

1/2/2011
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KWARA STATE PUBLIC PROCUREMENT AGENCY BILL
ARRANGEMENT OF SECTIONS

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A BILL

FOR

A LAW TO ESTABLISH THE KWARA STATE PUBLIC PROCUREMENT AGENCY AND FOR
CONNECTED PURPOSES

BE IT ENACTED by the House of Assembly of Kwara State of Nigeria and by the authority of same as follows –

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[Commencement]

1. Establishment of the Kwara State Public Procurement Agency

(1) There is established the Kwara State Public Procurement Agency (referred to in this Law as "the Agency").

(2) The Agency shall-

- (a) be a body corporate with perpetual succession and a common seal;
- (b) have power to sue and be sued in its corporate capacity; and
- (c) be capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out its functions under this Law.

2. Establishment of the Kwara State Public Procurement Governing Board

(1) There is established the Kwara State Public Procurement Agency Governing Board (referred to in this Law as - the Board)

(2) The affairs of the Agency shall be administered by the Governing Board.

(3) The Board shall consist of—

- (a) the Commissioner for finance who shall be the Chairman;
- (b) the Commissioner for Planning and Economic Development who shall be the Vice Chairman;
- (c) the Attorney-General and Commissioner for Justice and one other member of the State Executive Council;
- (d) three (3) members from the public, including a member of a Civil Society Organisation, who shall be of unquestionable character and shall serve on the Board on a part-time basis subject to the confirmation of the House; and
- (e) the General Manager of the Agency.

3. Powers of the Board

The powers of the Board are to-

- (a) consider, set, amend and review prior benchmark for the application of the provisions of this Law by procuring entities;
- (b) consider and approve policies on Public Procurement;
- (c) make recommendations in respect of any Procurement guidelines or regulations to be made pursuant to the provisions of this Law;
- (d) approve the employment of the Directors of the Agency;
- (e) receive and consider for approval, the audited accounts of the Agency; and
- (f) give such other directives and or perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law.

4. Tenure of Office

The members of the Board shall be appointed by the Governor and shall hold Office for a period of three (3) years and may be re-appointed for one further term. The members of the State Executive Council shall hold their membership of the Board by virtue of being members of the State Executive Council.

5. Cessation of Office

- (1) A member shall be removed from office if he has-
 - (a) by reason of infirmity of the mind or body become incapable of discharging his duties;
 - (b) been convicted of an offence which involves moral turpitude;
 - (c) been involved in any act considered to be inimical to the interest of the Agency or the State.

(2) Notwithstanding the provisions of section 4 above, the Governor may remove any member of the Board if he is satisfied that it is in the public interest to do so.

6. Remuneration and Allowances

Members of the Board shall be paid such remunerations and allowances as may be approved by the Governor.

7. Meetings of the Board

- (1) The Board shall in each year hold a general meeting as its annual meeting, in addition to any other meetings in that year, and it shall specify the meeting as such.
- (2) The Annual General Meeting shall be held within six (6) months after the close of each financial year and it shall be open to the public who shall be given adequate notice of the meeting and salient points from the annual report.
- (3) The Board shall ordinarily meet for dispatch of business at such times and places as the Chairman may appoint, but not less than three (3) times in any financial year.
- (4) The Chairman shall preside at all meetings of the Board when he is present, and when he is not present any other member of the Board may be appointed by the members present at the meeting to preside.
- (5) Where not less than five members of the Board request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Board for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Board for those purposes at the earliest convenient date.
- (6) The first ordinary meeting of the Board shall be summoned by the Governor, who may give such directions as he thinks fit in respect of the procedures to be followed at the meeting.

8. Quorum

The quorum at any meeting of the Board shall be five (5) members including the Chairman.

9. Voting

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

meeting shall, have a second or casting vote.

10. Standing Order

(1) Subject to the provisions of this Law, the Board may make standing orders with respect to the holding of meetings of the Board, the notices to be given of such meetings, the proceedings at the meetings, the keeping of minutes of such meetings, custody or the production for inspection of such minutes.

(2) Subject to any standing order made under subsection (1) of this Section, the procedure of the Board with respect to the holding of meetings, shall be such as the Board may determine.

11. Powers of the Board to co-opt persons

Where the Board desires to obtain the advice of any person on any matter, the Board may co-opt such person to be a member for the meeting(s) as may be required, and the person shall whilst so co-opted, have all the rights and privileges of a member of the Board save that he shall not be entitled to vote on any question or count towards a quorum.

12. Validity of Proceedings

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

13. Disclosure of interest by members of the Board

(1) A member of the Board who is in any way directly or indirectly interested in a transaction or project of the Board shall disclose the nature of his interest at a meeting of the Board, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.

(2) For the purpose of subparagraph (1) of this Paragraph a general notice given at a meeting of the Board by a member to the effect that he is interested with any trade or business or he is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Board concerning that trade, business, company or firm, shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.

