

A BILL

FOR

**A LAW TO ESTABLISH THE PLATEAU STATE
BUREAU OF PUBLIC PROCUREMENT AND
OTHER RELATED MATTERS.**

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**A BILL
FOR
A LAW TO ESTABLISH THE PLATEAU STATE BUREAU OF PUBLIC
PROCUREMENT AND FOR OTHER RELATED MATTERS.**

ENACTED by the Plateau State House of Assembly as follows:

**PART I
PRELIMINARY**

**Citation and
Commencement.**

1. This Bill may be cited as the Plateau State Public Procurement Law, 2018 and shall come into operation on the.....day of2018.

Interpretation

2. In this Bill:

“accounting officer” means any person charged with the responsibility relating to procurement in a Procuring Entity;

“approving authority” means a body charged with the responsibility of approving public procurement. In the case of:

- (a) a Government Agency, Parastatal or Corporation, its Tenders Board;
- (b) a Ministerial Entity, the Ministerial Tenders Board;
- (c) Local Government Councils, the Local Government Tenders Board; and
- (d) State Tenders Board, State Executive Council.

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

“Board” means the Board of the Bureau of Public Procurement;

“Bid or Tender” means a formal offer to supply goods or to do work or provide a service for a particular price or a stated price in competition with other Entities;

“Bidder or Tenderer” means a Legal Entity, artificial or natural person or group that offers to participate in public procurement proceedings in competition with others;

“Board” means the Board of the Bureau of public procurement;

“Contract” means an agreement entered in writing;

“Contractor or Supplier” means any potential party to a procurement contract with the Procuring Entity and includes any Corporation, Partnership, Limited liability Partnership, Individual, Sole Proprietors, Joint Stock Companies, Joint Ventures 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 Bill;

“Disposal” includes absolute and temporary parting with a property;

“Fund” means the State Procurement Bureau Fund established by Section 14 of this Bill;

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

“Governor” means the Governor of Plateau State;

“House” means the Plateau State House of Assembly,

“ILO” means International Labour Organization;

“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 Procuring Entity but not meaning completion;

“International competitive bidding” means the solicitation of bids from both domestic and foreign Contractors and Suppliers;

“Margins 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;

“MDA” means Ministries, Departments and Agencies;

“Monetary threshold” means value limit in Naira set by the State Bureau of Public Procurement outside of which a Procuring Entity may not award a Procurement Contract without prior Certificate of No Objection issued by the Bureau;

“National Competitive Bidding” means the solicitation of bids from domestic Contractors and Suppliers registered or incorporated to carry on business under the Nigerian Law;

“Negotiation” means discussion to determine the terms and conditions of a Contract or Procurement;

“Open Competitive Bidding” means the process by which a Procuring Entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed;

“Post Review Threshold” means the value limit in Naira set by the State Bureau of Public Procurement within which a Procuring Entity can enter into, and award, a procurement contract without a prior Certificate of No Objection issued by the Bureau;

“Prior Review Threshold” means the value limit in Naira set by the State Bureau of Public Procurement within which a Procuring Entity can only enter into, and award, a procurement contract with a prior Certificate of No Objection issued by the Bureau;

“Procurement” means acquisition;

“Procurement Proceedings” means the initiation of the process for effecting procurement up to award of a procurement contract;

“Procuring Entity” means any public body in the State engaged in procurement and includes Ministries, Departments, Agencies, Bureaux, Offices, Extra-Ministerial Offices, Parastatals, Corporations, State Institutions and Local Government Councils and their derivative Units;

“Public Procurement” means the acquisition by any means of goods, works or services by the Government;

“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;

“State” means Plateau State of Nigeria;

“UN” means United Nations;

“Validity Period” means the period during which a bidder agrees not to increase the cost of its bid or remove any components of the bid; and

“WB” means World Bank.

PART II

ESTABLISHMENT, COMPOSITION OF THE BOARD AND APPLICATION

**Establishment
of the Bureau**

- 3 (1) There is established a body to be known as the Plateau State Bureau of Public Procurement (herein after referred to as “the Bureau”).
- (2) The Bureau shall:
- (a) be a body corporate with perpetual succession and a common seal;

Establishment
of the Board of
the Bureau

- (b) have power to sue and be sued in its corporate name;
- (c) have power to enter contracts or partnership with any person (whether corporate or unincorporated) which in its opinion shall facilitate the discharge of the functions conferred on it by this Bill; and
- (d) be capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out its functions under this Bill.

(3) The common seal of the Bureau shall be authenticated by the signature of the Director-General or anybody representing him in the Bureau.

4. (1) There is established a body to be known as the State Bureau of Public Procurement Board (herein after referred to as "the Board").

(2) The affairs of the Bureau shall be administered by the Board.

(3) The Board shall consist of:

- (a) Commissioner for Finance;
- (b) Commissioner for Economic Planning and Budget;
- (c) Attorney – General and Commissioner for Justice;
- (d) Secretary to the Government of the State;
- (e) Head of Civil Service;
- (f) three (3) Part-time professional members representing the:

(i) Chartered Institute of Purchasing and Supply Management of Nigeria in the State;

(ii) Nigerian Society of Engineers in the State; and

(iii) Nigerian Institute of Quantity Surveyors in the State.

(4) The Members mentioned in Clause 4(3)(f) of this Bill shall be appointed by the Governor.

(5) The Commissioner for Finance shall serve as the Chairman of the Board.

(6) The Director-General of the Bureau shall serve as the Secretary of the Board.

**Powers of the
Board**

5. The Board shall:

- (a) Consider, set, amend and review prior threshold for the application of the provisions of this Bill for implementation by Procuring Entities;
- (b) Consider and approve policies on public procurement;
- (c) Make recommendations in respect of any procurement Guidelines or Regulations to be made pursuant to the provisions in this Bill;
- (d) Approve the employment of the Directors of the Bureau;
- (e) Receive and consider, for approval, the audited accounts of the Bureau; and
- (f) Give such other directives or perform such other functions not being inconsistent with the provisions of this Bill, as may be necessary to achieve its objectives.

**Tenure of
Members of
the Board**

- 6. (1) The three (3) Members in Section 4 (3) (f) of this Bill shall have a tenure of three (3) years in the first instance and may be renewable for another term of three (3) years and no more.
- (2) Members of the Board mentioned in Section 4 (3) (a)–(e) shall serve on the Board by virtue of their office.
- (3) The appointment of the Members mentioned in Section 4 (3) (f) of this Bill shall be upon such terms and conditions as may be stipulated in their letters of appointment.
- (4) In the event of a vacancy, the Governor shall appoint a new Member, nominated from the relevant professional body to complete the tenure of his successor.

**Cessation of
office**

- 7 (1) Notwithstanding the provisions of Section 4 (3) of this Bill, a Member of the Board shall cease to hold office if:
 - (a) He resigns his appointment as a member of the Board by a notice, under his hand, addressed to the Governor;
 - (b) He becomes of unsound mind;

- (c) He becomes bankrupt or makes a compromise with his creditors;
- (d) He is convicted of a felony or of any offence involving dishonesty, corruption, etc;
- (e) He becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body; or
- (f) the Governor is satisfied that it is not in the interest of the Board or in the interest of the public for the person to continue in office and notifies the Member in writing to that effect.

(2) A Member may resign his membership by notice in his handwriting, addressed to the Governor and his membership shall cease on the date of acceptance of his resignation by the Governor.

Remuneration and Allowances

8. Members of the Board shall be paid such remunerations and allowances as may be approved by the Governor.

Proceedings of the Board

9. The supplementary provisions set out in the Schedule to this Bill shall have effect with respect to the proceedings of the Board and other matters contained thereto.

Secretary to Bureau

10. (1) There shall be a Secretary/Legal Adviser of the Bureau who shall be a State Counsel and responsible to the Director-General for discharging his function.

(2) The Secretary/Legal Adviser shall be responsible for the following matters:

- (a) Arranging meetings of the Board and its constituent Committees;
- (b) Preparation of agenda and minutes of meetings;
- (c) Conveying decisions of the Board to Members of the Board and other related matters; and

- (d) Generally performing all other duties affecting the Bureau as may be assigned to him by the Director-General.
- (3) The Bureau may engage such other Officers as are deemed necessary for proper execution of its functions in this Bill.

**Objectives of
the Bureau**

- 11. The objectives of the Bureau shall be to:
 - (a) Ensure probity, accountability and transparency;
 - (b) Establish fair pricing standards and benchmarks;
 - (c) Ensure the application of fair, competitive, value-for-money standards and practices for the procurement and disposal of public assets and services;
 - (d) Create ample opportunities for the citizenry particularly micro, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement;
 - (e) Create a cost effective and time efficient adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by Procuring Entities, Bidders and the general public; and
 - (f) Attain transparency, competitiveness, professionalism and guarantee integrity and public trust in the public procurement procedure.

