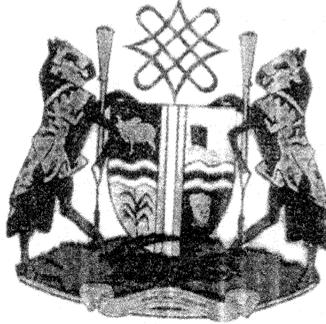


**A LAW TO ESTABLISH A PUBLIC PROCUREMENT
AUTHORITY FOR KADUNA STATE AND FOR
CONNECTED PURPOSES**



Kaduna State of Nigeria

Law No. 12 2016

(June 1, 2016)

Date of Commencement

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

Enactment

1. This Law may be cited as the Kaduna State Public Procurement Law, 2016.

Short Title

2. This Law shall come into operation on the 1st day of June 2016.

Commencement

3. In this Law unless context otherwise requires:

Interpretation

"Authority" means the Kaduna State Public Procurement Authority;

"Bid" means Tender;

"Board" means Board of the Authority;

"Governor" means the Governor of Kaduna State;

"Fund" means Fund of the Authority established by Section 21 of this Law;

"Interest" means and includes direct personal interest, personal interest of a brother or half brother, sister or half-sister,

member of the extended family, friend, partner or business associate, whether pecuniary or otherwise;

"Limited Sources or Restrictive Bidding" means conduct of procurement by invitation to tender by the procuring entity, directed to a set of pre-selected suppliers with experience and capability relating to the requirement of a particular contract;

"Members" shall include the Chairman;

"Negotiated Procurement" means the conduct of procurement by a procuring entity directly negotiating a contract with a technically, legally and financially capable supplier, contractor or consultant under conditions specified in the law;

"Procurement Entity" means all Ministries, Departments, Agencies, Legislature and Judiciary, Local Governments and Parastatals responsible for all processes laid down in this Law to carry out all procurements of goods, works and services;

"Procurement of Goods" means acquisition by any procuring entity within the purview of this law of all items including supplies, products, equipment, objects and raw materials whether in solid, liquid or gaseous form and such general services incidental to the supply of off the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification;

"State" means the Kaduna State of Nigeria;

"Tender" means Invitation or Offer;

"Two Stage bidding" means a procurement method where the procuring entity calls upon bidders to submit in the first stage of bidding, their proposals only without a price, such proposals in addition to any other requirements that the rules may impose, will relate to design, technical quality or other characteristics of the goods or works or service, as well as proposed contract terms, conditions of supply, professional competence, technical qualification of bidders whilst the second stage of the bid will relate to price based on a single set of specifications, with an opportunity for all initial bidders to bid on the single approved set of specifications.

PART I
ESTABLISHMENT OF THE KADUNA STATE
PUBLIC PROCUREMENT AUTHORITY

4. (1) There is hereby established a body to be known as the Kaduna State Public procurement Authority.

Establishment of the Authority

(2) The Authority shall:

(a) be a body corporate with perpetual succession and a common seal;

(b) have power to sue and be sued in its corporate name; and

(c) be capable of acquiring and holding any property, movable or immovable for the purpose of carrying out any of its functions under this Law.

5. The objectives of the Authority shall be to:

Objectives of the Authority

(1) comprehensively formulate and harmonize existing policies and practices on public procurement and ensuring probity, accountability and transparency in the public procurement process;

(2) regulate, monitor, evaluate and audit the public procurement process of Kaduna State, the Local Governments, their derivative Units to ensure uniform procurement policy;

(3) train personnel and build state-wide institutional capacities for a professional, sustainable and efficient public procurement system;

(4) establish fair pricing standards and benchmarks;

(5) ensure the application of fair, competitive, transparent and value-for-money standards and practices for the procurement and disposal of public assets and services;

(6) create equal opportunities that are in line with legal requirements in the policies and practices of supply and

sub-contracting for the citizenry particularly small and medium scale enterprises to partake in the economic opportunities and benefits of public procurement; and

- (7) provide for increased efficiency and economy in public procurement activities and maximize to the fullest extent the purchasing power of the State to achieve value for money.

6. There shall be a Governing Board for the Authority, which shall comprise of the following:

The Governing Board

- (a) a Chairman;
- (b) Director-General of the Authority;
- (c) a representative of the Secretary to the State Government not be below the rank of a Director;
- (d) a representative not be below the rank of a Director from the following:
 - (i) Ministry of Finance;
 - (ii) Ministry of Justice;
 - (iii) Ministry for Budget and Planning;
- (e) representative of Kaduna Chamber of Commerce and Industry;
- (f) Nigeria Society of Engineers, Kaduna State Chapter;
- (g) one Local Government Chairman from each of the three Senatorial Zones which shall be rotated annually from amongst the Local Government Councils Chairmen in the State;
- (h) a representative of the Nigeria Institute of Purchasing and Supply, Kaduna State Chapter;
- (i) a representative of Institution of Surveyors and Estate Valuers;

- (j) three (3) persons from the private sector including a registered Quantity Surveyor with experience in procurement practices, one of whom shall be a woman;
 - (k) the Secretary to the Authority to serve as Secretary.
7. (1) The Chairman shall be appointed by the Governor subject to confirmation by the State House of Assembly. Appointment of Chairman
- (2) All Members of the Board other than the Director-General shall be appointed on part-time basis.
8. The Chairman shall be a person with relevant and adequate professional qualification and experience in procurement related disciplines. Qualification of Chairman
9. The functions and powers of the Board shall be to: Functions and Powers of the Board
- (i) consider, review and approve the monetary thresholds for the applications of the provisions of this Law by procuring entities;
 - (ii) consider and approve policies formulated by the management of the Authority on public procurement;
 - (iii) approve any procurement guidelines or regulations to be made pursuant to this law;
 - (iv) approve the employment of directors and other staff of the Authority;
 - (v) receive and consider for approval the audited accounts of the Authority;
 - (vi) consider and approve operational structure, policy guidelines and major programmes of the Authority; and
 - (vii) give such other directive and perform such other functions as may be necessary to achieve the objectives of this law.
10. (1) The Chairman and other members shall hold office for term of three (3) years and may be re-appointed for another term only. Tenure of Office of Members

11. Notwithstanding any provision under this Law, a member shall vacate his office if: Vacation of Office

- (a) he gives one month notice in writing to the Governor of his intention to resign;
- (b) he is convicted of any crime involving dishonesty or fraud by a court of competent jurisdiction;
- (c) he attains the age of 70 years;
- (d) he attends fewer than 75% of the Board's meetings in a year;
- (e) he is barred from practicing his profession by any professional body to which he belongs;
- (f) he becomes bankrupt;
- (g) he becomes of unsound mind or incapable of carrying out his duties; or

