



# **JIGAWA STATE GOVERNMENT**

**A LAW TO PROVIDE FOR THE ESTABLISHMENT OF  
DUE PROCESS AND PROJECT MONITORING BUREAU,  
ESTABLISHMENT OF GOVERNING COUNCIL, ITS  
POWERS AND FUNCTIONS FOR THE EFFECTIVE  
CONTROL AND MANAGEMENT OF PROJECTS AND  
PROCUREMENT IN THE STATE**

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**Preamble**

WHEREAS the Government of Jigawa State considers it imperative to regulate and observe due process in procurement, so as to promote the objectives of:

- (a) Achieving value for money and efficiency in procurement;
- (b) Fostering and encouraging competitive participation in procurement proceedings by eligible suppliers and contractors;
- (c) Promoting competition among suppliers and contractors for the supply of the subject matter of the procurement;
- (d) Providing for the fair, equal and equitable treatment of all suppliers and contractors;
- (e) Promoting the integrity of, and fairness and public confidence in the procurement process;
- (f) Achieving transparency in the procedures relating to procurement.

BE IT **THEREFORE** ENACTED by the Jigawa State House of Assembly as follows:

**Part I: Short title and Commencement**

*1. Short title*

This Law may be cited as Due Process and Project \_\_\_\_\_ Monitoring Bureau Law 20....

*2. Commencement*

This Law shall come into operation on ..... day of ..... 20....

**Part II: Establishment of the Due Process and Project Monitoring Bureau**

*3. Establishment of the Bureau*

There is hereby established for the State a body to be known as State Due Process and Project Monitoring Bureau which shall be a body corporate with perpetual succession and a common seal with power to sue and be sued in its corporate name.

*4. Functions of the Bureau*

The Functions of the Bureau include the following:

- (a) to regulate and set standards to enforce bidding and tender documents for all the State contracts;
- (b) to ensure full compliance with the laid down guidelines and procedures on procurement;

- (c) to develop, update and maintain system wide database for the State on various procurements at the Ministries, Department, Agencies and Local Government levels;
- (d) to uphold professional ethics and report erring procurement personnel, state and local government functionaries, department and private sector companies and their personnel to relevant authorities for appropriate sanctions;
- (e) to monitor prices of tendered items and provide price database advisory services to the procuring entity;
- (f) to perform pre-procurement audits;
- (g) to evaluate and monitor government projects from point of award until completion and issue certificate accordingly;
- (h) to coordinate training to promote capacity building of procurement personnel of the State;
- (i) to sensitize, promote and educate the citizens and other stakeholders in the state on public procurement issues;
- (j) to provide relevant procurement and budget performance information to interested parties;
- (k) to publish the details of major contracts awarded in the state periodically;
- (l) to undertake procurement research and surveys;
- (m) to set and update standard bidding and contract documents;
- (n) to perform all things and carryout such other activities as are necessary and expedient for the full discharge of its functions under or pursuant to this law.

##### *5. Powers of the Bureau*

The powers of the Bureau shall include the following:

1. (a) enforce the procurement rules and review threshold set pursuant to this Law;
- (b) inspect and review any procurement transaction to ensure compliance with the provisions of this Law;
- (c) investigate and determine whether any procuring entity has violated any provision of this Law;
- (d) blacklist or debar any supplier, contractor or consultant that contravenes any provision of this Law and Regulations made therefrom;

(e) register and maintain a database of contractors and service providers to the exclusion of all procuring entities;

(f) prescribe classifications and categorizations for the Companies or firms on the register;

(g) maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them;

(h) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider;

(i) call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;

(j) act on complaints by public procurement entities in accordance with the procedures set out in this Law;

(k) nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;

(l) recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law;

(m) undertake procurement and contract performance audit;

(n) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;

(o) recommend to the approving authority the award of goods, works and services contracts within the provisions of this Law;

(q) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law.

(2) Where there are persistent or serious breach of this Law, its Regulations or any other guideline made thereunder, the **Bureau** shall recommend to the Governor the following–

(i) the suspension from Office of Officers concerned with the procurement or disposal proceeding in issue;

(ii) the removal from Office of the head of any Procuring or Disposal Unit;

(iii) the discipline of the Accounting Officer of any Procuring entity;

(iv) 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 may consider appropriate.

(3) The Bureau shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law and may carry on in that behalf either alone or in association with any other person or body.

### **Part III: Establishment of the Governing Council**

#### *6. Establishment of the Governing Council*

There is hereby established for the Bureau a Governing Council.

#### *7. Composition of Council*

The Council shall consist of the following members to be appointed by the Governor:

(a) the Chairman who shall be a person of unquestionable integrity and shall have a sound knowledge and experience in the procurement process;

(b) a representative of each of the following:

i) Council Affairs Directorate;

ii) Ministry of Justice;

iii) Ministry for Local Government;

iv) Office of the Accountant General; and

v) Budget and Economic Planning Directorate.

(c) The Director General of the Bureau, who shall be a Secretary of the Council;

(d) not more than six persons representing public interest to be chosen from the following professions and at least two of whom shall be women:

i) the Media;

ii) accountancy;

iii) purchasing and supply;

iv) engineering;

v) legal profession;

i) Jigawa State Chamber of Commerce.



## *8. Functions of the Council*

The Council shall have the following functions:

- (a) to review the procurement and award of contract procedures of every entity to which this law applies subject to thresholds as may be set by the Council;
- (b) to consider, amend or approve the monetary thresholds of procuring entities under this Law;
- (c) to formulate policies on public procurements;
- (d) to approve the appointment of Directors and Unit heads of the Bureau;
- (e) to receive and consider for approval the audited account of the Bureau;
- (f) to approve changes in the procurement process;
- (g) to review periodically the socio-economic effects of procurement policies;
- (h) to advise the Governor on the status of the State government procurement in relation to annual appropriation;
- (i) to give such other directives and perform such other function as may be necessary to achieve the objectives of this law.

