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A Law to Establish Bauchi State Budget Monitoring Price Intelligence and Public Procurement Unit	2-63

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LONG TITLE	A LAW TO ESTABLISH BAUCHI STATE BUDGET MONITORING PRICE INTELLIGENCE AND PUBLIC PROCUREMENT UNIT AS THE OVERSIGHT UNIT FOR THE MONITORING OF PUBLIC PROCUREMENT AND ASSET DISPOSAL BY ENSURING THAT THE FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN THE STATE AND OTHER RELATED MATTERS ARE COMPLIED WITH
SHORT TITLE	BAUCHI STATE BUDGET MONITORING, PRICE INTELLIGENCE AND PUBLIC PROCUREMENT LAW 2008
ENACTMENT	BE IT ENACTED by the Bauchi State House of Assembly as follows:
CITATION AND COMMENCEMENT	1. This Law may be cited as Bauchi State Budget Monitoring, Price Intelligence and Public Procurement Law and shall come into operation on Day of2008.
INTERPRETATION	2. In this law unless the context otherwise requires:-
"ACCOUNTING OFFICER"	Means the person charged with the supervision of the conduct of all procurement processes.
"APPROVING AUTHORITY"	Means the person charged with overall responsibility for the function of a Ministry, Extra – Ministerial Department or corporation.
"ASSETS"	Includes tangible and intangible thing which have been or may be sold or procured for consideration.
"BID SECURITY"	Means a form of Security assuring the bidder so that he shall not withdraw bid within the period specified in the bid.
"SCOPE OF APPLICATION"	Means it applies to Bauchi State Government and its Agencies, Judiciary, House of Assembly, LGA.
"PUBLIC FUNDS"	Means whose funding derives from the State Treasury, their own internally generated revenue, the state share of the Consolidated Revenue Fund, Special Allocation from the Federal Treasury.
"DEBAR"	Means the placing of a firm, company or natural person on a list of person ineligible to participate in any procurement procedure under this law.

Means the document evidencing and authenticating that due process and the letters of this law has been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payment to contractors or the suppliers from treasury.	"CERTIFICATE OF NO OBJECTION"
Means an agreement entered in writing.	"CONTRACT"
Means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted.	"CONTRACTOR OR SUPPLIER"
Means a monetary value proposed by a bidder for any procurement which is in the estimation of the unit unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.	"EXCLUSIVE PRICE"
Means objects of any kind of description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the good.	"GOOD"
Means evidence that a contractor or supplier has performed its obligations under the procurement contract up to a level stipulated by the contractor but not completion.	"INTERIM PERFORMANCE CERTIFICATE"
Means the solicitation of bids from both State and National Contractors and Suppliers "Lowest valued responsive bid" is the lowest price bid amongst the bids that meet all the technical requirement and standard as contained in the tender document.	"NATIONAL COMPETITIVE ADDING"
Means the extra mark up on price allowed any state contractors or being otherwise disadvantageous to the bind in terms of price.	"MARGIN OF PREFERENCE"
Means monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau.	"MINOR VALUE"
Means the value limit in Naira set by the unit outside of which an approving authority may not award procurement contract.	"MONETARY THRESHOLDS"

"STATE COMPETITIVE BIDDING"	Means the solicitation of bids from the State Contractors and Suppliers registered or incorporated to carry on business under the Companies and Allied Matters Act.
"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 PROCEEDING"	Means the initiation of the process of effecting procurement up to award of a procurement contract.
"PROCUREMENT ENTITY"	Means any public body engaged in procurement and includes a Ministry, Extra – Ministerial Department, Government Agency, Parastatals and Corporation.
"PUBLIC PROCUREMENT"	Means the acquisition of goods works or services by the Government.
"RELEVANT AUTHORITY"	Includes House of Assembly of the State and Office of Auditor – General of the State.
"SERVICE"	Means the rendering by a Contractor or Supplier of his time and effort and includes any object of procurement other than good, works of construction.
"SOLICITATION DOCUMENT"	Means any documents for solicitation of offers proposals or quotations.
"SUBSTANTIALLY RESPONSIVE"	Means the response which virtually answered to all the needs of a procuring entity as stipulated in the bid.
"SUPPLIER"	Means a real or legal person that provides supply of goods.
"THRESHOLDS"	Refers only to the approving and not the actual process of award.
"VALIDITY PERIOD"	Means the period during which a bidder agrees not to increase the cost of its bid or to remove any component of the bid.

Means all works associated with the constructions, re-construction, demolition, repair or renovation of a building structure or works, such as site preparation, excavation, erection, building installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract where the value of those services does not exceed that of the construction itself.

"WORKS"

PART ONE (I): ESTABLISHMENT OF BUDGET MONITORING PRICE INTELLIGENCE AND PUBLIC PROCUREMENT UNIT

3. (1) There shall be established a Budget Monitoring Price Intelligence and Public Procurement Unit (in this Law referred to as "the Council").
- (2) The Unit shall consist of:
- (a) A Special Adviser as Chairman and Chief Operating Officer
 - (b) Director of Finance – Ministry of Finance
 - (c) Director Legal Drafting – Justice Ministry of the State
 - (d) Director in the Office of the Secretary to the State Government
 - (e) Director Finance & Supply Office of the Head of Service of the State
 - (f) The Special Assistant: Budget and Economic Planning
 - (g) A Secretary of not less than Assistant Director
 - (h) Seven other members of proven integrity to be appointed by the Governor.
4. This Law shall apply to all procurement of goods, works, services and disposal of assets by the Bauchi State Government and its agencies, LGA, Judiciary, House of Assembly whose funding derives from the State Treasury, their own internally generated revenue, special allocations from the Federal Treasury.

ESTABLISHMENT OF THE BUDGET MONITORING PRICE INTELLIGENCE AND PUBLIC PROCUREMENT UNIT

SCOPE OF APPLICATION

Notwithstanding this Law, the state is under obligation under any international treaty, bilateral agreement, joint venture agreements to use a method of procurement stipulated under such treaty or agreement.

**FUNCTIONS OF
THE COUNCIL**

5. The unit shall:-
- a. Consider and recommend for approval policies on public procurement to the Executive Council.
 - b. Recommend new changes in the procurement process to be adopted with improvement in modern technology for consideration and approval of Executive Council.
 - c. The harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process.
 - d. The establishment of pricing standard and benchmarks.
 - e. Ensuring the application of fair comparative transparent, value for money standard and practices for the procurement and disposal of public assets and services and;
 - f. The attainment of transparency, competitiveness cost effectiveness and professionalism in the public sector procurement system.
 - g. Formulate the general policies and guidelines relating to public sector procurement for the approval of the State Executive Council.
 - h. Publicize and explain the provision of the Unit.
 - i. Subjects to thresholds as may be set by the State Executive Council, certify state procurement prior to the award of contract.
 - j. Supervise the implementation of established procurement policies.
 - k. Monitor the prices of tendered items and keep state data base of standard prices.

