

PUBLIC PROCUREMENT ACT, 2007

A Simplified Version

Produced by

PUBLIC AND PRIVATE DEVELOPMENT CENTRE

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A. Introduction

A1 Purpose of the Simplified Version of the Public Procurement Act

1. To present the provisions of the Act in a plain language for easy understanding
2. To serve as a tools for enlightenment of citizens on the provisions of the Act.
3. To serve as a quick reference guide to stakeholders in public procurement.

A2 Procurement and Governance

Public procurement is essential in the process of delivering public goods and services. Most government works and services are implemented through the process of procurement. Good and accountable governance therefore thrives when the public procurement processes are governed by rules and effective institutions. To achieve this scenario, procurement laws are usually enacted and procurement oversight institutions established to regulate the practice of public procurement within governance and the participation of private sector actors such as contractors and consultants.

A3 Procurement and socio-economic development

The importance of public procurement is underscored by the fact that it is the means through which governments implement policies and programmes. In other words, procurement of public works, goods and services transforms government's programmes, policies, strategies and frameworks into concrete actions.

Socio-economic development which is one of the very important ends of government is met when government reduces national plans, policies and strategies into appropriations in the public budgets. These appropriations in turn are implemented through the process of procurements whereby government through its institutions and agencies procures the services of contractors, suppliers and consultants to provide works, goods and services as envisaged in the appropriations.

In this connection, public procurements play important roles in determining the extent to which government's social and economic targets will be attained. The business of government is conducted through policies, plans and framework with the aimed of achieving socio-economic development. Policies include those on various sectors such as education and health, whilst frameworks include development targets such as the millennium development goals. All these are dependent on effective procurement systems to achieve their short, medium and long term goals.

A4 Why the Public Procurement Act?

Prior to return of democratic rule in 1999, rules governing public procurement were limited and mostly confined to administrative regulations and practices. Lack of uniformity and effective regulations and coordination of public procurement led to mismanagement of public funds, poor development planning and ineffective delivery of public services. (See the table below)

Manifestation		Impact
Limited Competition	(i). Secrecy in sharing procurement information with limited or no advertising (ii). Lack of transparency (iii). Limited and ineffective public bidding (iv). Unclear evaluation and award criteria (v). Wrongful exclusion of qualified bidders (vi). Political interference and control in contract awards was predominant. (vii). Selective Tendering, Sole Source Contracting, contract price negotiations, were dominant practices rather than exceptions.	(i). Absence of any form of participation of non-state actors in the procurement process. (ii). Hijack of the implementation of the public procurement by a few. (iii). Erosion of standards leading to poor implementation of procurements and outputs.
Absence of value for money	(i). Absence of procurement planning. (ii). Limited or no prioritization (iii). Limited mandates given to tender boards (iv). Excessive advance payments (v). Delay in execution and cost over-runs (vi). Delay, uncertainty and some times non payment for jobs done. (vii). Inflation of prizes and costs.	(i). Non-implementation of projects leading to stagnated development. (ii). Widespread public sector and corporate corruption stemming from a skewed procurement process.
Limited Regulation of Procurement Procedures	(i). Absence of independent supervision and verification of compliance (ii). Absence of data base of standard prizes (iii). Absence of transparent periodic reviews and evaluation. (iv). Lack of access to information by citizens and other non state actors and groups.	(i). Increased corruption as a result of failed oversight and management of the procurement process. (ii). Lack of inter and intra agency coordination in public procurement. (iii). Lack of standards and uniformed practices.

As part of its quest for effective governance and economic development, the Federal Government of Nigeria embarked upon far reaching institutional, legal and regulatory reforms between 2003 and 2007. In relation to the field of public procurement, the reforms seek to achieve legal and regulatory reforms as well as the harmonisation of standards and practices and to achieve transparency, competitiveness and value for money in public procurements.¹

A5 Major strands of the Public Procurement Act

1. Regulation of procurement: Institutional regulation through the Bureau for Public Procurement (BPP) established under the Act.²
2. Standards: The establishment of common standards in procurement planning, methods, execution, enforcement and review.
3. Access to information and participation: The Act allows for citizens to request for documents relating to procurement process as well as participate as observers in the proceedings.
4. Fighting corruption: The Act makes provisions that will not only set standards but will also identify and punish corrupt practices and unethical activities related to public procurement proceeding.

¹ Section 4 of the Public Procurement Act 2007

² Section 3(1)

1. PART I - ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT

1.1 National Council on Public Procurement

1.1.1 What is National Council on Public Procurement?

The National Council on Public Procurement is the governing body on issues relating to public procurement in Nigeria. It is a high level organ with approval powers on issues relating to the administration and management of public procurement under the Public Procurement Act of 2007.

