



## **Adamawa State of Nigeria**

### **Gazette**

*Published by Authority*

---

No. 23

YOLA –27<sup>th</sup> June, 2013

Vol. 13

---

*Adamawa State Notice No. 23*

The following is published as a supplement to this Gazette:-

ADS. Law No. 7 of 2013 – Adamawa State House of Assembly Law, 2013

- - - - - A1 – A57

# **PUBLIC PROCUREMENT LAW, 2013**

## **ARRANGEMENT OF SECTIONS**

### **PART I: ESTABLISHMENT OF THE ADAMA WASTE BOARD ON PUBLIC PROCUREMENT**

1. Short title and commencement
2. Interpretation
3. Establishment of Board on Public Procurement and its Membership
4. Function of the Board

### **PART II: ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT**

5. The establishment of the Bureau of Public Procurement.
6. Objectives of the Bureau.
7. Functions of the Bureau.
8. Powers of the Bureau.
9. Director-General of the Bureau
10. Principal Officers of the Bureau
11. Other staff of the Bureau
12. Staff Regulations
13. Pension Provisions
14. funds of the Bureau
15. Financial year. Budgeting and Annual Report
16. Legal Proceedings

### **PART III: SCOPE OF APPLICATION**

17. Scope of Application

### **PART IV: FUNDAMENTAL PRINCIPLES FOR PROCUREMENT**

18. Fundamental Principles and Modes of Procurement

### **PART V: ORGANIZATION OF PROCUREMENT, APPROVING AUTHORITY**

19. Approving Authority
20. Procurement Planning
21. Procurement Implementation
22. Accounting Officer
23. Planning Committee

### **PART VI: PROCUREMENT METHODS (GOODS AND SERVICES)**

24. Modes of Conducting Procurement
25. Invitation of Bid
26. Bid Security
27. Submission of Bids
28. Rejection of Bids
29. Validity periods of Bids, Modification and withdrawal of tenders
30. Bid opening
31. Examination of Bids
32. Evaluation of Bids
33. Acceptance of Bids
34. Domestic preference
35. Mobilization fees
36. Contract Performance Guarantee
37. Interest on delayed payment
38. Records of Procurement Proceedings

## **PART VII: SPECIAL AND RESTRICTED METHODS OF PROCUREMENT TWO STAGES TENDERING**

39. Two stage tendering
40. Restricted tendering
41. Request for quotations
42. Direct Procurement
43. Emergency Procurement

## **PART VIII: PROCUREMENT OF CONSULTANTS (SERVICES)**

44. Expression of interest to provide services for ascertained needs
45. Request for proposals to provide services for unascertained needs
46. Conduct of the request for proposal
47. Clarification and modification of request for proposals
48. Submission of proposals
49. Criteria for evaluation of proposals
50. General selection procedures (services)
51. Procedure for selection of proposal where price is a factor
52. Selection procedure where price is not a factor

## **PART IX: PROCUREMENT SURVEILLANCE AND REVIEW**

53. Bureau to recommend investigation
54. Administrative review

## **PART X: DISPOSAL OF PUBLIC PROPERTY**

55. Disposal of public property

56. Planning of Disposals

**PART XI: CODE OF CONDUCT**

57. Code of Conduct for Public Procurement

**PART XIII: OFFENCES**

58. Offences relating to Public Procurement

**PART XIII: MISCELLANEOUS**

59. Miscellaneous

60. Interim Management Consultancy

# ADAMAWA STATE HOUSE OF ASSEMBLY



## Adamawa State of Nigeria Law No.7 of 2013

*A Law to Establish the Adamawa State Board on Public Procurement and the Bureau of Public Procurement as the Regulatory Authorities Responsible for the Monitoring and oversight of Public Procurement, Harmonizing the Existing Government Policies and Practices, Liaising with Federal Counterpart Bodies by Regulating, setting standards and developing the Legal framework and Professional Capacity for Public Procurement in Adamawa State and for related matters.*

[1<sup>st</sup> June, 2013]

### **PART I - ESTABLISHMENT OF THE ADAMAWA STATE BOARD OF PUBLIC PROCUREMENT**

1. This law may be cited as the Adamawa State Public Procurement (Amendment) Law, 2020 and shall come into operation on the 14<sup>th</sup> day of December, 2020.
2. The Adamawa State Public Procurement Law (in this Law referred to as "the Principal Law") is amended as set out in this Law.

Short title and  
Commencement

Amentment of Law  
No. 7 of 2013

**"Accounting Officer"** means the person charged with the supervision of the Conduct of all Procurement Process;

**"Approving Authority"** means the person charged with overall responsibility for the functioning of a Ministry, extra- ministerial department or corporation;

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

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

**"Debar"** means the placing of company or natural person on list of ineligible persons;

**"State"** means Adamawa State of Nigeria.

3. (1) The Board shall consist of:-

- (a) a Chairman
- (b) Director-General of the Bureau
- (c) A representative of the secretary to the state Government not below the rank of a Director.
- (d) a representative not below the rank of a Director from the following:-
  - i. Ministry of Finance and Budget;
  - ii. Ministry of Justice;
  - iii. Planning Commission;
- (e) a representative of Adamawa State Chamber of commerce and Industries.
- (f) Nigeria Society of Engineers, Adamawa State Chapter;
- (g) One Local Government Chairman from each of the Senatorial Zones which shall be rotated annually from amongst the Local Government Council Chairmen in the State;
- (h) a representative of the Nigerian Institute of Purchasing and Supply Adamawa State;
- (i) a representative of institute of Surveyors and Estate Valuers;
- (j) Three persons (3) from the private sector including a registered Quantity Surveyor with experience in procurement practices, one whom shall be a woman;
- (k) a representative of Civil Society Organizations (CSO); and
- (l) The Secretary to the Bureau to serve as Secretary.

(3) The Chairman and members shall be appointed by the Governor for a term of four years subject to the confirmation of the Adamawa State House of Assembly. Provided that only non-ex-officio members shall be subjected to confirmation by the Adamawa State House of Assembly.

(4) (1) The Chairman or member of the Board may cease to hold office if he or she resigns by notice in writing to the Governor.

(2) The Governor may subject to a resolution by 2/3 majority of the House of Assembly remove a member from office if he is satisfied that the member;

(a) Is an undercharged bankrupt; or

- (b) Is for whatever reason, permanently incapable of performing the duties of a member; or
  - (c) Has neglected the duties of a member or has engaged in misconduct; or
  - (d) Has been absent, without leave of the Board for 4 consecutive meetings of the Board; or
  - (e) Has been convicted of an indictable offence against this Law.
- (5) All members of the Board other than the Director General shall be appointed on Part time Basis.
- (6) The Chairman shall be a person with proven integrity, relevant educational qualification and experience in procurement related disciplines.

