

BAUCHI STATE

**A LAW TO ESTABLISH THE BAUCHI STATE PUBLIC
PROCUREMENT BUREAU, 2020**

**ENACTED BY THE HOUSE OF ASSEMBLY OF BAUCHI STATE
OF NIGERIA as follows:**

1 Citation and Commencement

This Law may be cited as Bauchi State Public Procurement Bureau Law and shall come into operation on day of year.....

**PART I – Establishment, Scope and Objectives of the
Bauchi State Public Procurement Bureau**

**2. Establishment of the Bauchi State Public Procurement
Bureau:**

(1) There is established a body to be known as the Bauchi State Public Procurement Bureau (referred to in this law as the **“Bureau”**)

3. The Bureau shall:

- a) be a corporate body with perpetual succession and a common seal;
- b) have power to sue and be sued in its corporate name; and
- c) Be capable of holding, purchasing, acquiring and disposing of property moveable or immovable, for the purpose of exercising its functions specified in this law.

4. Scope and Application of this Law

Notwithstanding the provisions of any other law, public service rules, practice or circular in existence in Bauchi State this law shall apply to all procurement and disposal of goods, works, and services carried out by the Bauchi State Government, its ministries, departments, authorities, agencies, Judiciary,

Legislature, State Universities and Colleges, government owned and/or controlled corporations, government institutions and local government areas/councils and their constituent and derivative units and all entities set up under the Constitution or Law of the State House of Assembly and/or whose funding derives from the State Treasury, their own internally generated revenue, the State's share of the Consolidated Revenue Fund and special allocations from the Federal or state Treasury, whatever form this may take.

Nothing in this Law shall absolve the state from any obligation under any international treaty, bilateral or grant agreement to comply with any other set of Procurement rules as stipulated in such an agreement.

5. Objectives of the Law includes to:

- a) Create a Bureau which shall have powers and responsibility to regulate, monitor, evaluate and audit the public procurement and disposal processes of all procuring entities in the State;
- b) Harmonize existing government policies and practice on public procurement and disposal;
- c) Train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
- d) Ensure probity, accountability and transparency in the conduct of procurement and disposal activities.
- e) Establish fair pricing standard and benchmarks;
- f) Ensure the application of fair, competitive, transparent and value-for money standards and practices in the procurement and disposal of public assets and services;
- g) Create ample opportunities for the citizenry, particularly, small and medium scale enterprises to partake in the economic opportunities and benefits of public procurement in the state.

- h) Create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from the public procurement and disposal processes in the State filed by procuring entities, bidders and the general public; and
- l) Enhance transparency, competitiveness and professionalism in the state public procurement system.

6. Governing Council:

1. There shall be a Governing Council for the Bureau which shall consist of:
 - a) The Governor,
 - b) The Secretary to the State Government
 - c) The Hon. Attorney General & Commissioner for Justice
 - d) The Hon. Commissioner for Finance
 - e) The Hon. Commissioner for Budget and Economic Planning
 - f) The Head of Civil Service.
 - g) The Chief Economic Adviser (if any)
 - h) The Chairman of ALGON to represent the Local Government Chairmen
 - i) Three other indigenes with experience in Engineering, Law, Economics, Procurement, one from each Senatorial District
 - j) The Director General (DG) who shall be the Secretary of the Council
2. With the exception of Director General, all other members of the Council shall be on part time basis.

7. Functions and Powers of the Council:

The functions and powers of the Council are to:-

- a) Consider and approve the monetary thresholds for the applications of the provisions of this Law by procuring entities;
- b) Consider and approve policies on public procurement and disposal as may be formulated by the Bureau;

- c) To approve the framework and regulation for monitoring of public procurement and disposal for all procurement entities in the state;
- d) Approve any procurement and disposal guidelines or regulations to be made pursuant to this Law;
- e) Formulate and approve the policy framework, guideline and monetary thresholds for direct labour projects
- f) Approve operational structure of the Bureau as may be necessary to enhance the Bureau's duties and functions.
- g) Approve the employment of the directors and other staff and the internal management structure, rules and guidelines for management and operation of the Bureau.
- h) Receive and consider for approval the audited accounts of the Bureau;
- i) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law;
- j) Except as herein specifically provided, the Council shall not be involved in day-to-day management of the Bureau; and
- k) The Management of the Bureau shall in the absence of the Governing Council exercise such powers under this section subject to the approval of His Excellency the Executive Governor of the State.

8. Tenure of office of members of the Council:

- a) All members of the Council except the Director General shall be appointed on a part-time basis.
- b) The part-time members of the Council shall hold office for a term of four years, renewable for another four years and no more.

c) The appointment of the Director General of the Bureau shall hold office for a term of four (4) years, renewable for another four (4) years and no more.

9. Remunerations of members of the Council:

The members of the Council shall be paid such remuneration as the Governor may determine from time to time.

10. Quorum:

The quorum for a meeting of the Council shall be one third of the members.

11. The Proceeding of the Council:

The provision of schedule 1 to this law shall apply with respect to proceedings of the Council.

12. Power to Co-opt:

Where the Council of the Bureau desires to obtain the advice of any person on any matter, it may co-opt such person as a member but such a person shall not count in determining the quorum for meeting and shall have no voting right in the resolutions of the Council.

PART II
The Director General and other Officers of the Bureau

13. The Director General and other Officers of the Bureau

- a) There shall be for the Bureau, a Director General who shall be appointed by the Governor on confirmation by the State House of Assembly on such terms and conditions as may be specified in his letter of appointment.
- b) The Director General so appointed shall be the Secretary of the Council
- c) A person to be appointed as Director General shall possess professional certificate in addition to already acquired certificate in relevant field of - engineering, law, accounting, economics, procurement, finance, management, quantity survey, project management architecture and shall have been so qualified for a period of 10 years or above at the time of appointment.
- d) The Director General shall be:-
 - i. The Chief Executive and Accounting Officer of the Bureau; and
 - ii. Responsible for the execution of the policy and day to day administration of the affairs of the Bureau.
- e) Without prejudice to the provisions of this Law, the Director General of the Bureau may be removed from office by the Governor on the grounds of gross misconduct or financial impropriety, fraud, and manifest incompetence.
- f) Such removal shall be approved by the Bureau's Council and confirmed by at least a two-third majority of the members of the State House of Assembly.
- g) The Bureau with the approval of Council, may from time to time engage, second or employ such other officers as are deemed necessary for the due and proper execution of its functions under this Law.

h) The appointment of all officers of the Bureau shall be in a transparent and competitive manner to ensure that only persons with the relevant experience and qualifications manage the affairs of the Bureau.

i) The Director General and the staff of the Bureau may, where practicable, be appointed from the public service

14. Functions of the Bureau:

The functions of the Bureau shall be to:

- a) Formulate the general policies guidelines and implementing regulations relating to Public Procurement and disposal in Bauchi State and its Local Governments;
- b) Engage in public enlightenment on the need for procuring entities to comply with the provisions of this law.
- c) Supervise and monitor the implementation of established procurement and disposal policies and regulations;
- d) Monitor the prices of tendered items and keep a database of standard prices which shall be open to the public;
- e) Publish the details of major contracts in the State Procurement Journal and by other means it may choose;
- f) Publish paper and electronic editions of the State Procurement Journal and maintain an archival system for the State Procurement Journal;
- g) Maintain a register and database of the particulars, classification and categorization of contractors and consultants to the exclusion of all other entities;
- h) Collate and maintain in an archival system for all state procurement plans and information;
- i) Undertake procurement researches and surveys;

- j) Provide and co-ordinate training programs in order to build the institutional capacity of all procuring entities within the purview of this Law and to coordinate the training and development of service-wide procurement cadre;
- k) Periodically review the socio-economic effect of the policies on procurement and advise the government accordingly;
- l) Prepare and update standard bid /tender and contract documents for the all procuring entities in the state and for all local governments as may be modified to suit their operations;
- m) Respond expeditiously to enquiries from procuring entities provided the enquiry is accompanied by adequate information.
- n) Subject to the threshold as may be set in the regulation, certify procurement of entities to which this law applies prior to award of contract.
- o) Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- p) Review for compliance the procurement and award of contract procedures of every entity to which this Law applies;
- q) Receive and expeditiously investigate and decide complaints from bidders and the general public against public procurement rules and practices, and the conduct of any procurement proceeding;
- r) Introduce, develop, update and maintain related database and technology; and
- s) Review, amend and continuously update and publicize the code of ethics (Schedule II hereof), the regulations and

standard documents here issued and ensure transparency, fairness and the long-term sustainability of the outcome of every state procurement.

