



EDO STATE OF NIGERIA

EDO STATE PUBLIC PROCUREMENT AGENCY LAW 2012

**EDO STATE PUBLIC PROCUREMENT AGENCY LAW AND
FOR OTHER MATTERS CONNECTED THEREWITH**

**Be it enacted by the Edo State House of Assembly and by the authority
of the same as follows:**

Citation and Commencement

This Law shall be cited as the Edo State Public Procurement Law 2012 and shall
be come into force on the 29th day of February, 2012

**PART 1: ESTABLISHMENT OF THE EDO STATE PUBLIC
PROCUREMENT AGENCY**

1. Establishment of the Edo State Public Procurement Agency

- (1) There is hereby established a body to be known as the Edo State Public Procurement Agency (referred to in this Law as "the Agency").
- (2) The Agency shall-
 - (a) be a body corporate with perpetual succession and a common seal;
 - (b) have power to sue and be sued in its corporate name; and
 - (c) be capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out any of its functions under: this Law.
- (3) The affairs of the Agency shall be governed by a Governing Board (referred to in this Law as "the Council")

Procurement Agency Law, 2012

- (4) The board shall consist of:
- (a) a member of the Edo State Executive Council as the Chairman (Commissioner for Finance)
 - (b) a member of Edo State Executive Council as the Vice Chairman (Commissioner for Economic Planning and Budget);
 - (c) two other members of the Edo State Executive Council (Attorney-General & Commissioner for Justice) ; and any other commissioner;
 - (d) three persons from the public, one from each Senatorial District of the State who shall be part time members and nominated by the Governor and the persons should be of unquestionable character, including a member of the Civil Society Organisations (CSO), whose nomination shall be confirmed by the Edo State House of Assembly;
 - (e) the Managing Director of the Agency.
- (5) The functions and powers of the Board are, subject to the provisions of this law, to:
- (a) set consider and/or amend the monetary and prior review thresholds for the application of the provisions of this Law by procuring entities;
 - (b) consider and approve policies on public procurement;
 - (c) approve any procurement guidelines or regulations to be made pursuant to this Law;
 - (d) approve the employment of the management and staff of the Edo State Public procurement Agency;
 - (e) receive and consider, for approval, the audited accounts of the Edo State Public Procurement Agency; and
 - (f) give such other directives and or perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law.

2. Tenure of Office, Removal and Remuneration of Members of the Board

- (1) The members of the Board shall be appointed by the Governor, and shall hold office for a period of 3 years and may be re-appointed for one further term. The members of the Edo State Executive Council hold their membership of the Board by virtue of being members of the Edo State Executive Council.
- (2) A member shall be removed from the Board if he has -
- (a) by reason of mental or bodily infirmity become incapable of discharging his duties;
 - (b) been convicted of an offence which involves fraud or corruption or moral turpitude;

Procurement Agency Law, 2012

- (c) been involved in any act that may be considered inimical to the interest of the Agency or the State.
- (3) Members of the Board shall be paid such remuneration and allowances as may be approved by the Governor.
- (4) The supplementary provisions set out in the Schedule to this Law shall have effect with respect to the proceedings of the Council and the other matters contained in it.

3. Objects of the Agency:

The objects of the Agency are to-

- (a) ensure probity, accountability and transparency
- (b) establish fair pricing standard and benchmarks;
- (c) ensure the application of fair, competitive, transparent and value-for-money standards and practices for the procurement and disposal of public assets and services;
- (d) create ample opportunities for the citizenry particularly small and medium scale enterprises to partake in the economic opportunities and benefits of public procurement;
- (e) create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from the public procurement process in the State, and its Local Governments filed by procuring entities, bidders and the general public; and
- (f) attain transparency, competitiveness and professionalism in the public procurement system.

4. Functions of the Agency

The Agency shall:

- (a) consider, amend and review the monetary thresholds for the application of the provisions of this Law;
- (b) approve the employment of staff of the Agency other than the Managing Director;
- (c) approve changes in the procurement process to adapt to changes in technology;
- (d) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law;
- (e) Formulate: the general policies and guidelines relating to public sector procurement for the approval of the Governor, publicise the provisions of this Law;
- (f) supervise, oversee and superintend compliance by all procuring entities with the procurement policies of the State;
- (g) monitor the prices of tendered items and keep a database of standard prices;
- (h) publish the details of major contracts awards in the State Procurement Journal and or website;
- (i) publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal;

Procurement Agency Law, 2012

- (j) earn out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law; and
- (k) prepare quarterly report of all major procurement transactions in the State and submit same to the Edo State Executive Council not later than 30 days from the end of each quarter.

