**XXX STATE PUBLIC PROCUREMENT LAW 20XX**

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| **Part I: Establishment of the Public Procurement Agency and Governing Board of the Public Procurement Agency** | | |
| 1- | 1. There is hereby established a body to be known as the XXX State Public Procurement Agency; and 2. The Agency shall: 3. be a body corporate with perpetual succession and a common seal; 4. have power to sue and be sued in its corporate capacity; and 5. be capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions under this Law. | Establishment of the XXX State Public Procurement Agency |
| 2- | 1. There is hereby established a body, to be known as the Board of the Public Procurement Agency. 2. The affairs of the Agency shall be administered by the Board. 3. The Board shall consist of– 4. the Commissioner for Finance; 5. the Commissioner for Economic Planning and Budget; 6. the Attorney-General and Commissioner for Justice; 7. Three (3) members from the public, including a member of a Civil Society Organisation, who shall be of unquestionable character, to be appointed by the Governor subject to the confirmation of the House, and shall serve on the Board on a part-time basis; and 8. the Director General of the Agency. 9. The Governor shall appoint one of the members of the Board as Chairman. | Establishment of the XXX State Public Procurement Agency Governing Board |
| **Part II: Administration of the Board** | | |
| 3- | The powers of the Board are to–   1. Consider, set, amend and review the application of the provisions of this Law by procuring entities; 2. Consider and approve policies on Public Procurement; 3. Make recommendations in respect of any Procurement guidelines or regulations to be made pursuant to the provisions of this Law; 4. Consider, approve and amend the prior review thresholds for the application of the provisions of this Act by procuring entities; 5. Approve the employment of the Director-General of the XXX State Public Procurement Agency; 6. Receive and consider, for approval, the audited accounts of the XXX State Public Procurement Agency; and 7. Give such other directives and or perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law. | Powers of the Board |
| 4- | The members of the Board shall be appointed by the Governor and shall hold office for a period of three (3) years and may be re-appointed for one (1) further term. The members of the State Executive Council shall hold their membership of the Board by virtue of being members of the State Executive Council. | Tenure of Office |
| 5- | 1. A member shall be removed from office if he/she has– 2. by reason of infirmity of the mind or body become incapable of discharging his/her duties; 3. been convicted of an offence which involves moral turpitude; 4. been involved in any act considered to be inimical to the interest of the Agency or the State. 5. A member may resign his/her membership by notice in his/her handwriting, addressed to the Governor and his/her membership shall cease on the date of acceptance of his/her resignation by the Governor. | Cessation of Office |
| 6- | Members of the Board shall be paid such remunerations and allowances as may be approved by the Governor. | Remuneration and Allowances |
| 7- | The supplementary provisions set out in the Schedule to this Law shall have effect with respect to the proceedings of the Board and the other matters contained in it. | Proceedings of the Board |
| **Part III: Administration of the Agency** | | |
| 8- | The objectives of the Agency are to–   1. ensure probity, accountability and transparency; 2. establish fair pricing standards and benchmarks; 3. ensure the application of fair, competitive, value-for-money standards and practices for the procurement and disposal of public assets and services; 4. create ample opportunities for the citizenry, particularly small and medium scale enterprises, to participate in the economic opportunities and benefits of public procurement; 5. create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the XXX State and its Local Governments, filed by procuring entities, bidders and the general public; and 6. attain transparency, competitiveness, professionalism and guarantee integrity and public trust in the public procurement procedures. | Objectives of the Agency |
| 9- | The Agency shall:   1. consider, amend and review the monetary benchmark for the application of this Law; 2. approve the employment of staff of the Agency other than the Director General; 3. approve changes in procurement processes to adapt to changes in technology; 4. give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law; 5. formulate the general policies and guidelines relating to public sector procurement, for the approval of the Governor; 6. publicise the provisions of this Law; 7. certify State procurements above the stipulated threshold prior to, during and after the award of any contract; 8. supervise the implementation of established procurement policies; 9. oversee and superintend compliance by all procuring entities with the procurement policies of the State; 10. monitor the prices of tendered items and keep a database of standard prices; 11. publish the details of major contracts in the State Procurement Journal; 12. publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal; and 13. carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law. | Functions of the Agency |
| 10- | 1. The Agency shall have the power to: 2. enforce the rules and review benchmark set pursuant to this Law; 3. inspect and review any procurement transaction to ensure compliance with the provisions of this Law; 4. investigate and determine whether any procuring entity has violated any provision of this Law; 5. debar from bidding for any future procurement opportunity any supplier, contractor or consultant that contravenes any provision of this Law and Regulations made pursuant to this Law; 6. maintain a database of contractors and service providers for use by all procuring entities; 7. prescribe classifications and categorizations for the Companies or Limited Liability Partnerships on the register; 8. maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them in the State Procurement Journal; 9. call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider; 10. call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding; 11. act on complaints by public procurement entities in accordance with the procedures set out in this Law; 12. nullify the whole or part of any procurement proceeding or award which is in contravention of this Law; 13. recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law; 14. undertake procurement and contract performance audit; 15. train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system; 16. recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of this Law; 17. review and approve the procurement plans of procuring entities; and 18. issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law. 19. Where there is persistent or serious breach of this Law, its Regulations or any other guideline made under this Law, the Agency shall recommend to the Governor the following: 20. the suspension from Office of Officers concerned with the procurement or disposal proceeding in issue; 21. the removal from Office of the head of any Procuring or Disposal Unit; 22. the discipline of the Accounting Officer of any Procuring Entity; 23. temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third-party procurement agency or consultant; or 24. any other sanction that the Agency may consider appropriate. 25. The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law and may carry on in that behalf either alone or in association with any other person or body. | Powers of the Agency |
| 11- | 1. The Agency shall establish and maintain a fund from which all expenditure incurred by the Agency shall be defrayed. 2. There shall be credited to the fund, all monies appropriated from time to time to the Agency by the XXX State House of Assembly from the first line charge on revenue of the State. 3. The Agency may specify the manner in which assets or fund of the Agency are to be held, and regulate payment into and out of the fund. 4. The Agency shall require the keeping of proper accounts and records of the fund in such form as may be specified in the Regulations to this Law. 5. The Agency may, from time to time, apply proceeds of the fund for– 6. the cost of administration of the Agency; 7. the payment of salaries, fees and other remuneration of employees of the Agency or experts or professionals appointed by the Agency; 8. the maintenance of any property acquired by or vested in the Agency; and 9. any expenditure connected with all or any of the functions of the Agency under this Law. | Fund of the Agency |
| 12- | 1. There shall be a Director General for the Agency, who shall be appointed by the Governor, subject to the confirmation of the House of Assembly. 2. The Director General shall be– 3. the Chief Executive and accounting officer of the Agency; 4. responsible for the execution of the policy and day to day administration of the affairs of the Agency; and 5. a person who possesses relevant and adequate professional qualifications and has been qualified for a period not less than fifteen (15) years. 6. The Director General shall hold office for a period of four (4) years renewable for another term of four (4) years on such terms and conditions as may be specified in his/her contract of appointment. 7. The Director General of the Agency may resign his/her appointment by notice in his/her handwriting, addressed to the Governor and his/her appointment shall cease on the date of acceptance of his/her resignation by the Governor. | The Director General of the Agency |
