

MANUAL

Of

PUBLIC PROCUREMENT PRACTICE

IN

YOBE STATE OF NIGERIA

2019

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Introduction: Use of the Manual

The legislative policies on public procurement are defined in the law and guidelines governing procurement in Yobe State. This manual provides general procurement guidance to all Ministries, extra-ministerial offices, departments, agencies, parastatals, corporations and all other public entities in the State and/or whose funding derives from the State Accounts or other public funds.

The Manual is intended to give advice and assistance to procurement staff to help them carry out their procurement responsibilities. It explains how specific aspects of procurement should be handled. It is a source of “how-to” information about the tasks and elements that comprise the procurement process. It may be used as an aid in training programmes.

Acronyms

AO	Accounting Officer
ARC	Accountable, Responsive and Capable Government
BOQ	Bill of Quantities
Bureau	Bureau on Public Procurement
CMC	Contract Management Committee
EC	Evaluation Committee
EXW	Ex-works, Ex-factory, or Off-the-Shelf
FA	Framework Agreement
FBS	Fixed Budget Selection
FC	Framework Contract
GDP	Gross Domestic Product
IAC	Inspection and Acceptance Committee
ICB	International Competitive Bidding
LCS	Least Cost Selection
MDA	Ministry, Department or Agency
NCB	National Competitive Bidding
OCB	Open Competitive Bidding
PE	Procuring Entity
PERL	Partnership to Engage, Reform and Learn
PM	Project Manager
PU	Procurement Unit
PPC	Procurement Planning Committee
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request for Proposals
RFQ	Requests for Quotations
SBD	Standard Bidding Document
SPARC	State Partnership for Accountability, Responsiveness and Capability
SSS	Single Source Selection
TB	Tenders Board

1. Background

1.1 Sound public procurement policies and practices are one of the essential elements of good governance. Good practices reduce costs and produce timely results that support effectively the work of the end-user; poor practices lead to waste and delays and are often the cause of allegations of corruption and government inefficiency.

1.2 Yobe State has well-developed procurement frameworks, including a law, supporting guidelines, and a set of standard bidding and contracting documents that cover the main categories of procurement. A procurement regulatory body has been established to enforce the procurement law, to give guidance and training to practitioners and to develop the system in accordance with changing needs, including the development of electronic means of communication within the procurement process.

1.3 It is important that any procurement system should be owned by its practitioners, so that the business community has confidence in its integrity and is familiar with its requirements. There is therefore no “one size fits all”. Procurement systems differ between different Nigerian States, reflecting different procurement practices and business customs.

1.4 An advantage of having a well-developed procurement framework based on open competitive bidding is that there is less reliance on exclusively local sources, with new potential suppliers able to enter the market, bringing a greater degree of competition and innovation that may lead to procurement contracts of better value. The rules and procedures are clearly laid down and each party knows its obligations and responsibilities. There is thus a legal basis for holding government officials and bidders and contractors to account, thus reducing opportunities for corruption, collusion and other malpractices. Government contracts are based on a shared understanding of obligations, so that contractors know the resources they need to deploy to fulfil their contractual obligations and government bodies or agencies do not enter into contracts unless they are able to meet their payment obligations.

1.5 The guiding principles for public procurement, together with the organisational structure to be established in the State and the broad procedures to be followed during the procurement and contract management process, are enshrined in the State’s **Public Procurement Law**. The **Public Procurement Guidelines** support the implementation of the Law by providing greater detail about the workings of the organisational structure and the procedures to be followed to uphold the principles in the Law. Together, the Law and Guidelines demonstrate the State’s commitment to good procurement and contract management practices and provide the basis of authority for enforcement action to be taken by an independent regulatory body for procurement in the State (the Yobe State Bureau on Public Procurement) and by bidders and contractors to uphold their interests when fair practice has not been upheld.

1.6 In addition to these legal documents, the State Bureau on Public Procurement, in accordance with its powers under the Law, may issue **circulars** that provide instructions for the better performance of particular functions and practices.

1.7 The Bureau should also issue standard bidding and contracting documents for use in the procurement activities of PEs in the State. As noted in Chapter 11, the use of standard documentation ensures that bidding and the performance of contracts proceeds on the basis of a mutual understanding between the PE and the bidder or contractor on what is required, without omission of key features.

1.8 This **Public Procurement Manual** provides general guidance on carrying out procurement functions in accordance with the Law and Guidelines. While it is not a legal document, it may be referred to as an indication of whether procedures have been carried out correctly. It may also be used as part of training programmes in procurement.

1.9 The aim of enshrining procurement policies and procedures in the State Law, Guidelines, circulars and this Manual is to ensure that they are standardised, with uniform application to all government procurement, while being capable of adaptation to meet advancements in public administration and technology.

2. The importance of public procurement

2.1 A sound procurement system based on the principles set out in Chapter 3 and supported by an effective system of monitoring and enforcement enables well-qualified providers to have confidence in the system, so that they are willing to compete for government contracts. A sound public procurement system is an important component of effective public financial management, thereby supporting economic growth and effective public investment. Conversely, a procurement system that falls short in these areas can turn public investments into major political and economic liabilities, hinder development goals and outcomes, result in additional costs and waste public funds. Other consequences include collusion in bribery by frustrated or unscrupulous vendors and government officials, and betrayal and abuse of the public trust for personal gain.

2.2 According to the World Bank, public procurement usually makes up between 15% - 20% of Gross Domestic Product (GDP)¹. The items procured are generally grouped into three categories:

- **Civil works** — for example, buildings, highways and basic physical infrastructure;
- **Goods** — these include major equipment for schools and hospitals as well as regularly-purchased items to meet daily needs, such as medical consumables and stationery; and
- **Services** — these are generally divided into consultancy services providing expert advice and training and non-consultancy services such as contracts for cleaning and security of government property.

2.3 Well-planned and executed procurement can have a substantial beneficial impact that largely determines whether the related public investments will succeed or fail. Much of the procurement process is highly visible, as well as controversial, requiring procurement choices to be carefully defended.

¹ World Bank (2012), Why Reform Public Procurement?
(http://www.worldbank.org/content/dam/Worldbank/document/MNA/Why_Reform_Public_Procurement_English.pdf)

3. Key principles of public procurement

3.1 Public procurement is conducted differently from private sector procurement, primarily because there is a different system of accountability. A private company is accountable to its owners or shareholders and their main concern is that the company is profitable and grows its market share. The purchasing department in a private company may draw its materials, supplies and services from whichever source it considers appropriate, so long as the company's profitability is well served. If the purchasing department is inefficient, the company's profitability may diminish and it may lose ground to its competitors. A government ministry, local government or other public agency is financed from public funds and usually is not in a competitive market. The efficiency of public sector procurement must therefore be judged by other standards. The public expects that departments of government and other publicly financed agencies should carry out their procurement fairly and transparently, so that businesses have equal opportunity to compete to supply goods and perform works and services and that contracts are awarded to providers who are capable and qualified and whose offer represents best value to the purchasing government department.

3.2 With these considerations in mind, public procurement is conducted in accordance with key principles that are enshrined in legislation in Nigeria and in other countries that are also committed to good governance:

- **Planning:** Any decision to buy should be based on a careful assessment of need for a particular item and the alternatives to it. The opportunities for reducing the use of consumables should be considered, for example, greater use of electronic means of communication should reduce the use of paper and other products used in producing hard copies. Once it has been decided that an item is needed, each stage of the procurement process should be carefully planned. Procurement should be closely linked with financial planning, so that procurement does not take place unless funds are available to pay for the goods, works or services that are acquired. This is usually done on the basis of an annual procurement plan that is drawn up together with the budget and kept under review as needs and financial circumstances change. In this way priorities are identified, so that the goods and services that are procured are the ones that are most important for the services of the State to be run efficiently and economically.
- **Value for Money:** Achieving value for money means more than buying at the lowest price. Goods should be well-suited for their purpose, be durable and have low operating, maintenance and other life-cycle costs. For works and service procurements, value for money depends on the quality of the end-result, on timely completion and the avoidance of cost overruns. Fair employment conditions, site safety and good environmental management are further important considerations in determining value for money.
- **Efficiency:** All those with responsibility for public sector procurement should ensure that the procurement process is completed promptly and efficiently, so that the goods, works and services are available at the time required. This may mean starting the process in sufficient time for the full process to be completed without circumventing

proper procedures. The administrative costs of procurement costs can be substantial, taking up the time of skilled staff in the public-sector for procurement planning, contracting and for contract supervision and execution. To enable these human resources to be deployed efficiently requires the right facilities, equipment and training to be made available, while keeping the administrative costs of procurement to a reasonable level.

- **Fairness:** Good public procurement offers all interested contractors, suppliers and consultants a level playing field on which to compete. It ensures that contract award decisions are taken impartially, in the interests of the organisation and the services it provides.
- **Transparency:** The opportunity to compete in the procurement process and the decision on contract award should not only be fair but should be seen by the business community and by other interested parties in the community to be fair. A procurement law and implementing Guidelines should state clearly the eligibility and qualification requirements of providers, the procedures to be followed and the basis on which contract award decisions are made and how they may be challenged. Transparency is enhanced through modern communication systems such as the Internet. Therefore, government ministries and agencies should provide on their website as much information as possible on procurement opportunities, procurement procedures and contract award decisions. A procurement system that is fair and transparent can aid the development of local contractors and manufacturers by enhancing the confidence of the business community in the State procurement system and providing an incentive to raise standards so that they may compete effectively in this and other States.
- **Accountability:** All those involved in the procurement process should be made aware of their responsibilities. There should be clear arrangements for monitoring how these responsibilities are carried out and provision for disciplinary action in the event of serious breaches.
- **Ethical standards:** The ethical standards required of procurement practitioners and providers should be made clear in the procurement law and in a code of conduct. There should be effective enforcement arrangements and clear penalties for breaches of these standards.

3.3 It is important that procurement practitioners should understand these principles and procedures. Moreover, putting principles into practice requires professional skills which need to be developed through education and training programmes. Professional bodies have a role in setting standards for their members and providing for continuous professional development.

4. General procurement policies

4.1 The objective of procurement is to obtain the best possible value for money on behalf of the State Government.

4.2 Services that are either not part of the State Government's core business activity or for which there is a fluctuating requirement in terms of specialist skills or equipment, or where the open market provides a more efficient and commercially-attractive alternative, should be outsourced. This would include services such as property cleaning and maintenance, guarding, transportation and catering.

4.3 The State should support the development of an indigenous contractor base in Nigeria, by ensuring that contractual terms are fair and reasonable. In order to assist development of a domestic supplier base, preferences of up to 15% for goods may be given may be granted to domestic contractors in international competitive bidding procedures in line with section 36 of the Public Procurement Law, though a decision to use domestic preference should be balanced against any additional procurement cost. Domestic preference should be based on the value added within Nigeria in respect of the manufacture and assembly of goods and the use of Nigerian labour, raw materials and components. The standards of the goods, works or services to be provided should be as stated in the technical specifications and not be lowered for the benefit of domestic producers. As the purpose of domestic preference is to build capacity on a national scale, it should not be used to give manufacturers in one State an advantage over manufacturers in other States. Domestic preference should be applied during the evaluation process as set out in Chapter 12.

4.4 Bids should be invited only from qualified/approved contractors/suppliers who are competent to do the work or provide the services to the nominated standards. There should be disciplinary procedures for taking action against bidders and contractors who breach ethical standards or who fail to perform their contractual obligations to a satisfactory standard, as set out in Chapter 19.

4.5 Contracts should be awarded to the lowest evaluated responsive bidder meeting all technical requirements and standards on the basis of competitive tendering unless overriding grounds exist to justify any other course of action.

5. Roles and responsibilities in procurement

5.1 A key principle of modern procurement systems is that the management of the procurement process and contract award decisions should be decentralised to each Ministry, Department or Agency (MDA) but that the rules and procedures should be determined centrally and enforced through central monitoring and corrective action where necessary. In carrying out its procurement responsibilities, each MDA is regarded in the law as a **Procuring Entity (PE)**. This system requires the following organisational structure to operate effectively.

5.2 At the **PE level**, the **Accounting Officer (AO)**, who is normally the Permanent Secretary or Director-General, is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of the State Procurement Law and supporting Guidelines.

5.3 The AO should ensure that the PE has suitable organisational arrangements for managing the procurement process, including the main stages of the process:

1. To prepare the annual procurement plan and keep it under review in the course of the financial year;
2. To maintain a list of suitable sources of supply for each main category of regularly purchased items;
3. To prepare and issue invitations to tender and tender documents;
4. To receive and evaluate bids;
5. To take decisions on contract award;
6. To support arrangements for bid challenge;
7. To manage the contract to completion;
8. To initiate action against bidders and contractors who breach ethical standards or fail to complete their contractual obligations satisfactorily; and
9. To maintain records of the whole procurement process.

5.4 These functions require the AO to establish the following structures:

1. A **Procurement Unit (PU)**, comprising staff with professional qualifications, training and experience in procurement. The PU should be involved in all aspects and stages of the procurement process, providing expert advice to all parties. In particular, the PU would:
 - a. Support the work of the Procurement Planning Committee in preparing the annual procurement plan.
 - b. Advertise procurement opportunities on the PE's website and elsewhere, as appropriate, and prepare the invitation to bidders;
 - c. Oversee the compilation of the bidding documents, including the technical specification as prepared by suitable experts, and ensure that the bidding documents are ready for issue before the invitation to bidders is sent out;
 - d. Ensure that any request for clarification on the bidding document is answered satisfactorily;

- e. Conduct the bid opening process;
 - f. Support the work of the Evaluation Committees and the Tenders Board;
 - g. Ensure that any required prior review is carried out;
 - h. Notify bidders of the contract award decision and ensure that any challenge is heard;
 - i. Arrange for the AO and the successful bidder to sign the contract;
 - j. Monitor contract performance;
 - k. Ensure that contract awards are published on the PE's website; and
 - l. Ensure that complete procurement records are maintained.
2. A **Procurement Planning Committee (PPC)** would be responsible for preparing the annual procurement plan and for keeping it under review in the course of the financial year, having regard to changing circumstances, as described in Chapter 6. The Committee would be chaired by the AO or a senior directorate officer, appointed by the AO. Its work would be supported by the PU, with the head of the PU serving as the Committee's secretary. Committee members should include the main end-users, other technical experts, and officers responsible for financial planning and approval, and officers responsible for planning, research and statistics, as well as officers from the legal department.
 3. **Evaluation Committees (EC)** are ad hoc committees formed to evaluate each procurement above a specified threshold according to the procedures in Chapter 12. Each EC should include qualified persons knowledgeable of the goods, works or services being procured, which is why the membership should change to reflect the nature of expertise required.
 4. A **Tenders Board (TB)** would be a standing committee whose function is to decide on the award of contracts based on the recommendation of the relevant EC and to ensure that the procurement process has been carried out fairly and satisfactorily, in accordance with the law. The Board should normally be chaired by the AO or another senior official, appointed by the AO, and its members should be drawn from senior officials in the PE, with the head of the PU serving as secretary.
 5. An **Inspection and Acceptance Committee (IAC)** or other arrangements for inspecting goods received and confirming that the specifications in the bidding and contract documents have been complied with; for major works projects a **Contract Management Committee** should be established to oversee the project until completion while discharging the functions described in Chapter 15.
 6. A **Records Officer**, who may be an officer in the PU, who would be charged with opening and maintaining the procurement file for each procurement in accordance with the requirements set out in Chapter 17.

5.4 The AO has an obligation to ensure that sufficient resources are made available for these functions to be carried out correctly and effectively. In particular, it is important that the PU and other bodies with responsibilities for procurement should be provided with adequate accommodation, including facilities for the safe storage of documents, and the necessary equipment, including computers and Internet access.

