



KANO STATE PUBLIC PROCUREMENT LAW 2021 (1442 A.H)

PREAMBLE

A Bill for a Law to provide for Public Procurement Procedures in the State and establish Public Procurement Bureau which shall be responsible for enforcing compliance with the Procedures as well as supervising and regulating Procurement of Goods, Works and Services by MDAs and Local Government Councils in the State and for other matters connected therewith

PART I: PRELIMINARIES

BE IT ENACTED by the Kano State House of Assembly as follows:

Short title and commencement

1. This Bill may be cited as the Kano State Public Procurement Law, 2021 (1442 A.H) and shall come into operation on the ~~30th~~ day of ~~June~~ 2021 ~~20th~~ ~~Zhilgida~~ (1442A.H)

Application/Scope of this Law

2. the provisions of this Law shall apply to-
 - (a) All procurement of works, goods, and services undertaken by State, Local Government councils and procuring entities;
 - (b) Disposal of public assets by tender; and
 - (c) Procurement under Public/Private Partnership;

Carried out by:

- (i) The State Government- the Executive, Legislator and Judiciary inclusive, Local Government Councils and all procuring entities in the State;
- (ii) any public body in the State engaged in procurement, and shall include Ministries, Extra-Ministerial Departments, and Agencies of the State, as well as the State Corporation and
- (iii) All other entities which derive any funds appropriated or proposed to be appropriated for any procurement described in this Law from the State Government's share of Consolidated Revenue Fund.

Interpretations

3. (1) In this Law unless the context otherwise requires;
“**Accounting officer**” means the person charged with line supervision of the conduct of all procurements processes.
“**Alteration**” includes insertion of document such as bid security or tax clearance which were not submitted as bid opening and requests for

clarification in a manner not permitted under this Law;

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

“Bid rigging” means offers submitted have been pre-arranged between them, or their conduct had the effect of directly or indirectly restricting free and open competition, distorting competitiveness of the procurement process and leading to an escalation or increase in cost or loss of value to the State;

“Certification” means issuing a document evidencing and authenticating that Due process and the letters of this law have been followed in the conduct of a procurement proceeding entity to enter into contract or effect payments to contractors or suppliers from the treasury;

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

“Collusion” means presumed from a set of acts from which it can be assumed that there was an understanding implicit, formal nor informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provision of this law;

“Contract” means an arrangement entered in writing;

“Contractor or Supplier” means any potential party to a procurement contract with the procuring entity and includes any corporation partnership, individuals, sole proprietor, Joint stock Company, Joint venture or any other legal entity through which business is conducted;

“Council” means the Executive Council of the State;

“Board” means the governing Board of the Bureau;

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

“Disposing entity” means procuring entity .

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

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

“Government” means Government of Kano State;

“Governor” means the Governor of Kano State;

“Local Government Council” means the 44 Local Governments councils of the State;

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

“Member” means a member of the Board;

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

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

“Opening Competitive Bidding” means the offer of prices by

individuals or firms competing for a contract privilege of right to supply specific goods, works, construction or services;

“procurement Proceedings” means any public body engaged in procurement and it includes a Ministry, Extra Ministerial Office, Government Bureau, Parastatals, Corporation and Local Government;

“Procuring entity” means any public body engaged in procurement and it includes a Ministry, Extra Ministerial Offices and Departments, Government Bureau, Parastatals, Corporation and Local Government Councils;

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

“Public Officer” means a person employed in the public service of the state, Local Government or political office holder appointed by the Governor,

“Services” means the rendering by a contractor or suppliers or concessioner of his time and effort and includes any object of procurement other than goods, works or construction.

“Public Private Partnership” is also known as Alternative Financing and Procurement

“Solicitation Documents” means the bid solicitation offers proposals or quotations;

“State” means Kano State of Nigeria;

“Service Provider” means any person or firm engaged in the provision of services for payment i.e. consultancy, Auctioning;

“Technical Knowhow” means a Professional with practical knowledge in engineering, Architecture and Quantity Surveying;

“Tenders Board” means a committee established in a Procuring Entity to undertake public procurement procedures

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

“Concession” means grant of right by the Government in return of services;

“Concessionaire” means the owner of concession who pays a fixed percentage of revenues to the government from what he operates;

“Suit” includes criminal and Civil Action;

“Regulations” means the Due Process Manual for Kano State and Local Government Procurement Services (as amended);

“Manual” means Public Procurement Manual for Kano State and Local Government Procurement Services (as amended);

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

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

“Disposing Entity” means the State Ministry of Finance.

Objects of the Law

4. the objects of this Law are to-

- (i) Maximize economy and efficiency in public procurement;
- (ii) Promote economic development through public procurement

- (iii) Obtain value for money in public procurement;
- (iv) Promote integrity and engender public confidence in the public procurement process;
- (v) Foster transparency in the public procurement process
- (vi) Encourage participation in public procurement
- (vii) Provide for the fair and equitable treatment of all persons participating in public procurement proceedings; and
- (viii) Encourage the State economic growth by enabling the participation of small and medium sized enterprises in Public procurement.

PART II:
ADMINISTRATION OF PUBLIC PROCUREMENT
A –PUBLIC PROCUREMENT BOARD

Establishment of public procurement board

5. (1) There is hereby established in the State a body to be known as the Public Procurement Board (herein after called the “Board”).
- (2) The Board shall serve as the Governing Body for the Bureau established by section 11 of this law.

Compositions of Public Procurement Board.

6. (1) The Board shall consist of the following members to be appointed by the Governor:
- (a) The Chairman shall be a person of impeccable integrity or cognate working experience;
 - (b) Three additional persons of impeccable integrity one from each of the 3 senatorial zones of the State, one of whom shall be a woman. An experience in procurement process as in added advantage;
 - (c) A representative of each of the following organizations
 - (i) Office of the Secretary to the State Government
 - (ii) Office of the Head of Civil Service;
 - (iii) Ministry for Local Government;
 - (iv) Ministry of Finance;
 - (v) Ministry of Planning and Budget;
 - (vi) Ministry of Justice;
 - (vii) Ministry of Works; and
 - (d) The Director-General of Bureau, who shall be the secretary of the Board;
 - (e) Not more than Eight (8) persons representing public interest to be chosen from the following professional bodies and at least two (2) of whom shall be women;
 - (i) CSOs
 - (ii) Nigerian Institute of Architect;
 - (iii) Nigerian Society of Engineers
 - (iv) Nigerian institute of Quantity Surveyors;
 - (v) Association of Professional Women Engineers in Nigeria;

- (vi) Kano State Indigenous Contractors Associations;
- (vii) Kano State Chamber of Commerce, Industries, Mines and Agriculture;
- (viii) Nigeria Institute of Purchasing and Supply Management; and
- (ix) Nigerian Bar Association

(2) The members of the Board specified in sub-section (1) (a) and (b) of this section shall be appointed subject to a resolution of the House of Assembly.

Functions of the Board

7. The Board shall have the following functions:
- (a) Review and approve policy and subsidiary instruments formulated by the Bureau;
 - (b) Recommend the appointment of Directors and Unit Heads of the procurement in all MDAs and LGAs;
 - (c) Receive and Consider for approval, the audited account of the Bureau
 - (d) Approve changes in procurement processes
 - (e) Advise the Governor on the status of the State Government procurement in relation to annual appropriation;
 - (f) Give other directives and perform such other functions as may be necessary to achieve the objectives of this law;
 - (g) Coordinate the Public Private Partnership arrangement which shall be carried out as follows:
 - i. Ensuring that projects delivery method, transfer Risks and Returns to the stakeholders and their interests are protected as contained in the regulations under this law;
 - ii. The projects can be implemented through various contracts arrangements to achieve the client's goals and objectives;
 - iii. To adhere to State Procurement Procedures to do all things as necessary for the full involvement of the Local Content, Taxpayers, Benefits, Technology and innovative participation that is under this law.

Powers of the Board.