12. The members of the Board shall be paid such remuneration as the Governor may determine from time to time. Remuneration

13. The functions of the Authority shall be to: Power and Functions of the Authority

- (a) formulate the general policy guidelines and implement regulations relating to public procurement in Kaduna State and its Local Governments;
- (b) publicize and explain the provisions of this law;
- (c) supervise the implementation of established procurement policies and regulations;
- (d) monitor the prices of tendered items and keep a database of standard prices;
- (e) publish the details of procurement contracts in the State procurement journal;
- (f) issue certificate of no objection for contract award in respect of all procurement within the established threshold, that comply with the provisions of this Law;

- (g) collate and maintain in an archival system all state procurement plans and information;
- (h) undertake procurement research and surveys;
- (i) provide and co-ordinate training programmes to build the institutional capacity of all procuring entities within the purview of this law and to coordinate the training and development of service-wide procurement cadre;
- (j) periodically review the socio-economic effect of the policies on procurement and advise the Governor accordingly;
- (k) prepare and update standard bid/tender and contract documents;
- (l) respond expeditiously to enquiries from procuring entities; provided the enquiry is accompanied by adequate information;
- (m) certify State procurement prior to award of contracts from the commencement date of this law, and thereafter provide an effective monitoring mechanism,
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) review for compliance the procurement and award of contract procedures of every entity to which this Law applies;
- (p) perform regular procurement audits;
- (q) receive, expeditiously investigate and decide complaints from bidders and the general public against public procurement rules and practices;
- (r) introduce, develop, update, maintain related database and technology; and

- (s) ensure transparency, fairness and the long-term sustainability of the outcome of every procurement process in the State.

14. (1) The Authority shall have the power to:

Powers of the Authority

- (a) prepare for the approval of the Board of the Authority and enforce the monetary rules and thresholds set pursuant to this law;
- (b) inspect and review any procurement transaction to ensure compliance with the provisions of this law;
- (c) investigate and determine at any time whether any procuring entity has violated any provision of this law;
- (d) Blacklist or ban any supplier, contractor or consultant adjudged to have contravened any provision of this law and Regulations made pursuant to this law;
- (e) enforce the monetary and prior review threshold set by regulations made pursuant to this law for the application of this law to procuring entities;
- (f) stipulate to all procuring entities, the procedures and documentations pre requisite for issuance of certificate of No Objections under this law.
- (g) Register, maintain and update a database of all suppliers, contractors and consultants to the exclusion of all procuring entities or other bodies or departments;
- (h) Prescribe classifications and categorizations for the persons and or companies on the register.
- (i) 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, contractor, consultant or any person;

(j) to conduct procurement audit in liaison with all procurement entities;

(k) to provide a framework for e-procurement;

(l) to set up a framework for concession contracts for all procurement entities;

(m) to hire a consultant for the purposes of training and capacity building who is qualified by way of education, training and experience to render any of the services enumerated in this Law;

(n) call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding;

(o) act upon complaints by the public procurement entity, or bidder in accordance with the procedures set out in this Law;

(p) nullify the whole or part of any procurement proceeding or award which is in contravention of this law; and

(q) direct the discontinuance, stoppage, or suspension of any payments 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.

(2) Where there is a breach of procurement process by any officer, the Authority shall liaise with the procurement entity on appropriate disciplinary action to be taken.

15. (1) The Board shall hold such number of meetings as may be necessary for the fulfillment of its functions at least once in every quarter of the year.

Meetings

(2) At every meeting of the Board, the Chairman shall preside and in his absence, any member proposed and

agreed by the members shall serve as the Chairman, only for that meeting.

(3) At a meeting of the Board, issues requiring a vote shall be determined by a majority of the members present and in case of an equality of votes, the Chairman shall have a casting vote.

(4) The Board or any sub-committee appointed by it may make Standing Orders for the purpose of regulating its proceedings.

16. Where the Board desires to obtain the advice of any person on any particular matter, the Board may invite such person as an expert to attend its meeting, but such a person shall not count towards a quorum. Powers to acquire Expertise
17. The quorum for a meeting of the Board shall be seven (7) members. Quorum
18. (1) The Common Seal of the Authority 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. Quorum
- (2) Any document purporting to be a document duly executed under the common seal of the Authority shall be received in any Court and shall, unless the contrary is proved, be deemed to be so executed.
19. The validity of any Proceedings 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 proceedings. Validity of Proceedings
20. (1) Where a member of the Board, the Director-General, a member of Staff of the Authority or any person engaged by the Authority has pecuniary interest or other beneficial Disclosure

interest in, or material to, any matter which is to be considered by the Board, the person shall:

- (a) disclose to the Board the nature of interest in advance before the consideration of the matter;
- (b) neither influence nor seek to influence a decision relating to the matter;
- (c) not take part in the consideration of the matter; and
- (d) withdraw from the meeting as long as the matter is being discussed or considered and neither vote nor otherwise act in consideration of the matter.

(2) Any member who contravenes subsections (1) of this Section commits an offence and is liable to a fine of ₦100,000.00 or two years imprisonment or both.

(3) Any interest that accrued to the member for non-disclosure shall abate.

21. (1) The Authority shall establish and maintain a fund from which there shall be defrayed all expenditure incurred by the Authority;

Fund of the Authority

(2) There shall be paid and credited to the fund of the Authority:

- (a) such sums as may be appropriated to the Authority by an Appropriation Law of the State;
- (b) all such monies paid to the Authority by way of grants, donations, gifts, subsidies, charges, fees, subscriptions, interest and royalties;
- (c) monies raised by way of loans under the power to borrow, vested in the Authority under this Law;
- (d) all monies which may vest in the Authority under any enactment; and

(e) all other sums which may in any manner become payable to the Authority in respect of any matter incidental to its powers or functions under Law.

22. The Authority shall prepare and submit to the Governor not later than the 31st day of October of each year, an estimate of income and expenditure of the Authority for the next succeeding year. Estimates

23. (1) The Authority shall cause to be kept proper books of accounts and other records in respect of its functions. Accounts

(2) The Authority shall prepare in respect of each financial year statement of accounts in such forms as the Governor may approve.

(3) The said annual statement of accounts shall be fair and accurate statement of the financial position and of the result of the operations of the Authority for the financial year to which it relates.

