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HIS EXCELLENCY, THE EXECUTIVE GOVERNOR

Crest
Oyo State of Nigeria

No.20

A LAW TO ESTABLISH THE OYO STATE COUNCIL ON PUBLIC PROCUREMENT AND THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITIES RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN OYO STATE AND FOR RELATED MATTERS

Date of Commencement: ()

Enactment: BE IT ENACTED by the House of Assembly, Oyo State of Nigeria as follows:

Short Title: 1 This law may be cited as Oyo State Public Procurement Law, 2010.

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

“Accounting Officer” mean
charged with the conduct o'
procurement processes”

"Approving Authority" means the person charged with overall responsibility for the functioning of a Ministry, Extra-Ministerial Department, Corporation, or Parastatal;

"Asset" includes tangible and intangible things which have been or may be sold or procured for consideration;

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

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

"Contract" means an agreement entered in writing;

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

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

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

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

"Interim Performance Certificates" mean 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;

"Lowest evaluated responsive bid" is the lowest price bid amongst the bids that met all the technical requirements and standards as contained in the tender document;

"Margin of preference" means the extra mark-up on any price allowed domestic contractor or supplier bidding under International Competitive Bidding

without being otherwise disadvantageous to the bid in terms of price;

"Minor Value" means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau;

"Monetary threshold" means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract;

"Negotiation" means discussions 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 proceedings set out in parts IV and V of this

Law;

"Procuring Entity" means any public body engaged in procurement and includes a Ministry, Extra-Ministerial office, Government Agency, Parastatal and corporation;

"Public Procurement" means any public body engaged in procurement and includes a Ministry, Extra-Ministerial office, Government Agency parastatal and Corporation.

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"Relevant Authority" means the acquisition by any means of goods, works or services by the government; includes Economic and Financial Crimes Commission and Independent COITupt Practices Commission;

"Services" means i be rendering by a contractor or supplier of his time and effort and includes (my object or procurement other than goods, works or construction;

"Solicitation Documents" means the bid solicitation documents or any other documents for solicitation of offers proposals or quotation: and

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

"Suppliers" means ~ real or legal person that provides supply of goods, contracting of works or consultants;

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

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

"Works" means (in works associated with the construction reconstruction, demolition, repair or renovation of a building, structure of works, such as site preparation, excavation, erection, building installation of equipment or materials, decoration and

finishing, as
well as
services
incidental to

construction such as drilling, mapping, satellite photograph, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those services does not exceed that of the construction itself.

"Restitution" means refund of the amount involved;

PART I ESTABLISHMENT OF OYO STATE COUNCIL ON PUBLIC PROCUREMENT

Establishment of the State Council on Public Procurement and its Membership

3. There is established the State Council on Public Procurement
 - i. The Council shall consist of:
 - (a) the Commissioner for Finance, Budget and Planning as Chairman;
 - (b) the Attorney-General and Commissioner for Justice;
 - (c) the Secretary to the State Government or his representative;
 - (d) the Head of Service or representative;
 - (e) the Special Adviser to the Governor on Due Process; or
 - (f) the Special Assistant to Governor on Due Process;
 - (g) six part-time members to represent:
 - (i) Nigeria Bar Association;
 - (ii) Oyo State Chartered Institute of purchasing, supply and Management of Nigeria
 - (iii) Nigeria Society of Engineers;
 - (iv) Civil Society;
 - (v) The Media; and
 - (h) The Permanent Secretary of the Bureau who shall be the Secretary of the Council;

5. Notwithstanding the provisions of subsection 9(2) the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards quorum.
6. The Chairman and other members of the Council shall be appointed by the Governor.
7. The Permanent Secretary shall hold office such terms and conditions as may be specified in his letter of appointment.

Functions of
The Council

8. The Council shall:
 - (3) consider, approve and amend the monetary and prior review of thresholds for the application of the provisions of this Law by procuring entities;
 - (b) consider and approve policies on public procurement;
 - (c) approve the appointment of the Permanent Secretary of the Bureau;
 - (d) receive and consider for approval, the audited accounts of the Bureau of Public Procurement;
 - (e) approve changes in the procurement process to adapt to improvements in Modern Technology;
 - (f) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law

PART II ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

The Establishment of
the Public
Procurement
Bureau

- 9.(1) There is established an agency to be known as the Bureau of Public Procurement.

Objective of the
Bureau

(2) The Bureau:

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

10. The objectives of the bureau are:

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

Function of the
Bureau

11. The Bureau shall:

- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council.
- (b) publicize and explain the provisions of this Law;
- (c) subject to thresholds as may be set by the Council, certify State procurement prior to the award of contract;

- supervise the implementation of established procurement policies;
- (e) monitor the prices of tendered items and keep a State database of standard prices;
- (f) publish the details of major contracts in the State Procurement journal;
- (g) publish paper and electronic editions of the State procurement Journal and maintain an archival system for the State procurement journal;
- maintain a State database of the particulars and classification and categorization of contractors: and service provider
- collate and maintain in an archival system, all State procurement plans and information;
- (h) undertake procurement research and surveys;
- (k) organize training and development programmes for procurement professionals;
- (l) periodically review the effect of the procurement and advise accordingly; SOCIO-policies on
- (m) prepare and update the Council standard bidding
- (n) and contract documents; prevent fraudulent and unfair procurement and where necessary
- (o) apply administrative sanctions; Perform the procurement audits and submit such report to the House of Assembly annually;
- (p) introduce, develop, update and maintain related database and technology;
- (q) establish a single internet portal that shall, subject to section 16(10) serve

as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all time; and

- (r) co-ordinate relevant training programs to build institutional capacity.