5.5 The structure for procurement and contract management within a PE is shown diagrammatically below.

Accounting Officer: ensures correct structure in place and procurement system works effectively

Procurement Planning Committee: identifies procurement needs and prepares annual procurement plan aligned with budgetary provision

Procurement Unit: carries out processes and supports work of Evaluation Committees and Tenders Board; Records Officer within PU maintains procurement records

Tenders Board: considers Evaluation Report from Evaluation Committees and approves contract award

Evaluation Committees: separate committee for each major procurement to carry out each stage of tender evaluation

Inspection and Acceptance Committee: ensures that goods received comply with specifications in bidding document

Contract Management Committee: oversees major works projects until completion

5.6 At the **central government level** in the State, there is an independent regulatory body known as the **Yobe State Bureau on Public Procurement (Bureau)**. There is also the **Yobe State Council on Public Procurement (Council)**, which has powers to approve the procurement policies made by the Bureau. The following are the functions and powers of the Bureau:

- a. To monitor the procurement activities of the PEs to ensure that they are in accordance with the law and other requirements; this function includes inspecting procurement documents and records and conducting periodic reviews of procurement activities;
- b. To determine thresholds for use of particular procurement methods;
- c. To certify procurement awards above a specified threshold prior to the award of contract;
- d. To publish, on a website where possible, procurement opportunities and procurement awards above a specified threshold;
- e. To monitor the prices of regularly purchased items and to maintain a database of standard prices;
- f. To ascertain whether the MDA has established the right structure to carry out its tasks and whether the staff assigned to these tasks have adequate qualifications and resources;
- g. To provide for training and development needs, including advice on revisions to the law and documents and taking other necessary steps to keep the procurement system in the State up to date and in accordance with local needs;
- h. To set up arrangements by which dissatisfied bidders may challenge the conduct of the procurement process or the proposed contract award; and
- i. To establish and maintain a disciplinary system for breaches of ethical conduct on the part of bidders, contractors and PE staff.

5.7 To exercise these functions and powers in a satisfactory manner, the procurement regulatory agency would have the following structure:

1. An **Office of the Director-General**, that would be designed to provide direct support to the Director-General and the Council in discharging their responsibilities. The Office would include technical and support staff, including an information technology specialist, together with secretarial staff. It would exercise the following functions:
 - a. Arranging Council meetings and providing secretarial services and other necessary support to the Council;
 - b. Ensuring that the Council's directives are put into effect;
 - c. Undertaking research to promote policy and system development, including revisions of the Law and Guidelines;
 - d. Developing an e-procurement system when the time was right to do so;
 - e. Preparing a comprehensive report each year to the House of Assembly on all procurement activities, not being of a recurrent nature, carried out by all procuring entities within the purview of the Law; and

- f. Maintaining good relations with stakeholders and the public and providing suitable arrangements for public bodies to become involved in monitoring the procurement process and the implementation of contracts awarded.
2. A **Department for Training and Capacity Development**, concerned with:
 - a. Assessing shortfalls in capacity and proposing remedies to meet these shortfalls;
 - b. Identifying suitable staffing structures for the PU in each PE, having regard to the volume and complexity of procurement activities; and
 - c. Arranging for training and capacity development programmes for the staff of PU and other staff members with procurement responsibilities.
 3. A **Legal and Compliance Department**, which would include legal professionals and would be concerned with:
 - a. Providing legal advice to the Council and the departments of the Bureau;
 - b. Advising PEs on their obligations under the Law;
 - c. Monitoring each PE's procurement activities, including reviewing the monthly reports on procurement activities, and taking action on any malpractices thereby revealed;
 - d. Carrying out surprise inspections when there are grounds for suspicion that malpractices may be taking place or on other matters of concern;
 - e. Carrying out periodical reviews of a PE's procurement activities directly or through external agents and ensuring that any malpractices are duly remedied;
 - f. Establishing arrangements for administrative review, either within the Bureau or as a separate independent body;
 - g. Carrying out prior review of high value and unusually complex procurements; and
 - h. Considering complaints against bidders and contractors.
 4. A **Finance and Administration Department**, which would be concerned with:
 - a. Managing the financial affairs of the Bureau;
 - b. Maintaining the Bureau's website and ensuring that the information on the website was complete and kept up-to-date;
 - c. The Bureau's own procurement activities; and
 - d. Other administrative duties.

5.8 There should also be an independent internal audit function within the Bureau.

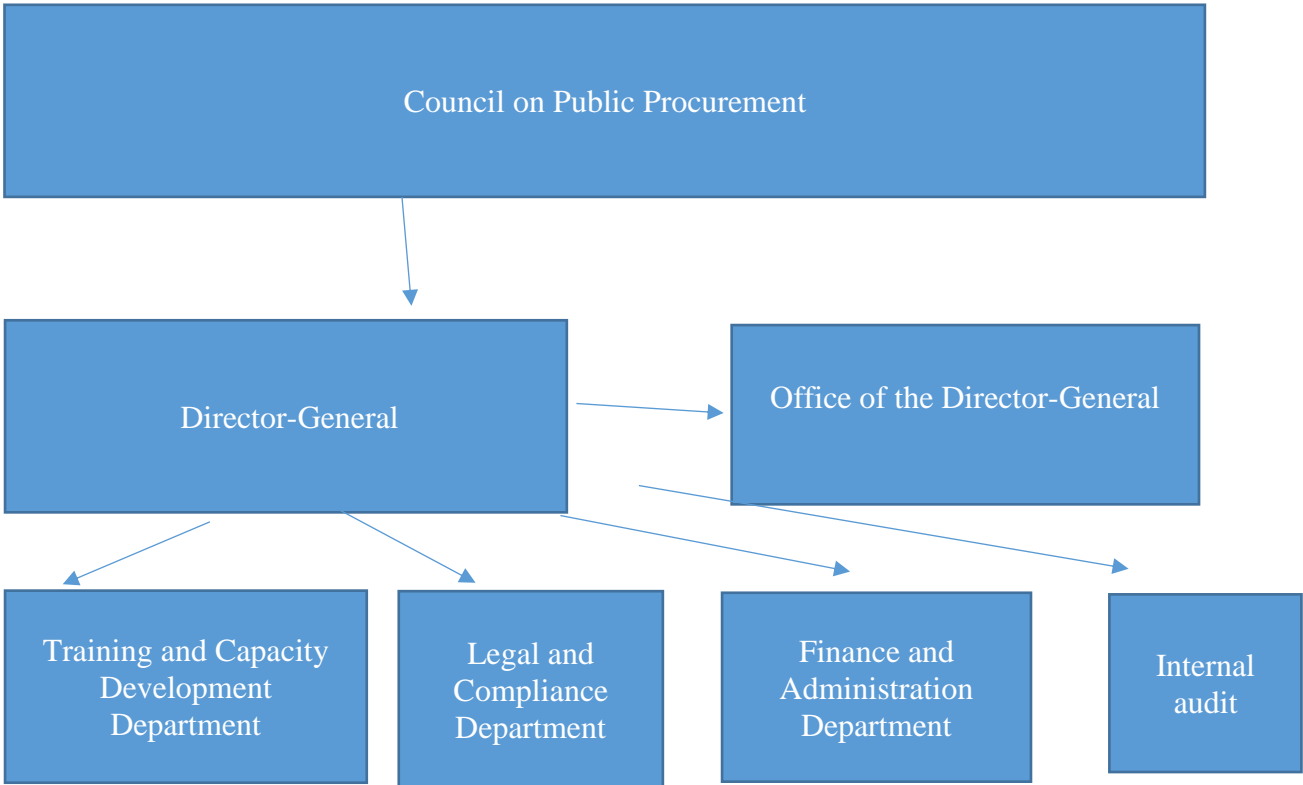
5.9 The Office of the Director-General would support the Council and the Director-General in directing the development of procurement activities in the State and maintaining the confidence and support of the House of Assembly and the wider public. As well as preparing the annual report to the House of Assembly, it would ensure that House Members' concerns were properly addressed. It would seek ways of involving business and civil society in monitoring the procurement process and the performance of contracts, to ensure that all public contracts are awarded in accordance with the provisions of the Law and Guidelines and are performed strictly according to specifications. It should assess when the time was right for introducing e-procurement and decide on the most suitable system and associated software and other requirements.

5.10 The Department for Training and Capacity Development would have an important role, particularly in the initial years of the reformed procurement system, in promoting understanding of the requirements in the Law and Guidelines and in developing capacity through training and continuous professional development programmes. It would advise each PE on the appropriate staffing structure and resource needs and report shortfalls that needed to be addressed.

5.11 The Legal and Compliance Department would be the main enforcement arm of the Bureau and would take action in accordance with the Bureau's powers under the Law to monitor procurement activities through scrutiny of the monthly reports, through inspections and procurement reviews. It would establish procedures for receiving complaints from PEs concerning the behaviour and performance of bidders and contractors leading to debarment or other disciplinary action.

5.12 The Finance and Administration Department would assess the Bureau's resource needs and prepare and maintain its accounts. A Statement of Accounts would be included in the Bureau's annual report to the House of Assembly. It would develop and maintain the Bureau's website, ensuring the required information was duly posted and kept up to date. It would also carry out general administrative duties.

5.13 The organisational structure for the Bureau can be shown diagrammatically as follows:



5.14 The required number of staff would depend on the number of PEs in the State and the volume and value of their procurement transactions. As the Bureau is a monitoring and regulatory body rather than a body undertaking procurement directly, staffing numbers should not be excessive.

5.15 Detailed provisions for the governance of the Bureau, the composition of the Council, the management of its affairs and financial provision are found in the Procurement Law.

6. Procurement planning

6.1 Effective planning is at the heart of a good procurement system. This requires the preparation of an Annual Procurement Plan, which is designed:

1. To identify the PE's expected procurement needs over the coming financial year, including both regular requirements, such as office supplies and medical consumables, and new items to meet development plans, and to prioritize between them, having regard to the availability of funds;
2. To direct the PU to undertake market surveys and other research with a view to obtaining information about new products and services, technological innovations, price trends and other factors that need to be taken into account when preparing the procurement plan;
3. To estimate the cost of each item to be procured and thereby to ensure that procurement expenditure is provided for in the State's Budget or otherwise that procurement does not proceed unless sufficient funds are available to meet the tendered price;
4. To specify the procurement methods for each project and ensure that no contract is split in order to circumvent the rules relating to high value procurements;
5. To identify opportunities for grouping similar requirements and aggregating contracts in order to make increase the value of the procurement to achieve economies of scale, increase efficiency and reduce administrative costs and to identify when framework contracts should be used; and
6. To carry out procurement scheduling by:
 - a. Establishing the time at which items in the plan are required;
 - b. Estimating the time required to complete the whole procurement process, including the time needed by any provider to manufacture, deliver and install the goods; and
 - c. Scheduling the work to ensure that the procurement process begins in sufficient time so that the items are available at the time required.

6.2 In supporting the work of the PPC, the PU should invite each user department, and where necessary, the representatives of beneficiary communities, to put forward proposals for the goods, works and services required to meet the continued needs of existing services, as well as the State's development plans. Community interaction in this regard will ensure that procurement reflects the needs of specific communities. The proposals should be analysed and scrutinised by the PU on behalf of the PPC. The PU should also carry out tasks such as market and statistical surveys, so that acquisition decisions are based on information about what is available in the market and on current technological solutions.

6.3 As there may be insufficient funds available in the budget to meet all the desired acquisitions, the PPC should determine which items are essential to the continuance of important existing services and development plans and which items may be reduced or deferred having regard to budgetary limitations.

6.4 The Annual Procurement Plan should be approved by the AO on the recommendation of the PPC. The Plan should be kept under review throughout the financial year and be modified to take account of budgetary allocation and availability and end-user requirements. It should be submitted to the Bureau as part of reporting activities.

6.5 A template for use in preparing the Annual Procurement Plan is at Appendix A. Software is also available to assist the planning process.

6.6 The PE should extract from the Annual Procurement Plan the major procurement packages that are proposed for the financial year and publish on its website advance information to alert providers on these opportunities, including the scheduled date at which bidding documents are expected to be available.

7. Eligibility and qualification

7.1 As a general rule, all suppliers, contractors and consultants are entitled to a fair opportunity to tender for provision of goods, works and services in public entities in the State. However, public procurement should only be carried out with bidders that are legal entities that meet requirements for **eligibility**.

7.2 A PE should exclude suppliers, contractors and consultants from tendering for procurement opportunities where they have been debarred from tendering under formal debarment procedures laid down in the State's law, under any other State's law or Federal Government law. The procedures leading to suspension or debarment are set out in Chapter 19. Also, if the bidder is in receivership or is the subject of any type of insolvency proceedings or if, being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt within two calendar years prior to the initiation of the procurement proceeding, their tender may be rejected on these grounds. Nigerian companies should also not be in arrears in the payment of due taxes, charges, pensions or social security contributions, unless they have a lawful permit with respect to deferment of such payments.

7.3 The eligibility criteria should be clearly stated in the bidding documents for each procurement. To ensure that these criteria are met, signed statements or documentary evidence may be requested to establish eligibility. A potential bidder should be made aware of the grounds for any determination of ineligibility and be given opportunity to contest these grounds.

7.4 Improper conduct by a bidder during the procurement process, such as offering a bribe to a public official, may provide grounds for the PE to reject its offer, as described in Chapter 19.

7.5 Contractors should be **qualified** as well as eligible. Qualification may be assessed in relation to the various professional, technical, financial, personnel and other factors related to successful contract performance. Some PEs may have a registered suppliers' list but not all companies on the list will necessarily be qualified to perform a particular contract. To be qualified, providers of goods should either be the manufacturer of goods that meet the specifications in the tender document or have demonstrated the ability to obtain the goods from reputable sources and to deliver the goods to the locations where they are required.

7.6 Works contractors should demonstrate that they:

1. Have sufficient experience of carrying out projects of similar complexity and scope to the one that is the subject of the procurement;
2. Have adequate financial capacity;
3. Are capable of engaging staff with the technical skills to manage the project; and
4. Have access to the necessary equipment.

7.7 Consultants should demonstrate that they have the necessary expertise to provide authoritative advice on the issue in question both through the experience of the firm in carrying out similar assignments and through their ability to engage individuals who are expert in the subject under review.

7.8 Whether a bidder is qualified to perform the contract may be established through the evaluation process but for high value and critically important projects, it is usually advisable to establish qualification through a **pre-qualification** exercise that is held before tendering takes place. Procurements that are suitable for pre-qualification should be identified in the annual procurement plan.

7.9 In pre-qualification, an open invitation is issued stating the nature of the procurement requirement and the qualification criteria. Interested providers then submit proposals without pricing to demonstrate that they would be qualified to perform the contract. On that basis, a short-list of qualified providers is drawn up and bidding documents are issued only to providers on the pre-qualified list, who then submit a priced tender in the usual way.

7.10 Qualification is also assessed on the basis of a firm's track record. It is not sufficient for a firm to demonstrate that they have experience of undertaking a similar contract, they should also show that they have completed the contract satisfactorily. Accordingly, PEs should monitor the performance of bidders and contractors and report breaches of ethical standards and serious failures in contract performance to the Bureau, so that the disciplinary procedures described in Chapter 19 may be initiated.

8. Procurement methods

8.1 Different procurement methods may be appropriate in different circumstances according to the value of what is being bought and the existing conditions in the market. The choice of procurement method should be taken carefully and should normally have been stated in the procurement plan. The choice of method should be based on which method offers best value and meets users' needs, weighing the administrative cost and time required for fully competitive methods against the greater value that is likely to be obtained.

8.2 **Open competitive bidding** should be the default method for procurement, as the best results are likely to be obtained through providing for a high degree of competition among qualified providers, particularly where, through the use of advertising, new providers may compete for the contract. Procurements above a threshold that is prescribed by the Bureau should be obtained through open competitive bidding unless, exceptionally, there is justification for using other forms of tendering. The threshold for open competitive bidding is as prescribed by the Procurement Guidelines. The State should keep that threshold under review in accordance with its changing needs and patterns of procurement.

8.3 Studies have shown² that contracts awarded through direct procurement or restricted bidding may be 20%-30% higher than similar contracts awarded through open competitive procedures. They also found that, while there are many circumstances where direct procurement or restricted bidding may be an appropriate method of procurement, these methods are more prone to corruption than is open competitive bidding.

8.4 Open competitive tendering may be national or international. **National competitive bidding (NCB)** should only be used when the PE is certain that there are adequate sources of the required product within Nigeria. Otherwise, better results are likely to be obtained by the use of **international competitive bidding (ICB)**, under which direct offers are sought from overseas providers as well as Nigerian providers through advertisement or other means. In ICB the interests of national providers can be protected through use of domestic preference in the evaluation process, as described in Chapter 12.

8.5 Procurements under ICB can follow either a one-stage or two-stage tendering method. In a **one-stage process**, the PE will prepare a bidding document which will include, among other things, detailed functional and technical requirements. In response, suppliers submit tenders containing both their technical and financial proposals, which are opened in one single public opening. The PE then proceeds to evaluate these tenders and awards the contract to the offer that meets the technical requirements and also represents the best price..