24. (1) The Authority shall cause the annual statement of accounts required by Section 30 of this Law to be audited not later than six months after the end of each financial year, by the Auditor-General of the State, or by any other person authorised by him. Audit

(2) As soon as the annual statement of accounts has been audited the Authority shall forward to the Governor a copy of the statement of accounts together with a copy of the report made by the Auditors.

25. (1) There shall be a Director-General for the Authority who shall be appointed by the Governor subject to the confirmation of the State House of Assembly. The Director-General and other Staff of the Authority

(2) The Director-General shall be:

(a) the Chief Executive and accounting officer of the Authority;

- (b) responsible for the execution of the policy and day to day administration of the affairs of the Authority; and
 - (c) a person who possesses the relevant and adequate professional qualifications and shall have been so qualified for a period of not less than 15 years.
- (3) The Director-General shall hold office for a term of four (4) years and may be re-appointed for a further term of four (4) years only.
- (4) The Director-General of the Authority may resign his appointment by notice in his handwriting, addressed to the Governor.
- (5) The Chairman and Director-General of the Authority may be removed from office at the instance of the Governor, on the grounds of gross misconduct, financial impropriety, fraud, and/or manifest incompetence; such removal shall be confirmed by at least a two-third majority vote of the State House of Assembly.
26. (1) There shall be a Secretary/Legal Adviser for the Authority, who shall be responsible to the Director-General for the discharge of his functions. The Secretary of the Authority
- (2) The Secretary shall be a legal practitioner of not less than 10 years post call qualification experience and shall be responsible for the following:
- (a) arranging meetings of the Board and its constituted committees;
 - (b) preparation of the agenda and the minutes of such meetings;
 - (c) conveying decisions of the Board to meeting to members;
 - (d) arranging for the payment of allowances of the Board members and other related matters; and

(e) generally, performing all other duties affecting the Authority as may be assigned to him by the Director-General.

27. The Director-General and staff of the Authority may, where practicable be appointed from the Public Service of the State, and staff of the Authority shall as much as possible include quantity surveyors, architects, procurement officers, Engineers, Planning officers and information communication and technology specialists.

28. The appointment of all officers of the Authority shall be in a transparent and competitive manner to ensure that only persons with the relevant experience and qualifications manage the affairs of the Authority and work for it.

29. The staff of the Authority shall be paid such remuneration and allowances as are applicable to Civil Servants in the State.

Remuneration of the Officers of the Authority

30. (1) The Authority 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 and without prejudice to the forgoing, such regulations shall provide for:

Staff Regulations and Pensions

(a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Authority; and

(b) appeals by such employees against dismissal or other disciplinary measures.

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

(3) Employees of the Authority shall be entitled to pension as may be prescribed by the Pension Law applicable in the state.

31. (1) Subject to the provisions of this law, no suit shall be commenced against the Authority before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Authority

Legal Proceedings

by the intending claimant or his agent, and the notice shall clearly state:

- (a) the cause of action;
- (b) the particulars of claim;
- (c) the name and address of both the intending plaintiff and his legal practitioner; and
- (d) the reliefs sought.

(2) The Director-General, Officers, Employees or Agents of the Authority shall not be liable for any act or omission done in exercise of any function or power conferred by this Law upon them.

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

Service of Documents

33. (1) The Authority may make Regulations for the proper implementation and enforcement of the provisions of this Law.

Power to Make Regulations

(2) Such Regulations must take into account the special circumstances of Local Governments, and include provisions that encourage community monitoring of local government procurement.

(3) Until new rules are issued pursuant to this law, existing regulations made pursuant to the Kaduna State Bureau of Budget Implementation, Monitoring and Price Intelligence Law No.4 of 2005 shall apply.

34. (1) Not later than 4 months after the end of each year, the Authority shall prepare a comprehensive report on all procurement activities carried out by all procuring

Annual State Procurement Assessment Report

entities, for presentation and approval by the State House of Assembly.

- (2) The report shall give an accurate account of the conduct of all procurements carried out by procuring entities within the purview of this Law, including complaints resolved and unresolved and shall be published in the State Government's official website and or Authority's website.

35. (1) All procurement carried out by the Kaduna State Government, its Ministries, Departments, Bureaus, Offices and Agencies, including State Universities and Colleges, Government-owned and/or controlled Corporations, Government Institutions and Local Government Areas, shall subject to any exceptions as may be provided under this law be governed by the following principles:

Governing Principles on
Public Procurement

- (a) Open Competitive bidding using clearly defined criteria, and offering to every interested bidder equal simultaneous information and opportunities to offer the works, goods and services needed;
- (b) Promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts and be devoid of discrimination;
- (c) the processes for the conduct of public procurements shall be standardized, simplified, sustainable and shall apply uniformly to all public procurement and shall be adaptable to advancements in public administration and modern technology;
- (d) all public procurement contracts shall be executed in an effective, efficient, transparent, timely, equitable manner that shall ensure accountability, and conform with the provisions of this Law and Regulations deriving from it, with the aim of achieving value for money and fitness for purpose;
- (e) ensuring a system of accountability where public officers and persons involved directly or indirectly

in the procurement process or in the implementation of procurement contracts, are when warranted by circumstances, investigated and held accountable for their actions;

- (f) Public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of this Law and Regulations, and that all public contracts are performed strictly according to specifications;
 - (g) Be based only on procurement plans supported by prior budgetary appropriations; and no procurement proceedings or contracts shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.
- (2) All regulations, guidelines, procedures and timelines to be prescribed pursuant to this Law and specified by the Authority from time to time shall always conform to the provisions of Sub-sections (1) (a) - (g) of this section.
 - (3) Where the Authority has set monetary thresholds in the procurement regulations, no funds shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement in contravention of the thresholds.
 - (4) For all cases where the Authority shall set a monetary threshold, it shall prescribe by regulation and guidelines, the conditions precedent to the award of any contract falling within or outside the set thresholds.
 - (5) Subject to the monetary thresholds as may be set under this Law, any procurement purported to be awarded in contravention of this Law or Regulations shall be null and void.
 - (6) Suppliers, Contractors or Consultants 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.

- (7) All bidders, in addition to the requirements contained in any solicitation documents shall:
- (a) possess the required:
 - (i) professional and technical qualifications to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure; and
 - (iv) personnel and skill to perform their obligations under the contract.
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - (e) not have any directors who have been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - (f) accompany its bid with an affidavit disclosing whether or not any officer of the procuring entity or authority is a former, or present director, shareholder of the bidder or has any pecuniary interest in the bidder, listing all attachments or annexure to the bid and confirming that all information and documents presented in its bid are genuine, true and correct in all particulars.