12 (I) The Bureau shall have the power to:

Power of the Bureau

- (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law' by the procurement entities;
- (b) subject to paragraph (a) of this subsection, issue certificate of "No Objection" for Contract Award" within the prior review threshold for all procurement within the purview of this Law;
- (c) from time to time stipulate to all procuring entities, the procedures and documentation prerequisite for the issuance of Certificate of No Objection under this Law;
- (d) where a reason exist:
- (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;
- (ii) review and determine whether any procuring entity has violated any provision of this law
- (e) debar any supplier, Contractor or service provider **that**

contravenes any provision of
. this Law and regulations made
pursuant to this Law.

- (f) Maintain a State database of
coru factors and service
providers and to the exclusion
of all procunng entities
prescribe classifications and
categorizations for the
companies on the register;
- (g) Maintain a list of firms and
persons that have been debarred
from participating 111 public
procurement activity and
publish them 111 the State
procurement journal;
- (h) Cat! for such information,
documents, records and reports
in respect of any aspect of any
procurement proceeding where
a breach, wrongdoing, default,
mismanagement and or
collusion has been aJleged,
reported or proved against a
procunng entity or service
provider;
- (i) R commend to the Council,
where there are persistent or
serious breaches of this Law or
regulations' or guidelines made
under this Law:
 - (i) the suspension of officers
concerned with the
procurement or
disposal
proceeding in issue;
 - (j l) the replacement of the
head or any of the
members of the
procuring or
disposal
unit of any entity
or the

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- (iv) curing entity;
the temporary transfer of
the procunng and
disposal function
party
procurement agency
or
consultant; or
- (v) any other sanction that
the Bureau may
consider
appropriate.

- (j) call for the production of books
of accounts, plans, documents,
. and examine persons or parties
in connection with any
pncmement proceeding;
- (k) act upon complaints in
accordance with the procedures
set out in this Law;
- (1) nullify the whole or any part, of
any procurement proceeding or
award which is in contravention
oithis Law
- (m) do such other things as are
necessary for the efficient
performance of its functions
under this law.
- (2) The Bureau shall subject.
to the approval of the
Council, have power to:
 - (a) enter into contract or
partnership with any
company finn or person
which in its opinion will
facilitate the discharge of
its functions.

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information
Including reports,
memoranda and
audited
accounts, and other
information relevant to
its functions under this Law;
and;

- (c) liaise with relevant
bodies or
institutions
national and
international
for effective
performance
of its function
under the
Law.

13.(1) The Special Adviser due Process
shall be Head and Chief Executive of
the Council and the Permanent Secretary
shall be the Accounting Officer

(2) The Permanent Secretary shall be:

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

(3) The Permanent Secretary shall hold office:

- (a) for a term of 4 years in the first
instance and may be re-

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removed from office at the instance of the
Governor on the basis of gross misconduct,
financial impropriety, fraud, or manifested
incompetence proven by the Council

14.(1) The Council shall appoint the principal
officers for the Bureau after competitive
selection process.

(2) The Principal officers appointed under
subsection (1) shall each have the
requisite
qualification and experience required
for:

(a) ensuring compliance with the
prOVISIONs of this Law by
his entity .
and liable in person for the
breach or
contravention of the Law or
any
regulation made hereunder
whether or
not the act or omission
effective
performance of the functions
of their
respecti ve Departments and
the
Bureau as specified under
this Law

The Council shall have power to modify the
operational structure of the Bureau as may
be necessary to enhance the Bureau's duties
and functions under this Law.

15.(1) The Council may appoint such officers and
other employees as may from time to time,
deemed necessary for the purposes of the
Bureau.

(2) The terms and conditions of service
(including remuneration, allowances,
benefits and pensions) of officers and

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Funds of the
Bureau

~ (1) the sums appropriated by the House of

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

Assembly for the running of the Bureau;

(0) all subventions, fees and charges for services rendered or publications made by the Bureau; and

(c) all other assets which may from time to time, accrue to the Bureau.

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

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

\ a) specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund: and

b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.

(4) The Bureau may from time to time, apply the proceeds of the fund for:

(a) the cost of administration of the Bureau;

(b) the payments of salaries, fees and other remuneration of employees of the Bureau or experts or professionals appointed by the Bureau;

(c) the maintenance of any property acquired by or vested in the Bureau; and

(d) any matter connected with all or any of the functions of the Bureau under this Law; and

(e) any expenditure connected with all or any of the functions of the Bureau under this Law.

Financial
year Budgeting

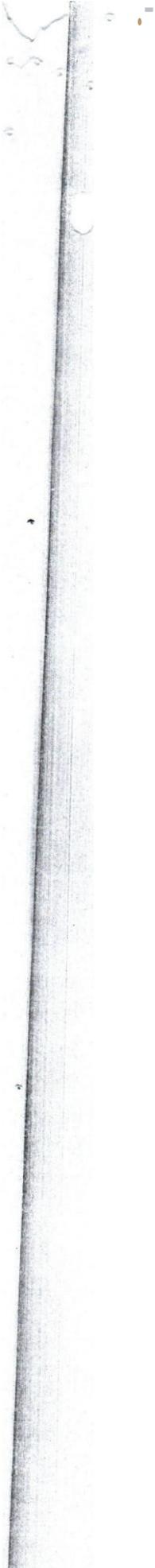
19.(1) The Financial year of the Bureau shall be the same as that of the State Government.

And **Annual Report**

- (2) Not later than 6 months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the council may direct
- (4) The Bureau shall within 6 months after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor-General of the State.
- (5) The Bureau shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture and the activities of the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

Legal Proceedings 20.

- (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 ail intention to commence the suit shall have been served upon the Bureau by the intending claimant or his agent; and the notice shall clearly and explicitly state:
 - l 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 Permanent Secretary 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



power conferred by this Law upon the Bureau, its
Permanent Secretary officers, employees or
agents.

