

**YOBE STATE GOVERNMENT**

# **Administrative Review Procedures Manual**

2019

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## **Abbreviations and Acronyms**

Bureau	Yobe State Bureau on Public Procurement
NBA	Nigerian Bar Association
PE	Procuring or Disposing Entity

# Executive Summary

This Administrative Review Procedures Manual is designed to set down the procedures to be followed by:

1. A bidder who files a complaint under section 55 of Yobe State Public Procurement Law 2016, seeking administrative review for a breach by a Procuring or Disposing Entity (PE) of any provision under the Law or any other Regulations or Guidelines or the provisions of the bidding document;
2. A PE when responding to such a complaint;
3. The Yobe State Bureau on Public Procurement (Bureau) when hearing such a complaint, after the initial decision or no decision by the PE;
4. A mediator where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau; and
5. Finally, an arbitrator, where either party is dissatisfied with the opinion of the mediator or should the mediation fail.

This Manual shall be published on the Bureau's website for the information of all potential parties to an Administrative Review. Adherence to these procedures by the above parties will ensure that the Law relating to administrative review procedures is applied consistently and fairly, and in accordance with good procurement practice.

An Administrative Review provides an opportunity for potential suppliers concerned about the propriety of the procurement process to seek redress.

Administrative review procedures may take place over 4 stages:

1. **Initial complaint to the Accounting Officer of the PE concerned.** Upon receiving a complaint, the Accounting Officer should undertake a full and fresh review of the procedures carried out by the responsible staff of the PE, having regard to the validity or otherwise of the grounds for complaint that have been presented.
2. **Complaint to the Bureau.** If the Accounting Officer does not respond within the stipulated period or if the potential supplier is not satisfied with the decision of the Accounting Officer, the complainant may take his complaint to the Bureau, which would form a Complaints Committee to hear the complaint, together with the response of the PE and the representations of other interested parties.
3. **Resolution before a mediator.** The mediator, appointed by the parties or relevant professional body, will guide the parties to resolve the dispute by reaching mutually agreeable and lawful terms of settlement/remedy. The procedure and timeline shall be as agreed by the parties, guided by this Manual.
4. **Resolution before an arbitrator.** this is the final recourse and involves referring the dispute to a single arbitrator agreed upon by the parties or appointed by a relevant professional body. The procedure shall be as prescribed under this Manual and the decision reached by the arbitrator shall be binding and final.

# 1.0 Introduction

## 1.1 Purpose

1.1.1 This Administrative Review Procedures Manual prescribes the procedures to be followed by:

- a) A bidder who files a complaint under section 55 (1) of Yobe State Public Procurement Law 2016 (Law), seeking Administrative Review for a breach by a Procuring or Disposing Entity (PE) of any provision of the Law or any Regulations or Guidelines made under the Law or the provisions of the bidding document;
- b) A PE when responding to such a complaint;
- c) The Yobe State Bureau on Public Procurement (Bureau) when further hearing a complaint, after the PE has made its decision on the complaint submitted to it by the bidder or has failed to do so within the stipulated deadline;
- d) A mediator where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau; and
- e) Finally, by a single Arbitrator, if either party is dissatisfied with the opinion of the mediator or the mediation fails.

The full text of section 55 of the Law is reproduced at Appendix 1.

1.1.2 This Manual is published on the Bureau's website <https://bpp.pfm.yb.gov.ng/> for the information of all potential parties to an Administrative Review. Adherence to these procedures by the above parties will ensure that the Law relating to administrative review procedures is applied consistently and fairly, and in accordance with good procurement practice.

## 1.2 Grounds for seeking an Administrative Review

1.2.1 Procurement contracts for goods, works and services in the State are to be carried out in accordance with the principles of transparency, competition, efficiency and value-for-money.

1.2.2 The general grounds for seeking administrative review or submitting a complaint to challenge a procurement decision or action under section 55 of the Law are that:

- a) There has been a breach of the provision(s) of the Law, related Regulations, Guidelines or the bidding documents; and
- b) The PE either caused the breach or permitted the breach.

1.2.3 A bidder or a potential supplier is entitled to seek administrative review of a procurement decision if it has reasons to believe that:

- a) a contract has been or is about to be awarded contrary to the provisions of the Law, related Regulations, Guidelines or the bidding documents, or
- b) it has been denied a contract or an opportunity to compete for a contract, contrary to the Law.

