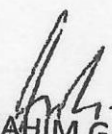


M.S.A

I ASSENT THIS 22ND DAY OF JULY 2016


ALH. IBRAHIM GAIDAM
EXECUTIVE GOVERNOR
YOBE STATE

A BILL

FOR

A LAW TO ESTABLISH THE STATE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY
AUTHORITY RESPONSIBLE FOR THE MONITORING AND OVER
SIGHT OF PUBLIC PROCUREMENT AND OTHER MATTERS
RELATED THERETO

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

1 Citation

This Law may be cited as the Yobe State Bureau on Public Procurement Law, 2016.

2 Interpretation

In this law:

“Accounting Officer” means the person charged with line supervision of the conduct of all procurement processes;

“Approving Authority” means the person charged with the overall responsibility for the functioning of a Ministry, Extra Ministerial Department, Corporation, Board or Parastatal;

“Assets” includes tangible and intangible things which have been or may be sold or procured for consideration;

“Bid Security” means a form of security assuring that the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid;

“Certificate of No Objection” means the document evidencing and authenticating that due process and the letters of this law have been followed in the conduct of a procurement

proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers;

“Contractor or Supplier” means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted;

“Debar” means the placing of a firm company or natural person on a list of persons ineligible to participate in any procurement proceedings under this law;

“Excessive Price” means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit;

“Goods” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as service incidental to the supply of the goods;

“Interim Performance Certificate” means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion;

“International Competitive Bidding” means the solicitation of bids from both domestic and foreign contractors and suppliers;

“Lowest Evaluated Responsive Bid” is the lowest price bid amongst the bids that meet all the technical requirements and standards as contained in the tender document;

“Margin of Preference” means the extra mark up on price allowed any domestic contractor or supplier bidding under international competitive bidding without being otherwise disadvantageous to the bid in terms of price;

“Minor” means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau;

“Monetary Threshold” means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract;

“Negotiation” means discussions to determine the terms and

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conditions of a contract or procurement;

"Open Competitive Bidding" means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;

"Procurement Entity" means any public body engaged in procurement and includes a Ministry, Extra Ministerial Office, Government Agency, Parastatal or Corporation;

"Procurement Proceedings" means the initiation of the process of effecting procurement up to award of procurement contract;

"Procurement" means acquisition;

"Public Procurement" means the acquisition by any means of goods, works or services by the government;

"Relevant Authority" includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission;

"Services" means the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction;

"Solicitation Documents" means the bid solicitation documents or any other documents for solicitation of offers, proposals or quotations;

"State Competitive Bidding" means the solicitation of bids from local contractors and suppliers registered or incorporated to carry on business under the Nigerian law;

"Substantially Responsive" means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents;

"Supplier" means a real or legal person that provides supply of goods, contracting of works or consultancy;

"Threshold" refers only to the approving and not the actual process of award;

"Validity Period" means the period during which a bidder agrees not to increase the cost of bids or to remove any components of the bid;

"Works" means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection of a building, installation of equipment or materials, decoration and finishing, as well as services incidental to

construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement contract, where the value of those services does not exceed that of the construction itself.

PART II -

ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

3 Establishment
of the Bureau

1. There is hereby established a body to be known as the Yobe State Bureau on Public Procurement (in this Law referred to as "The Bureau").

2. The Bureau:

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name;
- (c) may acquire, hold, or dispose of any property moveable or immovable for the purpose of carrying out its functions under this law.

4 Establishment
of the Council

1. There shall be established for the state a council to be known as the Yobe State Council on Public Procurement.

2. The Council shall comprise of:

- (a) the Commissioner of Finance as the Chairman;
- (b) the Attorney General and Commissioner for Justice;
- (c) the Secretary to the State Government;
- (d) the Head of Service;
- (e) the Economic Adviser to the Governor
- (f) Six other members of proven integrity to be appointed by the Governor, two from each of the senatorial districts of the state.

(g) The Director-General of the Bureau who shall be the Secretary to the Council.

(3) Notwithstanding the provision of sub section 1 above the council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards a quorum.

(4) Members mentioned in paragraph (f) shall be appointed by the Governor.

(5) The members representing the 3 senatorial zones of the

State shall be part time members and shall serve for a period of four years and may be renewable for another term of four years only.

5 Function of
the Council

The Council shall:

- (a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this law by procuring entities;
- (b) consider and approve policies on public procurement;
- (c) approve the appointment of the Directors of the Bureau;
- (d) recommend the appointment of the Director-General of the Bureau;
- (e) receive and consider for approval the audited account of the Bureau;
- (f) approve changes in the procurement process to adapt to improvement in modern technology;
- (g) as far as practicable, benchmark the policies on procurement under this Law with policies for procurement approved from time to time by the partner agency created or existing under the Public Procurement Act of the Federal Government of Nigeria; and
- (h) Give such other directives and perform such other functions as may be necessary to achieve the objective of this Law.