- (8) The Authority 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.
- (9) A bid and/or a tender shall be excluded from any particular procurement proceedings if:
- (i) there is verifiable evidence that any supplier, contractor or consultant 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 Authority in an attempt to influence any action, decision making or further his or its course in any procurement activity;
 - (ii) the bidder, supplier, contractor or consultant during the three(3) years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in performance of any public procurement;
 - (iii) 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 creditors within two years prior to the initiation of the procurement proceeding;
 - (iv) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidder has obtained a lawful permit with respect to allowance for deferral or waiver of such outstanding payments;

- (v) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
 - (vi) the bidder has in its management staff or is wholly or partly owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit;
 - (vii) the bidder fails to submit a statement regarding its dominating/subsidiary relationship with respect to other participants in the procurement proceedings or that persons acting on behalf of the procuring entity in the same proceedings have been or remain in a subordinate relationship with it.
 - (viii) The bidder fails in any particular to comply with any requirement of sub-section 7 of this section.
- (10) The procuring entity or the Authority (as the case may be) shall inform the bidder in writing, the grounds for the exclusion of his or its bid from the procurement process in question and a record to such effect shall be kept in a manner as prescribed by the Authority.
- (11) All contract prices shall be considered as fixed and therefore not subject to any upward variations during contract implementation, except under extraordinary circumstances and only upon prior approval of the Authority which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.
- (12) All communication and documents issued by procuring entities and the Authority shall be in English language.
- (13) 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 Authority.

- (14) Every procuring entity shall maintain both paper and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a minimum period of ten years from the date of the award.
- (15) Copies of all procurement records shall be transmitted to the Authority not later than 2 months after the award of contract and shall include:
 - (a) information identifying the procuring entity and the contractors;
 - (b) the date of the contract award;
 - (c) the value of the contract;
 - (d) the detailed records of the procurement proceedings, evaluation and bidders compliance with this law and its regulations; and
 - (e) details of individual value of items procured, terms of the contract, technical specifications, standards of goods, works or services to be provided in accordance with the contract.
- (16) All procurement records shall be open to inspection by the public on the payment of an administrative fee including the cost of copying and certification, if so desired, as may be prescribed from time to time by the Authority.
- (17) Criteria stipulated as the basis upon which suppliers, contractors or consultants would be evaluated shall not be changed in the course of any procurement proceeding, and all relevant factors, in addition to price that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (18) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the supplier, contractor or consultant.

- (19) A contract shall in the case of goods and works be awarded to the lowest cost evaluated bidder and in the case of services to the highest rated evaluated and qualified bid from the bidders substantially responsive to the bid solicitation.
- (20) Notwithstanding subsection (19) of this Section, the Authority may approve the refusal of any procuring entity to proceed to a contract award on the grounds that the price is manifestly excessive or unreasonably below the predetermined price and/or that a procurement proceeding has been conducted in a manner that violates this Law.
- (21) Pursuant to subsection (20) of this Section, the Authority may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct pre-tender.
- (22) Notwithstanding subsection 16 of this section, 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 bid 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.
- (23) The Accounting Officer of an entity and any officer to whom responsibility is delegated shall be responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law.
- (24) The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations laid down by the Authority are complied with; and concurrent approval by any resident due process committee shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.
- (25) 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 Authority.

- (26) 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 thereof either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their bids/tenders.
- (27) A procuring entity shall not request or stipulate that a bidder engage the services of a particular subcontractor as a requirement for participating in any procurement proceeding.
- (28) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.
- (29) The value 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 a bid. All payments for procurements carried out under the provisions of this Law shall be denominated and made in Nigerian Currency, and if in a foreign currency shall be converted to naira as stated above.
- (30) All contracts for goods and works shall contain warranties assuring their durability and fitness for purpose during and within a reasonable time after contract execution.
- (31) A contract must be awarded on the basis of either:
 - (i) Lowest Price: The lowest priced tender wins. No other element of the tender may be taken into account; or
 - (ii) The Most Economically Advantageous Tender (MEAT): Factors other than or in addition to price, like quality, technical merit and running costs can be taken into account.

- (iii) The contract criteria (e.g. "price, quality of services, risk to contracting authority etc") and sub-criteria must be set out in either an advert in the procurement journal, by notice or in the tender documents; and
- (iv) The weighting of each criterion (and sub-criterion, if weighted) must also normally be given, either as an exact number or as a meaningful range (e.g. price: 30%-40%).

36. (1) A procuring entity may enter into a framework agreement procedure in accordance with this Section:

- (i) The need for the goods or services of the procurement is expected to arise on an indefinite or repeated basis during a given period of time; or
- (ii) By virtue of the nature of the goods or services, their need for arise on an urgent or emergency basis during a given period of time.

(2) The procuring entity shall include in the record required of this Law a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected.

37. (1) The accounting officers of the respective procuring entities shall be as follows:

Accounting Officers

- (a) For each of the State Ministries, its Commissioner;
- (b) For the Judiciary, the Chief Judge of the High Court;
- (c) For the State Legislature, the Speaker of the House;
- (d) For each of the State's Extra-Ministerial Departments, Bureaus, Offices and Agencies, including State Universities and Colleges Government-owned and/or controlled Corporations, its Chief Executive Officers;

(e) For each Local Government in the State the Chairman of the Local Government.

(2) Notwithstanding the provisions of subsection (1) of this Section, the Accounting Officers in subsection (1) (a), (b), (c) and (e) may by notice in the State Gazette delegate their powers to:

(a) the Permanent Secretary, in the case of a Ministry;

(b) the Chief Registrar of the High Court, in the case of the Judiciary;

(c) the Clerk of the House, in the case of the State Legislature; and

(d) the Secretary to the Local Government, in the case of a Local Government.

38. (1) There is hereby established the following bodies who shall be responsible for the conduct of public procurement in their respective entities:

Due Process Committees

(a) for each of the State's Ministries, a Resident Due Process Committee;

(b) for the judiciary a Judicial Services Due Process Committee;

(c) for the state legislature a Legislative Services Due Process Committee;

(d) for each of the State's extra-ministerial departments, bureaux, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, a Parastatal Due Process Committee; and

(e) For each of the State's Local Governments there shall be a Local Government Due Process Committee (LGDPC) provided that its membership shall include such other persons as the Kaduna

State Procurement Authority may from time to time stipulate.