12. The functions of the Bureau shall include the following:
 - (a) Consider, amend and review the monetary threshold for application by the Procuring Entities subject to approval by the Board;
 - (b) Approve the employment of staff of the Bureau other than the Director-General and other Directors;
 - (c) Approve changes in procurement process to adapt to changes in technology;
 - (d) Formulate the general policies and guidelines relating to public sector procurement for the approval of the Board;
 - (e) Publicise the provisions of this Bill;
 - (f) Certify all State procurements prior to, during and after the award of any Contract;
 - (g) Organize training for professionals, procurement personnel and build State wide institutional capacities for a sustainable and efficient public procurement system;
 - (h) Supervise the implementation of established procurement policies;
 - (i) Oversee and superintend compliance by all Procuring Entities with the procurement policies of the State;
 - (j) Monitor the prices of tendered items and keep a database of standard prices;
 - (k) Publish the details of major contracts in the proposed State Procurement Standard Journal;
 - (l) Publish paper and electronic editions of the proposed State Procurement Journals and Procurement Manual and maintain an archival system for the State Procurement Journal;
 - (m) Carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions as detailed in this Bill; and
 - (m) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Bill.

13. (1) The Bureau shall have the power to:

- (a) Enforce the rules, monetary and prior review thresholds approved by the Board for the application of the provisions of this Bill by the Procuring Entities;
- (b) Subject to sub-clause (1)(a) of this Clause, issue Certificate of No Objection to Contract awarded within the prior review threshold for procurements within the purview of this Bill;
- (c) Inspect and review any procurement transaction to ensure compliance with the provisions of this Bill;
- (d) Investigate and determine whether any Procuring Entity has violated any provision contained in this Bill;
- (e) Blacklist or ban any Supplier, Contractor or Service Provider that contravenes any provision of this Bill and Regulations made pursuant to this Bill;
- (f) Maintain a database of the particulars of Contractors and Service Providers to the exclusion of all Procuring Entities;
- (g) Prescribe classifications and categorizations for the Companies or Limited Liability Partnerships (LLPs) on the Register;
- (h) Maintain a list of Firms and Persons that have been blacklisted or banned from participating in the public procurement system and publish them in the proposed State Procurement Journal;
- (i) Call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a Procuring Entity, Contractor or Service Provider;
- (j) Call for the production of Books of Accounts, Plans or Documents and examine persons or parties in connection with any procurement proceeding;
- (k) Act on Complaints by procurement entities in accordance with the procedures set out in this Bill;
- (l) Nullify the whole or part of any procurement proceeding or award which is in contravention of this Bill;

- (m) Recommend to the Board discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Bill;
- (n) Undertake procurement and contract performance audit;
- (o) recommend to the Approving Authority contracts for the award of procurement of goods, works and services within the provisions of this Bill; and
- (p) Issue a Certificate of No-objection after it has certified compliance by a Procuring Entity within the provisions of this Bill.

(2) Where there are persistent or serious breaches of the provisions of this Bill, its Regulations or any other Guideline made under it, the Bureau shall recommend to the Board the following:

- (a) Suspension of Officers concerned with the procurement or disposal proceeding in issue;
- (b) The removal from Office of the head of any Procuring/ Disposal Unit;
- (c) Discipline of the Accounting Officer of any Procuring Entity;
- (d) Temporary transfer of the procuring and disposal function of a Procuring and Disposing Entity to a Third Party Procurement Agency or Service Provider; or
- (e) Any other sanction that the Bureau may consider appropriate in accordance with the Law.

(3) The Bureau shall, subject to the approval of the Board, have power to do all such things as are reasonably necessary for the purpose of carrying out its functions as stipulated in this Bill and may carry on in that behalf either alone or in association with any other person or body.

Scope of Application

14. (1) The provisions of this Bill shall apply to all procurements of goods, works and services carried out by:

- (a) The State Government, Local Government Councils and all Procuring Entities in the State;
- (b) Any public body in the State engaged in procurement, and shall include Ministries, Departments, Agencies, Bureaux, Offices and the State Extra-Ministerial Offices, Parastatals and Corporations; and
- (c) All entities outside the foregoing description which derive any funds appropriated or proposed to be appropriated for any type of procurement described in this Bill from the State Government's share of Consolidated Revenue Fund.

PART III
STRUCTURE AND STAFF OF THE BUREAU

Structure of
the Bureau

15. (1) The Bureau shall consist of the following Departments:
- (a) Finance;
 - (b) Administration;
 - (c) Procurement and Surveillance;
 - (d) Compliance, Monitoring and Evaluation; and
 - (e) Data Management and Information Communication Technology.
- (2) The Bureau shall establish the following Units:
- (a) Publicity and Protocol;
 - (b) Audit; and
 - (c) Legal.
- (3) The Bureau may, subject to the approval of the Board, establish such number of Departments and Units for the effective performance of its functions under this Bill.

The
Director-General
of the Bureau

16. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor subject to confirmation of the State House of Assembly.
- (2) The Director-General shall be:
- (a) The Chief Executive and Accounting Officer of the Bureau;

- (b) Responsible for the execution of the policies and day to day administration of the affairs of the Bureau; and
- (c) A person who possesses relevant and adequate professional qualifications in Management Science, Engineering, Law and Procurement and shall have been so qualified for a period of not less than Fifteen (15) years.

(3) The Director-General shall hold office for a period of four (4) years renewable for another term of Four (4) years and no more.

(4) The appointment shall be upon such terms and conditions as may be stipulated in the Letter of Appointment.

(5) The Director-General may resign his appointment by notice in his handwriting, addressed to the Governor through the Board and his appointment shall cease on the date of acceptance of his resignation by the Governor.

(6) Without prejudice to the provisions of this Bill, 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 manifest incompetence proven by the Board.

Staff of the
Bureau

17. (1) The Bureau shall have powers to:
- (a) Appoint directly or from any public service of the Federation any number of staff and other employees as it may from time to time deem necessary to assist the Bureau in the discharge of its functions under this Bill;
 - (b) Conduct promotion exercises for junior staff in conjunction with the Civil Service Commission of the State; and
 - (c) Undertake disciplinary measures.
- (2) The Condition of Service of Members of Staff shall be as may be determined by the Civil Service Commission of

the State and in accordance with prevailing terms and Conditions of Service.

(3) The Condition of Service shall include:

- (a) Conditions for appointment, promotion, conversions and discipline of employees of the Bureau;
- (b) Procedures for appeals by employees against any disciplinary measures regarding their employment:

Provided that until such Conditions of Service are made, any instrument relating to Conditions of Service in the Public Service of the State shall be applicable with such modifications as may be necessary to the employees of the Bureau.

(4) A person appointed from any of the Public Service in the Federation may transfer his service to the Bureau.

(5) The Bureau shall approve appointments, promotions, conversions and disciplinary measures deliberated upon pursuant to the provisions of sub-clause (1) of this Clause.

Pension Rights.

- 18. (1) Service in the Bureau shall be approved service under on the provisions of the Pension Law and accordingly, employees of the Bureau shall be entitle to Pensions, gratuities and other retirement benefits as prescribed under the Pension Law of the State.
- (2) Without prejudice to the provisions of subclause (1) of this Clause, nothing in this Bill shall prevent the appointment of any person to any office on terms which preclude the grants of pension, gratuity or other retirement benefits with respect to that office.

Remuneration
of Officers

- 19. The Bureau shall, subject to the approval of the Board, determine the remuneration to be paid to its Officers and may require any Officer to give such Security deemed proper for the execution of his functions.

Staff
Regulations and
Pensions

- 20. (1) The Bureau may subject to the approval of the Board, within Six (6) months of its inauguration, make Staff

Regulations relating generally to the Condition of Service of its employees.

- (2) Without prejudice to the foregoing, such Regulations may provide for:
 - (a) The appointment, promotion and disciplinary control (including suspension, termination and dismissal) of employees of the Bureau; and
 - (b) Appeals by such employees against dismissal or other disciplinary measures.
- (3) Until such Regulations are made, any instrument relating to the Conditions of Service in the Civil Service of the State shall be applicable.
- (4) Employees of the Bureau shall be entitled to Gratuity, Pension and other retirement benefits as obtained in the State Civil Service.

PART IV LEGAL PROCEEDINGS

Limitations of suits against the Bureau

21. (1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Law shall apply in relation to any suit instituted against any Member, Officer or Employee of the Bureau in this Bill.
- (2) No suit against any Member of the Board in this Bill or any other Officer or Employee of the Bureau for any act done in pursuance or execution of any Law, or any public duties in respect of any alleged neglect or default in the execution of such act, duties or authority shall lie or be instituted in any Court unless:
 - (a) it is commenced within three (3) Months next after the act, neglect or default complained; or
 - (b) in the case of continuation or damage or injury, within three (3) Months next after the ceasing thereof.

