



ZAMFARA STATE OF NIGERIA

ZAMFARA STATE BUREAU OF PUBLIC PROCUREMENT LAW AND OTHER RELATED MATTERS THERETO 2020 (1442 A.H.)

LAW NO., 2020 (1442 A.H.)

**ZAMFARA STATE BUREAU OF PUBLIC PROCUREMENT LAW AND OTHER
RELATED MATTERS THERETO 2020 (1442 A.H.)**

The Zamfara State House of Assembly enacts as follows -

- | | |
|-------------------------------------|---|
| <i>Short title and commencement</i> | 1. This Law may be cited as the Zamfara State Public Procurement Law 2020 and shall come into operation on Day of2020. |
| <i>Establishment of The Bureau</i> | 2. (1) There is established for the State a body to be known as Bureau of Public Procurement and shall be referred to as the “Bureau”.

(2) The Bureau shall - <ul style="list-style-type: none">i. Be a Body corporate with perpetual succession and a Common Seal;ii. Have power to sue and be sued in its corporate name; and;iii. Be capable of acquiring, holding or disposing any property, movable or immovable for the purpose of carrying out any of its functions, in accordance with the State’s laid down procedures; |
| <i>Establishment of the Council</i> | 3. There is hereby established for the Bureau, State Council on Public Procurement (In this law referred to as “The Council”). |
| <i>Composition of the Council</i> | 4. (1) The Council shall consist of the following members to be appointed by the Governor - <ul style="list-style-type: none">(a) The Commissioner of Finance who shall be the Chairman;(b) Hon. Commissioner for Budget and Economic Planning Vice Chairman;(c) The Attorney General and Commissioner for Justice;(d) Hon. Commissioner for Local Government and Community Development; |

- (e) One other member from the state Executive Council to be appointed by the Governor;
- (f) Chairman of Association of Local Governments of Nigeria (ALGON) Zamfara State Chapter;
- (g) The Director General of the Bureau;
- (h) Not more than five persons representing public interest to be chosen from the following professions subject to the confirmation of the State House of Assembly;
 - i. The Nigeria Union of Journalist, Zamfara State Chapter;
 - ii. Institute of Purchasing and Supply Management, Zamfara State Chapter;
 - iii. Nigerian Society of Engineers, Zamfara State Chapter;
 - iv. Zamfara State Chamber of Commerce;
 - v. Association of Surveyors and Estate Valuers, Zamfara State Chapter;
 - vi. Association of any Accounting Body in the State;
 - vii. Nigerian Bar Association, State Chapter.
- (i) The Secretary of the Bureau to Serve as Secretary of the Council.

(2) Notwithstanding the provisions of Sub Section (1) of this Section, the Council may invite any expert person to attend its meeting but the person invited shall not have a casting vote or be counted towards quorum.

*Functions of
the Council*

5. The Council shall -
 - (a) Consider, approve and amend the monetary and prior review threshold to the application of the provisions of this Law by Procuring Entities;
 - (b) Consider and approve policies on Public Procurement;
 - (c) Recommend to State Head of Service for the approval of appointment of Directors and Head Units of the Bureau;
 - (d) Receive and consider for approval the audited account of the Bureau;
 - (e) Review periodically the socio-economic effects of procurement policies;
 - (f) Provide advisory services to the Governor on the status of the State Government procurement in relation to annual appropriation;
 - (g) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this law.

*Tenure of the
Members*

6. Members of the Council under section 4 (h) shall be appointed for a first term of three years and may be eligible for re-appointment for another term and no more.

*Removal from
office*

7. Subject to the provision of section 6 of this law, a Member of the council may be removed from office -
 - a. On resignation of his appointment, by a written notice addressed to the Governor;
 - b. Death, permanent incapacity or infirmity of mind;
 - c. Upon conviction of a criminal offence, which involves fraud, corruption or immorality;
 - d. The Governor may remove a member who is not discharging the function of his office by reason of -
 - (i) Ill-health
 - (ii) Insanity

- (iii) Bankruptcy or
- (iv) Misconduct

*Remuneration
of the Council*

8. The Members of the council shall be paid such remuneration and allowances as the Governor may determine.

*Meeting of the
Council*

9. (1) The council 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 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 council shall ordinarily meet for dispatch of business at such times and places as the Chairman may appoint, but not less than three times in any financial year.

(4) The Chairman shall preside at all meetings of the Council when he is present and when he is not present the meeting shall be chaired by any other member of the council as may be appointed by the members present at the meeting to preside.

(5) Where not less than five members of the Council request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Council for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Council for those purposes at the earliest convenient date.

(6) The first ordinary meeting of the Council 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.

Quorum

10. The quorum at any meeting of the Council shall be five members including the Chairman.

Voting

11. (1) All questions at a meeting of the council shall be determined by a majority vote of members of the Council present and voting, being

members who under section 4(a) – (h) are entitled to vote at such meeting.