- (2) Subject to the monetary thresholds as may be set out or other provisions under this Law, each Due Process Committee shall be responsible for the award of all contracts for the procurement of goods, works and services falling within the administrative functions of the procuring entity.
- (3) The functions of the Due Process Committees shall be to:
 - (a) supervise the development of all bids;
 - (b) ensure that the advertisements/ publications in solicitation for bids are in conformity with this Law and its Regulations as may be issued from time to time;
 - (c) where necessary pre-qualify bidders;
 - (d) issue bid documents;
 - (e) conduct pre-bid conferences when necessary;
 - (f) constitute Technical Committees comprising technical, financial and legal experts to assist in the solicitation/evaluation process for a pending procurement when necessary;
 - (g) receive and evaluate any bids received in response to solicitation;
 - (h) make recommendations subject to the provisions of sub-section (2) of this Section;
 - (i) recommend the application of any sanctions in accordance with this Law;
 - (j) approval of the recommendations of the Technical Committees or procurement planning units as the case may be; and

(k) all other functions provided for directly or by necessary implication by this law or regulations issued hereunder.

39. (a) Membership of all Due Process Committees shall consist of such officers of the State Public Service and other persons as may from time to time be stipulated by regulation of the Authority.

Membership of Due
Process Committees

PROVIDED that, no Due Process Committee shall have less than 5 or more than 9 members.

(b) the Due Process Committee shall where necessary, subject to this law and in addition to its regular members, co-opt persons from within or outside the service or hire members of the public who have requisite or special knowledge that bring value to its work, but such a person shall not have a vote, it shall ensure public observation of its contract award processes.

(c) In all cases where there is need for pre-qualification, subject to implementing rules, the chairman of the Due Process Committee shall constitute a technical evaluation sub-committee of the Committee, charged with responsibility for evaluation of bids, which should be made up of professional staff of the procuring entity and an officer of the Due Process Committee who shall chair the sub-committee. In the case of the local governments such technical evaluation committee shall be made up of technical staff of the department under whose function the goods, works or services being procured falls.

(d) Notwithstanding the provisions of any other law the proceedings of all Due Process Committees shall be regulated by this law and implementing regulations issued hereunder.

40. (1) All procuring entities shall prepare Annual Procurement Plans listing out the goods, works and services to be procured, the timelines and procedure for such contracts;

Annual Procurement Plan

(2) Annual Procurement Plans shall be based strictly on the appropriations approved in the yearly budgets of procuring entities; and

- (3) No procurement shall be carried out unless it is in accordance with the approved annual procurement plan of the procuring entity.

41. (1) Every procuring entity shall annually constitute a Procurement Planning Committee different from the Due Process Committee.

Procurement Planning Committee

- (2) The procurement planning committee of each procuring entity shall be responsible for:

- (a) the procurement functions of the entity subject to such regulations made from time to time by the Authority;

- (a) preparing the entity's procurement needs assessment and evaluation;

- (b) collaborating with relevant units of the procuring entity to identify the goods, works or services required;

- (c) carrying out appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;

- (d) developing technical specifications;

- (e) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement costs;

- (f) Integrate its procurement expenditure into its yearly budget within any existing budgetary framework;

- (g) recommending any method for effecting the procurement, subject to the approval of the Due Process Committee, coordinate the entity's procurement process and serve as secretariat of the Due Process Committee;

- (h) preparing bid and all solicitation documents in accordance with minimum standard specifications; and
 - (i) maintaining procurement records.
- (3) The procurement planning committee shall comprise of:
- (a) The accounting officer of the procuring entity or his representative who shall chair the committee;
 - (b) a representative of:
 - (i) the unit directly in need of the procurement;
 - (ii) the financial unit of the procuring entity;
 - (iii) the planning ,research and statistics unit of the procuring entity;
 - (iv) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
 - (v) such other persons as may be specified from time to time in the implementing regulations.
- (4) There shall be a procurement planning committee in each department of a local government, headed by the Head of the department and performing the functions enumerated in subsection 1 of this section for the department.

42. Subject to Regulations as may from time to time be issued by the Authority a procuring entity shall implement its procurement plans through a Procurement Due Process committee as follows:

Procurement Implementation

- (a) advertise/solicit for bids;
- (b) receive, evaluate and make a selection of the bids received;

- (c) obtain approval of the approving authority before making an award;
- (d) debrief the bid losers;
- (e) obtain and confirm the validity of any Performance Bond/Guarantee;
- (f) execute the Contract Agreement for sums within its approved threshold, and submit others for approval of higher approving authority after informing the bid winner of his or its success; and
- (g) Announce, publicize the award and submit appropriate reports to the Authority in the format stipulated by this Law, guidelines and regulations as may be issued by the Authority from time to time.

43. (1) The procurement of goods, works and services by all procuring entities shall be conducted by Open Competitive Tender except as may otherwise be provided by this Law.

Open Competitive Bidding

(2) Any references to Open Competitive bidding in this Law means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested candidate, equal simultaneous information and opportunity to offer the goods, works and services needed;

(3) Unless as otherwise provided for by this Law, no negotiations shall be conducted with suppliers, contractors or consultants and the winning bidder shall be that which is:

(i) in the case of goods and works, 'the lowest cost evaluated bid from the bids responsive to the bid solicitation;

(ii) in the case of services, 'the highest rated evaluated bid from the bids responsive to the bid solicitation.

44. (1) Invitations to bid may be either by way of National Competitive bidding or International Competitive bidding

Invitation to Bid

and the Authority shall from time to time set the monetary thresholds for which procurements shall fall under either system.

- (2) In the case of goods, works and services to be procured under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized publication, any official websites of the procuring entity and the Authority if any, the State Procurement Journal and the Federal Government procurement Journal not less than six weeks before the deadline for submission of the bids for the goods, works and services.
- (3) In the case of goods, works and services to be procured under National Competitive Bid, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, the State Procurement Journal and at least one (1) national newspaper not less than six weeks before the deadline for submission of the tenders for the works, goods and services.
- (4) Not later than six (6) months after the enactment of this Law, the Authority shall issue guidelines for the advertisement and publication of invitations to bid.

45. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or consultants 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 consultant 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 consultant that requests them to bid; and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery.

Pre-qualification of Bidders

- (3) Subject to section 38 (2) and (3) above, and not later than six (6) months of the enactment of this Law, the Authority shall make Regulations stipulating the guidelines for the pre-qualification of bids in any public procurement process.

