set threshold, unless payments or other form of request for payment 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 threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent in the award of Certificate of No Objection under this Law.
- (4) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a “Certificate of No Objection” to “Contract Award” duly issued by the Bureau shall be null and void.
- (5) A supplier, contractor or service provider may be a natural person or a legal person or a combination of the two suppliers, contractors or service providers acting jointly and are jointly and severally liable for all obligations and or responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.
- (6) All bidders, in addition to requirements contained in any solicitation documents, shall:
- (a) possess the necessary:
 - (i) professional and technical qualifications to carry out particular procurement;

- (ii) financial capability;
 - (iii) equipment and other relevant infrastructure;
 - (b) shall have adequate personnel to perform the obligations of the procurement contracts;
 - (c) possess the legal capacity to enter into the procurement contract;
 - (d) 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 proceedings;
 - (e) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - (f) not have any Director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - (g) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau; is a former or present Director or shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.
- (7) 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 this Law and the solicitation documents and for this purpose; any such requirements shall apply equally to bidders.
- (8) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set-out exists, a bidder may have his bid or tender excluded from any procurement proceeding if: -
- (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or

any tangible item, or any has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary term to a current or former employee of a procuring entity or the bureau, in an attempt to influence any action, or decision making of any procurement activity;

- (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in the performance of any public procurement;
- (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Law, 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 creditors within two calendar years prior to the initiation of the procurement;
- (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidder has obtained a lawful permit with respect to allowance, deferment of such outstanding payments or payment thereof in instalments;
- (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
- (f) the bidder has in his management or is in any portion owned by any person that has been validly sentenced for a crime committed with a procurement proceeding, or other crime committed to gain financial profit; and
- (g) the bidder fails to submit a statement regarding his dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in the same

proceeding or who remains in subordinate relationship with other participants to the proceedings.

- (9) In such cases, the procuring entity shall inform the Bureau and person referred to in sub-section 8 (a) – (g) under this Section, in writing that the bid or tender in question has been excluded and the grounds of the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.
- (10) All communications and documents issued by procuring entity and the Bureau shall be in the English Language.
- (11) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (12) Every procurement entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten (10) years from the date of award.
- (13) Copies of all procurement record shall be transmitted to the Bureau not later than three (3) months after the end of the financial year and shall show:
 - (a) information identifying the procuring entity and the contractors;
 - (b) the date of the contract award;
 - (c) the value of the contract; and
 - (d) the detailed record of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau.

- (15) 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.
- (16) The burden of proving fulfilment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
- (17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding the provisions of subsection (17) of this Section, the Bureau may refuse to issue a "Certificate of No Objection" to "Contract Award" on the grounds that the price is excessive.
- (19) Pursuant to the provisions of subsection (18) of this Section, the Bureau may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.
- (20) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for the action(s) taken or omitted to be taken either in compliance with or in contravention of this Law.
- (21) The accounting officer of the procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the Bureau are complied with and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of this Law or the regulations laid down hereunder.
- (22) Procurement and disposal decisions at a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as may from time to time be laid down by the Bureau.

- (23) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as the main contractor or subcontractor, nor may they co-operate in any manner with bidders in the course of preparing their tenders.
- (24) A procuring entity shall not request or stipulate that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings.
- (25) All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.
- (26) All values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.
- (27) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART VI

ORGANIZATION OF PROCUREMENT

- 19.** Subject to the monetary and prior review thresholds for procurements in this Law, as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement: -
 - (a) in the case of a Government Agency, Parastatals, or Corporation, a Parastatals Tenders Board, and
 - (b) in the case of a Ministry or Extra-Ministerial Entity, the Ministerial Tenders Board.

- 20.** Subject to regulations, as may from time to time be made by the Bureau under the direction of the Council, a procuring entity shall plan its procurement by: -

*Approving
Authority*

*Procurement
Planning*

- (a) preparing the needs assessment and evaluation;
- (b) identifying the goods, works or services required;
- (c) carrying appropriate market and statistical surveys and on that basis, prepare analyses of the cost implications of the proposed procurement;
- (d) aggregating its requirement whenever possible, both within the procuring entity and between procuring entities to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- (f) prescribing any method for effecting the procurement, subject to the necessary approval under this Law, and
- (g) ensuring that the procurement entity functions as stipulated under this section shall be carried out by the Procurement planning committee.