(2) At any meeting of the Council, each member other than the Director General shall have a deliberative vote and if there is equality of votes, the Chairman of the meeting shall, have a second or casting vote.

Standing Orders

12. (1) Subject to the provisions of this Law, the Council may make standing orders with respect to the holding of meetings of the Council, 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 Council with respect to the holding of meeting(s) shall be such as the Council may determine.

Powers of the Council to invite expert

13. Where the Council desires to obtain the advice of any expert personnel on any matter, the Council may invite such person to be part of the meeting(s) as may be required and the person invited shall not have the rights and privileges of the member of the Council and shall not be entitled to vote on any question or count towards a quorum.

Validity of proceedings

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

PROVIDED that the Council formed a quorum at the meeting.

Disclosure of interest by members of the Council

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

(2) For the purpose of Subsection (1) of this Section, a general notice given at a meeting of the Council 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 Council 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 Council may not attend in person a meeting of the Council in order to make a disclosure which he is required to make under this Section, if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

*Objectives of
the Bureau*

16. The Objectives of the Bureau shall be –
- (a) Harmonize existing government policies and practices in Public Procurement and ensuring probity, accountability and transparency in the Procurement Process.
 - (b) Establish fair pricing standard and benchmarks
 - (c) Ensure the application of fair competitive transparent value for money standards and practices for the Procurement and disposal of Public assets and Services.

*Functions of
the Bureau*

17. The functions of the Bureau shall be –
- (a) Regulate and set standards to enforce harmonized bidding and tender documents for all the State Contracts;
 - (b) Ensure full compliance with the laid down guidelines and procedures on procurement;
 - (c) Certify procurement prior to the award of contract, subject to thresholds as may be set by the Council;
 - (d) Develop, update and maintain system wide database for the State on various procurements for the Ministries, Department, Agencies and Local Government levels;
 - (e) Uphold professional ethics and report erring procurement personnel, state and local government functions, department and private sector companies and their personnel to relevant authorities for appropriate sanctions;

- (f) Monitor prices of tendered items and provide price database advisory services to the procuring entity;
- (g) Perform procurement audits and submit the reports to the State House of Assembly bi-annually;
- (h) Evaluate and monitor government procurement processes and issue certificates of No Objection based on thresholds;
- (i) Coordinate training to promote capacity building of procurement personnel of the State;
- (j) Sensitize, promote and educate the citizens and other stakeholders in the State on public procurement issues;
- (k) Provide relevant procurement information to the stakeholders;
- (l) Publish the details of major contracts awarded in the State periodically;
- (m) Undertake procurement research and surveys;
- (n) Set and update standard bidding of contract documents;
- (o) Perform other functions and carryout such other activities that are necessary and expedient for the full discharge of its functions under this law.

Powers of the Bureau

18. The Powers of the Bureau shall be –

- (1) Certify contract procedures of every entity to which this law applies subject to thresholds as may be set by the council;
- (2) Stipulate procedures to all procuring entities and documentation required for such certification from time to time;
- (3) Request for such information, documents, records and report in respect of any aspect of any procurement proceedings where a breach or wrong doing, default, mismanagement and or collusion has been alleged, reported or proved against a Procuring MDAs or contractor;
- (4) To receive report and recommend disciplinary action against erring Accounting Officers of any Procuring MDAs for appropriate sanctions;

- (5) Nullify the whole or any part of any procurement proceedings which is in contravention of this law;
- (6) Enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its function subject to the approval of the Council;
- (7) Register and maintain a database of contractors to the exclusion of all Procuring MDAs in the State;
- (8) Stipulate a code of conduct subject to Council approval for all public officers, suppliers, contractors and service providers with regard to their standard of conduct acceptable in matters involving the procurement and disposal of public assets;
- (9) Debar any contractor that contravene any provision of this law and regulations made pursuant to this law;
- (10) Cancel any tender/bidding that violates the provisions of this law;
- (11) Exercise such other powers as deem necessary for the efficient performance of its functions under this law subject to the approval of the Council;

*Office of the
Director
General*

19. (1) There shall be for the Bureau a Director General to be appointed by the Governor from within or outside the Civil Service of the State and where such appointment is made from the civil service, the rank shall be equivalent to the rank of Permanent Secretary and should retire as such.

(2) Where a person is appointed as Director General from outside the Civil Service of the State, such appointment shall be subject to confirmation by the State House of Assembly and shall hold office for the period of four years and may be re-appointed for another term of four years only and on such terms and conditions specified in his letter of appointment.

*Qualifications
of the Director
General*

20. A person to be appointed as the Director-General of the Bureau shall have relevant professional qualification, and has served for a period of not less than 15 years and is of proven integrity.

*Functions of
the Director -
General*

21.(1) The Director-General shall be the Chief Executive and Accounting Officer of the Bureau and shall also be responsible for the execution of the policy and day to day administration of the Bureau.