5. The Powers of the Agency:

- (1) The Agency shall have the power to:
 - (a) enforce the rules and prior review thresholds 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 any supplier, contractor or consultant that contravenes any provision of this Law or Regulations made pursuant to this Law;
 - (e) maintain a database of contractors and service providers to the exclusion of all procuring entities;
 - (f) prescribe classifications and categorizations for the Companies or Limited Liability Partnerships (LLPs) on the register;
 - (g) maintain a list of firms and persons that have been blacklisted or delisted from participating in the public procurement process and publish them in the State Procurement Journal;
 - (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 proven against a procuring entity or service provider;
 - (i) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (j) act upon complaints by public procurement entities in accordance with the procedures under 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 payments 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) constitute a Technical Review Committee comprising technical, financial and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest;
- (2) Where there are breaches of this Law, Regulations or any other guideline made under this Law, the Agency shall recommend to the Board the following:
 - 1. the suspension from office of Officers concerned with the procurement or disposal

Procurement Agency Law, 2012

- proceeding in issue;
- 2. the removal from Office of the Head of any Procuring or Disposal Unit;
- 3. the discipline of the Accounting Officer of any Procuring Entity;
- 4. the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
- 5. any other sanction that the Agency may consider appropriate.

(3) The Agency 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.

6. Fund and Resources of the Agency

- 1. The Agency shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Agency.
- 2. There shall be paid or credited to the fund all monies appropriated to it from the revenue of the State;
- 3. The Agency may make regulations:
 - (a) specifying the manner in which assets or the fund of the Agency are to be held, and regulating the payment into and out of the fund; and;
 - (b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- 4. The Agency may from time to time apply the proceeds of the fund for;
 - (a) the cost of administration of the Agency;
 - (b) the payments of salaries, fees and other remuneration of employees of the Agency or experts or professionals appointed by the Agency;
 - (c) the maintenance of any property acquired by or vested in the Agency; and
 - (d) any expenditure connected with all or any of the functions of the Agency under this Law.

7. The Managing Director, Secretary and other officers of the Agency

- (1) There shall be for the Agency, a Managing Director who shall be appointed by the Governor on the recommendation of the Board of the Agency after competitive selection.
- (2) The Managing Director shall be-
 - (i) the Chief Executive and accounting officer of the Agency;

Procurement Agency Law, 2012

- (ii) responsible for the execution of the policy and day to day administration of the affairs of the Agency; and
- (iii) a person who possesses a First Degree from a recognized University and in addition shall possess any of the under listed professional qualifications;
 - (a) Associate Member, the chartered institute of purchasing and supply management;
 - (b) Associate Member, Nigeria Society of Engineer or Council of Registered engineer of Nigeria;
 - (c) Associate Member of the Institute of Chartered Accountants of Nigeria or Association of National Accountants of Nigeria;
 - (d) Ten (10) years post professional experience
- (3) The Managing Director shall hold office for a period of four years renewable for another term of four years and no more, on such terms and conditions as may be specified in his contract of appointment.
- (4) Without prejudice to the provisions of subsection (3) of this Section, the Managing Director of the Agency may be removed from office at the instance of the Governor.
- (5) There shall be a Secretary and Legal Adviser for the Agency who shall be responsible to the Managing Director for the discharge of the Agency's functions.
- (6) The secretary and Legal Adviser shall be responsible for the following matters-
 - (a) arranging meetings of the Board and its constituent committees;
 - (b) preparation of the agenda and the minutes of such meetings;
 - (c) conveying decisions of the Board to members of the Board;
 - (d) arranging for the payment of allowances of the members of the Board and other related matters; and
 - (e) generally performing all other duties affecting the Agency as may be assigned to him by the Managing Director.

8. Remuneration of Officers

The Agency shall, subject to the standing rules approved by the Governor, determine the remuneration to be paid to its officers and may require any officer to give such security, deemed proper, for the due execution of his functions.

9. Staff Regulations and Pensions

- (1) The Agency may, subject to the approval of the Governor, and within six months of the inauguration, make staff regulations relating generally to the

Procurement Agency Law, 2012

conditions of service of the employees of the Agency, and without prejudice to the foregoing, such regulations may provide for:

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Agency: and
 - (b) appeals by such employees against dismissal or other disciplinary measures.
- (2) Until such regulations are made, any instrument relating to the conditions of service in the Civil Service of the State, shall be applicable.
- (3) Employees of the Agency, shall, be entitled to pensions and other retirement benefits, as may be prescribed by law.

10. Power to make General Regulations

The Agency may, with the approval of the Governor make general regulations for the proper implementation and enforcement of the provisions of this Law, and without prejudice to the generality of the foregoing, make regulations with respect to all or any of the following matters-

- (a) the structure and contents of Annual Procurement Plans;
- (h) the standard and content of all bid solicitation documents;
- (c) the standard and content of all procurement contracts;
- (d) the use of any procurement method;
- (e) fees chargeable, by any procuring entity, for matters relating to public procurements; and
- (f) the prevention and detection of the Agency of any offence or act amounting to an infringement of this Law or its Regulations.

11. Legal Proceedings

- (1) Subject to the provisions of this Law, no suit shall be commenced against the Agency, before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Agency, by the intending claimant *or* his agent: and the notice shall clearly and explicitly state:
- (a) the cause of action;
 - (b) the particulars of the claim
 - (c) the name and address of legal practitioner of the intending claimant; and
 - (d) the relief being sought.
- (2) The Managing Director of the Agency, its officers, employees or agents shall not personally be subject to any action, claim or demand by, or be liable to any

Procurement Agency Law, 2012

person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Law upon the Agency, Managing Director, officers, employees or agents.