20. Subject to regulations as may from time to time be made by the Bureau under the direction of the council, 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) to invite two (2) credible persons as observers in every procurement process, the person each representing a recognized: -
 - (i) private sector professional organization whose expertise is relevant to the particular goods or services being procured; and
 - (ii) non-governmental organization working in transparency, accountability and anti-corruption areas and the observers shall not intervene in the procurement process but shall have the right to submit their observation report to any relevant agency or body including their own organizations or associations;

- (c) 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;
 - (d) obtain approval of the approving authority before making an award;
 - (e) debrief the bid losers on request;
 - (f) resolve complaints and dispute if any;
 - (g) obtain and confirm the validity of performance;
 - (h) obtain a "Certificate of No objection" to "Contract Award" from the Bureau within the prior review threshold as stipulated under section 9 of this Law;
 - (i) execute all contract Agreements; and
 - (j) 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.
- 22.** (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 ministries, the Permanent Secretary and in the case of extra-ministerial departments and parastatals, the Director-General, Secretary or officer of co-ordinate responsibility. *Accounting Officer*
- (2) The accounting officer of every procuring entity, shall have overall responsibility for the planning of tenders, organization 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 the law or any regulation made hereunder whether or not the act or omission was carried out by him personally or by any of his subordinates and it shall not be material that he delegated any function, duty or power to any person or group of persons;

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

23. (1) For each financial year, each 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 procuring 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) the Technical Personnel of the procuring entity with expertise in the subject matter;
 - (vi) the State Ministry of Justice, who shall be represented by a Legal Officer.

- 24.** (1) There is hereby established by this Law in each procuring entity a tender's board (in this Law referred to as "the Tenders Board").
- (2) Subject to the approval of the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders Board so established.
- (3) The Tenders Board shall be responsible for the award of procurements 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 the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board, who shall also be the Chairman of the Evaluation Sub-committee.
- (5) The decision of the Tenders Board shall be communicated to the Commissioner for implementation.

*Establishment of
the Tenders Board
and Matters
Connected
Therewith.*

- 25.** (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 reaching a decision as to which supplier, contractor or services provider qualifies, shall apply only to the criteria set out in the pre-qualification documents and no more.
- (2) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or consultant that request for them and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and provision to suppliers or Contractors and Consultants.
- (3) The pre-qualification documents shall include: -

*Pre-
Qualification
of Bidders*

- (a) instructions to prepare and submit prequalification;
 - (b) a summary of the main terms and condition required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications, taking into account the reasonable need of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations relating to the preparation and submission of applications to prequalify and to the pre-qualification proceedings.
- (4) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made, at least, ten (10) days before the deadline for the submission of applications to prequalify.
- (5) The response by the procuring entity shall be given within a reasonable time, and in any event, within a period of at most seven (7) working days, so as to enable the supplier, contractor or consultant to make a timely submission of its application to prequalify.
- (6) The response to any request that might reasonably be expected to be of interest to other suppliers, contractors or consultants shall, without identifying the source of the requests, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.

- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to prequalify of whether or not it has been prequalified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been prequalified.
 - (8) Suppliers, contractors or consultants who have been prequalified may participate further in the procurement proceedings.
 - (9) The procuring entity shall, upon request, communicate its suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.
 - (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to prequalify the supplier, contractor or consultant.
 - (11) The procuring entity shall promptly notify each supplier, contractor or service provider requesting to demonstrate its qualification again whether or not the contractor or consultant has done so to the satisfaction of the procuring entity.
 - (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.
- 26.** (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 procuring entity, based on previously defined criteria, effects public procurements, by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed.