15. Powers of the Bureau:

- (1) The Bureau shall have the power to:
 - a) Inspect and review any procurement transaction to ensure compliance with the provisions of this Law;
 - b) Investigate and determine whether any procuring entity has violated any provision of this Law;
 - c) Subject to Council's approval, blacklist or debar any supplier, contractor or consultant adjudged to have contravened any provision of this Law and regulations made pursuant thereto;
 - d) Enforce the monetary and prior review threshold set by regulations made pursuant to this Law for procuring entities
 - e) Subject to paragraph (d) above, issue "Certificate of No Objection" to contract award in respect of all procurement within the established threshold that qualify by the provisions of this Law.
 - f) Stipulate to all procuring entities the procedures and documentation pre-requisite for issuance of Certificate of No Objection.
 - g) Register and maintain a database of suppliers, contractors and consultants to the exclusion of all procuring entities;
 - h) Prescribe classifications and categorizations for companies on the register;
 - i) Maintain a list of firms and persons that have been blacklisted or debarred from participating in the public procurement system and publish them in the State Procurement Journal and the Bureau's website;

- j) Call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against any person, procuring entity, contractor or service provider;
 - k) Call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - l) Act upon complaints by bidders and public procurement entities in accordance with the procedures set out in this Law, and when the complaint or appeal arising from the decision of an accounting officer relates to conduct of any person in the Bureau such a complaint or appeal shall be referred to the Council, and for the purpose of determining such a complaint the Director General shall be excused from the Council;
 - m) Nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;
 - n) Direct the discontinuance, stoppage, or suspension of any payments due from public fund under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law; and
 - o) Monitor and evaluate all projects award certificate of No Objection to ensure compliance with the signed terms and conditions of the contract and the provision of this Law.
- (2) Where there are persistent or serious breaches of this Law, Regulations or any other guideline made under this Law, the Bureau shall without prejudice to any existing law or regulation, recommend to the appropriate authority after an opportunity for a defense in writing has been given to those involved by the Council, any one or more of the following:

- a) The suspension from office of officer(s) concerned with the procurement or disposal proceeding in issue;
 - b) The removal from office of the head of any Procuring or Disposal Unit or the Director General of a Procurement Planning Committee or Tenders Board as the case may be;
 - c) The discipline of the Accounting Officer of any procuring entity;
 - d) Subject to the approval of the Governor, temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third-party procurement Bureau or consultant;
 - e) The termination or dismissal from employment of any staff of procuring entity; or
 - f) Any other sanction that the Council may consider appropriate; and in addition.
 - g) Debar any bidder, supplier, contractor or consultant found to be involved in the infractions and recommend to the relevant authority, the investigation and prosecution of any perceived misconduct or infractions of this law;
- (3) The Bureau may in the performance of its functions collaborate with all relevant agencies, entities or hire consultants, provided that any such persons shall be bound by the rules and standard of conduct applicable to the Bureau and the Bureau shall ensure that their contract and or terms of collaboration or engagement so provides.
- (4) The Bureau shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law and may carry on in that behalf either alone or in association with any other person, relevant authority or body.

(5) The Bureau shall serve as Secretariat of the Council

16. Funds of the Bureau:

(1) The Bureau shall establish and maintain a fund from which there shall be defrayed all expenditure incurred by the Bureau; there shall be paid or credited to the Fund:

- a) All financial donations and gifts to the Bureau.
- b) All monies as may be appropriated from time to time to the Bureau by the State Government;
- c) Money raised by loan under the power to borrow vested in the Bureau by this Law; and
- d) Any other monies of the Bureau

17. Power to Borrow:

The Bureau may from time to time borrow money by way of loan or overdraft from any source, in connection with the exercise of its functions under this Law, provided always that borrowing by the Bureau shall be in accordance with laws and rules regulating borrowing by government agencies in Bauchi State

18. Remuneration of Officers:

The Governing Council of the Bureau shall determine the remuneration to be paid to officers of the Bureau.

19. Power to make Regulations:

The Bureau may with the approval of the Council and subject to this Law make regulations for the proper implementation and enforcement of the provisions of this Law and without prejudice to the generality of the foregoing provisions issue guidelines and make regulations with respect to all or any of the following matters-

- (a) i) The operational structure and staffing of the Bureau
- ii) The structure and composition of Tenders Boards and procurement planning committees

- (b) The setting of monetary thresholds;
- (c) The structure and contents of Annual Procurement Plans;
- (d) The standard and content of all tender solicitation documents;
- (e) The standard and content of all procurement contracts;
- (f) Structure and standard contents of all other documentation in the procurement process;
- (g) The use of any procurement method;
- (h) Fees chargeable by any procuring entity for matters relating to public procurements or access to procurement documents, provided that such fees will not be prohibitive; and
- (i) The prevention and detection of the commission of any offence or act amounting to an infringement of this Law and its Regulations.
- (j) Any other matter in respect of which this Law has authorized the making of regulations.

Provided always, that the regulations and standard documents shall take account of unique features of local administration and in the case of local Governments, be further simplified.

20. Annual State Procurement Assessment Report:

- 1) Not later than 4 months after the end of each year, the Bureau shall prepare a comprehensive report on all procurement activities carried out by all procuring entities within the purview of this Law for presentation to the State House of Assembly and the Council.

The report shall give an accurate account of the conduct of all capital procurements carried out by procuring entities within the purview of this Law, including complaints resolved and unresolved and the report shall be published in the state government official gazette.

21. Bank Account:

The Bureau shall operate funds with a reputable bank or banks in the state and the signatories to the account shall be the Director General, the Secretary and the Head of Accounts or their designated representative as duly authorized by Bureau.

22. Account and Audit:

- 1) The Bureau shall keep proper accounts in respect of all its expenditure and revenue and the Council shall cause the Bureau's accounts to be audited not later than 3 months after the end of each financial year by external auditors appointed from the list of auditors approved by the Auditor-General of the State.
- 2) Not later than 4 months after the end of each financial year, the Bureau shall furnish the Council and the State House of Assembly with a copy of its audited account along with a report of the state of affairs of the Bureau for the year reported upon. (3) In compliance with subsections (1) & (2) of this Section, the Bureau shall cause the report to be published in the State Government Official Gazette and its website.

PART III

Governing Principles on Public Procurement

23. Governing Principles on Public Procurement:

- (1). All procurements carried out by all procuring entities in Bauchi State, subject only to any exceptions under this Law, shall in all cases be governed by the following principles –
 - a. Open Competitive bidding shall be the primary method of procurement with exceptions otherwise here provided;
 - b. Promotion of competition, economy, efficiency, and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
 - c. the processes for the conduct of public procurements shall be standardized, simplified, sustainable and shall apply uniformly to all public procurement and shall be adaptable to advancements in public administration and modern technology subject only to this law;
 - d. all public procurement contracts shall be executed in an effective, efficient, transparent, timely, equitable manner that shall ensure accountability, value for money and conform with the provisions of this Law and Regulations deriving from it with the aim of achieving value for money and fitness for purpose;
 - e. ensuring a system of accountability where public officers and persons involved directly or indirectly in the procurement process or in the implementation of procurement contracts are when warranted by circumstances investigated and held liable for their actions;
 - f. public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of

this Law and its implementing Regulations, and that all public contracts are performed strictly according to specifications;

- g. Based only on procurement plans supported by prior budgetary appropriations; and no procurement proceedings or contracts shall be formalized until the procuring entity has ensured that funds shall be available to meet the maturing obligations.
 - h. All procurement related files shall be treated expeditiously to enhance efficiency.
- (2) All regulations, guidelines, procedures and timelines to be prescribed pursuant to this Law and specified by the Bureau from time to time shall always conform to the provisions of **Sub-Sections (1) (a) — (h)** of this section.
 - 3). Where the Bureau has set monetary thresholds in the procurement regulations, no funds shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement in contravention of the thresholds.
 - 4). For all cases where the Bureau shall set a monetary threshold, the Bureau shall prescribe by regulation and guidelines the conditions precedent to the award of any contract falling within or outside the set thresholds.
 - 5). Subject to the monetary thresholds as may be set under this Law, any procurement purported to be awarded in contravention of this Law or Regulations issued by the Bureau shall be null and void.
 - 6). A supplier, contractor or consultant may be a natural person, a legal person. Suppliers, contractors or consultants acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.

- 7). All bidders, in addition, to requirements contained in any solicitation documents shall: (a) possess the required: (i) professional and technical qualifications to carry out particular procurement; (ii) financial capacity; (iii) equipment and other relevant infrastructure; (iv) personnel and skill to perform the obligations of the procurement contract; (b) possess the legal capacity to enter into the procurement contract; (c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings; (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions; (e) Not have any directors who have been convicted in any country for any criminal offence or have been found wanton by an administrative tribunal of a misconduct relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter. (f) Accompany its bid with an affidavit disclosing whether or not any officer of the procuring entity or Bureau is a former, or present director, shareholder of the bidder or has any pecuniary interest in the bidder, listing all attachments or annexures to the bid and confirming that all information and documents presented in its bid are genuine, true and correct in all particulars.
- 8). The Bureau or any procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with the provisions of this Law and for this purpose any such requirement shall apply equally to all bidders.
- 9). A bid and/or a tender shall be excluded from any particular procurement proceedings 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, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau in an attempt to influence

any action, decision making or further his or its course in any procurement activity; (b) the bidder, supplier, contractor or consultant during the three (3) years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in performance of any public procurement (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters 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 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 bidder has obtained a lawful permit with respect to allowance for deferral or waiver of such outstanding payments; (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 procurement proceeding, or other crime committed to gain financial profit; (g) the bidder fails to submit a statement regarding: its dominating or subordinate relationship with respect to other participants in the procurement proceedings or other persons acting on behalf of the procuring entity in the same proceedings have been or remain in a subordinate or dominating relationship with it. (h) The bidder fails in any particular to comply with any requirement contained in **Sub-Section (7)** of this section.

- 10). The procuring entity shall inform the bidder in **Sub-Section (9) (a) - (h)** of this section in writing, the grounds for the exclusion of his or its bid from the procurement process in question and a record to such effect shall be kept in a manner as prescribed by the Bureau.