(3) A member of the Board may not attend in person a meeting of the Board in order to make a disclosure which he is required to make under this Paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

14. Objectives of the Agency

The objectives of the Agency are to-

- (1) ensure probity, accountability and transparency ;
- (2) establish fair pricing standards and benchmarks;
- (3) ensure the application of fair, competitive value-for-money standards and practices for the procurement and disposal of public assets and services;
- (4) create ample opportunities for the citizenry particularly, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement;
- (5) create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by procuring entities, bidders and the general public; and
- (6) attain transparency, competitiveness professionalism and guarantee integrity

and public trust in the public procurement procedure.

15. Functions of the Agency

- (i) consider, amend and review the monetary benchmark for the application of this Law;
- (ii) approve the employment of staff of the Agency other than the General Manager;
- (iii) approve changes in procurement process to adapt to changes in technology;
- (iv) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law;
- (v) formulate the general policies and guidelines relating to public sector procurement for the approval of the Governor;
- (vi) publicise the provisions of this Law;
- (vii) certify all State procurements prior to, during and after the award of any contract;
- (viii) supervise the implementation of established procurement policies;
- (ix) oversee and superintend compliance by all procuring entities with the procurement policies of the State;
- (x) monitor the prices of tendered items and keep a database of standard prices;
- (xi) publish the details of major contracts in the State Procurement Journal;
- (xii) publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal;
- (xiii) maintain a database of contractors and service providers to the exclusion of all procuring entities;
- (xiv) maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them in the State Procurement Journal; and
- (xv) carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law.

16. The Powers of the Agency

- (1) The Agency shall have the power to-
 - (a) enforce the rules and review thresholds set pursuant to this Law;
 - (b) inspect and review any procurement transaction to ensure compliance with the provisions of this Law;
 - (c) investigate and determine whether any procuring entity has violated any provision of this Law;
 - (d) blacklist or ban any supplier, contractor or consultant that contravenes any provision of this Law and Regulations made pursuant to this Law;
 - (e) prescribe classifications and categorizations for the Companies or Limited Liability Partnerships (LLPs) on the register;
 - (f) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider;
 - (g) call for the production of books of account, plans, documents, and examine persons or parties in connection with any

- procurement proceeding;
- (h) act on complaints by public procurement entities in accordance with the procedures set out in this Law;
 - (i) nullify the whole or part of any procurement proceeding or award which
 - (j) due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law;
 - (k) undertake procurement and contract performance audit;
 - (l) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
 - (m) recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of this Law;
 - (n) constitute a Technical Review Committee comprising of technical, financial and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest;
 - (o) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law.
- (2) Where there are persistent or serious breach of this Law, its Regulations or any other guideline, the Agency shall recommend to the Governor the following-
- (a) the suspension from Office of Officers concerned with the procurement or disposal proceeding in issue;
 - (b) the removal from Office of the head of any Procuring or Disposal Unit;
 - (c) the discipline of the Accounting Officer of any Procuring entity;
 - (d) temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
 - (e) any other sanction that the Agency may consider appropriate.
- (4) The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law and may carry on in that behalf either alone or in association with any other person or body.

17. Fund of the Agency

- (1) The Agency shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Agency.
- (2) There shall be credited to the fund, all monies appropriated to the Agency by the Kwara State House of Assembly from the first line charge on revenue of the State.
- (3) The Agency may specify the manner in which assets or fund of the Agency are to be held, and regulate the payment into and out of the fund.
- (4) The Agency shall require the keeping of proper accounts and records of the fund in such form as may be specified in the Regulations to this Law.
- (5) The Agency may apply proceeds of the fund for-
- (a) the cost of administration of the Agency;
 - (b) the payment of salaries, fees and other remuneration of employees of the Agency or experts or professionals appointed by the Agency;
 - (c) the maintenance of any property acquired by or vested in the Agency; and
 - (d) any expenditure connected with all or any of the functions of the Agency under this Law.

18. The General Manager of the Agency

- (1) There shall be General Manager who shall be appointed by the Governor subject to the confirmation of the House of Assembly.
- (2) The General Manager shall be-
 - (a) the Chief Executive and accounting officer of the Agency;
 - (b) responsible for the execution of the policy and day to day administration of the affairs of the Agency; and
 - (c) a person who possesses relevant and adequate professional qualifications and shall have been so qualified for a period not less than fifteen (15) years.
- (3) The General Manager shall hold office for a period of four years renewable for another term of four (4) years on such terms and conditions as may be specified in his contract of appointment.
- (4) Without prejudice to the provisions of subsection (3) of this Section, the General Manager may be removed from office at the instance of the Governor.

19. The Secretary/ Legal Officer and other Officers of the Agency

- (1) There shall be a Secretary/Legal Adviser of the Agency who shall be a State Counsel not below Grade Level 15 and shall be responsible to the General Manager for discharge of his functions.
- (2) The Secretary/Legal Adviser shall be responsible for the following matters—
 - (a) arranging meetings of the Board and its constituent committees;
 - (b) preparation of agenda and minutes of meetings;
 - (c) conveying decisions of the Board to members of the Board;
 - (d) arranging for payment of allowances of the members of the Board and other related matters; and
 - (e) generally performing all other duties affecting the Agency as may be assigned to him by the General Manager.
- (3) The Agency may engage such other officers as are deemed necessary for proper execution of its functions under the provisions of this Law.