8.6 In a **two-stage process**, the PE prepares at the first stage a document stating in general terms the functions and performance standards that the acquisition is to meet, rather than detailed technical specifications. In response, bidders offer un-priced technical proposals (i.e.,

² Strombom, Donald, "Corruption in Procurement" (USIA Economic Perspectives, November 1998)

no financial proposal is submitted at this time). The PE then assesses the suppliers' qualifications and evaluates the technical proposals to establish which would suitably meet its needs.

8.7 Following the first stage evaluation, the PE prepares a memorandum of changes, which details all changes required to be made in 2nd stage/updated technical bid for each bidder, and may prepare an addendum to the tendering documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage tendering process. During the second stage tendering process, bidders offer final tenders containing their final technical proposal and a financial proposal. The PE then evaluates the proposals (technical and financial) according to the criteria specified in the bidding documents.

8.8 The advantages of the two-stage process include the ability of the PE during the first stage to interact extensively on technical matters with bidders which are not permissible in a one-stage process. In this way, the PE can learn from the market and adapt its requirements to maximize competition. In addition, a two stage process allows a PE, in the first stage, to state its requirements in more general functional terms than the detailed functional and technical requirements necessary to carry out a one-stage process. By knowing the bidders and their technologies prior to the second stage, this reduces the burden of preparing detailed functional and technical requirements.

8.9 A one-stage process is most appropriate for relatively straightforward procurement of fairly standard technologies and ancillary services. In contrast, the additional capacity to review technical proposals, revise technical requirements and interact directly with the suppliers during the first stage make the two stage process more suitable for the procurement of items with complex and rapidly changing technologies and for procurements which involve extensive technical services.

8.10 For procurements below the prescribed threshold, the time and expense involved in open competitive tendering may not be worthwhile and other procurement methods may be used, provided that the PE is satisfied that value for money can be obtained. Whereas open competitive bidding invites competition from any potential provider, subject to eligibility and qualification being ascertained during the procurement process, in other procurement methods the opportunity to bid is confined to companies on a **standing list** of registered suppliers and contractors for each category of goods, works and services. PEs should compile such a standing list of suppliers and contractors for their regular purchases. The opportunity to apply for inclusion on the list should be advertised at regular intervals. Companies that apply for inclusion should be subject to checks on eligibility, such as whether they are legal entities, have complied with tax and other obligations and whether they have been suspended or debarred from tendering in accordance with procedures described in Chapter 19. However, a detailed assessment of their qualifications and an evaluation of their goods and services or their capability to manage a works or service project would take place during the evaluation stage of the procurement process.

8.11 The **restricted bidding** method may be used for procurements that are below the value prescribed for open competitive tendering and where it is considered that the goods, works or services are available only from a limited number of suppliers or contractors or where the time and cost required to evaluate a large number of tenders would be disproportionate to the value of the goods works or services. Under restricted bidding, the invitation to tender is sent to all or only to a selection of providers on the standing list for that category of requirement. These companies would submit their offers according to the normal tendering procedures. Tenders from companies who had not been so invited would not be accepted.

8.12 For very low value off-the-shelf items for which adequate supplies are available in the local market, informal purchasing methods may be used such as a **Request for Quotations (RFQ)**. Under this method, a minimum of 3 providers on the standing list may be asked to provide a quotation for supplying the required goods. Such RFQ should be sent out in writing, though e-mail may be used. The quotations should be received in writing either in sealed envelopes or by e-mail by a stipulated deadline. The envelopes containing the quotations should be opened at the same time, so that there is no risk of any bidder learning about a competitor's price before submitting its own bid. Where quotations are received by e-mail, that quotation should be held securely by a designated member of the PU staff and should not be used for comparison until the deadline has been reached.

8.13 Each provider should be informed whether they should quote only the price of the item or include other factors, such as any applicable transportation and insurance charges, customs duties and taxes. Each provider should give only one quotation and should not be allowed to change or vary the quotation. No negotiations should take place between a PE and a provider with respect to a quotation. The procurement should be awarded to the qualified provider that gives the lowest priced responsive quotation, taking into account the contractor's ability to meet delivery requirements and the availability and costs of maintenance services and spare-parts. The terms of the accepted offer are incorporated in the purchase order.

8.14 Wherever possible, regularly purchased items should be obtained through **framework contracts**. Under these arrangements, the total volume of requirements for a particular item or service over a one-year period or longer are assessed and bidders are invited to bid a price for supplying these requirements. The successful contractor would have the right to supply these items to all departments of the PE during the stipulated period at the contract price, with each department drawing down from the contract to meet its needs. Alternatively, contracts may be awarded to several providers, so that end-users have a degree of choice; these are known as **framework arrangements**.

8.15 Procurements that are suitable for framework contracts or framework arrangements should be identified in the annual procurement plan. The PU would estimate demand for each of these regularly purchased items on behalf of the whole MDA and monitor the use that is made by each user department in drawing down from the contract. Guidelines on the making of framework contracts and framework arrangements are provided at Appendix B.

8.16 **Direct procurement** using a sole source provider carries risk for achieving value for money, as there would be an absence of competition. Therefore, it should be used only in certain circumstances, such as:

1. When buying patented medicines or other patent protected products for which one provider has an exclusive right to supply;
2. When buying extensions to existing equipment where compatibility is essential;
3. Where standardisation with existing supplies is essential; and
4. In cases of extreme emergency.

8.17 Where direct procurement is used, the sole provider should still be asked to quote a price for the product against specifications provided by the PE and these should be included in a formal contract. Unlike other procurement methods, the contract price under direct procurement may be negotiated, as it has not been set competitively. During negotiations, the sole-sourced bidder should be asked to justify the bid price against the estimated price in the procurement plan and other market information. The bidder's responses should be recorded in the Evaluation Report.

8.18 A PE should consider the appropriate degree of standardisation that best meets its needs. For example, when procuring motorbikes for the police and other users, spare parts holding and maintenance may be simpler if only one brand of motorbike is used and holding an adequate supply of the spare parts could be made a contract requirement. However, such an arrangement gives a monopoly of supply to a particular brand manufacturer or agent and would prevent the PE from using other brands that may have developed superior products through technological innovation. These arrangements therefore need to be made subject to periodic review leading to open competition.

8.19 Unforeseen disasters or critical events do arise where the importance of obtaining the needed items in the shortest possible time is the overriding consideration. Such **emergency procurement** should only be used for genuine emergencies where lives and vital national interests are at risk, such as in response to an earthquake, catastrophic flood or other natural disaster. Emergency procurement is not justified merely because proper procurement planning had not taken place to meet events that should have been anticipated. While direct procurement is often used to meet emergencies, a degree of competition should be provided wherever possible.

8.20 Separate procurement methods apply to the procurement of consultancy services, as set out in Chapter 14.

8.21 The range of procurement method might be summarised as follows:

Extent of competition	Type of method	Use
Competitive methods	International competitive bidding	For major procurements above the threshold prescribed by the Procurement Guidelines where there are inadequate sources of supply within Nigeria
	National competitive bidding	For procurements above the threshold prescribed by the Procurement Guidelines for which there are adequate sources of supply within Nigeria
	Framework contracting	Used to bring regularly purchased items within the scope of competitive tendering
Restricted methods	Restricted bidding	For items below the threshold for competitive tendering
	Request for Quotations	For low-value off-the-shelf items
Non-competitive methods	Direct procurement	For patented products and where compatibility with existing equipment is the overriding consideration.
	Emergency procurement	For genuine emergencies where speed of acquisition is the overriding consideration.

9. The stages in the procurement process

9.1 The procurement process begins with the compilation and approval of the **Annual Procurement Plan**. Once an item has been approved in the Plan, the PE may proceed to **prepare the bidding document** for that procurement. Subsequent stages should not commence until the bidding document is ready. It may then publish an **invitation to bid** or, where pre-qualification is proposed, an **invitation to pre-qualify**. For simple and low value requirements that can be obtained from local sources, it may be sufficient to place a notice of the requirement on the PE's notice board. However, wider publicity is likely to lead to better results and PEs should where possible publish the requirement on their website. For high-value products that are the subject of open competitive tendering, an advertisement should be placed in newspapers of wide circulation. As noted in Chapter 6, the major procurement packages should already have been notified to potential bidders through publication on the PE's website.

9.2 An invitation to bid or an invitation for pre-qualification should be a brief statement of the requirement but containing sufficient detail and clarity to enable a provider to know whether the requirement is within its field of supply, so that it would be worthwhile to obtain the bidding or pre-qualification documents. It should include the following information:

1. The name of the PE and the name or nature of the contract;
2. The items to be procured;
3. Information for obtaining tender documents and the price of these documents, if any;
4. The eligibility and minimum qualification requirements that bidders must meet;
5. The place and deadline for tender submission;
6. A note that tenders will be opened once the submission deadline has been reached and that bidders and their representatives may attend the opening of tenders; and
7. Any requirement for bid security and the amount and format it should take (bid security should not be required for pre-qualification).

9.3 Potential bidders who are interested in competing for the procurement in the invitation to bid would then obtain the **bidding documents** or **pre-qualification documents**. The bidding documents contain a full statement of the procurement requirement together the evaluation criteria, the terms and conditions for bidding and the contract terms. They indicate any requirement that must accompany a bid, such as product samples, bid security or documentary evidence to demonstrate the bidder's qualifications.

9.4 The purpose of **bid security** is to discourage frivolous bids and to ensure that a successful bidder will stand by his offer. A bid security should take the form of a bank guarantee issued by a reputable bank acceptable to the PE. As the cost of obtaining bid security can be burdensome, particularly for small and medium-sized enterprises, it should only be required when there is considered to be a serious risk of default. Bid security should be expressed as a fixed amount that does not exceed 2% of the expected bid price. The format of a bank guarantee is provided in the standard bidding documents. Bid securities should be returned to bidders

upon contract award, unless there are grounds for forfeiture of bid security, such as where the successful bidder refuses to sign the contract.

9.5 Under manual systems, bidding documents are collected by potential bidders from the PE's offices or, at the bidder's request, may be sent out through the post. It is permitted to levy a **charge for the bidding documents** provided that it does not exceed the cost of printing and distribution. Under electronic systems, the bidding document may be downloaded from the PE's website and no charge should be made as there are no printing or distribution costs involved.

9.6 The bidding document would indicate the place for submitting bids and the time by which bids must be received. In manual systems, bids would normally be presented to a designated member of the PU who would issue the bidder with a receipt for the bid. The bidder or its representative would then deposit the bid in a designated tender box.

9.7 During the bid submission period, potential bidders should be assisted in their efforts to submit conforming bids in ways that are transparent and do not give any bidder an advantage over others. This should be done by:

1. For major procurements and particularly works procurements, arranging a **briefing session** which all potential bidders would be invited to attend and ask questions about any aspect of the bidding documents or the project requirements; this might be combined with an opportunity to inspect the site of performance; or
2. Inviting any bidder to submit a **request for clarification** in writing before a deadline that leaves sufficient time for bidders to adjust their bids having regard to the PE's response; the PE would respond to the query promptly and copy that response to other potential bidders who had obtained the bidding document.

9.8 The issues raised by potential bidders sometimes reveal weaknesses in the bidding document that need to be corrected by the issue of an **amendment to the document**, and any of such amendments should be issued to all bidders. It is important that PEs should take advantage of this opportunity to make corrections to the bidding document. If serious errors or unsatisfactory features are discovered after the deadline for submission of bids has passed, it would be necessary to cancel the procurement and to start the process afresh. If there is insufficient time for bidders to adjust their bids having regard to the amendment (usually if less than a third of the bid submission period remains), the deadline for submission of bids should be extended.

9.9 Once the **bid submission deadline** has been reached, the tender box and the envelopes therein should be opened by staff of the PU in the presence of bidders and their representatives. The staff should read aloud the name of each bidder and the amount of their bid, together with the presence or absence of any other requirement that was specified in the bidding document, such as bid security. In the selection of consultants by the Quality and Cost-Based Selection method and in certain other high value procurements where it is important to ensure that knowledge of the price does not influence the technical evaluation, bidders would be required

to submit the technical and financial components of their bid in separate sealed envelopes within a main envelope and only the technical envelope would be opened at initial bid opening. The price of the offer would be retained in the sealed financial envelope until the technical evaluation had been completed. The financial envelopes of those bidders whose offer had passed technical evaluation would then be opened in the presence of bidders or their representatives and the prices read out. Those bidders whose offers did not pass technical evaluation would have their financial envelope returned unopened.

9.10 The opened bids are then sent for **evaluation** by the Evaluation Committee (EC), in accordance with the procedures in Chapter 12. Once the evaluation process has been completed, an Evaluation Report including a recommendation for contract award, is prepared on behalf of the EC and submitted to the Tenders Board. The Board has authority to decide on the bidder to be awarded the contract, unless the contract is required to be submitted for prior review by the Bureau. The successful bid should normally be the one with the lowest cost from among the bids that were responsive to the specifications and other requirements in the bidding document, unless there are other grounds in accordance with the law for awarding the contract to another bidder.

9.11 The decision of the Tenders Board should be notified simultaneously to the successful bidder and to others who have submitted a bid. This is **notification of proposed contract award** not the formation of a contract. A period of 14 days should be allowed before the contract is signed to enable challenges to be made by any unsuccessful bidder who considers that the procurement process has not been conducted fairly in accordance with the law and that the contract award decision is unfair. The **challenge** procedures are described in Chapter 13.

9.12 If no challenge is received, **formation of contract** may proceed. Subject to confirmation that sufficient funds are available to meet contractual obligations, the AO should issue a **Letter of Acceptance** to the successful bidder. The Letter of Acceptance must be free of new conditions, so that the contract is based on the requirements that were stated in the bidding document and accepted by the bidder when it put forward its bid. Additional obligations should not be imposed as a requirement for award of contract.

9.13 If the evaluation process or other stages prior to the award of contract cannot be completed in the expected time for good reason, it may be necessary to request bidders to extend the bid validity period in their offers. A bidder has a right to refuse the request for extension and the effectiveness of its bid will then terminate upon the expiry of the un-extended period of effectiveness. Refusal of such a request does not provide grounds for forfeiture of bid security.

9.14 The contract is then signed by the PE and the successful bidder. If the successful bidder refuses to sign the contract, that company should forfeit any bid security and the second best evaluated bidder should be awarded the contract. Otherwise, the bid security should be returned to each bidder. A **notice of contract award** is then published on the PE's website. The **contract should then be implemented** in accordance with the contract terms and time scale.