8. (1) The Board shall have powers to;
- (a) Make guidelines for the regulation of public procurement and may from time to time review or update the said regulations under this law.
 - (b) Make regulations for the Bureau specifying the manner in which assets or funds of the Bureau are to be held;
 - (c) Require the keeping of proper accounts and records for the purpose of managing the funds in such forms as may be specified in the regulations;
 - (d) Issue guidelines detailing operational principles and organization modalities to be adopted by all procuring entities engaged in the disposal of public property;
 - (e) Debar any supplier, contractor, service provider that contravenes any provision of this law and regulations made pursuant to this law;
 - (f) Promotion and Discipline of staff

- (g) The Board may at any time create such other number of Departments where ever necessary for the effective Discharge of the functions of Bureau.
 - (h) Do anything and carry out such other activities as are under pursuant to this law
- Tenure of Members* (2) Members of the Board with the exception of the Ex-Officio Members shall be appointed for a term of four years and may be eligible for re-appointment for a like term only.
- Ex-Officio* (3) Members specified in section 5(c) are herein referred as ex-officio members;
- Vacation of Members* 9. the office of a member other than Ex-Officio member shall become vacant Where:
- (a) He resigns his appointment by a written notice addressed to the Governor;
 - (b) Where he absents himself/herself for three consecutive meetings of the Board without any cogent reason;
 - (c) Death, permanent incapacity or infirmity of mind;
 - (d) Where he becomes bankrupt or found wanting for any offence or act of gross misconduct; and
 - (e) The Governor may at any time revoke the appointment of a member or dissolve the Board where it appears that the members are incompetent or derelict from duty.
- Remuneration of Members* 10. The members of the Board shall be paid such remuneration and allowances as may be fixed by the Governor upon the recommendations of relevant government agencies in the state responsible for determining allowances of part time and perhaps full-time appointees.

B – PROCUREMENT BUREAU

- Establishment of the Bureau* 11. There is hereby established for the State a body to be known as the Kano State Public Procurement Bureau (herein after referred to as “*The Bureau*”) which:
- (a) Shall be a body corporate with perpetual succession and a common seal
 - (b) May sue and be sued in its own name; and
 - (c) May acquire, hold or dispose off any property movable or immovable for the purpose of carrying out any of its functions under this Law
- Powers of the Bureau* 12. The Powers of the bureau shall include the following;
- (a) Formulating procurement policy and subsidiary instruments
 - (b) Coordinating all public procurement of Works, Goods and Services in accordance with the Kano State Public Procurement Manual;
 - (c) Evaluating all conceptual proposals on projects, programs and services with a view to advising Government accordingly for their feasibility, viability and relevance to

- the community concerned and the state in general;
- (d) Advising Chief Executives of Ministries and Parastatals in advance, on any observed lapses which may constitute impediments to effective attainment of set out goals and recommending appropriate remedies;
 - (e) Preparing periodic situation reports of projects, programs and services for the State and those rendered by the State Government, Donor Agencies and Development Partners in the State with a view of providing Government with update report;
 - (f) Harmonizing the effects of the two tiers of Government, eliminating duplications and endangering, speedy realization of the overall goal of development, notwithstanding the provisions of the Local Government Law 2006 (as amended);
 - (g) Providing technical advice and vetting of payment certificates, cost management, value for money and savings from the budgeted contract sums, for efficiency as the case may be
 - (h) Issuing "NO OBJECTION CERTIFICATE" to MDAs and LGAs which will pave way to obtain State Government's approval on any proposed project program or service;
 - (i) Offering technical services and advice to Anti-graft Agencies and other related commissions on request to aid their decision making;
 - (j) Offering technical support for procurement processes best practices and best practices to identified organizations with capacity challenges and disregard to the provisions of this law;
 - (k) Preparing and update Standard Bidding and Contract Documents;
 - (l) Performing procurement audits and submit such report to the Board;
 - (m) Acting as arbitrators between MDAs/ LGAs and contractors/consultants;
 - (n) Certifying contract procedures of every entity to which this law applies subject to the thresholds as may be set by the Board;
 - (o) Stipulating to all procuring entities the procedures and documentation required for such certification from time to time;
 - (p) Requesting for such information, documents, records and report in respect of any aspect of any procurement proceedings where a breach, wrongdoing, default, mismanagement and or collusion has been alleged reported or proved against a procuring entity or service providers;
 - (q) Reporting and recommend disciplinary action against accounting officers of any procuring entity to the Board for appropriate action;
 - (r) Nullifying the whole or any part of any procurement proceeding which is in contravention of this law;
 - (s) Entering into contract or partnership with any company, firm or person which in its opinion will facilitate the

discharge of its function subject to the approval of the Board;

- (t) Registering all categories of Contractors, Service providers, Auctioneers and issuance of Contract License thereof;
- (u) Stipulating and offer a code of conduct Certificate for all public Officers, Suppliers, Contractors, Service Providers and Auctioneers with regard to their standard of conduct acceptable in matters involving the procurement and disposal of public assets; and
- (v) Performing such other things as are necessary for the efficient performance of its powers under this Law;

*Functions of the
Bureau*

13. In the exercise of its functions under this Law, the Bureau shall be guided by the regulations as provided under this Law. The key functions to be undertaken by the Bureau to achieve its core mandates include the following;

- I. Coordinating all public procurement Works, Goods and Services in accordance with the PUBLIC PROCUREMENT MANUAL as well as issuance of "NO OBJECTION CERTIFICATE" to MDAs and LGAs.
- II. Establishing Tenders Board in all the Ministries, Departments, Agencies and the Local Governments Authority
- III. Ensuring the application of fairplay, competitive, transparent, value for money, and best practices in the procurement and disposal of Public assets and services;
- IV. Ensuring the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system;
- V. Ensuring that procurement procedures and regulations are complied with as determined by the State and Local Government resources;
- VI. Preparing periodic and situation reports on projects, program and services for the State Government;
- VII. Registering and licensing potential contractors, service providers, and maintain database of the particulars, classification and categorization of contractors, service providers and auctioneers;
- VIII. Developing, updating and maintaining system database for the State on various procurements at the MDAs and Local Government levels;
- IX. Organizing and coordinating training for capacity development programmes;
- X. Preventing fraudulent and unfair procurement and where necessary apply administrative sanctions;
- XI. Reviewing the procurement and award of contract procedures of every MDAs and Local Government Councils;
- XII. Monitoring the stages of projects implementation by the State Government, Development Partners and Donor Agencies in the State with a view to providing the

Government with an update report;

- XIII. Offering technical supports to MDAs and LGAs on Procurement process where necessary;
- XIV. Reviewing and recommending consultant or supervisor in complex or classified projects/ programmes;
- XV. Checking proposed contract threshold as set by the Manual;
- XVI. Undertaking procurement research and surveys;
- XVII. Carrying out oversight functions of public procurement and performance of all projects;
- XVIII. Handling Alternative Dispute Resolution (ADR) with a view to achieving value for money to the Government by ensuring full compliance with Due process.
- XIX. Acting as Arbitrators between MDAs/LGAs and Contractors/Consultants and adjudicate;
- XX. Participating in all the services for bid opening exercises and regularly conduct due diligence on procurement advertisement placed by organization to ensure compliance with the Due Process Manual;
- XXI. Identifying and reporting Infractions or gross violation of the Manual and recommend appropriate punishment on persons involved;
- XXII. Reviewing for compliance the provision, adequacy and effectiveness of established processes for the procurement of Works, Goods and Consultancy Services;
- XXIII. Managing and Negotiating with Consultants and Contractors on behalf of the Government;
- XXIV. Monitoring and maintaining a crucial role to the State Organizations and Local Government Councils through capacity strengthening on procurement matters; and
- XXV. Engaging Donor Agencies and Development partners in the implementation of assistance programmes and support for each other's activities particularly related to procurement reforms.

- XXVI. Involving professional bodies in appropriate areas of their operations especially on the monitoring of construction materials and standardization of manufactured items in the markets where they are to participate in the panels
- XXVII. Monitoring the artisans activities for the purpose of enhancing quality services provided by such enterprises, in order to promote customer satisfaction through certifications;
- XXVIII. Monitoring and evaluating skills development institute in conjunction with authorized bodies for effectiveness and resilience;
- XXIX. Providing coverage of the Bureau's activities on the State Government Projects and Programmes on Television, Radio stations and online Media as BUREAU ON AIR!
- XXX. Regulating and set standard to enforce harmonized bidding and tender documents for all State procurement;
- XXXI. Upholding professional ethics and report erring procurement personnel, State and Local Government

functionaries, Department and Private Sector Companies and their personnel to relevant authorities for appropriate sanctions;

- XXXII. Preparing and monitoring prices of tendered items (Harmonized State Rate) and provide price database advisory services to the procuring entities;
- XXXIII. Performing pre-procurement audits and post-procurement monitoring and submit such report to the Executive Council bi-annually;
- XXXIV. Evaluating and Monitoring Government Projects from point of award until completion and issue certificate (s) accordingly.
- XXXV. Sensitizing, promoting and educating the citizens and other stakeholders in the State on Public Procurement issues;
- XXXVI. Publishing details of procurement contracts awarded in the State periodically in the Bureau's Procurement Journal, website or any other means of mass communication;
- XXXVII. Preparing and updating Standard Bidding and Contract Document;
- XXXVIII. Reviewing procurements made by MDAs and LGAs for approval certification; and
- XXXIX. Performing all such other things and carry out such other activities as are necessary and expedient for the full discharge of its functions under pursuant to this law;

*Appointment of
Director General
and his Functions*

14. (1) There shall be for the Bureau a Director General to be appointed by the governor with the approval of the State House of Assembly.