20. Remuneration of Officers

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

21. Staff Regulations and Pensions

- (1) The Agency may subject to the approval of the Governor, within six (6) months of its inauguration, make staff regulations relating generally to the conditions of service of its employees, without prejudice to the forgoing; such regulations may provide for:
 - (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Agency; and
 - (b) appeals by such employees against dismissal or other disciplinary measures.
- (2) Until such regulations are made, any instrument relating to the conditions of service in the Civil Service of the State shall be applicable.
- (3) Employees of the Agency shall be entitled to pension and other retirement benefits as may be prescribed by Law.

22. Governing Rules on Public Procurement

(1) Subject to the exceptions under this Law, all procurements carried out by any procuring entity shall be governed by the following rules:
Open Competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed;

- (b) promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
 - (c) Simple, sustainable, standardised with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology;
 - (d) Executing in an effective, efficient, transparent, timely, equitable manner to ensure accountability which shall conform with the provisions of this Law and its Regulations with the aim of achieving value for money and fullness of purpose.
 - (e) a system of accountability where public officers and persons involved directly or indirectly in the procurement process or its implementation are when warranted by circumstances to be investigated and held liable for their actions.
 - (f) public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of this Law and its Regulations, and that all public contracts are performed strictly according to specifications;
 - (g) procurement plans shall be supported by prior budgetary appropriation; no procurement proceeding shall be formalised until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.
- (2) All regulations, procedures and timelines to be prescribed pursuant to this Law and specified by the Agency shall always conform to the provisions of paragraphs (a)–(g) of subsection (1) above.
- (3) Where the Agency has set prior review or monetary benchmark pursuant to this Law, no funds shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement falling above the set benchmark.
- (4) A supplier, contractor or service provider may be a natural person, a legal person or a natural/legal person. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.
- (5) All bidders, in addition, to requirements contained in any solicitation document shall:
- (a) possess the following:
 - (i) professional and technical qualification to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure;
 - (iv) personnel to perform the obligations of the procurement contract;
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) Not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding-up petition or proceedings;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - (e) not have any directors who have been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
- (6) The Agency or any procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with the provisions of this Law and for this purpose any such requirement shall apply equally to all bidders.

(7) A bid or a tender shall be excluded from any particular procurement proceeding if:

- (a) there is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Agency, in an attempt to influence any action, decision making or any procurement activity.
 - (b) a supplier, contractor or service provider during the last three (3) years prior to the commencement of the procurement proceeding in issue failed to perform or to provide due care in performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding;
 - (d) The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in instalments;
 - (e) the bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
 - (f) The bidder has in its management or is in any portion owned by any person that has been convicted for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit;
 - (g) The bidder fails to submit a statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceeding.
- (8) (a) Where a bid and or tender is excluded under the provisions of subsections (6) and (7) (a-g) of this Section, the Agency shall inform the bidder in writing the grounds for the exclusion of the bid or tender from public procurement.
- (b) A procuring entity shall keep a record of the proceeding in a manner prescribed by the Agency.
- (9) All contract prices shall be considered as fixed, and therefore not subject to any upward variation during the contract implementation, except under extraordinary circumstances and only upon prior approval of the Agency which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.
- (10) All communications and documents issued by procuring entities and the Agency shall be in English Language.
- (11) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Agency.

- (12) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten (10) years from the date of the award.
- (13) Copies of all procurement records shall be forwarded to the Agency not later than three (3) months after the end of the financial year and shall include:
- (a) information identifying the procuring entity and the contractors;
 - (b) the date of the contract award;
 - (c) the value of the contract; and
 - (d) the detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed by the Agency.
- (15) Criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.
- (16) The burden of proving fulfilment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
- (17) A contract shall be awarded to the lowest cost evaluated and qualified bidder from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding subsection (17) of this Section, the Agency may refuse to endorse the award of a contract for public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law.
- (19) Pursuant to subsection (18) of this Section, the Agency may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender amongst the bidders substantially responsive to the initial bid solicitation based only on the price.
- (20) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposal or quotations other than in the summary form stating the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award.
- (21) The Accounting Officer of an entity and any officer to whom responsibility is delegated is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its Regulations.
- (22) The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations made under are complied with; and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.
- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made from time to time by the Agency.
- (24) Any person who has been engaged in preparing for a procurement or part of the proceedings may not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tenders.
- (25) A procuring entity shall not request or stipulate that a bidder should engage the services of a particular subcontractor as a requirement for participating in any procurement proceeding.

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

(27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the prevailing rate of the Central Bank of Nigeria valid on the day of opening the tender.