- l. Publish the details of major contracts in the procurement journal.
 - m. Maintain a state database of the particulars and classification and categorization of state contractors and service providers.
 - n. Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal.
 - o. Collate and maintain in an archival system all state procurement plans and information.
 - p. Undertake procurement research and survey.
 - q. Organize training and development programmes for procurement professionalism.
 - r. Periodically review the socio – economic effects of the policies on procurement and advise the State Executive Council accordingly.
 - s. Prepare and update standard bidding and contract document.
 - t. Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions.
 - u. Coordinate relevant training programme to build institutional capacity.
6. (1) The unit shall have the power to:
- a. From time to time stipulate to all procuring entities, the procedures and documentation pre – requisite for the issuance of certificate of No. Objection for contracts award and payment certificates.
 - b. Recommend any supplier, contractor or service provider that contravene any provision of this law and regulation for appropriate sanction by State Executive Council.
 - c. Maintain a State database of State Contractors and service providers and to the exclusion of all procuring

POWERS OF THE
UNIT

- entities prescribe classification and categorization for the companies on the registers.
- d. Maintain a list of firms and persons that have been debarred from participating in public procurement activities and publish them in the procurement journal.
 - e. Call for such 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, respond against a providing entity or service providers.
 - f. Recommend to the Executive Council, where there are persistent or serious breaches of this Law, Regulations or Guidelines made under this Law.
 - i. To recommend the suspension of the officer concerned with the procurement or disposal proceeding in issue.
 - ii. To recommend the replacement of the head of any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Boards as the case may be.
 - iii. To recommend the temporary transfer of the procuring and disposal functions of a procuring and disposing entity to a third party Procurement Agency or Consultant or
 - g. Any other sanction that the Unit may recommend as appropriate to the Executive Council.
 - h. Call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding.
 - i. Act upon complain in accordance with the procedures set out in this law.
 - j. Nullify in the whole or part of any procurement proceeding or award which is in contravention of this Law and report to the Governor.

- k. Do such other things as are necessary for the efficient performance of its functions under this Law.
- (2) The Unit shall as the situation demands.
- i. Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provision of this law.
- ii. Review and determine whether any procuring entity has violated any provision of this Law.
- (3) The Unit shall, Subject to the approval of the Executive Council, have power to:-
- a. Enter into contract or partnership with any company or person which in the opinion will facilitate the discharge of its functions.
- b. Request for and obtain from any procurement entity information including reports, memoranda and audited accounts and other information relevant to its functions under this law and
- c. Liaise with relevant bodies or institutions, State or National for effective performance of its functions under this Law.
7. (1) There shall be for the Unit, a Special Adviser who shall be appointed by the Governor, subject to confirmation by the House of Assembly of the State.
- (2) The Special Adviser shall be:
- a. The Chief Executive and Accounting Officer of the Unit.
- b. Responsible for the day to day affairs of the Unit.
- c. A Legal Practitioner, Architect, Engineer, Economist and Accountant and shall have been so qualified for a period of not less than 15 years; and

APPOINTMENT OF
THE SPECIAL
ADVISED

- d. His/her appointment is on such term and conditions as may be specified in his/her letter of appointment.
- ORGANISATIONAL STRUCTURE OF THE UNIT**
8. (1) The Unit shall be divided into the following sections that is:-
- a. Procurement and Surveillance.
 - b. Planning, Monitoring and Evaluation.
 - c. Administration and Finance
- (2) The appointment or deployment of sectional heads shall be by the Governor from a list of suitable candidates compiled by the Office of the Head of Service.
- COMPOSITION OF THE MANAGEMENT COMMITTEE OF THE UNIT**
9. (1) There shall be for the Unit a body to be known as the Management Committee.
- a. The Committee shall consist of the Chairman who shall be the Senior Adviser; and
 - b. The Heads of all the sections who shall constitute the members of the Committee.
- THE SECRETARY OF THE UNIT**
10. (1) There shall be for the Unit a Secretary, who is the Head of Finance and Administration.
- (2) The Secretary shall:-
- a. Prepare the minutes of meeting of the Unit or any of its committees.
 - b. Keep and secure the records of the Unit and Management Committee of the Unit.
 - c. Perform such other functions as may from time to time be determined by the Chairman of the Management Committee.
- OTHER STAFF OF THE UNIT**
11. (1) The Unit may make requisition for additional officers and other employees as may from time to time deemed necessary for the purpose of the Unit, such request shall be made to the Governor for approval.

- (2) Subject to the Bauchi State Pension Law the terms and Conditions of Service (including remuneration, allowances, benefits and pension) of officers or other employees of the Unit shall be as determined by the public service and political appointees' remuneration.
- (3) Without prejudice to subsection 1 of this section, the Unit shall make requisition to appoint either on transfer or on secondment employees from the public service subject to the approval of the Governor to assist the Unit in the discharge of any of its functions under the Law.
12. a. The Unit as an arm of government shall operate its recurrent/capital expenditure under extant public service regulations. FUNDS OF THE UNIT
- b. All fees and charges for services rendered or publication made by the Unit may be retained to augment recurrent expenditure of the Unit.
13. (1) The financial year of the Unit shall be the financial year of Bauchi State Government. FINANCIAL YEAR BUDGETING AND FINANCIAL REPORT
- (2) Not later than 4 months before the end of the financial year, the Unit shall present to the Executive Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Unit shall keep proper accounts and records of its receipts payments, assets and liabilities and shall in respect of each financial year prepare a statement of accounts in such form as the Executive Council may direct.
- (4) The Unit shall within 6 months after the end of the financial year to which the account relates cause the accounts to be audited in accordance with guidelines supplied by the Auditor – General of the State.
- (5) The Unit shall at the end of each financial year prepare and submit to the Executive Council a report in such form as shall accurately capture all the activities of the Unit during the preceeding year and shall include in the report a copy of the audited account of the unit of that year.

LEGAL
PROCEEDING

14. (1) Subject to existing legal provision in the Statutes of Bauchi State Government.

PART III – SCOPE OF APPLICATION

SCOPE OF
APPLICATION

15. (1) The provision of this Law shall apply to all procurement of goods works and services carried out by:-
- a. The Bauchi State Government of Nigeria and all procurement entities.
 - b. All entities outside the foregoing description which derive at least 35% of the fund appropriated or proposed to be appropriated for any type of procurement described in this law from the State Share of Consolidated Revenue Fund.

PART IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

FUNDAMENTAL
PRINCIPLES FOR
PROCUREMENT

16. (1) All public procurement shall be conducted.
- a. Subject to the prior review thresholds as may from time to time be set by the Unit pursuant to section 6 (1) & (2).
 - b. Based only on procurement plan supported by prior budgetary appropriation and no procurement proceeding shall be formalized until the procuring entity has ensured that funds are available to meet the obligation and subject to the threshold in the regulation made by the Unit, has obtained a Certificate of No Objection to Contract Award from the Unit.
 - c. By open competitive bidding or selective tendering.
 - d. In a manner which is transparent, timely, equitable for ensuring accountability and conformity with this law and regulation deriving therefrom.