- (2) A person shall be qualified to hold the office of the Director General only if he possesses requisite academic, professional qualifications and experience with membership of relevant professional body. Where however, he is or was a public servant, he shall in addition not be below the rank of a substantive director or equivalent.
- (3) The Director General shall be the Chief Executive and Accounting Officer of the Bureau and shall also be responsible for the execution of the policy and day to day administration of the Bureau.

*Tenure of Office
of the Director
General*

15. (1) The Director General shall hold office for a period of five (5) years and may be reappointed for another term of five (5) years and no more;

- (2) A person so appointed from the public service of the State, shall be entitled to retain his previous position in the service at the time of expiration of his tenure
- (3) The Governor may at any time remove the Director General if he is satisfied that he has behaved in such a manner that is Prejudicial to the spirit of the Law;

Directors of the Bureau and their qualifications

16. (1) There shall be appointed Directors of the relevant departments of the Bureau;
- (2) The Directors shall each have the requisite professional qualification(s) and experience for the effective performance of the Functions of their respective departments

Other staff of the Bureau

17. The Board may approve the employment of such number of staff for the Bureau as may be required for the due discharge of its functions under this law and may accept such number of staff on transfer or secondment from the service of the Federal, State or Local Government subject to the prevailing rules or guidelines obtainable from the State Civil Service Commission.
- (2) The person so seconded under subsection (1) of this Section may transfer his/her services to the Bureau for the purpose of any pension.

Remuneration of staffs

18. (1) The staff of the Bureau shall be paid such remuneration including other allowances as applicable to procurement Personnel and such other regulations in the State Civil Service.
- (2) Without prejudice to subsection (1) of this Section, the condition, remuneration and staff regulation of the Bureau shall be obtain as in the procurement cadre.
- (3) The Governor may approve any other allowances to the Staff of the Bureau in addition to what is obtained in the Civil Service of the State.

Pensions

19. Employee of the Bureau shall be entitled to pensions and other retirement benefits as prescribed under Pension Law of the state.

Funds of the Bureau.

20. The Bureau shall establish and maintain a Fund to be approved by the Board into which shall be paid and credited:
- (a) Such sums as may be appropriated by the appropriation Law of the State;
- (b) Grants and donations from Development Partners and Donor Agencies where such donations or gifts do not conflict with objectives of the Bureau;
- (c) All other assets which may from time to time accrue to the Bureau; and
- (d) The Bureau may utilize thirty percent (30%) of proceeds from generated funds of the sales of production.

Budget and Annual Estimate

21. (1) The financial year of the Bureau shall be the same as that of the State Government.
- (2) Whenever a Budget Call Circular is issued, not later than three months before the end of the financial year, the Bureau shall submit to the Board an estimate of its expenditure and projected income for the succeeding Year.

*Record and
Account*

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

Auditing

23. The Bureau shall within three months after the end of each financial year to which the accounts relate, cause the accounts to be audited in accordance with guidelines supplied by the Auditor General of the State;

Annual Report

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

**PART III:
PUBLIC PROCUREMENT FUNDAMENTAL PRINCIPLES
A -CORE PRINCIPLES**

*Economy and
Efficiency*

25. Subject to the exceptions under this Law, all procurement carried out by any procuring entity shall be governed by the following rules;

(a) Public procurement shall be to make the best possible use of public funds with honesty and fairness;

(b) There shall be economy and efficiency in the use of Funds with honesty and fairness;

(c) When undertaking or approving procurement or disposal of Public assets by tender, members of tender boards and other public officers, shall choose appropriate procedures and cause the procurement or disposal of public assets to be carried out diligently and efficiently, so that the prices paid or received by the procuring entity represent the best value or net outcome that can be reasonably be obtained for the funds applied for or the assets disposed off.

Competitiveness

26. All public officers including accounting officers and Members of procuring entity shall, when undertaking or approving procurement, be guided by the following basic considerations:

(1) The best interests of the public are ensured in giving all eligible tenders equal opportunities to compete in providing goods or executing works or providing services through

(a) Open competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed; and

(b) Promotion of competition, economy, efficiency and allowing all parties who are eligible and qualified to participate in public contracts;

(2) All public officers including accounting officers and members of Tender Boards and all procurement bodies shall, when undertaking or approving disposal of public assets, be guided by the following basic considerations:

- (a) The need for the best net outcome and efficiency in the implementation of disposal of assets;
- (b) The best interests of public, in giving all eligible buyers equal opportunities to compete in buying the assets and
- (c) The need to ensure that Local, National, Social, Economic and Environmental interests are protected.

(3) Encouragement of local and national manufacturing, contracting and service industries.

(4) The importance of integrity, accountability, fairness and transparency in the procurement process; and

(5) Except where information is provided or required to be published under or pursuant to a provision in this Law, a procuring entity shall treat applications to pre-qualification and bid in such a manner as to prevent or protect against the disclosure of their contents to competing suppliers or to any other person not authorised to have access to this information.

Effectiveness

27. In furtherance to Sections 26 and 27 above, public officers and members of Tender Boards and all procurement bodies shall ensure that:

- (1) Simple, sustainable, standardized uniform application to all government procurement shall be adaptable to advancement in public administration and modern technology.
- (2) Public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of this law and its regulations, and that all public contracts are performed strictly according to specifications.
- (3) The goods, works or services procured are of satisfactory quality;
- (4) The goods, works, or services are appropriate to the public body requirements and, where necessary, good or services or consultancy services are compatible with any similar goods or services already supplied or provided for public authority's use or for a particular project;
- (5) The goods are delivered, services are provided, or the works are completed in a timely manner in accordance with the procuring entity's priorities,
- (6) The public assets to be disposed of by tender are disposed in a manner which attracts maximum competition while reducing the administrative and transactions costs;
- (7) Disposal of public assets shall be based on the need to achieve the best available net return when disposing of public assets by tender, while conducting all disposals with honesty and fairness; and
- (8) All public officers including Accounting Officers, members of tender boards and members of other procurement shall, when undertaking or approving disposal of public assets, be guided by the following basic consideration;
 - (a) The need for the best net outcome and efficiency in the

implementation of disposal of assets;

- (b) The best interests of public, in giving all eligible buyers equal opportunities to compete in buying the assets and
- (c) The need to ensure that national, social, economic and environmental interests are protected.

Transparency

28. All public procurements shall be conducted in a transparent manner, which shall:

- (a) Provide adequate and timely degree of transparency in each phase of public procurement cycle;
- (b) Ensure visibility of the contracting authority's intent to the greatest extent possible, allow;
 - (i) Stakeholder to understand government priorities and spending plans; and
 - (ii) Policy makers to organise procurement strategically,
- (c) Allow free access, through an online portal, for all stakeholders;
- (d) Ensure the contracting authority's duty to announce public procurement opportunities and awards in a commonly available media and Gazette; and
- (e) Present information in a user-friendly and easily comprehensible way for all interested parties to understand the procurement process.

Accountability

29. Public officers, members of Tender Boards and members of Procurement bodies must be accountable for the correct and complete execution of their tasks and duties and for the decisions and actions being made in their area of responsibilities.