*Tenure and
removal of the
Director -General*

(2) The Director General shall hold office for a period of four years and may be re-appointed for another term of four years only.

(3) Where a person has been appointed from the public service of the State he shall be entitled to return to the service of the State at the end of his tenure.

(4) The Director General may be removed from office at the instance of the Governor, on the grounds of gross misconduct, financial impropriety, fraud, and/or manifest incompetence, such removal shall be confirmed by at least a two-third majority vote of the State House of Assembly.

*The
Secretary/
Legal Officer
and other
Officers of the
Bureau*

22. (1) There shall be a Secretary/Legal Adviser of the Bureau who shall be a State Counsel not below Grade Level 14 and shall be responsible to the Director General for discharge of his/her functions.

(2) The Secretary/Legal adviser shall be posted by the State Attorney-General and Commissioner for justice.

(3) The Secretary/Legal Adviser shall be responsible for the following matters -

(a) Arranging meetings of the Bureau and its constituent committees;

(b) Preparation of agenda and minutes of meetings;

(c) Conveying decisions of the Council to members of the Council;

(d) Arranging for payment of allowances of the members of the Council and other related matters; and

(e) Generally performing all other duties affecting the Bureau as may be assigned to him by the Director General.

(4) The Bureau may engage other officers deemed necessary for proper execution of its functions under the provisions of this Law.

Employment of Staff

(5) Subject to the approval of the Council, the Bureau may employ such number of staff for the Bureau as may be required for the due discharge of its functions under this law and may accept such number of staff on transfer or secondment from the service of the Federal, State or Local Government subject to the prevailing rules or guidelines obtainable from the State Civil Service Commission.

(6) The Director General and Staff of the Bureau may, where practicable be appointed from the Public Service of the State or Federal. And staff of the Bureau shall as much as possible include Quantity Surveyors, Architects, Procurement officers, Engineers, Planning officers, information and communication technology specialists.

Remuneration of staff

23. The Governor may approve any other allowances to the staff of the Bureau in addition to what is obtained in the Civil Service of the state.

Transfer of Service

24. The person so seconded under section 22 sub-section (5) of this Law may choose to be transferred to the service of the Bureau and any previous service he may have rendered in the public service shall count as service to the Bureau for the purpose of any pension.

Pensions

25. Employees of the Bureau shall be entitled to pensions and other retirement benefits as prescribed under the pension laws of the State.

Funds of the Bureau

26. (1) The Bureau shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Bureau.

(2) There shall be credited to the fund, all monies appropriated to the Bureau by the State House of Assembly.

(3) The Bureau may specify the manner in which assets or fund of the Bureau are to be held and regulate the payment into and out of the fund.

(4) The Bureau 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 Bureau may apply proceeds of the fund for -

(a) The cost of administration of the Bureau;

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

(c) Any expenditure connected with all or any of the functions of the Bureau.

*Budget and
Annual
Reports*

*Submission of
Annual Estimate*

*Keeping
Records of the
Bureau*

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

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

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

Account and Audit

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

Annual Reports

29. The Bureau shall at the end of each financial year prepare and submit to the Council a report in such forms accurately capture all the activities of the Bureau for that year.

*Establishment
of Local
Government
Due Process
Unit*

30. (1) There is established a unit under the Bureau to be called Local Government Due Process Unit which shall be headed by an officer not below the rank of a Director.

(2) The Function of the unit shall be to ensure full compliance and implementation of the provision of this law as applicable to Local Government Councils.

Guidelines

31. In the exercise of its powers under this law, the Bureau shall be guided by the regulations as may be provided by the Council under this law.

Principles of Procurement

32.(1) Subject to any exemption allowed by this Law, all public procurements shall be conducted in accordance with the regulations made by the Council under this law as prescribed below:

- (a) Open Competitive bidding applying clear and defined criteria to every interested bidder with equal information and opportunities to the goods, works and services needed by the State.
- (b) promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
- (c) Executing in an effective, efficient, transparent, timely and equitable manner to ensure accountability which shall conform to the provisions of this Law and its Regulations with the aim of achieving value for money and fullness of purpose.
- (d) A system of accountability where public officers and persons involved directly or indirectly in the procurement process or its implementation may be investigated and held liable for their actions or in actions.
- (e) 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;
- (f) Procurement plans shall be supported by prior budgetary appropriation, no procurement proceeding shall be formalized 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 Bureau shall always conform to the provisions of Section (a) – (f) of subsection (1) of this Law.

(3) Where the Bureau 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 MDAs for any procurement falling above the set benchmark.

(4) A contractor 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) The bidders, in addition to other requirements contained under this law, shall -

(a) Possess the following -

(i) Professional and technical qualification to carry out particular procurement;

(ii) Financial capacity;

(iii) Enough 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 criminal proceedings in any court of law;

(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) Pursuant to Subsection (5) of this Section, newly incorporated Companies or companies participating in a bidding process for the first time, with no concrete financial capacity and/or proven experience in the procurement under consideration may for reason of economic growth in the state be considered to participate upon -

(a) Presentation of Credentials of its Professional Staff in the relevant field;

(b) Presentation of a reference letter from reputable Bank, indicating willingness to provide a credit facility for the execution of the contract;

(c) Presentation of evidence of Equipment Purchase or Lease Agreements.