46. (1) The Bid Solicitation Documentation shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Authority. The bid documents shall include the following: Bids Security

- (a) Invitation to bid, with precise Instructions to bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), deadline for submission of bids and opening of bids; the deadline for submission of bids must give enough time for bidders to prepare and submit their bids taking into account reasonable needs of the procuring entity;
- (b) Terms of Reference;
- (c) Eligibility Requirement and precise criteria upon which it seeks to give consideration to the bids;
- (d) Plans and or Technical Specification;
- (e) Form of Tender, Price Form, and List of Goods or Bill of Quantities;
- (f) Delivery Time or Completion Schedule;
- (g) Form and Amount of bid Security;
- (h) Form and Amount of Performance guarantee;
- (i) Form of Contract, and General and Special Conditions of Contract;
- (j) Any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualification; and

(k) Any other requirement that the procuring entity may prescribe pursuant to this law or the implementing regulations made pursuant to this Law.

(2) Procuring Entities may in addition require all bidders in a procurement proceeding to provide additional documentation or specifications reasonably necessary to complement the information contained in their respective bids.

47. (1) Subject to the monetary thresholds as may be set out by the Authority, all bidders for public procurements shall be accompanied by a bid Security in an amount not less than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity;

Bid Documentation

(2) The Authority shall from time to time specify the principal terms and conditions of bid security to be posted by bidders, which shall apply to all bidders.

48. (1) All bids in response to an invitation to Open Competitive bidding shall be submitted in writing or any other format stipulated in the bid solicitation, signed by an official authorized to bind the bidder to a contract and placed in a properly sealed envelope or other package.

Submission of Bids

(2) All submitted bids shall be deposited and kept in a secured tamper- proof tender-box.

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

(4) Every bidder submitting a bid shall be issued a receipt showing the date and time the bid was received.

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

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

49. There is a bid failure if:

Bid Failure

- (1) (i) No bids are received;
 - (ii) No bid qualifies as the lowest cost evaluated responsive bid or highest rated responsive bid; or
 - (iii) Whenever the bidder with the highest rated or lowest calculated responsive bid refuses, without justifiable cause to accept the award of the contract.
- (2) Where there is bid failure:
- (i) The contract shall be re-advertised and the bidding process repeated.
 - (ii) The procuring entity shall observe the same process and set the new periods according to the same rules followed during the first bid. If however, there is a bid failure on a second occasion, the procuring entity may with approval of the Authority resort to an alternate method of procurement as provided for by this Law.

50. A procuring entity may:

Rejection Bid

- (1) Reject all bids at any time prior to the acceptance thereof, without incurring thereby any liability to the bidders;
- (2) Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

51. (1) The period of validity for a bid shall be the period specified in the bid solicitation documents.

Validity Period of Bids

- (2) A procuring entity may request the supplier, contractor or consultant to extend the period of validity for an additional specified period of time.
- (3) A supplier, contractor or consultant may refuse the request and the effectiveness of its bid will terminate

upon the expiry of the un-extended period of effectiveness.

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

52. All bids shall be submitted before the deadline or date specified in the bid documents or any extension of the deadline for submission and the procuring entity shall:

Bid Opening

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

53. (1) After bid opening, every bid shall be first examined to determine if it:

Examination of Bids

- (a) meets the minimum eligibility requirements stipulated in the bid documents;
 - (b) has been duly signed;
 - (c) is substantially responsive to the bid documents;
and
 - (d) is generally in order.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission within a specified time in order to assist in the examination, evaluation and comparison of bids.
- (3) The following shall not be sought, offered or permitted as clarification:
- (i) changes in prices;
 - (ii) changes of substance in a bid; and
 - (iii) Changes to make an unresponsive bid responsive.
- (4) Notwithstanding the provisions of subsection (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of bids.
- (5) The procuring entity, shall give prompt notice of the correction to the supplier, contractor or consultant that submitted the bid. If the correction is not accepted by the bidder, its bid shall be immediately excluded from the evaluation process.
- (6) A major deviation shall result in the rejection of a bid, while a minor deviation shall be subject to clarification. The Authority may issue guidelines stipulating the basis of a deviation.
- (7) The following shall be considered as major deviations:
- (a) clauses in an offer:

- (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of the essence;
 - (iii) unacceptable alternative design, and
 - (iv) unacceptable price adjustment;
- (b) with respect to the status of the bidder:
 - (i) that he is ineligible or not prequalified;
- (c) with respect to bid documents an unsigned bid;
- (d) with respect to time, date and location for submission:
 - (i) any bid received after the date and location for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, the bid shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - (a) the use of codes;
 - (b) alternative design;
 - (c) alternative workmanship;
 - (d) omission in minor items;

- (e) arithmetical errors;
 - (f) completion period where time is of the essence;
 - (g) any other condition that has little impact on the bid.
- (11) Not later than six months after the enactment of this law, the Authority shall issue Regulations stipulating the guidelines for the opening and examination of bids.
54. (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. Evaluation of Bids
- (2) The objective of bid evaluation shall be:
- (a) in the case of goods and works to determine and select the 'Lowest Cost Evaluated Bid' from the bids responsive to the bid solicitation.
 - (b) in the case of services to determine the 'Highest Rated Evaluated bid' from the bids responsive to the bid solicitation.
- (3) Not later than six months after the enactment of this law; the Authority shall issue Regulations stipulating the guidelines and any further criteria for the evaluation of bids.
55. A procurement entity shall at any time before acceptance of a bid, disqualify a bidder who submits Documents containing false information or documents forged for purposes of qualification, such disqualification shall be published in the State Official Gazette. Disqualification of Bids
56. (1) Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, procurement entities shall not disclose information forwarded to them by bidders labeled as confidential, such information includes technical aspects, trade secrets and confidential information of tenders. Confidentiality of Bids

(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 entity shall be disclosed to any bidder or any third party until the award decision is notified to the successful tenderer.

57. (1) A procuring entity may grant a margin of preference in the evaluation of bids, when comparing bids from domestic bidders with those from foreign bidders or when comparing bids from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign Country.

Domestic Preferences

(2) Where a procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic bidders and the criteria for eligibility of a bid for such preference.

(3) Margins of preference shall apply only to bids under International Competitive bidding.

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

58. (1) The successful bid shall be the lowest cost evaluated bid or highest rated evaluated bid from the bids responsive to the bid solicitation.

Acceptance of Successful Bids

(2) Notice of the success of a bid shall immediately be given to the successful bidder.

(3) Notwithstanding the provision of subsection (2) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice given to a successful

bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award.

(4) Where the procurement proceeding is with regard to a value of which the Due Process Committee is the approving authority, subject to the fulfillment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

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

59. (1) Notwithstanding the provisions of this Law, the following shall be considered special and restricted methods of procurement within the purview of this Law and may be used by procuring entities only with prior approval of the Authority:

Special and Restricted
Procurement Methods

- (a) two stage Tendering;
- (b) limited Source Tendering;
- (c) single Source Contracting;
- (d) repeat Orders;
- (e) shopping; and
- (f) negotiated Procurements.