## *9. Powers of the Council*

(1) The Council shall have the following powers:

- (a) to make guidelines for the regulation of public procurement and may from time to time review or update the said regulations under this law and periodically set monetary thresholds for procuring entities in the State;
- (b) to make regulations for the Bureau specifying the manner in which assets or funds of the Bureau are to be held and the making of payments into and out of the funds;
- (c) to require the keeping of proper accounts and records for the purpose of the funds in such forms as may be specified in the regulations;
- (d) to determine the applicable policies and practices in relation to disposing of all public property;
- (e) to issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property;
- (f) to control all finances and accounts of the Bureau; and

(g) to do all things and carry out such other activities as are necessary and expedient for the full discharge of its functions under or pursuant to this law.

(2) At any time before the coming into operation of this law or the constitution of the Governing Council hereunder, the Director General of the Bureau may exercise such powers of the Governing Council as may be necessary for the smooth operation of the Bureau subject to the approval of the Governor.

#### *10. Tenure of Office*

(1) Members of the Council with the exception of Ex-officio members shall be appointed for a first term of four years and may be eligible for re-appointment for a like term only.

#### *Ex-officio member*

(2) The members specified in section 6(b) are herein referred as ex-officio members.

#### *Vacation of Office*

(3) The office of a member other than ex-officio member shall become vacant where:

- (a) he resigns his appointment by a written notice addressed to the Governor;
- (b) death, permanent incapacity or infirmity of mind; and
- (c) the Governor may revoke at any time the appointment of a member or dissolve the council.

#### *Remuneration of Council members*

(4) The members of the Council shall be paid such remuneration and allowances as the Governor may determine.

### **Part IV: Administration of the Bureau**

#### *11. Appointment of the Director General*

There shall be for the Bureau a Director-General to be appointed by the Governor, subject to the approval of the State House of Assembly.

#### *12. Qualification of the Director General*

A person shall be qualified to hold the office of the Director-General where he possesses relevant professional qualification for a period of not less than ten years and is of proven integrity.

#### *13. Functions of the Director General*

(1) The Director-General shall be the chief executive and accounting officer of the Bureau and if appointed from the Civil Service shall be deemed to be in the rank or equivalent of a permanent Secretary.

(2) The Director General shall also be responsible for the execution of the policy and day to day administration of the Bureau.

*14. Tenure of the Director General*

(1) The Director General shall hold office for a period of four (4) years and may be re-appointed for one (1) further four (4) year term only.

(2) Where a person has been appointed from the public service of the State, he shall be entitled to return to the service of the State at the end of his tenure.

(3) The Governor may prior to the expiration of the current tenure of the Director General, with ~~to~~ the supporting resolution of the House of Assembly, remove the Director General from office, if he satisfies himself that the Director General has behaved in such a manner that is unbecoming of the status of the office.

*15. Secretary/Legal Adviser of the Bureau*

There shall be a Secretary/Legal Adviser of the Bureau who shall be a State Counsel not below Grade Level 15 and shall be responsible to the Director General for discharge of his functions.

(a) The Secretary/Legal Adviser shall be responsible for the following matters–

(i) arranging meetings of the Council and its constituent committees;

(ii) preparation of agenda and minutes of meetings;

(iii) conveying decisions of the Council to members of the Council;

(iv) arranging for payment of allowances of the members of the Council and other related matters;

(v) heading the Legal Unit/Department of the Bureau; and

(vi) generally performing all other duties affecting the Bureau as may be assigned to him by the Director General.

*16. Employment of Staff*

(1) The Council may employ such number of members of staff for the Bureau as may be required for the due discharge of its functions under this law and may accept such number of members of staff on transfer or secondment from the service of the Federal, State or Local Government subject to the prevailing rules or guidelines obtainable from the State Civil Service Commission.

*Remuneration* *of* *Staff*  
(2) The persons employed shall be remunerated including allowances as obtained in the State Civil Service.

*Transfer* *of* *Staff*  
(3) The person so seconded under subsection (1) may choose to be transferred to the service of the Bureau and any previous service he may have rendered in the public service shall count as service to the Bureau for the purpose of any promotion or/and pension.

(4) Without prejudice to subsection (5) of this section, the condition, remuneration, and staff regulation of the Bureau shall be as obtained in the State Civil Service.

(5) The Governor may approve any other allowances to the staff of the Bureau in addition to what is obtained in the civil service of the State.

### *17. Pension*

Employees of the Bureau shall be entitled to pensions and other retirement benefits as prescribed under the pension laws of the State.

### *18. Funds of the Bureau*

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

- (a) such sums as may be appropriated by the Appropriation Law of the State;
- (b) grants and donations from donor agencies;
- (c) all other assets which may from time to time accrue to the Bureau

(2) The Bureau shall charge its funds to meet all its expenditure as may be appropriated by the State House of Assembly.

(3) The Bureau may from time to time apply the proceeds of the fund for the following:

- (a) the cost of administration of the Bureau;
- (b) the payment of salaries, fees and other remuneration of employees of the Bureau, experts or professionals appointed by the Bureau;
- (c) the maintenance of any property acquired by or vested in the Bureau;
- (d) any matter connected with all or any of the function of the Bureau under this law.

### *19 Budget and Annual Reports*

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

#### *(2) Submission of Annual Estimate*

Not later than six months before the end of the financial year the Bureau shall submit to the council an estimate of expenditure and projected income during the next succeeding year.

#### *(3) Keeping Records of the Bureau*

The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall keep in respect of each financial year a Statement of Account in such form as the Council may direct.

**(4) Account and Audit**

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 and by an auditor or a firm of auditors appointed by the Auditor General.

**(5) Annual Reports**

The Bureau shall at the end of each financial year prepare and submit to the Council a report in such forms as shall accurately capture all activities of the Bureau for that year.

**20. Establishment of Local Government Unit**

(1) There is hereby established a Unit under the Bureau to be called Local Government Due Process Unit which shall be headed by an officer not below the rank of a Director.

(2) The function of the unit shall be to ensure full compliance and implementation of the provision of this Law as applicable to Local Government.

**21. Guidelines**

In the exercise of its powers under this law, the Bureau shall be guided by the regulations as may be made by the Council under this law.