**4. The Board shall:**

- (a) Consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Law by procuring entities;
- (b) Consider and approve policies on public procurement;
- (c) Approve the appointment of the directors of the Bureau;
- (d) Receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;
- (e) Approve changes in the procurement process to adopt to improvements in E-Procurement;
- (f) As far as practicable benchmark the policies on procurement under this Law with policies for procurement approved from time to time by the partner agency created or existing under the Public Procurement Act of the Federal Government of Nigeria; and
- (g) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

Functions of the Board

**PART II: ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT**

- 5. (1)** There is hereby established an agency to be known as the Bureau of Public Procurement in this Law referred to as “The Bureau”

Establishment of Bureau of Public Procurement

**(2)The Bureau:**

- (a) Shall be a body corporate with perpetual succession and a common seal;
- (b) May sue and be sued in its corporate 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.

**6. The objectives of the Bureau are:**

Objectives of the Bureau

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

**7. The Bureau shall:**

Objectives of the Bureau

- (a) Formulate the general policies and guidelines relating to public sector procurement for approval by the Board; publicize and explain the provisions of this Law;
- (b) Subject to thresholds as may be set, by the Board, Certify State procurement prior to the award of contract;
- (c) Supervise the implementation of established procurement policies;
- (d) Monitor the prices of tendered items and keep a database of standard prices;
- (e) Publish the details of major contracts in the procurement journal;
- (f) Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (g) Maintain database of the particulars and classification and categorization of State contractors and service providers.
- (h) Collate and maintain in an archival system, of all State procurement plans and information;
- (i) Undertake procurement research and surveys;
- (j) Organize training and development programme for procurement professionals;
- (k) Periodically review the socio-economic effect of the policies on procurement and advise the Board accordingly.
- (l) Prepare and update standard bidding and contracts documents;
- (m) Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;

- (n) Review the procurement and award of contract procedures of every entity to which this Law applies;
- (o) Appoint external Auditor to perform procurement Audits and submit such report to the State House of Assembly.
- (p) Establish a single internet portal that shall, subject to Section 18 (21) of this Law serve as a primary and definitive source of all information on Government procurement, containing and displaying all public sector procurement information at all times.
- (q) Coordinates relevant training programs to build institutional capacity; and
- (r) In so far as standards and database are concerned, adopt by official gazette and make applicable in Adamawa State, any similar standard or database, as for the time being are applicable in public procurement by the Federal Government of Nigeria with or without modification.
- (s) Provide and maintain a fully functional unit for receiving and addressing procurement process complaints and their timely resolution, data on such resolutions shall be accessible to the House of Assembly and the Public for scrutiny.

**8. (1) The Bureau shall have the power to:**

Powers of the Bureau

- (a) Enforce the monetary and prior review thresholds set by the Board for the application of the provisions of this Law by the procuring entities;
- (b) Subject to paragraph(a)of this sub-section, issue certificate of “No Objection” for contract award within the prior review threshold for all procurement within the purview of this Law;
- (c) From time to time stipulate to all procuring entities, the procedures and documentations pre-requisite for the issuance of Certificate of “No Objection” under this Law;
- (d) Where a reason exist:
  - (i) Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law.
  - (ii) Review and determine whether any procuring entity has violated any provision of this Law.
- (e) Debar any supplier, contractor or service provider that contravenes any provision of this Law and regulations made pursuant to this Law;

- (f) Maintain a database of State contractors and service providers and to the exclusion of all procuring entities, prescribe classifications and categorization for the companies or business enterprises on the register.
  - (g) Maintain a list Firm and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;
  - (h) Call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrong doing, default, mismanagement and/or collusion has been alleged, reported or proved against a procuring entity or service provider;
  - (i) Recommend to the Board, where there are persistent or serious breach of this Law, regulations or guidelines made under this law for:
    - (i) The suspension of officers concerned with the procurement or disposal proceeding in issue;
    - (ii) The replacement of the head or any of the members of the procuring or Disposal Unit of any entity or the Chairman or Chairperson of the Tenders Board as the case may be;
    - (iii) The discipline of the Accounting Officer of any procuring entity;
    - (iv) The temporary transfer of the procuring and disposal function of a procuring and disposal entity to a third procurement agency or consultant; or
    - (v) Any other sanction that the Bureau may consider appropriate.
  - (j) Call for the production of books of accounts, tax clearance certificate plans, documents and examine persons or parties in connection with the procurement proceeding;
  - (k) Act upon complains in accordance with the procedures set out in this Law;
  - (l) Nullify the whole or any part of any procurement proceedings or award which is in contravention of his Law and
  - (m) Do such other things as are necessary for the efficient performance of its functions under this Law.
- (2)The Bureau shall, subject to the approval of the Board have power to:
- (a) Enter into contact or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions.

- (b) Request for and obtain from any procurement entity information including report, memoranda and audited accounts, tax clearance certificate and other information relevant to its functions under this law; and
- (c) Liaise with relevant bodies or institutions national and international for effective performance of its functions under this Law.

**9.** (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor on the recommendation of the Board subject to the confirmation of the State House of Assembly. Director General  
of the Bureau

(2) The Director-General shall be:

- (a) The Chief Executive and Accounting Officer of the Bureau;
- (b) Responsible for the execution of the policy and day to day administration of the affairs of the Bureau and
- (c) A person who possess University Degree in Management Science, Engineering or Law and must be a registered member of his professional body with at least 15 years post qualification experiences.

(3) The Director General shall hold office:

- (a) For a term of 4 years in the first instance and may be re-appointed for further term of 4 years and no more; and
- (b) On such terms and conditions as may be specified in his letter of appointment.

(4) Without prejudices to the provisions of this Law, the Director General of the Bureau may be removed from office by the Governor on the recommendation of the Board for gross misconduct, or financial impropriety or fraud, or manifest incompetence subject to a confirmation by two-third of the members of the State House of Assembly in plenary.

**10.** (1) The Board shall appoint the Principal Officer for the Bureau after competitive selection process. Principal Officers  
of the Bureau

(2) The Principal Officers appointed under sub-section (1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective departments and the Bureau as specified under this Law.

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

(4) There shall be a Secretary/Legal Adviser for the Bureau, who shall be responsible to the Board. The secretary shall be a Legal Practitioner

of not less than 10 years post call experience and shall be responsible for the following:-

- (a) assisting the Director General in the day to day operations of the Bureau;
- (b) arranging of meetings of the Board and its constituted committees;
- (c) Preparing agenda of meetings;
- (d) Conveying decisions of the Board to its members;
- (e) arranging for the payment of allowances of the Board Members and the Secretary and other related matters;
- (f) generally performing the duties as may be assigned to him by the Director General or the Board.