6 Objectives of
the Bureau

(5) The objectives of the Bureau are:

- (a) the harmonization of existing government policies on public procurement and ensuring probity, accountability and transparency in the procurement process;
- (b) the establishment of pricing standards and benchmarks; ensuring the application of fair, competitive, transparent, value for money standards and practices for the procurement and disposal of public assets; and services; and
- (c) the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

7 Functions of
the Bureau

The Bureau shall:

- ✕ (a) formulate the general policies and guidelines relating to the public sector procurement for the approval of the council;
- (b) subject to thresholds as may be set by the council, certify state procurement prior to the award of contract;
- (c) supervise the implementation of established Procurement policies;
- ✕ (d) monitor the prices of tendered items and keep a database of standard prices;
- ✕ (e) Publish the details of major contracts in the procurement journal;
- (f) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- ✕ (g) maintain a state database of the particulars and classification and categorization of contractors and service providers;
- (h) collate and maintain, in an archival system, all state procurement plans and information;
- ✕ (i) undertake procurement research and surveys;
- (j) organize training and development programmes for procurement professionals;
- (k) periodically review the socio-economic effect of the policies on procurement and advise the council accordingly;
- ✕ (l) prepare and update standard bidding and contract documents;
- (m) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (n) review the procurement and award of contract, procedures of every entity to which this law applies;
- ✕ (o) perform procurement audits and submit such report to the house of Assembly quarterly;
- (p) introduce, develop, update and maintain related database and technology;
- (q) establish a single internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times; and
- (r) co-ordinate relevant training programmes to build institutional capacity.

8 Powers of
the Bureau

- (1) The Bureau shall have the power to:
 - (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law by the procuring entity;
 - (b) subject to paragraph (a) of this subsection, issue certificate of "No Objection" for contract award within the prior review threshold for all procurements within the purview of this Law;
 - (c) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of certificate of "No Objection" under this Law;
 - (d) where a reason exists:
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;
 - (ii) review and determine whether any procuring entity has violated any provision of this Law;
 - (e) debar any supplier, contractor or service provider that contravenes any provision of this Law and regulations made pursuant to this Law;
 - (f) maintain a database of state contractors and service providers and to the exclusion of all procuring entities prescribe classifications and categorizations for the companies on the register;
 - (g) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;
 - (h) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;
 - (i) recommend to the Council, where there are persistent breaches of this Law or regulations made under this Law for:
 - i. the suspension of officers concerned with the procurement or disposal proceeding in issue;
 - ii. the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be;
 - iii. the discipline of the Accounting Officer of any procuring

- entity;
- iv. the temporary transfer of the procuring and disposal function of a procuring and disposal entity to a third party procurement agency or consultant; or
- v. any other section that the Bureau may consider appropriate;
- (j) call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding;
- (k) act upon complains in accordance with the procedures set out in this Law;
- (l) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
- (m) do such other thing as are necessary for the efficient performance of its functions under this Law;

9 Director-General of the Bureau

- (1) (a) There shall be a Director-General for the Bureau who shall be appointed by the Governor on the recommendation of the Council after a competitive selection subject to the confirmation of the Yobe State House of Assembly.
- (b) The Director General shall be a person who possesses a degree or its equivalence in any of the following areas; and shall have been so qualified for a period of not less than 15 years.
 - i) Public Administration
 - ii) Accountancy
 - iii) Law
 - iv) Social Sciences or
 - v) other field related to the aforementioned.
- (c) Must be an indigene of Yobe state
- (2) The Director-General shall be:
 - (a) the Chief Executive and the Accounting Officer of the Bureau;
 - (b) responsible for the execution of the policy and day to day administration of the affairs of the Bureau; and
- (3) The Director-General shall hold office:
 - (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more;

(b) on such terms and conditions as may be specified in his letter of appointment.

(4) Notwithstanding the provisions of this section the Director-General of the Bureau may be removed from office at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud and manifested incompetence.

10 Principal Officers of the Bureau

(1) The Council shall appoint the principal officers of the Bureau after competitive selection process.

(2) The principal officers appointed under subsection (1) of this section shall each have the requisite qualifications and experience required for the effective performance of the functions of the respective departments and the Bureau as specified under this Law.

(3) The council shall have power to modify the operational structure of the bureau as may be necessary to enhance the bureau's duties and functions under this law.

11 Other staff of the Bureau

(1) The council may appoint for the bureau such officers and other employees as it may from time to time deem necessary.

(2) Subject to the provision of any Law of the State regulating Pension, the terms and conditions of service (including remuneration, allowances benefits and pensions) of officers and employees of the Bureau shall be as determined by the council.

(3) Without prejudice to the generality of subsection (1) of this section the council shall have power to, in consultation with the State Head of Service, appoint either on transfer or on secondment from the civil service in the state, such number of employees as may be required to assist the Bureau in the discharge of any of its functions under this law and persons so employed shall be remunerated (including allowances) as the council may consider appropriate.

12 Staff regulations

(1) The Council may subject to the provisions of this law and within six months of its inauguration, make staff

regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
- (b) appeals by such employees against dismissal or other disciplinary measures.

(2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the state shall be applicable.

13 Pension provision

Employees of the Bureau shall be entitled to pension and other retirement benefits as prescribed under the pension law of the state.

14 Funds of the Bureau

- (1) The Bureau shall establish and maintain fund, to be approved by the council into which shall be paid and credited:
 - (a) the sums appropriated by the House of Assembly for the running of the Bureau;
 - (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
 - (c) all other assets which may, from time to time, accrue to the Bureau.

(2) The Bureau shall charge its fund to meet all its expenditure.

3) The Council may make financial regulations for the Bureau:

- (a) specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
- (b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the regulation.

- (4) The Bureau may, from time to time, apply the proceeds of the fund for:
- (a) the cost of administration of the Bureau;
 - (b) the payments of salaries, fees and other remuneration of employees of the Bureau or experts or professionals appointed by the Bureau;
 - (c) the maintenance of any property acquired by or vested in the Bureau; and
 - (d) any matter connected with all or any of the functions of the Bureau under this law.

15 Financial year
and annual
Report

(1) The financial year of the Bureau shall be the same as that of annual report of the state government.

(2) Not later than 6 months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.

(3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the council may direct.