- e. With the aim of achieving value for money and fitness for purpose.
 - f. In a manner which promotes competition, economy and efficiency; and
 - g. In accordance with the procedures laid down in this law and as may be specified by the Unit from time to time subject to Executive Committee approval.
- (2) Where the Unit has set prior review threshold in the procurement regulation no funds shall be disbursed from the Treasury or Consolidated Revenue Fund Account or any Bank account of any procurement entity falling above the set threshold unless the cheque, payment or other form of request for payments is accompanied by a certificate of No Objection to an award of contract duly issued by the Unit.
- (3) For all cases where a Unit shall set a prior review threshold the Unit shall prescribe by regulation, guidelines and the conditions precedent to the award of certificate of "No Objection" under this law.
- (4) Subject to the prior review threshold as may be set by the Unit, any procurement purported to be awarded without a Certificate of No Objection to Contract Award duly issued by the Unit shall be null and void.
- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two, supplier contractors or service provider acting jointly shall be liable for all obligations and responsibilities arising from this law and the non performance or improper performance of any contract awarded pursuant to this law.
- (6) All bidders in addition to requirements contained in any solicitation documents shall:
- a. Possess the necessary.

- i. Professional and technical qualification to carry out particular procurement.
 - ii. Financial capability.
 - iii. Equipment and other relevant infrastructure.
 - iv. Shall have adequate personnel to perform the obligation of the procurement contract.
- b. Possess the legal capacity to enter into the procurement contract.
 - c. Not be in receivership of the subject of any form of insolvency or Bankruptcy proceedings or the subject of any form of winding up petition or proceeding.
 - d. Have fulfilled all its obligations to pay taxes pension and social security contributions.
 - e. Not have any Director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of fact relating to any matter.
 - f. Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Unit is a former or present Director, thresholder or has any pecuniary interest in the bidder and confirming that all information presented in its bid are true and correct in all particulars.
- (7) The procuring entity may require a bidder to provide documentary evidence or other information it consider necessary as proof that the bidder is qualified in accordance with this law and the solicitation document and for this purpose any such requirement shall apply equally to all bidders.

- (8) Whenever it is established by a procuring entity or Unit that any or a combination of the situation set out exists a bidder may have its bid or tender excluded from any particular procurement proceeding if:-
- a. Whenever there is verifiable evidence that any supplier, contractor or consultant has given employment or promised a gift of money or any tangible items or has promised, offered or given employment or any other benefit items or a service that can be qualified in monetary items to a current or former employee of a procuring entity or the Unit, in an attempt to influence any action or decision making of any procurement activity.
 - b. Whenever a supplier, contractor, or consultant during the last three years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in performance of any public procurement.
 - c. Whenever the bidder is in receivership or is the subject of any type of insolvency proceeding or being a private company under the Companies and Allied Matters Act is controlled by a person or persons who are subject to any Bankruptcy proceeding or who have been declared bankrupt and or have made any compromises with their credits within two calendar years prior to the initiation of the procurement proceeding.
 - d. The bidders 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 deference of such outstanding payment in installment thereof.
 - e. Whenever the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding or other crime committed to gain financial profit; and

- f. Whenever the bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceeding and persons acting on behalf of the procuring entity participating in same proceeding or whom remain in subordinate relationship with other participants to the proceeding.
- (9) In such cases the procuring entity shall inform the Unit and person referred to in sub – section (8) (a) (g) of this section in writing that the bid or tender in question has been excluded and the ground for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.
- (10) All communications and documents issued by procuring entities and the Unit shall be in English Language.
- (11) All communications regarding any matter deriving from his law or proceeding of public procurement shall be in writing or such other form as may be stipulated by the Unit.
- (12) Every procuring entity shall maintain both file and electronic records of all procurement proceeding made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.
- (13) Copies of all procurement records shall be transmitted to the Unit not later than 3 months after the end of the financial year and shall show:-
- a. Information identifying the procuring entity and the contractors.
 - b. The date of the contract award.
 - c. The value of the contract.
 - d. The detailed records of the procurement proceeding.

- (14) The criteria stipulated as the basis upon which supplier or contractors would be evaluated shall not be changed in the course of any procurement proceeding.
- (15) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall be on the supplier or contractors.
- (16) A contract shall be awarded to the lowest evaluated responsive bidder from the bidders substantially responsive to the bid solicitation.
- (17) Notwithstanding subsection (16) of this section the Unit may refuse to issue a certificate of "No Objection" to Contract Award on the grounds that the price is excessive.
- (18) Pursuant to subsection (17) of this section the Unit may direct either that the procurement proceeding be awarded to the lowest evaluated responsive.
- (19) Pursuant to subsection (18) of this section the Unit may either direct that the procurement proceeding be entirely cancelled or that the procuring entity conduct in tender.
- (20) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible for any action taken or omitted to be taken either in compliance with or in contravention of this law.
- (21) The accounting officer of a procuring entity has the responsibility to ensure that the provision of this law and the regulation laid down by the Unit are complied with, the concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for any thing done in contravention of this law or the regulation laid down here under.
- (22) Procurement and disposal decision of a procuring entity shall be taken in sole adherence to the provisions of this law and any regulations as may from time to time be laid down by the Unit subject to Executive Committee approval.

- (23) Persons who have been engaged in preparing for a procurement or part of the proceeding thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub – contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.
- (24) A procuring entity shall not request or stipulate that a bidder should engage a particular sub – contractor as a requirement for participating in any procurement proceeding.
- (25) All procurement contracts shall contain provisions for arbitral proceeding as the primary forms of dispute resolution.
- (26) The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.
- (27) All procurement contracts shall contain warranties for the durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART V – ORGANISATION OF PROCUREMENTS

17. Subject to the monetary and prior review threshold for procurement in this law as may from time to time be determined by the State Executive Council, the following shall be the approving authority for the conduct of public procurement.
- a. In the case of:
- (i) A Government Agency, Parastatal or Corporation, a parastatals tenders.
18. Subject to regulation as may from time to time be made by the Unit under the direction of the EXCO Council a procuring entity shall plan its procurement by:

- a. Preparing the needs assessment and evaluation.
- b. Identifying the goods, works or services required.
- c. Carrying appropriate market and statistical surveys and on that basis prepare an analysis or the cost implications of the proposed procurement.
- d. Integrating its procurement expenditure into its yearly budget.
- e. Prescribing any method for effecting the procurement subject to the necessary approvals under this law and;
- f. Ensuring that the procurement entity functions stipulated in this section shall be carried out by the procurement planning committee.

19. Subject to regulations as may from time to time be made by the Unit under direction of Executive Council a procuring entity shall in implementing its procurement plans:

PROCUREMENT
IMPLEMENTATION

- a. Advertise and solicit for bids in adherence to this law and guidelines as may be issued by the Unit from time to time.
- b. The Unit can use its discretion to invite two credible persons as observers in every procurement process, one person each representing a recognized:-
 - i. Private sector professional organization whose expertise is relevant to the particular goods or service being procured; and
 - ii. Non – Government Organization working in transparency, accountability and anti – corruption areas and the observers shall not intervene in the procurement process but shall have right to submit their observation report or any relevant agency or body including their own organizations or association.
- c. Receive, evaluate and make a selection of the bids received in adherence to this law and guidelines as may be issued by the Unit from time to time.