**Part V: Governing Rules on Public Procurement**

**22. Principles Guiding Public Procurement**

(1) Subject to the exceptions under this Law, all procurements carried out by any procuring entity shall be conducted:

- (a) by Open Competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed;
- (b) to promote competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
- (c) by a simple, sustainable, standardized process, with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology;
- (d) in an effective, efficient, transparent, timely, equitable manner to ensure accountability, which shall conform with the provisions of this Law and its Regulations with the aim of achieving value for money and fitness for purpose.
- (e) In observance of a system of accountability, where public officers and persons involved directly or indirectly in the procurement process or its implementation are, when warranted by circumstances, investigated and held liable for their actions;

- (f) to involve public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of this Law and its Regulations, and that all public contracts are performed strictly according to specifications;
- (g) to involve procurement plans that are supported by prior budgetary appropriation, and no procurement proceeding shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.
- (h) to ensure that procurement and contract publication process align with the Open Contracting Data Standards;
- (i) using applicable technological and electronic means, among others, for the procurement process and documentation;
- (j) to ensure that framework contract procedures as may be stipulated in guidelines made by the Bureau pursuant to this Law apply where appropriate.

(2) All regulations, procedures and timelines to be prescribed pursuant to this Law and specified by the Bureau from time to time shall always conform to the provisions of paragraphs (a) – (j) of subsection (1).

(3) Where the Bureau has set prior review or monetary threshold pursuant to this Law, no funds shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement falling above the set threshold.

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

(5) All bidders, in addition to requirements contained in any solicitation document shall:

(a) Possess the following:

- (i) professional and technical qualification to carry out particular procurement;
- (ii) financial capacity;
- (iii) equipment and other relevant infrastructure;
- (iv) personnel to perform the obligations of the procurement contract; and

(v) the legal capacity to enter into the procurement contract;

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

(c) Have fulfilled all its obligations to pay taxes, pensions and social security contributions;

(d) Not have any directors who have 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.

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

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

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

(b) A supplier, contractor or service provider during the last three (3) years prior to the commencement of the procurement proceeding 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 Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding;

(d) The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in instalments;

(e) The bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;

(f) The bidder has in its management or is in any portion owned by any person that has been convicted for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit;

(g) The bidder fails to submit a statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceeding.

(8) Where a bid and or tender is excluded under the provisions of subsections (6) and (7)(a – g) of this Section, the Bureau shall inform the bidder in writing the grounds for the exclusion of the bid or tender from public procurement.

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

(10) All communications and documents issued by procuring entities and the Bureau shall be in 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 procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a minimum period of ten (10) years from the date of the award.

(13) Copies of all procurement records shall be forwarded to the Bureau ~~Berau~~ not later than three (3) months after the end of the financial year and shall include:

(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 records 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 in addition to an administrative charge as may be prescribed from time to time by the Bureau.

(15) 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 cost evaluated and qualified bidder from the bidders substantially responsive to the bid solicitation.

(18) Notwithstanding subsection (17) of this Section, the Bureau may refuse to endorse the award of a contract for public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law.

(19) Pursuant to subsection (18) of this Section, the Bureau may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender amongst the bidders substantially responsive to the initial bid solicitation based only on the price.

(20) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposal or quotations other than in the summary form stating the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award.

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

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

(23) A procuring entity shall not request or stipulate that a bidder should engage the services of a particular subcontractor as a requirement for participating in any procurement proceeding.

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

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

(26) 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: Organisation of Procurement**

### **23. Procurement Unit**

A procuring entity within the provisions of this Law shall establish a Public Procurement Unit whose functions shall be to—

- (a) initiate the entity's procurement process;

- (b) carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
- (c) aggregate its requirement, within and between procuring entities to obtain economical and reduce procurement cost;
- (d) conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite expression of interest;
- (e) develop technical specifications;
- (f) conduct pre-bid conferences when necessary;
- (g) ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Law and Regulations as may be issued from time to time;
- (h) prepare bid documents;
- (i) issue bid documents;
- (j) supervise the development of all tenders;
- (k) organise communications with bidders;
- (l) issue receipts and keep bids in safe custody until opening;
- (m) maintain procurement records; and
- (n) carry out any other functions that the Accounting Officer of the procuring entity may assign to it.

#### 24, Approving Authority

Subject to the monetary and prior review threshold be for procurements as may from time to time be determined by the Bureau, the following shall be the Approving Authority for the conduct of public procurement:

- (a) in the case of a government agency, parastatal or corporation, a Parastatal Tenders Committee;
- (b) in the case of a ministry or extra-ministerial entity, the Ministerial Tenders Committee; and
- (c) in the case of a Local Government Council, a Local Government Tenders Committee.

## 25. Procurement Planning

Subject to regulations or guidelines as may from time to time be issued by the Bureau, a procuring entity shall plan its procurement by:

- (a) preparing a needs assessment and evaluation;
- (b) identifying based on paragraph (a), the goods, works or services required;
- (c) preparing an analysis of the cost implications of the proposed procurement;
- (d) aggregating its requirements 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) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (g) ensuring that the procurement entity functions stipulated in this Section shall be carried out by a Procurement Planning Committee.

## 26. Establishment and Composition of Procurement Planning Committee

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

(2) The Procurement Planning Committee shall comprise of the following members:

- (a) the Accounting Officer of the procuring entity or his representative who shall be the Chairman of the committee;
- (b) a representative of the procurement unit of the procuring entity who shall be the secretary;
- (c) a representative of the unit directly in requirement of the procurement;
- (d) a representative of the financial function of the procuring entity;
- (e) a representative of the planning, research and statistics function of the procuring entity;

(f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and

(g) a representative of the legal function of the procuring entity.

### 27. Procurement Implementation

Subject to regulations as may from time to time be issued by the Bureau, a procuring entity shall implement its procurement plans as follows:

(a) Advertise/solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;

(b) Invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency or body including their own organizations or association;

(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/disputes if any;

(g) Obtain and confirm the validity of any performance guarantee;

(h) Execute the Contract Agreement;

(i) 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

### 28. Accounting Officer

(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 corporations the Director General or Officer of coordinate responsibility; and in the case of a Local Government, the Secretary of the Local Government.

(2) The Accounting Officer of an entity and any officer to whom responsibility is delegated is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its Regulations.

(3) The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations made under are complied with, and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.

(4) The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organisation of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for:

(a) Ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of this Law or any Regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;

(b) Constituting the Procurement Planning 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 procurement method;

(f) Constituting the Evaluations Committee;

(g) Liaison with the Bureau and ensure the implementation of its Regulations.