- (3) An officer or employee of the Agency shall be indemnified from the assets of the Agency against any liability incurred by him in defending any civil proceeding, if the proceeding is brought against him in his capacity as an officer or employee of the Agency.
- (4) A notice, summons or other documents required or authorized to be served upon the Agency under the provisions of this law or enactment may be served by delivering it to the Managing Director or by sending it by registered post and addressed to the Managing Director at the principal office of the Agency.

12. Scope of Application

- (1) The provision of this Law shall apply to all procurement of goods, Works and services carried out by:
 - (a) the Edo State Government including Local Government Councils and all procurement entities;
 - (b) any public body in Edo State engaged in procurement, and includes Ministries, Departments, Bureaus, Offices and agencies of the Edo State Government, extra-ministerial offices, parastatals, institutions and corporations.;
 - (c) all entities outside the foregoing description which derive any fund appropriated or proposed to be appropriated for any type of procurement described in this Law from the Edo State Government's share of Consolidated Revenue Fund.

13. Annual State Procurement Assessment Report

- (1) The Agency shall prepare a comprehensive report each year on all procurement activities not being of a re-current nature, carried out by all procuring entities within the purview of this Law for presentation to the State House of Assembly.
- (2) The report shall give an accurate account of the conduct of all capital procurements carried out by procuring entities within the purview of this Law.

14. Bank Account

The Agency shall operate an account with a bank or banks in the State and the signatories to the account shall be the Managing Director or in his absence his designated representative as the case may be, and the head of the accounts department, or in his absence his designated representative or any person duly authorized by the Council in that behalf.

15. Account and Audit

- (1) The Agency shall keep proper accounts, in respect of all its expenditure and revenue, and shall cause its accounts to be audited not later than 6 months after the end of each financial year, by external auditors appointed by the Auditor-General of Edo State.
- (2) The Agency shall, not later than 9 months after the end of each financial year, furnish the Governor with a copy of its audited account, along with a report of the state of affairs of the Agency, for the year reported on.
- (3) In compliance with subsections (1) & (2) of this Section, the Agency shall cause the report to be published in the State Government Official Gazette and its website.

PART II — FUNDAMENTAL RULES OF PROCUREMENT

16 Governing Rules on Public Procurement:

- (1) All procurement, carried out by any procuring entity, shall be governed by the following rules:
 - (a) subject to the exceptions under this Law, by Open Competitive bidding, using clearly defined criteria, and offering to every interested bidder equal simultaneous information and opportunities to offer the works, goods and services needed;
 - (b) promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
 - (c) a procurement process which is simple, sustainable, standardized and applying uniformly, to all government procurement and shall be adaptable to advancement in public administration and modern technology;
 - (d) the public procurement process, shall be executed in an effective, efficient, transparent, timely, equitable manner that shall ensure accountability, and shall conform, with the provisions of this Law and Regulations deriving from it with the aim of achieving value for money and fitness of purpose.
 - (e) a system of accountability, where public officers and persons involved, directly or indirectly, in the procurement process or in the implementation of procurement contracts are, when warranted by circumstances, are investigated and held liable for their actions.
 - (f) 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 Regulations, and that all public contracts are performed, strictly according to specifications;
 - (g) procurement plans shall be supported, by prior budgetary appropriations; no procurement proceedings shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.

Procurement Agency Law, 2012

- (2) All regulations, procedures and timelines to be prescribed pursuant to this law and specified by the Agency from time to time shall always conform to the provisions of Subsections (a) — (g) of subsection (1) of this section.
- (3) Where the Agency has set prior review or monetary thresholds 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 thresholds.
- (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 documents shall:
 - (a) Possess the following:
 - (i) professional and technical qualifications to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure;
 - (iv) personnel to perform the obligations of the procurement contract;
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) 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;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - (e) Not have any directors who have been convicted in any country for an^y criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
- (6) The Agency 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 proceedings if:
 - (a) there is verifiable evidence that any supplier, contractor or service provider has given or promised. a gift of money or any tangible item, or has

Procurement Agency Law, 2012

- 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 Agency, in an attempt to influence any action, decision making or any procurement activity;
- (b) a supplier, contractor or service provider during the last three years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromise with their creditor within two calendar years prior to the initiation of the procurement proceeding;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in installments;
 - (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 any 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) (a) Where a bid and or tender is excluded under the provisions of sub-section (16) (7) (a) — (g) of this section the Agency shall inform the bidder in writing the grounds for the exclusion of the bid or tender from public procurement.
- (b) A procuring entity shall keep a record of the proceeding in a manner prescribed by the Agency.
- (9) All contractor 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 Agency which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.
- (10) All communication and documents issued by procuring entities and the Agency 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 Agency.

Procurement Agency Law, 2012

- (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 period often years from the date of the award.
- (13) Copies of all procurement captured data, the type and frequency of which will be defined in the Regulation shall be transmitted to the Agency by the procuring entities
- (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 Agency.
- (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 fulfillment 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 responsive and qualified bidder from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding subsection (17) of this Section, the Agency may refuse to endorse the award of a contract for public procurement on the grounds that the cost is manifestly excessive or unreasonably below the predetermined cost or that a procurement proceeding has been conducted in a manner that violates this Law.
- (19) Pursuant to subsection (18) of this Section, the Agency may direct either 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) The Accounting Officer of an entity and any officer to whom responsibility is delegated is responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law.
- (22) The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations laid down by the Agency are complied with; and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.
- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict

Procurement Agency Law, 2012

adherence to the provisions of this Law and any Regulations made from time to time by the Agency.