1.1.2 Members of the National Council on Public Procurement

The following are members of the National Council on Public Procurement (the Council) who are to be appointed by the President:

- a. The Minister of Finance as Chairman
- b. The Attorney-General of the Federation and Minister of Justice
- c. The Secretary to the Government of the Federation
- d. The Head of Service of the Federation
- e. The Economic Adviser to the President
- f. Six part-time members to represent;
 - i. Nigeria Institute of Purchasing and Supply Management
 - ii. Nigeria Bar Association
 - iii. Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture
 - iv. Nigeria Society of Engineers
 - v. Civil Society
 - vi. The Media
 - vii. The Director-General of the Bureau who shall be the Secretary of the Council.

1.1.3 Functions of the Council:

The Council shall perform the following functions:

- a. Consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities.
- b. Consider and approve policies on public procurement.
- c. Approve the appointment of the Directors of the Bureau.
- d. Receive and consider, for approval, the audited accounts of the Bureau of Public Procurement.
- e. Approve changes in the procurement process to adapt to improvements in modern technology.
- f. Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.

Notes:

1. *Members of the Council who hold public office shall cease to be members at the expiration of their tenure or appointment in that other public office*

2. *The Council can invite or co-opt other persons to attend its meeting but such person shall not have casting vote.*
3. *Council only has approval powers. Formulation of policies is done by the Bureau of Public Procurement (BPP)*
4. *The BPP serves as the secretariat of the Council.*
5. *In principle, the Council ought to have limited oversight on BPP.*

2 PART II - ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

2.1 Bureau of Public Procurement (BPP)

2.1.1 What is BPP?

BPP is the Bureau of Public Procurement (also known as the Bureau) which is the agency charged with the implementation of the Public Procurement Act and the regulation of every aspects of public procurement involving the federal government and its agencies, as well as all projects involving other bodies where not less than 35% of project costs is proposed to come from the Federal Budget.

2.1.2 Features of BPP:

- a. BPP is set up as a body corporate (legal entity) with perpetual succession and a common seal
- b. As a legal entity, it may sue and be sued in its corporate name; and
- c. It can acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act.

2.1.3 The objectives of BPP are:

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

2.1.4 Functions of the BPP:³

The functions given to the BPP in the Act can be divided into the following five categories:

1. Public Procurement Policy Formulation, Management and Oversight
 - (a) Formulate the general policies and guidelines relating to public sector procurement for the approval of the Council.
 - (b) Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly.

³ Section 5

- (c) Supervise the implementation of established procurement policies.
 - (d) Monitor the prices of tendered items and keep a national database of standard prices.
 - (e) Subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract.
 - (f) Review the procurement and award of contract procedures of every entity to which this Act applies.
2. Research and Publication
 - (a) Publicize and explain the provisions of this Act⁴
 - (b) Publish the details of major contracts in the procurement journal.
 - (c) Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal.
 - (d) Undertake procurement research and surveys.
 - (e) Periodically review socio-economic effects of policies on public procurement and advice the council.
 3. Establishment and Enforcement of Public Procurement Standards
 - (a) Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions.
 - (b) Prepare and update standard bidding and contract documents.
 - (c) Perform procurement audits and submit such report to the National Assembly bi-annually.
 4. Information management and dissemination
 - (a) Maintain a national database of the particulars, classification and categorization of federal contractors and service providers.
 - (b) Collate and maintain in an archival system, all federal procurement plans and information.
 - (c) Introduce, develop, update and maintain related database and technology.
 - (d) Establish a single internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times.
 5. Capacity Building
 - (a) Organize training and development programmes for procurement professionals.
 - (b) Co-ordinate relevant training programs to build institutional capacity.

2.1.5 Powers of the BPP:⁵

1. Implementation and enforcement of the Provisions of the Act
 - (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Act by the procuring entities

⁴ Section 5(b)

⁵ Section 6

- (b) Grant or refuse the granting of “Certificate of No Objection” for a procurement activity falling above the set threshold approved by the Council.
- (c) From time to time stipulate to all procuring entities the procedures and documentation pre- requisite for the issuance of Certificate of 'No Objection' under this Act.
- (d) Prevent Fraudulent and unfair procurement and apply administrative sanctions including debarring any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act.
- (e) Nullify the whole or any part of any procurement proceeding or award which is in contravention of this Act

2. Power of inspection and review:

- (a) Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act.
- (b) Review and determine whether any procuring entity has violated any provision of this Act.
- (c) Call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider.
- (d) Call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding.