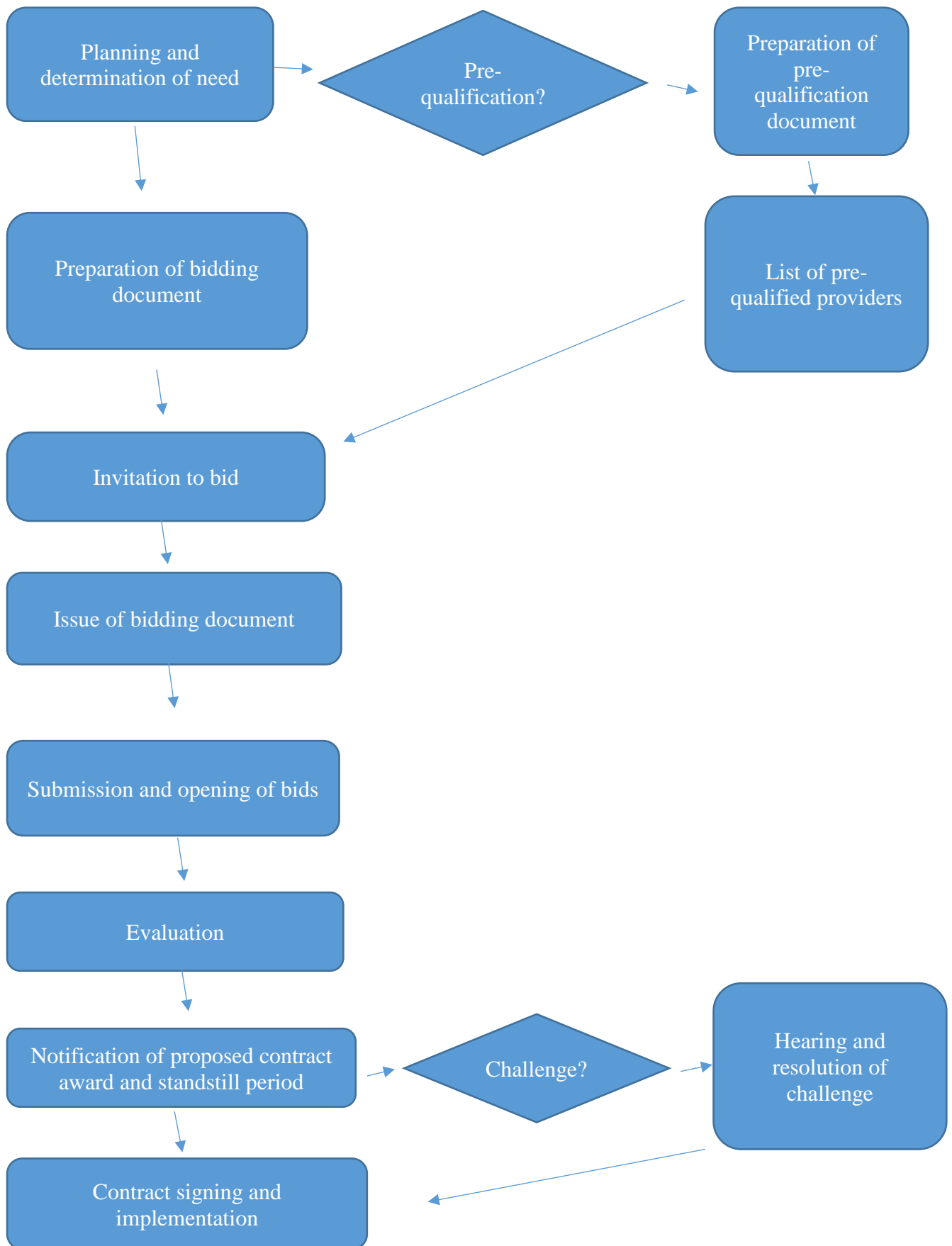
9.15 The PE should reserve the right to cancel the procurement process at any time before the contract is signed or to refuse to award the contract to any bidder. Grounds for cancellation would include:

1. The PE finds that it no longer has sufficient funds to proceed with the procurement;
2. The end-user's requirements have changed;
3. The technical specifications used in the bidding document have been found to be unsatisfactory or have been rendered obsolete on account of technological innovations;
4. No competitive bids within the budgetary provision have been received; or
5. There are grounds for suspecting collusion among bidders.

However, cancellation of a procurement process is undesirable, as bidders may go to considerable expense in preparing their offers and repeated cancellations may reduce confidence in the procurement system.

9.15 The stages in the procurement process can thus be set out diagrammatically as follows.

Stages in the procurement process



10. E-procurement

10.1 The State is working on developing electronic methods of procurement. Such an **e-procurement** system should include:

1. A website containing bidding opportunities and related documents which potential bidders could download;
2. A facility for bidders to submit their bids electronically.

Stage 1 might proceed before the development of Stage 2, if conditions are not yet right for the electronic submission of bids.

10.2 The bids would be submitted in encrypted format and would not be opened until the bid submission deadline had been reached. At the bid submission deadline, bids received would be made available to the PU's designated staff and the bidders or their representatives would be invited to be present when the names of bidders and the prices of their bids are read out. The bids would then proceed to evaluation and subsequent stages of the procurement process in the same manner as in a manual system.

10.3 There are several advantages in developing e-procurement:

1. It is convenient to bidders living outside the administrative capital of the State and to bidders in other States, as bidding opportunities may be inspected on the website and, if of interest, the related documents may be downloaded. The bidding documents are thus received immediately and the completed offer may be transmitted electronically close to the bid submission deadline, allowing bidders more time to prepare their bids.
2. These arrangements avoid the necessity for out-of-town bidders to send a messenger to collect the documents and subsequently to deposit the completed bid in the tender box, or to use a courier service for that purpose.
3. E-procurement is likely to attract a better response in international bidding, as the convenience in receiving and submitting bids is greater. Most international companies expect to bid for government contracts through electronic means.
4. The system should provide an audit trail, so that actions would be recorded and any malpractice would become more easily detected. For example, the time of bid submission and receipt would be recorded electronically.
5. It is economical and environmentally-friendly by reducing the need for printing and copying.

10.4 Development of an e-procurement system should be one of the main tasks of the Bureau. The facility for receiving bids might be held in the Bureau if some PEs in the State do not have the necessary facilities. Once received by the Bureau, the bids would be transmitted electronically to the PE responsible. Some procurement authorities use a third-party provider for the operation of the e-procurement system.

10.5 The successful development and operation of an e-procurement system has resource implications for the Bureau, the PEs in the State and the local business community. These include:

1. Good computing facilities with Internet connectivity by all the parties involved. If many bidders are small and medium-sized enterprises that do not have fast and reliable Internet connectivity, the introduction of e-procurement may place them at a disadvantage, though it is possible to have electronic and manual systems running simultaneously.
2. Facilities for the secure encryption and safe-keeping of bids during transmission and storage up to the bid submission deadline.
3. Other requirements, such as electricity supply that is not subject to frequent interruptions.

10.6 E-procurement will not succeed unless the business community has confidence in its integrity, reliability and security. There should be a roll-out period during which the Bureau would explain to stakeholders the purpose and advantages of the electronic system and the adaptations they may need to make to their own facilities and procedures to take advantage of it.

10.7 There are various software facilities available for supporting e-procurement and the selection of facilities that best meet the needs of the State and supervising the installation and maintenance of that system should be based on expert advice.

11. Preparation of bidding documents

11.1 The bidding document for each procurement should be based on the **standard bidding documents (SBD)**, separate models of which have been provided for each category of procurement, i.e. goods, works, consulting services and non-consulting services. The SBD should be written in a way that provides a fair basis for competition among eligible and qualified companies. They should enable potential bidders to understand clearly what the PE requires them to provide.

11.2 The SBD consist of:

1. The **standard rules for submitting bids**, which apply to all procurements in the State and should not be altered for any particular procurement. For example, the rule that bids submitted after the published deadline shall not be accepted applies to all procurements without exception. The general eligibility requirements for submission of bids in the State would be stated. It should be specified that bids must be expressed in English and that prices should be in Nigerian naira, except in international bidding where prices may be in convertible foreign currencies, with an indication of how such foreign currencies would be converted into naira for evaluation purposes.
2. **Detailed rules for the procurement in hand**: these modify the standard rules to provide necessary detail but do not depart from the principles in the standard rules. For example, the standard rules would state that all bids must be valid for a specified period and the special rules would specify how many days the validity period must be. Similarly, the standard rules would state that the evaluation criteria must be included in the bidding document while the detailed rules would indicate what the evaluation criteria would be for the procurement in hand.
3. The **statement of requirements** in the bidding document provides detailed information about the goods, works or services to be procured, including quantities, technical specifications and the delivery time or completion schedule.
4. The **general conditions of contract** are the standard conditions that apply to all procurement contracts made by the State. As these are provided in a standalone document, they may be referred to on the State's website rather than be issued to all potential bidders.
5. The **special conditions of contract** are permitted variations to the general conditions to meet the requirements of the contract in hand. The special conditions would be issued to potential bidders as part of the bidding document and provide detailed provisions relating to this particular procurement, cross-referenced to relevant clause number of the general conditions of contract. For example, the general conditions of contract will state that the contractor shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination; the special conditions will apply this principle to the procurement being made, so that where certain pharmaceuticals are being procured, it may specify that refrigerated containers shall be used during the transportation process.

11.3 The **evaluation criteria** should be stated in the bidding document. If in international competitive bidding **domestic preference** is to be given to Nigerian providers, this feature should be stated as part of the evaluation criteria, together with the basis on which a bidder would be entitled to domestic preference. The grounds for granting domestic preference in a contract for supply of goods should be that labour, raw material, and components from within Nigeria will account for 30% or more of the Ex-works, Ex-factory, or Off-the-Shelf (EXW) price of the product offered and the bidder has been engaged in manufacturing/assembling such goods at least since the time of bid submission. When domestic preference is applied in works contracts, bidders' claims for preference should be considered on the basis of the details of company ownership and the use of Nigerian nationals in the performance of the contract.

11.4 Nigerian bidders should be invited to apply for domestic preference if they consider themselves to be eligible for it. These claims should be considered during financial evaluation.

11.5 The **technical specifications** are the requirements which objectively define the characteristics of the goods, services or works to be procured, in order to ensure that those goods, services or works fulfil the intended purpose. It may include functional and design specifications. Technical specifications should be written by persons who are expert in the technical features of the goods being procured or the works or services to be performed. The specifications for public works contracts require collaboration among a range of experts, including civil engineers, architects and quantity surveyors. Such expertise may be found among the end-users or other specialists within the MDA but if that is insufficient, outside expertise should be obtained from people who do not have a vested interest in the decision on contract award. The PU should oversee the preparation of the technical specifications and their inclusion in the bidding documents and ensure that the document is ready for issue in good time, in accordance with the time schedule in the procurement plan.

11.6 The technical specifications should state the purpose for which the item is to be used and include all essential details without being so restrictive that variations, perhaps based on technological innovation, would be deemed to be non-conforming. For example, the technical specifications for a vehicle should state the uses to which it will be put and essential requirements to meet these uses. If such a vehicle is intended to be driven for long journeys on rough roads in remote areas, the technical specifications might state that the vehicle should be 4-wheel drive and have sufficient fuel capacity to be driven 500 kilometres without refuelling. Dimensions should normally be shown within a range or upwards from a minimum capacity. The use of brand names should be avoided as a restriction on competition, and where used should be qualified by the phrase "or equivalent".

11.7 The invitation to bid and any accompanying advertisement should not be published until the bidding document is ready for collection.

12. Evaluation

12.1 Once the bid submission deadline has passed and the bids received have been opened in the presence of bidders, the Tenders Board should appoint an Evaluation Committee (EC), comprising people who are expert in the technical aspects of the item being procured, to evaluate the bids received. Evaluation should be carried out in accordance with the evaluation criteria in the bidding document, which should not be changed in the course of the procurement process.

12.2 The stages of evaluation are, in sequence:

1. **Preliminary examination**, where a check is made that the bid is in order, for example that it has been duly signed and is valid for the stipulated tender validity period, that the requisite number of copies have been provided and that any required bid security or samples have been provided.
2. **Technical evaluation**, where the features of the product offered are examined against the requirements in the specifications and in accordance with the evaluation criteria in the bidding document.
3. **Financial evaluation**, where the prices offered for goods, works or services that are technically compliant are compared to identify the lowest-priced responsive offer.

Only bids that have been found compliant in one stage should proceed to the next stage.

12.3 In technical evaluation, deviations from the requirements in the bidding document should be classified as major or minor deviations.

12.4 **Major deviations** are significant departures from the requirements in the bidding document and would mean that the quality and usefulness of the goods provided, or the scope or standard of public works or services were not as stated in the technical specifications or other parts of the bidding document. The following features of a bidder's offer might be considered to be major deviations:

1. Unacceptable sub-contracting, to companies that are unqualified for the tasks assigned to them.
2. An unacceptable time schedule if time is of the essence. For example, if the time schedule in a bid for a school construction contract would not have the buildings ready for use by the start of the school year and this had been made a specific requirement in the bidding document, that would be a major deviation. However, if a substantial number of bidders are unable to meet the time schedule in the bidding document, the PE should review whether it was realistic in the circumstances;
3. An unacceptable alternative design, such as one that failed to provide the same degree of functionality; and
4. An unacceptable price adjustment, for example one that required an unacceptably high proportion of payment to be made in advance.

Any major deviation would lead to rejection of the bid.

12.5 **Minor deviations** are deviations that do not materially depart from the requirements set out in the tender document and would not affect the quality and usefulness of the product to be provided, the works to be constructed or the services to be performed. Minor deviations might include:

1. Use of a different but acceptable design that does not impair functionality;
2. Use of materials or workmanship that do not reduce the value of the item being procured;
3. Omission of minor items;
4. Differences in the delivery schedule or proposed completion date where these are not essential requirements; and
5. Any other condition that has little impact on the bid.

If there are cost implications to a minor deviation, these should be added to the price of the item during financial evaluation.

12.6 In financial evaluation, **life cycle costs** should be taken into account where these can be clearly identified. For example, a room cooler that is cheap to acquire but high in consumption of electricity may be more expensive over the expected life of the product than a higher-priced model that is more energy efficient. A comparison should be made by:

1. Identifying the expected use of the product over the foreseeable future (at least 5 years or longer if requirements and usage are unlikely to change);
2. Estimating the cost of electricity consumption over that period (it may be necessary to assume constant electricity tariffs unless changes can be reliably predicted); and
3. Adding the cost of consumption to the purchase price of the product.

Similar analyses can be made in respect of the fuel consumption of vehicles or the usage of cartridges by printers. Another example is the maintenance costs or the cost of a servicing agreement.

12.7 Bids should be checked carefully for **arithmetical errors** to ensure that the stated quantities and prices are consistent and any identified arithmetical error should be corrected and the correction agreed with the bidder.

12.8 In procurements where **domestic preference** is applied, the criteria for entitlement to domestic preference should have been stated in the bidding document. The stated percentage of preference should be added to any foreign company's price solely for the purpose of establishing whether that offer remains the lowest in price. In the event that the foreign company is the successful bidder, the price and contract terms would be as provided in its bid, not after the application of domestic preference.

12.9 While the EC may seek **clarification** from a bidder on any matter in the bid that is unclear, there should be **no negotiation** about the price, the product to be supplied, or the works and services to be performed. Nor should a bidder be allowed to amend or modify the bid price or any other substantial feature of the offer that has been regarded as a major deviation. This rule

about negotiation is in accordance with general international practice, because it is important that bidders should provide their best and final offer with the tender and they may be reluctant to do so if they know that they will be asked subsequently to change the price or any other aspect of the tender.

12.10 It is important also that the bid evaluation should be carried out in confidence, without disclosure to any bidder how his offer had fared. Evaluators should also bear in mind that they will be handling commercially-sensitive information that must not be disclosed to other bidders.

12.11 After completing the evaluation process, the officer of the PU who served as secretary to the EC should prepare a **Bid Evaluation Report** for the Committee's agreement. The Report should include:

1. Key dates and steps in bidding process (with a copy of the invitation to bid as advertised attached);
2. A copy of the bidding document;
3. A copy of the bid opening minutes, including the names of bidders;
4. The name of any bidder whose offer was rejected during preliminary examination and the grounds for rejection;
5. A table showing each bidder's compliance with key provisions of the technical specifications, including the nature of any deviation and whether it was classified as major or minor;
6. For all substantially responsive bids: the comparison of prices, including whether and, if so, how life cycle costs were taken into account;
7. Any correction of arithmetic mistakes;
8. Whether any bid needed to be clarified and the result of the clarification;
9. Whether any bids were submitted in a foreign currency and, if so, the rate of conversion to Naira;
10. Whether domestic preference was applied and, if so, the grounds used to establish a bidder's entitlement to domestic preference and how this affected the comparison of bids; and
11. A recommendation for contract award.

12.12 Once the Bid Evaluation Report has been agreed by the EC, the PU should send it to the Tenders Board for decision on contract award. In the event that the TB is dissatisfied with any aspect of the EC's recommendations or the way the procurement process has been carried out, it should refer the matter back to the EC with a statement setting out its reservations. The TB may require the EC to respond to its concerns, perhaps by carrying out further investigations, or to carry out afresh part of the evaluation process. If the TB considers that the whole process has been seriously flawed, so that fairness and value for money will not be achieved by the proposed contract award, it may annul the process and order that the procurement be retendered.