1.2.4 An Administrative Review provides an opportunity for bidders or potential suppliers concerned about the propriety of the procurement process to seek redress.

1.2.5 For illustration, possible specific grounds for complaint might include but are not limited to the following:

- a) Failure on the part of the PE to use the appropriate procurement method, having regard to the value of the contract and other relevant factors;

- b) Defects in the specification of requirements; for example, failure to set out requirements in terms of the functions that the required product or service should perform, leading to bias in favour of a particular supplier's products or services;
- c) Use of a brand name without specifying that equivalent alternative brands are acceptable;
- d) Failure to make available the bidding documents promptly to all potential bidders upon the issue of the tender invitation;
- e) Giving certain potential bidders special or privileged information that is not disclosed to all potential bidders and which gives those bidders an advantage in preparing their bids;
- f) Irregular procedures in receiving and opening bids, such as the acceptance of late bids;
- g) Failure, during bid evaluation, to follow the evaluation criteria stated in the bidding document;
- h) Bias or inconsistency in determining the best evaluated bidder or other conforming offers during bid evaluation;
- i) Failure to award the contract to the best evaluated bidder (the lowest evaluated responsive bid).

1.2.6 The following matters do not fall within the scope for Administrative Review:

- a) Solicitations offered or contracts made by any party which is not a government body in Yobe State or otherwise is not subject to the Public Procurement Law; and
- b) Sub-contract awards by a contractor as part of a government contract.

### **1.3 Standstill Period for opportunity to submit complaint**

1.3.1 Following the decision to award a contract to a successful bidder, a contract may not be concluded (signed):

- a) before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the bidders concerned, if fax or electronic means are used; or
- b) if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the bidders concerned; or
- c) at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

1.3.2 Bidders shall be deemed to be concerned in the circumstances below:

- a) They have not yet been definitively excluded from participating in the bidding process. An exclusion is definitive if it has been notified to the bidders concerned and has either been considered lawful by the Bureau or can no longer be subject to a review procedure.
- b) The PE has not made information available about the rejection of their application or bid before the notification of the contract award decision.

1.3.3 The communication of the award decision to each bidder concerned shall be accompanied by the following:

- a) A summary of the relevant reasons why the successful bid was selected for award and others were not; and
- b) A precise statement of the exact standstill period applicable pursuant to the provisions of this Manual.

1.3.4 The periods referred to in paragraph 1.3.1 of this Manual do not apply in the following cases:

- a) If the only bidder concerned is the one who is awarded the contract;
- b) In the case of a contract based on a framework agreement.



## **2.0 Procurement complaint procedures**

### **2.1 Initial complaint to the Procuring Entity**

#### **2.1.1 Filing of complaint**

2.1.1.1 A bidder or potential supplier who objects to an action or decision of a PE is required by section 55 (2) of the Law to submit a written complaint first to the Accounting Officer of the PE that is undertaking the procurement. Complaints may be filed in hard copy (paper) or by electronic means to the email address of the PE. This should be done promptly, in order to avoid undue delay to the procurement process; and in any event must be submitted within the following time periods:

- a) Applications for review of the terms of solicitation, pre-qualification or pre-selection or decisions or actions taken by the PE in pre-qualification or pre-selection proceedings shall be submitted prior to the deadline for presenting the submissions; or
- b) Applications for review of other decisions or actions taken by the PE in the procurement proceedings shall be submitted within the standstill period applied pursuant to paragraph 1.3.1 of this Manual, or, where none has been applied, prior to the entry into force of the procurement contract or the framework agreement; or
- c). Within fifteen working days from the date the bidder first become aware of the circumstances giving rise to the complaint or shall have become aware of the circumstances, whichever is earlier.

2.1.1.2 The complainant must disclose his identity, including its company name, address, telephone number, e-mail address and fax number and the name of the individual authorized to file the complaint and to make representation on behalf of the complainant.

2.1.1.3 The complainant should refer to the identification number of the tender concerned or the contract number if known, the estimated contract value, the product or service being procured, any other identifying features and, if known, the relevant times and dates (example, issuance of solicitation, bid closing, contract award).