### 29. Tenders Committee

(1) There is established by this Law in each of the State's Ministry, Extra-ministerial Office/Department/Agency, Parastatal, Corporation, the Local Government, and the State House of Assembly and Judiciary a Tenders Committee.

(2) Subject to the approval of the Council, the Bureau shall from time to time prescribe the membership of the Tenders Committee.

(3) The Tenders Committee shall have power to award and be responsible for the procurements of goods, works and services within the threshold set in the Regulations to this Law.

(4) In all cases where there is a need for pre-qualifications, the Chairman of the Tenders' Committee shall constitute a technical evaluation subcommittee 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' Committee.

(5) The decision of the Tenders Committee, after obtaining due approvals required under this law, shall be communicated to the Chief Executive of the procuring entity for implementation.

## **Part VII: Procurement Methods Goods, Works and Services**

### **30. Open Competitive Bidding**

(1) The procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding except it is otherwise provided by this Law.

(2) Any reference to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed.

(3) No negotiations unless otherwise provided for by this Law shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is:

(i) in the case of goods and works, the lowest cost evaluated bid from the bidders responsive to the bid solicitation; and

(ii) in the case of services, the highest rated evaluated bid from the bidders who is responsive to the bid solicitation.

(4) The provisions of this Law on open competitive bidding shall apply to procurement of goods, works and services with monetary value as prescribed in the regulations/guidelines.

### **31. Invitation to Bid**

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

(2) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized newspaper, and where available the official website of the procuring entity, the Bureau and the State Procurement Journal, not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services.

(3) In the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity and the State Procurement Journal not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services.

(4) Not later than six (6) months after the enactment of this Law, the Bureau shall issue guidelines for the advertisement/publication of Invitations to Bid, which shall include provisions allowing for shorter time for advertising invitation to bid in exceptional and appropriate circumstances.

### 32. Prequalification of Bidders

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

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

(3) Not later than six (6) months after the enactment of this Law, the Bureau shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process.

### 33. Bid Documentation

(1) Bid Documentation shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Bureau. The Bidding Documents shall include the following:

(a) Approved Budget for the contract;

(b) Instruction to Bidders, including criteria for eligibility, bid evaluation, the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;

(c) Terms of Reference;

(d) Eligibility Requirement;

(e) Description of the products, services or works concerned;

(f) Plans and Technical Specification;

(g) Form of Bid, Price Form, and List of Goods or Bill of Quantities;

(h) Delivery Time or Completion Schedule;

(i) Form and Amount of Bid Security; and

(j) Form of Contract and General and Special Conditions of Contract.

(2) Procuring entities may require additional document or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

### 34. Bid Security

(1) Subject to the monetary and prior review threshold as may be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not less than two percent (2%) of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity or an insurance bond issued by an insurance company acceptable to the Bureau.

(2) The Bureau shall from time to time specify the principal terms and conditions of bid security to be posted by bidders.

### 35. Submission of Bids

(1) All bids in response to an invitation to Open Competitive Bidding shall be signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.

(2) All bids shall have two (2) components, namely the technical and financial components, which shall be in separate sealed envelopes and submitted simultaneously; except where prequalification had earlier been conducted and financial bid only is subsequently requested.

(3) All submitted bids shall be deposited and kept in a secured tamper- proof bid box.

(4) All submitted bids must be in English Language.

(5) The procuring entity shall be issued a receipt showing the date and time the bid was received.

(6) Any bid presented after deadline for the submission of bids shall be rejected.

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

### 36. Failure of Bidding

(1) There shall be a failure of bidding if:

(a) No bids are received;

(b) No bid qualified as the lowest cost evaluated responsive bid or highest rate responsive bid; or

(c) The bidder with the highest rated or lowest calculated responsive bid refuses, without justifiable cause to accept the award of the contract, as the case may be.

(2) The contract shall be re-advertised for re-bid at the occurrence of any of the instance stated in sub section (1) of this Section.



(3) The procuring entity shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, the procuring entity, with the approval of the Bureau, may resort to an alternative method of procurement as provided for by this Law and the guidelines.

### ***37. Cancellation of Procurement***

(1) A procuring entity may cancel any procurement proceedings in the public interest with the approval of the Bureau, without incurring any liability to the bidders.

(2) Procurement proceedings may be cancelled based on any of the following grounds:

(a) no tender is submitted within the specified final time limit;

(b) none of the received tenders are compliant;

(c) all compliant tenders contain prices which substantially exceed the procuring entity's budget;

(d) the number of qualified candidates is less than a number that ensures a genuine competition on the envisaged contract; or

(e) any event beyond the procuring entity's control and unpredictable at the time of launching the award procedure, which frustrates the procurement proceeding.

(3) Where a contract award procedure is cancelled without the award of a contract or conclusion of a framework agreement, a cancellation notice shall be published in the State Official Gazette, the website of the Bureau or any other publicly accessible media.

### ***38. Validity Period of Bids***

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

(2) A procuring entity may request supplier, contractor or service provider to extend the period of validity for an additional specified period of time.

(3) A supplier, contractor or service provider may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.

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

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

### ***39. Bid Opening***

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

- (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;
- (d) ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the committee; and
- (e) call-over to the hearing of all present; the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary of the committee or his delegate in the minutes of the bid opening.

***40. Examination of Bids***

(1) Every bid shall be first examined to determine if it:

- (a) meets the minimum of eligibility requirements stipulated in the bidding documents;
- (b) has been duly signed;
- (c) is substantially responsive to the bidding documents; and
- (d) is generally in order.

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

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

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

(4) Notwithstanding the provisions of Subsection (3) of this Section, the procuring entity may correct 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) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

(7) The following shall be considered as major deviations:

(a) With respect to clauses in an offer;

(i) unacceptable sub-contracting;

(ii) unacceptable time schedule if time is of the essence;

(iii) unacceptable alternative design, and

(iv) unacceptable price adjustment;

(b) With respect to the status of the bidder:

(i) that he is ineligible or not prequalified;

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

(d) With respect to time, date and location for submission:

(i) any bid presented after the date and location for submission stipulated in the solicitation document; and

(ii) any bid submitted at the wrong location.