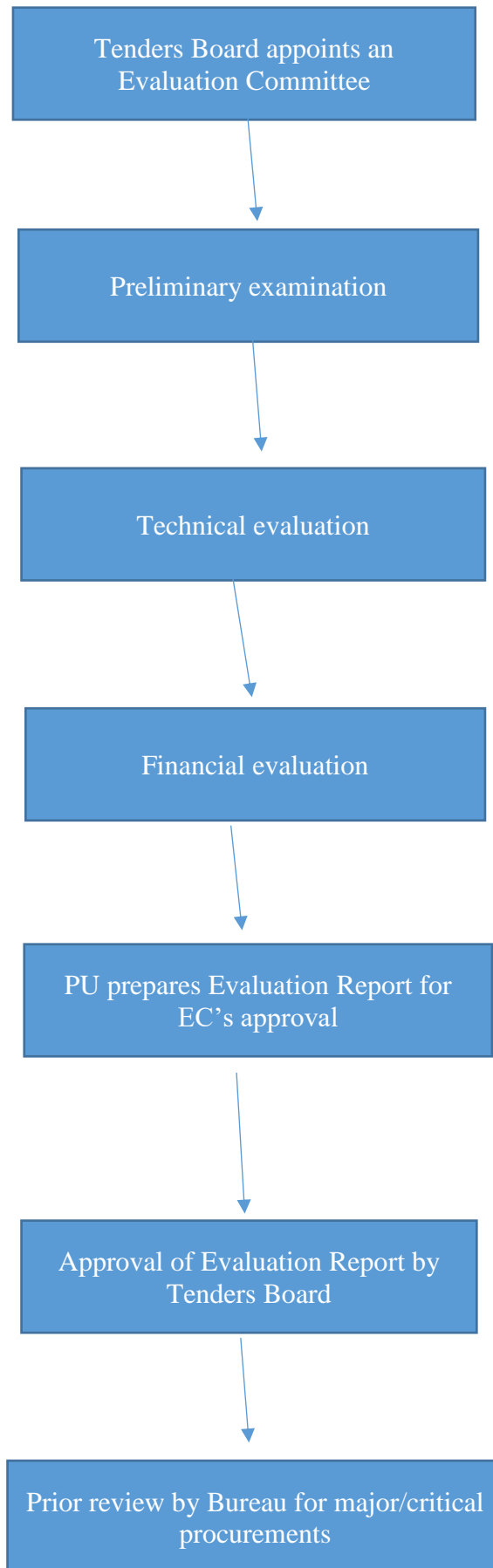
12.13 For goods, works and non-consultancy service contracts, the contract would normally be awarded to the lowest cost evaluated bidder from the bidders whose bids were responsive to the bid solicitation and contained no major deviation. Contracts for consultancy services are awarded by separate criteria, as described in Chapter 14.

12.14 The PE should not award the contract if it considers that the price is manifestly excessive or so unreasonably below the price estimated in the procurement plan that it casts doubt on the bidder's ability to carry out the contract. However, if the procurement process has been carried out correctly within an open competitive market, the price offered by the best evaluated bidder should normally be regarded as the best determinant of the market price. The bidders within an open competitive market may have better knowledge than the staff of the PE about the price of the goods they are offering to supply or the works or services to be performed. If the bid for a works or service contract is low in relation to the Engineer's Estimate or other estimate of costs, the bidder should be asked to confirm that all requirements have been fully understood and taken into account in the offer. It should not be the practice to base an award for a works contract on the offer that is closest to the Engineer's Estimate.

12.15 The PE should endeavour to complete the evaluation process expeditiously. For many routine procurements, the time between the bid submission deadline and the notification of contract award should not exceed 30 days, though for certain complex and high-value contracts it may take longer.

12.16 The Bureau may stipulate that contracts above a particular value and others which are particularly sensitive or complex should be referred to it for prior review before contract award. This step is intended to ensure that for major contracts proper procedures have been carried out in accordance with the law, that the contract award decision has been reached on a fair basis and the price is reasonable having regard to pricing information available. However, referral to the Bureau should not detract from the authority of the PE to make the contract.

12.17 The evaluation process may be summarised in the following diagram:



13. Procedures for administrative review

13.1 It is widely recognised internationally as good practice to provide an opportunity for dissatisfied bidders to challenge through **administrative review** procedures. A challenge may concern:

1. The way in which the **procurement process** is being carried out or the bidding documents prepared. For example, a bidder may consider that the technical specifications improperly favour a competitor's product and do not provide a fair basis for competition. A challenge to the procurement process may be made at any stage; or
2. The **contract award decision**, if any bidder considers that decision to be unfair or to have been taken on an improper basis. A challenge to the contract award decision should be made within 14 days of the challenger receiving the notice of contract award.

13.2 The possibility of a challenge being made from within the business community makes PEs careful to comply with the law and to ensure that there are good grounds for the contract award decision. Having a fair and impartial administrative review system in which the business community has confidence enables any challenge to the contract award decision, which has to be brought within a standstill period as stipulated under the Administrative Review Procedure Manual, to be resolved before the contract is made. Thus, avoiding the need to reopen contracts that are already in force. It also reduces the risk of contract award decisions being challenged in the Courts and, in the event of a challenge, the Court is likely to have regard to the review already undertaken in the administrative review process.

13.3 The challenge may be heard by a specially appointed body or committee within the Bureau.

13.4 Administrative review procedures is as provided under the Yobe State Administrative Review Procedure Manual.

13.5 Corrective measures might include:

1. Revision of the technical specifications or other feature of the bidding document, where a challenger has demonstrated that the specifications did not provide a fair basis for competition;
2. Enabling other bidders to put in offers, where they have been excluded unreasonably under restricted bidding procedures;
3. Requiring the PE to conduct the tender evaluation afresh; or
4. Directing that the contract be awarded to another bidder than the one proposed.

13.6 The decision on the administrative review and the corrective measures to be taken should be final unless the dispute is taken to mediation or arbitration. The review should be carefully documented and the record published on the Bureau's website, to serve as a learning process to all concerned.

14. Procurement of consultancy services

14.1 Separate arrangements should be made for the procurement of consultancy services, which are usually termed **Request for Proposals (RFP)**, as the expert advice that is sought from consultants often cannot be specified in the same way as is used for the specified standard of goods or construction works.

14.2 The procurement of consultancy services is a specialised form of procurement requiring procedures and documents which are different from those for goods and works. The use of a short list of candidates, a merit-point evaluation system and two-envelope procedures are standard features in the selection of consultants. Selecting consultants on the basis of cost alone is unlikely to achieve the required quality of services.

14.3 The starting point in the procurement of consultancy services is an invitation for **Expression of Interest**. The notice inviting expression of interest should be an open invitation, usually conveyed through an advertisement, inviting individual consultants and consultancy firms to indicate their interest in the assignment and to demonstrate their suitability for inclusion in a short list, though without quoting prices or fee rates at this stage. The notice should specify:

1. The name and address of the PE seeking the consultancy services;
2. A brief description of the services being procured;
3. The method of procurement to be used;
4. The selection criteria, based on the qualification and experience requirements which applicants would be expected to meet, the required skill sets among the staff and any other shortlisting criteria, e.g. nationality;
5. When and where expressions of interest must be submitted.

14.4 The PE would draw up a short list from among the applicants who responded to the invitation for expression of interest and who have demonstrated that they have suitable qualifications and experience and good understanding of the requirements. The PE would then issue bidding documents to the consultancy firms on the short list, who would then proceed to submit priced proposals. Other consultancy firms who indicate at this stage a wish to compete for the contract but who have not made an expression of interest would not be permitted to bid.

14.5 One of the following methods of selection would be used:

1. **Quality and Cost Based Selection (QCBS, the default method)**. Under this method, the technical proposals would be evaluated first by a weighted marking scheme. For example, 70% of marks might be awarded to the technical aspects of a proposal, i.e. on the basis of the qualifications, experience, skill sets and all other matters pertaining to the quality of service that the consultants could provide; the remaining 30% of the marks would be on the basis of price. Those proposals that met a minimum technical score would then proceed to the financial evaluation stage and will be scored. The

proposal with the best overall score would be awarded the contract. See the example of an evaluation under this method given below.

2. **Quality Based Selection (QBS)**, under which the contract award would be made to the firm that obtained the highest technical score, with price determined by negotiation.
3. **Fixed Budget Selection (FBS)**, under which the contract would be awarded to the best technical proposal that was priced within the budget.
4. **Least Cost Selection (LCS)**, under which the contract would be awarded to the lowest priced proposal that meets a minimum technical score
5. **Single Source Selection (SSS)**, under which the most suitable firm is determined without formal competition and then negotiations take place to determine the contract price. This method is usually employed when the PE wishes to engage consultants to follow-up work done on a previous assignment. This method does not require an initial expression of interest.

14.6 A PE may direct the RFP to a limited number of consultants if it can demonstrate that the services it seeks are available from no more than 3 consultants, or where 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 or where there are other public interest grounds. For example, a consultant may have been involved in providing advice at an earlier stage of a project and the PE wishes to extend that advice. However, the decision to restrict the opportunity to compete must be justified and made transparently.

14.7 The invitation may be confined to national consultants provided there are sufficient national consultants with the necessary skills to provide adequate competition.

14.8 The bidding document should include all relevant information to enable the consultant to submit a compliant proposal, including the selection method being used, the criteria and procedures for the evaluation of the qualifications of the consultant, the documentary evidence and other information required from consultants to demonstrate their qualifications. The document should provide all necessary information on the nature and required characteristics of the services to be provided and the time when they are required. The requirements on pricing information should be clearly expressed, including whether it is to include provision for other costs than the cost of services, such as reimbursement for transportation, accommodation, insurance, use of equipment, duties or taxes.

14.9 Consultants should be allowed to request for clarification on the RFP and the PE should respond to that request within a reasonable period of time, communicating the response to the other consultants. The PE may hold a meeting with the consultants to clarify any matter of doubt. Minutes of any such meeting should be prepared and circulated to the consultants concerned. In response to a request for clarification or for other reasons, the PE may decide to issue an addendum to the RFP and, if there is insufficient time remaining, may extend the submission deadline.

14.10 The document should specify the location and deadline for submission of proposals. They should be required to submit their technical and financial proposals in separate sealed envelopes. Sufficient time should be allowed for consultants to prepare their proposals. At least 10 working days should be allowed between the issue of the request and the deadline for submission. Proposals received after the deadline must be rejected.

14.11 The consultants' responses to the RFP may contain sensitive information which the PE and any other party involved in the evaluation process must handle in confidence.

14.12 Regarding evaluation under the QCBS method, the following is an example of a marking system that might be used to obtain the technical score where 70% of the total marks were awarded to technical features:

Specific Experience	[10-20] points
Methodology Proposed	[20-30] points
Key Personnel	[30-40] points
Transfer of Knowledge	[0-10] points
Participation by Nationals	[0-10] points
Total:	70 points

14.13 A minimum technical score would also be set. Only those proposals that meet the minimum technical score would proceed to financial evaluation and the financial envelope should not be opened until the technical evaluation has been completed. The financial score would be obtained by awarding the lowest priced offer the maximum 30 points, with higher priced offers receiving a proportionately lower score. The successful proposal would be the one with the highest combined technical and financial score.

14.14 For particularly complex RFP for which there is insufficient expertise in-house to carry out the evaluation satisfactorily, the PE may appoint an impartial panel of experts to carry out or to assist in the evaluation process.

15. Contract management

15.1 Following the making of a contract, all bidders should have their bid security returned. For the successful bidder of a works contract or other contract where a mobilisation fee or other advance payment is made, the contractor should be required to provide a **performance security** of not less than 10% of the contract value. The format of a performance security is provided in the standard bidding documents and would normally insist on a bank guarantee from a bank that is acceptable to the PE. The performance security should be released upon final completion of the contract and may be replaced by warranty obligations, as appropriate.

15.2 For many contracts for supply of off-the-shelf goods, payment would not be made until the goods have been received and tested and confirmed to be in accordance with the specified requirements. However, where the goods need to be specially manufactured to the PE's specifications, payments may need to be made at various stages of the work.

15.3 Works and service contracts also usually required staged payments, including an advance payment. The advance payment is designed to help the contractor with the cost of mobilisation, such as recruiting workers and hiring equipment. The Bureau should specify limits to such advance payments, which in any case must not be more than 40%, and ensure that they are covered by an appropriate security, such as a bank guarantee.

15.4 The form of contract management that is required depends on the nature of the contract. For standard contracts for the supply of goods, there should be arrangements for inspection of goods upon receipt to ensure that the right quantity has been delivered and that the goods meet the quality standards and other features in the specifications. This may be done by appointment of an **Inspection and Acceptance Committee** comprising an officer from the PU together with such other persons who are expert in the technical features of the goods concerned. For some items, such as pharmaceutical products, it may be necessary to quarantine the items until quality assurance tests have been carried out, unless the source of supply is known to be reliable and with strict quality control procedures in place. For bulky items, it may be desirable to arrange for quality inspection to take place at the storage warehouse or place of manufacture, so that unsatisfactory products do not need to be returned. Where goods are manufactured overseas, this may be done by engaging an inspection agent in the country of manufacture.

15.5 Service contracts, such as cleaning or security, should be subject to careful monitoring to ensure that the service standards as laid down in the contract documents are maintained. For example, a contract for provision of security services should be subject to periodic surprise inspections to ensure that the requisite number of guards have been deployed and given the right equipment and that the contractor's arrangements for supervision are working satisfactorily.

15.6 For major works contracts, where contract performance may take place over several months or even years, a **Contract Management Committee** (CMC) should be appointed

comprising senior engineers and other construction professionals under the leadership of a Project Manager (PM), with support from the PU in the event that the contract terms need amendment or variation.

15.7 The CMC should meet regularly to monitor progress of the work and to identify any defects that require correction. Their work should include:

1. **Time control.** The start and completion dates should be defined in the contract, which should require the contractor to submit to the PM for approval, a work management programme showing the general methods, arrangements, order, and timing for all the activities in the works. The performance should be monitored against this programme, which should be regularly updated. The intended completion date may be extended if a compensation event occurs or a variation is issued or a force majeure event occurs. Compensation events are as provided for under the Yobe State General Conditions of Contract for Works 2019, GCC 33. There may be provision in the contract for the PM to ask the contractor to accelerate completion of project, with any agreed costs being a variation to the contract price.
2. **Quality control.** The PM should check the contractor's work and require the contractor to undertake tests where a defect is suspected. If the test reveals a defect, the cost of the test and the cost of remedying the defect should be borne by the contractor. If there is no defect, that would constitute a Compensation Event. The defects liability period should be defined in contract and the PM should notify the contractor of any defects before the expiry of the liability period. The Defects Liability Period may be extended for as long as defects remain to be corrected.
3. **Cost control.** Works contracts contain various arrangements for payment:
 - a. In an **ad measurement contract**, the Bill of Quantities (BOQ) contains priced items for the works to be performed. The contractor will be paid for the quantity of the work accomplished at the rate in the BOQ for each item. If the final quantity of work done differs from the quantity in BOQ by more than 25% and the change exceeds 1% of initial contract price, the PM shall adjust the rate to allow for this change.
 - b. In a **lump sum contract**, the activity schedule contains the priced activities for the works to be performed by the contractor. The activity schedule is used to monitor and control the performance of activities on which basis the contractor will be paid. The activity schedule may be amended but prices shall not be altered.

15.8 The contractor should be required to submit to the PM monthly statements of the progress made, the estimated value of the work executed less the cumulative amount certified previously. The PM should check the monthly statement and certify the amount to be paid to the contractor. In an ad measurement contract, the value of work executed comprises the value of the quantities of work in the BOQ that have been completed, while in a lump sum contract it comprises the value of completed activities in the Activity Schedule.

15.9 It is important that the PE makes payment to the contractor in accordance with the contract terms for work completed satisfactorily. The contractor is also entitled to payment for a defined Compensation Event, including the following:

1. The PE does not give access to a part of the site by the site possession date;
2. Other contractors cause delay;
3. The PM orders a delay or does not issue drawings, specifications, or instructions required for execution of the works on time;
4. The PM instructs the contractor to uncover or to carry out additional tests upon work, which is then found to have no defects;
5. The PM unreasonably does not approve a subcontract to be let;
6. The ground conditions are substantially more adverse than could reasonably have been assumed;
7. The PM gives an instruction for dealing with an unforeseen condition or additional work required for safety or other reasons;
8. Advance payment is delayed; and
9. The PM unreasonably delays issuing Certificate of Completion.

In the event that the PE fails to pay the contractor any payment by its due date, the contractor may have entitlement to receive interest based on the contract terms.

15.10 Any variations to the contract should be included in an updated programme. The contractor should provide the PM with a cost estimate for carrying out the variation. The contractor should not be entitled to additional payment for costs that could have been avoided by giving early warning.