(4) The Bureau shall, within six months after the end of the financial year to which the accounts relate, cause the accounts to be audited in accordance with guidelines supplied by the Auditor General of the state.

(5) The Bureau shall at the end of each financial year, prepare and submit to the council a report in such form as shall accurately capture all the activities of the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

16 Legal
proceedings

(1) Subject to the provisions of this law no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending claimant, plaintiff or his agent, and the notice shall explicitly state:

- (a) cause of action;
- (b) the particulars of the claim;

(c) the name and address of legal practitioner of the intending plaintiff; and

(d) The relief being sought.

(2) the Director-General of the Bureau, its officers, employees or agents shall not personally be subjected to any action, claim or demand by, any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this law upon the Director-General, officers, employees or agents of the bureau.

(3) A member of the Bureau or the Director-General or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Bureau.

(4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this law or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post and addressed to the Director-General as the principal officer of the Bureau.

PART III SCOPE OF APPLICATION

17 Scope of
Application

(1) The provisions of this law shall apply to all procurement of goods, works, and services carried out by:

(a) the Government of Yobe State and all procurement entities.

(b) All entities outside subsection (1)(a) of this section which derive funds appropriated or proposed to be appropriated for any type of procurement described in this Law from public funds; and

(c) Public procurement by Local Government in the state.

(2) The provisions of this law shall not apply:

(a) to the procurement of special goods, works and services involving state security;

(b) to any public procurement which the State Government and the Federal Government are jointly executing; provided however that this Law shall apply to any public procurement

solely executed by the State Government in respect of which a reimbursement may be claimed from the Federal Government; and

© to procurement by the State Government in an emergency.

(3) Where a provision of this Law conflicts with the procurement rules of a Funding Agency, which application is mandatory, the procurement rules of the Funding Agency shall prevail.

(4) The State Government may enter into a concession contract with a corporate body for the provision and operation of public utilities and services through a "Build-Own-Operate", "Build-Operate-Transfer", or "Build-Own-Operate-Transfer" agreement under joint Public and Private Sector participation.

PART IV

FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

18 Fundamental principles for procurement

(1) Subject to any exemption allowed by this law, all public procurement shall be conducted:

(a) subject to the prior review thresholds as may from time to time be set by the Council pursuant to paragraph (a) of section 5;

(b) based only on procurement plans supported by prior budgetary appropriation and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau, has obtained a certificate of No Objection to contract award from the Bureau;

(c) by open competitive bidding;

(d) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with this law and regulations made there from;

(e) with the aim of achieving value for money and fitness for purposes;

(f) in a manner which promotes competition, economy and efficiency; and

(g) in accordance with the procedures and timeline laid down in this law and as may be specified by the Bureau from

time to time.

(2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or revenue account of the State or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payments or other form of request for payments is accompanied by a "Certificate of "No Objection to an Award of Contract" duly issued by the Bureau.

(3) for all cases where the Bureau shall set a prior review threshold, the Bureau shall prescribe by regulation, and guidelines, the conditions precedent to the award of Certificate of No Objection under this law

(4) Subject to the prior review thresholds, as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of 'No Objection' to contract award" duly issued by the Bureau shall be null and void;

(5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two, Suppliers, Contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibility arising from this law for the non-performance or improper performance of any contract awarded pursuant to this law.

(6) All bidders, in addition to the requirements contained in any solicitation documents, shall:

(a) possess the necessary:

(i) professional and technical qualifications to carry out particular procurements;

(ii) financial capability;

(iii) equipment and other relevant infrastructure;

iv) shall have adequate personnel to perform the obligations of the procurement contract;

(b) possess the legal capacity to enter into the procurement contract;

(c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;

(d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;

(e) not have any Director who has been convicted for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;

(f) include or attach an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder, and confirm that, all information presented in its bid are true and correct in all material particulars.

(7) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.

(8) A bidder may have its bid or tender excluded from any particular procurement proceedings where it is established by a procuring entity or the Bureau that:

(a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift or money or any tangible item, or has promised, offered or given employment or any other benefit item or a service that can be quantified in monetary terms to a current or former employee of procuring entity or the Bureau, in an attempt to influence any action, or decision making of any procurement activity; or

(b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement; or

(c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company

registered under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceedings; or

(d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions unless such bidder has obtained a lawful permit with respect to allowance deference of such outstanding payment thereof in installments; or

(e) the bidder has been validly convicted for a crime committed in connection with a procurement proceedings; or any other crime committed to gain financial profit;

(f) the bidder has, in its management or is in any portion owned by, any person that has been validly sentenced for crime committed in connection with a procurement proceedings, or other crime committed to gain financial profit; or

(g) the bidder fails to submit a statement regarding its dominating or subsidiary relationships with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding whom remains in subordinate relationship with other participants to the proceedings.

(9) In such cases the procuring entity shall inform the Bureau and person affected by any of the provisions subsection 8(a) – (g) in writing, that the bid or tender question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to public procurement proceeding in question.

(10) All communications and documents issued by or to procuring entities and the Bureau shall be in the English language

(11) All communications regarding any matter derived from this law or proceedings of public procurement shall be in writing.

(12) Every procurement entity shall maintain both file

electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.

(13) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:

- (a) information identifying the procuring entity and the contractor;
- (b) the date of the contract award;
- (c) the value of the contract; and
- (d) the detailed records of the procurement proceedings

(14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau.

(15) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.

(16) The burden of proving fulfillment of the requirement for participation in any procurement proceedings shall lie on the supplier or contractor.

(17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.

(18) Notwithstanding sub-section (17), the Bureau may refuse to issue a "Certification of "No Objection to Contract Award" on the grounds that the price is excessive.