- (3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard.
- 27.** (1) invitations to bid may be either by way of state competitive bidding or International Competitive bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system. *Invitation to bid*
- (2) Every invitation to an open competitive bid shall: -
- (a) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) National Newspapers and one relevant internationally recognized publication, any official website of the procuring entity and the Bureau as well as the procurement journal not less than two (2) weeks before the deadline for submission of the bids for the goods and works;
- (b) in the case of goods and works valued under State Competitive Biddings, the invitation for bids shall be advertised on the notice board of the procuring entity, any official website of the procuring entity in at least two (2) National Newspapers and in the Procurement journal not less than two (2) weeks before the deadline for submission of the bids for the good and works.
- 28.** (1) Subject to the monetary and prior review as may from time to time be set by the Bureau, all procurements valued in excess of the sum 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 reputable bank acceptable to the procuring entity. *Bid Security*
- (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 tenders to provide a bid security, the requirement shall apply to each supplier or contractor.
- 29.** (1) All bids in response to an invitation to competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender document signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope. *Submission of Bids*
- (2) All submitted bids shall be deposited in a secured tamper – proof bid box.
- (3) All bids submitted shall be in English Language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor 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 as provided for in this Law.
- 30.** A procurement entity may: - *Rejection of Bids*
- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.
- 31.** (1) The period of validity for a bid shall be the period specified in the tender document. *Validity Period of Bids, Modification and Withdrawal of Tenders*
- (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 bids, in which case, the effectiveness of his bid

will terminate upon the expiration of the unexpended period of effectiveness.

- (4) A supplier 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 submission of tenders.

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

Opening of Bids

- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) cause all the bids to be opened in public in the presence of the bidders or their representatives and any interested member of the public;
- (c) ensure that the bid 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 bid opening and the organizations they represent which is recorded by the Secretary of the Tender's Board; and
- (e) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the secretary of the Tenders Board or his delegate in the minutes of the bid opening.

33. (1) All bids shall be first examined to determine if they: -

Examination of Bids

- (a) meet the minimum eligibility requirements stipulated in 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 his 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) changes in prices;
 - (b) changes in substance in a bid; and
 - (c) changes to make an unresponsive bid responsive.
- (4) Notwithstanding subsection (3) of this Section, the procuring entity corrects purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (6) While a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations: -
 - (a) with respect to clauses in offer: -
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of essence;
 - (lii) unacceptable alternative design; and
 - (iv) unacceptable price adjustment;
 - (b) with respect to the status of the bidders: -
 - (i) the fact that he is ineligible or not pre-qualified;
 - (li) the fact that he is uninvited;
 - (c) with respect to bid documents, an unsigned bid;

- (d) with respect to time, date and location for submission: -
 - (i) any bid received after the date and time for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location.
- (8) In case of major deviations, bid 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 that bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations: -
 - (a) the use of codes;
 - (b) the difference in standard;
 - (c) the difference in materials;
 - (d) alternative design;
 - (e) modified liquidated damages;
 - (f) omission in minor items;
 - (g) discovery of arithmetical errors;
 - (h) sub-contracting that is unclear and questionable;
 - (i) different methods of construction;
 - (j) difference in delivery schedule;
 - (k) completion period where these are not of essence;
 - (l) non-compliance with some technical local regulations;
 - (m) payment terms and
 - (n) any other condition that has little impact on the bid.

- (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply: -
 - (a) where the impact on the cost 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 clarification may be obtained from the supplier or contractor and where applicable, an 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 deviations shall be qualified in monetary terms.
 - (15) For the rejection of a bid, a written notice shall be given promptly to the supplier.
- 34.** (1) For the evaluation and comparison of bids that have been adjudged 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) That objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from bidders that have responded to the 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 with domestic preference where applicable;
 - (h) determination of the lowest calculated prices in order of ranking;
 - (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 of 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 factor's 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 damage.
 - (b) for works, in addition to factors stipulated under Section 39 (1) and subject to Section 39 (2), if time is a critical factor, the value of early completion; and
 - (c) the value of early completion under Section 39 (2), 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 prequalified, verification of the information 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 bidders are notified of the award.
- 35.** (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation. *Acceptance of Bids*
- (2) Notwithstanding subsection (1) of this Section, the selected bidders need not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
 - (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.
- 36.** (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 abroad. *Domestic Preference*
- (2) Where 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 a bid for such preference.