- (3). A member of the Bureau or the Permanent Secretary or any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending a civil proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Permanent Secretary, officer or other employee of the Bureau.
- (4). Any notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Law or any other Law or enactment may be served by delivering to the Permanent Secretary or by sending it by registered post and address to the Permanent Secretary at the Principal office of the Bureau.

PART III - SCOPE OF APPLICATION

- Scope of Application 21.(1) The provisions of this Law shall apply to all procurement of goods, works, and services carried out by the State Government and all procurement entities.
- (2). The provisions of this Law shall not apply to the procurement of special goods, works and services involving security unless the Governor's express approval has been first sought and obtained.

PART IV FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

- 22.(1) Subject to any exemption allowed by this Law all public procurement shall be conducted:
- subject to the prior review thresholds as may from time-to-time be set by the Bureau pursuant to paragraphs (a) and (b) of sub-section 6; (1)

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- (b) based only on procurement plans supported by prior budgetary appropriation and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau, has obtained a "Certificate of No Objection to Contract Award" from the Bureau;
- (c) by open competitive bidding; in a manner which is transparent timely and equitable for ensuring accountability and conformity with this Law and regulations deriving therefrom;
- (d) with the aim of achieving value for money and fitness for purpose;
- (e) in a manner which promotes competition, economy and efficiency; and
- (1) in accordance with the procedures and timeline laid down in this Law and as may be specified by the Bureau from time to time;

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Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Revenue Account or any bank account of any procuring entity for any procurement failing the above set thresholds unless the cheque, payments or other form of request for payments is accompanied by a

- (3) For all cases where the Bureau shall set a prior review threshold the Bureau shall prescribe by regulation, guidelines and the "Certificate of No Objection to an Award of Contract" duly issued by the Bureau.



- (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
- (e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
- (f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the

procurement entity or Bureau is a

former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.

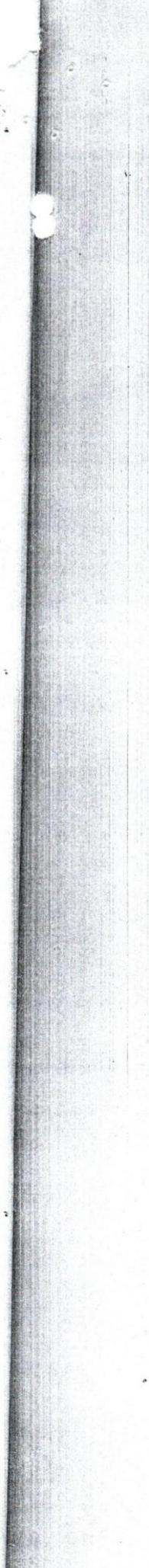
(7) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this Law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders .

(8) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if"

- (a) there is, verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, 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, or decision making of any procurement activity;
- (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue failed to perform or to provide due care in performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Law, is Controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement 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, defence of such outstanding payment thereof in installments;
 - (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding; or any other crime committed to gain financial profit;
 - (f) the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a



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ted to gain financial profit; and

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

((.) In such cases: the procuring entity shall inform the Bureau and person referred to in subsection (8) (a)-(g) in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question

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

(13) Copies of all procurement records shall be transmitted to the Bureau not later than 3

months after the end of the financial year and shall show:

- (a) Information identifying the procuring entity and the contractors;
- (b) the date of the contract award;
- (c) the value of the Contract; and
- (d) the detailed 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 plus an administrative charge as may be prescribed from time to time by the Bureau,

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

(16) The burden of proving 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 evaluated responsive bid from the bidders substantially responsive to the bid solicitation,

NOTE

(18) Notwithstanding subsection (16), the Bureau may refuse to issue a "Certificate of No Objection to Contract Award" on the grounds that the price is excessive.

NOTE

(19) Pursuant to subsection (17) above the Bureau may direct either that the procurement proceedings be entirely

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cancelled or that the procunng entity
conduct tender.

- (20) Pursuant to subsection (18) above the ~TC Bureau may either direct that the procurement uroceeding be entirely cancelled or that the procuring entity conduct tenders.

- C..
I) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in cornpliance with or in contravention of this Law.

NOTE

The accounting officer of a procuring entity has the responsibility to ensure that the provisions of 111is Law and the regulations laid down by the Bureau are complied with, and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contra vention of this Law or the regulations laid down hereunder.

NOTE

- (23) Procurement and disposal decisions of a procuring enn ty shall be taken in strict adherence to the provisions of this Law and any regulations as may from time to time be Laid down by the Bureau.

- (24) Persons who have' been engaged in preparing for a procurement or part of the proceedings 11 .ereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they 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 a particular subcontractor as a requirement for participating in any procurement proceedings,

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

The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.

(28) AU 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 V - ORGANISATION OF PROCUREMENT

Approving
authority

23. Subject to the monetary and prior review thresholds for approving authority procurements in this Law as may from time-to-time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:

- 1 a) in the case of
 - (i) a government agency, parastatal, or corporation, the procurement parastatal's Tenders Board; and
 - (ii) a ministry or extra-ministerial entity, the Ministerial Tender Board.