| 13- | 1. There shall be a Secretary of the Agency who shall be a State Counsel not below the rank of XXX and shall be responsible to the Director General for discharge of his/her functions. 2. The Secretary shall be responsible for the following matters– 3. arranging meetings of the Board and its constituent committees; 4. preparation of agenda and minutes of meetings; 5. conveying decisions of the Board to members of the Board; 6. arranging for payment of allowances of the members of the Board and other related matters; and 7. generally performing all other duties affecting the Agency as may be assigned to him/her by the Director General. 8. The Agency may, from time to time, engage such other officers as are deemed necessary for proper execution of its functions, under the provisions of this Law. | The Secretary/  Legal Adviser and other Officers of the Agency |
| 14- | The Agency shall, subject to the approval of the Governor, determine the remuneration to be paid to its officers and may require any officer to give such security deemed proper for the execution of his/her functions. | Remuneration of Officers |
| 15- | 1. The Agency may subject to the approval of the Governor, within six (6) months of its inauguration, make staff regulations relating generally to the conditions of service of its employees, without prejudice to the forgoing; such regulations may provide for: 2. the appointment, promotion and disciplinary control (including dismissal) of employees of the Agency; and 3. appeals by such employees against dismissal or other disciplinary measures. 4. Until such regulations are made, any instrument relating to the conditions of service in the Civil Service of the State shall be applicable. 5. Employees of the Agency shall be entitled to pension and other retirement benefits, as may be prescribed by Law. | Staff Regulations and pensions |
| 16- | The Agency may, with the recommendation of the Board, make regulations for the proper implementation and enforcement of the provisions of this Law and without prejudice to any other provision, make regulations subject to the approval of the House of Assembly with respect to all or any of the following matters–   1. the structure and contents of Annual Procurement Plans; 2. the standard and content of all bid solicitation documents; 3. the standard and content of all procurement contracts; 4. the use of any procurement method; 5. fees chargeable by any procuring entity for matters relating to public procurements; and 6. the prevention and detection by the Agency of any act amounting to an infringement on the provisions of this Law and its Regulations. | Power to make Regulations |
| 17- | 1. Subject to the provisions of this Law, no suit shall be commenced against the Agency before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Agency by the intending claimant or their agent, and the notice shall clearly state: 2. the cause of action; 3. the particulars of claim; 4. the name and address of the legal practitioner of the intending claimant; and 5. the relief sought. 6. The Director General, Officers, Employees or Agents of the Board shall not be liable for any act or omission done in exercise of any function or power conferred by this Law upon the Board and/or its Director General, Officers, Employees or Agents. 7. An officer or employee of the Agency shall be indemnified from the assets of the Agency against any liability incurred by him/her in defending any civil proceeding, if the proceeding is brought against him/her in his/her capacity as an officer or employee of the Agency. | Legal Proceedings |
| 18- | A notice, summons or other document required or authorized to be served upon the Agency, 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, addressed to the Director General at the principal office of the Agency. | Service of Documents |
| 19- | 1. The Agency shall prepare a comprehensive report each year on all procurement activities not being of a recurrent nature, carried out by all procuring entities within the purview of this Law to the House of Assembly. 2. The annual report shall give an accurate account of the conduct of all capital procurement carried out by procuring entities within the purview of this Law. | Annual State Procurement Assessment Reports |
| 20- | The Agency shall operate an account with a bank(s) in the State and the signatories to the account(s) shall be the Director General, in his/her absence a designated representative and the head of the accounts department, in his/her absence, a designated representative or any person duly authorised by the Board in that behalf. | Bank Account |
| 21- | 1. The Agency shall keep proper account of all its expenditure and revenue and shall cause its account to be audited, not later than six (6) months after the end of each financial year, by external auditors appointed by the Auditor- General of the State. 2. The Agency shall, within six (6) months after the end of each financial year, furnish the Governor with a copy of its audited account along with a report of the state of affairs of the Agency for the year reported on. 3. In compliance with subsections (1) and (2) of this Section, the Board shall cause the report to be published in the State Official Gazette and its website. | Account and Audit |
| **Part IV: General Rules on Public Procurement** | | |
| 22- | 1. Subject to the exceptions under this Law, all procurements carried out by any procuring entity shall be conducted: 2. by Open Competitive bidding, using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed; 3. to promote competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts; 4. in a simple, sustainable, and standardized process, with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology; 5. in an effective, efficient, transparent, timely, equitable manner to ensure accountability which shall conform with the provisions of this Law and its Regulations with the aim of achieving value for money and fullness of purpose; 6. through a system of accountability, where public officers and persons involved directly or indirectly in the procurement process or its implementation are, when warranted by circumstances, investigated and held liable for their actions; 7. to involve 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; 8. to involve procurement plans that are supported by prior budgetary appropriation; and no procurement proceeding shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations; 9. to ensure that procurement and contract publication processes align with the Open Contracting Data Standards; 10. using applicable technological and electronic means, as much as possible, to achieve the objectives of regulating procurement under this Law; 11. to incorporate, where appropriate, framework contract procedures as may be stipulated in guidelines made by the Agency pursuant to this Law. 12. All regulations, procedures and timelines to be prescribed pursuant to this Law and specified by the Agency, from time to time, shall always conform to the provisions of paragraphs (a) – (g) of subsection (1) above. 13. Where the Agency has set prior review or monetary benchmark pursuant to this Law, no funds shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement falling the above set benchmark, without the approval of the Agency. 14. A supplier, contractor or service provider may be a natural person, a legal person or a natural/legal person. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law. 15. All bidders, in addition to requirements contained in any solicitation document shall: 16. Possess the following: 17. professional and technical qualification to carry out particular procurement; 18. financial capacity; 19. equipment and other relevant infrastructure; 20. personnel to perform the obligations of the procurement contract; and 21. the legal capacity to enter into the procurement contract; 22. Not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding- up petition or proceedings; 23. Have fulfilled all its obligations to pay taxes, pensions and social security contributions; 24. 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; 25. The Agency or any procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with the provisions of this Law and for this purpose any such requirement shall apply equally to all bidders. 26. A bid or a tender shall be excluded from any particular procurement proceeding if: 27. There is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Agency, in an attempt to influence any action, decision making or any procurement activity; 28. The bidder has been debarred and the period of the debarment has not elapsed; 29. The bidder is in receivership or is the subject of any type of insolvency proceedings or, if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding; 30. The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in instalments; 31. The bidder has been convicted for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit; 32. The bidder has in its management or is in any portion owned by any person that has been convicted for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; 33. 