23. Warranties

All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

24. Procurement Office

(1) A procuring entity within the provisions of this Law shall establish a Public Procurement Office whose functions shall be to—

- (a) initiate the entity's procurement process;
- (b) carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
- (c) aggregate its requirement, within and between procuring entities to obtain economical and reduce procurement cost;
- (d) conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite expression of interest;
- (e) develop technical specifications;
- (f) conduct pre-bid conferences when necessary;
- (g) ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Law and Regulations as may be issued from time to time;
- (h) prepare bid documents;
- (i) issue bid documents;
- (j) supervise the development of all tenders;
- (k) organise communications with bidders;
- (l) issue receipts and keep bids in safe custody until opening;
- (m) receive and evaluate any bids received in response to solicitation;
- (n) maintain procurement records;
- (o) evaluate expression of interest by suppliers, contractors, or consultants and forward lists of qualified submissions to the Board.

(2) The procuring entity shall notify the Agency of the list of qualified submissions and the preferred mandate.

(3) The procuring entity shall award a procurement contract after the Agency has issued a Certificate of Compliance.

25. Offices outside the State

The Board may with the approval of the Governor open branch offices outside the State.

26. Approving authority

Subject to the monetary and prior review benchmark for procurements as may be determined by the Agency, the following shall be the Approving Authority for the conduct of public procurement-

- (a) in the case of a government agency, parastatal or corporation, a Parastatal Tenders' Board;
- (b) in the case of a ministry or extra-ministerial entity, the Ministerial

- Tenders' Board;
- (c) for a period of two (2) years, from the commencement of this Law, contracts within the benchmark that shall be set by the Agency in the regulations, the State Tenders' Board;
- (d) after two (2) years from the commencement of this Law, when procurement capacity has been built in the public service, all contracts irrespective of value shall be approved in line with the provisions set in (a) and (b) above.

27. Procurement Planning

Subject to regulations as may be issued by the Agency, a procuring entity shall plan its procurement by-

- (a) preparing a needs assessment and evaluation;
- (b) identifying based on (a) above, the goods, works or services required;
- (c) preparing an analysis of the cost implications of the proposed procurement;
- (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- (f) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (g) ensuring that the procurement entity functions stipulated in this section shall be carried out by a Procurement Planning Committee.

28. Establishment and Composition of Procurement Planning Committee

- (1) For each financial year each procuring entity establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall comprise of the following members-
 - (a) the Accounting Officer of the procuring entity or his representative who shall be the Chairman of the committee;
 - (b) a representative of the procurement function of the procuring entity who shall be the secretary;
 - (c) a representative of the unit directly in requirement of the procurement;
 - (d) a representative of the financial function of the procuring entity;
 - (e) a representative of the planning, research and statistics function of the procuring entity;
 - (f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement;
 - (g) a representative of the legal function of the procuring entity.

29. Procurement implementation

Subject to regulations as may be issued by the Agency, a procuring entity shall implement its procurement plans as follows-

- (a) advertise/solicit for bids in adherence to this Law and guidelines as may be issued by the Agency;
- (b) invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Agency and any other relevant agency or body including their own organizations or association;

- (c) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Agency;
- (d) obtain approval of the Approving Authority before making an award;
- (e) debrief the bid losers on request;
- (f) resolve complaints/disputes if any;
- (g) obtain and confirm the validity of any performance guarantee;
- (h) execute the Contract Agreement;
- (i) announce and publicise the award in the format stipulated by this Law and guidelines as may be issued by the Agency.

30. Accounting Officer

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

(2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organisation of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for-

- (a) ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of this Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
- (b) constituting the Procurement Planning Committee and its decisions;
- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
- (d) integrating his entity's procurement expenditure into its yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) constituting the Evaluations Committee;
- (g) liaison with the Agency and ensure the implementation of its regulations.

31. Tenders' Boards

(1) There is established by this Law in each of the State's Ministry, Extra-ministerial Office/Department/Agency, Parastatal, Corporation, a Tenders' Board.

(2) Subject to the approval of the Board, the Agency shall prescribe the membership of the Tenders' Board.

(3) The Tenders' Board shall have power to award and be responsible for the procurements of goods, works and services within the benchmark set in the Regulations to this Law.

(4) In all cases where there is a need for pre-qualifications, the Chairman of the Tenders' Board shall constitute a technical evaluation subcommittee of the Tenders' Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chairman of the Evaluation subcommittee.

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

32. Open Competitive Bidding

- (1) The procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding except it is otherwise provided by this Law.
- (2) Any reference to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed.
- (3) No negotiations unless otherwise provided for by this Law shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is-
 - (i) in the case of goods and works, the lowest cost evaluated bid from the bidders who respond to the bid solicitation;
 - (ii) in the case of services, the highest rated evaluated bid from the bidders who respond to the bid solicitation.
- (4) The provisions of this Law on open competitive bidding shall apply to procurement of goods and services with monetary value above One Hundred Million Naira (₦ 100,000,000.00).
- (5) The Board shall make rules applicable to procurement of goods and services with monetary value below One Hundred Million Naira (₦ 100,000,000.00).

33. Invitation to bid

- (1) Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Agency shall from time to time set the monetary benchmark for which procurements shall fall under either system.
- (2) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognised newspaper, the official website of the procuring entity, the Agency and the State Procurement Journal not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services.
- (3) In the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity and the State Procurement Journal not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services.
- (4) Not later than six (6) months after the enactment of this Law, the Agency shall issue guidelines for the advertisement/publication of Invitations to Bid.