(3) No Suit shall be commenced against the Board or any other Officer or Employee of the Bureau before the expiration of a period of one (1) Month after a written Notice of Intention to commence the Suit shall have been served on the Bureau by the intending Plaintiff or his Agent; and

(4) The Notice shall clearly and explicitly state the:
(a) cause of action;
(b) particulars of claim;
(c) name and place of the abode of the intending Plaintiff; and
(d) relief claimed.

Exemption from liability

22. The Director-General, Officers, Employees or Agents of the Board shall not be personally liable for any act or omission done in exercise of any function or power conferred by this Bill upon the Board or its Director-General, Officers or Employees of the Bureau.

Indemnity of Officers of the Bureau

23. An Officer or Employee of the Bureau shall be indemnified from the assets of the Bureau against any liability incurred by him in defending any civil proceeding, if the proceeding is brought against him in his capacity as an Officer or Employee of the Bureau.

Service of Notice/ Document

24. A Notice, Summons or other Document required or authorized to be served upon the Bureau under the provisions of this Bill or any other Enactment may be served by delivering it to the Director-General or sending it by registered post and addressed to the Director-General at the principal office of the Bureau.

Restriction on execution against the Bureau

25. (1) In any action or suit against any Staff of the Bureau, no execution or attachment of process shall be issued against them.

(2) Any sums of money which may be awarded against the Bureau shall, subject to any directions given by the Court, be paid from the general reserve fund of the Bureau.

PART V
FINANCIAL PROVISIONS

Fund of the
Bureau

26. (1) The Bureau shall establish and maintain a Fund from which shall be defrayed all expenditure incurred by the Bureau.
- (2) There shall be credited to the Fund, all monies appropriated from time to time to the Bureau by the State House of Assembly from the revenue of the State.
- (3) The Bureau may specify the manner in which assets or funds of the Bureau are to be held, and regulate payment into and out of the Fund.
- (4) The Bureau shall require the keeping of proper accounts and records of the Fund in such form as may be specified in the Regulations to this Bill.
- (5) The Bureau may from time to time apply proceeds of the Fund for the:
- (a) cost of administration of the Bureau;
 - (b) payment of salaries, fees and other remuneration of employees of the Bureau or experts or professionals appointed by the Bureau;
 - (c) maintenance of any property acquired by or vested in the Bureau; and
 - (d) expenditure connected with all or any of the functions of the Bureau under this Bill.

Annual State
Procurement
Assessment
Report

27. (1) The Bureau shall prepare a comprehensive report each year on all Procurement activities not being of a recurrent nature, carried out by all Procuring Entities within the purview of this Bill to the State House of Assembly.
- (2) The Annual Report shall give an accurate account of the conduct of all capital procurement carried out by Procuring Entities within the purview of this Bill.

- Bank Account
28. The Bureau shall operate an account with a Bank(s) in the State and the signatories to the account(s) shall be the Director-General, in his absence his designated representative and the head of Accounts Department, in his absence, his designated representative.
- Accounts and Audit
29. (1) The Bureau shall keep proper account of all its expenditure and revenue and shall cause its account to be audited, not later than six (6) Months after the end of each financial year, by external auditors appointed by the Auditor-General of the State.
- (2) The Bureau shall, within six (6) Months after the end of each financial year, furnish the Governor with a copy of its audited account along with a report of the state of affairs of the Bureau for the year reported on.
- (3) In compliance with sub-clauses (1) and (2) of this Clause, the Board shall cause the report to be published in the State Official Gazette and its website.
- Annual Estimates
30. The Bureau shall cause to be prepared a slide submitted to the State Ministry of Finance not later than 31st day of October in each year, the estimate of its income and expenditure for the succeeding year.
- Annual Report etc.
31. (1) The Bureau shall not later than six (6) Months after the end of each year submit to the Governor and the Public Accounts Committee of the State House of Assembly, a Report on the activities and administration of the Bureau during the immediate preceding year and shall include in such other Report, audited accounts of the Bureau and the Auditor's Report thereon.
- (2) Without prejudice to sub-clause (1) of this Clause, the Bureau may submit such other reports to the Governor on matters of expediency or urgency relating to its functions under this Bill as the Bureau may, from time to time determine.
- (3) The Bureau shall not later than six (6) Months after the end of each year publish the Annual Reports prepared under sub-clause (1) of this Clause in at least two (2) Newspapers

circulating in the State.

*Power to
accept gift*

32. (1) The Bureau may accept gift of land, money and other property or things upon such terms and conditions, if any, as may be specified by the person or organization making the gift.
- (2) The Bureau shall not accept any gift if the condition attached by the person or organization making the gift are inconsistent with the aims and objectives of the Bureau.

Power to
Borrow

33. The Bureau may, with the approval of the Governor, borrow money by way of Overdraft or Loan for the purpose of carrying out its functions under this Bill.

PART VI GENERAL ADMINISTRATIONS

Governing Rules on
Public Procurement

34. (1) Subject to the exceptions under this Bill, all procurements carried out by any Procuring Entity shall be governed by the following rules:
 - (a) open competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed;
 - (b) promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
 - (c) simple, sustainable, standardized rules with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology;
 - (d) executing in an effective, efficient, transparent, timely, equitable manner to ensure accountability which shall conform with the provisions of this Bill and its Regulations with the aim of achieving value for money and fitness for purpose;
 - (e) a system of accountability where Public Officers and persons involved directly or indirectly in the procurement process or its implementation are,

when warranted by circumstances, investigated and held liable for their actions;

(f) public monitoring of the procurement process and the implementation of contracts awarded pursuant to the provisions of this Bill and its Regulations, and that all public contracts are performed strictly according to specifications; and

(g) procurement plans shall be supported by prior budgetary appropriation; no procurement proceeding shall be formalized until the Procuring Entity has ensured that funds are budgeted and appropriated to meet the obligations.

(2) All Regulations, Procedures and Timelines to be prescribed pursuant to this Bill and specified by the Bureau from time to time shall always conform to the provisions of paragraphs (a)–(g) of sub-clause (1) of this Clause.

(3) Where the Bureau has set prior review or monetary threshold pursuant to this Bill, no funds shall be disbursed from the State Treasury or any Bank Account of any Procuring Entity for any procurement falling above the threshold, unless such requests are accompanied by Certificate of No Objection duly issued by the Bureau.

(4) A Supplier, Contractor or Service Provider may be a natural person, a legal person or a natural/legal person. Suppliers, Contractors or Service Providers acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Bill and the non-performance or improper performance of any contract awarded pursuant to this Bill.

(5) All bidders, in addition to requirements contained in any solicitation document shall:

(a) possess the following:

(i) professional and technical qualification to carry out particular procurement;

(ii) financial capacity;

(iii) equipment and other relevant infrastructure;

- (iv) personnel to perform the obligations of the Procurement Contract; and
- (v) the legal capacity to enter into the Procurement Contract;

- (b) 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;
- (c) have fulfilled all its obligations to pay Taxes, Pensions and Social Security Contributions; and
- (d) not have any Director(s) who have been convicted in any country for any Criminal Offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.

(6) The Bureau or any Procuring Entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with the provisions of this Bill and for this purpose, any such requirements shall apply equally to all bidders.

(7) A bid or a tender shall be excluded from any particular procurement proceedings if:

- (a) there is verifiable evidence that any Supplier, Contractor or Service Provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a Procuring Entity or the Bureau, in an attempt to influence any action, decision making or any procurement activity;
- (b) a Supplier, Contractor or Service Provider during the last three (3) years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in the performance of any public procurement;
- (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private

company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any Bankruptcy Proceedings or who have been declared Bankrupt and or have made any compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding;

- (d) the bidder is in arrears regarding payment of due Taxes, Charges, Pensions or Social Insurance Contributions, unless such bidders have obtained a lawful permit with respect to allowance or defence of such outstanding payment in instalments;
- (e) the bidder has been convicted for a crime committed in connection with a procurement proceeding, 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 convicted for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; and
- (g) the bidder fails to submit a statement regarding its documentation or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the Procuring Entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceeding.

(8) Where a bid or tender is excluded under the provisions of sub-clauses (6) and (7) (a – g) of this Clause:

- (a) the Bureau shall inform the bidder in writing the grounds for the exclusion of the bid or tender for Public Procurement; and
- (b) a Procuring Entity shall keep a record of the proceeding in a manner prescribed by the Bureau.

(9) All contract prices shall be considered as fixed, and therefore not subject to any upward variation during the contract implementation, except under extraordinary circumstances

and only upon prior approval of the Bureau which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.