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

- (i) preparing the need assessment and evaluation
- (ii) identifying the goods, works or services required;
- (ii i) carrying appropriate market and statistical surveys and on that basis prepare analysis of the cost implications of the proposed procurement;
- (iv) aggregating its requirements whenever possible both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (v) integrating its procurement expenditure into its yearly budget;
- vi) . prescribing any method for effecting the procurement subject to the necessary approval procurement implementation under this Law; and
- (vii) ensuring that the procurement entity functions stipulated in this section shall be carried out by the Procurement Planning Committee,

5. Subject to regulations as may from time to time be made by the Bureau under the direction of the Council procuring entity. shall in implementing its procurement plans;

- (a) advertise and solicit for bids in adherence to this Law and guideline as may be issued by the Bureau from time to time;
- (b) to invite two credible persons, as observers In every procurement

- process, one person each representing a recognized~
- (i) private sector professional organization whose, expertise is relevant to the particular goods or service being procured; and
 - (ii) non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation, report to any relevant agency or body including their own organizations or, associations;
- (c). receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (d) obtain approval' of the approving authority before making an award;
- (e) debrief the bid loser on request;
- (f) resolve complaints and disputes if any;
- 19) obtain and confirm the validity of any performance guarantee;
- (h) obtain a "Certificate of No Objection" to Contract Award" from the Bureau within the prior review threshold as stipulated in-Section 6(a)~ ,
- (i) execute all contract agreements; and
 - (j) announce and publicize the award in the format stipulated by this Law and

. guidelines as may' be issued by the

Bureau from time to
time.

- 26.(1) The accounting officer of a procuring entity shall be the uerson charged with line supervision 01 the conduct of all procurement processes; in the case of ministries. the Permanent Secretary and in the case of Extra-Ministerial Departments ana Parastatals, the General Manager, Executi ve Secretary or officer of co-ordinate 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 iii particular shall be responsible for,
- (a) ensuring compliance with the provisions of this Act by his entity and to table in person for the breach or contravention of this Act or any regulation made hereunder or not the act of 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 methods;
- (f) constituting the Evaluation Committee;
- (g) liaising with the BUreau to ensure the implementation of its regulations.

Procurement Planning
entity Committee
planning

LAL)

For each financial year each procuring shall establish a Procurement Committee;

- (2) The Procurement Planning Committee shall consist of;
 - (a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
 - (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the Secretary
 - (ii) the unit directly in requirement of the procurement
 - (iii) the financial implication entity;
 - (iv) the planning, research and statistics unit of the procuring entity;
 - (v) technical personnel of the procuring entity with, expertise in the subject matter for each particular procurement;
 - (vi) a legal officer from the Ministry of Justice; and
 - (vii) a representative from the Bureau.

2::5 (1) There is hereby established by this Law in each procuring entity a renders Board (in this Law re ierred to as "the Tenders Board") in each Muiistry, Parastatals, Agency or Corporation

)) Subject to the approval of the Council, the Bureau shall from time to time prescribe guidelines for the membership of the Tender Board.

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

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

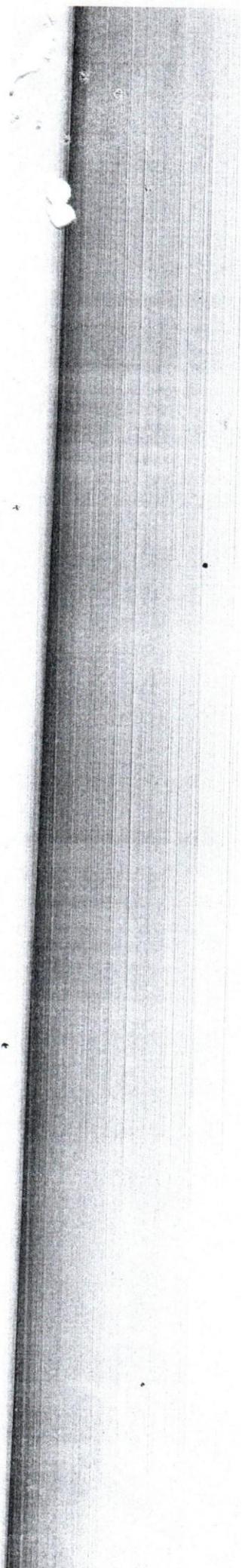
(.5) The decision or the Tenders Board shall all be communicated to the Commissioner for implementation

: 9.(I)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 qual rfies shall apply only the criteria set out in the prequalification documents a nd no more.

)) Procuring entities shall supply a set of prequalification documents to each supplier,

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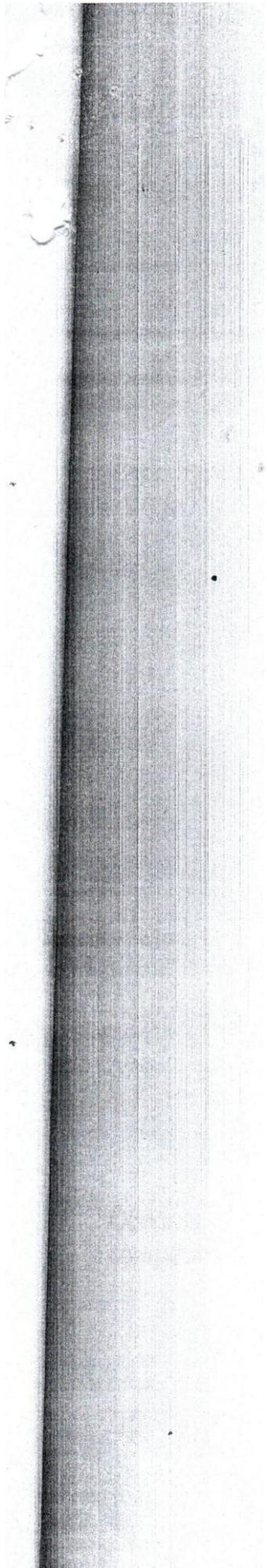
contractor or consultant that request them, and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.

- (3) The prequalification document shall include:
- (a) instructions to prepare and submit prequalification application;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed at a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications taking into account the reasonable need of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with this law and procurement regulations

30(1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to 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

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- (2) P 11 submitted bids shall be deposited in a secured temper-proof bid box
- (3) All bids submitted shall be in English Language
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission shall be rejected. Rejection of bid shall not be opened and must be returned to the supplier or contractor which submitted it
- (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.