2.1.1.4 The complainant should provide the grounds for seeking the review, with reference wherever possible to the provision of the Law or Guidelines or the bidding document which the decision or action complained against has breached. This includes a clear and detailed statement of the substantive, legal and factual grounds of the complaint. The complaint should provide a description of events, and include times and dates and any information that led to the complaint. Any relevant supporting documents should be attached to the complaint.

2.1.1.5 The complainant should indicate the remedy or form of relief that it is seeking, such as the issuance of a new solicitation, the re-evaluation of bids, the termination of the designated contract, the award of the designated contract to the complainant.

#### **2.1.2 Response by the Accounting Officer to a complaint**

2.1.2.1 Upon receiving a complaint, the Accounting Officer shall undertake a full review of the procedures carried out by the responsible staff of the PE, having regard to the validity or otherwise of the grounds for complaint that have been presented. The Accounting Officer shall:

- a) ensure, while carrying out his investigation or reconsideration, that no further decisions in respect of the procurement process are taken, such as making a contract with one of the potential suppliers, which would prejudice any corrective measures that may be deemed necessary;
- b) take a decision on the complaint within fifteen (15) working days of receipt of the complaint and convey this decision in writing to the complainant and any other party to the complaint.

2.1.2.2 When conveying his decision, the Accounting Officer shall indicate how the complaint has been investigated and respond to the grounds stated in the complaint. He shall indicate the corrective measures that will be taken, if any, and respond to any remedial measures that the complainant has requested. The corrective measures may, among others, include:

- a) suspending the procurement proceedings until the corrective measures have been taken and should give reasons for this suspension to all potential suppliers;
- b) undertaking the evaluation process afresh with a different evaluation committee or reviewing the decision of whether a particular offer conforms to the specifications and is compliant in all respects; or
- c) ordering that the procurement process be started afresh in cases where improper procedures have been followed that do not meet the requirements of the Law.

2.1.2.3 The 15 working days period begins on the day that the complaint is received by the PE. If it is not possible to complete this process within the 15 working days period, the Accounting Officer should send the complainant an interim reply and indicate when the final decision will be conveyed to it. However, in exercise of its right under section 55 (4) of the Law, the complainant notwithstanding the notification by the Accounting Officer that the final decision shall be conveyed beyond the 15 working days period may take the complaint to the Bureau on Public Procurement (Bureau).

## **2.2 Complaint to the Bureau on Public Procurement**

### **2.2.1 Filing of complaint**

2.2.1.1 If the Accounting Officer does not respond within the stipulated period of 15 working days as provided under 2.1.2.3 above, or if the bidder or the potential supplier is not satisfied with the decision of the Accounting Officer, he may take his complaint to the Bureau.

2.2.1.2 The complainant should promptly take any decision to make such an appeal to the Bureau, and in any event, this should be done within ten (10) working days of receiving the Accounting Officer's response.

2.2.1.3 If the complainant indicates that he will not be pursuing the matter further or if the 10 working days period has elapsed without an appeal to the Bureau, the Accounting Officer may direct that the procurement process should resume or that the contract be concluded.

2.2.1.4 When presenting a complaint to the Bureau, the complainant shall indicate why he is not satisfied with the manner in which the Accounting Officer has dealt with his complaint and include the content of the Accounting Officer's response to the grounds in his complaint, where available.

### **2.2.2 Response by the Bureau to a complaint**

2.2.2.1 Upon receiving a complaint, the Bureau shall first check that the complaint has been presented in the first instance to the Accounting Officer of the PE and that a response by the Accounting Officer has been issued to the complainant or that a decision was not made by the Accounting Officer within the indicated time limit.

2.2.2.2 If the complaint has not first been presented to the Accounting Officer, the complainant should be promptly informed of the correct procedure and that the Bureau has no jurisdiction in the matter at this stage. The Bureau may promptly refer such complaint to the Accounting Officer concerned if it deems fit and has determined that the time within which to apply for the initial review has not elapsed.

2.2.2.3 When the Bureau receives a complaint that has been considered first by the Accounting Officer, the Bureau shall promptly give notice of the complaint to the respective PE and request it to respond to the allegations in the complaint.