34. Prequalification of bidders

- (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more.
- (2) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or service provider that requests them; and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery.
- (3) Not later than six (6) months after the enactment of this Law, the Agency shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process.

35. Bid documentation

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

- (a) Approved Budget for the contract;
- (b) Instruction to Bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
- (c) Terms of Reference;
- (d) Eligibility Requirement;
- (e) Description of the products, services or works concerned;
- (f) Plans and Technical Specification;
- (g) Form of Bid, Price Form, and List of Goods or Bill of Quantities;
- (h) Delivery Time or Completion Schedule;
- (i) Form and Amount of Bid Security;
- (j) Form of Contract and General and Special Conditions of Contract.

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

36. Bid security

(1) Subject to the monetary and prior review benchmark as may be set by the Agency, all procurements valued in excess of the sums prescribed by the Agency shall require a bid security in an amount not less than one per cent of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity or an insurance bond issued by an insurance company acceptable to the Agency.

(2) The Agency shall specify the principal terms and conditions of bid security to be posted by bidders.

37. Submission of bids

(1) All bids in response to an invitation to Open Competitive Bidding shall be signed by an official authorised to bind the bidder to a contract and placed in a sealed envelope.

(2) All bids shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes, and which shall be submitted simultaneously.

(3) All submitted bids shall be deposited and kept in a secured tamperproof bid box.

(4) All submitted bids must be in English Language.

(5) The procuring entity shall be issued a receipt showing the date and time the bid was received.

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

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

38. Failure of bidding

(1) There shall be a failure of bidding if—

- (i) no bids are received;
- (ii) no bid qualified as the lowest cost evaluated responsive bid or highest rate responsive bid; or
- (iii) whenever the bidder with the highest rated or lowest calculated responsive

bid refuses, without justifiable cause to accept the award of the contract, as the case may be.

- (2) (i) The contract shall be re-advertised and re-bid at the occurrence of any of the instance stated in sub section (1) of this Section.
- (ii) the procuring entity shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the procuring entity may resort to an alternate method of procurement as provided for by this Law.

39. Rejection of bids

A procuring entity may-

- (1) reject any bids at any time prior to the acceptance of a bid, without incurring any liability to the bidders;
- (2) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

40. Validity period of bids

- (1) The period of validity for a bid shall be the period specified in the tender documents.
- (2) A procuring entity may request supplier, contractor or service provider to extend the period of validity for an additional specified period of time.
- (3) A supplier, contractor or service provider may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.
- (4) A supplier, contractor or service provider may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

41. Bid opening

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

- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension;
- (d) ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the Agency; and
- (e) call-over to the hearing of all present; the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary of the Agency or his delegate in the minutes of the bid opening.

42. Examination of bids

- (1) Every bid shall be first examined to determine if it—
 - (a) meets the minimum of eligibility requirements stipulated in the bidding documents;
 - (b) has been duly signed;

- (c) is substantially responsive to the bidding documents; and
 - (d) is generally in order.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (3) The following shall not be sought, offered or permitted –
- (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive;
- (4) Notwithstanding the provisions of subsection (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity, shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations:
- (a) with respect to clauses in an offer;
 - (i) unacceptable sub-contracting;
 - (i) unacceptable time schedule if time is of the essence;
 - (ii) unacceptable alternative design, and
 - (iii) unacceptable price adjustment;
 - (b) with respect to the status of the bidder:
 - (i) the fact that he is ineligible or not prequalified, and
 - (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 location for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, bid shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
- (a) the use of codes;
 - (b) alternative design;
 - (c) alternative workmanship;
 - (d) omission in minor items;
 - (e) arithmetical errors;
 - (f) completion period where these are not of essence;
 - (g) any other condition that has little impact on the bid.
- (11) Not later than six (6) months after the enactment of this law, the Agency shall issue regulations stipulating the guidelines for the opening and examination of bids.

43. Evaluation of bids

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

- (b) in the case of services to determine the highest rated bid bidder from the bidders responsive to the bid solicitation
- (3) Not later than six (6) months after the enactment of this law; the Agency shall issue Regulations stipulating the guidelines for the evaluation of bids.

44. Disqualification of bid

A procurement entity shall disqualify a bidder who submits Documents containing false information or documents forged for purposes of qualification at any time, such disqualification shall be published in the State Official Gazette.

45. Confidentiality of bids

- (1) Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, procurement entities shall not disclose information forwarded to them by bidders labelled as confidential, such information includes technical aspects, trade secrets and confidential information of tenders.
- (2) Confidential information contained in any bid concerning commercial, financial or technical information or trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances.
- (3) After the public opening of tenders, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the contracting authority or the procurement Agency shall be disclosed to any or any third party until the award decision is notified to the successful bidder.