(7) The Bureau or any procuring MDAs 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.

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

(a) there is verifiable evidence that any contractor 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 MDAs or the Bureau, in an attempt to influence any action, decision making or any procurement activity.

(b) A contractor during the last three 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 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 installments;

(e) The bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed;

(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;

(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.

(9) (a) Where a bid and or tender is excluded under the provisions of subsections (7) and (8) (a) – (g) of this section, the procuring MDAs 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 Bureau.

(10) 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 Bureau which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.

(11) All communications and documents issued by procuring MDAs and the Bureau shall be in English Language.

(12) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau.

(13) Every procuring MDAs 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 not less than 10 years from the date of the award.

(14) Copies of all procurement records shall be forwarded to the Bureau not later than three 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 the detailed records of the procurement proceedings.

(15) 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 Bureau.

(16) Criteria stipulated as the basis upon which contractors would be evaluated shall not be changed in the course of any procurement proceeding.

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

(18) A contract shall be awarded to the lowest cost evaluated to qualified bidder from the bidders substantially responsive to the bid solicitation.

(19) Notwithstanding sub-section (18) of this section, the Bureau 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.

(20) Pursuant to subsection (19) of this section, the Bureau may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a retender amongst the bidders substantially responsive to the initial bid solicitation based only on the price.

*Scope of
Application*

(21) A procuring MDA 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.

(22) The Accounting Officer of an MDA and any officer to whom responsibility is delegated is responsible and accountable for any action or inaction taken in non-compliance with or in contravention of the provisions of this Law or its Regulations.

(23) The Accounting Officer of an MDA 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.

(24) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made from time to time by the Bureau.

(25) 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 shall not compromise in any manner with bidders in the course of preparing their tenders.

(26) 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.

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

(28) 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 where applicable.

33. The provisions of this Law shall apply to all procurements of goods, works and services carried out by -

(a) The State Government, Local Government Councils/Development Authorities 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 funds

*Approving
Authority*

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

(a) A ministry or extra-ministerial entity, the Ministerial Tenders' Board;

(b) A government Agency, parastatal or corporation, a Parastatals Tenders' Board;

*Accounting
Officer*

35. (1) The Accounting Officer of a procuring MDA, shall be the person charged with line supervision of the contract of all procurement process, in the case of Ministries, the Permanent Secretaries and in

the case of Agencies and Corporations, the Chief Executive or Officer of coordinate responsibility as the case may be and in the case of a Local Government, the Secretary of the Local Government.

(2) The Accounting Officer shall have the overall responsibility for the planning, organization, evaluation of tenders and execution of all procurements and in particular shall be responsible for -

- (a) Ensuring compliance with this law by his entity;
- (b) Constituting the procurement committee;
- (c) Ensuring that adequate appropriation is provided specifically for the procurement in the State Budget;
- (d) Integrating his entity's procurement expenditure into its annual budget;
- (e) Ensuring that no splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) Liaising with the Bureau to ensure the implementation of its regulations.

*Procurement
Planning
Committee*

36. Subject to regulations as may be issued by the Bureau, 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;

*Procurement
Planning*

(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

37. (1) For each financial year, each procuring entity shall establish a procurement planning committee.

(2) The procurement planning committee shall consist of the following -

(a). The Accounting Officer or his representative who shall be the Chairman;

(b) A representative of each of the following -

i. The Procurement Unit of the procuring entity who shall be the Secretary;

ii. The unit directly in requirement of procurement;

iii. The financial unit of the procurement entity;

iv. Planning Research and Statistic Unit;

v. Technical personnel of entity with expertise in the subject matter for each procurement.

vi. a representative of the legal unit/department of the procuring entity.

(3) there shall be a procurement planning committee in each department of a local government, headed by the Head of the department and performing the functions enumerated in section 38, (a) – (g) for the department.

38. Subject to regulations as may from time to time be issued by the Bureau, a procuring entity shall implement its procurement plans as follows -

*Procurement
Implementation*

- (a) advertise/solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau;
- (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 Bureau 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 Bureau;
- (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 publicize the award in the format stipulated by this Law and guidelines as may be issued by the Agency.

Tenders Board

39. (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 Council, the Bureau 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.

*Prequalification
of Bidders*

40. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of 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 contractor 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 Bureau shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process.

Invitation to Bid

41. (1) Invitations to bid may be either by way of National or International Competitive Bidding and the Bureau 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 relevant internationally recognized newspaper, the official website of the Bureau and the State Procurement Journal for 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 at least one (1) national daily, the notice board of the procuring entity,

State Procurement Journal and the official Website of the Bureau for not less than four weeks before the deadline for submission of the bids for the goods, works and services.