15.11 Efforts should be made to minimize variations to a contract that are due to change of scope. The PE should ensure that detailed design and drawings are ready prior to the award of contracts for major projects. To minimise variations due to inaccurate quantities or omissions, the BOQ should be checked and certified for its accuracy and completeness. However, if the aggregate amount of the variations due to quantity changes and extra works orders issued is within the contingency provision, which should be a maximum of 10%, the AO may approve the change order with notification to the Bureau. If above the contingency provision, the PE should review the contract implementation and assess whether there are sufficient funds to complete the project or whether the scope should be reduced. The matter should then be referred to the Bureau for decision.

16. Disposals

16.1 Every PE is also a **disposing entity**, responsible for ensuring that public property that is no longer needed is properly disposed of and any residual value is obtained. Public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to unserviceable) acquired through public expenditure or by other means. The disposal process should be fair and transparent and achieve value for money.

16.2 PEs should not delay in carrying out disposals, having regard to the following considerations:

1. Goods deteriorate and lose value over time.
2. Storage space is a valuable resource that should be used to support the current work of the office.
3. Obsolete and disused items left lying in the premises are a safety hazard, are unsightly and create an impression of inefficiency.

16.3 It is difficult to plan for disposals unless the location of each asset is known. Otherwise, there is risk of loss or theft. Therefore, each asset should be registered at the time it is accepted from the supplier and included in an **asset register**. The location of an asset should be recorded throughout the life of the asset (e.g. held in store, allocated to named officer).

16.4 Disposals should be an integral part of the whole planning process. Major disposals should feature in the annual procurement plan, particularly where new equipment is to be procured as replacement for obsolete equipment. A PE's assets should be reviewed on an annual basis, to identify those which are obsolete and should be subject to disposal. Some procurement authorities have a Board of Survey to determine whether an asset has continued use or should be disposed of. Otherwise, a committee may be appointed for this purpose, supported and serviced by the PU. Assets planned for disposal need to be valued. The list of assets planned for disposal during the financial year should be approved by the Accounting Officer, together with the method of disposal to be deployed.

16.5 Assets to be disposed of should be grouped in contracts or lots in a manner which attracts the maximum possible competition. The following methods of disposal should be used, depending on the value of the assets and whether they can be grouped into larger lots:

1. Transfer to another PE;
2. Open competitive bidding;
3. Sale by auction;
4. Trade in as part of a procurement contract;
5. Sale to a public officer in exceptionally allowed circumstances as prescribed under 16.14 below;
6. Donation to charity; or
7. Destruction or recycling.

16.6 **Transfer to another PE** should be considered where another PE has need of the assets for disposal. The price for acquiring the asset should be agreed between the two PEs, though the transfer may be at no cost if it is uneconomic to charge for the asset. This method of disposal may be useful where one PE is moving into another PE's premises and agrees to take over furniture and certain equipment to reduce removal arrangements.

16.7 **Open competitive bidding** should be used mainly for the disposal of high value items or where the buyer is likely to be from a specialised or international market. A sales tender would be arranged in the same way as a purchase tender and offers received would be evaluated by an Evaluation Committee, whose recommendation for contract award would be put to the Tenders Board. A reserve price may be set. The successful contractor would normally be the one offering the highest price, subject to certain conditions being met, for example, the contractor must be capable of removing heavy/bulky equipment from the building without causing damage. Hazardous or security items, such as weapons, should only be sold to suitable purchasers with the approval of the appropriate authorities. The PE should make clear in the tender specifications that the asset is being sold on an "as is, where is" basis, whether removal of the equipment requires special skill or care and liability for any damages during removal.

16.8 The process used in conducting a sales tender and the contract award decision may be subject to challenge by administrative review.

16.9 **Sale by auction** may be used where there are:

1. No conditions of end-user or export restrictions attached to the sale; and
2. A large number of potential bidders or assets to be disposed of in one location.

Sale by auction is a useful means of disposing of large numbers of relatively low-value items, such as used electronic goods and computers. It may be useful to have combined arrangements for auctioning assets of several PEs.

16.10 A contract should be arranged with a firm of professional auctioneers to conduct auctions over a specified term. The contract should specify the rules for conducting the auction, e.g. the auction should be advertised at the contractor's expense, it should be held in suitable premises, the time within which the successful bidders should make payment and the time and manner by which the proceeds of sale should be passed on to the PE. The auctioneer would normally be rewarded by taking an agreed commission out of the proceeds of sale. Goods sold at auction should not be released until the full price has been received and the auctioneer should transfer the money promptly together with a set of auction accounts.

16.11 To reduce the risk of abuse, the PE should:

1. Put in place arrangements for monitoring the conduct of the auction and the timely delivery of the proceeds to the PE; it may be necessary for a member of staff of the PU to be present during the auction or at least to carry out surprise checks;
2. Ensure that the auctioneer maintains full and proper accounts, which the PE should inspect and take up any discrepancy;
3. Careful setting of the reserve price for valuable items;

4. Ensure that the arrangements for advertising the time and place of the auction and the range of goods being disposed of are sufficient to attract new bidders; and
5. Vary lot sizes to attract a broader range of bidders.

16.12 **Trade in** may be used to offset the purchase price of new items where it provides a convenient, economic and efficient way of upgrading equipment. A bidder would quote a price for the supply of the desired new equipment and, separately, a price that the bidder would pay to the PE for the existing equipment. The financial evaluation of the such offers would be on the basis of the best overall price.

16.13 Trade-in is a useful method of disposal where removal of existing heavy equipment is required before newly-purchased equipment can be installed, as it can lead to reduced down-time for particularly important services, for example, the removal by one contractor of old x-ray equipment from a hospital's radiology department and its replacement by new equipment may reduce the time out-of-service compared with having the two tasks performed by separate contractors. However, trade in should not be used where it prevents the operation of open and fair competition or where it reduces the value for money in a procurement process. As equipment manufacturers may need to sell on used equipment, such arrangements may increase the price offered for the new equipment, so the best overall deal may not be obtained.

16.14 **Sale to a public officer** may be used where:

1. There is no likely benefit or financial advantage to a PE in using any other disposal method;
2. The assets for disposal are low value items which are unlikely to attract public interest;
3. The personal use of the assets would directly benefit the performance of a public officer in the execution of his or her duties within a PE; or
4. In remote locations, where any other method of disposal would be difficult.

16.15 Before approving the sale of an asset to a public officer, a PE should arrange for a sale price to be determined impartially. An important consideration when disposing of items such as laptops is whether the officer who has been allocated the item for official use should have an exclusive opportunity to buy it or whether other public officers should be given equal opportunity to acquire the asset. One possibility would be to hold an auction that is restricted to public officers in the State. In that way, accusations of unfair advantage may be avoided.

16.16 **Donation to charity** may be used for items of limited value, that are unsuitable for sale at auction are not widely in demand.

16.17 **Destruction** of an asset is the least favoured method of disposal but may be used

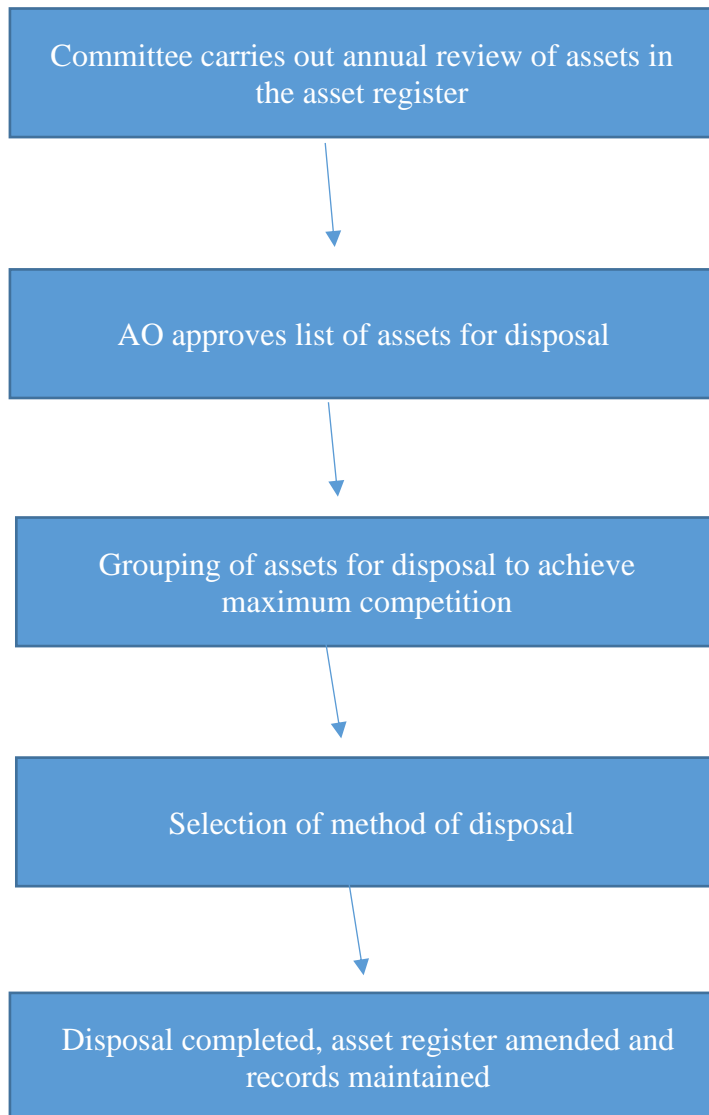
1. On grounds of national security or public interest, health and safety, legal or human rights issues or environment considerations; or
2. Where the asset has no residual value and cannot be transferred to any other PE or converted into another form with any value. The PE should be aware that some items

that are no longer of value in their present form may be used for their parts or converted into scrap metal. Such items might be disposed of through auction.

16.18 Destruction is necessary where the cost of disposal is greater than the sale proceeds that are likely to be obtained. When arranging for destruction, the PE should ensure that any environmental damage is avoided. Recycling opportunities should be identified and used, for example, items such as used cartridges, broken cell phones can be recycled. For some items, such as medical waste, radioactive materials, etc., a safe method of destruction is necessary and this may entail considerable cost.

16.19 Once an asset has been disposed of, the asset register should be amended accordingly. Records should be made of the disposal process and the results obtained, as indicated in Chapter 17.

16.20 The disposal process may be shown diagrammatically as follows:



17. Record keeping, inspection, review and reporting

17.1 The availability and completeness of **procurement records** is critical. In addition to overall data on numbers, types, values and dates of contracts awarded and names of awardees, the PU, with the support by other departments of the PE, should maintain for all contracts a record which includes, inter alia:

1. The inclusion of the procurement in the procurement plan;
2. Public notices of tendering opportunities;
3. Bidding documents and any amendments;
4. Any clarifications sought on the bidding document;
5. Tender opening information;
6. Tender evaluation reports;
7. Formal appeals by bidders and outcomes;
8. The date and value of contract award;
9. Signed contract documents and addenda and amendments;
10. Record of time taken to complete key steps in the process;
11. Records of claims and dispute resolution;
12. The performance of contractors and the PE in meeting contractual obligations; and
13. Comprehensive disbursements data in relation to payments.

17.2 There should be similar records maintained in respect of disposals, indicating:

1. Authority for disposal of the asset;
2. Measures taken to consolidate the assets for disposal;
3. Method of disposal used;
4. Name of the purchaser and the price obtained.

17.3 Procurement and disposal records should be maintained for 10 years. For ease of maintenance and retrieval, records should be maintained in electronic format, where possible, and linked to an electronic **Management Information System** for the more effective management and oversight of all the PE's activities.

17.4 The routine reporting of procurement activity is essential for procurement planning and budgeting and for the monitoring and tracking of procurements. In addition to submitting the annual procurement plan to the Bureau, a **Monthly Report on Procurement** should be submitted, highlighting in respect of all items above a threshold value to be stipulated by the Bureau:

1. New procurements that have been initiated by the issue of an invitation to bid;
2. Procurements in progress, including the stage they have reached;
3. Contracts signed i.e. all new contracts signed during the month together with any procurements which have been cancelled after receiving an initial procurement approval by the relevant authority or cancelled/terminated; and
4. Contracts in progress, including the stage they have reached in the month;

5. Contracts completed, i.e. contracts completed during the month following performance by the supplier, contractor, service provider or consultant, with confirmation of final payment by the PE and the release of any performance security.

17.5 A suggested format for the Monthly Report on Procurement is at Appendix C. The Monthly Report should be prepared by the PU and approved by the AO. Procurements below the threshold value for reporting as individual items should be grouped together and the total of such items included in a separate report.

17.6 The Monthly Report should be scrutinised by the Bureau, which should query any matter which appears to be in contravention of the Law or irregular in other respects.

18. Inspection and review of procurement activities

18.1 Procurement and disposal records must be made available for **inspection** by the Bureau upon request at any time. The Bureau should carry out surprise inspections if it has reason to believe that a major procurement is being carried out improperly or on other matters of concern, for example in response to allegations by a whistle-blower. Staff assigned to these inspections must be allowed access to all documents pertaining to the procurement examine and have the right to search the premises and make extracts from and remove any document or accounts and to require the PE's staff to provide an explanation for an entry in these documents or accounts. Such inspections may also take place in the premises of a bidder or contractor.

18.2 In addition to ad hoc inspections, the Bureau should carry out periodically **reviews** of a PE's procurement activities over the course of a financial year. These procurement reviews should supplement the standard auditing arrangements in the MDA but provide a particular focus on procurement activities and their compliance with the procurement law. These reviews may be carried out by specialists within the Bureau or by external agents whom the Bureau would appoint. The primary purpose of a procurement review is to assist the PE by making useful recommendations for improvements in areas such as organisational structures, internal controls or reports.

18.3 The procurement review should proceed by making use of the following formalities:

1. An engagement letter should be sent to the AO of the PE approximately two weeks prior to commencement of the review.
2. An entry meeting should be held with the AO and senior procurement staff to obtain their agreement in respect of the review objectives and scope.
3. The reviewers should notify those persons as to why they need access to their area and what records and information they will require.
4. Once the reviewers have carried out the review and the draft review report has been approved by the Bureau, the report should be sent to the AO of the PE.
5. An exit meeting should be held with the reviewed PE. The exit meeting should be held between the Director General or other senior official of the Bureau and the AO or other senior official of the entity concerned. The meeting should discuss all findings and recommendations contained in the draft review report. The reviewed entity's requests for revisions to the report would be considered if they provide adequate evidence that the findings or recommendations were based on inaccurate or incomplete information. If necessary, the PE could follow-up its response in writing.
6. The review team may add comments to clarify recommendations, as necessary, based on the PE's response. The final review report, incorporating the entity's response and reviewers' comments, should be prepared.

18.4 The final review report should be sent to the AO of the PE and to other relevant officials, including the Auditor General. It may be published on the Bureau's website if agreed by the parties concerned, provided that any confidential or other sensitive information is redacted.

18.5 The review report should include an action plan that has been agreed with the AO of the PE for addressing any weaknesses in procurement performance that the review had revealed. There should also be an agreed timetable for putting these remedies into effect. These commitments should be follow-up at the appointed time to ascertain whether the remedies have been implemented and whether there are any remaining weaknesses and further measures needed to eliminate them.

19. Ethical standards and discipline

19.1 Procurement should be conducted with integrity on the part of the PE and its staff and on the part of bidders and contractors. Severe action should be taken against any party that abuses the procurement process through corruption, fraud, collusion and other prohibited practices. Corruption damages the vital interests of the State by leading to contracts that are on disadvantageous terms or in other ways do not provide the State with best value for its expenditure. It also damages the public's confidence in the procurement process and its respect for the institutions of the State.

19.2 Corruption in Nigeria is perceived as being at a high level³ and this has proved damaging to the country's international image and the willingness of some overseas firms to compete for government contracts. Corruption may be one of the factors, together with political instability, terms of trade, etc., that adversely affects economic development.

19.3 It is required that staff of PEs, together with bidders and contractors, observe the highest standard of ethics during the procurement process and execution of contracts. In pursuit of this policy the PE should not award a contract to a bidder if it determines that the bidder has been convicted of a procurement offence under section 59 and debarred for the period.