31.(1) A procuring entity may:

- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;
 - (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
- (2) The procurement entity shall respond to any request by a supplier contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify
 - (3) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify

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be expected to be of interest to other supplier, contractor or consultant shall, without identifying the source of the request to be communicated to other suppliers contractors or consultants provided with the prequalification documents by the

procuring entity.

- (5) The procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been pre-qualified.
 - (6) Suppliers, contractors or consultants who have been Pre-qualified may participate further in the procurement proceedings.
 - (7) The procuring entity shall upon request discriminate to suppliers, contractors or consultants who have not been pre-qualified; the grounds for disqualification.
 - (8) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
 - (9) The procuring entity shall promptly notify supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
32. The procuring entity shall disqualify any supplier, Contractor or service provider who fails to demonstrate its qualification again if requested to do so.

PART VI PROCUREMENT METHODS (GOODS AND SERVICES) 83.

33,(1)

Except as provided by this Law procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.

- (2) Any reference to open competitive bidding in this Law means the process by which a procuring entity based on previously defined criteria effects public procurements by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed,
- (3) The winning bid shall be that which is the lowest or most responsive evaluated, bid which has been responsive to the bid with regards to work specification and standard

34.(1) Invitation to bid may be either by way of State Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system,

- (2) Every invitation to all open competitive bid shall:
 - (a) in the case of goods and works under international Competitive Bidding the invitation for bid shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than two weeks before the deadline for submission of the bid for the goods and works.
 - (b) In the case of goods and works valued under State Competitive Bidding the invitation for bids shall be advertised on the notice board of the procuring entity, any

official website of the procuring entity, at least two national newspapers and in the procurement Journal not less than two weeks before the deadline for submission of the bid for the goods and works:

35(1) Subject to the monetary and prior review thresholds as may from time to time 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 more than 2% of the bid price by way of a Bank guarantee issued by a reputable bank acceptable to the procuring entity.

Bid security

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

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

36.(1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to 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

(2) All submitted bid shall be deposited in a secured tamper-proof bid box,

(3) All bid submitted shall be in English Language.

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

Rejection of Bid

(5) Any bid received after the deadline for the submission of bid shall not be

It opened and must be returned to the supplier or contractor which submitted it

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

37.(1) \ procuring entity may:

- a) reject all bid at any time prior to the acceptance of a bid without incurring thereby any liability to the bidders, and
 - b) cancel the procurement proceedings in the public interest without incurring any liability to the bidders relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
- (2) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.
- (3) The response by the- procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify;
- (4) The response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall without identifying the source of the request be communicated to other suppliers, contractors or consultants provided with the prequalification documents by the procuring entity

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(5)

A procunng entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers contractors or consultant who have been pre-qualified

(6) Suppliers contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.

(7) The procunng entity shall upon request commurucate to suppliers, contractors or consultants who have not been pre-qualified the grounds of disqualification

(8) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.

(9) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity ..

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

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

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

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

Examination of Bids

39 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 bid have been submitted to ascertain that the bid have not been tampered with;
- (b) cause all the bid to be opened in public or 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 bid or any extension thereof;
- (d) ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the tenders board; and
- (e) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

Validity period

40(1) All bid shall be first examined to determine if

of bid Modification
and withdrawal of
tenders.

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to

they:

- (a) meet the minimum eligibility requirements stipulated in the bidding documents;
 - (b) have been duly signed;
 - (c) are substantially responsive to the bidding documents; and
 - (d) are generally in order.
- (2) / 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 bid.
- (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 sub-section (3), 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 essence;
 - (iii) unacceptable alternative design, and
 - (iv) Unacceptable price adjustment;
- (D) With respect to the status of the bidder:
- (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited;
- (c) With respect to bid documents, an unsigned bid;
- (d) With respect to time, date and location for submission;
- (i) any bid received after the date and time for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location.
-)' In cases of major deviations, bids shall not be considered any further and where unopened, shall be returned as such to the bidder
-) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
- 0) Subject to any provision to the contrary, the following shall be considered as minor deviations:
- (a) the use of codes;
 - (b) the difference in standards;
 - (c) the difference in materials;
 - (d) alternative design
 - (e) modified liquidated damages; omission in minor items;
 - (f) discovery of arithmetical errors;
 - (g) sub-contracting that is unclear and questionable
 - (h) different methods of construction;
 - (i) difference in final delivery date;
 - (j) difference in delivery schedule
 - (k) completion period where these are not of essence;
 - (l)

- (m) non-compliance with some technical local regulation;
 - (u) payment terms; and
 - (o) any other condition that has little impact on the bid;
-) III cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation the following rules shall apply
- (3) where the impact on the costs is major, it shall be regarded as a major deviation; and
 - (b) where the impact on the costs is minor, it shall be regarded as a minor deviation;
- 2) In case of minor deviations, written clarification may be obtained from the supplier or contractor and where applicable an offer made for the correction of the minor deviation.
- 3) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.
- 4) At the stage of evaluation and comparison, all minor deviation shall be qualified in monetary terms;
- 15¹ For the rejection of a bid, a written notice shall be given promptly to the supplier.