- (10) All communications and documents issued by Procuring Entities and the Bureau shall be in English Language.
- (11) All communications regarding any matter deriving from this Bill or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (12) Every Procuring Entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten (10) years from the date of the award.
- (13) Copies of all procurement records shall be forwarded to the Bureau not later than three (3) Months after the end of the financial year and shall include:
 - (a) information identifying the Procuring Entity and the Contractors;
 - (b) date of the contract award;
 - (c) value of the contract; and
 - (d) detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection at the cost of copying and certifying the documents in addition to an Administrative Charge as may be prescribed from time to time by the Bureau.
- (15) Criteria stipulated as the basis upon which Suppliers or Contractors would be evaluated shall not be changed in the course of any procurement proceedings.
- (16) The burden of providing fulfilment of the requirement for participation in any procurement proceeding shall lie on the Supplier or Contractor.

- (17) A Contract shall be awarded to the lowest cost evaluated and qualified bidder from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding sub-clause (17) of this Clause, the Bureau may refuse to endorse the award of a Contract for public procurement on the grounds that, the price is manifestly excessive or unreasonably below the predetermined price or that a procurement proceeding has been conducted in a manner that violates the provisions of this Bill.
- (19) Pursuant to sub-clause (18) of this Clause; the Bureau may direct that the procurement proceedings be entirely cancelled or that the Procuring Entity conduct a re-tender amongst the bidders that are substantially responsive to the initial bid solicitation based only on the price.
- (20) A Procuring Entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification submissions and actual contents of the tender proposal or quotations other than in the summary, from starting the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award.
- (21) The Accounting Officer of an entity and any Officer to whom responsibility is delegated is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Bill or its Regulations.
- (22) The Accounting Officer of an entity shall ensure that the provisions of this Bill and the Regulations made under are complied with, and approval by the Approving Authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Bill or its Regulations.
- (23) Procurement and Disposal decisions of a Procuring Entity shall be taken in adherence to the provisions of this Bill and Regulations made from time to time by the Bureau.

- (24) Any person who has been engaged in preparing for a procurement or part of the proceedings may not bid for the procurement in question or any part of it either as Main Contractor or Sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tenders.
- (25) A Procuring Entity shall not request or stipulate that a bidder should engage the services of a particular Contractor as a requirement for participating in any procurement proceeding.
- (26) All Contracts shall contain provisions for Arbitration proceedings as the primary form of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the prevailing rate of the Central Bank of Nigeria valid on the day of opening the tender.

Warranties

- 35. 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.

Procurement Office

- 36. (1) A Procuring Entity within the provisions of this Bill shall establish a Public Procurement Office whose functions shall be to:
 - (a) initiate the entity's procurement process;
 - (b) carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
 - (c) aggregate its requirement, within and between Procuring Entities to obtain economy of scale and reduce procurement cost;
 - (d) conduct pre-qualification exercise for Suppliers, Contractors or Service Providers based on requisite expression of interest;

- (e) develop technical specifications in liaison with relevant Departments or Units;
- (f) conduct pre – bid conferences when necessary;
- (g) ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Bill and Regulations as may be issued from time to time;
- (h) prepare bid documents;
- (i) issue bid documents;
- (j) supervise the development of all tenders;
- (k) organise communication with bidders;
- (l) issue receipts and keep bids in safe custody until opening;
- (m) receive and evaluate any bids received in response to solicitation;
- (n) maintain procurement records; and
- (o) evaluate expression of interest by Suppliers, Contractors, or Service Providers and forward the list of qualified submissions to the Tenders Board of the Procuring Entity.

(2) The Procuring Entity shall notify the Bureau of the list of qualified submissions and the preferred mandate.

(3) The Procuring Entity shall award a procurement contract after the Bureau has issued a Certificate of No Objection.

Approving
Authority

37. (1) Subject to the monetary and prior review threshold for procurements as may from time to time be determined by the Bureau and approved by the Board, the following shall be the Approving Authorities for the conduct of Public Procurement. In the case of a:
- (a) Government Agency, Parastatal or Corporation, its Tenders' Board;
 - (b) Ministry or Extra-Ministerial Entity, the Ministerial Tenders Board;
 - (c) Local Government Council, the Local Government's Tenders Board;
- (2) The State Tenders Board shall be the Approving Authority for thresholds above those provided in sub-clause (1) (a) and (b) of this Clause.

Procurement
Planning

38. Subject to the Regulations as may from time to time be issued by the Bureau, a Procuring Entity shall plan its procurement by:
- (a) preparing a needs assessment and evaluation;
 - (b) identifying based on paragraph (a) of this Clause, the goods, works or services required;
 - (c) preparing an analysis of the cost implications of the proposed procurement;
 - (d) aggregating its requirements whenever possible, both within the Procuring Entity and between Procuring Entities, to obtain economy of scale and reduce procurement cost;
 - (e) integrating its procurement expenditure into its yearly budget;
 - (f) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
 - (g) ensuring that the Entity's procurement functions stipulated in this Clause shall be carried out by a Procurement Planning Committee.

Establishment and
Composition of
Procurement
Planning Committee

39. (1) For each financial year, each Procuring Entity shall establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall comprise of the following Members:
- (a) the Accounting Officer of the Procuring Entity or his representative who shall be the Chairman of the Committee;
 - (b) a representative of the Procurement Department/Unit of the Procuring Entity who shall be the Secretary;
 - (c) a representative of the Unit directly in requirement of the procurement;
 - (d) a representative of the Financial Unit of the Procuring Entity;
 - (e) a representative of the Planning, Research and Statistics Unit of the Procuring Entity;

- (f) technical personnel of the Procuring Entity with expertise in the subject matter for each particular procurement; and
- (g) a representative of the Legal Unit of the Procuring Entity.

Procurement
Implementation

40. Subject to the Regulations as may from time to time be issued by the Bureau, a Procuring Entity shall implement its procurement plans as follows:
- (a) advertise/solicit for bids in adherence to the provisions in this Bill and guidelines as may be issued by the Bureau from time to time;
 - (b) invite as an observer, at least a Non-Governmental Organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant Agency or body including their own Organizations or Associations;
 - (c) receive, evaluate and make a selection of the bids received in adherence to the provisions of this Bill 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 losers on request;
 - (f) resolve Complaints/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 threshold as stipulated in this Bill;
 - (i) execute the Contract Agreement; and
 - (j) announce and publicize the award in the format stipulated by this Bill and Guidelines as may be issued by the Bureau from time to time.

Accounting Officer

41. (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 Corporations, the Director-General or Officer of co-ordinate responsibility.

(2) The Accounting Officer of every Procuring Entity shall have overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for:

- (a) ensuring compliance with the provisions of this Bill by his entity and liable in person for the breach or contravention of the provisions of this Bill or any Regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
- (b) constituting the Procurement Planning Committee and its decisions;
- (c) ensuring that adequate appropriation is provided specifically for procurement in the State budget;
- (d) integrating his entity's procurement expenditure into its yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) constituting the Evaluations Committee; and
- (g) liaising with the Bureau and ensure the implementation of its Regulations.

Tenders Board

42. (1) There is established in this Bill, the State Tenders Board and in each Ministry, Extra-Ministerial Office, Department, Agency, Parastatal, Institution and Corporation, a Tenders Board.

(2) The Governor shall from time to time appoint the membership of the State Tenders Board.

(3) The Tenders Board shall have power to recommend for award, Contracts for procurement of goods, works and

services within the threshold set in the Regulations to this Bill.

(4) The State Tenders Board shall recommend for awards of Contracts for procurement of goods, works and services within the thresholds set out in the Regulations to this Bill.

(5) The State Tenders Board in recommending for award, shall obtain from the Bureau a Certificate of No Objection for projects that are above its threshold.

(6) In cases where there is a need for pre-qualifications, the Chairman of the Tenders Board shall constitute a Technical Evaluation Sub-Committee which shall be comprised of professional staff of the Procuring Entity and the Secretary of the Tenders Board who shall also be the Chairman of the Evaluation Sub-Committee.

(7) The decision of the Tenders Board shall be communicated to all concerned for implementation.

Open
Competitive
Bidding

43. (1) The procurement of works, goods and services by all Procuring Entities shall be conducted by Open Competitive Bidding except it is otherwise provided in this Bill.

(2) No negotiations, unless otherwise provided for in this Bill, shall be conducted with Suppliers, Contractors or Service Providers and the winning bid shall be that which is, in the case of:

(a) goods and works, the lowest evaluated response from the bidders who responded to the bid with regards to work specification and standard; and

(b) services, the highest rated evaluated bid from the Bidder who responded to the bid solicitation.

Invitation of
Bid

44. (1) Invitations 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 procurement shall fall under either system.