(19) Pursuant to subsection (18), the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

(20) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this law.

(21) The accounting officer of procuring entity has the responsibility to ensure that the provisions of this law and the regulations laid down by the Bureau are complied with, and

concurrent approval by any Tender Board shall not absolve the accounting officer from accountability for anything done in contravention of this law or the regulations laid down hereunder.

(22) Procurement and disposal decisions of a procuring entity shall be taken in strict compliance with the provisions of this law and any regulations as may from time to time be laid down by the Bureau.

(23) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.

(24) A procuring entity shall not request or stipulate that a bidder shall engage a particular sub-contractor as a requirement for participating in any procurement proceedings.

(25) all procurement contracts shall contain provisions for arbitration proceedings as the primary forms of dispute resolution.

(26) The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the central bank of Nigeria valid on the day of opening of a tender or bid.

(27) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART V- ORGANIZATION OF PROCUREMENT

19 Approving authority

18 Subject to the monetary and prior review thresholds for procurements as may from time to time be determined by the council, the following shall be the approving authority for the conduct of public procurement.

(a) in case of:

- (i) a government agency, board, parastatal, or corporation, the agency, board or parastals tenders board; and
- (ii) a ministry or extra-ministerial entity, the ministry tenders board.

20 Procurement planning

Subject to regulations as may from time to time be made by the Bureau under the direction of the council; a procuring entity shall plan its procurement by:

- (i) preparing the need assessment and evaluation;
- (ii) identifying the goods, works or services required;
- (iii) carrying out appropriate market and statistical surveys and on that basis prepare analysis of the cost implications of the proposed procurement;
- (iv) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (v) integrating its procurement expenditure into its yearly budget;
- (vi) prescribing any method for effecting the procurement subject to the necessary approval under this law; and
- (vii) ensuring that the activities and duties stipulated in this section shall be carried out by the procurement planning committee;

21 Procurement implementation

Subject to regulations as may from time to time be made by the Bureau under the directions of the council, procuring entity shall, in implementing its procurement plans:

- (a) advertise and solicit for bids in accordance with the provisions of this law and guidelines as may be issued by the Bureau from time to time;
- (b) invite two credible persons as observers in every procurement process, one person each representing a recognized;
 - (i) private sector professional organization whose expertise is relevant to the particular goods or services being procured; and
 - (ii) non-governmental organization working in transparency, accountability and anticorruption areas and the

observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations;

(c) receive, evaluate and make a selection in accordance with the provisions of this law and guidelines as may be issued by the Bureau from time to time;

(d) obtain approval of the approving authority before making an award;

(e) debrief the bid loser on request;

(f) resolve complaints and disputes if any;

(g) obtain and confirm the validity of any performance guarantee;

(h) obtain a "Certificate of "No Objection" to Contract Award" from the Bureau within the prior review thresholds as stipulated in section 4(a);

(i) execute all contract agreements; and

(j) announce and publicize the award in the format stipulated by this law and guidelines as may be issued by the Bureau from time to time.

22 Accounting
officer

(1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of Ministries the Permanent Secretary and in the case of Extra-Ministerial Departments and Parastatals, the Director-General, Executive Secretary or officer of Co-ordinate responsibility.

(2) The accounting officer of a procuring entity shall have overall responsibility for the planning, organization, evaluation and execution of tenders of all procurements and in particular shall be responsible for:

(a) ensuring compliance with the provisions of this law by his entity and liable in person for the breach or contravention of the law or any regulation made hereunder whether or not the act of omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;

(b) constituting the procurement committee and its decisions;

- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State's budget;
- (d) integrating his entity's procurement expenditure into the yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) constituting the evaluation committee;
- (g) liaising with the Bureau to ensure the implementation of its regulations.

23 Procurement
planning
committee

(1) For each financial year, each Procuring entity shall establish a procurement planning Committee.

(2) The procurement planning committee shall consist of:

- (a) the accounting officer of the procuring entity or his representative who shall chair the committee;
- (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the secretary;
 - (ii) the unit directly in requirement of the procurement;
 - (iii) the financial unit of the procuring entity;
 - (iv) the planning, research and statistic unit of the procuring entity;
 - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement and
 - (vi) a legal unit of the procuring entity, a legal officer from the Ministry of Justice or a private legal practitioner, if the entity has no legal unit.

24 Tenders
Board

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

(2) Subject to the approval by the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tender's Board.

(3) The tenders board shall be responsible for the award of contract for the procurements of goods, works and services within the threshold set in the regulations.

(4) In all cases where there is a need for prequalification, the chairman of the tenders board shall constitute a technical subcommittee for the evaluation of bids which shall be made up of professional staff of the procuring entity and the secretary of the tenders board who shall be the chairman of the evaluation subcommittee.

(5) The decision of the tenders board shall be, communicated to the accounting officer for implementation.

25 Prequalification
of bidders

(1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, it shall apply only the criteria set out in the prequalification documents and no more.

(2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.

(3) The prequalification document shall include

(a) instructions to prepare and submit prequalification application;

(b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;

(c) any documentary evidence or other information that shall be submitted by suppliers, contractors or consultants to demonstrate their qualification;

(d) the manner and place for the submission of applications to prequalify and the deadline for the

submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications taking into account the reasonable need of the procuring entity; and

(e) any other requirement that may be established by the procuring entity in conformity with this law and procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings.

(4) the procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the Prequalification document if the request is made at least ten (10) days before the dateline for the submission of application to prequalify.

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

(6) the response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall, without identifying the source of the request be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.

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

(8) suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.

(9) the procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.