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. 34. (i) Where a bid and/or tender is excluded under the provisions of subsections (6) and (7) (a – g) of this Section, the Agency shall inform the bidder in writing the grounds for the exclusion of the bid or tender from public procurement.   (ii) A procuring entity shall keep a record of the proceeding in a manner prescribed by the Agency.   1. All contract prices, except in the case of admeasurement contracts, shall be considered as fixed, and therefore not subject to any upward variation during the contract implementation, except under extraordinary circumstances and only upon prior approval of the Agency which shall, from time to time, stipulate by regulation, the basis for allowing or computing the quantum of such variations. 2. All communications and documents issued by procuring entities and the Agency shall be in English Language. 3. All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Agency. 4. Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten (10) years from the date of the award. 5. Copies of all procurement records shall be forwarded to the Agency not later than three (3) months after the end of the financial year and shall include: 6. information identifying the procuring entity and the contractors; 7. the date of the contract award; 8. the value of the contract; and 9. the detailed records of the procurement proceedings. 10. All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed from time to time by the Agency. 11. Criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding. 12. The burden of proving fulfilment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor. 13. A contract shall be awarded to the lowest cost evaluated and qualified bidder from the bidders substantially responsive to the bid solicitation. 14. Notwithstanding subsection (17) of this Section, the Agency may refuse to endorse the award of a contract for public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law. 15. Pursuant to subsection (18) of this Section, the Agency may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender amongst the bidders substantially responsive to the initial bid solicitation, based only on the price. 16. A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposal or quotations, other than in the summary form stating the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award. 17. The Accounting Officer of an entity and any officer to whom responsibility is delegated is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its Regulations. 18. The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations made under it are complied with, and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention with the provisions of this Law or its Regulations. 19. Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made from time to time by the Agency. 20. Any person who has been engaged in preparing for a procurement or part of the proceedings may not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tenders. 21. 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. 22. All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution. 23. 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. | General Rules on Public Procurement |
| 23- | All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution. | Warranties |
| **Part V: Organisational Structure for Procurement** | | |
| 24- | A procuring entity within the provisions of this Law shall establish a Procurement Management Unit, whose functions shall be to:   1. To support the preparation of the annual procurement plan and keep it under review in the course of the financial year; 2. To maintain a list of suitable sources of supply for each main category of regularly purchased items; 3. To prepare and issue invitations to tender and tender documents; 4. To receive and support the evaluation of bids; 5. To support arrangements for bid challenge; 6. To manage the contract to completion; 7. To initiate action against bidders and contractors who breach ethical standards or fail to complete their contractual obligations satisfactorily; 8. To maintain records of the whole procurement process; and 9. To carry out any other related functions that may be assigned to it by the accounting officer of the procuring entity. | Procurement Management Unit |
| 25- | Subject to the monetary and prior review benchmark for procurements, as may from time to time be determined by the Agency, the following shall be the Approving Authority for the conduct of public procurement:   1. in the case of a government agency, parastatal or corporation, a Parastatal Tenders Board; 2. in the case of a ministry or extra-ministerial entity, the Ministerial Tenders Board. | Approving Authority |
| 26- | Subject to regulations, as may from time to time be issued by the Agency, a procuring entity shall plan its procurement by:   1. preparing a needs assessment and evaluation; 2. identifying based on (a) above, the goods, works or services required; 3. preparing an analysis of the cost implications of the proposed procurement; 4. aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost; 5. integrating its procurement expenditure into its yearly budget; 6. 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 7. ensuring that the procurement entity functions stipulated in this Section shall be carried out by a Procurement Planning Committee. | Procurement Planning |
| 27- | 1. For each financial year, each procuring entity shall establish a Procurement Planning Committee. 2. The Procurement Planning Committee shall comprise the following members: 3. the Accounting Officer of the procuring entity or his/her representative who shall be the Chairman of the committee; 4. a representative of the procurement function of the procuring entity who shall be the secretary; 5. a representative of the unit directly in requirement of the procurement; 6. a representative of the financial function of the procuring entity; 7. a representative of the planning, research and statistics function of the procuring entity; 8. Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and 9. A representative of the legal function of the procuring entity. | Establishment and Composition of Procurement Planning Committee |
| 28- | Subject to regulations, as may from time to time be issued by the Agency, a procuring entity shall implement its procurement plans as follows:   1. Advertise/solicit for bids in adherence to this Law and guidelines, as may be issued by the Agency from time to time; 2. Invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Agency and any other relevant agency or body including their own organizations or association; 3. Receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines, as may be issued by the Agency from time to time; 4. Notify and obtain the approval of the Approving Authority, including the Certificate of No Objection of the Agency where applicable, before making an award; 5. Debrief the bid losers on request; 6. Resolve complaints/disputes if any; 7. Obtain and confirm the validity of any performance guarantee; 8. Execute the Contract Agreement; 9. Announce and publicize the award in the format stipulated by this Law and guidelines, as may be issued by the Agency from time to time. | Procurement Implementation |
| 29- | 1. The Accounting Officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and corporations the Director General or Officer of coordinate responsibility. 2. The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for: 3. Ensuring compliance with the provisions of this Law by his/her entity and liable in person for the breach or contravention of this Law or any Regulation made hereunder, whether or not the act or omission was carried out by him personally or any of his/her subordinates, and it shall not be material that he/she had delegated any function, duty or power to any person or group of persons; 4. Constituting the Procurement Planning Committee and its decisions; 5. Ensuring that adequate appropriation is provided specifically for the procurement in the State budget; 6. Integrating his/her entity’s procurement expenditure into its yearly budget; 7. Ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; 8. Constituting an Evaluations Committee for each procurement requirement; 9. Liaison with the Agency and ensuring the implementation of its Regulations. | Accounting Officer |
| 30- | 1. There is a Tenders Board, established by this Law, in each of the State’s Ministry, Extra-ministerial Office/Department/Agency, Parastatal, Corporation. 2. Subject to the approval of the Board, the Agency shall, from time to time, prescribe the membership of the Tenders Board, which shall include the Head of the Procurement Management Unit of the Procuring Entity as the secretary. 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 Accounting Officer, in consultation with 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 secretary of the Evaluation subcommittee. 5. The decision of the Tenders Board shall be communicated to the Chief Executive Officer of the Procuring Entity for implementation. |  |