- 11). All extra works costing over 15% of the original contract price shall be procured as a fresh contract.
- 12). All communication and documents issued by procuring entities, the Bureau and all other stakeholders relating to public procurement shall be in English language.
- 13). 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.
- 14). Every procuring entity shall maintain both hardcopy file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a minimum period of ten years.
- 15). Copies of all procurement records shall be transmitted to the Bureau not later than 2 months after the award of contract and shall include –
 - a. information identifying the procuring entity and the Contractors;
 - b. the subject of the contract or procurement;
 - c. the date of the contract award;
 - d. the value of the contract;
 - e. the detailed records of the procurement proceedings; and
 - f. details of individual values of items procured, terms of the contract, technical specifications, standards of goods, works or services to be provided in accordance with the contract
- 16). Criteria stipulated as the basis upon which suppliers, contractors or consultants would be evaluated shall not be changed in the course of any procurement proceeding, and all relevant factors, in addition to price that will be

considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

17). The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the supplier, contractor or consultant.

18). A contract shall in the case of goods and works be awarded to the lowest cost responsive evaluated bidder and in the case of services as provided for in **Section 56** of this law.

19). Notwithstanding the provision of **Sub-Section (18)** of this Section, the Bureau may refuse to issue a Certificate of **"No Objection"** to contract awarded on the grounds that the price is manifestly excessive or unreasonably below the predetermined price and/or that a procurement proceeding has been conducted in a manner that violates this Law, provided that in cases of unreasonably low prices the procuring entity and or the Bureau must give adequate opportunity to the bidder in question to explain how he can accomplish the assignment at such low price and value, and make reports of such explanation public within two weeks of its decision. If the contract is not to be awarded to the low bidder, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

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

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

- 22). The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations laid down by the Bureau are complied with; and concurrent approval by any Tenders Board shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.
- 23). Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made from time to time by the Bureau.
- 24). Any person who has been engaged in preparing for a procurement or part of the proceedings may not bid for the procurement in question or any part thereof either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their bids/tenders.
- 25). All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.
- 26). The values in procurement documents shall be stated in Naira and where stated in foreign currency shall be converted to Naira using the prevailing rate of the Central Bank of Nigeria valid on the day of opening a bid. All payments for procurements carried out under the provisions of this Law shall be denominated and made in Nigerian Currency, and if in a foreign currency shall be converted to naira as stated above.
- 27). All contracts for goods and works shall contain warranties assuring their durability and fitness for purpose during and within a reasonable time after contract execution.
- 24. The accounting officers of the respective procuring entities shall be as follows:**
- 1) For each of the state ministries, its permanent secretary;
 - 2) For the judiciary, the Chief Registrars respectively of the High Court, and Sharia Courts of Appeal;

- 3) For the State House of Assembly, the Clerk of the House;
- 4) For each of the state's extra - ministerial departments, bureaus, offices, agencies, and government-owned and/or controlled corporations, its Chief Executive Officers;
- 5) For state universities, polytechnics, colleges and other higher institutions of learning, the Vice Chancellors, Rectors & Provosts or its equivalent;
For each local government in the state, the Head of Administration

25. Establishment of Tenders Board:

- 1) There is hereby established under this Law, the following bodies: -
 - a. For each of the State's ministries, a Ministerial Tenders Board (referred to in this Law as "**MTB**"); The State Executive Council shall approve all contracts above the Ministerial Tenders Board threshold.
 - b. For the two arms of the judiciary, a High Court, and Sharia Court of Appeal Tenders Board respectively;
 - c. for the State House of Assembly, a Legislative Tenders Board (referred to in this Law as "**LTB**");
 - d. For each of the State's extra-ministerial departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, an Extra-Ministerial Tenders Board (referred to in this Law as "**ETB**");
 - e. For each of the State's Local Governments, a Local Government Tenders Board in each local Government Area of the State (referred to in this Law as "**LGTB**").
- 2) Subject to monetary thresholds as may be set under this Law, each Tenders Board shall be responsible for the

award of all contracts for the Procurement of goods, works and services falling within the administrative functions of Its procuring entity.

- 3) The functions of the Tenders Board shall be to: -
- (a) The Tenders Board shall be responsible for the award of contract for the procurement of goods, works and services with the threshold set in the regulations
 - (b) In all cases where there is a need for pre-qualification, the DG of the Tenders Board shall constitute a technical evaluation sub-committee of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chair of the Evaluation Subcommittee.
 - a) Receive and evaluate any bids received in response to solicitation;
 - b) Award contracts;
 - c) Recommend the application of any sanctions in accordance with this Law;
 - d) Approval of the recommendations of the Technical Committees or procurement planning committee as the case may be; and

Any other functions provided for directly or by necessary implication by this law.

26. Membership of the Tenders Boards: -

The membership of all Tenders Board except the State Executive Council shall consist of the Accounting officer as the Chairman and all heads of departments as members with the head of procurement as the secretary.

27. Procurement Planning and Budget Linkage:

- 1) All procuring entities shall prepare Annual Procurement Plans listing out the goods, works and services to be procured, the timeliness and procedure for such

contracting, and its contents and subject to the rules, include results of needs analysis, market surveys and cost implication analysis, and where applicable indicate evidence of aggregation or needs or such other items as the MDA may consider necessary;

- 2) Annual Procurement Plans shall be based strictly on the appropriations approved in the yearly budgets of procuring entities;
- 3) No procurement shall be carried out unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity.
- 4) Procurement Planning may commence before budget approval, but can only be finalized after budget approval

28. Procurement Planning Committee:

- 1) For each financial year, every procuring entity within the purview of this Law shall constitute a Procurement Planning Committee which shall also act as a Disposal Planning Committee.
- 2) The procurement and disposing planning function of each procuring entity shall be carried out by the Procurement Planning Committee.
- 3) The functions of the procurement planning committee shall, subject to regulations made from time to time by the Bureau, be to:
 - a) Prepare the entities procurement needs assessment and evaluation; in co-ordination with relevant units of the procuring entity
 - b) Identify the goods, works or services required to be procured;
 - c) Carry out appropriate market and statistical surveys and

on that basis prepare an analysis of the cost implications of the proposed procurement;

- d) Develop Technical specifications of all goods, works and services
- e) Aggregate its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement costs.
- f) Integrate its procurement expenditure into its yearly budget within any existing budgetary framework,
- g) Recommend a method for effecting the procurement, subject to the approval of the Tenders Board, coordinate the entity's procurement process and serve as secretariat of the Tenders Council;
- h) Prepare all solicitation documents in accordance with minimum standard specifications;
- (i) Maintain procurement records.

4) The procurement planning committee shall in addition to other persons that may be provided for by the rules consist of:

- a) The accounting officer of the procuring entity or his representative who shall chair the committee; A representative of;
- b) The unit directly in need of the procurement;
- c) The financial unit of the procuring entity;
- d) The procurement unit of the procuring entity who shall be the secretary
- e) Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; Or

- f) The planning, research and statistics unit of the procuring entity
 - g) Such other persons as may be specified from time to time in the implementing regulations.
- 5) There is hereby established a Procurement Planning Committee in every Local Government in Bauchi State to be headed by the Head of Administration of each Local Government Area or his appointee who must be a civil servant of not less than rank of a director in the Local Government with the following membership:
- a. A representative each of all departments in the Local government except for the works department which shall have two representatives;
 - b. Technical staff of the Local Government with expertise in the subject matter for each procurement;
 - c. The Procurement Planning Committee may where necessary, subject to this law and in addition to its regular members, co-opt persons from within or outside the service or hire members of the public who it determines have requisite or special knowledge that brings value to its work, but such persons shall have no voting right;

Any other persons as may be prescribed by the rules issued pursuant to this Law.

PART IV Approving Authority

29. Approving Authority:

1) The following shall be the approving Authorities for the conduct of public procurement:

a. In the case of a ministry, the Ministerial Tenders Board; ii) In the case of all procurements above the Ministerial Tenders Board, the State Executive Council.

b. In the case of the Judiciary, the Tenders Board of the various arms of the judiciary as in **Section 24 (1) (b)** of this Law;

c. In the case of the House of Assembly, the Legislative Tenders Board;

d. In the case of each Local Government, the Local Governments Tenders Board;

e. In the case of extra-ministerial departments, bureaus, offices and agencies, including state universities and colleges, government owned and/or controlled corporations, Extra-Ministerial Tenders Board, respectively.

2). Subject to any thresholds provided for under this law, the decision of the Tenders Board shall be communicated to the, Commissioner in the case of Ministry, The Speaker in the case of the House of Assembly, the Chairman in the case of Local Government, in the case of extra ministerial department, bureaus, offices and agencies, including state universities and colleges, government owned/or controlled corporations, the Chief Executives for implementation.

30. Procurement Implementation Subject to Regulations:

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

- a. Advertise/solicit for bids;
- b. Invite at least two observers one representing a Non-Governmental Organization and one representative of a professional body whose expertise relates to the Goods, Works and Service being procured, in the case of Local Governments, at least two community-based organizations to monitor the procurement process and give them adequate written notice of the procurement activity subject to rules issued by the Bureau;
- c. Receive, evaluate and make a selection of the bids received;
- d. Obtain approval of the approving authority before making an award;
- e. Debrief the bid losers on request;
- f. Obtain and confirm the validity of any Performance Bond/Guarantee; or take such other step as required by the rules
- g. Execute the Contract Agreement for sums within its approval threshold, and submit others for approval of higher approving authority after informing the bid winner of his or its success; and
- h. Announce, publicize the award and submit appropriate reports to the Bureau in the format stipulated by this Law, guidelines and regulations as may be issued by the Bureau from time to time.

31. Open Competitive Bid:

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

- 2) Any references to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested candidate, equal simultaneous information and opportunity to offer the goods, works and services needed.
- 3) Unless otherwise provided for by this Law or the rules issued hereunder, no negotiations shall be conducted with suppliers, contractors or consultants and the winning bidder shall be that which is:
 - a) In the case of goods and works, the lowest cost evaluated responsive bid to the bid solicitation;
 - b) In the case of services, as provided for in Sec.43 of this Law.