- (24) 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.
- (25) 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.
- (26) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the prevailing rate of the Central Bank of Nigeria valid on the day of opening, the tender.
- (28) All payments for procurements carried out under the provisions of this Law shall be denominated and made in Nigerian Currency

17. Warranties

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 111 — ORGANIZATION OF PROCUREMENT

18. Procuring entity and Procurement Office

A procuring entity within the purview of this Law shall establish a Public Procurement Office or Unit whose functions shall be to:

- (a) initiate the entity's procurement process;
- (b) carry out appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of a proposed procurement;
- (c) aggregate its requirement whenever possible, within and between the procuring entities, to obtain economies of scale and reduce procurement cost;
- (d) conduct pre-qualification process for suppliers, contractors or consultants based on request for expression of interest;

Procurement Agency Law, 2012

- (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 this Law and Regulations as may be issued from time to time;
- (h) prepare bid documents;
- (i) issue bid documents;
- (j) supervise the preparation of all tender documents;
- (k) organize communications with bidders;
- (l) issue receipts and keep bids in safe custody until opening;
- (m) receive and organize evaluation of any bids received in response to solicitation;
- (n) maintain procurement records; and
- (o) organize evaluation of expression of interest by suppliers, contractors, or consultants and prepare a list of qualified submissions and issue a preferred mandate.

19. Approving Authority

Subject to the monetary and prior review thresholds for procurements as may from time to time be determined under this Law, 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 Board; and
- (b) In the case of a ministry or extra-ministerial entity, the Ministerial Tenders Board;
- (c) For a period of two years, and in the case of contracts within the threshold that shall be set by the Agency in the regulations, the State Tender Board.
- (d) After two years when procurement capacity has been built in the public service, all contracts irrespective of value shall be approved in line with provisions set in (a) and (c) above.

Procurement Planning

Subject to regulations as may from time to time be issued by the Agency under direction of the Council of the Agency, a procuring entity shall plan its procurement by:

- (a) preparing a needs assessment and evaluation ;
- (b) identifying based on (a) above, 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

Procurement Agency Law, 2012

be carried out by a Procurement Planning Committee.

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 Chair the committee;
 - b. a representative of the procurement function of the procuring entity who shall be the secretary;
 - c. a representatives 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

Procurement Implementation

Subject to regulations as may from time to time be issued by the Agency under direction of the Council, 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 Agency from time to time;
- (b) Invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas at bid opening,, and the observer shall not intervene in the procurement process hut shall have the right to submit their observation report to the Agenc^y and any other relevant agency or body including their own organizations or associations;
- (c) Receive, evaluate and make a selection of the bids received in adherence to this law and guidelines as may be issued by the Agency from time to time;
- (d) Obtain approval of the approving authority before making an award;
- (e) Debrief unsuccessful bidders on request;
- (f) Resolve complaints/disputes if any;
- (g) Obtain and confirm the validity of any performance guarantee;
- (h) Execute the Contract Agreement; and
- (i) Announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Agency from time to time.

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.
- (2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
 - (a) Ensuring compliance with the provisions of this law by his entity and liable in person for the breach or contravention of this law or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function duty or power to any person or group of persons;
 - (b) Constituting the Procurement Committee 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;
 - (r) Constituting the Evaluations Committee; and
Liaising with the Agency and ensure the implementation of its regulations

Tenders Board

- 1) There are hereby established by this law, State Tenders Board and in each Ministry, Extra-ministerial Office/Department/ Agency, Parastatal, Institution and Corporation, a Tenders Board (in this law referred to as "the Tenders Board).
- 2) The Governor shall from time to time appoint the membership of the State Tenders Board.
- 3) The Tenders Board shall have power to recommend for award, contracts for procurements of goods, works and services within the threshold set in the Regulations.
- 4) In all cases where there is a need for pre-qualification, the Procuring Entity shall constitute a technical evaluation subcommittee of the Tenders Board which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chairman of the Evaluation subcommittee.
- 5) The recommendation of the Tenders Board shall be communicated to the appropriate approving authority for approval.

PART IV- PROCUREMENT METHODS

20. 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, effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to bid for 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 responsive bid from the bidders response to the bid solicitation; and
 - (ii) in the case of services, the highest rated evaluated bid from the bidders responsive to the bid solicitation.
- (4) The provision of this Law on open competitive bidding shall apply to procurement of goods and services with monetary value as may be stipulated by the Agency in a Legal Notice published in the State Official Gazette from time to time.