46. Acceptance of successful bids

- (1) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation.
- (2) Notwithstanding the provision of subsection (1) of this section and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the success of its bid shall immediately be communicated to the successful bidder.
- (4) Notwithstanding the provision of subsection (3) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice communicated to a successful bidder shall serve only for notification purposes only and shall not howsoever be construed as a procurement award.

47. Expressions of interest to provide Services for Procurement Award

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

- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two (2) national newspapers and the procurement journal;
- (b) where the value of the services to be procured is less than One Million Naira (₦ 1,000,000.00), or with the approval of the Agency, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice request at least three and not more than ten consultants or service providers to make proposals for the provision of the services in a format stipulating:

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

48. Limitation of time for Procurement Award

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

49. Termination of Award Procedure

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

- (a) a contract of framework agreement is concluded;
- (b) the award procedure is cancelled for one of the following reasons:
 - (i) tenders was not submitted within the specified final time limit;
 - (ii) none of the received tenders are compliant;
 - (iii) all compliant tenders contained prices substantially exceed the procuring entity's budget;
 - (iv) the number of the received compliant tenders is less than three (3) and does not a genuine competition on the contract concerned;
 - (v) the number of qualified candidate is less than three (3) and does not ensure a genuine competition on the envisaged contract.
- (c) the award procedure is cancelled for other reasons beyond the procuring entity's control and unpredictable at the time of launching the award procedure.

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

50. Request for proposals to provide services for unascertained needs

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

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

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

- (a) the services are only available from no more than three (3) consultants;
- (b) the time and cost required to examine and evaluate a large number of proposal would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
- (c) it is in the public interest.

51. Content of the request for proposals

(1) Request for proposals shall include:

- (a) the name and address of the procurement entity;
- (b) a requirement that the proposals are to be prepared in the English language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedures for the evaluation of the qualifications of the consultants;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian currency;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
- (l) a short list to be made of only national consultants for consulting assignment, contract within a set benchmark in the procurement regulation provided that national consultants possess such requisite skills.

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

52. Clarification and modification of request for proposals

(1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified.

(2) A procuring entity may whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.

(3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

(4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues without identifying the sources of request for clarifications.

(5) The minutes shall be provided promptly before the deadline for submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into accounts in preparing their proposals.

53. Submission of proposals

- (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than ten (10) days between the issue of the notice or request and the deadline for submission.
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
- (5) The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any review by the Agency is concluded.

54. Criteria for evaluation of proposals

- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:
 - (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
 - (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
 - (c) the proposal price, including any ancillary or related cost;
 - (d) the extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
 - (e) security considerations.
- (2) A procuring entity may accord a margin of preference for domestic consultants or service providers which shall be calculated in accordance with the regulations and guidelines as issued by the Agency and shall be reflected in the record of the procurement proceedings.

55. General selection procedure

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

56. Procedure for selection of proposal where price is a factor

- (1) Where the procuring entity elects to choose the successful proposal based on technical and price factors. It shall establish a weight with respect to quality and technical

price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request of proposals.

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

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

(4) The name of the qualified consultants, the quality score 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 proposals shall be:

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

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

57. Selection procedure where price is not a factor

(1) Where the procuring entity elects to make a quality based selection based on consultant's qualification or single-source selection, it shall engage in negotiations with consultants 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 consultant that has attained the best rating in accordance with subsection (1) of this Section;
- (iii) inform the consultants that attained ratings above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurement contract; and
- (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 (2)(ii) will not result in a procurement contract.

(3) The procuring entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

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

58. Register of Awards

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

59. Restricted tendering

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

- (a) the goods, works or services are available only from a limited number of suppliers or contractors; or
- (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
- (c) the procedure is used as an exception rather than norm.

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

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

(3) The provisions of this Law regarding the open competitive bidding shall apply to selective tender proceedings only to the extent of the variance by this section.

60. Emergency procurements

(1) Subject to the approval of the Board a procuring entity may initiate emergency procurement where:

- (a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an act of God;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain them in their actual value or usefulness.

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

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

61. E-Procurement

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

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

62. Domestic preferences

- (1) The procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign Country.
- (2) Where the procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic suppliers and contractors and the criteria for eligibility for such preference.
- (3) Margin of Preference may apply to tenders under all International competitive bidding.
- (4) The Agency shall by Regulation from time to time set the limit and the formulae for computation of margins of preference.

63. Advance payments

- (1) Advance payment of 20 per cent may be paid to a supplier or contractor, provided that advance payment above 20 per cent may be paid where the supplier or contractor submits a written request justifying the need for such payment. Advance payment above 20 per cent shall be guided by regulations prescribed by the Agency with the approval of the Governor.
- (2) Advance payment is subject to the following—
 - (i) in the case of National Competitive Bidding – an unconditional bank guarantee or insurance bond issued by a reputable bank, institution acceptable to the Board; or
 - (ii) in the case of International Competitive Bidding – an unconditional bank guarantee issued by a reputable bank, institution acceptable to the Board; or
 - (iii) in cases mentioned in (i) and (ii) above the Board may accept other forms of security which it considers sufficient to guarantee performance.
- (3) After advance payment has been made to a supplier or contractor, no further payment shall be made to such supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

64. Performance guarantees or bonds

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

65. Interest on delayed payments

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

66. Records of Procurement Proceedings

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

67. Investigation by the Agency

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

(2) The Agency may in the course of its investigation:

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

(3) The power of entry and search conferred by subsection (2)(i) and (ii) of this section shall not be exercised except the Agency has first obtained an order of the State High Court without the necessity of putting the procuring entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.