- (3) Margins of preference shall apply, only to tenders under International Competitive bidding.
 - (4) The Bureau shall, by regulation from time to time, set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.
- 37.** (1) In addition to any other regulation as may be prescribed by the Bureau, a mobilization fee of not more than 30% shall be paid to a supplier or contractor supported by the following:-
- Mobilization Fees*
- (a) in the case of State Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and
 - (b) in the case of International Competitive Bidding, an unconditional bank guarantee issued by a banking institution to the procuring entity.
- (2) Once a mobilization fee has been paid to any 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.
- 38.** 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 that 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*
- 39.** (1) Payment for the procurement of goods, works and services shall be settled promptly and diligently.
- Prompt Payment*
- (2) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by a Ministry, extra-ministerial office, government agency, parastatals or corporation shall be deemed a delayed payment.

- (3) All delayed payments shall attract interest at the rate specified in the contract document.
- (4) All contracts shall include terms specifying the interest for late payment of more than sixty (60) days.
- 40. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceeding.
- (2) The record 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 proceedings have been terminated without resulting in a procurement contract; and
 - (b) suppliers, contractors or consultants that submitted tenders, proposals, offers quotations or applied for prequalification, 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 record 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) Entries on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Auditor-General upon request, and where donor funds have been

*Recorded
Procurement
Proceedings*

used for the procurement, donor officials shall also have access upon request, to procurement files for purposes of audit and review.

PART VII

SPECIAL AND RESTRICTED METHOD OF PROCUREMENT

- 41.** (1) Notwithstanding the provisions of this Law, the Bureau may issue certificate of “No Objection” upon conditions hereinafter prescribed. *Two Stage Tendering*
- (2) A procuring entity shall engage in procurement by two (2) stages tendering where: -
- (a) it is not feasible for procuring entity to formulate detailed specification for the goods or works, or in the case of service, to identify their characteristics and where it seeks tender’s proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) the character of the goods or works are subjected to rapid technological advances;
 - (c) the procuring entity seeks to enter into a contract for research, experiment, study or
 - (d) development, especially where the contract includes the production of goods in sufficient quantities to establish their commercial viability or recover research and development cost;
 - (e) the procuring entity applies this Law and the procurement concerned has to do with National or State Security and determines that the selected method is the most appropriate method of procurement; or
 - (f) the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the

procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract.

- (3) The provision of the law as regards the process for open competitive bidding, shall apply to two stage tendering proceedings except to the extent that those provisions vary from this Section.
- (4) The invitation documents: -
 - (a) shall call upon suppliers or contractors to submit in the first stage of two –stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
 - (b) may solicit proposals that relate to technical quality or other characteristics of good, services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors.
- (5) The procuring entity may, in the first stage, engage in negotiation with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its' tender.
- (6) In the second stage of the two –stage tender proceedings, the procuring entity: -
 - (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
 - (b) may, in formulating the specification, delete or modify any aspect of the technical or quality characteristic of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tenders;
 - (c) may add new characteristics or criteria that conform with this Law;

- (d) shall communicate to suppliers or contractors, in the invitation to submit firm tenders, any deletion, modification or addition;
 - (e) may permit a supplier or contractor who does not wish to submit final tenders to withdraw from the tendering proceedings.
- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.
- 42.** (1) Subject to the approval by the Bureau, a procuring entity may for reasons of economy and efficiency, engage in procurement by means of restricted tendering if:- *Restricted Tendering*
- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods or works or services to be procured; or
 - (c) the procedure is used as an exception than the norm.
- (2) Where a procuring entity engages in restricted tendering on the basis that:
- (a) goods, works or 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 non-discriminatory manner the number of suppliers or contractors to ensure effective completion.
- (3) For the purpose of sub-section (2) of this Section, the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.

- (4) 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.
- 43.** (1) a procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation. *Request for Quotation*
- (2) Generally, invitations shall be obtained from three unrelated contractors or suppliers.
- (3) Each contractor or supplier from whom a quotation is requested shall: -
- (a) be informed whether any factor 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 contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the contractor or suppliers that give the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than the sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.
- 44.** (1) A procuring entity may carry out any direct procurement where: *Direct Procurement*
- (a) goods, works or services are only available from a particular supplier or contractor or if a particular supplier has exclusive right in respect of the goods or service, and no reasonable alternative exist; or

- (b) there is an urgent need for the goods, work or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseen circumstance giving rise to the urgency which is not a result of dilatory conduct on the part of the procuring entity;
- (c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that: -
 - (i) additional supplies need to be procured from that supplier or contractor because of standardization;
 - (ii) there is a need for compatibility with existing goods, equipment, technology, services taking into consideration the effectiveness of the original procurement in meeting the needs of the procurement entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merit the decision;
- (e) the procuring entity seeks to enter into a contract for research, experiment study or development except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development cost; or
- (f) the procuring entity applies this Law for procurement if that concerns state or security and determines that single

procurement is the most appropriate method of procurement.