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

*Open
Competitive
Bidding*

42. (1) The procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding except where 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:

(a) in the case of goods and works, the lowest cost evaluated bid from the bidders who respond to the bid solicitation;

(b) 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 Council shall make rules applicable to procurement of goods and services with monetary value below One Hundred Million Naira (₦100,000,000.00).

*Bid
Documentation*

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

(a) Approved Budget for the contract;

(b) Instruction to Bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;

(c) Terms of Reference;

- (d) Eligibility Requirement;
- (e) Description of the products, services or works concerned;
- (f) Plants 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

Bid Security

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

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

Submission of Bid

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

(1) 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.

(2) 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.

Rejection of Bids

46. (1) A Procuring Entity may:

- (a) at any time reject bids prior to the acceptance of a bid, without incurring any liability to the bidders;
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.
- (c) reject all bids if no bid qualified as the lowest cost evaluated responsive bid or highest rate responsive bid; or
- (d) 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) The contract shall be re-advertised and re-bid at the occurrence of any of the instance stated in sub section (1) (a) – (c) of this section.

- (a) 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.

(3) The procuring entity may request the supplier, contractor or consultant to extend the period of validity for an additional specified period of time.

(3) A supplier, contractor or consultant 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 consultant may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effect if it is received by procurement entity before the deadline for the submission of bids or any extension thereof

Bid Opening

47. 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 Tender's Board of the procuring entity or his delegate; 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 Tenders Board or his delegate in the minutes of the bid opening.

Examination of Bids

48. (1) Every bid shall be first examined to determine if it:

(a) meets the minimum eligibility requirements stipulated in the bidding documents;

(b) has been duly signed;

(c) is substantially responsive to the bidding documents; and

(c) 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;

(ii) unacceptable time schedule, if time is of the essence;

(iii) unacceptable alternative design, and

(iv) unacceptable price adjustment;

(b) with respect to the status of the bidder:

(i) the fact that he is ineligible or not prequalified, 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 Bureau shall issue regulations stipulating the guidelines for the opening and examination of bids.

*Evaluation of
Bids*

49.(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 Bureau shall issue Regulations stipulating the guidelines for the evaluation of bids.

*Disqualification
of Bids*

50. A procuring 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.

*Confidentiality
of Bids*

51.(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 labeled 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 procuring entity or the Bureau shall be disclosed to any bidder or any third party until the award decision is notified to the successful tender.

*Acceptance of
successful bids*

52.(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.

(5) The Procuring MDAs shall notify the Bureau of the list of qualified submission and the preferred bidder.

(6) The Procuring MDAs shall award a procurement contract after the Bureau has issued and preferred bidder.

*Domestic
Preference*

53. (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 National and International competitive bidding.

(4) The Bureau shall, by Regulation from time to time, set the limit and the formulae for computation of margins of preference.

*Advance
payments*

54. (1) In addition to the other regulation as may be prescribed by the Bureau, Mobilization fees of not more than 35% may be paid to a local contractor, and 25% may be paid to the foreign contractors. Advance payment above 35% may be paid where the contractor submits a written request justifying the need for such payment. Advance payment above 35% shall be guided by regulations prescribed by the Bureau 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, acceptable to the procuring entity; or

(ii) in the case of International Competitive Bidding – an unconditional bank guarantee issued by a reputable bank, acceptable to the Procuring Entity.

(iii) the provision of an advance payment Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid. Provided, that it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee to be paid to the contractor, which is higher.

(iv) no further payment shall be made to a contractor without an interim performance certificate issued in accordance with

the contract agreement after the payment of mobilization fee to the contractor.

(v) in case of specialized procurement contract, the Governor may direct the payment of higher percentage as mobilization fee.

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

Performance guarantees or bonds

55. Prior to the signing of the contract, the successful Bidder shall, as a measure of guarantee for the faithful performance for and compliance with his obligations under the contract, be required to post a performance security in such form and amount as specified in the bid solicitation.

Interest on delayed payments

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

(2) Any payment due for more than Ninety (90) 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 Ninety (90) days.

Records of Procurement Proceedings

57. 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 Bureau.

Expressions of interest to provide Services for Procurement Award

58. 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 one national newspaper, the procurement

journal and the website of the procuring entity and/or the Bureau;

(b) The expressions of interest will be evaluated and a shortlist of qualified firms will be established.

(c) where the value of the services to be procured is less than an amount prescribed in the regulations or with the approval of the Bureau, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least 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 providing the service

(iv) the time frame for providing the service; and

(v) the cost or fee for the service.

Request for proposals to provide services for Ascertained and unascertained needs

59. (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) A procuring entity shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in the state owned newspaper, any other National Newspaper, the Bureau's Website and the State 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 not 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.

(d) It is in the public interest.

*Content for Request
for Proposals*

60. (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

(i) 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.