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

- (i) nullification of the procurement proceedings;
- (ii) cancellation of the procurement contracts;
- (iii) ratification of anything done in relation to the proceedings; or
- (iv) a declaration consistent with any relevant provisions of this Law.

(5) On completion of an investigation, the Agency shall send a summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant.

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

(7) The Agency may pursuant to an advice of a procuring entity; result of its review on a procurement or report of investigation by a relevant government Agency, issue a variation order, requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried

out with inferior or defective materials or with less skill and expertise than required under the contract.

68. Administrative review

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

69. Procedure for complaints against a procuring or disposing entity or the Agency

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

- (i) a complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer of the procuring entity or disposing entity who shall on receiving the complaint make a decision in writing within fifteen (15) working days indicating the corrective measures to be taken, including the suspension of the proceedings where he deems it necessary and gives reasons for his decision;
- (ii) where the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Agency within ten (10) working days from the date of communication of the decision of the accounting officer;
- (iii) upon receipt of a complaint, the Agency shall promptly give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Agency settles the matter;
- (iv) before taking any decision on a complaint, the Agency shall notify all interested bidders of the complaint considering representations from the bidders and from the respective procuring or disposing entity; and
- (v) the Agency shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted;

(2) The following procedures shall apply to complaints against the Agency-

- (i) a complaint by a bidder against the Agency shall first be submitted in writing to the General Manager of the Agency who shall bring the complaint to the attention of the Agency. The Board shall notify all interested bidders of the complaint and consider all representations from the bidders and procuring or disposing entities.
- (ii) the Board shall make its decision within twenty-one (21) working days
- (iii) after receiving the complaint, stating the reasons for its decision and remedies granted.
- (iv) where a bidder is not satisfied with the decision of the Board, the bidder shall lodge an appeal against the decision to the Kwara State Executive Council.
- (v) the decision of the Kwara State Executive Council may include any or all of the following:
 - (a) dismissal of the complaint;
 - (b) nullifying in whole or in part an unlawful act or decision made by the procuring or disposing entity or the Board;
 - (c) declaring the rules or principles governing the subject matter of the complaint; and
 - (d) revising an improper decision by the procuring or disposing entity

or the Board substituting same with its own decision.

70. Disposal of Public Property

- (1) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (3) The Board shall, with the approval of the Governor:
 - (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
 - (c) issue standardised documents, monitor implementation, enforce and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (4) The means of the disposal of public property shall include:
 - (a) sales and rentals;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auctions;
 - (e) transfer from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorised variation.

71. Legal proceedings

- (1) Subject to the provisions of this Law, no suit shall be commenced against the Agency before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Agency by the intending claimant or his agent; and the notice shall clearly state:
 - (a) the cause of action;
 - (b) the particulars of claim;
 - (c) the name and address of legal practitioner of the intending claimant; and
 - (d) the relief sought.
- (2) The General Manager, Officers, Employees or Agents of the Board shall not be liable for any act or omission done in exercise of any function or power conferred by this Law upon the Board and/or its General Manager, Officers, Employees or Agents.
- (3) An officer or employee of the Agency shall be indemnified from the assets of the Agency against any liability incurred by him in defending any civil proceeding, if the proceeding is brought against him in his capacity as an officer or employee of the Agency.

72. Service of documents

A notice, summons or other document required or authorised to be served upon the Agency under the provisions of this law or any other enactment may be served by delivering it to the General Manager or sending it by registered post and addressed to the General Manager at the principal office of the Agency.

73. Annual State Procurement Assessment Report

(1) The Agency shall prepare a comprehensive report each year on all procurement activities not being of a recurrent nature, carried out by all procuring entities within the purview of this Law to the House of Assembly.

(2) The annual report shall give an accurate account of the conduct of all capital procurement carried out by procuring entities within the purview of this Law.

74. Bank account

The Agency shall operate an account with a bank or banks in the State and the signatories to the account shall be the General Manager, in his absence his designated representative and the head of the accounts department, in his absence, his designated representative or any person duly authorised by the Board in that behalf.

75. Account and audit

(1) The Agency shall keep proper account of all its expenditure and revenue and shall cause its account to be audited, not later than six (6) months after the end of each financial year, by external auditors appointed by the Auditor- General of the State.

(2) The Agency shall, within six (6) months after the end of each financial year, furnish the Governor with a copy of its audited account along with a report of the state of affairs of the Agency for the year reported on.

(3) In compliance with subsections (1) and (2) of this section, the Board shall cause the report to be published in the State Official Gazette and its website.

76. Offences

(1) Any natural person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than five (5) years but not exceeding ten (10) years without an option of fine.