- (2) The procuring entity: -
 - (a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;
 - (b) shall include in the record of procurement proceedings;
 - (c) statement of the grounds for its decision and the circumstances in justification of single source procurement.

45. (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, buildings owned, capital goods, may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - (c) a public project may be seriously delayed for want of an item of minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
 - (3) All procurements 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 with the Bureau which shall verify same and if appropriate, issue a "Certificate of No Objection".

PART VIII

PROCUREMENT CONSULTANCY SERVICES

46. Where a procuring entity wishes to procure services for its needs which are precise and ascertainable: -

*Expressing
Interest to
Provide Services
for Ascertained
Needs.*

- (a) it shall solicit for expression of interest or applications to prequalify to provide the services by publishing a notice to that effect in at least two (2) National Newspapers and the procurement journal;
- (b) where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only local consultants would be interested, the procuring entity may, without placing any notice, request at least three (3) and not more than ten (10) consultants or service providers to make proposals for 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 need;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service; and
 - (v) the cost or fee for the service;
- (c) every consultant (with the exception of legal practitioners and security service providers) shall register with the Bureau of public Procurements.

47. (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 commercial viability or to recover research and development cost.

*Expression of
Interest to
Provide
Services for
Unascertained
Needs.*

- (2) The procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in two (2) National Newspapers and the procurement journal.
- (3) A procuring entity may make direct requests to a limited number of consultants, requesting proposals for the provisions of a service if:
 - (a) the service is only available from no more than three (3) consultants;
 - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
 - (c) it is in the interest of State Security or similar reason of confidentiality particularly legal representation and or legal advisory services by private legal practitioners.

48. (1) Request for proposal shall include: -

- (a) the name and address of the procurement entity;
- (b) a requirement that the proposals are to be prepared in the English Language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity has the right to reject proposals;
- (e) the criteria and procedure for the evaluation of the qualifications of the consultants;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;

*Content of the
Request for
Proposal*

- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided;
 - (h) whether the procuring entity is seeking proposals on various possible ways of meeting it's needs;
 - (i) a requirement that the proposal price is to be expressed in Nigerian currency;
 - (j) the manner in which the proposal price is to be expressed, including a statement on the price elements, apart from the cost of services such as re-imbusement 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 or quality and combination of the lowest, 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.
- 49.** (1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified. *Clarification and Modification of Requests for Proposals*
- (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 proposals 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 proposal 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 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 their proposals.
- 50.** (1) The procuring entity shall allow sufficient time for the preparation at least thirty (30) days between the issue of the notice or request and the deadline for submission. *Submission of Proposals*
- (2) The technical and financial proposals shall be submitted, 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 in the financial proposals until the evaluation, including Tender Boards review, are conducted.
- 51.** (1) The procuring entity shall establish criteria for the proposals and prescribe the relative weight to be accorded to each criteria and the manner in which they are to be applied in evaluation of: - *Criteria for Evaluation of Proposals*
- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service providers and of the personnel to be involved in providing the services;

- (b) the effectiveness of the proposals submitted by the consultants or service providers in meeting the needs of the procuring entity;
 - (c) the proposal price including any ancillary or related cost;
 - (d) the effect that acceptance of the proposal will have on the balance of payments position and foreign reserves of the government 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 the counter trade offered by consultants or trade offered by consultants or service providers; and
 - (e) national defence and security considerations.
- (2) A procuring entity may accord 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.
- 52.** (1) The procuring entity shall select the successful proposal by either choosing the proposal with: -
- (a) the lowest evaluated price; or
 - (b) the best combined evaluation in terms of the general criteria set-out in the request for proposals and the price quoted.
- (2) The procuring entity shall include in the record of procurement, a statement of the grounds and circumstances on which it relied to select either of the procedures under 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.