21 Invitation to Bid

- (1) Invitations to bid may be either by way of Nationwide Competitive Bidding or International Competitive Bidding and the Agency shall from time to time set the monetary thresholds in accordance with this Law 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, any official websites of the procuring entity and the Agency, and the State Procurement Journal not less than six 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 Nationwide Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official website of the procuring entity, the State Procurement Journal and at least one (1) national newspaper not less than 2 weeks or more than 4 weeks before the deadline for submission of the bids for the works, goods and services.
- (4) Not later than six months after the enactment of this law, the Agency shall issue guidelines for the advertisement/publication of Invitations to Bid.

Procurement Agency Law, 2012

22. 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 pre-qualification documents shall reflect only the cost of printing and delivery.
- (3) Not later than six months after the enactment of this Law, the Agency shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process.

23. Bid Documentation

- (1) Bid Solicitation Documentation shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Agency. The Bidding Documents shall include the following:
 - (a) Approved Budget for the Contract.
 - (b) Instruction to Bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
 - (c) Eligibility Requirement;
 - (d) Plans and Technical Specification;
 - (e) Form of Bid, Price Form, and List of Goods or Bill of Quantities;
 - (f) Delivery Time or Completion Schedule;
 - (g) Form and Amount of Bid Security;
 - (h) Form and Amount of Performance Guarantee; and
 - (i) Form of Contract, and General and Special Conditions of Contract.
- (4) Procuring entities may require additional document or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

24. Bid Security

Procurement Agency Law, 2012

- (1) Subject to the monetary and prior review thresholds as may be set by the Agency, all procurement valued in excess of the sums prescribed by the Agency shall require a bid security in an amount not less than 1% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity;
- (2) The Agency shall from time to time specify the principal terms and conditions of bid security to be posted by bidders.

25. Submission of Bids

- (1) All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope; clearly marked with the title of the project and the deadline of the submission.
- (2) Depending on the nature of the bids, bids shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes, and which shall be submitted simultaneously.
- (3) All submitted bids shall be deposited and kept in a secured tamper-proof bid-box.
- (4) All bids submitted shall be in English Language.
- (5) The procuring entity shall issue a receipt showing the date and time the bid was received.
- (6) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or service provider which submitted it.
- (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.

26. Failure of Bidding

There shall be a failure of bidding if

- (1)
 - (a) No bids are received;
 - (b) No bid qualifies as the lowest cost evaluated responsive bid or highest rated responsive bid;
 - (c) Whenever the bidder with the highest rated or lowest cost calculated responsive bid refuses, without justifiable cause to accept the award of the contract, provided the bid goes to the next rated calculated responsive bidder
- (2)
 - (a) the contract shall be re-advertised and re-bid at the occurrence of any of the instance stated in sub-section (1) of this Section.
 - (b) 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, however, the

Procurement Agency Law, 2012

procuring entity may resort to an alternate method of procurement as provided for by this Law

27. Rejection of Bids

A procuring entity may-

- (1) Reject any bids at any time prior to the acceptance of a bid subject to contravention of Section 25, without incurring any liability to the bidders;
- (2) Cancel the procurement proceedings• in the public interest, without incurring any liability to the bidders.

28. 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 tenders.

29. 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 who choose to attend 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 a register is taken of the names and addresses of all those present at the bid opening and the organization they represent which is recorded by the Secretary of the Tenders Council; and
- (e) call-over to the hearing of all present; the name and address of each bidder, the

Procurement Agency Law, 2012

total amount of each bid, the amount of bid security if applicable, the bid currency; and shall ensure that these details are recorded by the Secretary of the Tenders Council or his delegate in the minutes of the bid opening.

30. 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) The Tenders Council 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 Tenders Council may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The Tender Council, 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) acceptable price adjustment,
 - (b) with respect to the status of the bidder, the fact that he is ineligible or not pre-qualified, and
 - (c) with respect to bid documents, an unsigned bid;
 - (d) with respect to date any bid received after the date.

Procurement Agency Law, 2012

- (8). In cases of major deviations, bid shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9). In cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.
- (10). Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - a) the use of codes;
 - b) alternative design;
 - c) alternative workmanship;
 - d) omission in minor items;
 - e) arithmetical errors;
 - f) completion period where these are not of essence; and
 - g) any other condition that has little impact on the bid
- (11). Not later than six months after the enactment of this law, the Agency shall issue Regulations stipulating the guidelines for the opening and examination of bids.

31. 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 responsive bidder from the bidders responsive to the bid solicitation;
 - (b) in the case of services to determine the highest rated bidder from the bidders responsive to the bid solicitation
- (3). Not later than six months after the enactment of this law; the Agency shall issue Regulations stipulating the guidelines for the evaluation of bids.

32. Acceptance of Successful Bids

- (1). The successful bid shall be that submitted by the Lowest cost evaluated responsive bidder from the responsive bidders to the bid solicitation.
- (2). Notwithstanding the provision of subsection (1) of this section and for the

Procurement Agency Law, 2012

avoidance of doubt, the selected bidder need not be the lowest evaluated responsive bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.

- (3) Notice of the success of its bid shall immediately be given to the successful bidder.
- (4) Notwithstanding the provision or subsection (3) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice given to a successful bidder shall

33. Limitation of Time for Procurement Award

Without prejudice to any provision of this Law, "Contract award must be made within the bid validity period".