- d. Obtain the approval of the approving authority before making an award.
- e. Debrief the bid losers on request.
- f. Resolve complaints and disputes if any.
- g. Obtain and confirm the validity of any performance Guarantee/Bond.
- h. Obtain a certificate of No Objection to Contract "Award" from the Unit within the prior review threshold as stipulated in section 3 (a) of this law. Execute all Contract Agreement; and
- i. Announce and publicize the award in the form stipulated by this law and guidelines as may be issued by the Unit from time to time.

ACCOUNTING
OFFICER

20. (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 Secretaries and in the case of Extra – Ministerial Departments and Corporation the Director – General or officer of coordinate responsibility.
- (2) The accounting officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for:
 - a. Ensuring compliance with the provisions of this law by his entity, and liable for the breach or contravention of this law, of any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any functions, duty or power to any person or group of persons.
 - b. Constituting the procurement committee.
 - c. Ensuring that the adequate appropriation is provided specifically for the procurement in the state Budget.

- d. Integrating his entity's procurement expenditure into its yearly budget.
- e. Ensuring that no reduction of values or splitting of procurement is carried outside as to evade the use of the appropriate procurement method.
- f. Constituting the Evaluation Committee.
- g. Liaising with the Unit to ensure the implementation of its regulations and issuance of No Objection Certificates for contracts and payment above one million Naira.

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

PROCUREMENT
PLANNING
COMMITTEE

(2) The Procurement Planning Committee shall consist of:

- a. The accounting officers of the procuring entity or his representatives who shall chair the committee.
- b. A representative of:
 - (i) The procurement unit of the procuring entity who shall be the Secretary.
 - (ii) The Unit directly in requirement of the procurement
 - (iii) The financial unit of the procuring entity
 - (iv) The planning, research and statistics unit of the procuring entity.
 - (v) Technical personnel of the procuring entity

22. (1) There is hereby established by this Law in each procuring entity a Tenders Board in this Law referred to as the "Tenders Board"

TENDERS
BOARD

- (2) Subject to the approval of the Executive Council the Unit shall, from time to time prescribe guideline for the membership of the Tenders Board.
- (3) The Tenders Board shall be responsible for the award of the procurement of goods works and services within the threshold set in the regulations.
- (4) In all cases where there is need for prequalification, the Chairman of the Tenders Board shall constitute a technical evaluation sub – committee of the Tenders Board charged with the responsibility of the evaluation of Bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chairman of the Evaluation Sub – Committee.
- (5) The decision of the Tenders Board shall be communicated to the Commissioner for presentation to the Unit for no objection certificate either for contract award or payment.
- QUALIFICATION BIDDERS 23. (1) Where a procuring entity has made a decision with respect to the minimum qualification of Suppliers, Contractors or Service Providers by requesting interested person to submit application to prequalify, it shall set out precise criteria upon which it seeks to give consideration to the application and in reaching a decision as to which it seeks to give consideration to the application and in reaching a decision as to which suppliers, contractors or service provider qualifies, shall apply only the criteria set out in the prequalification documents.
- (2) Procuring entity shall apply a set of prequalification documents to each suppliers, contractors or consultant that request them and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to supplier or contractors and consultant.
- (3) The prequalification documents shall include:-

- a. Instructions to prepare and submit prequalification application.
- b. A summary of the main term and conditions required for the procurement contract to be entered into as a result of the procurement proceeding.
- c. Any documentary evidence or other information that must be submitted by Suppliers, Contractors or Consultants to demonstrate their qualification.
- d. The manners and place for the submission of application to pre-qualify and the deadline for the submission, expressed at a specific date and time which allows sufficient time for Suppliers, Contractors or Consultants to prepare and submit their application taking into account the reasonable need of the procuring entity; and
- e. Any other requirement that may be established by the procuring entity in conformity with this law and procurement regulation relating to the preparation and submission of application to pre-qualify and to the prequalification proceeding.

(4) The procurement entity shall respond to any request by the supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least five days before the deadline for the submission of application to pre-qualify.

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

(6) The response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall without identifying the source of the request be communicated to other supplier or contractor

or consultants provided with the prequalification documents by the procuring entity.

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

(8) Suppliers, Contractor or Consultant who have pre-qualified may participate further in the procurement proceeding.

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

PART VI – PROCUREMENT METHODS FOR GOODS AND SERVICES

OPEN COMPETITIVE BIDDING

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

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

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

INVITATION TO BID

25. (1) Invitation to bid may be either by way of State Competitive Bidding or National Competitive Bidding and the Unit shall from time to time set the monetary threshold for which procurement shall fall under either system.

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

- i. In the case of goods and works under State Bidding the invitation for bids shall be advertised in at least two National Newspapers or any official websites of the procuring entity and the Unit as well as the procurement journal not – less than six weeks before the deadline for submission fo the bids for the goods and works.
- ii. In the case of goods and works valued under State Competitive Bidding the invitation for bids shall be advertised on the notice Board of the procuring entity, any official websites of the procuring entity, at least two national newspapers and in the procurement journal if any not – less than six weeks before the deadline for submission of the bids for the goods and works.

BID SECURITY

26. (1) Subject to the monetary and prior review threshold as may from time to time be set by the Unit all procurement valued in excess of the sums prescribed by the Unit shall require a bid security in an amount not more than 2% of the bid price by way of bank guarantee issued by a reputable Bank acceptable to the procuring entity.
- (2) The Unit shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

SUBMISSION OF BID

27. (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.
- (2) All submitted bid shall be deposited in a secured temper proof bid box.
- (3) All bids submitted shall be in English language.

(4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.

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

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

**REJECTION
OF BID**

28. I. A procuring entity may:
- a. Reject all bids at any time prior to the acceptance of a bid, without incurring any liability to the bidder.
 - b. Cancel the procurement proceeding in the public interest, without incurring any liability to the bidders.

**VALIDITY OF
PERIOD BOTH
MODIFICATION
AND WITHDRAWAL
OF TENDERS**

29. a. the period of validity for a bid shall be the period specified in the tender documents.
- b. A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
 - c. A supplier or contractor may refuse the request for the extension of bid in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
 - d. A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
 - e. The modification or notice of withdrawal is effective if it is received by procurement entity before the deadline for the submission of tenders.

BID OPENING

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

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

31. A All bids shall be first examined to determine if they:-
- i. Meet the minimum eligibility requirement stipulated in the bidding document.
 - ii. Have been duly signed.
 - iii. Are substantially responsive to the bidding documents; and
 - iv. Are generally in order.
- B. A procuring entity may ask a supplier or contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- C. The following shall not be sought, offered or permitted.
- i. Changes in prices

EXAMINATION
BID

- ii. Changes of substance in a bid; and
 - iii. Changes to make an unresponsive bid responsive.
- D. Notwithstanding sub-section (3) of the section the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- E. Major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- F. The following shall be considered as major deviation.
- i. With respect to clauses in an offer;
 - ii. Unacceptable sub – contracting;
 - iii. Unacceptable time schedule if time is of essence;
 - iv. Unacceptable alteration design; and
 - v. Unacceptable price adjustment.
- G. With respect to the status of the bidders.
- i. The fact that he is ineligible or not pre-qualified; and
 - ii. The fact that he is uninvited;
 - iii. With respect to bid documents an unsigned bid;
 - iv. With respect to time, date and location for submission;
 - v. Any bid received after the date and time for submission stipulated in the solicitation document.
- iv. Any bid submission at the wrong location.
- H. In case of major deviations, bids shall not be considered any further and where unopened shall be returned as such to the bidder.