**11.** (1) The Bureau may appoint such officers and other employees as it may from time to time, deem necessary for the purposes of the Bureau.

Other Staff of the Bureau

(2) Subject to the Provisions of any Law of the State regulating pensions, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined by the Board.

(3) Without prejudice to the generality of sub-section (1) of this section, the Board shall have power to appoint either on transfer or on secondment from any public service in the State, such number of employees as may require to assist the Bureau in the discharge of any of its functions under the Law and persons so employed shall be remunerated (including allowances) as the Board may consider appropriate.

**12.** (1) Board may, subject to the provisions of this Law and within six months of the inauguration, make staff regulations relating generally to the conditions of services of the employees of the Bureau and without prejudice to the foregoing; such regulations may provide for:

Staff Regulations

- (a) The appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
- (b) Appeals by such employees against dismissal or other disciplinary measures.

(2) Until such regulations are made, any instrument relating to the conditions of services of officers in the Civil Service of the State shall be applicable.

**13.** Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the Law of the State regulating pensions.

Pension Provisions

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

- (a) The sums appropriated by the State House of Assembly for the running of the Bureau;
- (b) All subventions, fees and charges for services rendered or publications made by the Bureau; and
- (c) All other assets which may, from time to time, accrue to the Bureau.

(2)The Bureau shall charge its funds to meet all its expenditure and other manner in which assets or the funds of the Bureau are to be held, and regulating the making of payment into and out of the funds; and

(3)The Bureau shall keep proper accounts and records for the purpose of the fund in such form as may be specified in the rules.

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

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

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

Financial year,  
budgeting and  
annual report

(2)Not later than 6 months before the end of the financial year, the Bureau shall submit to the Board an estimate of its expenditure and projected income during the next succeeding year.

(3) The Bureau shall keep proper accounts and records of receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Board may direct.

(4) The Bureau shall within 6 months after the end of the financial year to which the account relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor-General of the State.

(5)The Bureau shall at the end of each financial year, prepare and submit to the Board a report in such form as shall accurately capture all the activities of the during the preceding year and shall include in the receipt a copy of the audited accounts of the Bureau for that year.

**16.**(1)Subject to the provision of the Law, no suit shall be commenced against the Bureau before the expiration of 60 days after written notice of an intention to commence the sui shall have been served upon the Bureau by the intending claimant, plaintiff or his agent, and the notice shall clearly and explicitly state: Legal Proceedings

- (a) The cause of action;
- (b) The particulars of the claim;
- (c) The name and address of legal practitioner of the intending plaintiff; and
- (d) The brief being sought

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

(3)A member of the Bureau or the Director General or any officer or employee of the Bureau shall be indemnify out of the assets of the Bureau against any liability incurred by him in defending any proceedings, whether civil or criminal, if the proceeding is brought against him his capacity as a member, Director-General, officer or other employee of the Bureau provide however that such an officer was acting within the provision and in compliance with this Law.

(4)A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Law or any other document required or authorized to be served upon the Bureau under the provisions of this Law or any other Law or enactment maybe served by delivering it to the Director-General or by sending it by registered post and addressed to the Director-General at the principal office of the Bureau.

## **PART IIISCOPE OF APPLICATION**

**17.** (1)The provisions of this Law shall apply to all procurements of goods, works and services carried out by: Scope of Application

- (a) The Government of Adamawa State and all procurement entities;
- (b) All entities outside the foregoing description which derive at least35% of the funds appropriated or proposed to be

appropriated for any type of procurement described in this Law from the State Consolidated Revenue Fund; and

(c) all Public procurement by Local Government Councils and Tertiary institutions of Adamawa state.

(2)The provisions of this Law shall not only apply to the procurement of special goods, works and services, involving State Security (as may be designated by the Governor of the State by an instrument, under his hand) unless the Governor’s express approval has been sought and obtained.

(3)The provisions of the Law shall not apply to any public procurement which the State Government and the Federal Government and the donor assisted programmes funds are jointly executing provided however that this Law shall apply to any public procurement solely executed by the State Government in respect of which a reimbursement may be claimed from the Federal Government.

#### **PART IV: FUNDAMENTAL PRINCIPLES FOR PROCUREMENT**

**18.** (1) Subject to any exemption allowed by this Law, all public procurement shall be conducted: Fundamental Principles and mode of procurement

- (a) Subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to Section 8 (1)- (b) of this Law;
- (b) Based only on procurement plans supported by prior budgetary appropriations and non procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and, subject to the threshold in the regulations made by the Bureau, has obtained “Certificate of No Objection to Contract Award” from the Bureau;
- (c) By open competitive bidding
- (d) In a manner which is transparent, timely, equitable for ensuring accountability and. conformity with this Law and regulations deriving there from;
- (e) With the aim of achieving value for money and fitness for purposes;
- (f) In a manner which promotes competition, economy and efficiency; and
- (g) In accordance with the procedures and timeline laid down in this Law and as may be specified by the Bureau from time to time.

(2) Where the Bureau has set prior review' thresholds in the procurement regulations, no funds shall be disbursed from the

Treasury or account of the State or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payment or other form of request for payment is accompanied by the certificate of "No Objection" to an award of contract duly issued by the Bureau. .

(3) For all cases where the Bureau shall set are view threshold the Bureau shall prescribe by regulations, .guidelines and the conditions precedent to the award of Certificate of "No Objection" under this Law.

(4) Subject to the prior review thresholds as my be set by the Bureau, any procurement purposed to be awarded without a "Certificate of No Objection to Contract Award" duly issued by the Bureau shall be null and void.

(5)A supplier, contractor or service provider may be a natural person, a legal person, a registered business enterprises, or a combination of the three, supplier, contractors or service provider acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law",

(6) All bidders in addition "to requirements contained in any solicitation documents shall:

(a) Posses the necessary:

- (i) Professional and technical qualification to carry out particular procurements;
- (ii) Financial capability:
- (iii) Equipment and other relevant infrastructure;
- (iv) Shall have adequate personnel to perform the obligations of the procurement contracts; and
- (v) Every bid or service to be provided be accompanied with tax clearance certificate for 3 years immediately preceding the current year of assessment.

(b) Posses the legal capacity to enter into the procurement contract;

(c) Not be in receivable, the subject of any form of insolvency or bankruptcy proceeding or the subject of any form of winding up petition or proceedings; but where such status is the subject of pending litigation the bidder may bid subject to disclosing its said status in the bid and the substances and stage of the legal disputation on the status;

- (d) Have fulfilled all its obligations to pay taxes as at when due by the production of tax clearance certificate, pensions and social security contributions,
- (e) Not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
- (f) Accompany every bid with a duly sworn affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau its former or present pecuniary interest in the bid and confirming that all information presented in its bid are true and correct in all particulars.