(8) In cases of major deviations, the bid shall not be considered any further.

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

(a) The use of codes;

(b) Alternative design;

(c) Alternative workmanship;

(d) Omission in minor items;

(e) Arithmetical errors;

(f) Completion periods where these are not of essence; and

(g) Any other condition that has insignificant impact on the bid.

(10) Not later than six (6) months after the enactment of this law, the Bureau shall issue regulations stipulating the guidelines for the opening and examination of bids.

#### 41. Evaluation of Bids

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

(2) The objective of bid evaluation shall be:

(a) In the case of goods and works to determine and select the lowest cost evaluated bidders from the bidders responsive to the bid solicitation;

(b) In the case of services to determine the highest rated bid from the bidders responsive to the bid solicitation.

(3) Not later than six (6) months after the enactment of this law; the Bureau shall issue Regulations stipulating the guidelines for the evaluation of bids.

#### 42. Disqualification of Bid

A procuring entity shall disqualify a bidder who submits documents containing false information or documents forged for purposes of qualification at any time, such disqualification shall be published by the Bureau.

#### 43. Rejection of abnormally low submissions

1. The procuring entity may reject a submission if it has determined that the price, in combination with other constituent elements of the submission, is abnormally low in relation to the subject matter of the procurement and raises concerns as to the ability of the bidder to perform the procurement contract, provided that the procuring entity has taken the following actions:

(a) it has requested in writing from the bidder details of the submission that gave rise to concerns; and

(b) it has taken account of the response or details provided by the bidder and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

2. The decision of the procuring entity to reject a submission in accordance with this section, the reasons for that decision, and all communications with the supplier or contractor under this section shall be included in the record of the procurement proceedings. The decision of the procuring entity and the reasons therefor shall be promptly communicated to the supplier or contractor concerned.

#### 44. Confidentiality of Bids

(1) Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, procuring entities shall not disclose information forwarded to them by bidders labelled as confidential, such information includes technical aspects, trade secrets and confidential information of tenders.

(2) Confidential information contained in any bid concerning commercial, financial or technical information or trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances.

(3) After the public opening of tenders, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the procuring entity or the Bureau shall be disclosed to any bidder or any third party until the award decision is notified to the successful bidder.

#### 45. Acceptance of Successful Bids

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

(2) Notwithstanding the provision of subsection (1) of this section and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.

(3) The procuring entity shall notify the Bureau of the list of qualified submissions and the preferred bidder.

(4) The procuring entity shall award a procurement contract after the Bureau has issued a Certificate of No Objection.

(5) Notice of the success of bid shall immediately be communicated to the successful bidder.

(6) Notwithstanding the provision of subsection (3) of this section, where the procurement proceeding is of a value for which approval should be sought from an approving authority or Bureau, notice communicated to a successful bidder shall serve only for notification purposes and shall not howsoever be construed as a procurement award.

#### 46. Expression of Interest to provide Services

(1) Where a procuring entity wishes to procure services for its needs which are precise and ascertainable it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two (2) national newspapers and the procurement journal where applicable;

(2) where the value of the services to be procured is less than an amount stated in the guidelines or is 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 provision of the services in a format stipulating:

(a) a statement of qualifications of the consultant to provide the service;

(b) a statement of understanding of the procuring entity's needs;

(c) the methodology for providing the service;

(d) the time frame for providing the service; and

(e) the cost or fee for the service.

#### *47. Limitation of Time for Procurement Award*

Without prejudice to the provisions of this Law, the period between the opening of bids and the award of contract shall not exceed ~~four~~three (4) months.

#### *48. Termination of Award Procedure*

(1) When a contract award procedure has been launched by publication of a procurement notice, it may be terminated where:

(a) a contract of framework agreement is concluded; and

(b) the award procedure is cancelled in line with section 37.

### **Part VIII: Procurement of Consultancy Services**

#### *49. Request for Proposals to provide services for unascertainable needs*

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

(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 where applicable.

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

(a) the services are only available from not 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 public interest as certified by the Bureau.

#### 50. Content of the request for proposal

Request for proposals shall include:

(a) the name and address of the procuring 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 reserves the right to reject proposals;

(e) the criteria and procedures for the evaluation of the qualifications of the consultants;

(f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;

(g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;

(h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;

(i) a requirement that the proposal price is to be expressed in Nigerian currency;

(j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;

(k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and

(l) a short list to be made of only national consultants for assignment within a set threshold in the procurement regulation provided that the national consultants possess such requisite skills.

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

### 51. Clarification and modification of request for proposals

(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.

(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 proposals to the short-listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

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

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

### 52. Submission of Proposals

(1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than fourteen (14) working days between the issue of the notice or request and the deadline for submission.

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

(3) A proposal presented after the deadline for submission of proposals shall be rejected.

(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 insight to the financial proposals until the technical evaluations including any review by the Bureau is concluded.



### 53. Criteria for evaluation of proposals

(1) The procuring entity shall, subject to the relevant provisions of the law and the guidelines, state criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:

(a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;

(b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;

(c) the proposal price, including any ancillary or related cost;

(d) the extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and

(e) security considerations.

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

### 54. General selection procedure

(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 in subsection (1) of this Section.

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

### 55. Procedure for selection of proposal where price is a factor

(1) Where the procuring entity elects to choose the successful proposal 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 request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request of 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 procuring entity.

(4) The name of the qualified consultants, the quality score 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 proposal 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 in the case of fixed budget selection.

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

#### **56. Procedure for selection of proposal where price is not a factor**

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

(2) The procurement entity shall:

(a) establish a weight with respect to quality and price of the proposals;

(b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this Section;

(c) inform the consultants that attained ratings above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a 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 subsection (2) (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 negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

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

## **Part IX: Special and Restricted Methods of Procurement**

### *57. Special and Restricted Methods of Procurement*

(1) A procurement entity may with the approval of the Bureau conduct procurement by other methods other than open tendering such as:

(a) Direct Procurement;

(b) Emergency Procurement;

(c) Restricted Tendering (selective/nominative);

(d) Request for Quotation;

(e) Electronic Procurement.

(2) The Bureau may, by regulations or guidelines, provide other methods of procurement in addition to the those in subsection 1 of this section.