2.2.2.4 The Bureau shall direct the PE to suspend any further action until the Bureau has settled the matter. However, the PE may certify in writing to the Bureau that the procurement is urgent or that delaying the award of contract would be contrary to the public interest. If the Bureau considers that such a request is valid, it may authorize the procurement to proceed.

2.2.2.5 There may be other interested parties to the complaint, namely: potential suppliers or other bidders, and the successful bidder in the case where the decision to award contract has been made. These other parties should be invited to register their interest and make representations in relation to the complaint. Before taking any decision on a complaint, the Bureau shall take into account representations from the PE, and from the other bidders.

2.2.2.6 The Bureau shall make its decision within twenty-one (21) days of receiving the complaint, stating the reasons for its decision and the remedies granted, if any. The Bureau shall follow the procedure in 2.2.3 of this Manual. The remedies that the Bureau may grant are as prescribed under section 55 (5) (b) of the Law, reproduced at the appendix.

2.2.2.7 However, when receiving the complaint, the Bureau may decide that it has no merit, dismiss it forthwith and inform the PE that procurement may proceed. A complaint may also be rejected because it has been made outside the time limits.

2.2.2.8 In the event that parties resolve the complaint before the Bureau makes its determination, or in the event that the complainant decides not to pursue the complaint further, the complainant may withdraw the complaint by sending a letter to the Bureau, advising of its intentions.

### **2.2.3 Complaints Committee**

2.2.3.1 The Director General of the Bureau shall appoint a committee, consisting of a Chairperson, at least three members drawn from his staff and other persons whom he considers to be suitable, and a Secretary, for adjudicating on complaints.

2.2.3.1.1 The specific objectives of the Complaints Committee are to:

- a) examine objectively and independently the facts of a complaint as presented by a bidder or contractor or any other interested party;
- b) undertake necessary investigations; and
- c) decide on the justification or otherwise of the complaint and the corrective measures to be taken.

2.2.3.1.2 The Complaints Committee should reach its decision after studying all the representations received and evidence presented by the complainant, by the PE and by other interested parties. The Committee may seek further information from any of these parties and the advice of independent experts in the matters under review.

2.2.3.2 The Chairperson shall be responsible for:

- a) Calling and presiding over meetings of the Committee;
- b) Guiding the secretary in drawing up the agenda;
- c) Ensuring that the performance of the committee is in accordance with all legal requirements, codes of conduct and standards established by the Bureau and the Yobe State Government;
- d) Ensuring that order is maintained and productive work done at all meetings;
- e) Ensuring open and participatory debate by members at all meetings;
- f) Ensuring that specialist advice is obtained if required;
- g) Having the minutes of the committee meetings confirmed by members and signed as required; and

- h) Presenting the Committee's findings to the Director General of the Bureau, when required.

2.2.3.3 The Secretary shall be responsible for:

- a) Receiving applications for administrative review and registering them, indicating source, date, subject and entity;
- b) Liaising with the Chairperson regarding the timing and need for a committee meeting;
- c) Assisting the Chairperson in convening meetings and preparing the agenda;
- d) Organising and providing the necessary facilities for meetings of the Committee;
- e) Carrying out an investigation of the issue in dispute and reporting the preliminary findings to the Committee as soon as possible, together with a list of questions and necessary points for clarification;
- f) Ensuring that the agenda, submissions and any other documentation are distributed to members of the Committee within a reasonable time before any meeting;
- g) Recording the minutes of the meetings;
- h) Preparing reports and other correspondences of the committee;
- i) Maintaining records of the cases considered by the Committee and the decisions taken on them; and
- j) Publishing on the Bureau's website an annual report of cases considered by the Committee.

2.2.3.4 The conduct of each meeting will be as determined by the Chairperson, after considering the nature of the case under review. In general, the following rules of procedure will prevail:

- a) The committee shall form a quorum when any two members, including the Chairperson are present. If a quorum is not realized the meeting shall be adjourned.
- b) Any member of the Complaints Committee, who has a direct or indirect interest in any case that is the subject matter or will be affected by the decision of the Committee, shall declare his or her interest and disqualify himself or herself from participating in the discussion, proceedings or decision making of the Committee.
- c) The findings and decisions of the Complaints Committee shall be set down in writing and signed by the Chairperson. The reasons for all findings shall be recorded.
- d) The decisions should be reached by consensus wherever possible. However, if there is disagreement among the Committee, the decision shall be reached by a majority vote among the chairman and members of the Committee and, in the event of a tie, the chairman shall have the casting vote.
- e) Any member who does not agree with the majority may submit a minority report on the same issue, which report shall be sent to the Director General, together with the main report.
- f) The decision of the Committee, together with the minutes of its meetings, should be submitted to the Director General for endorsement before it is communicated to all interested parties.