32. Invitation to Bid:

- (1) Invitations to bid may be either by way of International Competitive bidding, National Competitive bidding or State Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either category.
- (2) In the case of goods, works and services valued under International Competitive bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized publication, the official websites of the procuring entity and the Bureau (if any), not less than six weeks before the deadline for submission of the bids for the goods, works and services.
- (3) In the case of goods, works and services valued under National Competitive bid, the invitation for bids shall be advertised on the notice Board of Bureau and the procuring entity, any official websites of the procuring entity, the State Procurement Journal and at least one (1) National newspaper not less than four weeks before the deadline for

submission of the tenders for the works, goods and services or such other time as the rules may stipulate.

- (4) In the case of goods, works or services valued under state competitive, bidding the invitation for bids shall be advertised on the notice Board of the Bureau and of the procuring entity, any official websites of the procuring entity, the State Procurement Journal, and at least one other publication circulating around the State, not less than four weeks before the deadline for submission of the tenders for the works, goods and services.
- (5) Not later than six (6) months after the enactment of this Law, the Bureau shall issue guidelines for the advertisement/publication of Invitations to Bid.

33. Prequalification of Bidders:

- 1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or consultants by requesting interested persons to submit applications to prequalify, 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 consultant qualifies, shall apply only the criteria set out in the prequalification documents and no more.
- 2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that requests them to bid; and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery of the prequalification documents.

In accordance with **Section 33 (2) and (3)** above, and not later than six months after the enactment of this Law, the Bureau shall make Regulations stipulating the guidelines for the pre-qualification of bids in any public procurement process

34. Bid Documentation:

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

a) Invitation to bid, with precise Instructions to bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), dateline for submission of bids and opening of bids; the dateline for submission of bids must give enough time for bidders to prepare and submit their bids taking into account reasonable needs of the procuring entity;

b) Terms of Reference (TOR);

c) Eligibility Requirement and precise criteria upon which it seeks to give consideration to the bids;

d) Plans and or Technical Specification;

e) Form of Tender, Price Form, and List of Goods or Bill of Quantities;

f) Delivery Time or Completion Schedule;

g) Form and Amount of bid Security;

h) Any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualification or as may be required by any regulation made pursuant to this Law.

i) Form and amount of performance guarantee;

j) Form of contract, and general and special conditions of contract; and

- k) Any other requirement that the procuring entity may establish pursuant to this law or the implementing regulations made pursuant to this law (2) Procuring Entities may in addition require all bidders in a procurement proceeding to provide additional documentation or specifications reasonably necessary to complement the information contained in their respective bids.

35. Bid Security:

- 1) Subject to the monetary thresholds as may be set by the Bureau, all bids for public procurements shall be accompanied by a bid Security in an amount not less than 1% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.
- (2). The Bureau shall from time to time specify the principal terms and conditions of bid security to be posted by bidders, which shall apply to all bidders

36. Submission of bids:

All bids in response to an invitation shall be submitted in writing or any other format stipulated in the bid solicitation, signed by an official authorized to bind the bidder to a contract and placed in a properly sealed envelope or other package.

- a) All submitted bids shall be deposited and kept in a secured tamperproof tender-box.
- b) All bids submitted shall be in English Language.
- c) Every bidder submitting a bid shall be issued a receipt showing the date and time the bid was received.
- d) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or consultant who submitted it.
- e) No communication shall take place between procuring entities and any supplier or contractor after the publication

of a bid solicitation other than as provided in this Law or in the regulations issued pursuant to this Law.

37. Bid Failure:

(1) There is a bid failure if-

a) No bid was received;

b) None of the bids received was responsive to the solicitation; or

c) The number of bids received fell short of such minimum number of bids as may be specified in the regulation for effective competition;

d) The successful bidder refuses to accept the award of the contract, and the next responsive bidder in line also refuses to accept an award.

(2) Where there is bid failure any of the following shall take place:

a) The contract may, subject to the regulations, be re-advertised and the bidding process repeated;

b) If re-advertised, the procuring entity shall observe the same process and set the new periods according to the same regulations followed during the first bid. If, however, there is a bid failure on a second occasion, the procuring entity may with approval of the Bureau resort to an alternative method of procurement as provided for by this Law.

38. Rejection of bids A procuring Entity May:-

a) Reject all bids at any time prior to the acceptance of a bid.

b) Cancel the procurement proceedings in the public interest.

c) No suit shall lie against a procuring entity, its officers or agents as a result of the cancellation of a procurement process or rejection of all bids under this section.

39. Bid Opening:

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

- a) Permit bidders or their representatives attending the bid opening to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- b) Cause all the bids to be opened in public, immediately after the deadline for submission of bids, in the presence of the bidders or their representatives and any interested member of the public;
- c) Ensure that the tender opening takes place immediately following the deadline stipulated for the submission of bids or any extension;
- d) Ensure that a register is taken of the names and addresses of all those present at the bid opening and the organization they represent which is recorded by the Secretary of the Tenders Board or any person nominated on his behalf;
- e) Call out to the hearing of all present; the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening, which shall be made available to every bidder.

40. Examination of Bids:

- 1) After bid opening, every bid shall be first examined to determine if it- (a) Meets the minimum of eligibility requirements stipulated in the bid documents; (b) Has been duly signed; (c) Is substantially responsive to the bid documents; and (d) Is generally in order.

- 2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission within a specified time in order to assist in the examination, evaluation and comparison of bids.
- 3) The following shall not be sought, offered or permitted as clarification- (a) Changes in price; (b) Changes in the substance of a bid; and (c) Changes to make an unresponsive bid responsive.
- 4) Notwithstanding the provisions of **Sub-Section (3)** of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of bids.
- 5) The procuring entity, shall give prompt notice of the correction to the supplier, contractor or consultant that submitted the bid. If the correction is not accepted by the bidder, its bid shall be immediately excluded from the evaluation process.
- 6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification. The Bureau shall issue Regulations stipulating the grounds for a deviation.

Not later than six months after the enactment of this law, the Bureau shall issue Regulations stipulating the guidelines for the opening and examination of bids

41. Evaluation of Bids:

- 1) For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- 2) The objective of bid evaluation shall be: (a) In the case of goods and works, to determine and select the 'Lowest Cost Evaluated Responsive Bid' from the bids responsive

to the bid solicitation. (b) In the case of services, to determine the Lowest Cost evaluated responsive proposal or the responsive proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted or the Highest Rated Evaluated bid' from the bids responsive to the bid solicitation depending on which of the criteria chosen and stipulated in the solicitation documents by the procuring entity.

- 3) Not later than six months after the enactment of this law; the Bureau shall issue Regulations stipulating the guidelines and any further criteria for the evaluation of bids.

42. Domestic Preferences:

- 1) A procuring entity may grant a margin of preference in the evaluation of bids, when comparing bids from domestic bidders with those from foreign bidders or when comparing bids from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign Country.
- 2) Where a procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic bidders and the criteria for eligibility of a bid for such preference.
- 3) Margins of Preference shall apply only to bids under International Competitive Bidding.
- 4) The Bureau shall by Regulation from time to time set the limits and the formulae for the computation of margins of preference.
- 5) Notwithstanding the provision of **Sub-Section (2)** of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award.

- 6) Where the procurement proceeding is with regard to a value below prior review threshold, subject to the fulfillment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award.
- 7) If suppliers were pre-qualified, verification of information provided in the submission for pre-qualification may 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 contract

43. Limitation of Time for Procurement Awards:

Without prejudice to any provision of this Law, all procuring entities and approval authorities shall endeavor to ensure that the period between the opening of bids and the award of contract should not exceed three (3) months, except there are cogent and verifiable reasons for such and such reasons are provided in writing to the Bureau.

44. Mobilization Fees and Advance Payment Guarantees:

- (1) In addition to any other Regulation as may be prescribed by the Bureau, Advance Payment fees of not more than 35% to all contractors and suppliers both local and foreign may be paid to a supplier or contractor by the following: -
 - (a) In the case of National Competitive Bid, an unconditional bank guarantee or insurance bond issued by a reputable banking or insurance institution acceptable to the procuring entity;
 - (b) In the case of International Competitive Bid, an unconditional bank guarantee issued by a reputable banking institution acceptable to the procuring entity.
- (2) Unless otherwise stated in the contract data, Advance Payment shall be repaid through percentage deduction from the interim payments following that in which the total of all certified interim payments (excluding the advance payment) exceeds 40% of the contract sum, less provisional sum.

- (3) No further payment shall be made to a supplier or contractor without an interim Performance certificate issued by the MDAs and verified by the Bureau in accordance with the contract agreement after the payment of advance payment fee to the supplier or contractor.

45. Performance Guarantees Prior:

To the signing of the contract, the successful bidder may, as a measure of guarantee for the faithful performance of and compliance with his obligations under the contract be required to post a performance security in such form and amount as specified in the bid solicitation. The Bureau shall from time to time make rules relating to requirement and issuance of performance guarantees and prescribe the threshold above which a performance guarantee must be issued by a winning bidder.

46. Prompt Payments:

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

47. Record of Procurement Proceedings:

- (1) Every procuring entity shall keep a detailed record and documentation of all procurement activity and processes in a format as shall be prescribed in the Regulations issued by the Bureau. Such information shall include, but not limited to names and qualification of all bidders, specifications and quantities of goods, works and services involved, prices quoted by each bidder, award prices and conditions, contracts, warranties and performance guarantee provided by the contractor, supplier or consultant.
- (2) All records of procurement proceedings shall on request be made available to:
 - (a) Any person once a winner has been selected by the Tenders Board or the procurement contract has been terminated without a contract, and
 - (b) Upon payment of not more than the moderate cost of reproduction of the document referred to as prescribed by the Bureau.