### **58. Direct Procurement**

(1) A procuring entity may carry out direct procurement where:

(a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;

(b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not the result of any conduct on the part of the procuring entity;

(c) owing to catastrophe event, there is an urgent need for the goods, works or services making it impracticable to use other methods of procurement because of the time involved in using these 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 need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring 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 suitability of alternatives to the goods or services in question merits the decision.

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

### **59. Emergency Procurement**

(1) A procuring entity may for the purpose of this law carry out an emergency procurement where:

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

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

(3) All procurements made under emergencies shall be handled with expedition but along with 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 detail report thereof with the Bureau which shall verify same.

## 60. Restricted Tendering

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

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

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or

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

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

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

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

(3) The provisions of this Law regarding the open competitive bidding shall apply to selective tender proceedings only to the extent of the variance by this Section.

## 61. Request for Quotation

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

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

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

(a) be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes are to be included in the price; and

(b) give only one quotation and shall not be allowed to change or vary the quotation.

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

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

### **62. Electronic procurement**

(1) Not later than twelve (12) months from the enactment of this Law or at such other time as the Governor may consider appropriate, the Bureau shall design and set up a secure electronic portal which shall be the primary source of information for all public procurement matters and opportunities within the purview of this Law and its Regulations issued under this Law.

(2) Subject to the provisions of this Law and its Regulations, it shall be lawful for any procuring entity to consider any or all of its tenders by electronic auction and or simulation on its electronic portal, provided that the use of the electronic system shall be transparent, efficient, and economical.

## **Part X. Supplementary Provisions**

### **63. Register of Awards**

Procuring entities shall maintain a register of awards, where the details of all procurement they awarded shall be kept.

### **64. Domestic Preferences**

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

(2) Where the procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic suppliers and contractors and the criteria for eligibility for such preference.

(3) Margin of Preference may apply to tenders under all International competitive bidding.

(4) The Bureau shall by regulation or guidelines from time to time set the limit and the formulae for computation of margins of preference.

### **65. Advance Payments**

(1). Advance payment of thirty percent (30%), or as may be prescribed in the guidelines, may be paid to a supplier or contractor, provided that advance payment above ~~thirty~~twenty percent (230%) may be paid where the supplier or contractor submits a written request justifying the need for such payment. Advance payment above thirty percent (230%) shall be guided by Regulations prescribed by the Bureau with the approval of the Governor.

(2) Advance payment shall be subject to and covered by an unconditional bank guarantee issued by a reputable bank or institution acceptable to the Bureau, presented by the contractor that will receive the advance payment.

(3) After advance payment has been made to a supplier or contractor, no further payment shall be made to such supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

#### **66. Performance Guarantees or Bonds**

Prior to the signing of the contract, the successful bidder may be required, in circumstances deemed necessary by the Bureau, as a further measure of guarantee for the faithful performance of the procurement contract and compliance with his obligation under the contract, to post a performance security in such form and amount as specified in the bid solicitation.

#### **67. Interest in delayed payments**

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

(2). Any payment due for more than ninety (90) days from the date of the submission to the treasury of the invoice, valuation certificate or confirmation or authentication by the procuring entity shall be deemed a delayed payment.

(3). All delayed payments shall attract interest at the rate specified in the contract document and approved by the Bureau.

#### **68. Record of Procurement Proceedings**

Every procuring entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Bureau.

### **Part XI: Investigation and Challenge Proceedings**

#### **69. Investigation by the Bureau**

(1) The Bureau may conduct an investigation into 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 it necessary or desirable to prevent or detect a contravention of this Law.

(2) The Bureau may in the course of its investigation:

(i) at any time during normal office hours, enter the premises of procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceedings under investigation;

(ii) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document;

(iii) search premises for any book, records -account or document;

(iv) examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant;

(v) obtain books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them  
but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;

(vi) require any officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in their books, records, accounts or documents;

(vii) provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.

(3) The power of entry and search conferred by subsection (2) (i) - (iii) of this Section shall not be exercised except the Bureau has first obtained an order of the State High Court without the necessity of putting the procuring entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.

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

(i) Nullification of the procurement proceedings;

(ii) cancellation of the procurement contracts;

(iii) ratification of anything done in relation to the proceedings; or

(iv) a declaration consistent with any relevant provisions of this Law.

(5) On completion of an investigation, the Bureau shall send a summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant.



(6) The Bureau shall afford any procuring entity, bidder, supplier or contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under subsection (4) of this Section.

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

### 70. Right to challenge and Appeal

(1) A supplier or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.

(2). The following procedure shall apply to complaints against a procuring or disposing entity–

(i) a complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer of the procuring entity or disposing entity who shall on receiving the complaint make a decision in writing within ten (10) working days indicating the corrective measures to be taken, including the suspension of the proceedings where he deems it necessary and gives reasons for his decision;

(ii) where the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within seven (7) working days from the date of receipt of the decision of the accounting officer;

(iii) upon receipt of a complaint, the Bureau shall promptly 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 settles the matter, except clear public interest consideration demands the contrary;

(iv) before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint considering representations from the bidders and from the respective procuring or disposing entity; and

(v) 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.

(3) The Director General shall constitute a Review Committee comprising of technical, financial and legal experts to assist in the review process.

(4) -The decision of the Bureau may include any or all of the following:

(a) dismissal of the complaint;

(b) nullifying in whole or in part an unlawful act or decision made by the procuring or disposing entity;

(c) declaring the rules or principles governing the subject matter of the complaint; and

(d) revising an improper decision by the procuring or disposing entity or substituting same with its own decision.

#### **71. Judicial Review**

(1) A party unsatisfied with the decision of the Bureau may apply to the State High Court for review of the decision.

(2) Following receipt of an application for review, the court may do any of the following:

(a) Order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; and

(b) Order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force;

if and for as long as it finds such a suspension necessary to protect the interests of the applicant unless the court decides that urgent public interest considerations require the procurement proceedings, the procurement contract or the framework agreement, as applicable, to proceed.