(2) A procuring entity may engage in procurement by two stage bidding:

Two Stage Bidding Method

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

- (b) Where it seeks bids, proposals or offers on various means of meeting its needs, in order to obtain the most satisfactory solution to its procurement needs.
 - (c) Where the character of the goods or works are subject to rapid technological advances.
 - (d) Where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs;
 - (e) Where the open competitive bid method has been utilized without success or the bids were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging new bidding proceeding will not result in a procurement contract;
 - (f) The provision of this Law as regard the process for open competitive bidding shall apply to two stage tendering proceeding except to the extent that those provisions are inconsistent with those of this Section.
 - (g) The procedure for two stage tendering shall be as provided for in the rules to be made from time to time by the Authority.
- (3) Limited Source Bidding or Restricted Bidding may only be used for the:
- (a) Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources.
 - (b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

Limited Source or
Restricted Bidding

- (c) The provisions of this law regarding open competitive bidding shall apply to limited source or restricted tendering, except to the extent that those provisions may be varied by this section.
 - (d) The detailed procedure for limited source or restrictive bidding shall be as provided for in the rules to be made from time to time by the Authority.
- (4) Under Single Source Procurement, a procuring entity may only engage in Direct Contracting for the following: Single Source Procurement
- (a) Procurement of goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
 - (b) When the procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract;
 - (c) Procurement of goods sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.
 - (d) The procedure for single source procurement shall be as provided for in the rules to be made from time to time by the Authority.
- (5) Under the repeat order method of procurement a procuring entity may only engage in procurements by Repeat Orders if: Repeat Order
- (a) The unit price is equal to or lower than that provided in the original contract;
 - (b) The repeat order does not result in splitting of requisitions or purchase orders;

- (c) If the repeat order is requisitioned not later than twelve (12) months from completion of the original contract or if during the currency of a contract not earlier than 6 months after its commencement; or
 - (d) The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item of the original contract.
 - (e) The detailed procedure for repeat orders shall be as provided for in the rules to be made from time to time by the Authority.
- (6) A procuring entity may only engage in Shopping if: Shopping
- (a) There is an unforeseen contingency requiring immediate purchase.
PROVIDED however, that the amount shall not exceed such limited sum as may from time to time be stipulated by the Authority.
 - (b) The Procurement is for the purchase of ordinary or regular office supplies and equipment for the use of the procuring entity involving an amount not exceeding specific amounts provided for in the implementing rules.
 - (c) This method of procurement may also be utilized when the time and cost that may be required to examine and evaluate a large number of bids is considered to be disproportionate to the value of the goods, works or services to be procured.
 - (d) The procuring entity shall select a minimum of three (3) price quotations from bona fide suppliers selected in a non-discriminatory manner to ensure effective competition and avoid collusion and related malpractices.
 - (e) The provisions of this law regarding open competitive bidding shall apply to shopping, except to the extent of inconsistency with this section.

(f) The detailed procedure for shopping shall be as provided for in the rules to be made from time to time by the Authority.

(7) A procuring entity may only engage in Negotiated Procurement if:

Negotiated Procurement

- (a) In cases of two failed bids, as provided in Section 34 of this Law;
- (b) In cases when a state of calamity whether man-made or natural causes occurs, the need for immediate action to prevent damage or the endangerment or loss of life or property arises;
- (c) To restore vital public services and or preserve the operation of public utilities or infrastructure;
- (d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project.

PROVIDED however that:

- (i) the original contract is the result of a Competitive Bidding;
- (ii) the subject contract to be negotiated has similar or related scopes of work;
- (iii) it is within the contracting capacity of the contractor;
- (iv) the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- (v) the amount involved does not exceed the amount of the ongoing project;
- (vi) the contractor has no negative slippage; and
- (vii) the negotiations for the procurement are commenced before the expiry of the original

contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultant has unique experience and expertise to deliver the required service;

- (e) In all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained, and that the principles of transparency, accountability and value for money are adhered to.
- (f) The procedure for negotiated procurement shall be as provided for in the rules to be made from time to time by the Authority.

(8) Not later than six months after the commencement of this Law, the Authority shall issue regulations regarding Special and restricted procurement methods.

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

Limitation of Time for Procurement Award

61. (1) In addition to any other Regulation as may be prescribed by the Authority, mobilization fees of no more than 20% for local suppliers and contractors and 15% for foreign suppliers and contractors may be paid to a supplier or contractor supported by the following:

Mobilization Fees and Advance Payment Guarantee

- (i) In the case of National Competitive Bid - an unconditional bank guarantee or insurance bond issued by a reputable banking institution acceptable to the procuring entity;
- (ii) in the case of International Competitive Bid - an unconditional bank guarantee issued by a reputable banking institution acceptable to the procuring entity.

(2) The provision of an Advance Payment Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid.

PROVIDED, that it shall not be less than 10% of the contract value in any case or an amount equivalent to the

mobilization fee to be paid to the supplier or contractor, whichever is higher.

(3) No further payment shall be made to a supplier or contractor without an interim performance certificate issued in accordance with the contract agreement after the payment of mobilization fee to the supplier or contractor.

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

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

Performance Guarantees
or Bonds

63. Every procuring entity shall keep a detailed record and documentation of all procurement activity and processes in a format as shall be prescribed in the Regulations issued by the Authority. Such Information shall include, but not limited to the names and qualification of all bidders, specifications and quantities of goods, information on fulfillment of criteria for award, works and services involved, prizes quoted by each bidder, award prizes and conditions, warranties and performance guarantee provided by each contractor, supplier or consultant.

Record of Procurement
Proceedings

64. (1) For the avoidance of doubt but save as may be permitted under this Law, all procurement of goods and works shall proceed only by Open Competitive Bid;

Procurement of Goods and
Works

(2) Not later than three (3) months after the commencement of this Law, the Authority shall issue Regulations in conformity with this Law outlining the procedure for conduct of all Open Competitive bidding and other methods herein specified and such other procedures, conditions prerequisite for the use or adoption of such methods and procedures for the procurement of goods and works.

65. A Consultant for the purposes of procurement of consulting services under this law may be a natural or artificial person or group of persons individually and/or collectively qualified by way of education, training and experience to render any of the types of services enumerated in this law or regulations made hereunder:

Procurement of Consulting Services

- (1) save as may be permitted under this Law or Regulations made hereunder, selection of consultants for consultancy services shall be by Open Competitive Tender;
- (2) not later than three (3) months after the commencement of this Law, the Authority shall issue Regulations in conformity with this Law outlining the methods, procedures and criteria on which procuring entities shall conduct Open Competitive bids for the engagement of consultants.