(10) the procuring entity may require a supplier, contractor

or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.

(11) the procuring entity shall promptly notify each supplier contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.

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

PART VI- PROCUREMENT METHODS (GOODS AND WORKS)

- 26 Open competitive bidding. (1) Except as provided by this law all procurement of goods and competitive works by all procuring entities shall be conducted by open bidding
- (2) Any reference to open competitive bidding in this law means the process by which a procuring entity, based on previously defined criteria, effects public procurements by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed.
- (3) the winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to works specification and standard.
- 27 Invitation to bid (1) Invitation to bid may be either by way of National competitive bidding or international competitive bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system.
- (2) Every invitation to an open competitive bid shall
- (a) in the case of goods and works under international competitive bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant international recognized publication, any official websites of

the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works;

(b) in the case of goods and works valued under National competitive bidding the invitation for bids shall be advertised on the notice board of the procuring entity, any official web site of the procuring entity, at least two national newspapers and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.

28 Bid Security

(1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements value in excess of the sums prescribed by the Bureau shall require a bid security in an amount not less than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

(2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

(3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

29 Submission of bids

(1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.

(2) All submitted bids shall be deposited in a secured tamper proof bid box.

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

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

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

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

30 Rejection of Bid

A procuring entity may:

- (1) reject all bids at any time prior to the acceptance of a bid without incurring any liability to the bidders; and
- (2) cancel the procurement proceedings in the public interest without incurring any liability to the bidders;

31 Validity period of bids, modification and withdrawal of tenders

30(1) The period of validity for a bid shall be the period specified in the tender documents.

(2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time;

(3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.

(4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.

(5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

32 Opening of bid

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

(1) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;

(2) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;

(3) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;

(4) ensure that a register is taken of the names and

addresses of all those present at the bid opening and the organizations they represent which is recorded by the secretary of the tenders board; and

(5) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the secretary of the tenders board or his delegate in the minutes of the bid opening.

33 Examination of Bid

- (1) All bids shall be first examined to determine if they:
 - (a) meet the minimum eligibility requirements stipulated in the bidding documents;
 - (b) have been duly signed;
 - (c) are substantially responsive to the bidding documents; and
 - (d) are generally in order.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bid.
- (3) The following shall not be sought, offered or permitted:-
 - (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive.
- (4) Notwithstanding sub-section (3), the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

- (7) The following shall be considered as major deviations:-
- (a) with respect to clauses in an offer;
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of essence;
 - (iii) unacceptable alternative design, or
 - (iv) unacceptable price adjustment;
 - (b) with respect to the status of the bidder:
 - (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited.
 - (c) with respect to bid documents, and unsigned bid;
 - (d) with respect to time, date and location for submission:-
 - (i) any bid received after the date and time for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location
- (8) In case of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
- (9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provisions to the contrary, the following shall be considered as minor deviation
- (a) the use of codes;
 - (b) the difference in standards;
 - (c) the difference in materials;
 - (d) alternative design;
 - (e) modified liquidated damages;
 - (f) omission in minor items;
 - (g) discovery of arithmetical errors;
 - (h) sub-contracting that is unclear and questionable;
 - (i) different methods of construction;
 - (j) difference in final delivery date;
 - (k) difference in delivery schedule;
 - (l) completion period where these are not of essence;
 - (m) non compliance with some technical local regulation;
 - (n) payment terms; and
 - (o) any other condition that has little impact on the bid.

(11) In cases not mentioned above where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:-

(a) where the impact on the costs is major, it shall be regarded as a major deviation; and

(b) where the impact on the costs is minor it shall be regarded as a minor deviation;

(12) In cases of minor deviations, written clarification may be obtained from the supplier or contractor and where applicable, an offer made for the correction of the minor deviation.

(13) Where a supplier or contractor does not accept the correction of a minor deviation his bid shall be rejected.

(14) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.

(15) For the rejection of a bid, a written notice shall be given promptly to the supplier

34 Evaluation
of Bids

(1) For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation no other method or criteria shall be used except those stipulated in the solicitation documents.

(2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from bidders that have responded to the solicitation.

(3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation the Tenders Board shall, in particular undertake the following processes as applicable:

(a) checking of deviations;

(b) checking of omission with quantification of same;

(c) application of discount as applicable;

(d) quantification in monetary terms of such questionable deviations;

(e) conversion to common currency;

(f) calculation and tabulation of bid amount with domestic preference where applicable;

(g) determination of the lowest calculated prices in order

of rank;

- (h) post-qualification of bidders, where applicable;
- (i) listing of rejection of bids, where applicable;
- (j) decision of rejection of all bids where justifiable;
- (k) recommendation for award; and
- (l) writing up of the bid evaluation report.

(4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation document.

(5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:

(a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;

(b) for works, in addition to factors stipulated in section 36(1) of this Law and subject to section 36(2) of this Law, if time is a critical factor, the value of early completion; and

(c) the value of early completion under section 36(2) of this Law shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.

(6) when bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian Currency, according to the rate and date of rate specified in the solicitation documents.

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

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

35 Acceptance of bid

(1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive to the bid solicitation.

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

36 Domestic preference

(1) A procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic supplier offering goods manufactured locally with those offering goods manufactured abroad.

(2) Where a procuring entity intends, to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.

(3) Margins of preference shall apply only to tenders under international competitive bidding.

(4) The Bureau shall by regulation from time to time set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.

(5) Government shall provide maximum opportunities for small and medium size entrepreneurs in the State to participate as suppliers, contractors, sub-contractors and consultants in public procurement.