B - COMPONENT PRINCIPLES

Funding

30. (1) Procurement plans shall be supported by prior budgetary appropriation, and no procurement proceeding shall be formalized until the procuring entity has ensured that funds are appropriated and money is made available to meet the obligations and subject to the threshold in the regulations made by the Bureau; and

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

Other Considerations

31. A supplier, contractor or service provider may be a Natural/Legal person, suppliers, contractors or service providers acting jointly and severally are 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

- (1) All bidders, in addition, to requirement contained in any solicitation document shall possess the following;

- (a) Professional and technical qualification to carry out particular procurement
 - (b) Financial capacity
 - (c) Equipment and other relevant infrastructure
 - (d) Personnel to perform the obligations of the procurement contract; and
 - (e) The legal capacity to enter into the procurement contract.
- (2) All bidders in addition to sub-section (b) above, shall:
- (a) 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;
 - (b) Have fulfilled all its obligations to pay taxes, pensions and social security contributions; and
 - (c) Not have Directors who have been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
- (3) The Bureau or any procuring entity may require a bidder to provide documentary evidence or other 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.
- (4) A bid or a tender shall be excluded from any particular procurement proceeding if:
- (a) There is verifiable evidence that any supplier, contractor or service provider has given or promised, a gift of money or any tangible item or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau in an attempt to influence any action, decision making or any procurement activity.
 - (b) A supplier, contractor, or service provider during the last three (3) years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in the performance of any public procurement.
 - (c) The bidders is in receivership or is the subject of any of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceeding or who have been declared and or have made any compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding;
 - (d) The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contribution, unless such bidders have obtained a lawful permit with respect to

allowance or deference of such outstanding payment in installments;

- (e) The bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit.
- (f) The bidder has in its management or is in any portion owned by any person that has been convicted for a crime committed in connection with a procurement proceeding
- (g) The bidder fails to submit a statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceeding; and
- (h) To provide for "the failure of any bidder to meet any other condition/requirement specified in the solicitation document

*Communication
and research*

32. (1) Where bid and tender is excluded under the provisions of Sections 11, the procuring entity shall inform the bidder in writing the grounds for the exclusion of the bid or tender from public procurement

- (2) A procuring entity shall keep a record of the proceeding in a manner prescribed by the Bureau;
- (3) All communications and documents issued by procuring entities and the Bureau shall be in English;
- (4) 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.
- (5) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten (10) years from the date of the award.
- (6) Copies of all procurement records shall be forwarded to the Bureau not later than three (3) months after the end of the financial year and shall include:
 - (a) Information identifying the procuring entity and the contractors;
 - (b) The date of the contract award;
 - (c) The value of the contract; and
 - (d) The detailed records of the procurement proceedings; and
- (7) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed from time to time by the Bureau.

*Obligations and
conditions*

33. (1) All public Procurements shall be conducted in accordance with the regulations made under this law.

- (2) The Criterion stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceedings;
- (3) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor;
- (4) A contract shall be awarded to the lowest cost evaluated and qualified bidders from the bidders substantially responsive to the bid solicitation;
- (5) Notwithstanding sub section (3) of this section, the Bureau may refuse to endorse the award of a contract for the public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this law;
- (6) Pursuant to sub-section (4) of this section, the Bureau may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender amongst the bidders substantially responsive to the initial bid solicitation based on the price;
- (7) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposals or quotations other than in the summary form stating the evaluation and comparison of tender proposals or the quotations received until the successful bidder is notified of the award;
- (8) The Accounting Officer of an entity and any officer to whom responsibility is delegated is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its regulations;
- (9) The Accounting Officer of an entity shall ensure that the provisions of this Law and the regulations made under are compiled with, and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations;
- (10) Procurement and disposal decision 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;
- (11) Any person who has been engaged in preparing for a procurement or part of the proceedings shall not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tenders;

- (12) A procuring entity shall not request or stipulate that a bidder should engage the service of a particular sub-contractor as requirement for participating in any procurement proceedings;
- (13) All procurement contracts shall contain provisions for arbitration proceeding as the primary form of dispute resolution;
- (14) The value in procurement document shall be stated in Nigerian currency using the prevailing exchange rate of Central Bank of Nigeria as valid on the day of opening the tender; and
- (15) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

**PART IV:
PROCUREMENT PLANNING AND IMPLEMENTATION**

*Procurement
Planning*

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

- (a) Preparing the needs assessment and evaluation;
- (b) Identifying based on paragraph (a) above the goods, works or service required;
- (c) Carrying appropriate market and statistical surveys and on that basis, prepare analysis of the cost implications of the proposed procurement;
- (d) Aggregating its requirements whenever possible, both within the procurement entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) Integrating procurement expenditure into its yearly budget;
- (f) Prescribing any method for effecting procurement subject to the necessary approval under this law;
- (g) Ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (h) Ensuring that the procurement entity functions stipulated in this section shall be carried out by the Procurement Planning Committee.

*Planning
Committee*

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

- (2) The procurement Planning Committee shall comprise of the following members:
 - (a) The accounting Officer of the procuring entity or his representative who shall be the Chairman of the Committee;
 - (b) Head of the procurement function of the procuring entity;
 - (c) A representative of the Financial Department of the procuring entity;

- (d) A representative of the Planning Research and Statistics department of the procuring entity;
- (e) Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
- (f) A representative of Ministry of Justice.

*Procurement
implementation*

36. (1) Subject to regulations as may from time to time be made by the Bureau, under the direction of the Board, a procuring entity shall, in implementing its procurement plans;

- (a) Advertise and solicit for bids in adherence to this Law and guideline as may be issued by the Bureau from time to time;
 - (b) Invite two credible persons as observers in every procurement process one person each representing a recognized;
 - i. private sector professional organisation whose expertise is relevant to the particular goods or service being procured; and
 - ii. non-government organization working in transparency, accountability and anti- corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant Bureau or body including their own organizations or associations.
- (2) Receive, evaluate and make a selection of the bids received in adherence to this Law and guideline as may be issued by the Bureau from time to time;
- (3) Obtain approval of the approving authority before making an award;
- (4) debrief the bid losers on request;
- (5) Resolve complaints and dispute if any;
- (6) Obtain and confirm the validity of any performance guarantee obtain a certificate of "No Objection Award" from the Bureau within the prior review threshold as stipulated in Section 3 of this Law;
- (7) Execute all Contract Agreements; and
- (8) Announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time through Open Contracting Data Standard (OCDS);

*Supervision of the
contract of
Procuring Process*

37. (1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-

ministerial department and corporations the Director-General or officer of co-ordinate responsibility;

- (2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning, organization, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
- (a) Ensuring compliance with the provisions of this Law by his or her entity and liable in person for the breach or contravention of this Law or any regulation made hereunder whether or not the omission was carried out by him or her personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
 - (b) constituting the Procurement Committee and its decisions;
 - (c) ensuring that adequate appropriation is provided specifically for the Procurement in the State budget;
 - (d) integrating his entity's procurement expenditure into its yearly budget;
 - (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
 - (f) constituting the Evaluation Committee; and
 - (g) liaising with the Bureau to ensure the implementation of its regulations.

**PART V:
METHODS OF PUBLIC PROCUREMENT OF WORKS, GOODS
AND SERVICES**

*Open Competitive
Bidding*

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

- (2) Subject to subsection (1) of this section, procurement entity may engage in public procurement by open competitive bidding by means of:
- (a) International competitive bidding;
 - (b) National competitive bidding; and
 - (c) Local competitive bidding;
 - (d) Selective bidding;
 - (e) Nominative bidding and
 - (f) E-procurement.

(3) A procuring entity may, if it appears to be necessary to do so, use a method of procurement other than open bidding in the circumstances specified in Sections 8 and 9 and shall:-

- (a) Select such other method of procurement as would best accommodate the circumstances of the procurement concerned; and
- (b) To the extent practicable, seek to maximize competition;
- (4) where a procuring entity uses a method of procurement other than open Bidding, it shall include in the record required under Section 15, a statement of the reasons and the circumstances on which it related to justify the use of that other method;
- (5) where the estimated value of procurement is lower than the procurement method threshold, a procurement entity may limit participation in open Bidding procurement proceedings to local bidders;
- (6) invitations to bid may either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary benchmark for which procurement shall fall under either System;
- (7) notwithstanding anything contained in any other law to the contrary, the participation of a national bidder in international competitive bidding shall not be required, to be on the same basis as that of a foreign bidder and a national bidder shall not, as a condition for participation, be required to take any action or observe any procedure or formality that is not required of a foreign bidder;
- (8) Where participation is limited as permitted under sub section (4), the limitations shall be stated in the invitation to bid or to pre-qualify, as the case may be, and shall be otherwise in accordance with such provisions as may be prescribed;
- (9) Regulations may prescribe the procedures for open bidding and make other provision in relation thereto;
- (10) Any reference to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed;
- (11) No negotiations unless otherwise provided for in this Law shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is in the case of goods and

works, the lowest cost evaluated bid from the bidders who respond to the bid solicitation and found to be most responsive.