2.2.3.5 The Director General may remove any member of the Committee for unethical conduct; failure to declare a conflict of interest; relaying information without due authority; failure to attend meetings without reasonable excuse; gross indiscipline; and any other relevant ground.

2.2.3.6 The Director General may set up and dissolve the Committee as and when he deems fit and constitute another Complaints Committee made up of a membership different from the previous one(s).

2.2.3.7 The venue for the sitting of the Complaints Committee shall be the Secretariat of the Bureau. However, the Committee may sit at any other venue within the State where the Director General of the Bureau may approve in writing.

## **2.2.4 Hearing of all parties to the dispute**

2.2.4.1 Exceptionally, the Committee may decide to convene a hearing at which all parties to the dispute, together with their legal representatives if they so choose, should be invited to be present. A hearing may be held for various reasons, including the need to resolve a specific factual dispute that is essential to the resolution of the complaint and that cannot be otherwise resolved on the written record.

2.2.4.2 At a hearing, the following procedures should be followed:

- a) The complainant will be given an opportunity to state his complaint and may be questioned by the chairman and members of the Committee;
- b) The PE will respond to the complaint and may be questioned by the Chairperson and members of the Committee;
- c) Other interested bidders who have declared an interest and come to the hearing, will be asked whether they wish to make representations and, if so, they may be questioned by the Chairperson and members of the Committee;
- d) The Committee will then adjourn to reach its decision.

2.2.4.3 Witnesses may be called upon to submit written sworn/affirmed depositions as their testimony in the proceeding and a transcript of the proceedings should be maintained by the Secretary.

2.2.4.4 When the Committee determines that a complaint is valid, it may recommend to the Director General such remedy, in accordance with section 55 (5) (b) of the Law, as it considers appropriate, including:

- a) that a new solicitation for the designated contract be issued;
- b) that the bids be re-evaluated;
- c) that the designated contract should not be concluded; or
- d) that the designated contract be awarded to the complainant.

2.2.4.5 The Bureau may provide the Accounting Officer of the PE with its comments and observations on any matter that it considers relevant to the good conduct of the procurement process.

2.2.4.6 The Bureau shall in applying the above procedures ensure that it completes the review process and makes its decision within 21 days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.

## **2.2.5 Follow Up**

2.2.5.1 The Secretary to the Complaints Committee should ensure that the Committee's decisions and remedies, once endorsed by the Director General and communicated to the PE, are properly applied.

2.2.5.2 The Secretary to the Complaints Committee should maintain records of the cases considered by the Committee and the decisions taken on them, for the purpose of:

- a) Maintaining a body of case law relating to Administrative Reviews, so that the Committee is aware of decisions taken on similar cases; and
- b) By publishing on the Bureau's website an annual report of cases considered by the Committee, enabling better understanding among PE and the business community of proper procurement procedures.

## **2.3 Referring to Mediation**

### **2.3.1 Commencement of mediation**

Where the Bureau fails to render its decision within the stipulated time, or the complainant is not satisfied with a decision of the Bureau, he shall within fourteen (14) days after the decision of the Bureau refer the dispute to mediation.

### **2.3.2 Appointment of the mediator**

The complainant and the respondents (the PE concerned, and may include the successful bidder) shall by agreement select a single mediator with expertise in the subject-matter of the procurement. If the parties fail to agree on the selection, a mediator shall be nominated by the president of the professional body in Yobe State with expertise in the subject-matter of the procurement. Where such a dispute concerns settlement of legal rights and liabilities or the interpretation of a legislative or legal document the mediation shall be conducted by a legal practitioner and member of the Nigerian Bar Association (NBA), selected by the agreement of the parties; failing to agree, the mediator shall be nominated by the Chairman of Yobe State branch of the NBA. The parties and the mediator shall agree in writing on the mediator's fees and the proportion that each of the parties shall pay, which should normally be equal.