- I. In all 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.
- J. Subject to any provision to the contrary the following shall be considered as minor deviation.
- i. The use of iron rod.
 - ii. The difference in standard.
 - iii. The difference in materials.
 - iv. Alternative design.
 - v. Alternative workmanship.
 - vi. Modified liquidated damages.
 - vii. Omission in minor items.
 - viii. Discovery of arithmetical errors.
 - ix. Sub – contracting that is unclear and questionable.
 - x. Different method of construction.
 - xi. Different in final delivery date.
 - xii. Different in delivery schedule.
 - xiii. Completion period where these are not of essence.
 - xiv. Non compliance with some technical local regulations.
 - xv. Payment terms; and
 - xvi. Any other condition that has little impact on the bid.
- K. In cases not mentioned above and where there exist a doubt as to whether a particular condition in a bid is a major or a minor deviation the following rules shall apply.

EVALUATION
OF BID

- i. Where the impact on the cost is major, it shall be regarded as major deviation; and
 - ii. Where the impact on the cost is minor, it shall be regarded as a minor deviation.
- L. In cases of minor deviation written clarification may be obtained from the suppliers or contractor and where applicable an offer made for the correction of the minor deviation.
- M. Where a supplier or contractor does not accept the correction of a minor deviation his bid shall be rejected.
- N. At the stage of evaluation and comparison, all minor deviations shall be qualified in monetary terms.
- O. For the rejection of a bid a written notice shall be given promptly to the supplier.
- 32. (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 to determine and select the correct evaluated responsive bid from bidders that have responded to the bid solicitation.
- (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation the Tenders Board shall, in particular, undertake the following processes as applicable.
 - a. Checking of deviation
 - b. Checking of omissions with qualification of same
 - c. Application of discount, as applicable
 - d. Clarification with bidders of questionable minor deviation
 - e. Qualification in monetary terms of such questionable deviation

- f. Conversion to common currency
 - g. Calculation and tabulation of bid amount with domestic preference where applicable
 - h. Determination of the lowest calculated prices in order of rank.
 - i. Post qualification of bidders where applicable
 - j. Listing of rejection of all bids where applicable
 - k. Decision of rejection of all bids where justifiable
 - l. Recommendation for award; and
 - m. Writing up of the bid evaluation report
- (4) All relevant factors, in addition to price that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
- a. For goods, among others, cost of transportation and insurance payment schedule, delivery time, operating cost, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety environmental benefits or losses by damages.
 - b. For works, in addition to factors stipulated in section 34(1) of the law and subject to section 34(2) of the law, if time is of essence, the value of early completion.
- (6) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian Currency according to the rate as at the date specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of information provided in the submission for pre-qualification shall be

confirmed at the time of award of contract and award may be devised to a bidder who no longer has the capability or resources to successfully perform the contract.

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

ACCEPTANCE
OF BID

33. (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responses as to the bid solicitation.
- (2) Notwithstanding sub-section (1) of this section the selected bidder need not be the lowest cost bidder provided the procuring entity can show good ground derived from the provision of this law to that effect.
- (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

DOMESTIC
PREFERENCE

34. (1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from outside the state or comparing tenders from domestic supplier offering goods manufactured locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preference the bidding document shall clearly indicate any preference to be granted to domestic supplier and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of preference shall apply only to tenders under natural bidding.
- (4) The Unit shall by regulation from time to time set the limit and the formula for the computation of margin of preference and determine the contents of goods manufactured locally.

35. (1) In addition to any other regulation as may be prescribed by the Unit a mobilization fee of not more than 70% may be paid to a supplier or contractor supported by an unconditional Bank Guarantee and Performance Bond issued by a Banking Institution acceptable to the procuring entity. MOBILIZATION FEES
36. The provision of a performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher. CONTRACT PERFORMANCE GUARANTEE
37. (1) Payment for the procurement of goods, works and services shall be paid promptly and diligently. INTEREST ON DELAY PAYMENT
- (2) Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or arithmetication by the Ministry, Extra-Ministerial office, Government Agency, Parastatal or Corporation shall be deemed a delay in the payment.
- (3) All delayed payments shall attract interest at the rate specified in the contract documents.
- (4) All contracts shall include terms, specifying the interest for late payment of more than sixty days.
38. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceeding. RECORD OF PROCUREMENT PROCEEDING
- (2) The portion of the record referred to in this section shall on request be made available on:-
- a. Any person after a tender, proposal offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and
- b. Suppliers, Contractors or Consultants that submitted tenders, proposals, offers or quotation or applied for pre-qualification after a tender, proposal, offer or quotation has been accepted

or procurement proceeding have been terminated without resulting in a procurement contract.

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

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

(5) The record and documents maintained by procuring entities on procurement shall be made available for inspection by the Unit or investigator appointed by the Unit and the Auditor – General upon request and where Donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of Audit and Review.

(6) **E – Procurement**

1. Not later than 12 months from the enactment of this Law, the Authority shall design and set up a secure electronic portal to be known as Bauchi State Government Electronic Procurement System (Bauchi – EPS) which shall be the primary and definitive source of information for all public procurement matters and opportunities within the purview of this Law or regulations issued hereunder.

2. Subject to other provisions of this Law and regulations as may be issued by the Agency from time to time, it shall be lawful for any procuring entity to conduct any or all of its bid by electronic auction and/or simulation either on the Bauchi – EPS or its own portal: provided that the use of the electronic system shall not compromise the principles provided for in S 16 of this law, be

transparent, efficient, economical and non – discriminatory.

(7) Concession Contracts

- (1) A procuring entity may prepare and grant a right to build, operate, manage, lease, retain or howsoever exploit for economic or fiduciary purposes any type of public infrastructure or utility whether on an exclusive or non – exclusive basis.
- (2) A Concession Contract shall mean but may not be limited to:
 - (i) Build Own Transfer Contracts;
 - (ii) Build Own Operate and Transfer Contracts;
 - (iii) Build Own Operate Contracts;
 - (iv) Management Contracts;
 - (v) Lease Contracts
- (3) With effect from the date of enactment of this Law, no entity within the purview of this Law shall grant to or howsoever allow any person or persons, real or artificial: the right to exploit for any economic or fiduciary purpose any public service, public infrastructure or utility or economic or fiduciary opportunity which should ordinarily derive from any public service, infrastructure or utility had it been operated by or remained under direct control of the procuring entity unless such a grant or allowance is as a result of an Open Competitive bidding, or by the application of Regulations as shall hereafter be issued by the Council from time to time.
- (4) Not later than one year from the enactment of this Law, the Council shall issue Regulations

outlining the scope of Concession Contracts, the procedure for preparing specific projects, and for applying for or being granted a concession and shall also stipulate the standard terms and tenure of such concession contracts.

- (5) Provided that regulations for concession of public utilities and infrastructure shall provide for prior consultation of stakeholders and prior detailed assessment of the economics of the grant and imperatives for service users before the grant.