(12) The provision of this Law on Open Competitive Bidding shall apply to the procurement of goods and services.

(13) The Board shall make rules applicable to procurement of goods and services.

Restricted Bidding

39. (1) Subject to the approval of the Bureau, a procurement entity may engage in procurement by means of restricted bidding where:-

- (a) the goods, works or services to be procured are, by reason of their highly complex or specified nature, available for a limited number of suppliers;
- (b) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement;
- (c) given the nature of the procurement, it is in the public interest that the procurement should be confidential, and restricted bidding is required to maintain confidentiality; or
- (d) where there is an urgent need in the public interest for the subject matter of the procurement, whether arising from the occurrence of a catastrophic event or otherwise, making it impractical to use any such other competitive method of procurement because of the time involved in using any such other method.

(2) Where a procuring entity engages in procurement by means of restricted Bidding:-

- (a) in the circumstances referred to in subsection ((1) (a), then it shall invite all known suppliers who are capable of supplying the goods, works or services, as the case may be, to bid;
- (b) in the circumstances referred to in subsection (1) (b), then it shall, in a non-discriminatory manner, select suppliers from which to invite bids and, where practicable, bids should be invited from a minimum of three bidders so as to ensure effective competition;

- (c) the provision of the Law regarding the open competition bidding shall apply to selective bids proceedings only to the extent of the variance by this Section;

*Single-
source/Direct
Procurement*

40. (1) A procuring entity may, in accordance with the prescribed procedures and subject to section 50 , engage in single-source Procurement only where:-

- (a) the goods, works or services to be procured are available from a particular supplier or approved unregistered supplier only, or a particular supplier has exclusive rights in respect of such goods, works or services, such that no reasonable alternative or substitute exist, and the use of any other method of procurement would not be practicable;
 - (b) the procuring entity, having procured goods, works or services from a contractor, determines that additional supplies must be procured from that contractor for reasons of standardization or because of the need for compatibility with existing goods, works or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods, works or services in question; and
 - (c) the situation is one of emergency and the engaging in any other method of procurement would be impracticable because of the time involved in using any such other method.
- (2) A procuring entity shall not engage in single-source procurement without a prior written approval of the Board;
- (3) Where a procuring entity engages in a single-source procurement, it shall invite a proposal from or price quotation from an approved registered single supplier;
- (4) A procuring entity shall engage in negotiations with the approved registered supplier from which a proposal is invited, unless negotiations are not feasible in the circumstances of the procurement concerned; and
- (5) Regulations may prescribe provisions governing public procurement by means of single-source and make other provision in relation thereto.
- (6) A procuring entity may initiate direct procurement where:-
- (a) The State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an act of God; and

- (b) The condition of the quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain them in their actual value or usefulness.

(7) Subject to the approval of the Board, in an emergency situation, a procuring entity may initiate direct contracting of goods, works and services.

- a) The Procuring Entity shall possess in-house technical competence to implement the procurement activity from start to finish;
- b) The procurement subject-matter should be planned and be integrated in the PE's Procurement Plan for the year;
- c) The monetary value of the procurement subject-matter must not exceed a monetary threshold to be set by the Bureau and approved by the Board amongst conditions;

(8) All procurements made under emergency shall be handled expeditiously having due regard to accountability.

(9) Tenders Board of the Procuring Entity headed by the Accounting Officer should supervise the technical team responsible for the implementation of direct Labor procurements;

(10) Immediately after the cessation of the situation warranting any direct procurement, the procuring entity shall file a detail report thereof with the Bureau which shall verify same.

*Electronic
procurement system*

41. (1) Not later than twelve (12) months from the enactment of this Law or at such other time the Bureau shall design and set up a secure electronic portal to be known as the Kano State Government Electronic Procurement System which shall be the primary source of information for all public procurement matters and opportunities within the purview of this Law and regulations made under this Law.

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

(3) the Bureau shall issue e-procurement and portal guidelines in accordance with the provisions of this Law or any other regulations made there under to all MDAs and local Government Councils in the State

42. (1) A procuring entity may carry out any emergency procurement where:

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

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

(c) Owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;

(d) A procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that:

(i) Additional supplies need to be procured from that supplier or contractor because of standardization,

(ii) There is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity,

(iii) The limited size of the proposed procurement in relation to the original procurement provides justification, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.

(iv) The procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or

(v) The procuring entity applies this Act for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.

(2) The procuring entity:

(a) May procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor.

(b) Shall include in the record of procurement proceedings a

statement of the grounds for its decision and the circumstances in justification of single source procurement.

Direct procurement committee 43. A procuring Entity may Plan, Design and Contract or Procure Goods directly as provided in the regulations made under this law;

(a). Where a procuring Entity decides to conduct procurement directly, it shall set up a committee for that purpose;

(b). The Committee mentioned in subsection (2) of this section shall comprise of the Resident Due Process Committee and the Accounting Officer of the entity as the Chairman.

Domestic preference. 44. (1) The 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 the procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic suppliers and contractors and the criteria for eligibility for such preference.

(3) Margin of Preference may apply to bids under all international competitive bidding.

(4) The Bureau shall by Regulations from time to time set the limit and the formula for competitiveness of margins of preference.

**PART VI:
PROCESS FOR THE PROCUREMENT OF GOODS, WORKS AND
NON-CONSULTANCY SERVICES**

Invitation to Bid 45 (1) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bid shall be advertised in at least two (2) National newspapers, one (1) relevant internationally recognized newspaper, the official website of the procuring entity, the Bureau and the State Procurement Journal not less than six weeks before the deadline for submission of the bids for the goods, works and services.

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

- (3) Not later than six (6) months after the enactment of this Law, the Bureau shall issue guidelines for the advertisement/publication of invitation to Bid.

*Pre-qualification
Of Bidders*

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

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

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

Bid Documents

47. (1) Bid documents shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Bureau. The bidding documents shall include the following:-

- (a) approved budget for the contract;
- (b) instruction to bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), submissions of bids and opening of bids;
- (c) terms of reference;
- (d) eligibility requirement;
- (e) description of the products, services or works concerned;
- (f) plans and technical specifications;
- (g) form of bid, price form, and list of goods or Bills of Quantity;
- (h) delivery time or completion schedule;
- (i) form and amount of bid security; and
- (j) form of contract, general and special conditions.

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

Bid Security.

- 48 (1) Subject to the monetary and prior review benchmark as may be set out by the Bureau, all procurement valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not less than 2% of the bid price by way of a Bank Guaranty issued by a reputable bank acceptable to the procuring entity or an insurance bond issued by an insurance company acceptable to the Bureau.
- (2) The Bureau shall from time to time stipulate the principal terms and conditions for every bid security through its issue of guidelines intended to aid PEs to make determinations on bid security for specific projects.

Submission of Bids

49. (1) All bids and proposals in response to an invitation to Open Competitive bidding are to be submitted in writing, in addition to any other format stipulated in the bid documents and shall be signed by an official authorized to bind the bidder to a contract and placed in sealed envelopes.
- (2) All submitted bids shall be deposited and kept in a secured tamper-proof Bid Box
- (3) All submitted bids must be in English Language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was received.
- (5) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or service provider which submitted it; and
- (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.

Bidding/Failure of bids

50. (1) There shall be a failure of bidding if:-
- (a) no bids were received;
 - (b) no bid qualified as the lowest cost evaluated responsive bid or highest rated responsive bid; or
 - (c) Whenever the bidder with the highest rated or lowest calculated responsive bid refuses, without justifiable cause to accept the award of the contract, as the case may be.