48. Procurement of Goods and Works:

- (1) For the avoidance of doubt but save as may be permitted under this Law or regulations issued hereunder, all procurements of goods and works within the purview of this Law shall proceed only by Open Competitive Bid;
- (2) Not later than Six (6) months after the enactment of this Law, the Bureau shall issue Regulations in conformity with this Law outlining the procedure for conduct of all Open Competitive bidding and other methods herein specified and such other procedures, conditions prerequisite for the use or adoption of such methods and procedures for the procurement of goods and world within the purview of this Law.
- (3) Any regulations in force on the date of assent to this law shall remain in force until the date on which a new regulation is issued by the Bureau.

PART V Procuring Services

49. Procuring Services:

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

- (1) It shall solicit for expressions of interest or applications to shortlisted consultants to provide the precise services by publishing a notice to that effect in at least 2 national newspapers and the procurement journal;
- (2) Provided that where the value of the services to be procured is less than N10 Million (Ten Million Naira) or of such a low value that only local consultants would be interested, the procuring entity, with the approval of the Bureau, may without placing a notice pursuant to **Sub-Section (1)** of this section, request at least 3 consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - (a) A statement of qualifications of the consultant to provide the service;
 - (b) A statement of understanding of the procuring entity's needs;
 - (c) The methodology for providing the service;
 - (d) The time frame for providing the service; and
 - (e) The cost/fee for the service.

50. Request for Proposals must include:

- a) The name and address of the procurement entity;
- b) A requirement that the proposals are to be prepared in 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) Criteria and procedures for the evaluation of the qualifications of the consultants;
- f) The requirements on documentary evidence or other information that shall be submitted by suppliers or contractors to demonstrate their qualifications including a verifying affidavit;
- 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 responsive proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost, but stipulated in the request for proposals;
- l) The criteria to be used to determine the successful proposal, including any margin of preference and the relative weight of the criteria;
- m) A statement on alternatives to the characteristics of the consulting services, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;

- n) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary;
 - o) The means by which consultants may seek clarification on the invitation for proposals and a statement whether the procurement entity intends to convene a meeting of consultants; and
 - p) The terms and conditions of the consultancy contract and the contract form to be signed by the parties.
- 51.** The procuring Entity shall provide the same information to every consultant or service provider requested to submit proposals.
- 52.** A consultant may request clarification of the request for proposals from the procuring entity -
- a) Whether on its initiative or as a result of a request for clarification by a consultant, a procuring entity may modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
 - b) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants, provided that the procuring entity shall where it considers it necessary as a result of an addendum and pursuant to rules issued by the Bureau grant an extension of time for submission of the proposal.
 - c) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without

identifying the sources of the requests for clarifications.

- d) The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.
- e) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals, and shall in no case give less than 30 days between the issue of the notice or request and the deadline for submission.
- f) The technical and financial proposals shall be submitted simultaneously, but in separate sealed envelopes.
- g) Any proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- h) 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.
- i) Under no circumstances should the technical evaluation committee have access to or insights to the financial proposals until the evaluations including any resident tenders committee's review are concluded, such review shall not exceed a number of days stipulated in the Regulations.

53. The procuring entity shall establish criteria for evaluation of 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 proposals. The criteria may concern the following:

- a) The qualifications, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- b) The effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
- c) The proposal price, subject to any margin of preference applied, including any ancillary or related costs in the case of quality and cost Based selection;
- d) The effect that the 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 local employment, the transfer of technology, the development of local managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
- e) The Bureau shall make detailed rules to guide Quality and Cost based selection, and requirements for acceptance and evaluation of bids for supply of goods and works in an international competitive bid may mirror the requirements set forth in this section.

54. Margin of Preference in Procuring Services:

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

55. Criteria for Choosing Successful Proposal:

- 1) A procuring entity shall select the successful proposal by either:

- a) Choosing the responsive proposal with the lowest price (the lowest evaluated responsive bid or proposal) or;
 - b) Choosing the responsive proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted; or
 - c) The highest ranked responsive technical proposal within the budget.
- 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 **Sub-Section (1)** above.
 - 3) Nothing in this section shall prevent the procuring entity from resorting to the use of an impartial panel of experts to make the selection

56. Selection Based on Price only:

Where a procuring entity elects to choose the successful proposal based on price only, it shall:

- a) Establish a threshold with respect to quality and technical aspects 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; and then
- b) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold;
- c) The procuring entity shall within a period of 14 working days after the decision has been taken by the procurement entity; notify the consultants whose proposals did not meet

the minimum qualifying mark or were not responsive to the invitation for proposals the names of the qualifying consultants,

- d) At the opening of the financial proposals, 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;
- e) 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. Quality based selection of Consultant
- f) The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals. Proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

57. Quality Based Selection

- (1) Where the procuring entity elects to make a quality-based selection, based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section.
- (2) The procurement entity shall:
 - a) Establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposal and rate each proposal in accordance within such criteria and the relative right and manner of application of the criteria as stipulated in the request for proposals;
 - b) Invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with **Sub-Section (a)** above;

- c) (c) Inform the bidders that attained ratings above the threshold that they may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurement contract;
 - d) (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 **Sub-Section (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 bidders 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

58. Procurement Portal

- a) As soon as practicable pursuant to the enactment of this law the Bureau shall design and set up a secure electronic portal to be known as Bauchi State Government Electronic Procurement System (Bauchi-EPS), which shall be the primary and definitive source of information for all public procurement matters and opportunities within the purview of this Law or regulations issued hereunder.
- b) Subject to other provisions of this Law and regulations as may be issued by the Bureau from time to time, it shall be lawful for any procuring entity to conduct any or all of its bid by electronic auction and/or simulation either on the Bauchi -EPS or its own portal: provided that the use of the

electronic system shall not compromise the principles provided for in S. 24 of this Law, be transparent, efficient, economical and nondiscriminatory.

- c) The use of framework agreement, Reverse auction and or any other electronic procurement method may be used so long as the principles provided for in **Section 24** of this law is not compromised.

59. Public Private Partnerships (PPP):

- 1) A procuring entity may prepare and concession or grant a right to build, operate, manage, lease, retain or howsoever exploit for economic or fiduciary purposes any type of public infrastructure or utility whether on an exclusive or non-exclusive basis.
- 2) The forms of PPP contracts regulated under this law shall include and not be limited to:
 - (a) Concession or Lease;
 - (b) Build Operate and Transfer Contracts;
 - (c) Build Own and Operate Contracts;
 - (d) Service Contracts;
 - (e) Management Contracts; and
 - (f) Joint Ventures and Partnerships
- 3) With effect from the date of enactment of this Law, no entity within the purview of this Law shall grant to or howsoever allow any person or persons, natural or artificial, the right to exploit for any economic or fiduciary purpose any public service, public infrastructure or utility or economic or fiduciary opportunity which should ordinarily derive from any public service, infrastructure or utility had it been operated by or remained under direct control of the procuring entity unless such a grant or allowance is as a

result of an Open Competitive bidding or by any other methods that regulations issued hereafter may provide for;

- 4) Not later than one year from the enactment of this Law, the Council shall issue Regulations outlining the scope of PPP Contracts, the procedure for preparing specific projects, and for applying for or being granted any form of right to exploit public infrastructure by way of a Public Private Partnership.
- 5) Provided always that stakeholder consultations shall as much as is practicable be an integral part of the process of preparation and launch of a public private partnership under this Law.

PART VI
Special and Restricted Procurement Methods

60. Special and Restricted Procurement Methods Notwithstanding any provisions of this Law the following shall be considered special and restricted methods of procurement within the purview of this Law and may be used by procuring entities only in special cases and with prior approval of the Bureau:

- (1) Two Stage Tendering
- (2) Limited Source Tendering
- (3) Single Source Contracting
- (4) Repeat Orders
- (5) Shopping
- (6) Negotiated Procurement.
- (7) Direct Labour
- (8) Emergency Procurement

61. Two Stage Tendering Method:

- (1) A procuring entity may engage in procurement by two stages tendering in the following circumstances:
 - a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works or in the case of services to identify their characteristics;
 - b) Where it seeks bids, proposals or offers on various means of meeting its needs, in order to obtain the most satisfactory solution to its procurement needs;
 - c) Where the character of the goods or works or services are subject to rapid technological advances;
 - d) Where 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 sufficient quantities to establish their commercial viability or to recover research and development costs; or

e) Where the open competitive bid method has been utilized without success or the bids were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging new bidding proceeding will not result in a procurement contract.

(2) The provision of this Law as regard the process for open competitive bidding shall apply to two stage tendering proceeding except to the extent that those provisions vary from this section.

(3) The procedure for two stage tendering shall be as provided for in the regulations to be made from time to time by the Bureau.

62. Limited Source or Restricted Bidding:

(1) Limited Source Bidding or Selective Bidding may only be used for the:

a) Procurement of highly specialized types of Goods, Works and Consulting Services which are known to be obtainable only from a limited number of sources; or

b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

c) Procurement where the time and cost required to examine and evaluate a large number of bids or proposals will be disproportionate to the value of the goods, works or services to be performed, provided that in this instance the procuring entity invites enough consultants to ensure transparent competition;

(2) The provisions of this law regarding open competitive bidding shall apply to limited source or restricted tendering, except to the extent that those provisions may be varied by this **Section (4)** The detailed procedure for limited source

or selective bidding shall be as provided for in the rules to be made from time to time by the Bureau.