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

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

In the course of its determination of the lowest evaluated responsive bid from the bidders who have responded to the bid solicitation, the Tenders Board shall

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in particular,
applicable:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

- (h)
- (i)
- (j)
- (k)
- (l)
- (m)
- (4)
- (5)

same;
Application of discounts, as applicable;
Clarification with bidders of questionable minor deviations;

- u Quantification in monetary terms of such
- n questionable deviations;
- d Conversion to common currency;
- e Calculation and tabulation of bid amount with
- r domestic preference where applicable;
- t Determination of the lowest calculated prices in
- a order of rank;
- k
- e Post-qualification of bidders, where applicable;
- t Listing of rejection of bid, where applicable;
- h Decision of rejection of all bid where justifiable;
- e Recommendation for award; and
- t Writing up of the bid evaluation report;
- o

l >11 relevant factors, in addition to price, that will
l be considered for the purpose of bid evaluation and
o the manner in which such factors will be applied
w shall be stipulated in the solicitation documents.
i Such factors shall be calculated in monetary terms
n as stipulated in the solicitation documents and
g shall include:

- p (3) goods, among others, costs of
- r transportation and insurance, payment
- o schedule.; delivery time, operating cost,
- c efficiency, compatibility of the equipment,
- e availability of services and spare parts,
- s related training, safety, environmental
- s benefits or losses by damages;
- a (b) .for works, in addition to factors stipulated
- s in Section 37(1) and subject to Section
- 37(2), if time is a critical factor, the value
- of early completion; and

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(c) the value of early completion under section 38(2) shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for.

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

(7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

After opening of bid information relating to the examination, clarification and evaluation of bids and recommendation concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluations process until the successful bidder is notified of the award,

successful bid shall be that submitted by the lowest cost bidder from the bidders responsive to the bid solicitation

Notwithstanding subsection (L), the selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds, derived from the provisions of this Law to that effect.

Notice of the acceptance of the bid shall immediately be given to the successful bidder

The procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from

Domestic preference

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domestic bidders with those from foreign bidders
 or
 in comparing tenders, and, in estimating
 suppliers
 (2) goods manufactured locally with those
 goods manufactured abroad.

where a procuring entity intends to award domestic
 (3) preferences the bidding documents shall clearly
 indicate any preference to be granted to domestic
 suppliers and contractors and the information
 required to establish the eligibility of a bid for such
 preference.

Margins of preference shall apply only to tenders'
 under international competitive bidding.

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

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(1) In addition to any other regulations as may be
 prescribed by the Bureau, a mobilization fee of not
 more than 30% of the contract sum for construction
 works and 60% of contract sum for supply may be paid
 to the contractor or supplier supported by the following:

- a) in the case of State Competitive Bidding, an
 unconditional bank guarantee or instance
 bond issued by an Institution acceptable to
 the procuring entity; and
- (b) in the case of international Competitive
 Bidding an unconditional bank guarantee
 issued by a banking institution acceptable to
 the procuring entity,

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

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Recorded
procurement
proceedings

(2)

Provision of a Performance Guarantee shall be a pre-condition for the award of any procurement contract for UPQ which any mobilization fee is to be paid provided however it shall not be less than 100% of the contract (value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor, whichever is higher.

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

(M) Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by a Ministry, Extra-Ministerial office, government agency parastatals or corporation shall be deemed a delayed payment.

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

(4) All contracts shall include terms, specifying the interest for late payment of more than Sixty days.

4. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.

The record referred to in this Section shall, on request be made available to:

- (a) any person, after a tender proposal offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and
 - (b) suppliers, contractors or consultants that submitted tenders proposals offers or quotations, or applied for pre-qualification, after a tender or proposal offer or quotation, has been accepted or procurement proceeding have been terminated without resulting in a procurement contract.
- (3) A disclosure of procurement proceeding records, prior to award of contract may be ordered by a court provided that when ordered to do so by a

(4)

**PART VII – SPECIAL AND RESTRICTED METHOD OF
PROCUREMENT**

Two Stage
Tendering
(Maginal note in
Section) 48(2)

the Court the procurement entity shall not disclose such information, if its disclosure would:

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

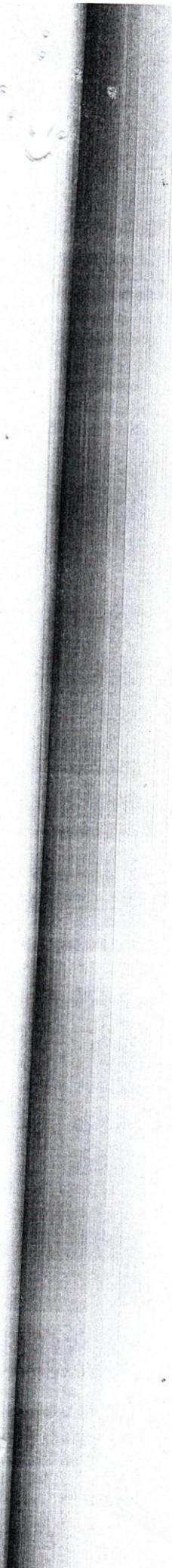
The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section

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

48.(1) Notwithstanding, the provisions of this Law, the Bureau may issue Certificate of No Objection upon conditions hereinafter prescribed.

(2) A procuring entity shall engage in procurement by two-stage tendering:

- (a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works or in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs,
- (b) Where the character of the goods or works are subject to rapid technological advances or where the procuring entity seeks to enter into a contract for research, experiment,



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cludes the production of goods
insufficient quantities to establish their
commercial viability or recover research and
development costs or where the procuring
entity applies this Law to procurement
concerned with national security and
determines the selected method is the most
appropriate method of procurement; or

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

(3) The provisions of this Law as regards the process
for open competitive bidding shall apply to two -
stage tendering proceedings except to the extent
that those provisions vary from this section.