(3) The court may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

(4) The court shall:

(a) Order the suspension of the procurement proceedings for a period of ten (10) working days where an application is received prior to the deadline for presenting submissions of bid; and

(b) Order the suspension of the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement, as the case may be, where an application is received after the deadline for presenting submissions and where no standstill period has been applied; unless the court decides that urgent public interest considerations require the procurement proceedings, the procurement contract or the framework agreement, as applicable, to proceed.

(5) Promptly upon receipt of the application, the court shall:

(a) Suspend or decide not to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement, as the case may be in accordance with subsection 3 and 4 of this section;

(b) Notify the procuring entity and all parties in the procurement proceedings of the application and its substance;

(c) Notify all parties in the procurement proceedings of its decision on suspension. Where the court decides to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement, it shall in addition specify the period of the suspension. Where it decides not to suspend them, it shall provide the reasons for its decision to the applicant and to the procuring entity; and

(d) Publish a notice of the application.

(6) The court may dismiss the application and shall lift any suspension applied, where it finds as a fact that:

(a) The application is manifestly without merit; or

(b) The applicant has no *locus standi*.

(7) The court shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceedings of the dismissal and the reasons therefor and that any suspension in force is lifted. Such a dismissal constitutes a decision on the application.

(8) The notices to the applicant, the procuring entity and other participants in the procurement proceedings under subsection 5 and 6 of this section shall be given no later than three (3) working days after receipt of the application.

(9) Promptly upon receipt of a notice under subsection 5 (b) of this section, the procuring entity shall provide the court with effective access to all documents relating to the procurement proceedings in its possession, in a manner appropriate to the circumstances.

(10) In taking its decision on an application that it has entertained, the court may declare the legal rules or principles that govern the subject matter of the application, shall address any suspension in force and shall take one or more of the following actions, as appropriate:

(a) Prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Law;

(b) Require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Law to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Law;

(c) Overturn in whole or in part an act or a decision of the procuring entity or the Bureau that is not in compliance with the provisions of this Law;

(d) Revise a decision by the procuring entity or the Bureau that is not in compliance with the provisions of this Law

(e) Confirm a decision of the procuring entity or the Bureau;

(f) Overturn the award of a procurement contract or a framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Law and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of notice of the overturning of the award;

(g) Order that the procurement proceedings be terminated;

(h) Dismiss the application; and

(i) Take such alternative action as is appropriate in the circumstances.

(11) The decision of the court under (10) of this section shall be issued within thirty (30) working days.

(12) The court shall immediately thereafter communicate the decision to the procuring entity or the Bureau to the applicant, to all other parties in the review proceedings.

(13) All decisions of the review bodies or the court under this section shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the court under this section.

(14) The Chief Judge shall make practice directions to facilitate the conduct of judicial review under this section.

## **Part XII: Disposal of Public Property**

### *72. Disposal of Public Property*

(1) For the purpose of this law, every procuring entity shall also be a disposing entity

(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 properties;

(b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public properties; and

(c) issue a standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public properties.

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

(a) created through public expenditure;

(b) acquired as a gift or through deeds;

(c) acquired in respect of intellectual or proprietary rights; and

(d) acquired on financial instruments (including shares, stocks, bonds etc.)

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

(a) sales and rentals;

(b) lease and hire purchase;

(c) licenses and tenancies;

(d) franchise and auctions;

(e) transfer from one government department to another with or without financial adjustments; and

(f) offer to the public at an authorized variation.

### **Part XIII: Offences and Punishments**

#### ***73. Offences and Punishments***

An offence under this law shall include:

(a) opening or tampering with any sealed Bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of Bids or other documents;

(b) delaying, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or its Regulations;

Offences:

(c) engaging in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way;

(d) directly or indirectly attempting to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract.

(e) split tenders to enable the evasion of monetary threshold set;

(f) altering any procurement document with intent to influence the outcome of a procurement proceedings;

(g) bid rigging;

(h) directly or indirectly attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;

(i) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favor, agreement, bribery and corruption;

(j) uttering or using fake documents or encouraging their use;

(k) wilful refusal to allow the officers of the Bureau to have access to any procurement records;

(l) collusion or attempting to collude with any party to the procurement in order to alter the prices or quotation to their advantage. For the purpose of this subsection. It shall be sufficient that a reasonable business person should have known that his action would result his company or firm having an undue advantage over other bidders to the detriment of the State.

(m) any other act which contravenes either directly or indirectly any of the provisions of this Law.

(2) Any person whilst carrying out his duties as an officer of the Bureau, or any procuring entity which contravenes any provision of this Law and its Regulations commits an offence and shall be liable on conviction to a cumulative punishment of–

(a) a term of imprisonment of ~~three~~ (3) years without option of fine; and

(b) summary dismissal from government service.

(3) Any corporate body or firm that contravenes any provision of this Law and its regulation commits an offence and is liable on conviction to a cumulative penalty of–

(a) being barred from all public procurement for a period not more than ~~thirteen~~ (3) years; and

(b) a fine equivalent to 5% of the value of the procurement in issue.

(4) Where a Corporate body or firm is convicted pursuant to subsection (3) of this Section, every Director of the Company or every Partner of the Firm shall be guilty of an offence and is liable on conviction to a term of imprisonment for not more than three (3) years without an option of fine unless he proves that the offence upon which the conviction was based was committed without his knowledge, consent or connivance.

(5) An alteration pursuant to subsection (1) (f) of this Section shall include but not limited to—

(a) forged arithmetical correction or calculation

(b) insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening; and

(c) request for clearance in a manner not permitted under this Law and its Regulations.

(6) 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 act 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.

(7) Bid-rigging pursuant to subsection (1) (g) of this Section means an agreement between persons where—

(a) offers submitted have been prearranged between them; or

(a) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.

(8) For the purpose of subsection (6) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether totally or partially, directly or indirectly.

(9) For the purposes of subsection (1), (4) and (7) above, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the State Treasury.

#### **Part XIV: Miscellaneous**

##### ***74. Governor's General Directives***

(1) The Governor may give to the Council or the Bureau such directives of specific or general nature which shall be in accordance with the Law and the Council or the Bureau shall comply with such directives.

(2) Notwithstanding anything contained in this law or any other law, the Governor may, where he satisfies himself that all due process procedures are followed, consider and give executive approval for the award of any contract. Such approval shall be forwarded to the State Executive Council for ratification where it exceeds One Hundred million Naira.