PART V- PROCUREMENT OF CONSULTANCY SERVICES

34. Expressions of interest to provide services for ascertained and unascertained needs

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

- (a) It shall solicit for expressions a interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least one (1) national newspaper, the procurement journal and the website of the procuring entity and/or the Agency;
- (b) The expressions of interest will be evaluated and a shortlist of qualified firms will be established. The shortlist will consist of six (6) firms.
- (c) where the value of the services to be procured is less than an amount prescribed in the regulations or with the approval of the Agency, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - (i) a statement of qualification of the consultant to provide the service;
 - (ii) a statement of understanding of the procuring entity's needs;
 - (iii) the methodology for providing the service
 - (iv) the time frame for providing the service ; and
 - (v) the cost or fee for the service.

Procurement Agency Law, 2012

35. Request for proposals to provide services for Ascertained and unascertained 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) A procuring entity shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in the Observer newspaper and any other national newspaper and the procurement journal.
- (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 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.

36. Content of the request for proposals

- (1) Request for proposals shall include:
 - (a) the name and address of the procurement entity;
 - (b) a requirement that the proposals are to be prepared in the English language;
 - (c) the manner, place and deadline for the submission of proposals;
 - (d) a statement to the effect that the procuring entity 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

Procurement Agency Law, 2012

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

- (1) a short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.
- (2) The procuring entity shall provide the same information to every consultant requested to submit proposals.

37. 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 account in preparing their proposals.

38. Submissions 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 10 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.

Procurement Agency Law, 2012

- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
- (5) The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any review by the Tenders Council is concluded.

39. Criteria for Evaluation of Proposals

- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of :
 - (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services ;
 - (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the 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 encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers: and
- (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 Agency and shall be reflected in the record of the procurement proceedings.

40. General selection procedure (services)

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

Procurement Agency Law, 2012

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

41. 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 for proposals.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity.
- (4) The names of the qualifying consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6) The successful 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

Procurement Agency Law, 2012

- (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.

42. Selection procedure: where price is not a factor

- (1) Where the procuring entity elects to make a quality-based selection based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this Section.
- (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 (ii) will not result in a procurement contract.
- (3) The procuring entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other firms 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 VI - SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

43. Restricted Tendering

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

Procurement Agency Law, 2012

- (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 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 procedure shall apply to the selective tendering proceedings except to the extent that those provisions are varied by this Section.

44. Emergency Procurements

- (1) Subject to the approval of the Governor, a procuring entity may initiate emergency procurement where:
- (a) The State is either seriously threatened by or actually confronted with a disaster. Catastrophe, war, insurrection or act of God; or
 - (b) The condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness.
- (2) Subject to the approval of the Governor in an emergency situation, a procuring entity may initiate direct contracting of goods, works and services.
- (3) All procurements made under emergencies shall be handled expeditiously having due regard to accountability.

45. Procurement

- (1) Not later than 24 months from the enactment of this Law or such other time as the Governor may consider appropriate, the Agency shall design and set up a secure electronic portal to be known as the Edo State Government Electronic Procurement System which shall be the primary source of information for all public procurement matters and

Procurement Agency Law, 2012

opportunities within the purview of this Law or regulations issued under this Law.

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

46. 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 of a bid for such preference.
- (3) Margins of Preference may apply to tenders under all international competitive bidding.
- (4) The Agency shall by Regulation from time to time set the limits and the formulae for the computation of margins of preference.

PART VII- SECURITY FOR PERFORMANCE OF PROCUREMENT CONTRACTS

47. Advance Payments

- (1) Advance payment of 25% may be paid to a supplier or contractor, provided that advance payment above 20% may be paid where the supplier or contractor submits a written request justifying the need for such payment. Advance payment above 20% shall be guided by regulations prescribed by the Agency with the approval of the Board of Directors of the Procurement Regulatory Agency. Advance payment is subject to the following-
 - (a) In the case of Nationwide Competitive Bidding-an unconditional bank guarantee or insurance bond issued by a reputable institution acceptable to the procuring entity; or
 - (b) In the case of International Competitive Bidding-an unconditional bank guarantee issued by a reputable banking

institution acceptable to the procuring entity.

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

48. Performance Guarantees or Bonds

Prior to the signing of the contract or the release of any advance payment, the successful bidder shall as a measure of guarantee for the faithful performance of the procurement of and compliance with his obligation under the contract prepared in accordance with the Bidding Document, be required to post a performance security in such form and amount as specified in the bid solicitation.

PART VIII— PROCUREMENT SURVEILLANCE AND REVIEW

49. Record of Procurement Proceedings

Every procuring entity shall keep a detailed record of all procurement activity and processes in a format as shall be prescribed in Regulations issued by the Agency.