(8) **Special and Restricted Procurement Methods**

- (1) Notwithstanding provisions of this Act 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 Agency.

- (a) Two Stage Tendering
- (b) Limited Source Tendering
- (c) Single Source Contracting
- (d) Repeat Orders
- (e) Shopping
- (f) Negotiated Procurements

(9) **Two Stage Bidding Method**

A procuring entity may engage in procurement by two stage bidding:-

- (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 resolution 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; or.
- (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 Act as regard the process for open competitive bidding shall apply to two stage tendering proceeding except to the extent that those provisions vary from 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 Agency.

(10) Limited Source or Restricted Bidding

- (i) Limited Source Bidding or Selective 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; or
 - (b) Procurement of major plant component 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.

- (c) The detailed procedure for limited source or selective bidding shall be as provided for in the rules to be made from time to time by the Agency.

(11) Single Source Procurement

- (i) Under Single Source Procurement a procuring entity may only engage in Direct Contracting for the following:

(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 this contract; or

(c) Those 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 limited source procurement shall be as provided for in the rules to be made from time to time by the Agency.

(12) Repeat Order

- (i) Under the repeat order method of procurement a procuring entity may only engage in procurements by Repeat Order if:

(a) The unit price is equal to or lower than that provided in the original contract;

(b) The repeat order does not result in splitting of requisitions or purchase orders;

- (c) If 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; and;
- (d) The repeat order shall not exceed twenty – five percent (25%) of the quantity of each item of the original contracts;
- (e) The detailed procedure for repeat orders shall be as provided for in the rules to be made from time to time by the Agency.

(13) Shopping

- (i) A procuring entity may only engage in shopping if:
 - (a) There is an unforeseen contingency requiring immediate purchase: Provided, however, that the amount shall not exceed such limited sum as from time to time provided by the Council; or
 - (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 a specific amount 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.

PART VII – SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

39. (1) Notwithstanding the provision of this Law the Bureau may issue certificate of No Objection upon conditions hereinafter prescribed.

TWO STAGE
TENDERING

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

a. Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works or in the case of services to identify their characteristic and where it seeks tenders proposals or offers on various means of meeting its need in order to obtain the most satisfactory solution to its procurement needs.

b. Where the character of the goods or works are subject to rapid technological advances where the procuring entity seek 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 liability or to recover research and development cost, where the procuring entities applies this Law to procurement concerned with security and determines that the selected method is the most appropriate method of procurement; or

c. Where the tender proceeding have been utilized but where not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceeding will not result in a procurement contract.

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

(4) The invitation document:

a. Shall call upon suppliers or contractors to submit in the first stage of two stage tendering proceeding initial tenders which contain their proposals without a tender price; and

- b. May solicit proposal that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors.
- (5) The procuring entity may in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive Bidding procedure with respect to any aspect of its tender.
- (6) In the second stage of the two tender proceedings the procuring entity:
- a. Shall invite supplier or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specification.
- b. May, in formulating the specification delete or modify any aspect of the technical or quality characteristic of the goods, work and services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tender.
- c. May add new characteristic or criteria that conform with this Law.
- d. Shall communicate to suppliers or contractors in the invitation to submit final tenders any deletion modification or addition, and
- e. May permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceeding.
- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in an open competitive bid.
40. (1) Subject to the approval by the Unit a procuring entity may for reasons of economy and efficiency engage in procurement by means of selective or restricted if:-

RESTRICTED
SELECTIVE

- a. The goods, works or services are available only from a limited number of suppliers or contractors.
- b. The time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured, or
- c. The procedure is used as an exception rather than rule.
- (2) Where a procuring entity engages in restricted/selective tendering on the basis that:
- a. The goods, works, and services are available only from a limited number of suppliers or contractors who can provide the goods, works and services; and
- b. The time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works and services. It shall select in all non – discriminatory manner of the number of suppliers or contractors to ensure effective competition.
- (3) For the purpose of sub – section (2) of this section the procuring entity shall cause a notice of the selected tendering proceeding to be published in the procurement journal.
- REQUEST FOR QUOTATION 41. (1) A procuring entity may carry out procurement by requesting for quotation from suppliers and contractors subject to approval of State Executive Council.
- (2) Generally, quotation shall be obtained from at least 3 related Contractors or suppliers.
- (3) Each Contractor or Supplier from whom the quotation is requested shall.
- a. Be informed whether any factor other than the charges the goods, works or services themselves, such as any applicable transportation

and insurance charges, Custom duties and taxes are to be included in the price; and

- b. Give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than a sum that shall be set in the regulation, the procurement entity may not obtain the Unit approval.

42. (1) A procuring entity may for the purpose of this Law, carry out an emergency procurement subject to approval of the Governor where:

EMERGENCY
PROCUREMENT

- a. The State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or the Act of God.
 - b. The condition or quality of goods, equipment buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - c. A public project may be seriously delayed for want of an item of a minor value.
- (2) In an emergency situation a procuring entity may engage in direct contracting of goods works and services.
 - (3) All procurements made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.
 - (4) Immediately after the cessation of the situation warranting any emergency procurement the procuring entity shall

file a detailed report thereof with the Unit which shall verify same and if appropriate issue a certificate of "No Objection".

PART VII – PROCUREMENT OF CONSULTANT (SERVICES)

EXPRESSION OF
INTENTION TO
PROVIDE
SERVICES FOR
ASCERTAINED
NEEDS

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

a. It shall solicit for expression of interest or application to pre-qualify to provide the services by publishing a notice to that effect in at least 2 national newspapers and the procurement journal.

b. Where the value of the services to be procured is less than One Million Naira or with the approval of the Unit of such a low value that only State Consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to make proposal for the provision of the services in a Format stipulating:

i. A statement of qualification of the Consultant to provide the service.

ii. A statement of understanding of the procuring entity's needs.

iii. The methodology for providing the services.

iv. The time frame for providing the service; and

v. The cost or fee for the services

REQUEST FOR
PROPOSAL TO
PROVIDE
SERVICES FOR
UNASCERTAINED
NEEDS

44. (1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into 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 expression of interest by

publishing a notice to that effect in 2 National Newspapers and the procurement journal.

(3) A procuring entity may make direct request to limited number of Consultants, requesting proposal for the provision of a service if:

- a. The services are only available from no more than 3 Consultants.
- b. The time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition, or
- c. It is in the interest of national defense and security or similar reason of confidentiality.

45. (1) Request for the proposal shall include:

- a. The name and address of the procurement entity.
- b. A requirement that the proposals are to be prepared in English Language.
- c. The manner, place and deadline for the admission of proposal.
- d. A statement to the effect that the procuring entity reserves the right to reject proposal.
- e. The criteria and procedure for the evaluation of the qualification of the Consultants.
- f. The requirement or documentary evidence or other information that shall be submitted by consultant to demonstrate their qualifications.
- g. The nature and required characteristic 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.