(4) The invitation documents:

- (a) shall call upon suppliers or contractors to
submit in the first stage of two - stage
tendering proceedings, initial tenders
which
contain their proposals without a tender
price; and
- (b) may solicit proposals that relate to technical
quality or other characteristics of the
goods,
works or services as well as contractual
terms and conditions of supply and may
stipulate the professional competence
and
technical qualification of the suppliers or
contractors

(5) The procuring entity may, in the first stage,
engaged in negotiations with any supplier or
contractor whose tender has not been rejected
under an open competitive bidding procedure with
respect to any aspect of its tender;

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(6) In the second stage of the two tender proceedings, the procuring entity:

- (t.) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
- (h) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristic of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tenders;
- (c) may add new characteristics or criteria that conform with this law
- (d) shall communicate to suppliers or contractors in the invitation to submit firm tenders, any deletion, modification or addition; and
- (e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

(7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.

Restricted Tendering --9.(1) Subject to the approval by the Bureau, a

procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted tendering if:

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

procured; or

- (c) the procedure is used as an exception rather than the norm.
- (2) Where a procuring entity engages in restricted tendering on the basis that:
- (a) the goods, works and services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works 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 to ensure effective competition
- (3) For the purposes of subsection (2), the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal. Procurement is impractical due to unforeseeable circumstance giving rise to the urgency which is not a result of dilatory conduct on the part of the procuring entity;
- (a) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods; (b) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor determines that:
- (i) additional supplies need to be procured from that supplier or contractor because of standardization
- (ii) there is a need for compatibility with existing goods equipment, technology or services, taking into account the effectiveness of the original

- procurement in meeting the needs of the procurement entity;
- (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;
- (e) . . the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or
- (d) the procuring entity applies this law for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement
- (4). The procuring entity,
- (a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;
 - (b)' shall include in the record of procurement proceedings and statement of the grounds for its decision and the circumstances in justification of single source procurement.
- (5) The provision of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.

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 three unrelated contractors or suppliers.
- (3) Each contractor or supplier from who a quotation is requested shall:-
 - (a) be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges custom duties and taxes are to be included in the price; and
 - (b) provide 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 the 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
- (6) Where the total value of the procurement is not more than the sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval. All direct procurement must obtain Bureau's approval.

Direct 51. (1)
procurement

A procuring entity may carry out any emergency procurement where:

- (a) goods, works or services are only available from a particular supplier or contractor or if a particular supplier has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
- (b) there is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of;

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Quotation

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A procuring entity may for the purpose of the Law, carry out an emergency procurement where:

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

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

Expressions 53.
of interest

All procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the

PART VIII- PROCUREMENT OF CONSULTANCY SERVICES

to provide
services for
for ascertained
needs

gravity of each emergency.
Immediately after cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate, issue "Certificate of Non-Objection".

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

- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two national newspapers and the procurement journal ~
- (b). Where the value of the services to be procured is less than one million naira, or with the approval of the Bureau of such a

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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 qualifications of the consultant to provide the service,
- (ii) a statement of understanding of the procuring entity's need;
- (iii) the methodology for providing the service
- (iv) The cost or fee for the service
- (c) Every consultant of infrastructural work shall register with the Ministry of Works and Transport:

- 54.(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 include the production of goods sufficient to establish their *commercial viability* or to recover research and development cost.
- (2) The procuring entities shall procure the services of consultant by soliciting for expressions of interest by publishing a notice to that effect in two National Newspapers 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 no more than three 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

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Content
Of the
Requests for
Proposals

55.(1) Request for proposal shall include.

- (a) the name and address of the procurement entity,
- (b) a requirement that the proposals are to be prepared in the English Language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals
- (e) the criteria and procedure for the evaluation of the qualification of the consultant;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;
- (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 or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
- (l) a short list to be made of only national consultants for consulting assignment,

Request for proposals to provide services for unascertained needs.

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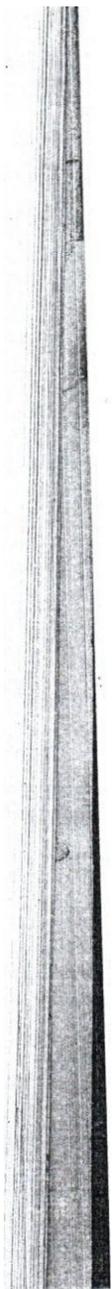
contract within a set threshold in the procurement . regulation provided that national consultants possess such requisite skills.

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

Clarification
and Modification
of Request
for Proposals

- 56.(1) \. consultant shall be allowed to request for clarification from 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 submission of proposals. The deadline for the submission of proposals to the short listed consultants to which the procuring entity has provided the request for proposals shall be binding on those consultant.
- (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 file request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications;
- (5). The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultants participating in the selection proceeding to enable them take the minutes into account in their proposals;



57.(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 30 days between the issue of the notice or request and the deadline for the submission.

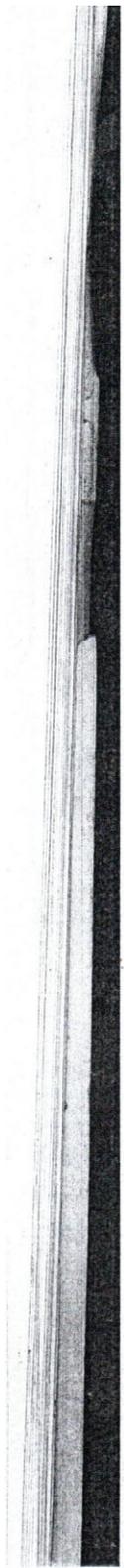
(2). The technical and financial proposals shall be submitted simultaneously but in separate envelope.

- (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 committees shall not have access to or insights to the financial proposals until the evaluation including Tender Boards review are concluded.