| **Part VI: Procurement Procedures: Goods, Works and Non-Consultancy Services** | | |
| 31- | 1. The procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding, except when it is otherwise provided by this Law. 2. Any reference to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed. 3. No negotiations, unless otherwise provided for by this Law, shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is: 4. in the case of goods and works, the lowest cost evaluated bid from the bidders who respond to the bid solicitation; 5. in the case of services, the highest rated evaluated bid from the bidders who respond to the bid solicitation. 6. The provisions of this Law on open competitive bidding shall apply to procurement of goods and services with monetary value above N XXX (XXX Million Naira). 7. The Board shall make rules applicable to procurement of goods and services with monetary value below N XXX (XXX Million Naira). | Open Competitive Bidding |
| 32- | 1. Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Agency shall, from time to time, set the monetary benchmark for which procurements shall fall under either system. 2. In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized newspaper, the official website of the procuring entity, the Agency and the State Procurement Journal not less than XXX weeks before the deadline for submission of the bids for the goods, works and services. 3. In the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity and the State Procurement Journal not less than XXX weeks before the deadline for submission of the bids for the goods, works and services 4. Not later than six (6) months after the enactment of this Law, the Agency shall issue guidelines for the advertisement/publication of Invitations to Bid. | Invitation to Bid |
| 33- | 1. Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more. 2. Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or service provider that requests them; and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery. 3. Not later than six (6) months after the enactment of this Law, the Agency shall make Regulations stipulating the guidelines for the pre- qualification of bidders in any public procurement process. | Pre-qualification of Bidders |
| 34- | 1. Bid Documentation shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Agency. The Bidding Documents shall include the following: 2. 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; 3. Terms of Reference; 4. Eligibility Requirement; 5. Description of the products, services or works concerned; 6. Plans and Technical Specification; 7. Form of Bid, Price Form, and List of Goods or Bill of Quantities; 8. Delivery Time or Completion Schedule; 9. Form and Amount of Bid Security; and 10. Form of Contract and General and Special Conditions of Contract. 11. 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 Documentation |
| 35- | 1. Subject to the monetary and prior review benchmark as may be set by the Agency, all procurements valued in excess of the sums prescribed by the Agency may require a bid security in an amount not more than two percent (2%) of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity or an insurance bond issued by an insurance company acceptable to the Agency. 2. The Agency shall, from time to time, specify the principal terms and conditions of bid security to be posted by bidders. | Bid Security |
| 36- | 1. All bids in response to an invitation to Open Competitive Bidding shall be signed by an official authorized representative, to bind the bidder to a contract, and placed in a sealed envelope. 2. All bids shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes and shall be submitted simultaneously. 3. All submitted bids shall be deposited and kept in a secured tamper- proof bid box or/and submitted in the electronic format or platform provided or required by the Procuring Entity. 4. All submitted bids must be in English Language. 5. The procuring entity may keep a register of bid submission showing the date and time the bid was presented for submission. 6. Any bid presented after the deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or service provider who 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. | Submission of bids |
| 37- | There shall be a failure of bidding if:   |  |  | | --- | --- | | (1) | 1. No bids are received; | |  | 1. No bid qualified as the lowest cost evaluated responsive bid or highest rate responsive bid; or | |  | 1. 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) | 1. The contract shall be re-advertised and re-bid at the occurrence of any of the instance stated in sub section (1) of this Section; | |  | 1. 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. | | Failure of Bidding |
| 38- | A procuring entity may –   1. Reject any bids at any time prior to the acceptance of a bid without incurring any liability to the bidders; 2. Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders. | Rejection of Bids |
| 39- | 1. The period of validity for a bid shall be the period specified in the tender documents. 2. A procuring entity may request the supplier, contractor or service provider to extend the period of validity for an additional specified period of time. 3. A supplier, contractor or service provider may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness. 4. A supplier, contractor or service provider may modify or withdraw its bid prior to the deadline for the submission of bids. 5. The modification or notice of withdrawal is effective if it is received by the procuring entity before the deadline for the submission of tenders. | Validity of Period of Bids |
| 40- | 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 –   1. permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with; 2. 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; 3. ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension; 4. ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the Agency; and 5. call-over to the hearing of all present; the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary of the Agency or his/her delegate in the minutes of the bid opening. | Bid Opening |
| 41- | 1. Every bid shall be first examined to determine if it: 2. meets the minimum of eligibility requirements stipulated in the bidding documents; 3. has been duly signed; 4. is valid for the stipulated tender validity period; and 5. is generally in order. 6. 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. 7. The following shall not be sought, offered or permitted: 8. changes in prices; 9. changes of substance in a bid; and 10. changes to make an unresponsive bid responsive. 11. 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. 12. The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender. 13. A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification. 14. A major deviation is a significant departure from the requirements in the bidding document that would render the quality and usefulness of the goods provided, or the scope or standard of public works or services, as inferior to what was stated in the technical specifications or other parts of the bidding document. The following shall be considered as major deviations: 15. With respect to clauses in an offer - 16. unacceptable sub-contracting, 17. unacceptable schedule if time is of the essence, 18. unacceptable alternative design, and 19. unacceptable price adjustment; 20. With respect to the status of the bidder - 21. that he is ineligible or not prequalified; 22. With respect to bid documents an unsigned bid, 23. With respect to time, date and location for submission: 24. any bid received after the date and location for submission stipulated in the solicitation document; and 25. any bid submitted at the wrong location. 26. In cases of major deviations, the bid shall not be considered any further and where unopened, shall be returned as such to the bidder. 27. 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. 28. Minor deviations are deviations that do not materially depart from the requirements set out in the tender document and would not affect the quality and usefulness of the product to be provided, the works to be constructed or the services to be performed. Subject to any provision to the contrary, the following shall be considered as minor deviations: 29. The use of codes; 30. Alternative design; 31. Alternative workmanship; 32. Omission in minor items; 33. Arithmetical errors; 34. Completion period where these are not of essence; 35. Any other condition that has little impact on the bid. | Examination of Bid |
| 42- | 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: 3. In the case of goods, works and non-consultancy services to determine and select the lowest cost evaluated bidders from the bidders responsive to the bid solicitation; 4. In the case of consultancy services to determine the bidder with the best overall combination of quality and cost. 5. The Agency shall issue Regulations stipulating the guidelines for the evaluation of bids. | Evaluation of Bids |
| 43- | 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. | Disqualification of Bid |