*General
Selection
Procedure
(Service)*

53. (1) Where the procuring entity elects to choose the successful proposals based on technical and price factors, it shall establish a 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 requests for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non-responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen (14) working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultant and 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 proposals shall be: -
- (a) the proposals 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 proposals with the lowest price in the case of least – cost selection; or
 - (c) the highest ranked technical proposal within the budget.

*Procedure for
Selection of
Proposal where
Price is a
Factor*

- (7) The consultants with the winning proposals shall be invited for negotiation, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff – months and re-imbursement shall not be negotiated unless there are exceptional reasons.
- 54.** (1) Where the procuring entity elects to make a quality-based selection procedure based on consultants' qualification or single-source selection, it shall engage in negotiations with consultants in accordance with this section. *Selection Procedure where Price is not a Factor*
- (2) The procurement entity shall: -
- (a) establish a weight with respect to quality and price of that proposals;
 - (b) invite for negotiations on the price of its proposals, the consultant that has attained the best rating in accordance with subsection (1) of this Section;
 - (c) inform the consultants that attained rating above the weight that may be considered for negotiation if the negotiation with the consultant with the best rating do not result in procurement contract, and
 - (d) 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 paragraph (b) 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 negotiation on the basis of their rating until it arrives at a contract or reject 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 SURVEILANCE AND REVIEW

- 55.** (1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract, if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law. *Bureau to recommend Investigation*
- (2) The relevant authority may in the course of investigation: -
- (a) require an officer, employee or agent of the entity or bidder, supplier, contractor or consultant to produce any book, records, accounts or documents;
 - (b) search premises for any books, records, accounts or documents;
 - (c) examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
 - (d) remove books, records or documents of the procuring entity, bidder, suppliers, 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 a detailed receipt for the records, accounts or documents removed;
 - (e) require an officer, employee or agent of the procuring entity or bidder, supplier or contractor or consultant: -
 - (i) to explain an entry in the books, records, accounts or documents;
 - (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 as a result 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 require, 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 concerning procurement proceedings or procurement contract, take action to verify 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 authority shall, if an 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 the procuring entity shall be duly informed.

56. (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.
- (2) A complaint by a bidder against procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen (15) working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
- (3) On reviewing a complaint, the accounting officer shall make a decision in writing within fifteen (15) working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.
- (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within ten (10) working days from the date of communication of the decision of the accounting officer.
- (5) 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 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 complaint; and

- (iv) revise an improper decision by a procuring or disposing entity or substitute his own decision for such a decision.
- (6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account, representations from the bidders and from the respective procuring or disposing entity.
- (7) The Bureau shall make its decision within Twenty-one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.
- (8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decisions of the Bureau, the bidder may appeal to the High Court within thirty (30) days after the receipt of the decision of the Bureau, or expiration of the time for the Bureau to deliver a decision.

PART X

DISPOSAL OF PUBLIC PROPERTY

- 57.** (1) For the purposes of this Law, every procuring entity shall also be a disposing entity. *Disposal of
Public
Property*
- (2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (3) The Bureau shall, with the approval of the Council: -
- (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 documents, monitor implementation, enforce compliance and set reporting standards that shall

be used by all procuring entities involved in the disposal of public property.

- (4) For the purpose of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to unserviceable): -
 - (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including shares, stocks, bonds etc.);
 - (e) acquired by goodwill and any other gifts of the State Government.
 - (5) The means of the disposal of public assets shall include: -
 - (a) sale and rental;
 - (b) lease and hire purchase;
 - (c) licences and tenancies;
 - (d) franchise and auction;
 - (e) transfer from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorized variation.
- 58.** (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.
- (2) The disposal of assets whether or not listed in the assets register for a procuring entity, shall be planned and integrated

Planning of Disposals

into the income and expenditure budget projection of the procuring entity.