### **2.3.3 Arranging mediation session**

All parties and the mediator shall agree on a date, time and location of the mediation session. Mediations should normally usually take one or a few days. During the mediation, all parties shall represent themselves.

### **2.3.4 Information for the mediator**

Before the mediation begins, the mediator should request information related to the case. The mediator may ask for a summary or history of the dispute or other documents that help tell the story of the dispute.

### **2.3.5 Mediation procedure**

At the mediation, the mediator may begin with a joint session, which is a meeting where all parties are in attendance. During this meeting, the mediator may use this time to explain how the mediation process will proceed, remind parties of their duty of confidentiality in the mediation process, and ask the parties to present the issues in dispute to the mediator and the opposing side. As the mediation process continues, and depending on the type of case and parties' needs, the mediator may use separate caucuses, which are private meetings with one party at a time, to candidly discuss settlement expectations with each party.

### **2.3.6 Mediator's role**

The mediator should help parties appreciate the strengths and weaknesses of the case; and through a series of joint sessions and separate caucuses, which should not take more than 15 working days, the mediator will facilitate the exchange of settlement offers, and help parties reach a common ground and settlement.

### **2.3.7 Terms of settlement**

When the parties reach an agreement, they shall record the terms of settlement in writing, with the help of the mediator, after which the parties shall execute the enforceable agreement.

## **2.4 Referring to Arbitration**

### **2.4.1 Appointment of the arbitrator**

If a party is dissatisfied with the opinion of the mediator or the mediation fails, such a party may, with the consent of the other party, refer the dispute to arbitration conducted by a single arbitrator, mutually agreed upon by the parties. Where the parties fail to agree on the appointment of an arbitrator, the president of the professional body in Yobe State related to the contract shall do the appointment. Where the dispute concerns settlement of legal rights and liabilities or the interpretation of a legislative or legal document, the arbitration shall be conducted by a legal practitioner and member of the Nigerian Bar Association (NBA) to be agreed upon by the parties, or nominated by the Chairman of the Yobe State branch of the NBA if the parties fail to agree.

### **2.4.2 Notice, Calculation of periods of time**

2.4.2.1 For the purposes of these Manual, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

2.4.2.2 For the purposes of calculating a period of time under these Manual, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### **2.4.3 Notice of Arbitration**

2.4.3.1 The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.

2.4.3.2 Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

2.4.3.3 The notice of arbitration shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and addresses of the parties;
- (c) a reference to the procurement out of or in relation to which the dispute arises;
- (d) the general nature of the claim; and
- (e) the relief or remedy sought.

### **2.4.4 Representation and Assistance**

The parties may be represented or assisted by legal practitioners of their choice. The names and addresses of such legal practitioners must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

## **2.4.5 Challenge of Arbitrators**

2.4.5.1 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

2.4.5.2 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2.4.5.3 A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

2.4.5.4 A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in 2.4.5.2 and 2.4.5.3 became known to that party.

2.4.5.5 The challenge shall be notified to the other party and the arbitrator who is challenged. The notification shall be in writing and shall state the reason for the challenge.

2.4.5.6 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in 2.4.1 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

2.4.5.7 If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by an appointing authority as designated in 2.4.1.

2.4.5.8 If the appointing authority upholds the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in 2.4.1.

## **2.4.6 Replacement of an Arbitrator**

2.4.6.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in 2.4.1 that was applicable to the appointment or choice of the arbitrator being replaced.

2.4.6.2 In the event that an arbitrator fails to act or in the event of de jure or defacto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the proceeding articles shall apply.

2.4.6.3 If the single arbitrator is replaced, any hearings held previously shall be repeated.

## **2.4.7 Arbitral proceedings**

2.4.7.1 Subject to these Manual, the arbitrator may conduct the arbitration in such manner as he considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2.4.7.2 If either party so requests at any stage of the proceedings the arbitrator shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitrator shall decide whether to hold such



hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

2.4.7.3 All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

#### **2.4.8 Place of Arbitration**

2.4.8.1 Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2.4.8.2 The arbitral tribunal may determine the locale of the arbitration within the place agreed upon by the parties. It may hear witnesses and hold meeting for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

2.4.8.3 The arbitrator may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

#### **2.4.9 Language**

2.4.9.1 Subject to an agreement by the parties, the arbitrator shall, promptly after his appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place to the language or languages to be used at such hearings.