#### *75. Meetings of Council*

(1) The Council shall hold meetings quarterly and such other meetings as the situation may warrant.

#### *Presiding at meetings*

(2) The meeting shall be presided over by the Chairman and in his absence, the members shall choose one of them to be the Chairman of that meeting.

#### *Quorum*

(3) The quorum of all meetings of the Council shall be two third of the total number of council members.

#### *Voting*

(4) All members shall be entitled to one vote at all meetings of the council except the Chairman who shall have a casting vote.

#### *Validity of proceedings*

(5) The validity of any proceeding of the council shall not be affected by any vacancy or in its membership or by any defect in the appointment of any member.

#### *Co-option of persons*

(6) The council may co-opt any person or persons to be a member of such meeting or meetings of the council only if the need arises.

Where the Council desires to obtain the advice of any person on any matter, the Council may co-opt such person to be a member for the meeting or meetings as may be required, and the person shall whilst so co-opted, have all the rights and privileges of a member of the Council save that he or she shall not be entitled to vote on any question or count towards a quorum.

#### *76. Committees power of delegation*

The council subject to such conditions as it may decide may appoint committees to perform any of its functions where necessary.

#### *77. Authentication of Seal*

The seal of the Bureau shall be authenticated by the signature of the Chairman, Secretary or any other person as may be authorized generally or specifically by the Council.

#### *78. Standing orders*

The Council shall make standing orders to regulate its own procedure and conduct of its meetings and may amend such orders



**79. Non-liability of members**

No member of the Council shall be sued in his personal capacity for any act done or omitted to be done in the lawful performance of his duties under this Law

**80. Disclosure of interest by members of the Council**

(1) A member of the Council who is in any way directly or indirectly interested in a transaction or project of the Council shall disclose the nature of his interest at a meeting of the Council, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Council with respect to that transaction or project.

(2) For the purpose of subsection (1) of this section a general notice given at a meeting of the Council by a member to the effect that he is interested in any trade or business or he is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Council concerning that trade, business, company or firm, shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.

(3) A member of the Council may not attend in person a meeting of the Council in order to make a disclosure which he is required to make under this section if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting

**81. Representation in Court**

In any suit instituted by or against the Council it shall be represented in court by a State Counsel duly delegated by the Attorney-General of the State or any other Legal Practitioner appointed by the Council.

**82. Pre-action notice**

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

- (a) the cause of action;
- (b) the particulars of the claim;
- (c) the name and address of legal practitioners of the intending plaintiff; and
- (d) the reliefs sought.

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

(3) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this law or any other law may be served by delivering it to the Director-

General or by sending it through registered post and addressed to the Director-General at the principal office of the Bureau.

### 83. *Savings*

(1) All assets and liabilities including monies standing to the credit of the Bureau before the coming into operation of the Law shall be deemed as belonging to the Bureau.

(2) All contracts and agreements relating to dealing and activities entered into or carried out by the Bureau prior to the coming into operation of this law shall be deemed to have been entered or carried out under the provision of this law and by the council.

### 84. *Scope of the Law*

The provisions of this law shall apply to:

(a) the procurement of goods, works and services, financed in whole or in part from public funds by the State Government and all its procurement entities;

(b) Local Government Councils and all procuring entities in the State;

(c) any public body in the State engaged in procurement, and shall include Ministries, Departments, Offices and Agencies of the State, extra-ministerial offices, parastatals, corporations, the State House of Assembly and Judiciary;

(d) all entities outside the foregoing description which derive any funds budgeted or proposed to be budgeted for any type of procurement described in this Law from the State Government's share of Consolidated Revenue Fund.

(e) the disposal of public properties;

(f) procurement with funds or loans taken or guaranteed by the State Government and foreign aid funds except where the applicable loan agreement, guarantee, contract or foreign agreement provides otherwise.

### 85. *Interpretation*

In this law:

“**Accounting Officer**” means the person charged with line supervision of the conduct of all procurements processes;

“**Alteration**” includes insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening and request for clarification in a manner not permitted under his law.

“Approving Authority” means:

(a) in the case of a government agency, parastatal or corporation, Parastatal Tender Board;

(b) in the case of a ministerial entity, the Ministerial Tender Board;

(c) for a period of two (2) years and in the case of contracts within the threshold that shall be set by the ~~Bureau~~Bureau in the Regulations, the State Tender Board;

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

**“Bid rigging”** means offers submitted have been prearranged between them; or 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 costs or loss of value to the State;

**“certification”** means issuing a document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury;

**“Chairman”** means Chairman of the Council or any other person appointed by the members of the Council in accordance with the provision of this law;

**“Collusion”** means 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;

**“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 proprietor, joint stock company. Joint venture or any other legal entity through which business is conducted;

**“Council”** means the Governing Council of the Board;

**“Debar”** means the placing of a firm or company or natural person in a list of persons ineligible to participate in any procurement proceedings under this laws;

**“Director-General”** means Director General of the Bureau;

**“Disposing entity”** means procuring entity;

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

“Fund” means the Jigawa State Procurement Council Fund established by Section 13 of this Law;

**“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;

**“Government”** means the Government of Jigawa State;

**“Governor”** means Governor of Jigawa State;

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

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

**“Lowest evaluated bid”** is the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document;

“Margin of Preference” means the extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

**“Member”** means a member of the Council;

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

**“monetary Threshold”** means the value limit in Naira set by the Council outside of which an approving authority may not award a procurement contract;

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

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

**“Opening competitive bidding”** means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;

**“Procurement proceedings”** means the initiation of the process of offering procurement up to award of a procurement contract;

**“Procuring entity”** means any public body engaged in procurement and it includes a ministry, extra-ministerial office, Government agency, parastatals corporation and Local Government;

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

“**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 of offers, proposals or quotations;

“**State**” means Jigawa State of Nigeria;

“**Court**” means high Court of Jigawa State

“**Supplier**” means a real or legal person that provides supply of goods, contracting of works or consultations;

“**Suit**” means criminal and civil actions;

“**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 remove any components of the bid;

“**Works**” means all the works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction where their value does not exceed that of the construction.

#### ***86. Repeal***

The Due Process and Project Monitoring Bureau Law 2012 is hereby repealed.