66. (1) For the purposes of this Law every procuring entity shall also be a disposing entity.

Disposal of Assets

- (2) Open Competitive bidding shall be the primary source of receiving offers and procuring purchasers for the purchase of any public property offered for sale.
- (3) The Authority shall with the approval of the Board:
 - (a) Determine the applicable policies, rules and practices in relation to the disposal of all public property;
 - (b) Issue guidelines detailing operational principles and organizational procedures to be adopted by all procuring entities engaged in the disposal of public property; and
 - (c) Issue standardized documents, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.

- (4) For the purposes of this Law, public property means resources in the form of tangible and non-tangible assets (whether serviceable or unserviceable):
- (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including bonds, stock or shares.); and
 - (e) Acquired by goodwill and any other rights of the State Government.
- (5) The means of the disposal of public assets shall include but not limited to:
- (a) sale and rental;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auction;
 - (e) transfers from one government department to another with or without financial adjustments; and
 - (f) offer to the public.

67. (1) A bidder may seek administrative review of any omission or breach by a procuring or disposing entity under the provisions of this Law or any Regulation or guidelines made under this Law or the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen (15) working days from the date the bidder first became aware of the circumstances.

Complaints by Bidders

- (3) On reviewing a complaint, the accounting officer shall make a decision in writing within fifteen (15) working days from the date of receipt of the complaint, addressed to the complainant and all others affected, indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary, and giving reason for his decision.
- (4) The right of a complainant (or of any other bidder affected by the decision of the accounting officer) to further complain to the Authority should the accounting officer fail to decide his complaint or communicate the decision taken to him within the time given, or if he is dissatisfied by any decision of the accounting officer, or if the Authority fails to decide his complaint within stipulated time or if he is dissatisfied by the Authority's decision, to approach the Kaduna State High Court, is guaranteed under this Law.
- (5) 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, such that suites/proceedings to the State High Court for judicial review, shall be dispensed with not later than 45 days after filing or in the case of a matter/dispute requiring oral evidence between/amongst parties, such that the matter is dispensed with not later than 6 months after institution of the action.
- (6) The provisions of subsection 6 of this section is made without prejudice to any other provisions in this Law and/or in the procurement contract, for Arbitration as a primary source of dispute resolution:

68. (1) Any person who makes a false complaint against a contractor or procurement entity commits an offence and shall be liable on conviction to a fine of Twenty Thousand Naira (₦20,000.00) or imprisonment for one month or both.
- (2) Any person not being a public officer who contravenes any provision of this Law commits an offence and is liable

Offences

on conviction to a term of imprisonment of not less than one year or a fine of Five Hundred Thousand Naira (₦500,000.00) or both.

- (3) It shall be an offence subject to sub-section (1) of this section to:
- (a) Open or tamper with any sealed bid or any documents required to be sealed or divulging their contents prior to the appointed time for the public opening of bids or such other documents;
 - (b) Delay without justifiable cause, the screening for eligibility, opening of bids evaluation and post evaluation of bids and awarding of contracts beyond the prescribed limits/periods of action provided for in this Law or regulations made hereunder;
 - (c) Enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective bids, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
 - (d) Collusion shall be presumed from a set of acts from which it can be inferred 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.
 - (e) Conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (f) Directly or indirectly attempting to influence in any manner the procurement process to obtain an

unfair advantage in the award of a procurement contract;

- (g) Split tenders to enable the evasion of monetary thresholds set out;
 - (h) Participate in bid- rigging;
 - (i) Alter any procurement document with intent to influence the outcome of a bid proceeding;
 - (j) Use fake documents or encourage their use;
 - (k) Willfully refuse allowance for the Authority or its officers to have access to any procurement records; and
 - (l) Withdraw a bid, after it shall have qualified as the lowest calculated bid or Highest rated bid, and/or refusal to accept an award, without just cause for the purpose of forcing the procuring entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, Performance Guarantee, preparatory to the final award of the contract.
- (4) Any person whilst carrying out his duties as an officer of the Authority, or any procuring entity who contravenes any provision of this Law commits an offence and liable on conviction to a cumulative punishment of-
- (i) a term of imprisonment not less than 5 years without any option of fine;
 - (ii) summary dismissal from government service.
- (5) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:
- (a) debarment from all public procurement for a period not less than 10 years.

- (b) a fine not more than the full value of the procurement in issue .
- (6) Where any legal person is convicted pursuant to Subsection (4) of this Section, every Director of the company listed on its records at the Corporate Affairs Commission, shall be guilty of an offence and liable on conviction to a term of imprisonment not less than 2 years or a fine of two million Naira (₦2,000,000.00) or both.
- (7) An alteration pursuant to subsection (2) (h) of this Section shall include but not limited to:
 - (i) forged arithmetical correction;
 - (ii) insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening; and
 - (iii) Requests for clearance in a manner not permitted under this Law.
- (8) Bid-rigging pursuant to subsection (2) (g) means an agreement between persons where:
 - (i) offers submitted have been prearranged between them; or
 - (ii) Their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.
- (9) For the purpose of subsection (7) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial, directly or indirectly.
- (10) For the purposes of subsection (2), (5) and (8) of this section, it shall be sufficient to prove that a reasonable

business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the State Treasury.

(11) For the purpose of subsection (5) of this section, considerations shall be given to whether a director is involved in the day to day management of the company, the onus shall however be on him to prove that he had no personal knowledge nor did he encourage or approve of the actions constituting the offence alleged.

69. From the commencement of this Law, any other Law on procurement and related matters are subject to the provisions of this Law.

70. Whatever had been done on matters relating to procurement and such other matters related thereto are deemed to have been done pursuant to this Law. Savings

71. The Kaduna State Bureau of Budget Implementation, Monitoring and Price Intelligence Law, Law No. 5 of 2007 is hereby repealed. Repeal

DATED AT KADUNA this^{31st}..... day of^{May}..... 2016.


Malam Nasir Ahmad el-Rufa'i
Governor, Kaduna State.

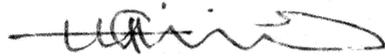
EXPLANATORY NOTE

(This note does not form part of this Law and has no legal effect)

The purpose of this Law is to establish the Kaduna State Public Procurement Authority as the regulating authority responsible for monitoring, oversight and harmonization of existing policies and setting standards for public procurement in the State.

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

HON. AMINU ABDULLAHI SHAGALI
(Speaker)



UMMA ALIYU HIKIMA Esq.
(Clerk to the Legislature)