CONTENT OF THE
REQUEST FOR
PROPOSALS

- h. Where the procuring entity is seeking proposals on various possible ways of meeting its needs.
- i. A requirement that the proposal price is to be expressed in Nigerian currency.
- j. That 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 re-imbursement for transportation lodging, insurance, use of equipment, duties or taxes.
- k. Whether the procedure to ascertain the successful proposal shall be based on the lowest cost, quality and criteria other than cost but stipulated in the request for proposals, and
- l. A short list to be made of only national consultant for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultant posses such requisite skills.

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

**CLARIFICATION
AND
MODIFICATION OF
REQUEST FOR
PROPOSALS**

46. (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 proposal to the short listed consultant 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 source of the request for clarifications.

- (5) The minutes shall be provided promptly before the deadlines for the submission of proposal to the consultant participating in the selection proceeding, to enable them take the minutes into account in preparing their proposals.

47. (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 30 days between the issue of the notice or request, and the deadline for submission.

SUBMISSION OF PROPOSALS

- (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 proposal shall remain sealed and kept in a secure bid box until they are opened publicly.

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

48. (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criteria and the manner in which they are to be applied in the evaluation of:

CRITERIA FOR EVALUATION OF PROPOSAL

- a. The qualification, experience, reliability professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services.

- b. The effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity.
- c. The proposal price, including any ancillary or related cost.
- d. The effect that the acceptance of the proposal will have on the balance of payment position and consolidated funds of the State, the extent of participation by Local Personnel, the economic development potential offered by the proposal including domestic investment or other business activity, if the encouragement of employment, the transfer of technology the development of managerial skill, scientific and operational skills and the encounter trader arrangements offered by consultant or service providers; and

- e. Security consideration.
 - (2) A procuring entity may accord a margin of preference for domestic consultant or service providers, which shall be calculated in accordance with the regulation and guidelines as issued from time to time by the Unit and shall be reflected in the record of the procurement proceedings.

GENERAL
SELECTION
PROCEDURE
(SERVICE)

49. (1) The procuring entity shall select the successful proposal by either choosing the proposal with:-
- i. The lowest evaluated price; or
 - ii. The best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

- (2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures in sub – section (1) of this section.

(3) Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

50. (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 proposal 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 for proposal, and then

PROCEDURE
FOR SELECTION
OR PROPOSAL
WHERE PRICE
IS A FACTOR

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

(3) The procuring entity shall notify the 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 4 working days after the decision has been taken by the procurement entity.

(4) The name of the qualifying consultant, the quality scores for the technical component of the proposals shall be read aloud and recorded along side the price proposed by each consultant or service provider when the financial proposals are opened.

(5) The procuring entity shall prepare the minutes which shall be part of the evaluation report and shall retain this record.

(6) The successful proposal shall be:-

a. The proposals with the best combined evaluation in terms of the criteria established under sub – section (1) of this section from price in the case of quality and cost based selection.

b. The proposals with the lowest price in term of least cost selection; or

c. The highest ranked technical proposal within the Budget.

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

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

SELECTION
PROCEDURE
WHERE PRICE IS
NOT A FACTOR

51. (1) Where the procuring entity elects to make a quality based selection based on consultant's qualification or single source selection, it shall engage in negotiation with consultants in accordance with this section.

(2) The procurement entity shall:

i. Establish a weight with respect to quality and price of the proposals.

ii. Invite for negotiations on the price of its proposals, the consultant that has attained the best rating in accordance with sub – sec. (1) of this section.

iii. Inform the consultant that attained rating above the weight that may be considered for negotiation if the negotiation with the consultants with the best rating do not result in a procurement contract; and

iv. Inform the consultant with the best rating that it is terminating the negotiation if it becomes apparent to the procuring entity that the negotiation with the consultant invited under sub – section (b) will not result in a procurement contract.

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

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

PART IX - PROCUREMENT SURVEILLANCE AND REVIEW

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

UNIT TO
RECOMMEND
INVESTIGATION

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

- a. Require an officer, employee or agent of the procuring entity or bidders, Suppliers, Contractors or Consultants to produce any books, record accounts or documents.
- b. Search premises for any books, record, accounts or documents.
- c. Examine and make extracts from copies of books, records, accounts or documents of any procuring entity, bidders, suppliers, contractors or consultants.
- d. 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 extract from copies of items but the investigation shall give a detailed

- receipt for the books records, accounts or documents removed.
- e. Require an officer, employee or agent of the procurement entity or bidder suppliers or contractors or consultants:
- i. To explain an entry in the books records accounts or documents.
 - ii. To provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.
- (3) The Unit may, pursuant to the advice of the procuring entity, results of the 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 contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract award.
- (4) The Unit shall, if satisfied that there has been a contravention of this Law or any regulations in relation to procurement proceeding or procurement contracts take action to rectify the contravention which action shall include:
- a. Nullification of the procurement proceeding.
 - b. Cancellation of the procurement contract.
 - c. Ratification of anything done in relation to the proceeding.
 - d. A declaration consistent with any relevant provision of this Law.
- (5) (a) On completion of the investigation, the relevant authority shall if an offence is disclosed take all

- necessary steps to commence prosecution through the office of the Attorney General and inform the Unit and the procurement entity accordingly. But where no offence is disclosed, the file shall be closed and the Unit and procuring entity shall be duly informed.
- (b) A comprehensive report of all investigation shall be forwarded to the Executive Council for ratification.
53. (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provision of this Law or any regulation or guidelines made under this Law or the provision of bidding documents. ADMINISTRATIVE REVIEW
- (2) (a) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complain or should have become aware of the circumstances which ever is earlier.
- (b) On reviewing a complaint the accounting officer shall make a decision in writing within 15 working days indicating the corrective measure to be taken if any, including the suspension of the proceeding where he deems it necessary and giving reasons for his decision, or
- (c) Where the accounting officer does not make a decision within the period specified in subsection (2) (b) the bidder may forward a copy of his complaint to the Unit.
- (3) If the bidder is not satisfied with the decision of the accounting officer the bidder may make a complaint to the Unit within 10 working days from the date of communication of the decision of the accounting officer.

- (4) Upon receipt of complaint, the Unit shall act promptly in the following ways:-
- a. Give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Unit has settled the matter.
 - b. Dismiss the complaint for lack of merit; or
 - i. Prohibit a procuring or disposing entity from taking any further action.
 - ii. Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity.
 - iii. Declare the rules or principles that govern the subject matter of the complaint a nullity.
 - iv. Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (5) Before taking any decision on a complaint the Unit shall notify all interested bidders of the complaint and may take into account representation from the bidders and from the respective procuring or disposing entity.
- (6) The Unit shall made decision within twenty one working days after receiving the complaint, stating the reason for its decision and remedies granted if any.
- (7) Where the Unit fails to render its decision within the stipulated time or the bidder is not satisfied with decision of the Unit the bidder may appeal to the Council within 30 days after the receipt of the decision of the Unit or expiration of the time stipulated for the Unit to deliver a decision.

PART X – DISPOSAL OF PUBLIC PROPERTY

54. (1) This section shall apply subject to the public Enterprises (privatization and commercialization) Act 1990.