2.4.9.2 The arbitrator may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitrator.

#### **2.4.10 Statement of claim**

2.4.10.1 Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitrator, but not later than 14 working days, the claimant shall communicate his statement of claim in writing to the respondent and to the arbitrator.

2.4.10.2 The statement of claim shall include the following particulars:

- (a) the names and addresses of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the point at issue;
- (d) the relief or remedy sought.

2.4.10.3 The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

#### **2.4.11 Statement of Defence**

2.4.11.1 Within a period of time to be determined by the arbitrator, but not later than 14 working days, the respondent shall communicate his statement of defence in writing to the claimant and to the arbitrator.

2.4.11.2 The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim, as in 2.4.10.2. The respondent may annex to his statement the documents on which

he relies for his defence or may add a reference to the documents or other evidence he will submit.

#### **2.4.12 Amendments to the claim or defence**

In the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitrator considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause.

#### **2.4.13 Pleas as to the jurisdiction of the Arbitral Tribunal**

2.4.13.1 The arbitrator shall have the power to rule on objections that it has no jurisdiction.

2.4.13.2 A plea that the arbitrator does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.

2.4.13.3 In general, the arbitrator should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitrator may proceed with the arbitration and rule on such a plea in its final award.

#### **2.4.14 Further written statements**

The arbitrator shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties and shall fix the periods of time for communicating such statements.

#### **2.4.15 Periods of time**

The total period of time fixed by the arbitrator for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days. However, the arbitrator may extend the time limits if it concludes that an extension is justified.

#### **2.4.16 Evidence and hearings**

2.4.16.1 Each party shall have the burden of proving the facts relied on to support his claim or defence.

2.4.16.2 The arbitrator may, if it considers it appropriate, require a party to deliver to it and to the other party, within such a period of time as the arbitrator shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.

2.4.16.3 At any time during the arbitral proceedings the arbitrator may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitrator shall determine.

2.4.16.4 Evidence of witnesses shall be presented in the form of written statements signed by them. However, such witnesses shall be present to be asked relevant questions by the other party and the arbitrator.

2.4.16.5 The arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### **2.4.17 Interim Measures of Protection**

At the request of either party, the arbitrator may take any interim measures he deems necessary in respect of the subject-matter of the dispute, including measures for the suspension of the procurement process or award forming the subject-matter in dispute.

#### **2.4.18 Default**

2.4.18.1 If, within the period of time fixed by the arbitrator, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitrator shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitrator, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitrator shall order that the proceedings continue.

2.4.18.2 If one of the parties, duly notified under these Manual, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

2.4.18.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitrator may make the award on the evidence before it.

#### **2.4.19 Closure of hearings**

2.4.19.1 The arbitrator may inquire of the parties if they have any further proof to offer or witnesses to be called or submissions to make and, if there are none, it may declare the hearings closed.

2.4.19.2 The arbitrator may, if he considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the hearings at any time before the award is made.

#### **2.4.20 Waiver of rules**

A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

#### **2.4.21 The Awards/Decisions**

2.4.21.1 In addition to making a final award, the arbitrator shall be entitled to make interim, interlocutory, or partial awards.

2.4.21.2 The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

2.4.21.3 The arbitrator shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

2.4.21.4 An award shall be signed by the arbitrator and it shall contain the date on which and the place where the award was made.

2.4.21.5 The award may be made public only with the consent of both parties.

2.4.21.6 Copies of the award signed by the arbitrator shall be communicated to the parties.

#### **2.4.22 Settlement or other grounds for termination**

2.4.22.1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitrator shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the arbitrator, record the settlement in the form of an arbitral award on agreed terms. The arbitrator is not obliged to give reasons for such an award.

2.4.22.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitrator shall inform the parties of its intention to issue an order for the termination of the proceedings. The

arbitrator shall have the power to issue such an order unless a party raises justifiable ground for objection.

2.4.22.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrator, shall be communicated by the arbitrator to the parties.

#### **2.4.23 Interpretation of the award**

2.4.23.1 Within 14 days after the receipt of the award, either party, with notice to the other party, may request that the arbitrator give an interpretation of the award.