(2) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) National Newspapers, one (1) relevant internationally recognized newspaper, the official website of the Procuring Entity, the Bureau and the State Procurement Journal not less than six (6) weeks before the deadline for submission of the Bids for the goods, works and services.

(3) In the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the Notice Board of the Procuring Entity, any of its Official Website, at least one Local Newspaper circulating within the State, one National Newspaper and in the State Procurement Journal not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services.

(4) Not later than Six (6) months after the passage of this Bill, the Bureau shall issue Guidelines for the Advertisement/Publication of Invitations to Bid.

Pre-qualification of Bidders

45. (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, shall apply only the criteria set out in the pre-qualification documents and no more.

(2) Procuring Entities shall supply a set of pre-qualification documents to each Supplier, Contractor or Service Provider that requests them; and the price that a Procuring Entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery.

(3) Not later than Six (6) months after the passage of this Bill, the Bureau shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process.

Bid Documentation

46. (1) Bid Documentation shall be prepared by Procuring Entities based on the Standard Forms and Manuals issued under regulation by the Bureau.
- (2) The Pre-qualification Documents shall include the following:
- (a) instructions to prepare and submit pre-qualification application;
 - (b) a summary of the main terms and condition required for the Procurement Contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by the Supplier, Contractor or Service Provider to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to the pre-qualified and the deadline for the submission expressed as a specific date and which allows sufficient time for the Supplier, Contractors or Service Providers 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 Bill and procurement Regulation relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.
- (3) The Procurement Entity shall respond to any request by a Supplier, Contractor or and Service Provider for classification of the pre-qualification documents if the request is made at least ten (10) days before dateline for the submission of application to pre-qualify.

- (4) The response by the Procuring Entity shall be given within a reasonable time and in any event within a period of at most seven (7) working days so as to enable the Supplier, Contractor or Service Provider to make a, timely submission of its application to pre-qualify.
- (5) The response to any request that might reasonably be expected to be of interest to other Suppliers, Contractors or Service Providers shall, without identifying the source of the request, be communicated to other Suppliers or Contractors or Service Providers provided with the pre-qualification documents by the Procuring Entity
- (6) A Procuring Entity promptly notifies each Supplier, Contractor or Service Provider which submitted an application to pre-qualify 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 Service Providers who have been pre-qualified.
- (7) Suppliers, Contractors or Service Providers who have been pre-qualified may participate further in the procurement proceedings.
- (8) The Procuring Entity may upon request communicate to the Supplier, the grounds for disqualification.
- (9) The Procuring Entity may require a Supplier, Contractor or Service Provider who has been pre-qualified to demonstrate its qualification again in accordance with the same criteria used to pre-qualify the Supplier, Contractor or Service Provider.
- (10) 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 Service Provider has done so to the satisfaction of the Procuring Entity.

(11)The Procuring Entity shall disqualify any Supplier, Contractor or Service provider, who fail to demonstrate its qualification again if requested to do so.

(12)Procuring Entities may require additional documents or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

Bid Security

47. (1) Subject to the monetary and prior review threshold as may be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a Bid Security in an amount not less than one percent (1%) of the Bid price by way of a Bank Guarantee issued by a reputable Bank acceptable to the Procuring Entity or an Insurance Bond issued by an Insurance Company acceptable to the Procuring Entity.

(2) The Bureau shall from time to time specify the principal, terms and conditions of Bid Security to be posted by Bidders.

Submission of Bids

48. (1) All Bids in response to an invitation to Open Competitive Bidding shall be signed by an official authorized to bind the Bidder to a contract and placed in a sealed envelope.

(2) All Bids shall have two (2) components, namely: the Technical and Financial components which should be in separate sealed envelopes, and which shall be submitted in one large envelope.

(3) All submitted Bids shall be deposited and kept in a secured tamper-proof Bid Box.

(4) All submitted Bids must be in English Language.

(5) The Procuring Entity shall be issued a receipt showing the date and time the bid was received.

- (6) Any Bid received after deadline for submission shall not be opened and must be returned to the Supplier, Contractor or Service Provider that submitted it.
- (7) No communication shall take place between Procuring Entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Bill.

Failure of Bidding

- 49. (1) There shall be a failure of bidding if:
 - (i) No Bids are received;
 - (ii) No Bid qualified as the lowest evaluated responsive bid or highest rate responsive bid; or
 - (iii) the Bidder with the highest rated or lowest calculated responsive bid refuses, without justifiable cause to accept the award of the Contract, as the case may be.
- (2) (i) the Contract shall be re-advertised and re-bided the occurrence of any of the instance stated in sub-clause (1) of this Clause;
- (ii) the Procuring Entity shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the Procuring Entity may resort to an alternate method of Procurement as provided for by this Bill.

Rejection of Bids

- 50. A Procuring Entity may:
 - (a) reject any bid at any time prior to the acceptance of a bid without incurring any liability to the bidders; and
 - (b) cancel the procurement proceedings in the public interest, without incurring any liability to the Bidders.

Validity Period of Bids, modification and withdrawal of Tenders

- 51. (1) The period of validity for a Bid shall be the period specified in the tender documents.
- (2) A Procuring Entity may request Suppliers, Contractors or Service Providers to extend the period of validity for an additional specified period of time.

- (3) A Supplier, Contractor or Service Provider may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.
- (4) A Supplier, Contractor or Service Provider 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.

Bid Opening

52. All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the Procuring Entity shall:
 - (a) permit attendees to examine the envelopes in which the Bids have been submitted to ascertain that the Bids have not been tampered with;
 - (b) cause all the Bids to be opened in public, in the presence of the Bidders or their representatives and any interested member of the public;
 - (c) ensure that the Bid opening takes place immediately following the deadline stipulated for the submission of Bids or any extension;
 - (d) ensure that attendance is taken of all those present at the Bid Opening with their Names, Addresses and the Organization they represent to be recorded by the Secretary of the Tenders Board; and
 - (e) call-over to the hearing of all present, the name and address of each Bidder, the total amount of each Bid, and shall ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

Examination of Bids

53. (1) Every Bid shall be first examined to determine if it:
 - (a) meets the minimum of eligibility requirements stipulated in the Bidding Documents;
 - (b) has been duly signed;

- (c) is substantially responsive to the Bidding Documents; and
 - (d) is generally in order.
- (2) A Procuring Entity may ask a Supplier or a Contractor for clarification of its Bid's Submission in order to assist in the examination, evaluation and comparison of Bids.
- (3) The following changes shall not be sought, offered or permitted:
- (a) prices;
 - (b) substance in a Bid; and
 - (c) making an unresponsive Bid to be responsive.
- (4) Notwithstanding the provisions of sub-clause (3) of this Clause, 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 the Bid while a minor deviation shall be subjected to clarification.
- (7) The following shall be considered as major deviations, with respect to:
- (a) clauses in an offer, unacceptable;
 - (i) sub-contracting;
 - (ii) time schedule if time is of the essence;
 - (iii) alternative design; and
 - (iv) price adjustment;
 - (b) the status of the Bidder, that he is ineligible or not prequalified;
 - (c) Bid Documents, an unsigned bid;
 - (d) time, date and location for submission, any Bid:
 - (i) received after the time and date for submission stipulated in the solicitation; and
 - (ii) submitted at the wrong location.

- (8) In cases of major deviations, the Bid shall not be considered any further and where unopened, it shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reasons for rejection shall be sent and the Bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
- (a) the use of codes;
 - (b) alternative design;
 - (c) alternative workmanship;
 - (d) omission in minor items;
 - (e) arithmetical errors;
 - (f) completion period where these are not of essence;
 - (g) any other condition that has little impact on the Bid;
 - (h) sub-contracting that is unclear and questionable; and
 - (i) any other condition that has little impact on the Bid.
- (11) In cases not mentioned in sub-clause (10) of this Clause, and where there exist a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply, where the impact on the costs is:
- (a) major, it shall be regarded as a major deviation; and
 - (b) 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, the 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.

(16)Not later than Six (6) months after the passage of this Bill, the Bureau shall issue Regulations stipulating the guidelines for the opening and examination of Bids.

Evaluation of Bids.

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

(2) The objective of Bid evaluation shall be, in the case of:
(a) goods and works, to determine and select the lowest evaluated and responsive bid from bidders that have responded to the bid solicitation; and
(b) services, to determine the highest rated Bid from the Bidders responsive to the Bid solicitation.

(3) Not later than Six (6) months after the passage of this Bill, the Bureau shall issue Regulations stipulating the guidelines for the evaluation of bids.

Disqualification of Bids

55. A Procurement Entity shall disqualify a Bidder who submits documents containing false information or documents forged for purposes of qualification at any time, such. disqualification shall be published in the State Official Gazette.