63. Single Source Procurement

A procuring entity may only engage in Direct Contracting for the following:

- a) Procurement of Goods, works (or services) of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract;
- c) Procurement of goods sold by an exclusive dealer or manufacturer, which does not have- sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.
- d) In cases when a state of calamity whether man-made or natural causes the need for immediate action to prevent damage or the endangerment or loss of life or property; To restore vital public services and or preserve the operation of public utilities or infrastructure; or
- e) The procedure for limited source procurement shall be as provided for in the rules to be made from time to time by the Bureau.

64. Repeat Order:

- (1) A procuring entity may only engage in procurement by Repeat Order if:
 - a) The unit price is equal to or lower than that provided in the original contract;
 - b) The repeat order does not result in splitting of requisitions or purchase orders;

c) The repeat order is requisitioned not later than six months from completion of the original contract or if during the currency of a contract not earlier than 6 (six) months after its commencement.

(2) The repeat order shall not exceed fifteen percent (15%) of the quantity of each item of the original contract.

(3) The detailed procedure for repeat orders shall be as provided for in the rules to be made from time to time by the Bureau.

65. Shopping:

(1) A procuring entity may only engage in Shopping if:

a) The Procurement is strictly for the purchase of ordinary or regular office supplies and equipment for the use of the procuring entity involving an amount not exceeding a specific amount provided for in the implementing rules; or

b) When the time and cost that may be required to examine and evaluate a large number of bids is considered to be disproportionate to the value of the goods, works or services to be procured.

(2) The procuring entity shall select a minimum of Five (5) price sealed quotations from bona fide suppliers selected in a non-discriminatory manner to ensure effective competition and avoid collusion and related malpractices.

(3) The detailed procedure for Sealed Quotations shall be as provided for in the rules to be made from time to time by the Bureau.

66. Negotiated Procurement:

(1) A procuring entity may only engage in Negotiated Procurement if:

a) In cases of two failed bids, as provided in **Section 38** of this Law;

b) The subject contract is adjacent or contiguous to an ongoing infrastructure project: Provided, however, that the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scope of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed one half of the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, that negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultant has unique experience and expertise to deliver the required service;

(2) In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained, and that the principles of transparency, accountability and value for money are adhered to.

(3) The procedure for negotiated procurement shall be as provided for in the rules to be made from time to time by the Bureau.

67. Direct Labour

Subject to **Section 5 (4)** of this law, a procuring entity may use direct labour based on the following conditions:

- a) The procurement is of emergency nature hence cannot stand the elaborate required procurement procedure.
- b) The MDA or LGA has the prerequisite skills, knowhow and equipment to execute the work;
- c) Using the in-house team is at least as economical (if not economically better) than using contractors
- d) The procuring entity shall provide a satisfactory need assessment of the project.

68. Emergency Procurement:

- (1) A procuring entity may for the purpose of this Act, 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, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - c) A public project may be seriously delayed for want of an item of a minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
- (3) All procurements made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.
- (4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of **"No Objection"**.

69. Regulations on Special and Restricted Procurement Methods

Not later than six months from the enactment of this Law, the Bureau shall issue regulations regarding Special and restricted procurement methods.

PART VII
Review by the Bureau

70. Review by the Bureau.

- (1) The Bureau may conduct a review of 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 review is necessary or desirable to prevent or detect a contravention of this Law.
- (2) The Bureau may in the course of the review:
- a) At any time during normal office hours, enter the premises of the procuring entity, bidder, supplier, contractor, or consultant concerned with the procurement proceedings under review;
 - b) Require an officer, employee or agent of a procuring entity or Bidder, supplier, contractor, or consultant to produce any books, records, accounts, documents, soft copy of documents or object relating to a procurement activity;
 - c) Examine and make extracts from and copies of books, records, accounts or documents of any 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 Bureau shall give a detailed receipt for the books, records, accounts, objects or documents removed;
 - 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 for the books, records, accounts or documents removed;
 - e) Require an officer, employee or agent of the procurement entity or bidder, supplier, contractor or consultant to explain an entry in the books, records, accounts or documents; require any person to provide it with

information concerning the management or activities of the procurement entity or Bidder as may be reasonably required. (g) The Bureau with approval of the Council shall have the power to debar a bidder who fails to comply with its written request for information and production of documents or things or obstructs its efforts to review a procurement exercise.

- (3) The Bureau shall, if satisfied that there has been a contravention of this Law or any Regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action may include:
 - a) Nullification of the procurement proceedings;
 - b) Cancellation of the procurement contracts;
 - c) Ratification of anything done in relation to the proceedings;
or
 - d) Making a declaration of the principle or procedure to be followed consistent with relevant provisions of this Law.
 - e) Refer the case to relevant authority for criminal investigation and if appropriate prosecution.
- (4) On completion of its review, the Bureau shall send a summary of its findings and recommendations to the procuring entity and to any bidder, supplier, contractor or consultant whose conduct was the subject of the review.
- (5) The Bureau shall afford any procuring entity, Bidder, supplier, contractor opportunity to make representation in writing in a matter, before taking any action in terms of **Sub-Section (3)** of this Section which may adversely affect the rights or property of that person or a procurement conducted by that procuring entity.

71. Code of Ethics:

The standard of conduct applicable in matters connected to the provisions of this Law shall be as stipulated in Schedule II to

this Law, or as may from time to time be amended by the Bureau following public consultation with stakeholders, subject only to the approval of its Council.

72. Disposal of Assets:

- (1) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (2) Open Competitive bidding shall be the primary source of receiving offers and procuring purchasers for the purchase of any public property offered for sale, and the rules issued hereunder shall specify other methods, and the conditions for their application.
- (3) The Bureau shall:
 - a) Determine the applicable policies, rules and practices in relation to the disposal of all public properties;
 - b) Issue guidelines detailing operational principles and organizational procedures to be adopted by all procuring entities engaged in the disposal of public property;
 - c) Issue standardized documents, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (4) Subject to this section and for the purposes of this Law, **"Public Property"** is defined as resources in the form of tangible and nontangible assets (whether serviceable and/or non-serviceable):
 - a) Created through public expenditure;
 - b) Acquired as a gift or through deeds;
 - c) Acquired in respect of intellectual or proprietary rights;
 - d) Acquired by goodwill and any other rights of the State Government.

- (5) The means of the disposal of public assets shall subject to Regulations to be issued by the Bureau include but not be limited to -
- a) Sales and rentals;
 - b) Hire-purchase;
 - c) Licenses, tenancies and leases;
 - d) Franchise and auction;
 - e) Transfers from one government department to another with or without financial adjustments; and
 - f) Offers to the public.

73. Administrative Review/Complaints by Bidders:

- a) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law or any regulation or guidelines made under this Law or the provisions of bidding documents.
- b) A complaint by a bidder against a procuring or disposing entity shall first - be submitted in-writing to the accounting officer of the entity within fifteen working days from the date the bidder first become aware of the circumstances.
- c) On reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days from the date of receipt of the complaint, addressed to the complainant and all others affected, indicating the corrective measure to be taken if any, including the suspension of the proceedings where he deems it necessary, and giving reason for his decision.
- d) The complainant (or any other bidder affected by the decision of the accounting officer) may further complain to the Bureau should the accounting officer fail to decide his complaint or communicate him with his decision within the time given, or if dissatisfied by any decision of the accounting officer.

- e) The bidder may appeal to the Bauchi State High Court if the Bureau fails to decide his complaint within 21 working days or to communicate him in writing with their decision or if he is dissatisfied with the Bureau's decision. The decision of the Bauchi State High Court shall be final on all complaints which has passed through administrative review.
- f) Complaints under this section shall be regulated by rules contained in Schedule III hereof as may from time to time be amended by the Bureau.
- g) Not later than six (6) months from the enactment of this Law but without prejudice to any existing laws or regulations, the Chief Judge shall issue Practice Directions for the accelerated hearing of matters arising from bidder's complaints and/or other disputes connected with public procurement, such that suites/proceedings to the State High Court for Certiorari and related reliefs within the purview of this Law shall be dispensed with expeditiously.
- h) Any bidder aggrieved by anything done, omitted to be done or improperly done by a procuring or disposing entity, its staff and officers prior to award or execution of a procurement contract shall first seek administrative review under this section before having recourse to any court of law.
- i) Where the complaint is against the conduct of the Bureau or its personnel the first line of complaint shall be to the panel set up by the Council of the Bureau, which has 21 working days to resolve the dispute and communicate its decision in writing to the complainant, and where it fails to so decide or where the complainant is dissatisfied with the decision of the Council in that instance, he or she may appeal to the Bauchi State High Court.

- j) For the expeditious disposal of procurement related cases at the Bauchi State High Court, the Chief Judge of the State is hereby vested with the power to make special rules or practice direction in that regard; or to designate some courts procurement courts.
- k) Without prejudice to the foregoing provisions of subsection (10) of this section, procurement cases shall be given priority attention in the scheduling of cases by the State High Courts. The decision of the Bauchi State High Court shall be final on all complaints which has passed through administrative review.