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

Clarification and modification of request for proposals

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

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

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

(4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of 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.

Submission of proposals

62.(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 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.

*Expressions of
interest to
provide Services
for Procurement
Award*

63. (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 from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

*General
Selection
Procedure*

64. (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.

Procedure for selection of proposal where price is a factor

65.(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, and after the evaluation of quality is completed within a period of fourteen (14) working days after the decision has been taken by the procuring 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.

Selection procedure where price is not a factor

66.(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.

*Register of
Award*

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

*Special and
Restricted
Tendering*

68. (1) Subject to the approval of the Bureau, 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.

*Single Source
Procurement*

69. Under Single Source Procurement, a procuring entity may only engage in Direct Contracting for the following:

(a) Procurement of goods of propriety nature, which can be obtained only from the propriety source, ie when patents, trade secrets and copyrights prohibits others from manufacturing the same items;

- (b) When the procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract;
- (c) Procurement of goods sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.
- (d) The procurement for single source procurement shall be as provided for in the rules to be made from time to time by the Authority.

Repeat Order

70. Under the repeat order method of procurement, a procuring entity may only engage in procurement by repeat order if:

- (a) The unit price is equal to or lower than that provided in the original contract;
- (b) The repeat order does not result in splitting of requisitions or purchase orders;
- (c) If the repeat order is requisitioned not later than Twelve (12) months from completion of the original contract or if during the currency of a contract not earlier than Six (6) months after its commencement; or
- (d) The repeat order shall not exceed twenty-five Percent (25%) of the quantity of each item of the original contract.
- (e) The detailed procedure for repeat orders shall be as provided for in the rules to be made from time to time by the Authority.

Shopping

71. A procuring entity may engage in shopping if:

- (a) There is an unforeseen contingency requiring immediate purchase. **Provided** however, that the amount shall not exceed such limited sum as may from time to time be stipulated by the Bureau.
- (b) The procurement is for the purchase of ordinary or regular office supplies and equipment for the use of the

procuring entity involving an amount not exceeding specific amount provided for in the implementation rules.

- (c) This method of procurement may also be utilized when the time and cost that may be required to examine and evaluate a large number of bids is considered to be disproportionate to the value of the goods, works or services to be procured.
- (d) The procurement entity shall select a minimum of three (3) price quotations from bona fide suppliers selected in a non-discriminatory manner to ensure effective competition and avoid collusion and related malpractices.
- (e) The provisions of this law regarding open competitive bidding shall apply to shopping, except to the extent of inconsistency with this section.
- (f) The detailed procedure for shopping shall be as provided for in the rules to be made from time to time by the Bureau.

*Negotiated
procurement*

72. A procurement entity may also engage in negotiated procurement if:

- (a) in cases of two failed bids, as provided in section 34 of this law;
- (b) in cases when a state of calamity whether man-made or natural causes occurs, the need for immediate action to prevent damage or the endangerment or loss of life or property arises;
- (c) to restore vital public services and or preserve the operation of public utilities or infrastructure;
- (d) where the subject contract is adjacent or contiguous to an on-going infrastructure project. **Provided** however that:
 - i. the original contract is the result of a competitive bidding;

- ii. the subject contract to be negotiated has similar or related scopes of work;
- iii. it is within the contracting capacity of the contractor;
- iv. the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- v. the amount involve does not exceed the amount of the ongoing project;
- vi. the contractor has no negative slippage; and
- vii. the negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultant has unique experience and expertise to deliver the required service;

(e) In all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained, and that the principle of transparency, accountability and value for money are adhere to.

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

*Emergency
Procurement*

73.(1) Subject to the approval of the Bureau 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.

(c) a public project may be seriously delayed for want of an item of a minor value.

(2) Subject to the approval of the Bureau, 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 and due consideration be given to the gravity of each emergency.

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

E-Procurement

74. (1) Not later than 12 months from the enactment of this Law or at such other time as the Governor may consider appropriate, the Bureau shall design and set up a secure electronic portal to be known as the Zamfara 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 the 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.

*Investigation by
the Bureau*

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

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

(i) 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 Bureau 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 Bureau 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 Bureau shall send a summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant.

(6) The Bureau 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 Bureau may pursuant to an advice of a procuring entity; result of its review on a procurement or report of investigation by a relevant government 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.

*Administrative
Review*

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

*Procedure for
complaints
against a
procuring or
disposing entity
or the Bureau*

77. (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 Bureau within 10 working days from the date of communication of the decision of the accounting officer;

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

(iv) before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint considering representations from the bidders and from the respective procuring or disposing entity; and

(v) the Bureau shall make its decision within 21 working days after receiving the complaint, stating the reasons for its decision and remedies granted;

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

(i) a complaint by a bidder against the Bureau shall first be submitted in writing to the Director General of the Bureau who shall bring the complaint to the attention of the Bureau. The Council shall notify all interested bidders of the complaint and consider all representations from the bidders and procuring or disposing entities.