- (2) For the purpose of this Law every procuring entity shall also be disposing entity.
- (3) The open competitive bidding shall be the primary sources of receiving offers for the purchase of any public property offered for sale.
- (4) The Unit shall, with the approval of the Executive Council:
 - a. Determine the applicable policies and practices in relation to the disposal of all public properties.
 - b. Issue guidelines detailing operational principle and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
 - c. Issue standardized document, monitor implementation, enforce compliance and set reporting standard that shall be used by all procuring entities involved in the disposal of public property.
- (5) For the purposes of this Law, public property is defined as resources in the form of tangible and non tangible assets (ranging from serviceable to the unserviceable).
 - a. Created through public expenditure.
 - b. Acquired as a gift or through deeds.
 - c. Acquired in respect of intellectual or proprietary rights.
 - d. Acquired on financial instrument (including shares, stocks, bonds, JV etc); and
 - e. Acquired by good will and any other gifts of the State Government.
- (6) The means of the disposal of public assets shall include:
 - a. Sale, rentals and concession.
 - b. Lease and hire purchase.

PLANNING
OF DISPOSAL

- c. Licenses and tenancies.
- d. Franchise and auction.
- e. Transfer from one Government Department to another with or without financial adjustment.
- f. Offer to the public at an authorized variation.

55. (1) Before slating any public property for disposal, the accounting officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal, shall authorize the preparation of a valuation report for such property by an independent valuer or such professional with the appropriate competence to carry out the valuation.

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

(3) The disposed assets referred to in sub – section (2) of this section shall be deemed to take place when the most advantageous returns can be obtained for the assets in order to maximize revenue accruing to the government.

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

(5) A report of the findings in 1 – 4 shall be forwarded to the Executive Council for appropriate directive.

PART XI – CODE OF CONDUCT

CODE OF
CONDUCT

56. (1) The Unit shall with the approval of the Executive Council, stipulate a code of conduct for all public officers, suppliers, contractors, and service providers with regard to their standard of conduct acceptable in matters involving the procurement and disposal of public assets.

(2) The conduct of all persons involved in public procurement, whether as official of the Unit, a procuring entity, supplier

contractors or service provider shall at all times be governed by principle of honesty accountability, transparency, fairness and equity.

- (3) All officers of the Unit, members of Tenders Board and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by the Executive Council.
- (4) All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization shall be judicious.
- (5) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to some extent as where it involves procurement.
- (6) These principle shall apply at all times particularly when:
 - a. Making requisition for or planning of procurements.
 - b. Preparing solicitation documents.
 - c. Receiving offer in response to any form of solicitation towards procurement or disposals.
 - d. Evaluating and comparing offers in confidentiality and in complete maturity.
 - e. Protecting the interest of all parties without fear or favour; and
 - f. Avoiding all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:
 - a. Ensuring adequate time for preparing offers.
 - b. Complying with this Law and all derivative regulations; and

c. Maintaining strict confidentiality until completion of a contract.

(8) All public officers involved in public procurement and disposal of assets shall maintain the highest standard of ethics in their relationship with persons real or corporate who seek government commerce, whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such persons.

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

a. Divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this law; and

b. Not engage or participate in any commercial transaction involving State Government, its Ministries, Extra – Ministerial Department Corporation where his capacity as public officer is likely to confer any unfair advantage pecuniary or otherwise on him or any person directly related to him.

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

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

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

a. Possesses an interest outside his official duties that materially encroaches on the time or

attention which should otherwise be devoted to affairs of government.

- b. Possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor, or service provider that is inherently unethical or that may be implied or constructed to be or make possible personal gain due to the persons ability to influence dealings.
 - c. Entertains relationships which are unethical rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgement.
 - d. Places by acts or omission the procuring entity he represent or the Government in an equivocal embarrassing or ethically questionable position.
 - e. Entertain relationship compromising the integrity of the procuring entity he represents or the Government.
 - f. Receives benefits by taking personal advantage of an opportunity or property which comes into his hands either in course of his work or otherwise; and
 - g. Create a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and
 - h. Discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractors or service provider to unauthorized person.
- (13) A person involved in the disposal of assets, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

PART XII - OFFENCES**OFFENCES
RELATING TO
PUBLIC
PROCUREMENT**

57. (1) Any natural person not being a public officer who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than 5 years or an option of fine which shall not exceed N300,000.00.
- (2) Any offence in contravention of this Law shall be tried by the State High Court.
- (3) Prosecution of offenders under this Law shall be instituted in the name of Bauchi State Government by the Attorney General of Bauchi state or such other officer of the Bauchi State, Ministry of Justice as he may authorize so to do.
- (4) The following shall also constitute offences under this Law:-
- a. Entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotation are higher than would have been the case, had there not been collusion between the persons concerned.
 - b. Conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption.
 - c. Directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract.
 - d. Splitting tenders to enable the evasion of monetary threshold set.

- e. Bid – rigging or altering any procurement documents with intent to influence the outcome of a tender proceeding.
- f. Altering or using fake documents or encouraging their use; and
- g. Willful refusal to allow the Unit or its officers to have access to any procurement records.

(5) Any person who will be carrying out his duties as an officer of the Unit or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to accumulative punishment of:

- a. A term of imprisonment of not more than 2 years or N200,000.00 fine.
- b. Termination of appointment from Government services.

(6) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:

- a. Deprivation from all public procurement for a period not less than 5 years; and
- b. A fine equivalent to 25% of the value of the procurement in issue.

(7) An alteration pursuant to sub – section 4 (f) shall include.

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

(8) 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 persons involved reasonably expected that the other would adopt a particular course of an action which would interfere with the faithful and proper application of the provision of this Law.

(9) Bid – rigging pursuant to sub – section 4 means an agreement between persons whereby:

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

(10) For the purposes of the presumption under section 5 (7) of this section consideration shall be given to a suspect's ability to control a solicitation or the conditions of the contract in question, whether total or partial.

(11) For the purposes of section 57 (5) of this section it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the state Treasury.

PART XIII – MISCELLANEOUS

MISCELLANEOUS

58. (1) The fixing of the seal of the Unit shall be authenticated by the signature of the Special Adviser and such other person generally or specially authorized to act for that purpose by the Special Adviser.
- (2) Any contractor or instrument which, if made or executed by a person not being a body corporate would not be required to be under seal may be made or executed on behalf of the Unit by the Special Adviser or any person

generally or specially authorized to act for that purpose by the Special Adviser.

- (3) Any document purporting to be a document duly executed under the seal of the Unit shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.
- (4) The validity of any proceeding of the Unit shall not be adversely affected by any absence of any member of the Unit or by reason that a person not entitled to do so, took part in the proceeding of the Unit.

Assented to thisday of2008

MALAM ISA YUGUDA
EXECUTIVE GOVERNOR
BAUCHI STATE.

generally or specially authorized to act for the purpose
by the Special Adviser.

Any document purporting to be a document of the State
under the seal of the State shall be treated as genuine
and shall not be questioned until the contrary is proved
presumed to be correct.

(4) The validity of any proceedings of the State shall not be
affected by any absence of any member of
the State or by reason that a person not entitled to do so
took part in the proceedings of the State.

Agreed to this ... day of ... 1988

MALAM 157 YEGUBA
EXECUTIVE GOVERNOR
BAUCHI STATE