- (2) (a) The contract shall be re-advertised and re-bid in the occurrence of any of the instance stated in sub section 1(a) of this section; and
 - (b) The procuring entity shall observe the same rules followed during the first bidding. After the second failed bidding, however, the procuring entity may resort to an alternative method of procurement as provided for by this Law.
- (3) A Procuring entity may:
- (a) reject any bids at any time prior to the acceptance of a bid, without incurring any liability to the bidders; and
 - (b) Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

Validity Period of Bids

51. (1) The period of validity of bid shall be the period specified in the Tender Documents.
- (2) A procuring entity may request supplier, contractor or service provider to extend the period of validity for an additional specified period of time.
 - (3) A supplier, contractor or service provider may refuse the request for the extension of bid, in which the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
 - (4) A supplier, contractor or service provider may modify or withdraw its bid prior to the deadline for the submission of bids.
 - (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline of the submission of tenders.
 - (6) All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall;
 - a. permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with; and
 - b. cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
 - (7) Ensure that the bid opening takes place immediately following the

deadline stipulated for the submission of bids or any extension;

- (8) Ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organizations they represent to be recorded by the Secretary of the Procurement Entity's Tenders Board; and
- (9) Call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary or his delegate in the minutes of the bid opening;

Bids Examination

52. (1) Every bid shall be first to determine if it:-

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

(2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of the bids. Same applies to the bidder. The clarifications may occur at both Pre-qualification/EOI and/or Bid/Proposal stages of procurement process.

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

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

(4) Notwithstanding the provisions of sub-section (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.

(5) The procuring entity, shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

i. A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

ii. The following shall be considered as major deviations:

- (a) With respect to sections in an offer:-
 - (i) Unacceptable sub-contracting

- (ii) Unacceptable time schedule if time is of the essence;
 - (iii) Unacceptable alternative design; and
 - (iv) Unacceptable price adjustment;
- (b) With respect to the status of the bidder:
- (i) The fact that he is ineligible or not prequalified;
 - (ii) With respect to bid documents, an unsigned bid; and
 - (iii) With respect to time, date and location for submission
 - (iv) Any bid received after the date and location for submission stipulated in the solicitation document; and
 - (v) Any bid submitted at the wrong location.
- (8) In cases of major deviations, bid shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant;
- (10) Subject to any provision to the contrary, the following shall not be considered as minor deviations:
- (a) The use of codes;
 - (b) Alternative designs;
 - (c) Omission in minor items;
 - (d) Arithmetical errors;
 - (e) Completion period where these are not in essence; and
 - (f) Any other condition that has little impact on the bid; and
- (11) Not later than six (6) month after the enactment of this Law, the Bureau shall issue regulations stipulating the guidelines for the opening and examination of bids.

Evaluation of Bid

53. (1) For the evaluation and comparison of bids that have been adjudged Bids 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 shall be:-

- (a) in the case of goods and works to determine and select the lowest cost evaluated bidder from the bidder responsive to the bid solicitation; and
- (b) In the case of services to determine the highest rated bid bidder from the bidders responsive to the bid solicitation.

(3) Not later than six (6) months after the enactment of this Law, the Bureau shall issue regulations stipulating the guidelines for the evaluation of bids

Disqualification of bids

54. A procuring entity shall disqualify a bidder who submits documents containing false information or documents forged for purpose of qualification at any time, such disqualification shall be published in the State Official Gazette and Online.

Confidentiality of Bids

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

(2) Confidential information on any bid concerning commercial or technical information or trade secrets or know-how of bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances; and

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

Bid's Successful evaluated bidder /Acceptance of letter

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

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

(3) Notice of the successful bid shall immediately be communicated to the successful bidder; and

(4) Notwithstanding the provision of sub section (3) of this section, where the procurement proceeding is with regards to a value for which approval should be sought from an approving authority, notice communicated to a successful bidder shall serve only for

notification purposes only and shall not however be construed as a procurement ward.

*Expression of
Interest to Provide
Procurement
Award*

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

- (i) It shall solicit expression of interest or application to prequalify to provide the services by publishing a notice to that effect in at least two (2) national newspapers, the Procurement Journal, Online and the Bureau's Notice Board.
- (ii) where the value of the services to be provided is less than Fifty Million Naira (N50,000,000) or with the approval of the Bureau, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice request at least three (3) and not more than ten (10) consultants or service providers to make proposals for the provision of the services in a format stipulating:-
 - (a) a statement of qualification of the consultant to provide the service;
 - (b) a statement of understanding of the procuring entity's need;
 - (c) the methodology for providing the service;
 - (d) the time frame for providing the service; and
 - (e) the cost or fee for the service.

*Limitation of time
for Procurement
Award*

58. Without prejudice to the provisions of this Law, the period between the opening of bids and the award of contract shall not exceed three (3) Months.

*Terminating of
Award Procedure*

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

- (a) a contract framework agreement is concluded;
- (b) the award procedure is cancelled for one of the following reasons:
 - (i) no bids submitted within the specified final time limit;
 - (ii) none of the received bids are compliant;
 - (iii) all compliant bids contained prices substantially exceeding the procurement entity's budget;
 - (iv) the number of the received compliant bids is less than three (3) and does not ensure a genuine competition on the contract concerned;
 - (v) the number of qualified bidders is less than three (3) and does not ensure a genuine competition on

- the envisaged contract; and
- (vi) the award procedure is cancelled for other reasons control and unpredictable at the time of launching the award procedure; and

(2) Where a contract award procedure is cancelled without the award of a contract or conclusion of a framework agreement, a cancellation notice shall be published in the State Official Gazette.

Proposals for uncertain needs

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

(2) The procuring entities shall procure the services of consultants by soliciting for expression of interest by publishing a notice to the effect in two (2) national newspapers, Online, the Procurement Journal and in the State Official Gazette; and

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

- (a) the services are only available for not more than three (3) consultants
- (b) the time and cost required to examine and evaluate a large number of proposal would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition, or
- (c) it is in the interest of security or similar reasons of confidentiality.

Request for proposal

61. (1) Requests for proposals shall include:-

- (a) The name and address of the procuring 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) the criteria and procedures for the evaluation of the qualifications of the consultants;

- (f) the requirement on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
 - (g) the nature and required characteristics of the services to be provided 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) (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 advertisement for transportation, lodging, insurance, use of equipment, duties or taxes;
 - (k) whether the procedure to ascertain the successful proposal shall be based on lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
 - (l) a short list to be made of only national consultants for consulting assignment contract, within a set benchmark in the procurement regulation provided that national consultant possesses such requisite skills; and
- (2) The procuring entity shall provide the same information to every consultant requested to submit proposals.

*Clarification and
Modification of
Proposals*

62. (1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified.
- (2) A procuring entity may whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals;
 - (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted consultants to whom the procuring entity has provided the request

for proposals and shall be binding on those Consultants;

- (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues without identifying the sources of request for clarifications; and
- (5) The minutes shall be provided promptly before the deadline for submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into accounts in preparing their proposals;

*Submission of
Proposals*

63. (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than twenty-one (21) days between the issuance of the notice or request and the deadline for submission.
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes;
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened;
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposal shall remain sealed and kept in a secure bid box until they are opened publicly; and
- (5) The Technical Evaluation Committee shall not have access or insight to the financial proposals until the evaluation including any review by the Bureau is concluded:

*Evaluation Criteria
for Proposals*

64. (1) the procuring entity shall establish criteria to evaluate the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the service;
 - (a) effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
 - (b) the proposal price, including any ancillary or related cost;
 - (c) the extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific and operational

skills and the counter trade arrangements offered by consultant or service provider; and

(d) Security considerations.

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

General selection procedure.

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

(a) the lowest evaluated price; or

(b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

(2) The procurement entity shall include in the record of procurement a statement of the grounds and the circumstances on which it relied to select either of the procedures in sub section (1) of this section; and

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

Procedure for Selection of Proposal Where price is a factor

66. (1) Where the procuring entity select to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request of proposals; and then

(2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the benchmark.

(3) The procuring entity shall notify the consultants whose proposal did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within 14 working days after the decision has been taken by the procurement entity.

(4) The name of the qualified consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposal are opened.

(5) The procuring entity shall prepare the minutes of public opening of financial proposal which shall be part of the evaluation report and shall retain the record.

(6) The successful proposals shall be:-

- (a) the proposals with the best combined evaluation in terms of the criteria established under sub-section (1) of this section from the price in the case of quality and cost-based selection;
- (b) the proposals with the lowest price in the case of least-cost selection; or
- (c) the highest ranked technical proposal within the budget in the case of fixed budget selection.

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

*Quality base
selection*

67. (1) Where the procuring entity chose to make a quality-based selection based on Consultant's quantifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section.

(2) The procuring entity shall:-

- (a) Establish a weight with respect to quality and price proposals;
- (b) Invites for negotiations on the price of its proposals, the consultant that has attained the best rating in accordance with subsection (1) of this section.
- (c) Inform the consultants that attained ratings above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in procurement contract; and
- (d) Inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant with invited under sub-section (2) (b) will not result in a procurement contract.