74. Offences:

- (1) Any natural person not being a public officer who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment of not less than six months but not exceeding 2 calendar years or an option of fine of N500,000.00
- (2) It shall be an offence subject to **Sub-Section (1)** of this section to –
 - a) Open or tamper with any sealed bid or any and all documents required to be sealed or divulging their contents prior to the appointed time for the public opening of bids or other documents;
 - b) Delay without justifiable cause, the screening for eligibility, opening of bids evaluation and post evaluation of bids and awarding of contracts beyond the prescribed limits/periods of action provided for in this Law or regulations made hereunder;
 - c) Enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective bids, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;

- d) Conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - e) Directly, indirectly, or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
 - f) Split tenders to enable the evasion of monetary thresholds set;
 - g) Participate in bid-rigging;
 - h) Alter any procurement document with intent to influence the outcome of a bid proceeding;
 - i) Use fake documents or encourage their use;
 - j) Willfully refuse allowance for the Bureau or its officers to have access to any procurement records; and
 - k) Withdraw a bid, after it shall have qualified as the Lowest calculated responsive bid /Highest Rated Bid, and/or refusal to accept an award without just cause for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time or delaying the submission of requirements such as but not limited to Performance Guarantee preparatory to the final award of the contract.
- (3) Any person whilst carrying out his duties as an officer or employee of the Bureau or any procuring or disposing entity who contravenes any provision of this Law commits an offence and is liable on conviction to the following punishment-
- a) A term of imprisonment not less than 2 (Two) years and a fine of N500,000.00; and

- b) Dismissal from government service without any severance benefits.
- (4) Any legal or juristic person that contravenes any provision of this Law commits an offence and is liable on conviction to a penalty of -
- a) Debarment from all public procurement for a period not less than 3 calendar years; and
 - b) A fine equivalent to the value of the procurement in issue.
- (5) Where any legal person is convicted pursuant to **Sub-Section (4)** of this section, directors of the company shall subject to **Sub-Section 11** hereof - be guilty of an offence and liable on conviction to a term of imprisonment not less than 1 (one) year but not exceeding 5 years and as fine of N1,000,000.
- (6) An alteration pursuant to **Sub-Section (2) (h)** of this section shall include but not limited to-
- a) Forged arithmetical correction;
 - b) insertion of documents such as bid security or tax clearance certificate which were not submitted together with the bid; and
- (7) Collusion shall be presumed from a set of acts from which it can be inferred that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular cause of action which would interfere with the due and proper application of the provisions of this Law.
- (8) Bid rigging pursuant to **Sub-Section (2) (g)** means an agreement between persons where-
- a) Offers submitted have been pre-arranged between them; or
 - b) Their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of

the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.

- (9) For the purpose of **Sub-Section (7)** of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial, directly or indirectly.
- (10) For the purposes of **Sub-Section (2), (5) and (8)** above, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the State Treasury.
- (11) For the purpose of **Sub-Section 5** of this section, considerations shall be given to whether a director is involved in the day to day management of the company, proof of his personal knowledge, or encouragement or approval of the actions constituting the offence shall be considered in arriving at a conviction.
- (12) Where any person charged with a crime under this Law, before the commencement of hearing of the charge admits his guilt and makes prompt and complete refund or restoration of any benefits he obtained in relation to the contravention or crime, and full disclosure of all facts including other persons involved in the commission of the crime, the court shall have the power to impose lesser punishment than those prescribed by this Law.
- (13) The Bauchi State High Court shall to the exclusion of all other courts have the jurisdiction to try all offences under this law.

75. REPEALS AND SAVINGS:

This Law hereby repeals the Bauchi State Public Procurement, Budget Monitoring and Price Intelligence Agency 2017.

Provided that regulations and circulars operating in Bauchi State pursuant to that law shall remain in force until new regulations or circulars are issued under the present law.

Interpretation

In this Law unless the context otherwise requires

Accounting Officer

Means the Permanent Secretary, Chairman, Director General, General Manager, Managing Director, Executive Secretary or persons of equivalent rank charged with the supervision of the conduct of all procurement processes in a procuring entity under this law.

"Appropriate Authority" Includes the Civil Service Commission, Judicial Service Commission, Legislative/House of Assembly Service Commission and Local Government Service Commission, State Council on Public Procurement.

"Approving Authority" Means the person or officer charged with overall responsibility for the functions of a ministry, extra-ministerial department, corporation or institution.

"Assets" Includes tangible and intangible things which have been or may be sold or procured at a consideration.

"Bid" Means tender and tender means bid.

"Bid Security" Means a form of security assuring that a bidder shall not withdraw his bid within the period specified in the bid and shall execute a contract in accordance with his bid.

"Council" Means the Council of the Agency established under this Law.

"Certificate of no Objection" Means the document evidencing and authenticating that due process and the letters of this Law has been followed in the conduct of a procurement proceeding and allowing for the procurement entity to enter into contract or effect payment to contractors, supplies etc. from any public fund.

"Contract" Means a written agreement.

"Contractor or Supplier" Means any party to a procurement contract with the procuring entity and includes any person, corporation, and partnership, individual, sole proprietor, Joint Stock Company, Joint Venture or any other Legal entity through

which a procuring or disposing entity conducts any of its business.

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

"Direct Labour" Direct labour is a process whereby, MDAs and LGAs, carry out procurement activities including planning, design, construction of projects/ or procurement of goods and services directly.

"Excessive Price" Means a monetary value proposed by a bidder for any procurement PRICE" which is in the estimation of the Agency or a procuring entity unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.

"Fund" Means the Bauchi State Public Procurement Agency Fund.

"Governor" Means the Governor of Bauchi State.

"Goods" Means objects of any kind of 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 object or Goods.

"Interest" Interest in this Law, with respect to conflict of interest, shall mean and include personal interest of a staff or officer of a procuring or disposing entity, direct personal interest of a brother or half brother, sister or half-sister, member of the extended family, friend, partner or business associate, whether pecuniary or otherwise.

"Interim Performance Certificate" Means certificate or document evidencing that a contractor or supplier has performed its obligations under the procurement contract up to a level stipulated by the certificate or document in accordance with the contract.

"Least Cost Responsive Bid" Least Cost Responsive bid is the lowest price bid amongst the bids that meet all the requirements, conditions and standards as contained in the tender document.

"Limited Source or Restricted Bidding" Means conduct of procurement by invitation to tender by the procuring entity directed to a set of pre-selected suppliers with known experience and

proven capability relative to the requirements of a particular contract.

"Margin of Preference" Means the extra and limited mark up on price allowed any State or National Contractor bidding in an International Competitive Bid to which without being otherwise disadvantageous to the bid in terms of price.

"Minor Value" Means monetary value which is not in excess of the monetary thresholds set for any approving authority by the Agency.

"Monetary Thresholds" Means the value limit in Naira set by the Agency outside of which an approving authority may not award a procurement contract without certificate of no objection from the Agency and further approval of a higher authority.

"National Competitive Bidding" Refers to the solicitation of bids from both State and National Contractors and Suppliers.

"Negotiated Procurement" Means the conduct of procurement by a procuring entity directly negotiating a contract with a technically, legally and financially capable supplier, contractor or consultant under conditions specified in this Law.

"Negotiation" Means discussions to determine the terms and conditions of a contract or procurement.

"Open Competitive Bidding" Any references to Open Competitive bidding in this Law means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested candidate, equal simultaneous information and opportunity to offer the goods, works and services needed;

"Procurement of Goods" "Procurement of Goods" by this Law, shall mean the acquisition by any procuring entity within the purview of this Law of all items including supplies, products, equipment, objects and raw materials whether in solid, liquid or gaseous form and such general services incidental to the supply and maintenance of the goods but to the exclusion of Consulting Services and Works;

"Procurement Proceeding" Means the process from procurement planning (initiation) up until award of contract, project implementation, assessment and evaluation of impact.

"Procurement of Services" "Procurement of Services" by this Law, shall mean the retainer or hire by procuring entities of technical and/or professional expertise of any type whether of an intellectual, proprietary or non-proprietary nature for purposes such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management, and related services; and (vi) other technical services or special studies;

"Procurement of Works" "Procurement of Works" by this Law shall mean site preparation, excavation, erection, construction, improvement, rehabilitation, repair, restoration, maintenance or demolition of all manner of civil works including buildings, roads, bridges, railways, airports, seaports, sanitation, sewage and water supply systems, shore protection, energy/power and electrification facilities, civil works components of technology projects, materials, decoration and finishing, as well as the services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to a construction contract, provided the value of such services do not exceed that of the construction itself"

"Procuring Entity" Means and includes the Bauchi State Government, a ministry, extra ministerial department, government agency, parastatal, public corporation, tertiary institution, local government, Bauchi State Judiciary and Legislature.

"Public Funds" Means monies derived or derivable from the state or Local Government Treasury, whether internally generated or the State and Local Government share of the Consolidated Revenue Fund, Special Allocation from the Federal Treasury and all other monies belonging to the State Government or its Local Governments, judiciary, legislature, ministries, extra ministerial departments, agencies, corporations, institutions or similar bodies to which this law applies"

"Public Procurement" Means the acquisition of goods, works and or services by a procuring entity.

"Relevant and Adequate Professional Qualification" with respect to the appointment of the Director General of the Bureau means a person who is a qualified and registered professional Engineer, Quantity Surveyor, Registered Builder, Legal Practitioner, Accountant, Architect or Economist, Purchasing and Supply with Procurement training and have been so qualified for a

period of not less than 15 years, or such other additional relevant qualification as the Governor may from time to time specify.

"Relevant Authority" "Relevant Authority" shall mean the Nigerian Police Force, Independent Corrupt Practices and other Offences Commission, The Economic and Financial Crimes Commission or any other criminal investigating agency created by Law of the State or an Act of the National Assembly.

"Repeat Order Method of Procurement" Means the direct Procurement of goods from the previous winning bidder /supplier, whenever there is a need to replenish goods procured under a contract previously awarded through a competitive bid.

"Service" Means the rendering by a contractor or supply of his time and skill and includes any object of procurement other than goods or works of construction.