Criteria 58.(1)
for Evaluation
of Proposals

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 proposals 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 effect that acceptance of the proposal will have on the balance of payments position and foreign reserves of the government, the extent of



participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and

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

Procedure 59.(1) The Procuring entity shall select the successful proposal for selection 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).
- (3). Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

60.(1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish 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 name of the qualifying consultants, and the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5). The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6). The successful proposals shall be:
 - (a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) 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;
- (7). The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.
- (8). The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.



Selection procedure price is not a factor

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61.(1) Where the procuring entity elects to make a quality based selection procedure 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 negotiation on the price of its proposal, the consultant that has attained the best rating in accordance with the subsection
- (c) inform the consultants that attained ratings above the weight that may be considered for negotiation 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 paragraph (b) will not result in a procurement contract

(3) The procuring entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for 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,



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

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

(a) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce books, records, accounts or documents;

(b) search premises for books, records, accounts or documents:

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

(d) remove books, records, 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; (e) require an officer employee or agent of the procurement entity or; bidder, supplier, or contractor or consultant.

(ii). 'to provide the investigator with

ecord, accounts or
.documents;

information concerning
the
management or
activities of the
procurement entity or
bidders as may
be reasonably required;

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- (s) explain an entry in the books, records, accounts or documents; and
 - (s) provide the investigator with information concerning the management or activities of the procurer entity or bidders as may be reasonably required
- (3) The Bureau may, pursuant to the advice of the procuring entity, result of its review of a procurement or report of investigation by a relevant government agency issue a variation order requiring: a contractor at his own expense to require, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less-skill and expertise than required by the contract of award.
- (4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulation to procurement proceedings or procurement contract, take action to rectify the contravention which action shall include:
- (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contract;
 - (c) ratification of anything done in relation to the proceedings; or
 - (d) a declaration consistent with any relevant provisions of this Law;
- (5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

- 63.(1) \ bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.
- (2) \ complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
- (3) On reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.
- (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.
- (5) Upon receipt of a complaint, the Bureau shall promptly
- (a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity, until the Bureau has settled the matter;
 - (b) unless it dismisses the complaint:
 - (i) prohibit a procuring or disposing entity from taking any further action,
 - (ii) nullify in whole or in part an unlawful act of Administrative Review decision

- made 1) the prOcurIng or disposing entity
- (iii) declare the rules or principles that govern the subject matter of the complaint, and
- (i v) revise cUl improper *decision* by tile
procuring or disposing entity or substitute its own decision for such a decision
- (6) Before *taking* any decision on a *complaint*, the Bureau shall noti1) all interested bidders of the -omplainr and may take into account (epresellta~jons fro o i the *bidders* and from the respective procuring or disposing entity.
- (7) The Bureau shall make its decision within 21 working days after receiving the complaint, stating til - reasons for its decisions and remedies granted, if ally.
- (8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not ::ntisfied with the decision of the Bureau, tile bidder may appeal *to* the High Court within 30 days after the receipr 'of the decision of the Bureau, or expiration by way of Judicial Review of the rime stipulated tor the Bureau to deliver a decision.

PART X - [J!§!>OSAIJ OF PUBLIC PROPERTY

- 64.(1) For the purposes of this Law every procunng ~ntity shall also be disposing entity
- (2) The opel! competi'\~~ 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:

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policies and
disposal of all

- (4) For the purposes of this law public property is defined as resource in the form of tangible and non-tangible assets ~ ranging from *serviceable* to *unserviceable* ~
- (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary *rights*;
 - (d) acquired on financial instruments (including shares, stocks, bonds etc); and
 - (e) acquired by goodwill and any other *gifts* of the State Government

- d blic properr. :
- (b) is~ue guide/tiles JetaiJillg operational prncipjes and *organizational* modalities to be *adopted* by ,tll *procuring entities* engaged in the disposal of public property; and
- (C) I.,Sue stand(udized document, monitor
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 1""~1)l)lllllg staJldard that shall be used by all
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 public propert\ ,

The means of the «disposa] of public assets shall include:

- (a) sale and **rentai**
- (b) lease and hire ptturchase;
- (c) licenses *and* tenancies;
- (d) franchise and auction;
- (e) transfers from one government department to another with or without financial ad_jllstments~ and
- (f) offer *to the public* at an autllorized *variation*.

Before Slaling any public property for disposal the accounting officer (whether acting in his own

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authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a valuation report for such property by an independent evaluation or such professional with the appropriate competence to carry out the valuation .

- (2) The disposal of assets whether or not listed in the assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (3) The disposal of assets referred to in subsection (2) shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government.
- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

PART XI - CODE OF CONDUCT

Code of conduct for public procurement

66_O)The Bureau shall; with the approval of the Council, stipulate a code of conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets.

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



PART XU - OFFENCES

Offences relating to public procurement

67.(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 and costs;

(2) Any offence in contravention of this Law shall be tried by the Magistrate

(3) The following shall also constitute offences under this Law;

(a) Currying or attempting 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 higher than *would* have been the case had there not been collusion between the persons concerned;

to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats unlawful, influence, undue interest, agreement, corruption, bribery or other actions;

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

(b) splitting of tenders to enable the evasion of monetary thresholds set;

(c) bid rigging;

- (f) altering any procurement document with intent to influence the outcome of a tender proceeding,
- (g) *using* or using fake documents or encouraging their use and
- (h) willfully allow the Bureau or its officers to have access to any procurement records.

(4) Any person who, while carrying out his duties as an officer or member of the Bureau or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of

- (a) a term of imprisonment of 5 years with an option of fine and restitution; and
- (b) summary dismissal from government service.

(5) Any legal person 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 procurements for a period not less than 5 years;
- (b) a fine equivalent to the value of the procurement in issue,

(6) Where any legal person shall be convicted pursuant to subsection (5) every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than 3 years but not exceeding 5 years and an option of fine and restitution,