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

Awards Register

68. The Bureau shall maintain a register of awards, where the details of all procurement contract awarded by the Bureau shall be kept.

PART VII FINANCIAL CONTROL

Mobilization fees

69. (1) Payment of 20% mobilization fees may be paid to a supplier or contractor where he submits a formal request with Justification for such payment to the provisions of the standard bidding documents and the regulations to be issued pursuant to the Law, payments above 20% shall be guided by the regulations prescribed by the Bureau.

- (2) Advance payment is subject to the following:-

(a) In the case of National Competitive Bidding, an unconditional bank guarantee or insurance bond issued by a reputable bank or institutions acceptable to the Board; and

(b) In the case of International Competitive Bidding, an unconditional bank guarantee issued by a reputable bank or institutions acceptable to the Board.

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

- (4) The Office of the Accountant General shall prepare the certificate of clearance for any contractor to his bank clearing him that he has discharge his obligation pertaining the 20% paid to him by Government.

*Performance
Guarantees or
Bonds*

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

Payments

71. (1) Payment for the procurement of goods, works and services shall be settled promptly and diligently.
- (2) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, Government Agencies, Parastatals or Corporations shall be deemed a delayed payment.
- (3) All delayed payments shall attract interest at the rate specified in the contract document.
- (4) All contracts shall include terms, specifying the penalty for late payment of more than sixty (60) days

PART VIII

METHOD AND PROCESS OF PROCUREMENT OF CONSULTANCY SERVICES

*Consultancy
Services*

72. All Consultancy Services procurement shall be in accordance with the Procedure laid down in the regulation of this law as contained in the 'Procurement of Consultancy Services Documentation.

*Selection Method
of Procurement*

73. A procuring entity shall procure consultancy services using the International Competitive, National Competitive, Restricted Competitive, Single-Source competitive, Nominative competitive and local Selection methods.

*Request for
Proposals to
Provide for
Services for
ascertained Needs*

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

- (1) It shall solicit the expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least 2 national newspapers and the procurement journal;
- (2) Where the value of the services to be procured is less than one million naira or with the approval of the Bureau, of such low value that only National Consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:-

- (i) A statement of qualification of the consultant to provide the service;
- (ii) A statement of understanding of the procuring entity's need;

- (iii) The methodology for providing the service;
- (v) The time frame for providing the service; and
- (iv) The cost or fee for the service.

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

*Request for
Proposals to
Provide for
Services for
Unascertained
Needs*

75. (1) The procuring entity shall procure the service of consultants by soliciting for expression of interest by publishing a notice to that effect in two (2) national newspapers and the procurement journal.

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

- (a) The services are only available from no more than 3 consultants;
- (b) The time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed provided that it invites enough consultants to ensure transparent competition; or
- (c) It is in the interest of national defense and security or similar reasons of confidentiality.

*Request for
Proposals*

76. (1) Request for proposals shall include:

- (a) The name and address of the procurement entity;
- (b) A requirement that the proposals are to be prepared in the English language;
- (c) The manner, place and deadline for the submission of proposals;
- (d) A statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) The criteria and procedures for the evaluation of the qualifications of the consultants;
- (f) The requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) The nature and required characteristics of the services to be

procured including the location where the services are to be provided and the time when the services are to be provided;

- (h) Whether the procuring entity is seeking for proposals on various possible ways of meeting its needs;
 - (i) A requirement that the proposal price is to be expressed in Nigerian currency;
 - (j) The manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
 - (k) Whether the procedure to ascertain the successful proposal shall be based on the lowest cost, quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
 - (l) A short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.
- (2) The procuring entity shall provide the same information to every consultant requested to submit proposals.

*Clarification and
Modification of
Request for
Proposals*

77. (1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made Public within a reasonable time to be specified.
- (2) A procuring entity may, whether on its initiative or as a result of requests for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
 - (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.
 - (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the request for clarification; and
 - (5) The minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the

selection proceedings to enable them to take the minutes into account in preparing their proposals.

*Submission of
Proposals*

78. (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than 30 days between the issue of the notice or request and the deadline for submission.
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposal, 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; and
- (5) The Technical Evaluation Committee shall not have access to or insights in the financial proposals until the evaluations including any Tender Boards review are concluded.

*Criteria for
Evaluation of
Proposals*

79. (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of :-
 - (a) The qualification experience, reliability, professional and managerial competence of the consultant or service provider and 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 providing the services;
 - (c) The proposal price, including any ancillary or related cost;
 - (d) The effect that the acceptance of the proposal will have on the balance of payments positions and foreign reserves of the government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and

(e) National defense and security consideration.

- (2) A procurement entity may accord a margin of preference for domestic consultant 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.

*General Selection
Procedure*

80. (1) The procuring entity shall select the successful proposal by either choosing the:
- (a) lowest evaluated price, or
 - (b) best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (2) The procuring entity shall include in the record of procurement, a statement of the grounds and circumstances on which it relied to select either of the procedures in sub-section (1) of this section
- (3) Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

*Procedure for
Selection of
Proposal
Where price is not
a factor*

81. (1) Where the procuring entity selects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price might as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

- (6) The successful proposals shall be:-
- (a) the proposal with the best combined evaluation in terms of the criteria established under sub-section (1) of this section from the price in the case of quality and cost-based selection;
 - (b) the proposals with the lowest price in the case of least-cost selection; or
 - (c) the highest ranked technical proposal within the budget.
- (7) The Consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals;
- (8) The proposed unit rates for Staff-months and reimbursable shall not be negotiated unless there are exceptional reasons;

*Selection
Procedure Where
Price Is a factor*

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

- (2) The procuring entity shall:-
- (a) Establish a weight with respect to quality and price of the proposals;
 - (b) Invite for negotiations on the price of its proposal, the Consultant that has attained the best rating in accordance with subsection (1) of this section;
 - (c) Inform the Consultant that attained rating above the weight that may be considered for negotiations with the consultant with the best rating do not result in a procurement contract; and
 - (d) Inform the Consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with the consultant, invited under subsection 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 the Consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of

their rating until it arrives at a contract or reject the remaining proposals

- (4) The procuring entity shall treat proposal and any negotiations on their contents to competing consultants.

**PART IX:
PROCUREMENT SERVICES AND REVIEW**

*Records of
Procurement
proceedings*

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

*Investigation by the
Bureau.*

84. The Bureau may conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it consider necessary or desirable to prevent or detect a contravention of this Law.

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

- (i) At any time during normal office working hours enters the premises of the procuring entity, bidder, supplier, contractor or service provider concerned with the procurement proceeding under investigation;
- (ii) Require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document;
- (iii) Search premises for any book, records accounts or documents.
- (iv) Examine and make extracts from book, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant
- (v) Remove book record, accounts or document of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from a copies of them but the investigator shall give a detailed receipt for the book, records, accounts or documents removed.
- (vi) Require any officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in their books, record, accounts or documents; and
- (vii) Provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.

(2) The power of entry and search conferred by subsection (2) (i) and (ii) of this section shall not be exercised except the Bureau has first obtained an order of the State High Court without necessarily putting the procuring

entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.

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

- (i) Nullification of the procurement proceedings;
- (ii) Cancellation of the procurement contracts;
- (iii) Ratification of anything done in relation to the proceeding;
or
- (iv) A declaration consistent with any relevant provisions of this law

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

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

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

*Administrative
Review*

85. A bidder may seek administrative review of any omission or breach by a procuring entity of the Board under the provision of this Law and its Regulations.

*Procedure for
complaint*

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

i. A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer of the procuring entity or disposing entity who shall on receiving the complaints make a decision in writing within 15 working days indicating the corrective measures to be taken, including the suspension of the proceeding where he deems it necessary and gives his decision;

ii. Where the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within ten (10) days from the date of communication of the decision of the accounting officer.

iii. Upon receipt of a complaint, the Bureau shall promptly give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau settles the matter;

iv. Before taking any decision on a complaint, the Bureau shall notify interested bidders of the complaint considering representation from the bidders and from the respective procuring or disposing entity;

v. The Bureau shall make its decision within twenty –one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted.