Confidentiality

56. (1) Without prejudice to the provisions of this Bill relating to advertisement of Award of Contract and information to Bidders, Procurement Entities shall not disclose information forwarded to them by Bids labelled as "Confidential". Such information includes Technical aspects, Trade secrets and Confidential information of tenders.

- (2) Confidential information contained in any Bid concerning Commercial, Financial or Technical Information or Trade Secrets or Know-How of a Bidder, need not be disclosed to any person not officially concerned with the procurement process under any circumstance.
- (3) After the public opening of tenders, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the contracting authority or the Procurement Agency shall be disclosed to any Bidder or any third party until the award decision is notified to the successful tenderer.

Acceptance of successful Bids.

- 57. (1) The successful Bid shall be that submitted the lowest evaluated responsive Bid from the Bidders who responded to the Bid solicitation.
- (2) Notwithstanding the provision of sub-clause (1) of this Clause and for the avoidance of doubt, the selected Bidder need not be the lowest cost evaluated Bidder: Provided the Procuring Entity can show good grounds derived from the provisions of this Bill to that effect.
- (3) Notice of the success of its Bid shall immediately be communicated to the successful Bidder.
- (4) Notwithstanding the provisions of sub-clause (3) of this Clause, where the Procurement Proceeding is with regard to a value for which approval should be sought by obtaining the Certificate of No. Objection from the Bureau, notice communicated to a successful Bidder shall serve only for notification purposes and shall not howsoever be construed as a Procurement Award.

Expression of Interest to provide Services Award.

- 58. Where a Procuring Entity wishes to procure services for its needs which are precise and ascertainable for Procurement:
 - (a) it shall solicit for Expression of Interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two (2) National Newspapers and the State Procurement Journal;

- (b) Where the value of the services to be procured is less than One Million Naira (~~₦~~1,000,000.00) or with the approval of the Bureau, of such a low value that only Local Service Providers would be interested, the Procuring Entity may without placing any notice request at least three (3) and not more than ten (10) Consultants or Service Providers to make proposals for provision of the services in a format stipulating the:
- (i) statement of qualifications of the Service Provider to provide the service;
 - (ii) statement of understanding of the Procuring Entity's needs;
 - (iii) methodology for providing the service;
 - (iv) time frame for providing the service; and
 - (v) cost or fee for the service.

Limitation Time
of Procurement
Award

59. Without prejudice to the provisions of this Bill, the period between the opening of Bids and the Award of Contract shall not exceed three (3) Months.

Termination of
Award Procedure

60. (1) When a Contract Award Procedure has been launched by publication of a Procurement Notice, it may be terminated where:
- (a) a contract of framework agreement is concluded;
 - (b) the Award procedure is cancelled for one of the following reasons:
 - (i) no tender is submitted within the specified final time limit;
 - (ii) none of the received tenders are compliant;
 - (iii) all compliant tenders contain prices which substantially exceed the Procuring Entity's budget;
 - (iv) the number of the received compliant tenders is less than three (3) and does not ensure a genuine competition on the contract concerned;
 - (v) the number of qualified candidates is less than three (3) and does not ensure a genuine competition on the envisaged contract; or

(c) the Award Procedure is cancelled for other reasons beyond the Procuring Entity's control and unpredictable at the time for launching the Award Procedure.

(2) Where a Contract Award Procedure is cancelled without the award of a contract or conclusion of a framework agreement, a Cancellation Notice shall be published in the State Official Gazette.

Request for proposal to provide services unascertained needs.

61. (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 includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.

(2) The Procuring Entities shall procure the services of Service Providers by soliciting for expressions of interest by publishing a notice to that effect in two (2) National Newspapers and the State Procurement Journal.

(3) A Procuring Entity may make direct requests to a limited number of Service Providers requesting proposals for the provisions of a service if the:

(a) services are only available from no more than three (3) Service Providers;

(b) 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 Service Providers to ensure transparent competition; or

(c) it is in the public's interest.

Content of the request for proposals.

62. (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 procedures for the evaluation of the qualifications of the Service Providers;
- (f) the requirements on documents evidence or other information that shall be submitted by Service Providers to demonstrate their qualifications;
- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (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 criteria other than cost but stipulated in the request for proposals; and
- (l) a short list to be made of only State Service Providers for consulting assignment contract within a set threshold in the Procurement Regulation:
Provided that State Service Providers possess such requisite skills.

(2) The Procuring Entity shall provide the same information to every Service Provider requesting to submit proposals.

Clarification and
Modification of
request for proposals

63. (1) A Service Provider shall be allowed to request for clarification on the request from the Procuring Entity

and such request may be made within a reasonable time to be specified.

- (2) A Procuring Entity may whether on its initiatives or as a result of a request for clarification by a Service Provider, 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 Service Providers to whom the Procuring Entity has provided the request for proposals and shall be binding on those Service Providers.
- (4) If the Procuring Entity convenes a meeting of Service Providers, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its response to those issues without identifying the sources of request for clarifications.
- (5) The minutes shall be provided promptly before the deadline for submission of proposals to the Service Providers participating in the selection proceedings to enable them take the minutes into accounts in preparing their proposals.

Submission of
Proposals

64. (1) The Procuring Entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than ten (10) 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 for 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 Committee shall not have access or insight to the financial proposals until the evaluations including any review by Tenders Board are concluded.

Criteria for
evaluation of
Proposals

65. (1) The Procuring Entity shall establish the 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 the:

- (a) 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) effectiveness of the proposal submitted by the Consultant or Service Provider in meeting the needs of the Procuring Entity;
- (c) proposal price, including any ancillary or related cost;
- (d) extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific and operational skills and the counter trade arrangement offered by Consultants or Service Providers and security considerations.

- (2) A Procuring Entity may accord a margin of preference for domestic Consultant or Service Provider 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.

General
selection
procedure.

66. (1) The Procuring Entity shall select the successful proposal by either choosing the proposal with the:
(a) lowest evaluated price; or

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

- (2) The Procuring Entity shall include in the record of procurement, a statement of the grounds and circumstances on which it relied to select either of the procedures in sub-clause (1) of this Clause.
- (3) Nothing in this Clause shall prevent the Procuring Entity from resorting to the use of any impartial panel of experts to make the selection.

Procedure for selection of proposal where price is a factor

67. (1) Where the Procuring Entity elects to the successful proposal based on and price factors, it shall 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 proposal 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 notify the Service Providers whose proposals did not meet the minimum qualification or were non-responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen (14) working days and after the decision has been taken by the Procurement Entity.
- (4) The name of the qualified Service Provider and the quality score 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 proposal which shall be part of the evaluation report and shall retain this record.
- (6) The successful proposals shall be the:
 - (a) proposals with the best combined evaluation in terms of the criteria established under sub-clause (1) of this Clause from price in the case of quality and cost – based selection;
 - (b) proposals with the lowest price in the case of least – cost selection; or
 - (c) highest ranked technical proposal within the budget in the case of fixed budgeted selection.
- (7) The Service Providers with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.

Selection where price is not a factor.

- 68. (1) Where the Procuring Entity elects to make a quality based selection based on Service Provider’s qualification or single-source selection, it shall engage in negotiations with Service Providers 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 Service Provider that has attained the best in accordance with sub-clause (1) of this Clause;
 - (c) inform the Service Providers that attained ratings above the weight that may be considered for negotiations if the negotiations with the Service Provider with the best rating do not result in a procurement contract; and
 - (d) inform the Service Provider with the best rating, that it is terminating the negotiations if it becomes apparent to the Procuring Entity that the negotiations with that Service Provider invited under sub-clause (2) (b) of this Clause will not result in a Procurement Contract.

- (3) The Procuring Entity shall, if negotiations with the Service Provider with the best rating fails, invite the Service Provider that obtained the second best rating, and if the negotiations with that Service Provider 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 Service Providers.

Register of Awards

- 69. The Bureau shall maintain a Register of Awards, where the details of all Procurement Awards shall be kept.

Restricted tendering.

- 70. (1) Subject to the approval of the Bureau, a Procuring Entity may by reasons of economy, efficiency, special skills, experience and proven track record of a Contractor or Service Provider over a period of time, initiate procurement by means of restricted procurement, if the:
 - (a) goods, works or services are available only from a limited number of Suppliers or Contractors; or
 - (b) 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 procure; or
 - (c) procedure is used as an exception rather than a norm.
- (2) Where a Procuring Entity engages in restricted tendering on the basis that the:
 - (a) goods and services are available 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) 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 that will ensure effective competition.

(3) The provisions of this Bill regarding the Open Competitive Bidding shall apply to selective tender proceedings only to the extent of the variance by this Clause.

Direct
Procurement.