(50) Review by the Agency

- (1) The Agency 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 that an investigation is necessary or desirable to prevent or detect a contravention of this Law.
- (2) The Agency may in the course of the investigation:
 - (a) at anytime during normal office hours, enter the premises of the procuring entity, bidder, supplier contractor, or service provider concerned with the procurement proceedings under review
 - (b) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
 - (c) search premises for any books, records, accounts or documents;
 - (d) examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant;
 - (e) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be

Procurement Agency Law, 2012

- 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;
- (f) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in the books, records, accounts or documents;
 - (g) provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.
- (3) The Agency shall, if satisfied that there has been a contravention of this Law or any Regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include recommending:
- a. nullification of the procurement proceedings;
 - b. cancellation of the procurement contracts;
 - c. ratification of anything done in relation to the proceedings; or
 - d. a declaration consistent with any relevant provisions of this Law.
- (4) On completion of investigation, the Agency shall send a summary of its findings and recommendations to the procuring entity and to any bidder, supplier, contractor or consultant whose conduct was the subject of the investigation.
- (5) The Agency shall afford any procuring entity, bidder, supplier, contractor adequate opportunity to make representation in a matter, before taking any action in terms of subsection (5) of this Section which may adversely affect the rights or property of that person.
- (6) The Agency may pursuant to the advice of the procuring entity, results of its review of a procurement or report of investigation by a relevant government agency issue a variation order, requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract of award.

51. Administrative Review

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

52. Procedure for Complaints against a Procuring or Disposing Entity or the Agency

Procurement Agency Law, 2012

- (1) The following procedure shall apply to complaints against a procuring or disposing entity-
 - (a) 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 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.
 - (b) Where the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Agency within 10 working days from the date of the communication of the decision of the accounting officer.
 - (c) Upon receipt of a complaint, the Agency 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 Agency has settled the matter.
 - (d) Before taking any decision on a complaint, the Regulatory Agency shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
 - (e) The Agency shall make its decision within thirty (30) working days after receiving the complaint, stating the reasons for its decision and remedies granted.
 - (f) Where the bidder is not satisfied with the decision of the Agency, the bidder may apply for Judicial Review in the State High Court within thirty (30) working days from the date of the communication of the decision of the Agency.
- (2) The following procedure shall apply to complaints against the Agency:
 - (a) A complaint by a bidder against the Agency shall first be submitted in writing to the Managing Director of the Agency who shall bring the complaint to the attention of the Board. The Agency shall notify all interested bidders of the complaint and may take into account representations from the bidders and from a procuring or disposing entity.
 - (b) The Board shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted.
 - (c) Where a bidder is not satisfied with the decision of the Board, the bidder shall within 21 days from the date of the communication of

the decision of the Board apply to the State High Court for Judicial review.

PART IX- DISPOSAL OF PUBLIC PROPERTY

53. Disposal of Public Property

- (1) For the purposes of this Law every procuring entity shall also be 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 Agency shall, with the approval of the Governor:
 - (a) Determine the applicable policies and practices in relation to the disposal of all public property:
 - (b) Issue guidelines detailing operational rules and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property: and
 - (c) Issue standardized documents, monitor implementation, enforce and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (4) For the purposes 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;
 - d. acquired on financial instruments (including shares, stocks, bonds or other securities)
- (5) The means of the disposal of public property shall include:
 - (a) sale and rental
 - (b) lease and hire purchase
 - (c) licenses and tenancies
 - (d) franchise and auction
 - (e) transfer from one government department to another with or without financial adjustments: and

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

PART X — OFFENCES

54. Offences

- (1) Any person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than 5 years but not exceeding 10 years with an option of fine or both.
- (2) It shall be an offence subject to sub-section (1) of this Law to-
 - (a) Open or tamper with any sealed Bid or any and all documents required to be sealed or divulging their contents prior to the appointed time for the public opening of Bids or other documents.
 - (b) delay, without 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 regulations made hereunder;
 - (c) enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be high than would have been the case has there not been collusion between the persons concerned;
 - (d) engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue influence, agreement, corruption, bribery or other actions;
 - (e) directly indirectly, or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract.
 - (f) split tenders to enable the evasion of monetary thresholds set;
 - (g) bid- rigging;
 - (h) alter any procurement document with intent to influence the outcome of a tender proceeding;
 - (i) use fake documents or encouraging their use;
 - (j) willful refusal to allow the Agency or its officer to have access to any procurement records; and
 - (k) withdraw; a bid, after it shall have qualified as the lowest Evaluated Bid or Highest Rated Bid, or refusal to accept an award, without just cause or for the purpose of forcing the procuring entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but limited to performance Guarantee, preparatory to the final award of the contract

Procurement Agency Law, 2012

- (3) Any person whilst carrying out his duties as an officer of the Agency, or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of:
 - (a) A term of imprisonment of 5 years with an option of fine; and
 - (b) Summary dismissal from government service.
- (4) Anybody corporate or firm that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:
 - (a) debarment from all public procurement for a period not less than 10 years and
 - (b) a fine equivalent to the value of the procurement in issue
- (5) Where a body corporate or firm is convicted pursuant to Subsection (4) of this Section, every director of the company or every partner in the firm shall be guilty of an offence and is liable on conviction to a term of imprisonment for not less than 3 years but not exceeding 5 years without an option of fine unless the offence upon which the conviction was based was committed without his knowledge, consent or connivance.
- (6) An alteration pursuant to subsection (2) (h) of this Section shall include but is not limited to:
 - (a) forged arithmetical correction;
 - (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.
- (7) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law.
- (8) Bid-rigging pursuant to subsection (2) (g) means an agreement between persons where:
 - (a) offers submitted have been prearranged between them; or
 - (d) 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.