(2) The following procedures shall apply to complaints against the Bureau;

i. a complaint by a bidder against the Bureau shall first be submitted in writing to the CEO of the Bureau who shall bring the complaint to the attention of the Board and the Board shall notify all interested bidders of the complaint and consider all representatives from the bidders and procuring or disposing entity.

ii. The Board shall make its decision within twenty- one (21) working days after receiving the complaints, stating the reasons for its decision and remedies granted;

iii. Where a bidder is not satisfied with the decision of the Board, the bidder may refer the complaint to Multi -Door Court House(ADR outfit); and

iv. The decision of the Multi Door Court House may include any or all the following;

- a. Dismissal of the complaint
- b. Nullifying in whole or in part an unlawful act or decision made by the procuring entity or the Board;
- c. Declaring the rules or principles governing the subject matter of the complaint; and
- d. Revising an improper decision by the procuring or disposing entity or the Board and substituting same with its own decision.

(3) The decision of the Multi Door Court House shall be final and bind the parties.

PART X: OFFENCES AND PENALTIES

Offences/Penalties

87. (1) Any natural person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment of One to five (1 to 5) years or an option of fine from a Minimum of N100,000 to N500,000 or Both.

(2) It shall be an offence to:

- a. open or tamper with any sealed Bid or any document required to be sealed divulging their contents prior to the appointed time for the public opening of Bids or other documents.
- b. delay, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided by this Law or its Regulations;
- c. enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned;
- d. engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other;
- e. directly or indirectly attempting to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract;
- f. split tenders to enable the evasion of monetary benchmark set;
- g. engage in bid-rigging
- h. Alter any procurement document with intent to influence the outcomes of tender proceedings;
- i. use fake documents or encouraging their use
- j. Willfully refuse to allow the Bureau or its officer to have access to any procurement record; and
- k. withdraw a bid, after it has qualified as the Lowest Calculated Bid Highest, Rated Bid, refusal to accept an award without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder; this shall include the non- submission within the prescribed time, or delaying the submission of requirement such as, but not limited to, Performance Guaranty, preparatory to the final award of the contract.

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

- i. a term of imprisonment of one (1) year with option of fine; and
- ii. shall be liable to dismissal from government service having regard to the provision of Civil service rules.

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

1. being barred from all public procurement for a period of not less than five (5) years; and
2. A fine equivalent to the value of the procurement in issue.

- (5) Where a Corporate body or firm is convicted pursuant to subsection (4) of this section, every Director of the Company shall be guilty of an offence and is liable on conviction to a term of imprisonment of not less than two (2) years but not exceeding three (3) years without option of fine unless he or she proves that the offence upon which the conviction was based without his knowledge.
- (6) An alteration pursuant to subsection (20) (h) of this section shall include but not limited to;
 - (a) forged arithmetical correction or calculating
 - (b) insertion of documents such as a bid or tax clearance certificate which were not submitted at the bid opening and
 - (c) request for clearance in a manner not permitted under this Law and its regulations.
- (7) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved is reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper applications of the provisions of this law.
- (8) Bid rigging pursuant to subsection (2) of this section means an agreement between persons where:
 - (a) offers submitted have been prearranged 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 value to the State Treasury.
- (9) For the purpose of subsection (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 totally or partially, directly or indirectly.
- (10) For the purposes of subsections (2), (5) and (8) of this section, it shall be sufficient to prove that reasonable business person have known that his action would result in his company from having an undue advantage over the other bidders to the detriment of the State Treasury.
- (11) Notwithstanding the provision of Chapter 4 of the Kano state civil Service Rules, civil servants who commit an offence under this law shall be liable for dismissal, termination, deferment of promotion, and debarment from participation in all future procurement in the State as well as withdrawal of code of conduct certificate.
- (12) In the case of public office holders, violation of this law, shall be liable to removal from office and or prosecution depending on culpability.
- (13). Any firm or corporate body, that contravenes the provision of sub-section (1) of this section, shall be liable for conviction to a term of imprisonment not exceeding one (1) year and or an option of fine which shall be two percent (2%) of the value of the procurement in issue or both.
- (14). Where a firm or corporate body is convicted under this section,

he shall be punished according to the regulations in this law, barred from Public procurement in the State and withdraw the Code of Conduct Certificate including that of the Director/s of a Company as the case may be.

- (15). In the event the complainant wins, he shall be compensated with a work equivalent to that bided for in value or an amount equivalent to anticipated to gain if successfully completed the works.

PART XI: MISCELLANEOUS

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| <i>Meetings</i> | 88. The Board shall hold meetings at least three times in every year and such other meetings as the situation may warrant. |
| <i>Presiding at the meeting</i> | 89. The meeting shall be presided over by the Chairman and in his absence members present shall appoint one of them to act as the chairman for the meeting. |
| <i>Quorum</i> | 90. The quorum of all meetings of the Board shall be two-third of the total number of Board members. |
| <i>Voting</i> | 91. All members shall be entitled to one vote at all meetings of the Board except the Chairman who shall have a casting vote. |
| <i>Validity of Proceedings</i> | 92. The validity of any proceeding of the Board shall not be affected by any vacancy in its membership or by any defect in the appointment of any member. |
| <i>Co-option</i> | 93. The Board may co-opt any person or persons to be a member of such meeting or meetings of the Board only if the need arises |
| <i>Privilege of co-opted member</i> | 94. The person so co-opted shall have the right and privileges of a Member and that such person shall not be entitled to vote upon any question. |
| <i>Power of delegation</i> | 95. The Board subject to such conditions as it may decide may appoint Committees to perform any of its functions where necessary. |
| <i>Authentication</i> | 96. The Seal of the Bureau shall be authenticated by the signature of the Director General or any other person as may be authorized generally or specifically by the Board. |
| <i>Standing Order</i> | 97. The Board shall make standing orders to regulate its own procedure and conduct of its meetings and may amend such orders. |
| <i>Non Liability of Member</i> | 98. No member of the Board shall be sued in his personal capacity for any act done or omitted to be done in good faith in the lawful performance of his duties under this law. |
| <i>Representation in Court</i> | 99. In any suit instituted by or against the Bureau, it shall be represented in court by a Lawyer from the office of the Attorney |

General of the State or any other legal Practitioner appointed by the Board.

Pre-action Notice

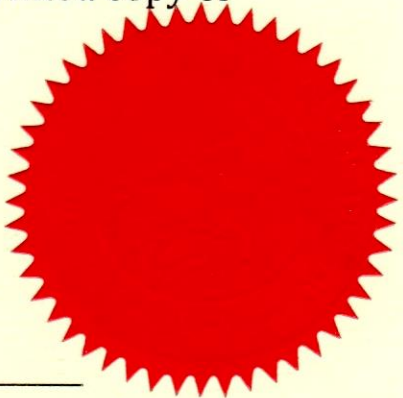
100. (1) Subject to the provision of this law, no suit shall be commenced against the Bureau before the expiration of 10 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending Plaintiff or his Agent and the notice shall clearly state:
- (a) The cause of action;
 - (b) The particulars of the claim;
 - (c) The name and address of legal practitioners of the intending plaintiff; and
 - (d) The reliefs sought.
- (2) The Director General as Head of the Bureau, its officers, employees or agents shall not personally be subjected to any action claim or demand by or liable to any person or in respect of anything done or omitted to be done in exercise of any functions or power conferred by this law.
- (3) A notice of summon or other documents required or authorized to be served upon the Bureau under the provisions of this law or any other law may be served by delivering it to the Director General or by sending it through registered post and addressed to the Director General at the principal office of the Bureau.

Savings

101. (1) All assets and liabilities including monies standing to the credit of the Bureau before coming into operation of this law shall without further assurances vest in the Bureau.
- (2) All contracts and agreements relating to dealings and activities entered into or carried out by the Bureau prior to the coming into operation of this law shall be deemed to have been entered or carried out under the provisions of this law and by the Board.

AUTHENTICATION BY THE CLERK

This printed impression has been carefully compared by me with the Bill **Kano State Public Procurement Law 2021 (1442 A.H)** which was passed by the Kano State House of Assembly and found by me to be a true and correct printed copy of the said Law.



Garba Bako Gezawa

**GARBA BAKO GEZAWA
CLERK/PERMANENT SECRETARY
KANO STATE HOUSE OF ASSEMBLY**

ASSENTED 30th DAY OF June 2021

20th DAY OF Zhilgida 1442 (A.H)

Dr. Abdullahi Umar Ganduje

**DR. ABDULLAHI UMAR GANDUJE OFR
GOVERNOR
KANO STATE OF NIGERIA**