| 44- | 1. Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, procuring entities shall not disclose information forwarded to them by bidders labelled as confidential, such information includes technical aspects, trade secrets and confidential information of tenders. 2. Confidential information contained in any bid concerning commercial, financial or technical information or trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances. 3. After the public opening of tenders, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the contracting authority or the procurement Agency shall be disclosed to any bidder or any third party until the award decision is notified to the successful tenderer. | Confidentiality of Bids |
| 45- | 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. The determination of the successful bidder shall be made by the Evaluation Committee and the grounds for that determination shall be included in an Evaluation Report which the Procurement Management Unit shall submit to the Tenders Board for approval, together with any recommendation of its own. 4. Notice of the success of its bid shall immediately and simultaneously be communicated to the successful bidder and the other bidder(s); but no action shall be taken to sign the contract until a standstill period of 14 days from the date of the award notice has elapsed, to allow any bidder aggrieved by the award decision to apply for challenge/administrative review under section 68. 5. Notwithstanding the provision of subsection (4) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, such notice shall not be communicated to a successful bidder until the approval is obtained or the prior review process has been completed. | Acceptance of Successful of Bids |
| 46- | Without prejudice to the provisions of this Law, the period between the opening of bids and the award of contract shall normally not exceed three (3) months, except the procuring entity, in circumstances beyond its control, before the deadline applies for extension and receives the written approval of the Agency. Notwithstanding, non-compliance with the stated timeline shall not vitiate the procurement process, but may be reflected in the performance assessment of the Procuring Entity and the officials involved. | Limitation of Time for Procurement Award |
| 47- | 1. When a contract award procedure has been launched by publication of a procurement notice, it may be terminated where – 2. a contract of framework agreement is concluded; 3. the award procedure is cancelled for one of the following reasons: 4. no tender is submitted within the specified final time limit; 5. none of the received tenders are compliant; 6. all compliant tenders contain prices which substantially exceed the procuring entity’s budget; 7. the number of the received compliant tenders is less than three (3) and does not ensure a genuine competition on the contract concerned; 8. the number of qualified candidates is less than three (3) and does not ensure a genuine competition on the envisaged contract; 9. the award procedure is cancelled for other reasons beyond the procuring entity’s control and unpredictable at the time of launching the award procedure. 10. 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. Procuring entities shall maintain a register of awards, where they shall record details of all procurement awards. | Termination of Award Procedure |
| **Part VII: Procurement Procedures: Consultancy Services** | | |
| 48- | Where a procuring entity wishes to procure services for its needs which are precise and ascertainable: | Register of Awards |
| 49- | 1. it shall solicit for expressions of interest or applications to pre- qualify to provide the services by publishing a notice to that effect in at least two (2) national newspapers and the procurement journal, where available; 2. where the value of the services to be procured is less than N XXX (XXX Million Naira) or with the approval of the Agency, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice request at least three (3) and not more than ten (10) consultants or service providers to make proposals for the provision of the services in a format stipulating: 3. a statement of qualifications of the consultant to provide the service; 4. a statement of understanding of the procuring entity’s needs; 5. the methodology for providing the service; 6. the time frame for providing the service; and 7. the cost or fee for the service. | Expressions of interest to provide Services for Procurement Award |
| 50- | 1. A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost. 2. The procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in two (2) national newspapers and the procurement journal. 3. A procuring entity may make direct requests to a limited number of consultants requesting proposals for the provision of a service if: 4. the services are only available from no more than three (3) consultants; 5. the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or 6. it is in the public interest. | Request for proposals to provide services for unascertained needs |
| 51- | 1. Request for proposals shall include: 2. the name and address of the procurement entity; 3. a requirement that the proposals are to be prepared in the English language; 4. the manner, place and deadline for the submission of proposals; 5. a statement to the effect that the procuring entity reserves the right to reject proposals; 6. the criteria and procedures for the evaluation of the qualifications of the consultants; 7. the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications; 8. 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; 9. whether the procuring entity is seeking proposals on various possible ways of meeting its needs; 10. a requirement that the proposal price is to be expressed in Nigerian currency, except in international bidding when convertible foreign currencies may be used, in which case the currencies shall be converted according to the prevailing Central Bank of Nigeria rate for evaluation purposes; 11. 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; 12. 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 13. a short list to be made of only national consultants for the consulting assignment, or contract within a set benchmark in the procurement regulation provided that national consultants possess such requisite skills. 14. The procuring entity shall provide the same information to every consultant requested to submit proposals. | Content of the request for Proposals |
| 52- | 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 to take the minutes into accounts in preparing their proposals. | Clarification and modification of request for proposals |
| 53- | 1. The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than ten (10) days between the issue of the notice or request and the deadline for submission. 2. The technical and financial proposals shall be submitted simultaneously but in separate envelopes. 3. A proposal received after the deadline for submission of proposals shall be returned to the sender unopened. 4. Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly. 5. The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any review by the Agency is concluded. | Submission of Proposals |
| 54- | 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: 2. 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; 3. the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity; 4. the proposal price, including any ancillary or related cost; 5. 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 6. security considerations. 7. 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 Agency and shall be reflected in the record of the procurement proceedings. | Criteria for evaluation of Proposal |
| 55- | 1. The procuring entity shall select the successful proposal by either choosing the proposal with: 2. the lowest evaluated price or; 3. the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted. 4. 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. 5. Nothing in this Section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection. | General Selection procedure |
| 56- | 1. Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals, in accordance with the criteria other than price, as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria, as stipulated in the request of proposals. 2. The procuring entity shall compare the prices of those proposals that have attained a rating at or above the benchmark. 3. The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non-responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen (14) days after the decision has been taken by the procurement entity. 4. The name of the qualified consultants, the quality score for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened. 5. The procuring entity shall prepare the minutes of public opening of financial proposal which shall be part of the evaluation report and shall retain this record. 6. The successful proposals shall be: 7. 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; 8. the proposals with the lowest price in the case of least-cost selection; or 9. the highest ranked technical proposal within the budget in the case of fixed budget selection. 10. The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals. 11. The procurement entity shall: 12. establish a weight with respect to quality and price of the proposals; 13. 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; 14. 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 does not result in a procurement contract; and 15. 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. | Procedure for selection of proposal where price is a factor |