(6) A procurement of works, goods or services that has a value not exceeding specified threshold shall at first instance be reserved for indigenous firms, failing which offers shall be

- solicited without restrictions.
- 37 Mobilization fees
- (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 40% may be paid to a supplier or contractor supported by the following:-
- (a) in the case of State and National competitive bidding, an unconditional bank guarantee issued by a bank acceptable to the procuring entity; and
- (b) in the case of international competitive bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.
- (2) Subsequent payments shall be as spelt out in the agreement for the works, service or supply.
- 38 Contract performance guarantee
- The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor, whichever is higher.
- 39 Record of procurement proceedings
- (1) Every procuring entity shall maintain a record of the comprehensive procurement Proceedings
- (2) The record referred to in this section shall, on request, be made available to:
- (a) any person after a tender proposal, offer or quotation has been accepted or after, a procurement proceedings have been terminated without resulting in a procurement contract; and
- (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposals, offer or quotation has been accepted or procurements proceeding have been terminated without resulting in a procurement contract.

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

- (a) be contrary to law
 - (b) impede law enforcement or
 - (c) prejudice legitimate commercial interest of the parties.
- (4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.

(5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, and investigator appointed by the Bureau and the Auditor General upon request and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review

PART VII

40 Two stage
tendering

SPECIAL AND RESTRICTED METHOD OF PROCUREMENT

(1) Notwithstanding the provisions of this law, the Bureau may issue "Certificate of No Objection" upon conditions hereinafter prescribed.

(2) a procuring entity shall engage in procurement by two stage tendering:-

(a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;

(b) where the character of the goods or works are subject to rapid technological advances or where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or recover research and development costs or where the procuring entity applies this law to procurement concerned with State or National security and

determines that the selected method is the most appropriate method of procurement; or

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

(3) The provisions of this law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.

(4) The invitation documents

(a) shall call upon suppliers or contractors to submit in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and

(b) may solicit proposals that relate to technical quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors

(5) The procuring entity may, in first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.

(6) In the second stage of the two stages tender proceedings the procuring entity:

(a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specification;

(b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristic of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tenders;

(c) may add new characteristics or criteria that conform with this law;

(d) shall communicate to suppliers or contractors in the invitation to submit final tenders, any deletion, modification

or addition; and

(e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

(7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.

41 Restricted
tendering

(1) Subject to the approval by the Bureau, a procuring entity may for reasons of economy and efficiency or legitimate affirmative action backed by an official government policy, engage in procurement by means of restricted tendering if:

(a) the goods works or services are available only from a limited number of suppliers or contractors;

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured;

(c) the procedure is used as an exception rather than the rule; or

(d) in the overriding public interest in pursuance of a legitimate affirmative action backed by an official government policy.

(2) Where a procuring entity engages in restricted tendering on the basis that:

(a) the goods, works or services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services, it shall select in a non-discriminatory manner the number of suppliers or contractors to ensure effective competition.

(3) For the purposes of subsection (2), the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.

(4) the provisions of this law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those

42 Request for quotation

provisions are varied by this section.

(1) A procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.

(2) Generally quotations shall be obtained from three unrelated contractors or suppliers.

(3) Each contractor or supplier from whom a quotation is requested shall:-

(a) be informed whether any factors other than the charges for the goods, works or services such as any applicable transportation and insurance charges, custom duties and taxes, are to be included in the price; and

(b) give only one quotation and shall not be allowed to change or vary the quotation.

(4) No negotiation shall take place between a procuring entity and the contractor or supplier with respect to a quotation.

(5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.

(6) Procurements by request for quotation shall be conducted in accordance with the regulations made by the Bureau.

(7) Where the total sum of the procurement is not more than a sum that shall be set in the regulation, the procuring entity may not obtain the Bureau's approval.

43 Direct procurement

(1) A procuring entity may carry out any emergency direct procurement where:

(a) goods, works or services are only available from a particular supplier or contractor or if a particular supplier has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or

(b) there is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is not practical due to unforeseeable circumstances giving rise to the urgency which is not the

result of dilatory conduct on the part of the procuring entity;

(c) owing to a catastrophic event, there is an urgent need for the goods, works or services making it impractical to use other methods of procurement because of the time involved in using those methods;

(d) a procuring entity that has procured goods, equipment technology or services from a supplier or contractor determines that:

(i) additional supplies need to be procured from that supplier or contractor because of standardization;

(ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity

(iii) the limited size of the proposed procurement in relation to the original procurement provides justification.

(e) the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development cost; or

(f) the procuring entity applies this law for procurement that concerns national security, and determines that single source procurement is the most appropriate method of procurement;

(2) The procuring entity

(a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;

(b) shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

44 Emergency procurements

(1) A procuring entity may for the purpose of this law, carry out an emergency procurement where:

(a) the state is either seriously threatened by or actually confronted with a disaster, catastrophe, insurrection or act of God;

(b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or

(c) a public project may be seriously delayed for want of an item of minor value;

(2) In an emergency situation, a procuring entity may engage in direct contracting goods, works and services;

(3) All procurement made under emergencies shall be handled with expedition but along principles of accountability due consideration being given to the gravity of each emergency;

(4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a certificate of No Objection

PART VIII- PROCUREMENT OF CONSULTANCY SERVICES

45 Expression of interest to provide Service of ascertained Needs

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

(a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two national newspapers and the procurement journal.