- 71 (1) A Procuring Entity may carry out a direct procurement where:
- (a) goods, works or services are only available from a particular Supplier or Contractor, or if a particular Supplier or Contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
 - (b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical 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 which has procured goods, equipment, technology or services from a Supplier or Contractor when it 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;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;

- (e) the Procuring Entity seeks to enter into a contract with the Supplier or Contractor 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 costs; or
- (f) the Procuring Entity applies this Bill 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; and
- (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.

Emergency
Procurement

72. (1) Subject to the approval of the Bureau a Procuring Entity may initiate emergency Procurement where:

- (a) the state is either seriously threatened by or actually confronted with a disaster, catastrophe, insurrection or an act of God;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods will seriously deteriorate unless action is urgently taken to maintain them in their actual value or usefulness;
- (c) a public project may be seriously delayed for want of a minor value; or
- (d) in an emergency situation, a Procuring Entity may engage in direct contracting of goods, works and services.

(2) All procurements made under emergency shall be handled expeditiously having due regard to accountability.

(3) 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"

E- Procurement. 73. (1) Not later than twelve (12) months from the enactment of this Bill or at such other time as the Governor may consider appropriate, the Bureau subject to the approval of the Board shall design and set up a secure Electronic Portal to be known as the "Plateau State Government Electronic Procurement System" which shall be the primary source of information for all public procurement matters and opportunity within the purview of this Bill and its Regulations issued under this Bill.

(2) Subject to the provisions of this Bill and its Regulations, it shall be lawful for any Procuring Entity to consider any or all of its tenders by electronic auction and or simulation on its electronic portal:

Provided that the use of the electronic system shall be transparent, efficient, and economical.

Domestic Preferences.

74. (1) The 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 suppliers offering goods manufactured locally with those offering goods manufactured in a foreign country.

(2) Where the Procuring Entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic Suppliers and Contractors and the criteria for eligibility for such preference.

(3) Margin of preference may apply to tenders under all International Competitive Bidding.

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

Mobilization fees

75. (1) In addition to any other Regulations as may be prescribed by the Bureau, a mobilization fee of not more than twenty per cent (20%) may be paid to a Supplier or Contractor and shall be supported by the following, in the case of:
- (i) International Competitive Bidding, an unconditional Bank Guarantee issued by a reputable Bank acceptable to the Procuring Entity; and
 - (ii) National Competitive Bidding, an unconditional Bank Guarantee or Insurance Bond issued by a banking institution acceptable to the Procuring Entity.
- (2) After a mobilization fee has been made to a Supplier or Contractor, no further payment shall be made to such Supplier or Contractor without an Interim Performance Certificate issued in accordance with the Contract Agreement.

Performance Guarantees or Bonds

76. 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 ten per cent (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.

Records of procurement

77. (1) Every Procuring Entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Bureau.
- (2) 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 Clause.
- (3). The records and documents maintained by Procuring Entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau 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.

Investigation
by the Bureau

78. (1) The Bureau may conduct an investigation into any matter related to the conduct of procurement proceedings by a Procuring Entity, or the conclusion or operation of a procurement contract if it considers it necessary or desirable to prevent or detect a contravention of this Bill.
- (2) The Bureau may in the course of this investigation:
- (a) at any time during normal office hours, enter the premises of Procuring Entity, Bidder, Supplier, Contractor, or Service Provider concerned with the procurement proceedings under investigation;
 - (b) require an Officer, Employee or Agent of the Procuring Entity or Bidder, Supplier, Contractor, or Service Provider to produce any Book, Record, Account or Document;
 - (c) search premises for any Book, Records, Account or Document;
 - (d) examine and make extracts from Books, Records, Accounts or Documents of any Procuring Entity, Bidder, Supplier, Contractor, or Service Provider;
 - (e) remove Books, Records, Accounts or Documents of the Procuring Entity, Bidder, Supplier, Contractor or Service Provider as may be necessary, to examine them or make extracts from them, however, the investigator shall give a detailed receipt for the Books, Records, Accounts or Documents removed;
 - (f) require any Officer, Employee or Agent of the Procuring Entity or Bidder, Supplier, Contractor or Service Provider to explain an entry in their Books, Records, Accounts or Documents; and
 - (g) provide the investigator with information concerning the management or activities of the Procuring Entity or Bidders as may be reasonably required.

- (3) The power of entry and search conferred by sub-clause (2) (a) – (f) of this Clause shall not be exercised except the Bureau has first obtained an Order of the State High Court without the necessity of putting the Procuring Entity or Bidder, Supplier, Contractor or Service Provider concerned or the person in charge of the premises on notice.
- (4) The Bureau shall, if satisfied that there has been a contravention of the provisions of this Bill or any of its Regulations in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which shall include recommending:
 - (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contracts;
 - (c) ratification of anything done in relation to the proceedings; or
 - (d) a declaration consistent with any relevant provisions of this Bill.
- (5) On completion of an investigation, the Bureau shall send a summary of its findings and recommendations to the concerned Procuring Entity, Bidder, Supplier, Contractor or Service Provider.
- (6) The Bureau shall afford any Procuring Entity, Bidder, Supplier or Contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under sub-clause (4) of this Clause.
- (7) The Bureau may pursuant to an advice of a Procuring Entity as a result of its review on 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 or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required under the contract.

Administrative
Review

79. A Bidder may seek Administrative Review of any omission or breach by a Procuring Entity or the Board under the provisions of this Bill and its Regulations.

Procedure for
complaints
against a
procuring or
disposing entity
or the agency

80. (1) The following procedure shall apply to Complaints against a Procuring or Disposing Entity:

- (a) a Complaint by a Bidder against a Procuring or Disposing Entity shall first be submitted in writing to the Accounting Officer of the Procuring or Disposing Entity who shall on receiving the Complaint make a decision in writing within fifteen (15) working days including the corrective measures to be taken, including the suspension of the proceedings where he deems it necessary and gives reasons for the decision;
- (b) where the Bidder is not satisfied with the decision of the Accounting Officer, the Bidder may make a Complaint to the Bureau within ten (10) working days from the date of communication of the decision of the Accounting Officer;
- (c) upon the receipt of the Complaint, the Bureau shall promptly give notice of complaint to the respective Procuring Or Disposing Entity and suspend any further action by the Procuring or Disposing Entity until the Bureau settles the matter;
- (d) before taking any decision on a complaint, the Bureau shall notify all interested bidders of the Complaint considering representations from the Bidders and from the respective Procuring or Disposing Entities;
- (e) the Bureau shall make its decision within thirty (30) working days after receiving the Complaint, stating the reasons for its decision and remedies granted, if any; and
- (f) where the Bureau fails to render its decision within the stipulated time, or the Bidder is not satisfied with decision of the Bureau, the Bidder may appeal to the State High Court

within thirty (30) days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

(2) The following procedures shall apply to Complaints against the Bureau:

- (a) a Complaint by a Bidder against the Bureau shall first be submitted in writing to the Director-General of the Bureau who shall bring the Complaint to the attention of the Bureau;
- (b) the Board shall notify all interested Bidders of the Complaint and consider all representations from the Bidders and Procuring or Disposing Entities;
- (c) the Board shall make its decision within thirty (30) working days after receiving the Complaint, stating the reasons for its decision and remedies granted;
- (d) where a Bidder is not satisfied with the decision of the Board, an appeal shall lodged at the State High Court within thirty (30) working days after the receipt of the decision of the Board, or expiration of the time stipulated for the Board to deliver a decision; and
- (e) the decision of the State High Court may include any or all of the following:
 - (a) dismissal of the Complaint;
 - (b) nullifying in whole or in part an unlawful act or decision made by the Procuring or Disposing Entity or the Board;
 - (c) declaring the Rules or Principles governing the subject matter of the Complaint; and
 - (d) reversing an improper decision by the Procuring or Disposing Entity of the Board, and delivering same with its own decision.

81. (1) For the purposes of this Bill, the Board of Survey shall be responsible for the disposal of all public properties including Lease, Hire Purchase, Rentals, Licenses, Tenancies, and Franchise.
- (2) Before such disposal, the Board of Survey shall obtain a Certificate of No Objection from the Bureau.
- (3) The Open Competitive Bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (4) The Bureau shall, with the approval of the Board:
- (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 documents, monitor implementation, set and enforce reporting standards that shall be used by all Procuring Entities involved in the disposal of public property.
- (5) For the purpose of this Bill, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):
- (a) created through public expenditure;
 - (b) acquired as a gift or through Deeds;
 - (c) acquired in respect of intellectual or proprietary rights; and
 - (d) acquired on financial instruments (including shares, stocks, bonds etc.)
- (6) The means of the disposal of public property shall include:
- (a) sales and auction;
 - (b) lease, hire purchase, rentals, licences, tenancies, and franchise. In the case of Lease, Hire Purchase, Rentals, Licences, Tenancies and Franchise, the Board of Survey shall exercise its functions in

conjunction with the relevant Ministries, Departments and Agencies:

Provided that in all cases a Certificate of No Objection shall be obtained from the Bureau;

- (c) transfer from one government department to another with or without financial adjustments; and
- (d) offer to the public at an authorized variation.