"Shopping" In this Law means conduct of procurement by a procuring entity requesting for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualification.

"Single Source Procurement" Means conduct of procurement without the use of elaborate bid procedure and documents, simply by the supplier being asked to submit a proposal or price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately with or without negotiations.

"Solicitation Document" Means any document seeking or soliciting for offers, proposals or quotations for the procurement of goods, works or services by a procuring entity.

"State" Means Bauchi State of Nigeria.

"State Competitive Bidding" Means the solicitation of bids from state contractors and suppliers registered to carry on business under the Companies and Allied Matters Act, and applies to procurement not exceeding N20,000,000.00 in monetary value for works, N10,000,000.00 in monetary value for goods and N5,000,000.00 in monetary value for services

"State Contractors" All contractors whose headquarters are in Bauchi State who have paid all due taxes and levies for at least three consecutive years preceding the date of the solicitation to the Federal Government and or Bauchi State Government and or any of its Local governments.

"Subordinate Relationship" Means affiliates, part owners, partners, associates or any other persons with interest in the particular procurement.

"Supplier" Means a natural or legal/juristic person that provides supply of goods or services.

"Technical Qualification" Technical qualification in this law shall mean and include specifically relevant experience backed up by required professional qualifications.

"Tender" Includes bid.

"Threshold" Refers only to the approval of procurement and not the actual process of award.

"Two-Stage Bidding" Means a procurement method where the procuring entity calls upon bidders to submit in the first stage of bidding, their proposals only without a price, such proposals in addition to any other requirements that the rules may impose, will relate to design, technical quality or other characteristics of the goods or works or services, as well as proposed contract terms, conditions of supply, professional competence, technical qualification of bidders, whilst the second stage of the bid will relate to price, based on a single set of specifications, with an opportunity to all initial bidders to bid on the single approved set of specifications.

"Validity Period" Means the period during which a bidder agrees not to increase the cost of its bid or to remove any component of the bid.

"Works" Means all activities (works) associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or work, such as site preparation, excavation, erection, building, installation of equipment or materials, and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract where the monetary value of those services does not exceed that of the construction itself.

SCHEDULE I

SUPPLEMENTARY PROVISIONS AS TO THE COUNCIL OF THE BUREAU

Council Proceedings

1. Subject to the provisions of this law the Governing Council may make standing orders regulating the proceedings of the Council or of any committee thereof.
2. Subject to any standing order made under paragraph one of this schedule, the procedure of the council with respect to the holding of meetings shall be such as the council may from time to time determine.
3. Disclosure of interest by members of the Council:
 - a) A member of the Council who is in any way directly or indirectly interested in a procurement proceeding or a transaction or project of the Bureau or in which the Bureau is playing a part, shall disclose the nature of his interest at a meeting of the Council, and such disclosure shall be recorded in the minute book of the Bureau and the member shall not take part in any deliberation or decision of the Council with respect to that transaction or project.
 - b) For the purpose of subparagraph (1) of this paragraph, a general notice in writing given at a meeting of the Council by a member, read out to all present to the effect that he is associated with any trade or business or he is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Bureau concerning that trade, business, company or firm shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.
 - c) A member of the Council may not attend in person a meeting of the Council in order to make a disclosure which he is required to make under this paragraph, if he takes reasonable steps to ensure that the disclosure is made in writing by a notice which is brought up and read at the meeting, and circulated to members present.

4. Offices:

- a) The Bureau shall have its principal office in the State Capital or such other places in the State as may be designated for the efficient discharge of its functions, and may open branch offices in other areas in the State in accordance with the decision of the Council.
- b) The Council may open branch offices, or establish departments of the Bureau outside the state capital.

5. Common Seal:

- a) The Common Seal of the Bureau shall be such as may be determined by the Council, and the affixing of the common seal shall be authenticated by the signature of the Director General or of some other members authorized generally or specifically by the Council to act for that purpose.

Any document purporting to be a document duly executed under the common seal of the Bureau shall be received in any Court and shall, unless the contrary is proved, be deemed to be so executed.

SCHEDULE II

Code of Ethics (Section 71)

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

- (1) All Officers of the Bureau, members of the Councils and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as issued by the Bureau.
- (2) All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.
- (3) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (4) These principles shall apply at all times, particularly when-
 - a) Making requisition for planning of procurement;
 - b) Preparing solicitation documents;
 - c) Receiving any offers in respond to any form of solicitation towards a procurement or disposal;
 - d) Evaluating and comparing offers confidentiality and in complete neutrality;
 - e) obviating all situations likely to render an officer of government vulnerable to embarrassment or undue influence, or that may appear in the eye of a reasonable man to diminish the level of neutrality and independence expected of a staff or officer of a procuring or disposing entity.

- (5) All -public officers shall handle public procurement and disposal of assets by-
- a) Ensuring adequate time for preparing offers;
 - b) Complying with this Law and all derivative regulations; and
 - c) Maintaining strict confidentiality until completion of a contract.
- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or consultant by developing transparent, honest and professional relationships with such persons.
- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall-
- a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interests of government and the underlining principles of this law; and
 - b) not engage or participate in any commercial transaction involving the State Government, its Ministries, Extra-Ministerial Departments, corporation where his capacity as public officer is likely to confer any unfair advantage-pecuniary or otherwise on him or any person directly related to him.
- (8) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume financial or other business relationship, or acquire personal interest that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest or any such situation that may undermine his independence In the eye of a reasonable member of the society.

- (9) Such a declaration shall be given such consideration at the relevant level as is necessary so that where it is seen that a conflict of interest exists, remedial action shall be taken.
- (10) A conflict of interests exists where a person-
- a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of Government
 - b) possesses a direct or indirect interest in or relationship with a bidder, suppliers, contractors and consultant that is inherently unethical or that may be implied or construed to be, or make possible personal gain due to the person's ability to influence dealings;
 - c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - d) places by act and omission, himself, the procuring entity he represents or the Government in an equivocal, embarrassing or ethically questionable position;
 - e) entertains relationships compromising his reputation or the reputation for integrity of the procuring entity he represents or the Government;
 - f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the Government;
 - g) creates a source of personal revenue or advantage by using public property which comes into 'hands either in course of his work or otherwise;
 - h) Receives any gift from a bidder, supplier, contractor and or participant in any public procurement in the state without first disclosing same to his immediate superior officer.

- i) Discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractor and consultant to unauthorized persons.
- (11) Every superior officer to whom a disclosure of a gift is made must determine whether in the circumstance it is excessive, and or the circumstance is such that it is unethical to accept same. And direct its return where necessary.
 - (12) The Council shall from time to time stipulate detailed rules for determining gifts that are unethical.
 - (13) A person involved in the disposal of assets, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.
 - (14) This code of ethics, any and all reviews, update or amendment by the Bureau shall be published in the state government official gazette with a date of commencement for the review, update or amendment.

SCHEDULE III
(Section 73)

Administrative Review and Resolution of Procurement Disputes

- (1) Any 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 of the provisions of bid documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer not later than Fifteen (15) working days from the date the bidder first became aware of or having reasonably been diligent, should have become aware of the circumstances giving rise to the complaint.

Upon receipt of the complaint but not later than fifteen (15) working days, the accounting officer shall make a decision in writing indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary, giving reasons for his decision;

- (4) Where the accounting officer does not or howsoever refuses to make a decision within the period specified in paragraph (3) above and or the complainant or any bidder affected is dissatisfied with the decision of the accounting officer, the bidder shall make a written complaint to the Bureau not later than five (5) working days from the date of the accounting officer's decision or the expiration of the period stipulated in paragraph (3) above whichever applies.
- (5) **Upon receipt of a complaint, the Bureau:**
 - a) shall promptly give notice of the complaint to the respective procuring or disposing entity and direct suspension of any further action by the procuring or disposing entity with respect to the procurement or disposal in issue until the Bureau has settled the matter or otherwise directs;

- b) The Bureau may, unless it dismisses the complaint—
 - i. Prohibit a procuring or disposing entity from taking any further action; and/or
 - ii. Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
 - iii. Declare the rules or principles that govern the subject matter of the complaint;
 - iv. Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (6) Before taking any decision on a complaint, the Bureau shall notify all --interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (7) The Bureau shall make its decision in writing within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (8) Where the bidder is dissatisfied with decision of the Bureau, the bidder shall refer to arbitration in accordance with rules and procedure as specified in the Arbitration Law Cap 11, Laws of Bauchi State 2007.
- (9) Where the complaint is against the conduct of the Bureau or is personnel, the first of line of complaint shall be to the Governing Council of the Bureau which has twenty one (21) working days to resolve the dispute and communicate its decision in writing to the complainant, and where it fails to so decide or where the complainant is dissatisfied with the decision of Council, the complainant shall refer to arbitration in accordance with paragraph 8 of this Schedule.

This printed impression has been compared by me with the Law which has been passed by the Bauchi State House of Assembly and found by me to be a true and correctly printed copy of the said Law.

I assented this day of2020

SEN. BALA A. MOHAMMED, CON.
Governor of Bauchi State

I withheld assent this day of 2020

SEN. BALA A. MOHAMMED, CON
Governor of Bauchi State

I, Umar Yusuf Gital Esq. Clerk to the Legislature of Bauchi State hereby certify that this Law has been passed in accordance with **Sub-Section 3 of Section 100** of the Constitution of the Federal Republic of Nigeria 1999. This printed impression has been carefully compared by me with the Bill, which has been passed by the Legislature and found by me to be a true and correctly printed copy of the said Bill.

Clerk to the Legislature