(b) where the value of the services to be procured is a sum that shall be set by the procurement regulation or with the approval of the Bureau, or of such other low value that only low profile consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a formal stipulating:

(i) a statement of qualifications of the consultant t

- provide the service;
- (ii) a statement of understanding of the procuring entity's needs;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service; and
 - (iv) the cost or fee for the service.
- 46 Request for proposals to provide service of unascertained needs
- (1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract include the production of goods sufficient to establish their commercial viability or to recover research and development cost.
- (2) The procuring entities shall procure the services of consultant by soliciting for expressions of interest by publishing a notice to that effect in two newspapers (one of which shall have national circulation) and the procurement journal.
- (3) A procuring entity may make direct request to a limited number of consultants, requesting proposals for the provision of services if:
- (a) the services are only available from no more than three consultants;
 - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
 - (c) it is in the interest of state security or similar reason of confidentiality;
- 47 Content of the Request for the Proposals
- (1) Request for proposals shall include:-
- (a) the name and address of the procurement entity;
 - (b) a requirement that the proposals are to be prepared in English language;
 - (c) the manner, place and deadline for the submission of proposals;
 - (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
 - (e) the criteria and procedure for the evaluation of the

qualifications of the consultant;

(f) the requirements on documentary evidence or other information that shall be submitted by consultants to show their qualification;

(g) the nature and required characteristic of the services to be procured including the location where the services are to be provided and the time when the service are to be provided;

(h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs

(i) a requirement that the proposal price is to be expressed in Nigerian currency;

(j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements, apart from the cost of services such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;

(k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost quality and a criteria other than cost but stipulated in the request for proposals; and

(l) a short list to be made of only local consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that the local consultants possess such requisite skills.

(2) The procuring entity shall provide the same information to every consultant requested to submit proposals

48 Clarification and modification of request for proposal

(1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request shall be made within a reasonable time

(2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.

(3) the addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

(4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposals and its responses to those issues, without identifying the sources of the requests for clarifications

(5) The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in their proposals.

49 Submission of proposals

(1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals which shall not be less than 30 days between the issue of the notice or request and the deadline for submission.

(2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.

(3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened

(4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid box until they are opened publicly.

(5) The technical evaluation committees shall not have access to or insights in to the financial proposals until the evaluation including tender boards review are concluded

50 Criteria for evaluation of proposals

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

(a) the qualification, experience reliability, professional and managerial competence of the consultant or service

provider and of the personnel to be involved in providing the services;

(b) the effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity;

(c) the proposal price including any ancillary or related cost;

(d) the effect that acceptance of the proposal may have on the revenue and expenditure profile and projections of the government, the extent of participation by local personnel, the economic development potential offered by the proposal, including local investment or other business activity, the encouragement of employment, the transfer of technology the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service provider; and

(e) state security consideration;

(2) A procuring entity may accord margin of preference for local consultants or service providers which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

51 General selection procedure

(1) The procuring entity shall select the successful proposal by either choosing the proposal with:

(i) the lowest evaluated price; or

(ii) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

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

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

52 Procedure for selection of

(1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it

proposals where price is a factor

shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals.

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

(3) The procuring entity shall within 14 working days notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed and decision has been taken by the procurement entity.

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

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

(6) The successful proposals shall be:

(a) the proposals with the best combined evaluation in terms of the criteria established under subsection (i) of this section apart from price in the case of quality and cost based selection;

(b) the proposals with the lowest price in the case of least cost selection; or

(c) the highest ranked technical proposal within the budget;

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

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

(1) Where the procuring entity elects to make a quality-

procedure where price is not a factor

based selection procedure based on consultant's qualifications or single sourced selection, it shall engage in negotiations with consultants in accordance with this section.

(2) The procurement entity shall:

(a) establish a weight with respect to quality and price of the proposals;

(b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this section.

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

(d) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiation with that consultants will not result in a procurement contract.

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

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

PART IX

54 The Bureau may recommend investigation

- PROCUREMENT SURVEILLANCE AND REVIEW

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

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

(a) require an officer, employee or agent of the procuring

entity or bidder, supplier contractor, or consultant to produce any books, records, accounts or documents;

(b) search premises for any books, records, accounts or documents;

(c) examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;

(d) Remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;

(e) require an officer, employee or agent of the procurement entity or bidder, supplier, or contractor or consultant;

(i) to explain an entry in the books, record, accounts or documents;

(ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.

(3) The Bureau may pursuant to the advice of the procuring entity as a result of its review of a procurement or report of investigation by a relevant government agency, issue a variation order requiring a contractor at his own expense to repair, replace, or to do anything in his contract left undone or found to have been carried out with inferior or defective materials or with less-skill and expertise than required by the contract.

(4) The Bureau shall, if satisfied that there has been a contravention of this law or any regulation to procurement proceedings or procurement contract, take action to rectify the contravention which action shall include:

(a) nullification of the procurement proceedings;

(b) cancellation of the procurement contract;

(c) ratification of anything done in relation to the proceedings; or

(d) a declaration consistent with relevant provisions of this

law;

(5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

55 Administrative
review

(1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this law, or any regulations or guidelines made under this law or the provisions of bidding documents.

(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen working days from the date the bidder first become aware of the circumstances giving rise to the complaint or shall have become aware of the circumstances, whichever is earlier.

(3) On receiving a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary giving reasons for his decision.

(4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.

(5) Upon receipt of a complaint, the Bureau shall promptly:

(a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;

(b) the Bureau shall unless it dismisses the complainant

(i) prohibit a procuring or disposing entity from taking any further action; and/or

(ii) nullify in whole or part an unlawful act or decision made by the procuring or disposing entity; and

(iii) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.

(6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring disposing entity.

(7) The Bureau shall make its decision within 21 days after receiving the complaint, stating the reasons for its decisions and remedies granted; if any

(8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may:

MEDIATION

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

ARBITRATION

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

Chairman of the Nigerian Bar Association of Yobe State branch and such decision of the Arbitrator shall be final.