- (3) The disposal of assets referred to under subsection (2) of this section shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government.
- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

PART XI

CODE OF CONDUCT

- 59.** (1) The Bureau shall, with the approval of the council, stipulates a code of conduct for all public officers, suppliers and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets. *Code of
Conduct in
Public
Procurements*
- (2) The conduct of all persons involved with public procurement, whether as an 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 procurements shall subscribe to an Oath as approved by the Council.
 - (4) These principles shall apply at all times, particularly when: -
 - (a) making requisition for or planning of procurements;
 - (b) preparing solicitation documents;
 - (c) receiving offers in response to any form of solicitation towards a procurement or disposal;

- (d) evaluating and comparing offers confidentially and in complete neutrality;
 - (e) protecting the interest of all parties without fear or favour; and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (5) All public officers shall handle public procurement and disposal of assets by:-
- (a) ensuring adequate time for preparing offers;
 - (b) complying with this Law and all derivative regulations; and
 - (c) receiving strict confidentiality until completion of a contract.
- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons, real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such persons.
- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets, 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, it's ministries, extra-ministerial departments or corporations, where his capacity as a public officer is likely to confer any unfair advantage, pecuniary or otherwise, on him or any person directly related to him.

- (8) Any person engaged in the public procurement and disposal of assets, who has assumed or is about to assume a financial or other business outside relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (9) 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.
- (10) A conflict of interest exists where a person: -
- (a) possesses an interest outside his duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
 - (b) possesses a direct or indirect interest in a relationship with bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or construed to be or make possible personal gain due to the ability to influence dealings;
 - (c) entertains relationships which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - (d) places by acts or omissions, the procuring entity he represents or the government in an equivocal, embarrassing or ethically questionable position;
 - (e) entertains relationship comprising the regulation 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) create a source of personal revenue or advantage by using public property which comes into his hands either in the course of his work or otherwise; and

- (h) discloses confidentiality information being either the property of his procurement entity, the government or to a supplier, contractor or service provider or to unauthorized person.
- (11) A person involved in the disposal of assets, shall not either by a third party or by himself, be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three (3) years after the disposal.

PART XII

OFFENCES

- 60.** (1) Any person not being a public officer, who contravenes any provision of this Law, commits an offence and is liable upon conviction to a term of imprisonment of not less than two (2) years but not exceeding five (5) years with an option of fine and restitution. *Offences
Relating to
Public
Procurements*
- (2) Any offence in contravention of this Law shall be tried by the High Court.
- (3) prosecution of offences under this Law shall be instituted in the name of Kogi State of Nigeria by the Attorney-General of the State or such other officer of the State Ministry of Justice as he may authorize to do so, and in addition, without prejudice to the constitution of the Federal Republic of Nigeria, 1999 (As amended), he may: -
- (a) after consultation with the Attorney-General of any state of the Federation, authorize the Attorney-General or any other officer of the Ministry of Justice of Kogi State;
 - (b) if the relevant authority so requests, authorize any legal practitioner in Kogi State to undertake such prosecution directly or assist therein.
- (4) The following shall also constitute offences under this Law: -

- (a) entering or attempting to enter an agreement, whether enforceable or not, with a supplier, contractor or service provider, where the prices quoted in their respective tenders, proposals or quotation are or would be higher than would have been the case had there not been collusion between the persons concerned;
 - (b) conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (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 of tenders to enable the evasion of monetary thresholds set'
 - (e) bid rigging'
 - (f) altering any procurement document with intent to influence the outcome of a tender proceedings;
 - (g) altering or using fake documents or encouraging their use;
 - (h) wilful refusal to allow the Bureau or its officers to have access to any procurement records.
- (5) Any person who, while carrying out his duties as an officer of the Bureau or as an officer of the procuring entity, contravenes any provision of this Law commits an offence and is liable upon conviction to a cumulative punishment of: -
- (a) a term of imprisonment of not less than five (5) calendar years without the option of fine; and
 - (b) summary dismissal from government services.
- (6) Any legal person that contravenes any provisions of this Law commits an offence and is liable upon conviction to a cumulative penalty of:

- (a) debarment from all public procurements for period not less than five years with option of fine and restitution;
 - (b) a fine equivalent to 25% of the value of the procurement in issue.
- (7) Where any legal person shall be convicted pursuant to subsection (5) of this Section, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and shall be liable upon conviction to a term of imprisonment of not less than three (3) years but not exceeding five (5) years with an option of fine and restitution.
- (8) An alteration pursuant to subsection 4 (f) of this Section shall include but not limited to: -
 - (a) insertion of documents such as bid security or tax clearance certificate which were not submitted when bids were opened; and
 - (b) request for clarification in a manner not permitted under this Law.
- (9) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert, under which each person involved reasonably expected that the other would adopt a particular course of action, which would interfere with the faithful and proper application of the provisions of this Law.
- (10) bid rigging pursuant to subsection 4 (e) of this Section means an agreement between persons whereby: -
 - (a) offers submitted have been pre-arranged between them;
or
 - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in cost or loss of value to the State Treasury.