| 57- | 1. Where the procuring entity elects to make a quality-based selection, based on the consultant’s qualification or single-source selection, it shall engage in negotiations with consultants in accordance with this Section. 2. The procuring entity shall, if negotiations with the consultant with the best rating fail, 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. 3. The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants. | Selection procedure where price is not a factor |
| **Part VIII: Restricted and Special Procurement Procedures** | | |
| 58- | 1. Subject to the approval of the Agency, a procuring entity may, by reasons of economy, efficiency, special skills, experience and proven track record of some identified contractors or service providers over a period of time, initiate procurement by means of restricted procurement if: 2. the goods, works or services are available only from a limited number of suppliers or contractors; or 3. 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 4. the procedure is used as an exception rather than a norm. 5. Where a procuring entity engages in restricted tendering on the basis that: 6. 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 7. 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. | Restricted Tendering |
| 59- | 1. A procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation. 2. Generally, quotations shall be obtained from at least 3 unrelated contractors or suppliers. 3. Each contractor or supplier from whom a quotation is requested shall: 4. be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes are to be included in the price; and 5. give only one quotation and shall not be allowed to change or vary the quotation. 6. No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation. 7. The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation. | Request for Quotation |
| 60- | 1. Subject to the approval of the Board, a procuring entity may initiate emergency procurement where: 2. the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an act of God; 3. 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. 4. Subject to the approval of the Board, in an emergency situation, a procuring entity may initiate direct contracting of goods, works and services. 5. All procurements made under emergency shall be handled expeditiously, having due regard to accountability. | Emergency Procurement |
| 61- | 1. At such time as the Governor may consider appropriate, the Agency shall design and set up a secure electronic portal to be known as the XXX State Government Electronic Procurement System, which shall be the primary source of information for all public procurement matters and opportunities within the purview of this Law and its Regulations issued under this Law. 2. Subject to the provisions of this Law and its Regulations, it shall be lawful for any procuring entity to consider any or all of its tenders by electronic auction and or simulation on its electronic portal, provided that the use of the electronic system shall be transparent, efficient, and economical. | E-Procurement |
| **Part IX: Procurement and Contract Requirements and Records** | | |
| 62- | 1. The procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign Country. 2. Where the procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic suppliers and contractors and the criteria for eligibility for such preference. 3. Margin of Preference may apply to tenders under all International competitive bidding. 4. The Agency shall by Regulation, from time to time, set the limit and the formulae for computation of margins of preference. | Domestic Preferences |
| 63- | 1. Advance payment of XX percent (XX%) may be paid to a supplier or contactor, provided that advance payment above XX percent (XX%) may be paid where the supplier or contractor submits a written request justifying the need for such payment. Advance payment above XX percent (XX%) shall be guided by Regulations prescribed by the Agency with the approval of the Governor. 2. Advance payment is subject to the following – 3. in the case of National Competitive Bidding – an unconditional bank guarantee or insurance bond issued by a reputable bank or institution acceptable to the Board; or 4. in the case of International Competitive Bidding – an unconditional bank guarantee issued by a reputable bank acceptable to the Board; or 5. in cases mentioned in (i) and (ii) above, the Board may accept other forms of security which it considers sufficient to guarantee performance. 6. After advance payment has been made to a supplier or contractor, no further payment shall be made to such supplier or contractor without an interim performance certificate issued in accordance with the contract agreement. | Advance Payment |
| 64- | Prior to the signing of the contract, the successful bidder may be required, in circumstances deemed necessary by the Board, as a further measure of guarantee for the faithful performance of the procurement contract and compliance with his obligation under the contract, to post a performance security in such form and amount as specified in the bid solicitation. | Performance Guarantees or Bond |
| 65- | 1. Payment for the procurement of goods, works and services shall be settled promptly and diligently. 2. Any payment due for more than XXX (XXX) 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 XXX (XXX) days. | Interest on delayed Payment |
| 66- | Every procuring entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Agency. | Records of Procurement Proceedings |
| **Part X: Investigation and Review** | | |
| 67- | 1. The Agency may conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers it necessary or desirable to prevent or detect a contravention of this Law. 2. The Agency may in the course of its investigation: 3. at any time during normal office hours, enter the premises of the procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceedings under investigation; 4. require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document; 5. search premises for any book, records, accounts or document; 6. examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant; 7. 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; 8. 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; 9. provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required. 10. The power of entry and search conferred by subsection (2) (i) - (iii) of this Section shall not be exercised except the Agency has first obtained an order of the State High Court without the necessity of putting the procuring entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice. 11. The Agency shall, if satisfied that there has been a contravention of the provisions of this Law or any of its Regulations in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which shall include recommending: 12. Nullification of the procurement proceedings; 13. cancellation of the procurement contracts; 14. ratification of anything done in relation to the proceedings; or 15. a declaration consistent with any relevant provisions of this Law. 16. On completion of an investigation, the Agency shall send a Summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant. 17. The Agency shall afford any procuring entity, bidder, supplier or contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under subsection (4) of this Section. 18. The Agency may, pursuant to an advice of a procuring entity, as a result of its review of a procurement or report of investigation by a relevant government Agency, issue a variation order, requiring a contractor at his own expense to repair, replace, or to do anything in his/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. | Investigation by the Agency |
| 68- | A bidder may seek administrative review of any omission or breach by a procuring entity of the Board under the provisions of this Law and its Regulations. | Administrative Review |