PART X – DISPOSAL OF PUBLIC PROPERTY

56 Disposal of public property

(1) For the purpose of this law every procuring entity shall also be disposing entity.

(2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.

(3) The Bureau shall, with the approval of the council:

(a) determine the applicable policies and practices in relation to the disposal of all public property;

(b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and

(c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property

(4) For the purposes of this law public property shall be defined as resources in the form of tangible and non tangible assets (ranging from serviceable to the unserviceable).

(a) created through public expenditure;

(b) acquired as a gift or through deeds;

(c) acquired in respect of intellectual or property rights;

(d) acquired on financial instruments (including shares, stocks, bonds);

(e) acquired by goodwill and any other gift of the State Government.

(5) The means of disposal of public assets shall include:

(a) sale and rental;

(b) lease and hire purchase;

(c) licenses and tenancies;

(d) franchise and auction;

(e) transfer from one government department to another with or without financial adjustment;

(f) offer to the public at an authorized value.

57 Planning of

(1) Before slating any public property for disposal the

disposal

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

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

(3) The disposal of assets referred to in subsection (2) shall be timed to take place when the most advantageous returns can be obtained for the assets in order to maximize revenue accruing to the government.

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

PART XI- CODE OF CONDUCT

58 Code of conduct
for public
procurement

(1) The Bureau shall, with the approval of the council, stipulate a code of conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets.

(2) The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity

(3) All officers of the Bureau, members of tenders board and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by council.

(4) All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.

- (5) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (6) These principles shall apply at all times, particularly when:
- (a) making requisition for or planning of procurements;
 - (b) preparing solicitation documents;
 - (c) receiving offers in response to any form of solicitation towards a procurement or disposals;
 - (d) evaluating and comparing offers confidentially and in complete neutrality;
 - (e) protecting the interest of all parties without fear or favour; and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:
- (a) ensuring adequate time for preparing offers;
 - (b) complying with this law and all derivative regulations; and
 - (c) maintaining strict confidentiality until completion of a contract.
- (8) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with natural persons or corporate who seek government patronage whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (9) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:
- (a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this law; and
 - (b) not engage or participate in any commercial

transaction involving the state government, its ministries, extra-ministerial departments, or corporations where his capacity as public officer is likely to confer any unfair advantage, pecuniary or otherwise, on him or any person directly related to him.

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

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

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

(a) possesses an interest outside his official duties that materially encroaches on the time or attention which shall otherwise be devoted to affairs of government;

(b) possess a direct or indirect interest in or relationship with bidder, supplier contractor or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings;

(c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;

(d) places by acts or omission the procuring entity he represents or the government in an equivocal embarrassing or ethically questionable position;

(e) entertain relationships compromising the reputation or integrity of the procuring entity he represents or the government;

(f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;

(g) create a source of personal revenue or advantage by

using public property which comes into his hands either In the course of his work or otherwise; and

(h) discloses confidential information being either the property of his procuring entity, the government, a supplier, contractor or service provider to unauthorized persons

(13) A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly the assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal

59 Offences relating to public procurement

PART XII- OFFENCES

(1)(a) Any person not being a public officer who contravenes any provisions of this law commits an offence and is liable on conviction to a term of imprisonment of not less than 2 years but not exceeding 5 years with an option of fine to a minimum of N200,000 or both. And shall also include the public office holders who connive with the offender(s)

(b) Pursuance to (a) above, they shall also pay all the money being charged with to the authority concerned.

(2) Any offence in contravention of this law shall be tried by a High Court.

(3) Prosecution of offences under this law shall be instituted by the Attorney General of the state or such other officer of the Ministry of Justice as the Attorney General may direct. He may, if the relevant authority so request, authorize any legal practitioner in Nigeria to undertake such prosecution directly or assist therein.

(4) The following shall also constitute offences under this law:

(a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or may be higher than shall have been the case had there not been collusion between the persons concerned.

(b) to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;

(c) direct or indirect attempt to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;

(d) splitting of tenders to enable the evasion of monetary thresholds set;

(e) bid rigging;

(f) altering any procurement document with intent to influence the outcome of a tender proceeding;

(g) uttering or using fake documents or encouraging their use;

(h) willful refusal to allow the Bureau or its officers to have access to any procurement records.

(5) Any person whilst carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this law commits an offence and is liable on conviction to a cumulative punishment of:-

(a) a term of imprisonment of 2 years with an option of fine and restitution;

(b) summary dismissal from government service;

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

(a) debarment from all public procurements for a period of not less than 2 years;

(b) a fine equivalent to 25% of the value of the procurement in issue.

(7) Where any legal person shall be convicted pursuant to subsection (6) every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and, is liable on conviction to a term of imprisonment of not less than 1 year but not exceeding 2 years with an option of fine and restitution.

(8) An alteration pursuant to subsection (4)(f) shall include but not limited to:

(a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid

opening and

(b) request for clarification in a manner not permitted under this law.

(9) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this law.

(10) Bid rigging pursuant to subsection (4)(e) means an agreement between persons whereby:

(a) offers submitted have been pre-arranged between them; or

(b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the state treasury.

PART XIII- MISCELLANEOUS

60 Miscellaneous

(1) The fixing of the seal of the Bureau shall be authenticated by the signature of the chairman, the Director-General or of any other person generally or especially authorized to act for that purpose by the council.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, may not be required to be under seal may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorized to act for that purpose by the council.

(3) Any document purporting to be a document duly executed under the seal of the Bureau shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.