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

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

- (a) There is veritable evidence that any supplier, contractor and consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefits, items or a service that can be quantified in monetary terms to a current or former employee of procuring entity or the Bureau, in an attempt to influence any action, or decision making of any procurement activity;
- (b) Supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;
- (c) The bidder is in receivership or the subject of any type of insolvency proceedings or if being a private company under the companies and allied matter Law, is controlled by a person or persons who are subject to bankruptcy proceedings (not excepted by the disclosure requirement in Section 8 (1) or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceedings;
- (d) The bidder is in arrears regarding payment of due taxes, changes, pensions or social insurance contribution, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or

payment in installments.

- (e) The bidder has been validly sentenced for a crime committed in connection with a procurement proceedings, or any other crime committed to gain financial profits;
- (f) The bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; and
- (g) The bidder fails to submit a statement regarding its dominating 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 remains in subordinate relationship with other participants to the proceedings; and
- (h) In such cases the procuring entity shall inform the Bureau and person referred to in subsection (8) (a)- (g) of this Section, in writing that the bid or tender in question has been excluded and the grounds of the exclusion, and to keep a record of same in the file pertaining to the public procurement proceeding in question.

(9) All communication and documents issued by procuring entities and the Bureau shall be in English Language, but a translated version in a popular local government within the State may be issued where it is thought desirable to do so.

(10) All communication regarding anything deriving from this law or proceeding of public procurement shall be in writing or such form as may be stipulated by the Bureau.

(11) Every procuring entity shall maintain documented records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.

(12) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after end of the financial year and shall show:-

- (a) Information identifying the procuring entity and the contractors;
- (b) The date of the contract award;
- (c) The value of the contract; and
- (d) The detailed records of the procurement proceedings.

(13) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by

the Bureau.

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

(15) The burden of proving fulfillment of the requirements for participation in any procurement proceedings shall lay on the supplier or contractor.

(16) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.

(17) Notwithstanding subsection (16) of this Section; the Bureau may refuse to issue a certificate of "No Objection to Contract Award" on the grounds that the price is excessive.

(18) Pursuant to subsection (17) of this Section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the proceeding entity conduct are-tender.

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

(20) The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this law and the regulations laid down by the Bureau are complied with, and concurrent approval by a Tender Board shall not absolve the accounting officer from accountability for anything done in contravention of this Law or the regulations laid down hereunder.

Procurement and proposal decisions of a procuring entity shall be taken with strict adherence I to the provisions of this law and any regulations as may from time to time be laid down by the Bureau.

(22) Persons who have been engaged preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either a main contractor or sub- contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders

(23) A procuring entity shall not request or stipulate a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceedings, save where such requirement is consistent with local content policy, regulations or law of the state or act of the Federal Government in any particular industry, particularly in the oil and gas and associated industry in which the State Government is financially committed.

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

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

(26) All procurement contracts shall contain warranties for durability or goods, exercise or requisite skills in service provision and use of genuine materials.

## **PART V: ORGANIZATION OF PROCUREMENT APPROVING AUTHORITY**

**19.** Subject to the monetary and prior review thresholds for procurement in this law as may from time to time be determined by the Board, the following shall be approving authority for the conduct of public procurement:

Approving  
Authority

- (i) A government agency parastatal or corporation a parastatal Tenders Board; and
- (ii) a ministry or extra-ministerial entity, the Ministerial Tender's Board, Local Government Tenders Board for Local Government Councils and Tertiary Institutions Tenders Board in the State.

**20.** 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:

Procurement  
Planning

- (a) Preparing the needs assessment and evaluation;
- (b) Identifying the goods, works or services required;
- (c) Carrying appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;
- (d) Aggregating its requirements whenever possible both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement costs;
- (e) Integrating its procurement expenditure into its yearly budget;
- (f) Prescribing any method for effecting the procurement subject to the necessary approval under this Law; and
- (g) Ensuring that the procurement entity functions stipulated in this Section shall be carried out by the procurement planning committee.

**21.** 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:

Procurement  
Implementation

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

- (b) To invite two credible persons as observers in every procurement process. one person each representing a recognized;
  - (i) Private sector, professional organization whose expertise is relevant to the particular goods or services being procured; and
  - (ii) Non-governmental organization working in transparency accountability and anti-corruption area, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or association.
- (c) Receives, evaluate and make a selection of the bids received in adherence to this 'law and guidelines as may be issued by the Bureau from time to time;
- (d) Obtain approval of the approving authority before making an award;
- (e) Debrief the bid losers on requests;
- (f) Resolve complaints and disputes if any;
- (g) Obtain and confirm the validity of any performance guaranteed;
- (h) Obtain a " Certificate of No Objection to Contract Award" from the Bureau within the prior review threshold as stipulated in Section 8 (1) (a) of this Law;
- (i) Execute all contracts agreements; and
- (j) Announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.

**22.**(1) The accounting officer of the procuring entity shall be a person Accounting Officer charged with line supervision of the conduct of all procurement processes; in the case of ministries, the Permanent Secretary and in the case of extra-ministerial departments and corporations the Director-General or officer of coordinate responsibility.

(2) The accounting officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:

- (a) Ensuring compliance with constituting the procurement committee and its decisions; the provisions of this Law by his entity and liable in person for the breach or contravention of this law or any regulations made hereunder whether or not the

act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;

- (b) Constituting the procurement committee and its decision;
- (c) Ensuring that adequate appropriation is provided; specifically for the procurement in the State budget;
- (d) Integrating his entity's procurement expenditure into the yearly budget;
- (e) Ensuring that no reduction of values or splitting of procurement is carried out as to evade the use of the appropriate procurement method;
- (f) Constituting the evaluation committee;
- (g) Liaising with the Bureau to ensure the implementation of its regulations.

**23.**(1) Every year each procuring entity shall establish a Procurement Planning Committee, Planning Committee

(2) The Procurement Planning Committee shall consist of:

- (a) The accounting officer of the procuring entity or his representative who shall chair the committee;
- (b) A representative of:
  - (i) The procurement unit of the procuring entity who shall be the Secretary;
  - (ii) The unit directly in requirement of the procurement;
  - (iii) The financial unit of the procuring entity;
- (c) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
- (d) Any documentary evidence or other information that must be submitted by the suppliers, contractors, or consultants to demonstrate their qualifications and competence on the job;
- (e) The manner and place for the submission of application to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications, taking into account the reasonable need of the procuring entity; and
- (f) Any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations

relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.

(3) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the pre-qualification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.

(4) The response to the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify.

(5) The response to any request that might reasonably be expected to be of interest to other suppliers, contractors, or consultants, shall, without identifying the source of request communicated to other suppliers or contractors or consultants provided with the pre-qualification documents by the procuring entity.