| 69- | 1. The following procedure shall apply to complaints against a procuring or disposing entity – 2. a complaint by a bidder against a procuring or disposing entity shall first be submitted in writing, within 14 days standstill period or 14 days of having actual or constructive notice of the issue being complained about, to the accounting officer of the procuring entity or disposing entity; 3. The accounting officer shall, on receiving the complaint, make a decision in writing within fifteen (15) days, indicating the corrective measures to be taken, including the suspension of the proceedings where he/she deems it necessary and gives reasons for his/her decision; 4. where the bidder is not satisfied with the decision of the accounting officer or the accounting officer fails to give his decision within the stipulated deadline, the bidder may make a complaint to the Agency within ten (10) days from the date of communication of the decision of the accounting officer or from the deadline for giving review decision; 5. upon receipt of a complaint, the Agency shall promptly give notice of the complaint to the respective procuring or disposing entity and may suspend any further action by the procuring or disposing entity until the Agency settles the matter; 6. before taking any decision on a complaint, the Agency shall notify all interested bidders of the complaint considering representations from the bidders and from the respective procuring or disposing entity; and 7. the Agency shall make its decision within twenty-one (21) days after receiving the complaint, stating the reasons for its decision and remedies granted. 8. The following procedures shall apply to complaints against the Agency when it has conducted procurement to meet its needs or the requirement of the Law – 9. A complaint by a bidder against the Agency shall first be submitted in writing, within a 14 days standstill period or 14 days of having actual or constructive notice of the issue being complained about, to the Director General of the Agency who shall bring the complaint to the attention of the Agency. 10. The Board shall notify all interested bidders of the complaint and consider all representations from the bidders and procuring or disposing entities. 11. The Board shall make its decision within twenty-one (21) days after receiving the complaint, stating the reasons for its decision and remedies granted. 12. The decision of the Agency or the Board in subsections 1(e) and (2)(b) respectively may include any or all of the following: 13. dismissal of the complaint; 14. nullifying in whole or in part an unlawful act or decision made by the procuring or disposing entity or the Board; 15. declaring the rules or principles governing the subject matter of the complaint; and 16. revising an improper decision by the procuring or disposing entity or the Board substituting the same with its own decision. 17. A complainant or any of the party to the review proceeding under this section may further complain or appeal to the XXX State High Court where the Agency, under subsection 1, or the Board, under subsection 2, fails to address the complaint or communicate the decision taken within the stipulated time, or if he/it is dissatisfied with any decision of the Agency or the Board. 18. Not later than six (6) months after the commencement of this Law but, without prejudice to any existing laws or regulations, the Chief Judge shall issue Practice Directions for the accelerated hearing of matters arising from bidders complaints and/or other disputes connected with public procurement, to ensure that suites/proceedings to the State High Court for judicial review shall be dispensed with not later than 60 days after filing, or in the case of a matter/dispute requiring oral evidence between/amongst parties, to ensure that the matter is dispensed with not later than 6 months after filing of the action. | Procedure for complaints against a procuring or disposing entity or the Agency |
| **Part XI: Disposal** | | |
| 70- | 1. For the purposes of this Law every procuring entity shall also be a disposing entity. 2. The Board shall, with the approval of the Governor: 3. determine the applicable policies and practices in relation to the disposal of all public property; 4. issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and 5. 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. 6. 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): 7. created through public expenditure; 8. acquired as a gift or through deeds; 9. acquired in respect of intellectual or proprietary rights; and 10. acquired on financial instruments (including shares, stocks, bonds, etc.). 11. The means of the disposal of public property shall include: 12. Transfer to another government or public body; 13. Open competitive bidding; 14. Sale by auction; 15. Trade in as part of a procurement contract; 16. Sale to a public officer; 17. Donation to charity; or 18. Destruction. | Disposal of Public Property |
| **XII: Offences and Debarment Procedure** | | |
| 71- | 1. Any natural person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than XXX (XXX) year(s) but not exceeding XXX (XXX) year(s) without an option of fine. 2. It shall be an offence to – 3. open or tamper with any sealed Bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of Bids or other documents; 4. delay, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or its Regulations; 5. 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; 6. engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way; 7. directly or indirectly attempt to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract; 8. split tenders to enable the evasion of monetary benchmark set; 9. bid-rigging; 10. alter any procurement document with intent to influence the outcome of a tender proceeding; 11. use fake documents or encourage their use; 12. wilfully refuse to allow the Agency or its officer to have access to any procurement record; and 13. Any person whilst carrying out their duties as an officer of the Agency, or any procuring entity which contravenes any provision of this Law and its Regulations commits an offence and shall be liable on conviction to a cumulative punishment of – 14. a term of imprisonment of XXX (XXX) year(s) without option of fine; and 15. summary dismissal from government service. 16. 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 – 17. being barred from all public procurement for a period not less than XXX (XXX) year(s); and 18. a fine equivalent to the value of the procurement in issue. 19. Where a Corporate body or firm is convicted, pursuant to subsection (4) of this Section, every Director of the Company or every Partner of the Firm, whose action or inaction is directly or indirectly involved shall be guilty of an offence and be liable on conviction to a term of imprisonment for not less than XXX (XXX) year(s) but not exceeding XXX (XXX) year(s) without an option of fine, unless he/she proves that the offence upon which the conviction was based was committed without his/her knowledge, consent or connivance. 20. An alteration pursuant to subsection (2) (h) of this Section shall include but not limited to – 21. forged arithmetical correction or calculation; 22. insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening; and 23. request for clearance in a manner not permitted under this Law and its Regulations. 24. 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. 25. Bid-rigging pursuant to subsection (2) (g) of this Section means an agreement between persons where – 26. offers submitted have been prearranged between them; or 27. 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. 28. 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. 29. For the purposes of subsection (2), (5) and (8) above, it shall be sufficient to prove that a reasonable businessperson should have known that his/her action would result in his/her company/firm having an undue advantage over other bidders to the detriment of the State Treasury. 30. Staff of procuring entities shall comply with code of ethics as may be approved by the Agency. | Offences |
| 72- | 1. The Agency shall commence the process of Debarment of Supplier, Contractor or Service provider: 2. If it has cause during its inspections to believe that a Supplier, Contractor or Service provider has contravened any provision of the Law or its regulation; or 3. When a Procuring Entity following adequate investigation submits a debarment recommendation approved by its Accounting Officer with convincing evidence. 4. The Agency shall immediately acknowledge receipt of the proposal for debarment to the Procuring Entity that reported the matter and shall form a Debarment Committee under the chairmanship of the Director-General and comprising other senior officers in the State Public Procurement Authority together with community representatives. 5. The Agency shall within twenty-one (21) days analyse the information received, including any further information/document(s) it may require from the procuring entity that submitted the debarment proposal and present this analysis to the Debarment Committee for its endorsement. 6. If the Agency on the advice of the Debarment Committee finds that the grounds of complaint have not been established or are insubstantial, it shall reject the complaint and so inform the Procuring Entity that reported the matter, together with the grounds for rejection of the complaint. 7. If grounds for debarment have been established, the Agency shall issue to the bidder or contractor within 14 days a notice of intention to debar. The notice must state the grounds for the intended debarment, the reasons thereof, the intended period of debarment as well as the terms attached to the debarment. 8. The bidder or contractor who is the subject of the complaint shall be given fourteen (14) days to respond to the allegations and the proposed sanctions. 9. The Debarment Committee shall consider the bidder or contractor’s response to the allegation and shall within twenty-one (21) days reach a decision on the allegation and an appropriate penalty, which may consist of: 10. A formal written warning; or 11. Suspension of entitlement to bid for future contracts in the State for a stipulated period of between one to five years; or 12. For the most serious offences, permanent debarment. 13. The Agency will within seven (7) days issue a notice of debarment or written warning in accordance with the decision of the Debarment Committee. The notice must state the grounds for the debarment, the reasons thereof (a description of the reasons for the debarment in sufficient detail) and the period of debarment. 14. Where debarment is not imposed, the Agency shall within seven (7) calendar days from the date of receipt of the Debarment Committee’s decision notify the supplier, contractor or service provider and the Procuring Entity concerned. 15. The name of the debarred supplier, contractor or service provider is then entered into the database of the Agency and published on the Agency’s website for public viewing. No Procuring Entity in the State shall enter into a contract with a debarred supplier, contractor or service provider until the period of debarment has expired. However, a contractor shall not be relieved of fulfilling obligations on an existing contract. 16. The supplier, contractor or service provider may appeal to the State High Court within 30 days after the receipt of the notice of debarment if not satisfied with the decision to debar. | Debarment procedure |