19.4 Certain actions are defined specifically as criminal offences in the Law with penalties that may include imprisonment. These offences include:

1. Opening or tampering with any sealed bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of bids or other documents;
2. Delaying, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in the Law or its Guidelines;
3. Entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned;
4. Engaging in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way;
5. Directly or indirectly attempt to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract;
6. Splitting tenders to evade a set monetary benchmark set;
7. Altering any procurement document with intent to influence the outcome of a tender proceeding;
8. Using fake documents or encouraging their use; and

³ See the Corruption Perceptions Index published annually by Transparency International at <https://www.transparency.org/research/cpi/overview>

9. Willfully refusing to allow the Bureau or its officers to have access to any procurement record.

19.5 It is important that functions in the procurement and contract management processes should be performed and decisions taken by the individuals or bodies that are assigned these responsibilities under the Law. Other parties should refrain from interfering in these decisions, as any improper interference might create an impression that the contract award decision is unfair and has not been arrived at through proper procedures.

19.6 A PE should take action against a bidder who commits malpractices in the bidding process and a contractor who does not carry out the contract obligations satisfactorily. The Bureau should establish procedures for receiving complaints from PEs concerning the behaviour and performance of bidders and contractors. A form for PEs to use when submitting such complaints to the Bureau is at Appendix D. The form should be completed by the PU and approved by the AO before being submitted to the Bureau.

19.7 Grounds for complaint about a bidder or contractor might include:

1. Having engaged in corrupt, fraudulent, collusive or coercive practices in competing for a contract or having otherwise sought to gain award of contract by improper means;
2. Having provided false or misleading information regarding the company's eligibility, qualifications or the nature and capabilities of the product or service it would supply;
3. Refusal to sign a contract that had been offered to it; however, as the normal penalty for refusal to sign a contract should be forfeiture of bid security, this ground should only be used in exceptional circumstances when the normal penalty cannot be applied;
4. Substantially poor contract performance;
5. Serious breach of contract terms.

19.8 Such complaints should be assessed impartially, with opportunity provided to the bidder or contractor to present evidence in its defence or to show mitigating circumstances, including a failure on the part of the PE to meet its own contractual obligations or to provide reasonable assistance.

19.9 The following procedures should be established for handling complaints:

1. The Bureau should commence the process of debarment of a supplier or contractor:
 - a. If it has found cause during its inspections to believe that a supplier, contractor or service provider has contravened any provision of the Law or its Guidelines; or
 - b. When a PE following adequate investigation submits a debarment recommendation approved by its AO with convincing evidence.
2. The Bureau should immediately acknowledge receipt of the proposal for debarment to the PE that reported the matter and form a Debarment Committee under the

chairmanship of the Director-General and comprising other senior officers in the Bureau together with community representatives.

3. The Bureau should within 21 days analyse the information received, including any further information/document(s) it may require from the PE that submitted the debarment proposal and present this analysis to the Debarment Committee for its endorsement.
4. If the Bureau on the advice of the Debarment Committee finds that the grounds of complaint have not been established or are insubstantial, it shall reject the complaint and so inform the PE that reported the matter, together with the grounds for rejection of the complaint.
5. If grounds for debarment have been established, the Bureau shall issue to the bidder or contractor within 14 days a notice of intention to debar. The notice must state the grounds for the intended debarment, the reasons thereof, the intended period of debarment as well as the terms attached to the debarment.
6. The bidder or contractor who is the subject of the complaint shall be given 14 days to respond to the allegations and the proposed sanctions.
7. The Debarment Committee should consider the bidder or contractor's response to the allegation and within 21 days reach a decision on the allegation and an appropriate penalty, which may consist of:
 - a. A formal written warning; or
 - b. Suspension of entitlement to bid for future contracts in the State for a stipulated period of not less than two years; or
8. The Bureau should within 7 days issue a written warning or notice of debarment in accordance with the decision of the Debarment Committee. The notice must state the grounds for the debarment, the reasons thereof (a description of the reasons for the debarment in sufficient detail) and the period of debarment.
9. Where debarment is not imposed, the Bureau should within 7 days from the date of receipt of the Debarment Committee's decision notify the supplier or contractor and the PE concerned.
10. The name of the debarred supplier or contractor should then be entered into the Debarment Register with the Bureau and published on its website for public viewing. No PE in the State shall enter into a contract with a debarred supplier or contractor until the period of debarment has expired. However, a contractor shall not be relieved of fulfilling obligations on an existing contract.

11. The supplier or contractor may appeal to the State High Court within 30 days after the receipt of the notice of debarment if not satisfied with the decision to debar.

19.15 Any debarment penalty would apply not only to the company as a legal entity but to its directors and senior managers who were implicated in the malpractices and to any successors in interest, such as a company that was reformed with the same directors and managers.

19.16 The procurement regulatory bodies in other States may take account of such suspensions or debarments when deciding whether the company should be allowed to compete for its own contracts.

19.17 All State employees who play any part in procurement activities should abide by a Code of Ethics. A suggested Code is at Appendix E. Breaches of the Code of Ethics should constitute a disciplinary offence.

19.18 The AO and other senior staff should look out for “red flags” in the PU and in other departments that play a part in procurement activities, as these may provide ground for suspicion that corruption is taking place. Such red flags may include:

1. Poor record keeping;
2. Deviations from procedures without written justification;
3. Poorly defined roles/responsibilities; and
4. Poor control procedures.

Senior management should also be suspicious about individuals with procurement responsibilities who maintain extravagant lifestyles, who have excessive interaction with certain providers to the exclusion of others and who are reluctant to delegate. Suspicion should also arise about a procurement system where only a small group of providers compete for and are awarded contracts, with other established providers being reluctant to enter competition.

19.19 Corruption and other malpractices often come to light through allegations made by whistle-blowers. Such allegations should be investigated thoroughly and impartially. Staff should be encouraged to report malpractices and should be protected from discrimination. Community interest and involvement in observing procurement activities and the performance of contractual obligations should be encouraged. For example, when a new school is being built, the local community of parents whose children will attend the school should be encouraged to take interest in the proper construction and acquisition of good facilities. It may be appropriate for community bodies to attend certain stages of the procurement and contract management processes for major projects as observers.

19.20 Integrity and commitment among staff to the goals and interests of the organisation and the State should be recognised as an important aspect of good performance.

Appendix A: Annual procurement plan template

Part 1: Cost estimate

Ref. no.	Item	Priority	No. of units	Unit cost (₦ 000)	Total cost (₦ 000)	Proc. method	Single / multi year	Aggregation	Budget availability	Source funding
1.1 Planned	ECG machines	High	5	2,000	10,000	Open int'l	Single	3 depts. requirement for 1 year	Yes (ref.)	State budget or development partner
1.1 Actual		High	4	2,500	10,000	Open int'l	Single	Unchanged	Yes (ref.)	State budget

Part 2: Time estimate

Dates for completing key procurement processing activities								
	Date procurement process must start	Pre-qual.	Bid docs prepared	Invitation to tender	Bid open	Evaluation/ Tenders Board approval/ Notification of award	Sign contract	Complete manufacture/ delivery/ installation/ testing
Planned	1/9/19	1/12/19	10/12/19	17/12/19	16/1/20	16/2/20	1/3/20	1/5/20
Actual	1/10/19	10/1/20	15/1/20	18/1/20	17/2/20	17/4/20	1/5/20	1/8/20

Notes on completing the annual procurement plan:

1. The annual procurement plan should be divided into two parts, the first part for estimating the cost and the second part for estimating the time required to complete the procurement process.
2. For each item there are separate lines showing the planned and the actual event. When compiling the annual procurement plan, only the planned line should be completed. The actual line should be completed in the course of the financial year as actual bids are received and as the time taken to complete each stage of the procurement process differs from what had been expected at the planning stage.
3. In the above fictitious example, 5 ECG machines were planned to be procured, at an estimated cost of ₦2 million per unit. As 5 units are required the total estimated cost would be ₦10 million. However, the PE has underestimated the cost and the lowest responsive bid is ₦2.5 million per unit. Consequently, the PE decides to scale down the requirement to 4 units to keep within the ₦10 million that is available in the budget.
4. Regarding the estimate of time in Part 2, the units were required to be delivered and installed by 1 June and it was estimated that for this to be achieved, the procurement process must start by 1 September the previous year. However, in the event, the actual procurement process did not commence until 1 October, a month late. There was also delay in carrying out some of the stages of the procurement process, for example the evaluation and contract award stage took two months to complete rather than the expected one month, with the result that, even though the contractor was able to complete its stages of manufacture, delivery, installation and testing within the allotted 2 months, the items were only available 3 months later than had been intended.

Appendix B: Guidelines on Framework Agreements and Framework Contracts

A. Purpose

A.1 These Guidelines are designed to explain in plain language how to make framework agreements and framework contracts for the regular requirements of each Procuring Entity (PE).

B. Definition

B.1 A framework agreement (FA) is a general term for agreements with one or more providers that set out terms and conditions under which specific purchases (call-offs) can be made throughout the period of the agreement. The FA is itself not a binding agreement, but provides bidders with assurance that they will be selected to supply once the PE has an actual, defined need. Once a PE has identified the quantities required, it then may have a further mini-competition between the bidders and enter into a legally binding contract with the successful bidder. This contract is referred to as a framework contract (FC).

B.2 FA are used to acquire supplies and/or general services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. One or more providers are engaged through competitive bidding to supply the item or range of items in the contract or to provide a required service over a pre-determined period of one or more years. The PE selects the bidder who put forward the best evaluated offer, according to the usual procedures for competitive bidding. The successful bidder is awarded a contract providing an exclusive right to supply the PE with that item or service for the stipulated period at the price which they bid and which is made part of the contract terms. Prices would be fixed for the period of the contract unless the contract provides a mechanism for price adjustment.

C. Items that are suitable for framework contracting

C.1 Framework contracting should be used for all the items and services that the PE requires on a regular basis throughout the year, including items in continuous demand but where the quantity of demand varies at different times. These include but are not limited to the following:

Goods

- Stationery and office supplies
- Standard office and school furniture
- Cleaning and sanitary materials
- Electrical fittings
- Desktops and laptops
- Pharmaceuticals
- Medical consumables and devices
- School textbooks

- Laboratory equipment
- Agricultural products and food
- Chemicals and related products
- Spare parts

Works

- Road and building maintenance

Services

- Cleaning
- Security
- Catering
- Transport.

D. Benefits of framework contracting

D.1 Framework contracting is a good way of achieving aggregation, by which the requirements of different end users are consolidated into a single supply contract. Without the use of arrangements for consolidation, requests for quotations (RFQ) are issued for small quantities of a regularly purchased item to meet the needs of a particular section of the PE whenever stocks are low. These arrangements are unlikely to achieve value for money, as providers may be unwilling to provide a discount to their normal price for small orders. Aggregation achieves a larger contract value which providers will be keen to win and will therefore offer competitive prices. This is sometimes referred to as “purchasing power”. Aggregation will also have the effect of bringing a greater proportion of the PE’s procurement requirements above ₦ 100 million, which is the presumptive threshold for open competitive bidding (OCB). OCB is the default method of procurement under the Law and is the method that is considered to be most likely to attract a high number of competitive offers. Part of the role of the Procurement Unit (PU) is to facilitate such consolidation of procurement requirements and thereby to achieve economies of scale.

D.2 If the intention of making repeated orders of small quantities is to evade the use of the appropriate procurement method, such as by keeping contract values below the threshold for open competitive bidding, such a practice would amount to “splitting”, which is prohibited by the Law. Therefore, splitting of procurement requirements which are broadly similar or related should only be permitted when there are clear and calculable economic or technical advantages to be obtained, such as bringing the procurement opportunity within the capacity of small and medium-size enterprises.

D.3 Framework contracting enables the requirements of different users within the PE to be consolidated over a period of a year or longer, thus achieving the maximum aggregation while avoiding the risk of buying more of an item or service than end-users actually require. As the procurement process only needs to be carried out once to obtain all of the PE’s requirements for an item or service over the one-year or other term of the contract, the administrative costs of procurement, mainly staff time, should be reduced.

D.4 A further advantage is that a contract will be in place from which end-users may call-off to meet requirements at any time. There is thus reduced need for stock holding and less need for emergency procurements at times of exceptionally high demand.

D.5 To obtain these advantages, framework contracting is the principal procurement method in most developed countries and is increasingly used in developing countries.

E. Example

E.1 A PE has a continuous requirement for packages of assorted stationery items for use by its various offices. It might acquire these in one of several ways:

1. By each office making separate purchases of stationery packages to meet its own needs whenever stocks are running low. Such purchases would be made through national shopping procedures using RFQ. As small-value contracts would be placed, providers would be unlikely to offer discounts from their usual retail price. As the acquisition procedures would need to be repeated several times throughout the year, they would over the course of the year take up much staff time.
2. By the PU aggregating these requirements and purchasing a year's supply through a bulk order. This procurement would be made through open competitive bidding or restricted bidding depending on the estimated contract value and might therefore be expected to lead to more competitive prices. However, the items would need to be stored in the central warehouse until they were required by individual offices. This would take up much storage space that might be put to better uses. Moreover, as the goods would have to be paid for upon delivery, the PE would have incurred substantial up-front capital costs.
3. By making a framework contract for the items to be delivered to end users at the time they are required. As open competitive bidding or restricted bidding would be used, attractive prices should be obtained through bulk buying. However, as actual purchases would only be made at the time the items were required utilising the contract price, up-front costs would not be incurred and, as stockholding and delivery obligations would be met by the successful contractor, the PE's warehousing requirements would be reduced.

F. Types of framework contracts and their uses

F.1 Framework contracts may be awarded to a single supplier through competitive bidding for the right to supply all requirements of an item or service to the PE for a pre-determined period (1 year or multi-year) at the tendered price. Sole award contracts have the advantage of being simple to operate but it is important that the PE should ensure that the successful contractor is capable of providing a reliable supply or service throughout the contract period. It would be appropriate also to prescribe in the contract terms a minimum stock-holding requirement and minimum response time to a call-off.

F.2 The other main type of FC is a multi-award framework contract. This is also awarded on the basis of competitive bidding, except that instead of awarding the contract only to the best evaluated bidder alone, it is awarded to the two or more bidders whose offers conformed to the specifications and who offered the best prices (i.e. the first and second best evaluated bidder). End-users may decide to call off their requirements from any of the approved contractors. Each contractor is bound to the price in its offer, except that it may choose to improve upon the terms in order to win more business, e.g. by offering an additional discount or an updated version of the model required.

F.3 As multi-award FC are more complex to operate PEs should initially make sole-award FC. They may subsequently with the approval of the Bureau make multi-award contracts once there is greater familiarity with framework contracting among their staff and among the business community.

F.4 Both sole-award and multi-award FC should be obtained through competitive bidding, which may be open competitive bidding or restricted competitive bidding depending on the estimated contract value.

G. Pre-qualification of bidders

G.1 PEs should consider whether bidders for a FC should be pre-qualified. A decision to use pre-qualification procedures should normally be based on the value of the whole contract and on the criticality of the item to be supplied, for example, it is important to ensure that supplies of pharmaceutical products and of medical consumables and devices are obtained only from approved sources that have met the appropriate registration requirements.

G.2 Where pre-qualification is used, PEs should follow the usual procedures that precede any invitation to bid. The pre-qualification criteria would be based only on a provider's fitness to supply and price information should not be sought at this stage.

H. The contract term

H.1 The term or period of the contract would normally be for one year or more. Prices for most items or services can be fixed for this period. Longer contracts should only be made when there is a suitable price adjustment mechanism that can be used or for service contracts where it is the market practice to use longer contract terms.

I. Price adjustment mechanism

I.1 Most framework contracting should be based on prices being fixed for the duration of the contract term. Bidders need to be aware that, when tendering for a framework contract, they must accept the risk of any adverse price movement from their sources and are obliged to continue to supply at the prices contained in the contract. Any failure to supply at the contracted prices should be treated as breach of contract.

I.2 Price adjustments should only be allowed when explicitly provided for in the bidding document and in the subsequent contract terms. Such provision might apply to items where price fluctuations are subject to government regulation, as in the case of certain fuel products. For multiyear contracts, there might be a fixed annual percentage increase to allow for inflation, or increases might be based on certain indices, such as the labour indices for service contracts.

J. Procedure for entering into framework contracts

J.1 The PU should prepare an estimate of the expected demand for a product or service among all offices and sub-divisions of the PE over the course of a financial year. Similar products might be grouped together as a general category for supply, e.g. requirements for pens, pencils, erasers, etc. might be grouped together under a single contract for the supply of stationery, though demand for each item should be estimated separately. Alternatively, a general category might be divided into different lots, so that bidders may bid for one or more lots rather than for supply of the whole category, for example, stationery products might be divided into:

Lot 1: Paper products;

Lot 2: Writing instruments;

Lot 3: Cartridges and other printer supplies, etc.