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

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

(8) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.

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

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

(11) The procuring entity shall qualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

## **PART VI: PROCUREMENT METHODS (GOODS AND SERVICES)**

**24.**(1) Except as provided by this Law, all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding.

(2) Any reference to open competitive bidding in this law means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.

(3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standards.

**25.**(1) Invitation to bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard. Invitation of Bids

(2) Every invitation to an open competitive bid shall:

(i) In the case of goods and works, under international competitive bidding, the invitation for bids shall be advertised in at least two national newspaper and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works;

(ii) In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two newspapers (one of which must have national circulation), and in the procurement journal (if any) not less than six weeks before the deadline for submission of the bid for the goods and works.

**26.** (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau" ail procurement valued in excess of the sums prescribed by 'the Bureau shall require a bid security in any sums amount not more than 20% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity: Bid Security

-

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

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

**27.** (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contractor and placed in a sealed envelope. Submission of Bid

(2) All submitted bids shall be deposited in a secured tamper proof bid box.

(3) All bids submitted shall be in English language.

(4) The-procuring entity shall issue a receipt showing the date and time the bids were delivered.

(5) Any bid received after the deadline for the submission of bids shall not be opened-and must be returned to the supplier or contractor which submitted it.

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

**28.** A procuring entity may: Rejection of Bid

(a) reject all bids at-any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders; and

(b) Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders;

**29.** (1) The period of validity for a bid shall be the period specified in the tender documents. Validity Period of Bid, Modification and Withdrawal of Tenders

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

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

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

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

**30.** (1) 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: - Bid opening

- (a) Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) Cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public
- (c) Ensure that the bid opening-takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- (d) Ensure that a register is taken of the names and address of each bidder, the total amount of each bid, the currency and shall ensure that these details are recorded by the Secretary of the Tender Board; and
- (e) Call over to the, hearing of all present the name and address of each bidder, the total 'amount of each bid, the currency and shall ensure that these details are recorded by the Secretary of the Tender Board or his delegate in the minutes of the bid opening.

**31.**(1) All bias shall be first examined to determine if they:

Examination of  
Bid

- (a) Meet the minimum eligibility requirements stipulated in the bidding documents;
- (b) Have been duly signed;
- (c) Are substantially responsive to the bidding documents; and
- (d) Are generally in order.

(2) A procuring entity may request suppliers for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

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

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

(4) Notwithstanding 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:

(6) A major deviation shall result in a rejection of bid.

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

(a) With-respect to clauses in an offer;

- (i) unacceptable sub-contracting;
- (ii) Unacceptable time schedule if time is of essence
- (iii) Unacceptable alternative designs;
- (iv) Unacceptable price adjustment;
- (v) The difference in standards;
- (vi) Omission in minor items;
- (vii) Sub-contracting that is unclear and questionable; and
- (viii) different methods of construction;

(b) With respect to the status of the bidder

- (i) The fact that he is ineligible or not prequalified; and.
- (ii) The fact that he is uninvited.

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

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

- (i) any bid received after the date and time for submission stipulated in the solicitation documents;
- (ii) Any bid submitted at the wrong location;
- (iii) Difference in final delivery date;
- (iv) Difference in delivery schedule; and
- (v) Non-compliance with some technical local relations.

(8) In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.

(9) In all the 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) For the rejection, a bid written notice shall be given promptly to the suppliers.

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

(2) The objectives of bid evaluation shall be to determine and select the lowest evaluation responsive bid from bidders that have responded to the bid solicitation.

(3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tender Board shall in particular undertake the following process as applicable;

- (a) Checking of deviation;
- (b) Checking of omission with quantification of same;
- (c) Application of discounts, as applicable;
- (d) Calculation and tabulation of bid amount with domestic preference where applicable;
- (e) Determination of the calculated prices in order or rank;
- (f) Post-qualification of bidders; where applicable;
- (g) Listing of rejection of bids, where applicable;
- (h) Decision of rejection of all bids where justifiable;
- (i) Recommendation for award; and
- (j) Writing of the bid evaluation report.

(4) Such factors in addition to price will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

(5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include;

- (a) For goods, among others costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages.
- (b) For work, in addition to factors stipulated in Section 36 (1) of this Law, and subject to Section 36 (2) of this Law, if time is a critical factor, the value of early completion; and
- (c) The value of early completion under Section 37 (2) of this law shall not be taken into account unless, in conformity with

criteria pre-set in the bidding documents the conditions of contract provide for commensurate penalties in case of late delivery.

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

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

(8) After opening of bids, information relating to the examination, clarification and valuation of bids and recommendations concerning award shall be disclosed to bidder or to persons not officially concerned with the valuation process until the successful bidder is notified of the award.

**33.**(1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation. Acceptance of Bids

(2) Notwithstanding subsection (1) of this section, the selected bidder needs not to be the lowest cost bidder' provided the procuring entity can show good grounds derived from the provisions of this law to that effect.

(3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

**34.**(1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad. Domestic preference

(2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall 'indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.

(3) Margins of preference shall apply only to international competitive bidding.

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

**35.**(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 40% may be paid to a supplier or contractor supported by the following: - Mobilization fees

(a) In the case of National Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity; and

(b) In the case of International Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.

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

**36.**(1) The provision of a performance guarantee shall be a pre- condition for the award of any procurement contract upon which any mobilization fee 'is to be paid; provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher. Contract Performance guarantee

**37.**(1) Payment for the procurement of goods, works and services shall be settled promptly. Interest on delayed payment

(2) Any payment due for more than 30 days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra Ministerial office, government agency, parastatal or corporation shall be deemed a delayed payment.

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

(4) All contracts shall include terms, specifying the interest rate for late payment of more-than sixty days which rate shall not exceed the commercial bank lending rate at the time of contract award.

**38.**(1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings. Record of Procurement Proceedings

(2) The portion of the record referred to in this Section shall, on request, made available to:-

- (a) Any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract, and
- (b) Suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations or applied for prequalification, after a tender, proposals, offer or quotation has been accepted or procurement proceedings have been terminated.

(3) A disclosure of procurement proceeding records, prior to award of contract may be ordered by a court provided that the court shall not so order and the procurement entity shall not disclose such information, if its disclosure would:

- (a) Be contrary to Law;
- (b) Impede Law enforcement; or
- (c) Prejudice commercial interest of the parties.

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

(5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau. An investigator appointed by the Bureau and the Auditor-General upon request, or upon request of a Law enforcement agency in pursuance of its statutory duty where a criminal offence is suspected to have committed in the course of a specific procurement; and where donor funds have been upon request to procurement files for the purpose of audit and review.