| **Part XIII: Miscellaneous** | | |
| 73- | The provisions of this Law shall apply to all procurement of goods, works and services carried out by:   1. The State Government, Local Government Councils and all procuring entities in the State; 2. 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; 3. all entities outside the foregoing description which derive any funds appropriated or proposed to be appropriated for any type of procurement described in this Law from the State Government’s share of Consolidated Revenue Fund. | Scope of Application |
| 74- | There shall be a transitory period of three (3) months after the assent to this Law. | Transitional provision |
| 75- | **“Accounting Officer”** means any person charged with responsibility relating to procurement in a procuring entity;  **“Approving Authority”** means:   1. in the case of a government agency, parastatal or corporation, Parastatal Tender Board; 2. in the case of a ministerial entity, the Ministerial Tender Board;   **“Assets”** include tangible and intangible things which have been or may be sold or procured for consideration;  **“Board “**means the XXX State Public Procurement Board;  **“Debar”** means the placing of a firm, company or natural person on a list of persons ineligible to participate in any procurement proceeding under this Act;  **“Contract”** means an agreement entered in writing;  **“Contractor or Supplier”** means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, limited liability partnership, individual, sole proprietors, joint stock companies, joint ventures or any other legal entity through which business is conducted;  **“Fund”** means the XXX State Procurement Board Fund, established by Section 11 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 XXX State;  **“Interim Performance Certificate”** means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by the procuring entity, but not meaning completion;  **“International Competitive Bidding”** means the solicitation of bids from both domestic and foreign contractors and suppliers;  **“Margin of Preference”** means the extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;  **“Monetary Benchmark”** means the value limit in Naira set by this Law and as may be prescribed by the Board from time to time;  **“National Competitive Bidding”** means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigerian Law;  **“Negotiation”** means discussion to determine the terms and conditions of a contract or procurement;  **“Open Competitive Bidding”** means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;  **“Procurement”** means acquisition;  **“Procurement Proceedings”** means the initiation of the process of effecting a procurement up to award of a procurement contract;  **“Procuring Entity”** means any public body in XXX State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and Agencies of the XXX 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 XXX 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. | Interpretation |
| 76- | This Law may be cited as the XXX State Public Procurement Law 20XX and shall come into effect on XX day of XXX, 20XX | Citation and commencement |
| **SCHEDULE** | | |
| **SUPPLEMENTARY PROVISIONS** | | |
| 1- | Where the Board desires to obtain the advice of any person on any matter, the Board may co-opt such person to be a member for the meeting or meetings as may be required, and the person shall whilst so co-opted, have all the rights and privileges of a member of the Board save that he/she shall not be entitled to vote on any question or count towards a quorum. | Powers of the Board to Co-opt Persons |
| **Proceedings of the Board** | | |
| 2- | 1. The Board shall in each year hold a general meeting as its annual meeting, in addition to any other meetings in that year, and it shall specify the meeting as such. 2. The Annual General Meeting shall be held within six (6) months after the close of each financial year and the report of the meeting shall be open to the public. 3. The Board shall ordinarily meet for dispatch of business at such times and places as the Chairman may from time to time appoint, but not less than three (3) times in any financial year. 4. The quorum of the Board shall be any four (4) members. 5. The Chairman shall preside at all meetings of the Board when he is present, and when he is not present any other member of the Board may be appointed by the members present at the meeting to preside. 6. Where not less than five (5) members of the Board request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Board for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Board for those purposes at the earliest convenient date. 7. Notwithstanding anything in the foregoing provisions of this paragraph, the first ordinary meeting of the Board shall be summoned by the Governor, who may give such directions as he/she thinks fit in respect of the procedures to be followed at the meeting. | Meetings of the Board |
| 3- | 1. All questions at a meeting of the Board shall be determined by a majority vote of members of the Board present and voting, being members who under this paragraph are entitled to vote at such meeting. 2. At any meeting of the Board, each member other than the 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. | Voting |
| 4- | 1. Subject to the provisions of this Law, the Board may make standing orders with respect to the holding of meetings of the Board, the notices to be given of such meetings, the proceedings at the meetings, the keeping of minutes of such meetings, custody or the production for inspection of such minutes. 2. Subject to any standing order made under subparagraph (1) of this paragraph, the procedure of the Board with respect to the holding of meetings, shall be such as the Board may from time to time determine. | Standing Order |
| 5- | 1. A member of the Board who is in any way directly or indirectly interested in a transaction or project of the Board shall disclose the nature of his/her interest at a meeting of the Board, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project. 2. For the purpose of subparagraph (1) of this Paragraph a general notice given at a meeting of the Board by a member to the effect that he/she is interested in any trade or business or he/she is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Board concerning that trade, business, company or firm, shall be regarded as sufficient disclosure of his/her interest in relation to that transaction or project. 3. A member of the Board may not attend in person a meeting of the Board in order to make a disclosure which he/she is required to make under this paragraph if he/she takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting. | Disclosure of  Interest by members of the Board |
| 6- | The Board shall have its principal office within the Agency’s premises or such other place in the State as may be designated for the efficient discharge of its functions. | Offices of the Board |
| 7- | 1. The Common Seal of the Board shall be such as may be determined by the Board, and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Secretary, or of some other members authorized generally or specifically by the Board to act for that purpose. 2. Any document purporting to be a document duly executed under the common seal of the Board shall be received in any Court and shall, unless the contrary is proved, be deemed to be so executed. | Common Seal |
| 8- | The validity of any Proceeding of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of a member to the Board, or by reason that a person not entitled to do so took part in the proceeding. | Validity of Proceedings |

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

*Clerk of the House of Assembly*

assented to by me, this......................day of.................................20….............................................................................

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*Governor of …………… State*

Assent withheld by me, this......................day of.................................20...

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*Governor of ………. State*

Passed again by the …………. State House of Assembly by two-thirds

majority, this.....................................day of.....................................20...

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*Governor of ………. State*