J.2 This quantitative estimate should be obtained through analysing purchases made over recent financial years, plotting the usage trend and anticipated factors likely to affect future demand, such as the opening of new offices or the introduction of new services. End-users should be asked about their anticipated requirements. Likely budget constraints should also be taken into account.

J.3 The consolidated estimate of requirements for a product or service should be included in the bidding document. The document should make clear that this is a best estimate of demand that should guide bidders in their pricing but that the PE is not committed to purchasing the full quantity in the estimate, as actual purchases will be based on end-users' actual requirements. However, as a commitment to purchase is an essential feature of a contract, there should be a lower quantity included in the bidding document that the PE would be certain to require. (See the worked example provided later in these Guidelines.)

J.4 Any bid security or performance security that is required should be based on the contractual commitment.

J.5 In addition to providing in the bidding document a best estimate of requirements and a minimum contractual commitment, PEs may wish to consider stating a maximum requirement above which the contract would cease to apply, as a safeguard against a surge in demand that might enable better terms to be obtained through retendering. However, such provision should not be necessary in most cases.

J.6 The bidding document should contain the following information:

1. An explanation that this is a framework contract by which the items will not be purchased at the time that the contract is made but that end users will call-off items from the contract according to their actual requirements and that payment will be made at the time when goods are delivered in response to the call-off;
2. That this is a sole-award FC, which will embody a commitment on the part of the PE to obtain all of its requirements for the items or services in the contract over the contract term from the successful bidder, subject to the bidder's ability to meet its contractual obligations; (if a multi-award FC, it would be stated how many contractors will be awarded the contract);
3. The period over which the contract will be in force;
4. The estimate of requirements over the contract period;
5. The minimum contractual commitment over the same period;
6. The end-user locations or central store where deliveries should be made in response to a call-off;
7. An explanation that bidders should submit the unit price for each item which they would be obliged to honour throughout the period of the contract, unless a price adjustment formula is made part of the contract; if any price adjustment mechanism would apply, the relevant index should be referred to;
8. The evaluation criteria, including evidence to be provided to indicate the provider's ability to supply the items or provide the services required;
9. Any other contractual terms, such as a requirement to hold a minimum level of stock and to deliver the required goods within a specified time following receipt of a call-off;
10. The method by which call-offs under the contract will be placed, e.g. electronically or by other means and how contractors may validate the authenticity of any call-off they receive; and
11. The PE's right to terminate the contract in the event of the contractor's failure to meet the contract terms or at the convenience of the PE.

J.7 Bidders would then submit their offers according to the usual tendering procedures, except that they would submit a unit price for each of the items to be acquired rather than a price for the total estimated contract value. Offers would be evaluated according to the evaluation criteria and an award would be made subject to the necessary approvals, i.e. by the PE's tenders' board and subject to prior review by the State Bureau on Public Procurement (Bureau), where required.

K. Call-offs from a sole-award framework contract

K.1 The PE would obtain all of its requirements for the items or services from the contractor. Separate purchases of small quantities through RFQ procedures would not be permitted, unless it were demonstrated that the framework contractor was unable to supply these items. As there would be a contract in place with an approved contractor for supply of the items required, individual call-offs would not be advertised and supply of these items would not be open to other providers until the contract period had expired.

K.2 Call-offs would be made by authorised end-users within the PE using standard requisitioning procedures. The requisition form should include the following information:

- The date of the call-off;
- The contract number;
- A description of the item and the required quantity;
- The place and required time of delivery; and
- Any packaging or shipping instructions.

K.3 The information on the requisition form must conform to the requirements in the contract, for example, the items called off must be in accordance with the items in the contract without variations of type or quality. The requisition form should be sent to the PU and to any other body whose approval is required. The PU would then place a local purchase order with the contractor by the means specified in the contract, which might be by the physical delivery of an order form or by electronic means. The PU must maintain records of call-offs made from each framework contract, so that the total quantity of items called-off from the contract is known. It should ensure also that sufficient budget is available to pay for the items purchased.

K.4 In the interest of efficiency, these procedures should be automated as far as facilities are available. Requisitions should be sent electronically to the PU who would turn them into purchase orders for sending to the contractor.

K.5 Payment should be made following delivery of the items to the specified location. The end-user or store manager should send the goods received note to the Accounts Office, via the PU, for effecting payment. The usual payment time limits would apply, including the provision for interest to be payable on payments that are delayed by more than 60 days.

L. Performance monitoring

L.1 The PU should monitor the performance of contractors and address any instances of poor performance. Performance records should be taken into account in decisions on future contract award.

L.2 The accuracy of the quantitative estimate of requirements given in the bidding document should be monitored against actual demand. If there is a significant difference, this should be queried. Were end-users overstating their requirements? If so, under-utilisation should be taken into account in future estimates. Were some offices obtaining supplies of these items by making small purchases outside of the FC? The reason for this should be investigated and, if not based upon the contractor's inability to supply, any such practice should be prevented.

L.3 The PU should also monitor the prices obtained through framework contracting and compare these to the prices obtained previously when the same items were bought through

RFQ procedures, so that the benefits obtained through framework contracting will be established.

M. Worked example

M.1 There is a regular requirement for a range of disposable medical items, such as syringes, vials, bandages, medical thermometers, plasters, cotton wool, examination gloves and surgical gloves, to meet the needs of public hospitals and clinics in the State. It is proposed to make a one-year sole-award framework contract for the supply of a package of these items. The PU would estimate the quantitative requirement for each of these items based on records of consumption over the past four years. It would also estimate the minimum contractual commitment that could be made, i.e. the “safe” estimate below which demand would be unlikely to fall. The following hypothetical results in Table A might be obtained for a lot consisting of four of these items (in practice the construction of packages would be more complex than these examples indicate as, for example, there are different size and usage requirements to be taken into account):

Table A

Medical device	Number of units consumed				Estimated demand next year	
	4 years ago	3 years ago	2 years ago	Last year	Best estimate	Minimum contractual commitment
Pack of 100 2.5 ml. disposable syringes)	300	320	330	340	350	300
Pack of 200 cotton wool balls	200	190	210	200	200	190
Pack of 12 non-woven triangular bandages	100	85	80	80	80	75
Pack of 100 latex examination gloves	150	140	130	120	110	100

M.2 For syringes there is a steadily rising demand, perhaps on account of the Ministry’s expanding immunization programme, so the best estimate of demand for next year should take this rising trend into account, with the minimum contractual commitment being based on the lowest level of demand. Demand for cotton wool balls fluctuates but with no clear trend, so the best estimate should be based on the average of the past four years and the minimum commitment on the lowest figure. Demand for bandages appears to have stabilised after a decline in earlier years, so the estimate might be based on consumption in most recent years. For examination gloves, it would appear that demand is declining and this trend might be predicted to continue, with the minimum commitment allowing for the possibility that the downward trend might accelerate.

M.3 The estimate of requirements should not be based on the consumption trends alone. End-users should be consulted about their anticipated requirements. For example, if a new clinic is to open, this may lead to demand for all these items being higher than the trend figures would indicate.

M.4 Once the best estimate of demand for each item during the forthcoming year has been obtained, together with the minimum commitment that could be included in the contract, bidding documents would be prepared inviting bidders to submit offers to supply these related items as a package under a framework contract for supply to each public hospital and clinic, with call-offs depending on end-users' actual requirements. Bidders were asked to bid to supply these items as a lot or package. As the combined estimated value would be above ₦ 100 million, open competitive bidding would be used (national competitive bidding, as these are off-the-shelf items readily available in Nigeria).

M.5 Let us imagine that five bids are obtained through national competitive bidding and that all offers have passed technical evaluation and are from qualified suppliers as set out in Table B.

Table B

Bidder	Unit price for pack of 100 2.5ml. disposable syringes	Unit price for pack of 200 cotton wool ball	Unit price for pack of 12 non-woven triangular bandages	Unit price for pack of 100 latex examination gloves	Overall cost of offer
Best estimate of demand	350	200	80	110	
A	₦ 1,600	No offer	No offer	No offer	Disqualified
B	₦ 1,800	₦ 320	₦ 1,690	₦ 1,100	₦ 950,200
C	₦ 1650	₦ 330	₦ 1,700	₦ 1,050	₦ 895,000
D	₦ 2,000	₦ 350	₦ 1,750	₦ 950	₦ 1,014,500
E	₦ 1,670	₦ 310	₦ 2,000	₦1,000	₦ 916,500

M.6 Bidder A has only bid for supply of one item, whereas the bidding document asked for supply of all these items as a lot and should therefore be disqualified. In financial evaluation, the unit prices offered by Bidders B, C, D and E in Table B would be multiplied by the estimated demand, as derived from Table A, to produce the best overall package cost. On the basis of these calculations, the framework contract would be awarded to Bidder C. Bidder C

would therefore be given the right to supply the whole package of these medical consumables to all public hospitals and clinics for the one-year contract term.

N. Anticipated problems and how they might be overcome

Problem	Suggested solution
There are no reliable records of usage in recent years on which to base the estimate of demand.	Record the average weekly consumption for each item in each type of work unit, then aggregate to produce an estimate for a whole year's consumption in the whole PE. This would be a rough-and-ready initial estimate which can be refined in subsequent years as consumption records are better maintained.
Bidders are unfamiliar with what is expected of them under FC.	There should be a briefing session for all interested suppliers when initial FCs are put out for bidding.
End-users continue to make small purchases under national shopping for items that are covered by a FC.	The PU should be centralized in the headquarters of the PE to control the use of procurement methods. A circular should be issued to explain to all end-users the obligations under FC.

Appendix C: Monthly Report on Procurement

Report for month					
Part 1: New procurements initiated by the issue of an invitation to bid					
Reference number	Description of item to be procured	Has item been included in annual procurement plan?	Proposed method of procurement	Planned date of award	Estimated contract value (₦ million)
Part 2: Procurements in progress					
Reference number	Description of item to be procured	Stage reached	Procurement method being used	Planned date of award	Estimated contract value (₦ million)
Part 3: Contracts awarded					
Reference number	Description of item procured	Number of bids received	Name of successful contractor	Date of award	Contract value (₦ million)
				Total for month	
Part 4: Contract amendments and variations					
Reference number	Description of item procured	Details of amendment or variation	Reason	Date	Revised contract value (₦ million)

Report for month					
Part 5: Contracts completed					
Reference number	Description of item procured	Name of contractor	Date of completion	Whether performance satisfactory	Total amount paid (₦ million)

Appendix E: Sample Code of Conduct (Ethics) for staff engaged in procurement

A. Preamble

A.1 Public procurement in the Yobe State is governed by the Public Procurement Law 2016, its Guidelines and instructions issued by the State Bureau on Public Procurement (Bureau). Every procuring entity (PE) is responsible for planning and implementing its procurement. The Bureau is responsible for ensuring that the procurement procedures established under the Law are complied with.

A.2 This Code of Ethics is designed to help employees of PEs to comply with the Law and to adopt good practices and ethical standards. Employees who violate the Law or engage in unethical business dealings contrary to the Civil or Public Service Rules of Yobe State may be subject to disciplinary proceedings.

B. Applicability

B.1 The Code of Ethics shall apply individually and collectively to employees of the PE.

B.2 The Code of Ethics shall be signed by all employees of the PE who participate at any stage of public procurement proceedings.

B.3 A PE shall make available to the Bureau on request a list of all signatories to the Code of Ethics.

B. 4 The Bureau shall be subject to the Code of Ethics in its capacity as a procuring entity.

C. General principles

C.1 A PE shall not commence procurement proceedings without confirmation that sufficient funds are available.

C.2 A PE shall carry out their procurement activities using well prepared standard tender documents with complete information and give equal opportunity to all interested bidders.

C.3 When preparing tender documents or request for proposals, a PE should avoid inclusion of conditions which are unfair, discriminatory or unreasonable.

C.4 A PE shall ensure that its procurement achieves value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.

C.5 Information given by a PE to other parties participating in public procurement should be true, accurate and fair and never designed to mislead.

C.6 A PE shall ensure that all instructions to vendors are given in writing by authorized officers.

C.7 A PE shall not delay payments which are due to the contractors, suppliers, providers of services, consultants or others.

C.8 Impunity, which is freedom from any risk of being punished for doing something wrong, shall not be tolerated.

C.9 Public procurement activities shall be undertaken bearing in mind the requirement for meeting the closest public scrutiny

D. Accounting Officers

D.1 Accounting Officers shall ensure availability of funds to meet the commitments under procurement contracts. They must ensure that procurement bills are paid in a timely manner and avoid accumulation of pending bills.

D.2 Accounting Officers shall appoint the bodies stipulated in the Procurement Law to carry out the responsibilities assigned to them under the Law and shall allow these bodies to perform their assignments without undue influence or interference from their offices or any other quarters.

D.3 Accounting Officers shall be responsible for ensuring observance of the Code of Ethics by their employees.

E. Employees of Procuring Entities

E.1 All employees shall observe this Code of Ethics and shall understand the value and necessity of integrity.

E.2 Employees of the PE shall be accountable for maintaining the highest standards of integrity and professionalism in their operations.

E.3 Employees shall comply both with the letter and spirit of the law applicable to public procurement.

E.4. Employees shall not solicit or accept bribes or be involved in corrupt or fraudulent practices, patronage or nepotism.

E.5 Employees shall prevent theft or misappropriation of state revenues and assets.

E.6 Stores, equipment and assets bought or acquired by a PE shall not be used for personal benefit.

E.7 All forms of conflict of interest shall be avoided.

E.8 All employees in public procurement shall serve, support and cooperate with one another and accord mutual respect and courtesy without compromising their independent and mutually distinct roles.

E.9 Information received from participants in public procurement shall not be disclosed to unauthorized persons and shall not be used for personal gain.

E.10 Gifts and favours other than items of very small value such as business diaries and calendars shall not be accepted.

E.11 Only modest hospitality within the policy guidelines of the PE may be accepted. Moreover, care must be taken that such hospitality is not deemed to influence the making of any business decisions. Moreover, employees shall avoid excessive socializing with members of the business community who participate in public procurement.

E.12 No employee shall knowingly lie or mislead or shall obstruct or hinder another person carrying out a duty or function or exercising a power relating to procurement.

E.13 No employee shall unduly influence or exert pressure on any member of a Tender Board or other committee or any other employee of the PE to take a particular action which favours or tends to favour a particular bidder.

E.14 No employee shall open any sealed bid, including such bids as may be submitted through an electronic system and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the bid or documents.

E.15 Employees undertaking evaluation shall perform their work diligently and expeditiously, strictly applying the stated evaluation criteria, without discrimination.

E.16 All employees shall maintain confidentiality in the evaluation of tenders.

E.17 All employees shall respond promptly and courteously to all proper requests for information, complaints or enquiries.

E.18 Employees who are members of professional organizations and institutes are required to uphold the code of ethics of their respective professions, provided that these do not conflict with the public procurement law.

E.19 Employees shall observe other laws, regulations, rules and practices relating to health and safety standards as well as environmental protection. This will particularly apply in the preparation of procurement specifications and in the inspection and acceptance of the item of procurement.

F. Additional obligations of Procurement Officers

F.1 Procurement Officers shall ensure integrity of the standing list of registered bidders and fairness and non-discrimination in sharing the bidding opportunities.

F.2 Procurement Officers shall not allow their activities to be unfairly influenced by unauthorized persons from any quarter.

F.3 Procurement Officers shall ensure the security and safe custody of procurement information received or generated and shall not allow access to the information to persons who have no official reasons to know.

F.4 Procurement Officers shall carry out their procurement activities in a timely manner, including provision of required procurement information and reports.

F.5 Procurement Officers shall maintain the good image and reputation of their procuring entities.

F.6 When carrying out their duties as the secretary of any statutory committee, Procurement Officers shall accurately record the minutes of the committees and avoid distortions.

F.7 Procurement Officers shall endeavour to protect their procuring entities from risks of stock outs, overstocking, overpricing and undeserving payments.

Declaration to be signed by each person involved with procurement and retained by the procuring entity

My signature indicates that I have read and fully understood the contents of the Public Procurement Code of Ethics and my responsibilities under the Code.

Signature

Name

Position

Office address

Telephone

E-mail

Date