PART VII OFFENCES AND PENALTIES

- Offences
82. (1) Any natural person who contravenes any provision of this Bill commits an offence and is liable on conviction to a term of imprisonment not less than five (5) years but not exceeding ten (10) years without an option of fine.
- (2) It shall be an offence to:
- (a) open or tamper with any sealed Bid or any document required to be sealed, divulging their contents prior to the appointed time for the Public Opening of Bids or other documents;
 - (b) delay, without any justifiable cause, the screening for eligibility, opening of Bids, evaluation and post evaluation of Bids and awarding of contracts beyond the prescribed periods of action provided for in this Bill or its Regulations;
 - (c) enter or attempt to enter into a collusive agreement, whether force able or not, with a Supplier, Contractor or Service Provider where the prices quoted in their respective Tenders, Proposals or Quotations are or would be higher than what it would have been if there was no collusion between the persons concerned;
 - (d) engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way;
 - (e) directly or indirectly attempting to influence in any manner, the procurement process to obtain an

advantage in the award of a procurement contract;

- (f) split Tenders to enable the evasion of monetary threshold set;
- (g) bid – rigging;
- (h) alter any procurement document with intent to influence the outcome of a Tender Proceeding;
- (i) using fake documents or encouraging their use;
- (j) wilfully refusing to allow the Bureau or its Officer procurement record; and
- (k) withdrawing a Bid, after it has qualified as the Lowest Calculated and Highest Rated Bid or refusal to accept an award without just cause or for the purpose of forcing the Procuring Entity to award the contract to another Bidder;

this shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, Performance Guarantee, preparatory to the final award of the contract.

- (3) Any person whilst carrying out his duties as an Officer of the Bureau or any Procuring Entity and which actions contravenes any provision of this Bill and its Regulations, commits an offence and shall be liable on conviction to a cumulative punishment of:
 - (a) a term of imprisonment of five (5) years without option of fine; and
 - (b) summary dismissal from Government service.
- (4) Any Corporate Body or Firm that contravenes any provision of this Bill and its Regulations commits an offence and is liable on conviction to a cumulative penalty of:
 - (a) being barred from all public procurement in the State for a period not less than ten (10) years; and
 - (b) a fine equivalent to the value of the procurement in issue.
- (5) Where a Corporate body or Firm is convicted pursuant to sub-clause (4) of this Clause, every Director of the Company or every Partner of the Firm shall be guilty of

an offence and is liable on conviction to a term of imprisonment for not less than three (3) years but not exceeding five (5) years without an option of fine unless he proves that the offence upon which the conviction was based, was committed without his knowledge, consent or connivance.

- (6) An alteration pursuant to sub-clause (2) (h) of this Clause shall include but not limited to:
 - (a) forged arithmetical correction or calculation;
 - (b) an insertion of documents such as Bid Security or Tax Clearance certificate which were not submitted at the Bid Opening; and
 - (c) request for clearance in a manner not permitted under this Bill and its Regulations.

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

- (8) Bid – rigging pursuant to sub-clause (2) (g) of this Clause means an agreement between persons where:
 - (a) offers submitted, have been pre-arranged between them; or
 - (b) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or of value to the State Treasury.

- (9) For the purpose of sub-clause (7) of this Clause, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether totally or partially, directly or indirectly.

(10) For the purposes of sub-clause (2), (5) and (8) this Clause, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his Company/Firm having an undue advantage over other Bidders to the detriment of the State Treasury.

PART VIII
MISCELLANEOUS PROVISIONS

Power to make
Regulations

83. The Bureau may with the approval of the Board make Regulations for the proper implementation and enforcement of the provisions of this Bill and without prejudice to any other provisions make Regulations subject to the approval of the Board with respect to all or any of the following matters:
- (a) structure and contents of Annual Procurement Plans;
 - (b) standard and content of all bids solicitation documents;
 - (c) standard and content of all procurement contracts;
 - (d) use of any procurement method;
 - (e) fees chargeable by any Procuring Entity for matters relating to public procurements; and
 - (f) prevention and detection by the Bureau of any act amounting to an infringement on the provisions of this Bill and its Regulations.

Transitional
provision

84. There shall be a transitional period of three (3) Months after the passage of this Bill and assented to by the Governor.

Repeal

85. The Plateau State Bureau of Public Procurement Law, 2016, is hereby repealed.

PROCEEDINGS OF THE BOARD

1. Subject to the provisions of this Bill and Section 30 of the Interpretation Law, (which provides for decision of statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Board may make Standing Orders regulating its proceedings or that of any of its Committees.
2. At any meeting of the Board, the Chairman shall preside and in his absence, the members present at the meeting shall appoint one of their members to preside at the meeting.
3. The quorum for a meeting of the Board shall not be less than two-third ($\frac{2}{3}$) of the total number of members of the Board as at the date of the meeting and the quorum of a Committee of the Board shall be as determined by the Board.
4. The Board shall for the purpose of this Bill, meet quarterly in each year and subject thereto, the Board shall meet whenever it is summoned by the Chairman.
5. Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him in the meeting of the Board for such period as it thinks fit but a person who is a member by virtue of this paragraph, shall not be entitle to vote at any meeting of the Board and shall not count towards a quorum.
6. A member of the Board who is directly or indirectly in any matter being deliberated upon by Board or is interested in a contract made or proposed to be made by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at the meeting of the Board.
7. A disclosure under paragraph six (6) above shall be recorded in the minutes of the meetings of the Board and the member concerned shall:
 - a. not, after the disclosure, take part in any deliberation or decision of the Board; and

- b. be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decision, with regard to the subject matter in respect of which his interest is so disclosed.

Committees:

- 8. (1) Subject to its Standing Orders, the Board may appoint such number of Standing and Ad-hoc Committees as it thinks fit to consider and report on any matter with which the Board is concerned.
- (2) A Committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board as may be determined by the Board) and a person other than a member of the Board, shall hold office on the Committee in accordance with the terms of his appointment and the Committee shall be presided over by a member of the Board.
- (3) The quorum of any Committee set up by the Board shall be as may be determined by the Board.
- (4) A decision of a Committee of the Board shall be of no effect until it is ratified and confirmed by the Board.

Miscellaneous:

- 9. The fixing of the Seal of the Board shall be authenticated by the signature of the Chairman or any other person generally or specifically authorised by the Board to act for that purpose.
- 10. Any contract or instrument which, if made by a person not being a body corporate, will not be required to be under Seal and may be executed on behalf of the Board by the Secretary or by any other person generally or specifically authorised by the Board to act for that purpose.
- 11. Any document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Board shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof, to have been so signed or sealed.

12. The validity of any proceedings of the Board or of any of its committees shall not be affected by:
 - a. any vacancy in the membership of the Board of Committee;
 - b. any defect in the appointment of a Member of the Board of Committee; or
 - c. by reason that any person not entitled to do so, took part in the proceedings of the Board or Committee.
13. A Member of a Committee who has a personal interest or in any contract or arrangement entered into or proposed to be considered by the Committee shall forthwith disclose his interest to the Committee and shall not vote on any
14. No Member of the Board shall be personally liable for any omission done or made in good faith while engaging in the business of the Board.

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

Longbap, Ponven Wuyep
Ag. Clerk,
Plateau State House of Assembly

I assent this _____ day of _____ 2018

Rt. Hon. Simon Bako Lalong
Governor,
Plateau State of Nigeria.

Repassed by two- Thirds majority
This _____ day of _____ 2018

Rt.Hon. Joshua Izang Madaki
Speaker,
Plateau State House of Assembly.

Governor of
Plateau State,
Government Office,
Rayfield, Jos.

**FORWARDING OF PLATEAU STATE BUREAU OF PUBLIC
PROCUREMENT BILL 2018 FOR ASSENT**

Following the presentation by you of the Plateau State Bureau of Public Procurement Bill 2018, the House, after a careful consideration of same passed the Bill as follows-

SCHEDULE TO THE BILL

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED
Plateau State of Public Procurement Bill 2018.	A Bill For A Law to Establish the Plateau State Bureau of Public Procurement and Other Related Matters.	The Bill seeks to Establish the Plateau State Bureau of Public Procurement Agency, and among other things ensure probity, accountability and transparency.	25/7/2018

2. In accordance with Section 100(3) of the 1999 Constitution (As Amended), I forward to you the Bill as passed for your assent.

Rt. Hon. Joshua Izang Madaki
Speaker