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

(iii) Where a bidder is not satisfied with the decision of the Council, the bidder shall lodge an appeal against the decision to the Zamfara State Executive Council.

(iv) The decision of the 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 Council;

(c) declaring the rules or principles governing the subject matter of the complaint; and

(e) revising an improper decision by the procuring or disposing entity or the Council substituting same with its own decision.

(3) a supplier or contractor that claims to have suffered or claims it may suffer loss or injury because of the alleged

non-compliance of a decision or actions of the procuring MDAs with the provisions of this Law, may challenge the decision or action concerned,

*Disposal of
Public Property*

78.(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 Bureau shall, with the approval of the Council:

(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 standardized 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 authorized variation.

*Legal
Proceedings*

79.(1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of intention to commence such suit has been served upon the Bureau 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 Director General, Officers, Employees or Agents of the Council shall not be liable for any act or omission done in exercise of any function or power conferred by this Law upon the Council and/or its Director General, Officers, Employees or Agents.

(3) An officer or employee of the Bureau shall be indemnified from the assets of the Bureau 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 Bureau.

Service of Documents

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

Bank Account

81. The Bureau shall operate an account with a bank or banks in the State and the signatories to the account shall be the Director General, in his absence his designated representative and the head of the accounts department, in his absence, his designated representative or any person duly authorized by the Council in that behalf.

Account and Audit

82. (1) The Bureau 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 Bureau shall, within six 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 Bureau for the year reported on.

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

Offences

83. (1) Any person who makes a false complaint against a contractor or procurement entity commits an offence and shall be liable on

conviction to a fine of Twenty Thousand Naira (~~₦~~20, 000.00) or imprisonment for one month or both.

(2) Any person not being a public officer who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment of not less than one year or a fine of Five Hundred Thousand Naira (~~₦~~500,000.00) or both.

(3) It shall be an offence subject to sub-section (1) of this section 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 such other documents;

(b) delay without justifiable cause, the screening for eligibility, opening of bids and post valuation 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) Participate in 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) willful 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 Responsive Bid, or 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.

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

(a) a term of imprisonment of five years with option of fine,

(5) 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 10 years; and

(b) a fine equivalent to the value of the procurement in issue.

(6) 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 two years but not exceeding five years or a fine of Two Million Naira (₦2,000,000.00) or both, unless he proves that the offence upon which the conviction was based was committed without his knowledge, consent or connivance.

(7) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved 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.

(8) Bid-rigging pursuant to subsection (3) (g) of this section means an agreement between persons where -

(i) offers submitted have been prearranged between them; or

(ii) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.

(9) For the purpose of 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.

Common Seal

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

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

Power to make regulations

85. The Bureau may with the recommendation of the Council 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 State House of Assembly with respect to all or any of the following matters:

(a) the structure and content 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 Bureau of any act amounting to an infringement on the provisions of this Law and its Regulations.

*Limitation of time
for Procurement
Award*

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

*Termination of
Award Procedure*

87. (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) no tenders submitted within the specified final time limit;

(ii) none of the received tenders are compliant;

(iii) all compliant tenders contained prices substantially exceeding the procuring entity's budget;

(iv) the number of the received compliant tenders is less than three and does not ensure a genuine competition on the contract concerned;

(v) the number of qualified candidate is less than three 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

*Transitional
Provision*

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

Interpretation

89. In this Law -

“**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 Bureau in the regulations, the State Tender Board;

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

“Council” means the Zamfara State Public Procurement Council;

“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 Law;

“Contract” means an agreement entered in writing;

“Contractor” 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;

“Court” means State High Court of Justice;

“Fund” means the Zamfara State Procurement Bureau Fund established by section 27 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 Zamfara 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;

“National and 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 Council 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 the State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and Agencies of the 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 Zamfara 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.

*Direct
Procurement*

90. (1) A Procuring entity may carry out direct procurement where:

- A) Goods, works or services are only available from a particular supplier or contractor, or if particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- B) There is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not result of any conduct on the part of the procuring entity;
- C) Owing to catastrophic event, there is an urgent need for the goods, works or services making it impracticable to use other method of procurement because of the time involved in using this method;
- D) A procuring entity which has procured goods, equipment's, technology or services from a supplier or contractor determines that:
 - I. Additional supplies need to be procured from the supplier or contractor because of standardization;
 - II. there is need for compatibility with existing goods, equipment's, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity;
 - III. the limited size of the proposed procurement in relation to the original procurement provides justification;
 - IV. the reasonableness of the price and the suitability of alternatives to the goods or services in question merit the decision.

(2) The procuring entity may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor and shall include in the record of procurement in justification of single source procurement.

*Governor's
General
Directive*

91. (1) The Governor may give to the council or Bureau such directives of specific or general nature and the council or Bureau shall comply with such directives.