## **PART VII: SPECIAL AND RESTRICTED METHODS OF PROCUREMENT TWO STAGETENDERING**

**39.**(1) Notwithstanding the provision of this law, the Bureau may issue "Certificate of No Objection" upon condition hereinafter prescribed. Two stage tendering

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

- (a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works or in the case of

services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;

- (b) where the character of the goods or works are subject to rapid technological advances, where the procuring entity seeks to enter into a contract for search, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research development costs, where the procuring entity, applies this Law to procurement concerned with State Security and method of procurement; or
- (c) Where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive entity considers that engaging in new tendering proceedings will not result in a particular contract.

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

(4) The invitation documents:

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

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

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

- (a) Shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
- (b) May, in formulating the specification, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate, and compare tender and ascertain the successful tender.
- (c) May add new characteristics or criteria that conform with this Law;
- (d) Shall communicate to suppliers or contractors in the invitation to quotation from suppliers or contractors where the value of the goods to be procured does not exceed a sum that shall be set in the procurement regulation.

**40.**(1) Subject to approval by the Bureau, a procuring entity may for reasons of economy and efficiency, or legitimate affirmative action backed by an official government policy, engage in procurement by means of restricted tendering if:

Restrictive tendering

- (a) The goods, works or services are available only from a limited number of suppliers or contractors.
- (b) The time and cost require to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
- (c) The procedure is used as an exception rather than norms; or
- (d) In the overriding public interest in pursuance of a legitimate affirmative action backed by an official government policy.

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

- (a) The goods, works or services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
- (b) The time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of goods, works or services, it shall select in a non- discriminatory

manner of the number of suppliers or contractors to ensure effective competition.

(3) For the purpose of sub-section (2) of this Section, the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal,

(4) The provision of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.

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

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

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

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

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

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

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

(6) Where the total value of procurement is not more than a sum that shall be in the regulation, the procurement entity may not obtain the Bureau's approval.

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

(a) Goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor

has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or

- (b) 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;
  - (c) Owing to a catastrophic event there is an urgent need for 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 when it determines that
    - (i) Additional supplies need to be procured from that Supplier or contractor because of standardization;
    - (ii) There is a need for compatibility with existing Goods, equipment, technology, or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
    - (iii) The limited size of the proposed procurement in relation to the original procurement provides justification;
    - (iv) The reasonableness of the price and unsuitability of alternatives to the goods or services in question merits the decision;
    - (v) The procuring entity seeks to enter a contract with the supplier or contractor for research, experiment, study or development except where the contract includes the reduction of goods in quantities to establish commercial viability or recover search and development costs: or-
    - (vi) The procuring entity applies this Law for procurement that concerns national security, and determines that single source procurement is the most appropriate method of procurement
- (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 records of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

**43.**(1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where: Emergency Procurement

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

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

(3) All procurements made-under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.

(4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau, which shall verify same and if appropriate issue a Certificate of No Objective.

## **PART VIII: PROCUREMENT OF CONSULTANT (SERVICES)**

**44.**Where a procuring entity wishes to procure services for its needs which are precise and ascertainable; Expression of Interest to provide Services for Ascertain Needs

- (a) It shall solicit for expression of interest or application to pre-qualify to provide the services by publishing a notice to that effect in at least 2 newspapers (one of which shall have national circulation) and the procurement journal (if any);
- (b) Where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only low profile consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to

make proposals for the provision of the services in a format stipulating;

- (i) A statement of qualification of the consultant to provide the service;
- (ii) A statement of understanding of the procuring entity's needs;
- (iii) The methodology for procuring the services;
- (iv) The time frame for providing the services; and
- (v) The cost or fee for the services.

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

Request for  
Proposals to provide  
Services for  
Unascertained Needs

(2) The procuring entities shall procure the services of consultants by soliciting for expression of interest by publishing a notice to that effect in 2 newspapers (one of which shall have national circulation) and the procurement journal.

(3) A procuring entity may make direct request to a limited number of consultants, requesting proposals for the provision of 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 public interest and state security or similar reason of confidentiality

**46.** (1) Request for proposals shall include:

Conduct of the  
Request for  
proposals

- (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 qualification of the consultants;
- (f) The requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) The nature and required characteristics of the services to be procured including the location, where the services are to be provided and the time when the services are to be provided;
- (h) Whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) A requirement that the proposal is to be expressed in Nigeria currency;
- (j) The manner in which the proposal price is to be expressed on whether the price cover element apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) Whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost 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 request to submit proposals.

**47.**(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.

Clarification and  
Modification of  
Request for  
Proposals

(2) A procuring entity may, whether on its initiative or 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

(3) The addendum shall be communicated promptly before the deadline for the submission of proposal to the shortlisted consultants to whom the procuring entity has provided the request for proposal 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 clarifications.

(5) The minutes shall be provided promptly before the deadlines for the proceeding to enable them take the minutes into account in preparing their proposals.

**48.**(1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposal but shall in no case give less than 30 days between the issue of the notice on request and the deadline for submission. Submission of Proposals

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

(3) A proposal received after the deadline for submission of proposals shall be returned to the Tender unopened.

(4) Immediately after the deadline for submission of proposal, the technical proposal shall be opened for evaluation whilst the financial proposal shall remain sealed and kept in a secure bid-box until they are opened publicly.

(5) The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any Tenders Boards review are concluded.

**49.**(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: Criteria for Evaluation of proposals

(a) The qualification, experiences, reliability, professional and managerial competence of the consultant or service provider and/ofthe personnel to be involved in providing the services.

- (b) The effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) The proposal price, including any ancillary or related costs;
- (d) The effect that acceptance of the proposals will have on the revenue profile and projection of the State for the contract period, the extent of participating 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 arrangement offered by consultant or service providers.

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

**50.**(1)The procuring entity shall select the successful proposal by choosing the proposal with: General Selection Procedure (Service)

- (i) The lowest evaluated price; or
- (ii) The best combined evaluation in terms of the general criteria set out in the request for proposal 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.

**51.**(1)Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out In the request for proposals and fate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposal. Procedure for Selection of Proposals where of price is a factor

(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 consultant whose proposal did not meet the minimum qualifying mark or were non-responsive to the invitation for proposal 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 proposal which shall be part of the evaluation report and shall retain this record.

(6) The successful proposal shall be:

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

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

(8) The proposal unit rates for staff months and reimbursable shall not be negotiated unless there are exceptional reasons.

**52.**(1) Where the procuring entity elects to make a quality-based selection, Procedures is not based on consultant's qualification or single-source selection, it shall engage in negotiations with consultant in accordance with this Section.