Procurement Agency Law, 2012

- (9) For the purpose of subsection (7) of this Section, consideration shall be given to a person's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial, directly or indirectly.
- (10) For the purposes of subsection (2), (5) and (8) 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 XI- Miscellaneous

55. Interpretation

“Accounting Officer” means any person charged with responsibility relating to procurement in a procuring entity;

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

“Board” means the governing Board of the Agency.

“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, limited liability partnership, individual, sole proprietorship, joint stock company, joint ventures or any other legal entity through which business is conducted;

“Commissioner” means commissioner for Budget and Planning;

“Fund” means the Fund established by Section 6 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;

“Governor” means the Governor of Edo State;

“Approving Authority” for the conduct of public procurement means:

- (a) In the case of a government agency, Parastatals or corporation, a Parastatal Tender Board;
- (b) In the case of a ministry or extra-ministerial entity, the Ministerial Tender Board;
- and

Procurement Agency Law, 2012

- (c) For the period of two years and in the case of contracts within the threshold that shall be set by the Agency in the regulations, the State or the State Tender Board

“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 contractor but not meaning completion;

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

“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;

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

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

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

“Open 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” means acquisition;

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

“Procuring Entity” means any public body in Edo State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and agencies of the Edo State Government, extra-ministerial offices, Parastatals, corporations, State University and Colleges, Government institutions and their derivative units and includes where the context admits a disposing entity;

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

“State” means the Edo State of Nigeria.

“Services” means the rendering by a contractor or supplier of his time and effort and

Procurement Agency Law, 2012

includes any object of procurement other than goods, works or construction;

“*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;

56. Transitional provision

This Law shall not apply to procurements that are pending as at the date of commencement of this law. The Law shall apply to procurements after a transitory period of three months after the assent to this Law.

SCHEDULE (SECTION 2(4)) SUPPLEMENTARY PROVISIONS

Tenure of office of members of the Board

1. Notwithstanding anything contained in the instrument by which he/she is appointed, a member of the Board may resign his/her appointment in writing under his/her hand and addressed to the Governor, and upon receipt of the letter of resignation the appointment of the member shall cease.
2. **Powers of the Board to co-opt persons**
Where the Board desires to obtain the advice of any person upon any matter, the Board 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 Board save that he shall not be entitled to vote on any question or count towards a quorum.

Proceedings of the Board

3. **Meetings of the Board**
 - (1) The Board shall in each year hold a general meeting as its annual meeting, in addition to any other meetings in that year, and it shall specify the meeting as such.
 - (2) The Annual General Meeting shall be held within six months after the close of each financial year and it shall be open to the public who shall be given adequate notice of the meeting and of salient points from the annual report.
 - (3) The Board shall ordinarily meet for the dispatch of business at such times and places as the Chairman may from time to time appoint, but not less than three times in any financial year.

Procurement Agency Law, 2012

- (4) The Chairman shall preside at all meetings of the Board when he is present, and when he is not present any other member of the board may be appointed by the members present at the meeting to preside.
- (5) Where not less than five members of the Board request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Board for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Board for those purposes at the earliest convenient date.
- (6) Notwithstanding anything in the foregoing provisions of this paragraph the first ordinary meeting of the Board shall be summoned by the Governor, who may give such directions as he thinks fit as to the procedure which shall be followed at that meeting.

4. Voting

- (1) All questions at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and voting, being members who under this paragraph are entitled to vote at such meeting.
- (2) At any meeting of the Board each member other than the General Manager shall have a deliberative vote, and if there is equality of votes, the chairman of the meeting shall, if entitled to a deliberative vote, have a second or casting vote.

5 Standing Order

- (1) Subject to the provisions of this Law, the Board may make standing orders with respect to the holding of meetings of the Board, the notices to be given of such meetings, the proceedings at the meetings, the keeping of minutes of such proceedings and custody or the production for inspection of such minutes.
- (2) Subject to any standing order made under subparagraph (1) of this paragraph, the procedure of the Board with respect to the holding of meetings shall be such as the Board may from time to time determine.

6. Disclosure of interest by members of the Board

- (1) A member of the Board who is in any way directly or indirectly interested in a transaction or project of the Board shall disclose the nature of his

Procurement Agency Law, 2012

interest at a meeting of the Board, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.

- (2) For the purpose of subparagraph (I) of this paragraph a general notice given at a meeting of the Board by a member to the effect that he is associated with 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 Board 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 Board may not attend in person a meeting of the Board in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

7. Office of the Board

- (1) The Secretariat of the Board shall be the office of the Regulatory Agency.

8. Common Seal

- (1) The Common Seal of the Board shall be such as may be determined by the Board, and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Secretary, or of some other members authorized generally or specifically by the Board to act for that purpose.
- (2) Any document purporting to be a document duly executed under the common seal of the Board shall be received in any Court and shall, unless the contrary is proved, be deemed to be so executed.

9. Validity of Proceedings

The validity of any Proceedings of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of a member to the Board, or by reason that a person not entitled to do so took part in the proceedings.