(2) Notwithstanding anything contained in this law or any other law, the Governor may, where he satisfies himself that all due process procedures are followed, consider and give executive approval for award of any contract. Such approval shall be forwarded to the State Executive Council for ratification where it exceeds Two Hundred Million Naira (₦200.000.000.00).

*Judicial
Review*

92. (1) A party unsatisfied with the decision of the Bureau may apply to the State High Court for review of the action.

(2) Following receipt of an application for review, the court may do any of the following -

- (i) Order the suspension of the procurement proceeding at any time before the entry into force of the procurement contract;
- (ii) Order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force; if or for as long as it finds such suspension necessary to protect the interest of the applicant unless the court decides that urgent public interest consideration require the procurement proceeding, the procurement contract or the framework agreement, as applicable, to proceed.

(3) The court may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

(4) The court shall:

- a. Order the suspension of the procurement proceeding for a period of ten (10) working days where an application is received prior to the deadline for presenting submission of bid;
- b. Order the suspension of the procurement proceeding or the performance of a procurement contract or the operation of a framework agreement, as the case may be, where an application is received after the deadline for presenting submission and where no standstill period has been applied; unless the court decides that urgent public interest consideration require the procurement proceeding, the procurement contract or the framework agreement, as applicable, to proceed.

(5) Promptly upon receipt of the application, the court shall:

(a) Suspend or decide not to suspend the procurement proceeding or the performance of a procurement contract or the operation of a framework agreement, as the case may be in accordance with section 3 and 4 of this section;

(b) Notify the procuring entity and all parties in the procurement proceeding the application and its substance;

(c) Notify all parties in the procurement proceeding of its decision on suspension. Where the court decides to suspend the procurement proceeding or the performance of a procurement contract or the operation of a framework agreement, it shall in addition specify the period of the suspension. Where it decides not to suspend them, it shall provide the reasons for its decision to the applicant and to the procuring entity;

(6) The court may dismiss the application and shall lift any suspension applied, where it finds as a fact that

(i) The application is manifestly without merit; or

(ii) The application has no *locus standi*.

(7) The court shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceeding of the dismissal and the reasons thereof and that any suspension in force is lifted. Such a dismissal constitutes a decision on the application.

(8) The notice to the applicant, the procuring entity and other participants in the procurement proceeding under subsections (5) and (6) of this section shall be given after receipt of the application.

(9) Promptly upon receipt of a notice under subsection (5) (b) of this subsection, the procuring entity shall provide the court with effective access to all documents relating to the procurement proceeding in its possession, in a manner appropriate to the circumstances.

(10) In taking its decision on an application that it has entertained, the court may declare the legal rules or principles that govern the subject matter of the application, shall address any suspension in force and shall take one or more of following actions, as appropriate:

- a. Prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of the law;
- b. Require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Law to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Law;
- c. Cancel in whole or in part an act or a decision of the procuring entity or the Bureau that is not in compliance with the provisions of this Law;
- d. Revise a decision by the procuring entity or the Bureau that is not in compliance with the provisions of this Law;
- e. Affirm a decision of the procuring entity or the Bureau;
- f. Cancel the award of a procurement contract or a framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Law and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of notice of the cancellation of the award;
- g. Order that the procurement proceeding be terminated;
- h. Dismiss the application;
- i. Take such alternative action as is appropriate in the circumstances.

(11) The decision of the court under section 10 of this section shall be issued as soon as possible.

(12) The court shall immediately thereafter communicate the decision to the procuring entity or the Bureau to the applicant, to all other parties in the review proceeding.

(13) The Chief Judge shall make practice direction to facilitate the conduct of judicial review under this section.

*Standing
Order*

93. The Council shall make standing order to regulate its own procedure and conduct of its meetings and may amend such orders.

*Representation
in Court*

94. In any suit instituted by a against the council it shall be represented in court by a State Counsel duly delegated by the Attorney- General of the state or any legal practitioner appointed by the council.

Savings

95. (1) All assets and liabilities including monies standing to the credit of the Bureau before the coming into operation of this Law shall be deemed as belonging to the Bureau.

(2) All contracts and agreement relating to dealing and activities entered into or carried out by the Bureau prior to the coming into operation of this Law shall be deemed to have been entered or carried out under the provision of this Law and by the Council.

MADE AT GUSAU THIS DAY OF 2020 (1442AH)

This printed impression has been carefully compared by me with the **ZAMFARA STATE BUREAU OF PUBLIC PROCUREMENT LAW AND OTHER RELATED MATTERS THERETO 2020** which was passed by the Zamfara State House of Assembly and found by me to be a True and correct printed copy of the said Bill.

**SHEHU SA'IDU
CLERK TO THE HOUSE**

ASSENTED TO BY ME THIS DAY OF 2020
..... DAY OF 1442AH.

**HON. BELLO MUHAMMAD, MON
(MATAWALLEN MARADUN)
GOVERNOR, ZAMFARA STATE**