- (11) For the purpose of the presumption with respect to directors of companies, consideration shall be given to suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial.
- (12) For the purpose of the provisions of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the State Treasury.

PART XIII

SCOPE OF APPLICATION

- 61. (1) The provisions of this Law shall apply to all procurement matters affecting the Local and State Governments and their entities. *Scope of Application of this Law*
- (2) The provisions of this Law shall not apply to procurement matters involving security unless the Governor's express approval has been sought and obtained.

PART XIV

MISCELLANEOUS

- 62. (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the Director-General or any other person generally or especially authorized to act for that purpose by the council. *Miscellaneous*
- (2) Any contract or instrument which if made or executed by a person not being a body corporate, would not be required under seal may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorized to act for that purpose by the council.

- (3) Any document purporting to be a document dully executed under the seal of the Bureau shall be received and shall unless and until the contrary is proved, be presumed to be so executed.
 - (4) The validity of any proceeding of the council or of a committee of the council thereof shall not be adversely affected by any vacancy in the membership of the council or committee or by any defect in the appointment of a member of the council or of a committee, or by reason that a person not entitled to do so, took part in the proceedings of the council or committee.
- 63.** (1) The Kogi State Public Procurement Law, 2014 is hereby repealed. *Repeals and Savings*
- (2) All valid appointments of staff made by the Bureau of Public Procurement established by the said Kogi State Public Procurement Law, 2014 before the coming into force of this Law shall be deemed to have been made pursuant to this Law and the existing rights of fresh staff, if any, to pension and gratuities, is by virtue of this section preserved. *Savings*
 - (3) All actions made by the Kogi State Council on Public Procurement and the State Bureau of Public Procurement before the coming into force of this repealing and re-enactment law and the existing rights therein are by virtue of this Section preserved.

This printed impression has been carefully compared by me with the Bill, which passed through the State House of Assembly and same found by me to be a true and correctly printed copy of the said Bill.



**IBRAHIM ISA-AMOKA
CLERK OF THE HOUSE**

Date: 28/9/2020

I ~~Assent/Withhold Assent~~ Assent this 28th day of 09, 2020.



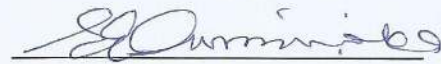
**ALHAJI YAHAYA BELLO
GOVERNOR OF KOGI STATE.**

Date: _____

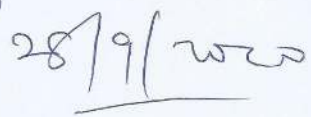
**SCHEDULE TO THE BILL REPEAL AND RE-ENACTING THE KOGI STATE
PUBLIC PROCUREMENT LAW, 2014**

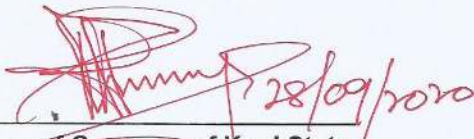
(1)	(2)	(3)	(4)
<i>Short Title of the Bill</i>	<i>Long Title of the Bill</i>	<i>Summary of Contents of the Bill</i>	<i>Date passed by the House</i>
A Bill repealing and re-enacting the Kogi State Public Procurement Law, 2014	A Bill for a Law to repeal and re-enact the Kogi State Public Procurement Law, 2014 Establishing the State Council on Public Procurement and the State Bureau of Public Procurement and other matters connected therewith, 2020	The Bill seeks to repeal and re-enact the Kogi State Public Procurement Law enacted in 2014, and to establish both the State Council on and State Bureau of Public Procurement.	August 19 th , 2020

I certify that this a true copy of the Bill passed by the Kogi State House of Assembly.



Signature of the Clerk of the House
Alhaji Ibrahim Isa-Amoka

28/9/2020




Signature of Governor of Kogi State,
Alhaji Yahaya Bello