2.4.23.2 The interpretation shall be given in writing within 14 days after the receipt of the request. The interpretation shall form part of the award.

#### **2.4.24 Correction of the Award**

2.4.24.1 Within 14 days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitrator may within 14 days after the communication of the award make such corrections.

2.4.24.2 Such corrections shall be in writing and communicated to the parties.

#### **2.4.25 Additional Award**

2.4.25.1 Within 14 days after the receipt of the award, either party, with notice to the other party, may request the arbitrator to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2.4.25.2 If the arbitrator considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 30 days after the receipt of the request.

2.4.25.3 When an additional award is made, the provisions of 2.4.21.2 to 2.4.21.6 shall apply.

#### **2.4.26 Costs**

2.4.26.1 The arbitrator shall fix the costs of arbitration in its award.

2.4.26.2 The terms "costs" includes only-

- (a) the fees of the arbitrator, fixed by the arbitrator and agreed by the parties;
- (b) the travel and other expenses incurred by the arbitrator;
- (c) the costs of expert advice and of other assistance required by the arbitrator;
- (d) the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitrator;
- (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitrator determines that the amount of such costs is reasonable.

2.4.26.3 The fee of the arbitrator shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrator and any other relevant circumstances of the case.

2.4.26.4 Except as provided in 2.4.26.5, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitrator may apportion each of such cost between the parties if it determines that apportionment is reasonable taking into account the circumstances of the case.

2.4.26.5 With respect to the costs of legal representation and assistance referred to in 2.4.26.2 (e), the arbitrator, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

2.4.26.6 When the arbitrator issues an order for the termination of the arbitral proceedings or makes an award on agreed terms it shall fix the costs of arbitration in the text of that order or award.

2.4.26.7 No additional fees may be charged by the arbitrator for interpretation or correction or completion of its award under 2.4.23 and 2.4.24.

#### **2.4.27 Deposit of costs**

2.4.24.1 The arbitrator, on his appointment, may request each party to deposit an equal amount as an advance for the costs referred to in 2.4.26.

2.4.24.2 During the course of the arbitral proceedings the arbitrator may request supplementary deposits from the parties.

2.4.24.3 If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitrator shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitrator may order the suspension or termination of the arbitral proceedings.

2.4.24.4 After the award has been made, the arbitrator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

## **Appendix: Section 55 of the Yobe State Public Procurement Law 2016**

- (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this law, or any regulations or guidelines made under this law or the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen working days from the date the bidder first become aware of the circumstances giving rise to the complaint or shall have become aware of the circumstances, whichever is earlier.
- (3) On receiving a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary giving reasons for his decision.
- (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.
- (5) Upon receipt of a complaint, the Bureau shall promptly:
  - (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 Bureau has settled the matter;
  - (b) the Bureau shall unless it dismisses the complaint
    - (i) prohibit a procuring or disposing entity from taking any further action; and/or
    - (ii) nullify in whole or part an unlawful act or decision made by the procuring or disposing entity; and
    - (iii) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring disposing entity.
- (7) The Bureau shall make its decision within 21 days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may:

### **MEDIATION**

- (a) Refer such dispute or claim without legal representation to a mediator by a single mediator who shall be selected by agreement between the parties and failing such an agreement, shall be nominated by the president of the professional body of the nature of the project in Yobe State. Where such a dispute concerns a legal matter or a matter relating to the interpretation of the agreement, the mediation shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA) to be mutually agreed upon between the parties, failing such agreement, to be nominated by the Chairman of Yobe State branch of the Nigerian Bar Association (NBA).

### **ARBITRATION**

- (b) if either party is dissatisfied with the opinion of the mediator or should the mediation fail, then such a party may with the consent of the other party, refer the dispute for arbitration by a single arbitrator to be mutually agreed upon by both parties. Where the parties fail to agree on such a single arbitrator, to be nominated by the president of the professional body of the nature of the project in Yobe State. Should the dispute concerns a legal matter or a matter relating to the interpretation of the agreement, the arbitration shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA) to be agreed upon between the

parties, failing such agreement, to be nominated by the Chairman of the Nigerian Bar Association of Yobe State branch and such decision of the Arbitrator shall be final.