(2) It shall be an offence to-

- (a) open or tamper with any sealed Bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of Bids or other documents;
- (b) delay, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or its Regulations;
- (c) enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned;
- (d) engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way;
- (e) directly or indirectly attempting to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract.
- (f) split tenders to enable the evasion of monetary benchmark set;
- (g) bid- rigging;
- (h) alter any procurement document with intent to influence the outcome of a tender proceeding;
- (i) use fake documents or encouraging their use;

- (j) wilful refusal to allow the Agency or its officer to have access to any procurement record; and
 - (k) withdraw a bid, after it has qualified as the Lowest Calculated Bid Highest, Rated Bid, refusal to accept an award without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder; this shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, Performance Guarantee, preparatory to the final award of the contract.
- (3) Any person whilst carrying out his duties as an officer of the Agency, or any procuring entity which contravenes any provision of this Law and its Regulations commits an offence and shall be liable on conviction to a cumulative punishment of—
- (a) a term of imprisonment of five (5) years without option of fine; and
 - (b) summary dismissal from government service.
- (4) Any corporate body or firm that contravenes any provision of this Law and its regulation commits an offence and is liable on conviction to a cumulative penalty of—
- (a) being barred from all public procurement for a period not less than ten (10) years; and
 - (b) a fine equivalent to the value of the procurement in issue.
- (5) Where a Corporate body or firm is convicted pursuant to subsection (4) of this section, every Director of the Company shall be guilty of an offence and is liable on conviction to a term of imprisonment for not less than three (3) years but not exceeding five (5) years without an option of fine unless he proves that the offence upon which the conviction was based was committed without his knowledge, consent or connivance.
- (6) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law.
- (7) Bid-rigging pursuant to subsection (2)(g) of this section means an agreement between persons where-
- (a) offers submitted have been prearranged between them; or
 - (b) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.
- (8) For the purpose of subsection (7) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether totally or partially, directly or indirectly.
- (9) For the purposes of subsection 5(2), (5) and (8) above, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the State Treasury.

77. Scope of application

- (1) The provisions of this Law shall apply to all procurement of goods, works and services carried out by:
- (a) The State Government, Local Government Councils/ Development Authority and all procuring entities in the State;
 - (b) any public body in the State engaged in procurement, and shall include Ministries, Departments, Bureaus, Offices and Agencies of the State , extra-ministerial offices, parastatals and corporations;

- (c) all entities outside the foregoing description which derive any funds appropriated or proposed to be appropriated for any type of procurement described in this Law from the State Government's share of Consolidated Revenue Fund.

78. Common Seal

(1) The Common Seal of the Board shall be such as may be determined by the Board, and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Secretary, or of some other members authorised generally or specifically by the Board to act for that purpose.

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

79. Power to make regulations

The Agency may with the recommendation of the Board make regulations for the proper implementation and enforcement of the provisions of this Law and without prejudice to any other provision, make regulations subject to the approval of the House of Assembly with respect to all or any of the following matters-

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

80. Transitional provision

There shall be a transitory period of three months after the assent to this Law.

81. Interpretation

"Accounting officer" means any person charged with responsibility relating to procurement in a procuring entity;

"Approving Authority" means:

- (a) in the case of a government agency, parastatal or corporation, a parastatal Tender Board;
- (b) in the case of a ministerial entity, the Ministerial Tender Board;
- (c) for a period of two (2) years and in the case of contracts within the threshold that shall be set by the Agency in the regulations, the State Tender Board;

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

"Board" means the Kwara State Public Procurement Board;

"Debar" means the placing of a firm company or natural person on a list of person ineligible to participate in any procurement proceeding under this Act; **"Contract"** means an agreement entered in writing;

"Contractor or supplier" means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, limited liability partnership, individual, sole proprietors, joint stock companies, joint ventures or any other legal entity through which business is conducted;

“**Fund**” means the Kwara State Procurement Board Fund established by Section 17 of this Law;

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

“**Interim Performance Certificate**” means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by the procuring entity but not meaning completion;

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

“**Margin of Preference**” means the extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

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

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

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

“**Open Competitive Bidding**” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;

“**Procurement**” means acquisition;

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

“**Procuring entity**” means any public body in Kwara State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and Agencies of the Kwara State Government, Extra-Ministerial Offices, Parastatals, Corporations, State University and Colleges, Government Institutions and Local Government Councils, Local Council Development Areas and their derivative Units;

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

“**State**” means the Kwara State of Nigeria.

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

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

(4) 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 expenditure;
- (b) acquired as a gift or through deeds;
- (c) acquired in respect of intellectual or proprietary rights and;
- (d) acquired on financial instruments (including shares, stocks, bonds etc.)

(5) An alteration pursuant to subsection (2)(h) of this section shall include but not limited to—

- (a) forged arithmetical correction or calculation

- (b) insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening; and
- (c) request for clearance in a manner not permitted under this Law and its regulations.

82. Citation and Commencement

This Bill may be cited as the Kwara State Public Procurement Bill, 2017.