(2) The procurement entity shall:

- (i) Establish a weight with respect to quality and price of the proposals;
- (ii) Invite for negotiations on the price of its proposal, the consultants that has attained the best rating in accordance with sub-section (1) of this Section;
- (iii) Inform the consultants that attain ratings above the weight that may be considered for negotiation if the negotiations with the

consultants with the best rating do not result in a procurement contract; and

- (iv) Inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant, invited under subsection (3) 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 consultants do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

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

## **PART IX:PROCEDURE SURVEILLANCE AND REVIEW**

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

Bureau to  
Recommend for  
Investigation

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

- (a) Require an office, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to procedure any books, records, or accounts or documents;
- (b) Search premises for any books, records, accounts or documents;
- (c) Examine and make extracts from copies of books, records, accounts or documents of any procuring entity, bidder, supplier contractor or consultant;
- (d) Prove books, records, 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 such copies but the investigator shall give a detailed receipt for books, records, accounts, or documents, removed;
- (e) Require an officer, employee or agent of the procurement entity or bidder, supplier or contractor or consultant;

- (i) To explain an entry in the books, records, account or documents; or
  - (ii) To provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.
- (f) Explain an entry into books, records, accounts or documents; and
- (g) Provide the investigator with information concerning the management or activities of the procurement entity or bidder as may be reasonably required.

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

(4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulations in relations to procurement proceedings or procurement contract, take action to rectify the contravention which action shall include;

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

(5) On completion of the investigation, the relevant authority shall if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

**54.** (1) A bidder may seek administrative review of any omission or breach by a procuring or disposing entity under the provisions of this Law, regulations or guidelines made under this Law or the provisions of bidding documents.

Administrative  
Review

(2) A complaint by a bidder against a procuring or disclosing entity shall first be submitted in writing to the accounting officer;

- a) Within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint

or should have become aware of the circumstances, whichever is earlier;

- b) On reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.

(3) If the bidder is not satisfied with the decision of the Accounting Officer or the accounting officer does not make a decision within the period specified in sub-section (2), (b) the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the Accounting Officer or on the expiration of the time within which the accounting officer was expected to act and failed to do so.,

(4) Upon receipt of a complaint, the Bureau shall promptly;

- a) Give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter,
- b) Unless it dismisses the complaint
  - (i) Prohibit a procuring or disposing entity from taking any further action
  - (ii) Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
  - (iii) Declare the rules or principles that govern the subject matter of the complaint; and
  - (iv) Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.

(6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take representatives from the bidders and from the respective procuring or disclosing entity

(7) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any

(8) Where the Bureau fails to render its decisions within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the

bidder may appeal to the High Court within 30 days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision. :

## **PART X: DISPOSAL OF PUBLIC PROPERTY**

**55.**(1) This section shall apply notwithstanding anything to the contrary in any law made for the time being for the divestment of government interest in public enterprises or in any company including Local Government Councils and Tertiary Institutions in the State.

Disposal of Public  
Property

(2) For the purpose of this Law every procuring entity shall also be a disposing entity.

(3) The open competitive bidding shall be primary source of receiving offers for the purchases of any public property offered for sale.

(4) The Bureau shall, with the approval of the Board;

- a) Determine the applicable policies and practices in relations to the disposal for all property;
- b) Issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
- c) Issued standardization document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- d) Issue with a certificate showing the description of the article, identifying mark or number, date and place where sold, and signature, name and designation of officer carry the service.

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

- (a) Created through public deeds;
- (b) Acquired as a gift or through deeds;
- (c) Acquired in respect of intellectual or proprietary rights;
- (d) Acquired on financial instruments (including shares, stocks, bonds, ere);
- (e) Acquired by good will and any other gifts of the State Government;

- (6) The means of disposal of public assets shall include-
- (a) Sale and rental;
  - (b) Lease and hire purchase;
  - (c) License and tenancies;
  - (d) Franchise auctions;
  - (e) Transfer from one government department to another with or without financial adjustment; and
  - (f) Offer to the public at an authorized valuation'.

**56.**(1) Before slating any public property for disposal, the accounting officer (whether acting on his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a valuation report for such property by an independent evaluator or such professional with the appropriate competence to carry out the valuation. The report of the valuation committee shall be forwarded to the Bureau for No objection before the disposal is carried out.

Planning of  
Disposals

(2) The disposal of assets whether or not in the assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.

(3) The disposal of assets referred to in sub-section (2) of the Section shall be timed to take place when most advantageous returns can be obtained for the assets in order to maximize revenue accruing to the government.

(4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

## **PART XI: CODE OF CONDUCT**

**57.**(1) The Bureau shall, with the approval of the Board stipulate a code of conduct for all public officers, suppliers, contractors, and services providers with regards to their standard of conduct acceptable in matters involving the procurement and disposal of public assets; and such code shall be consistent with the provisions of the Code of Conduct contained in the fifth Schedule to the Constitution of Federal Republic of Nigeria, 1999.

Code of Conduct for  
Public Procurement

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

(3) All officers of the Bureau, members of Tender Board and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by the Board.

(4) All persons in whose hand public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.

(5) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurements.

(6) These principles shall apply at all times, particularly, when:

- (a) Making requisition for or planning of procurements.
- (b) Preparing solicitation documents;
- (c) Receiving offers in response to any form of solicitation towards a procurement or disposal;
- (d) Evaluating and comparing offers confidentially and in complete neutrality;
- (e) Protecting the interest of-all parties without fear or favour:  
and
- (f) Obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.

(7) All public officers shall handle public procurement and disposal of assets by:

- (a) Ensuring adequate time for preparing offers;
- (b) Maintaining strict confidentiality until completion of a contract

(8) All public officers involved in public procurement and disposal of assets shall maintain the highest standard of ethics in their relationship with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such persons so that where it is seen that remedial action is taken, a conflict of interest is present.

(9) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:-

- (a) Divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlying principles of this Law; and
- (b) Not engage or participate in any commercial transaction involving the State Government, its ministries, extra-ministerial department, corporations where his capacity as public officer is likely to confer any unfair advantage-pecuniary or otherwise on him or any person directly related to him.

(10) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to, assumed a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.

(11) Such a declaration shall be given such consideration at the relevant level as is necessary so that where it is seen that remedial action is taken. a conflict of interest is present.

(12) A conflict of interest exists where a person;

- (a) Possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
- (b) Possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or services provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings;
- (c) Entertains relationship which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgment;
- (d) Places by acts or omission the procuring entity he represents or the Government in an equivocal embarrassing or ethically questionable position;
- (e) Entertains relationship compromising the reputations or integrity of the procuring entity he represents or the government;

- (f) Receives benefits by taking personal advantages of an opportunity that properly belongs to the procuring entity he represents or the government;
- (g) Creates a source of personal revenue or advantage by using public property which comes into his hand either in the course of his work or otherwise; and
- (h) Discloses confidential information being either the property of his procuring entity, the government or to a supplier, contractor, or service provider to unauthorized persons.

(13) A person involved in the disposal of assets, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period often years after the disposal.

## **PART XII: OFFENCES**

**58.**(1) Any natural person not being a public officer who contravenes any provisions of this law commits an offence and is liable on conviction to a term of imprisonment of not less than 5 calendar years but not exceeding 10 calendar years without an option of fine.

Offences Relating to  
Public Procurement

(2) Any offence in contravention of this Law shall be tried by the High Court.

(3) Prosecution of offences under this Law shall be instituted in the name of the Adamawa State Government by the Attorney General of the State or such other officers of the State Ministry of Justice as he may authorize so to do and in addition without prejudice to the constitution of the Federal Republic of Nigeria 1999, he may:

- (a) At the request of the Attorney General of the Federation or of another State undertake or authorize the prosecution of any offence under a similar enactment of the Federal Government, or of another State, by other officers of the Ministry of Justice, where an element of the offence sufficiently vests jurisdiction in the High Court of Adamawa State; or
- (b) If the relevant authority so request, authorize any legal practitioner in Nigeria to so prosecute the offence.

(4) The following shall also constitute offences under this Law:

- (a) Entering or attempting to enter into a collusive agreement, whether enforceable or not with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposal or quotations are or would be higher than would have been the case had there been no collusion between the persons concerned;
  - (b) Conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour agreement, bribery or corruption;
  - (c) Directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
  - (d) Splitting of tenders to enable the evasion of monetary thresholds set;
  - (e) Bid rigging;
  - (f) Alerting any procurement documents with intent to influence the outcome of a tender proceedings;
  - (g) Uttering or using fake documents or encouraging their use; and
  - (h) Willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (5) Any person who while carrying out his duties as an officer of the Bureau or of any procuring entity, contravenes, any provisions of this law commits an offences and is liable on conviction to a cumulative punishment of:
- (a) A term of imprisonment of not less than 5 calendar years without an option of fine; and
  - (b) Summary dismissal from government services.
- (6) Any legal person that contravenes any provisions of this law commits an offence and is liable on conviction to a cumulative penalty of:
- (a) Debarment from all public procurement for a period of not less than 5 calendar years; and
  - (b) A fine equivalent to 25% of the value of the procurement in issue.
- (7) Where any legal person shall be convicted pursuant to sub- section (4) of this Section, every director of the company as listed on its

records at the Corporate Affairs Commission, or such the person acting in relation to the procurement as such director although the person acting in relation to the procurement as such guilty of an offence and is liable on conviction to a term of imprisonment of not less than 3 calendar years but not exceeding 5 calendar years without an option of fine; PROVIDED that a director charged under this section, but who proves that he was not involved in the procurement nor reckless as to the facts of the procurement from which the offence was committed, proof of which shall be on him, may be discharged.

(8) An alteration pursuant to sub-section (4) (f) shall include:-

- a) Insertion of document such as bid security or tax clearance certificate which were not submitted at bid opening; and
- b) Request for clarification in a manner not permitted under this Law.

(9) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere' with the faithful and proper application of the application of this Law,

(10) Bid- rigging pursuant to sub-section (4) (e) means an agreement between persons whereby;

- a) Offers submitted have been pre-arranged between them; or
- b) Their conduct has had the effects of directly or indirectly restricting free and open competition; distorting competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the state treasury.

(11) For the purposes of presumption under sub-section(9) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question whether total or partial.

(12) For the purposes of sub-section (4) (c) of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the state treasury.

(13) A procurement contract awarded in contravention of this Law, shall not bind the Government, and shall not be enforceable at the instance of a supplier, contractor or consultant who procured or benefited from the breach; but nothing in this sub-section shall be construed so as to prevent the Government from seeking recovery of monies already paid out of the state treasury under the contract, or . from seeking indemnity or damages under the said contract against the supplier, contract or consultant as the case may be.

### **PART XIII: MISCELLANEOUS**

**59.**(1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the Director-General or of any person authorized generally or specifically by Law for that purpose by the Board. Miscellaneous

(2) Any contractor or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorized by Law for that purpose by the Board.

(3) Any document purporting to be a document duly executed under the seal of the Bureau shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

(4) The validity of any proceedings of the Board or a committee thereof shall not be adversely affected by any vacancy in the membership of the Board committee, or any defect in the appointment of a member of the Board, or proceedings of the Board or committee.

**60.**(1) Notwithstanding the foregoing provisions of this Law, and pending the composition and inauguration of the Board and the Bureau, the implementation of the functions and exercise of powers under this Law Interim management  
Consultancy SAVE the prosecution powers of the Attorney- General of the State, may be contracted in the interim to a reputable multi- disciplinary consultancy firm by the Governor of the State, but under the supervision of the Commissioner for Finance.

(2) The duration of an interim management consultancy provided for in sub-section (1) hereof, shall not exceed a period of one year in the first instance, commencing from the date that his Law comes into force; and renewable for another one year.

(3) The said Interim Management Consultancy firm shall submit a quarterly report of its activities to the State House of Assembly.

---

This printed impression has been carefully compared by me with the Bill which has passed the House and found by me to be true and correctly printed copy of the said Bill.

**MUSA AHMAD GAUDE**  
*Clerk to the Adamawa State House of Assembly*

I assent this 1<sup>st</sup> day of June, 2013

**RT. HON. AHMADU UMARU FINTIRI**  
*Governor,*  
*Adamawa State of Nigeria.*

Adamawa State House of Assembly, Law, 2013

Law of No. 7 of 2013

**SCHEDULE OF BILL**

<b>SHORT TITLE</b>	<b>LONG TITLE</b>	<b>SUMMARY OF CONTENTS</b>	<b>DATE PASSED BY HOUSE</b>
------------------------	-------------------	--------------------------------	---------------------------------

<p>Adamawa State Public Procurement Law, 2013</p>	<p>A Bill for a law to establish the Adamawa State Board on Public Procurement and the bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public Procurement, harmonizing the existing Government Policies and practices, liaising with Federal counterpart bodies by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Adamawa State and for related matters</p>	<p>The bill seeks to establish for the State a Board on public Procurement and Bureau of Public Procurement as the regulatory authorities responsible for monitoring and oversight of public, harmonizing the existing government policies and practices liaising with Federal Counterpart bodies by regulating, setting standards and developing the legal framework and professional capacity for public procurement, the Bill also makes provisions for the function of the Board and Bureau established.</p>	<p><b>17<sup>th</sup> March, 2013</b></p>
---	--	--	---

**MUSA AHMAD GAUDE**  
*Clerk to Adamawa State House of Assembly*