3. Information management

- (a) Maintain a national database of federal contractors and service providers and to the exclusion of all procuring entities prescribe classifications and categorizations for the companies on the register.
- (b) Maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal.
- (c) Request for and obtain from any procurement entity, information including reports, memoranda and audited accounts, and other information relevant to its functions under this Act.⁶

4. Making recommendations to the Council

Where there have been “persistent or serious breaches of the Act or regulations or guidelines” made under it, the BPP shall recommend the following measures to the Council:

- (a) The suspension of officers concerned with the procurement or disposal proceeding in issue.
- (b) The replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be.
- (c) The discipline of the Accounting Officer of any procuring entity.

⁶ Section 6(3)(b)

- (d) The temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant.
 - (e) Any other sanction that the Bureau may consider as appropriate.
5. Power to receive and address complaints under the PPA: In this regard, the Bureau may:
- (a) Give notice of the complaint to related procuring or disposing entities and all interested parties (bidders) taking account of their representations before taking a decision.
 - (b) Declare rules or principles governing the action, confirm or reverse the decision of the procuring entity or
 - (c) Nullify the whole or any part of any procurement proceeding or award which is in contravention of this Act.⁷
6. Ancillary powers
- (a) Enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions
 - (b) Liaise with relevant bodies or institutions national and international for effective performance of its functions under this Act.
 - (c) Do such other things as are necessary for the efficient performance of its functions under this Act.

2.2. Officers of BPP

2.2.1 The Director-General:⁸

- (a) He/she is the Chief Executive and Accounting Officer of BPP and responsible for its day to day administration and execution of the policies
- (b) Must have a professional qualification of 15 years
- (c) Shall hold office for 4 years and may be re-appointed for another term of 4 years and no more.
- (d) May be removed from office by the President “on the basis of gross misconduct of financial impropriety, fraud, and manifested incompetence proven by the Council.”⁹

2.2.2 Principal staff:¹⁰

- (a) Principal staff shall be appointed after a competitive selection process.
- (b) They shall have the requisite qualification and experience required for the effective performance of the functions of BPP and their respective Departments.

2.2.3 Other staff:¹¹

- (a) The Council may appoint such officers and other employees as may, from time to time, deem necessary for the purposes of the Bureau.

⁷ Section 6(1)(j)

⁸ Section 7

⁹ Section 7(4)

¹⁰ Section 8

¹¹ Section 9

- (b) The Council shall also appoint “either on transfer or on secondment from any public service in the Federation, such number of employees” as may be needed for effective operations in BPP.
- (c) The Council shall determine the terms and conditions of service of officers and employees of BPP.
- (d) The provisions of the Pension Act shall apply to all employees of the BPP.¹²

2.2.4 The Council and staff operations and regulations:

- (a) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureau's duties and functions under this Act.
- (b) The Council has power to make staff regulations relating generally to the conditions of service of the employees of (appointment, promotion, disciplinary control and appeals).¹³

2.3 Financial provisions

1. Funds of BPP: ¹⁴ The following shall be sources of revenues/funds for BPP:
 - a. Annual budget appropriations
 - b. Subventions, fees and charges
 - c. Other assets which may from time to time accrue to BPP
2. The Council shall make regulations governing the management and utilisation of this fund.
3. The Bureau shall apply this fund to administrative, maintenance, human resource and other costs.
4. The Bureau shall observe the same financial as the federal government.¹⁵
5. Reports to be submitted by the Bureau to the Council:
 - (a) Estimates of expenditure for the financial year
 - (b) Annual reports of activities and audited accounts
6. The Council shall keep proper accounts and audit same in accordance with the Auditor-General's guidelines

2.4 Legal Proceedings¹⁶

1. No suit or legal action shall be brought against the Bureau unless a notice of 30 days has been served and addressed to the Director-General.
2. The Director-General and employees of the Bureau are not personally liable for any action taken in their official capacities and shall be reimbursed for any loss arising from criminal or civil proceedings.

3 PART III – SCOPE OF APPLICATION

3.1 Scope of Application of the Act¹⁷

¹² Section 11

¹³ Section 10

¹⁴ Section 12

¹⁵ Section 13(1)

¹⁶ Section 14

1. Procurement of goods works and services by the Federal government and its agencies or any procurement by any other entity or government in Nigeria of which at least 35% of the amount for funding the procurement will be sourced from the Federal Budget.
2. Exception: The Act will not apply where goods, works and services involve national defense or security except with the approval of the President.

4 PART IV - FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

4.1 General Rules and Conditions for conducting Public Procurement:

1. Compliance with laid down thresholds set from time to time by the Bureau.¹⁸
2. Procurement must be based only on procurement plans supported by prior budgetary appropriations.
3. The procuring MDA must obtain a certificate of "No Objection" to Contract Award" from the Bureau if the value of procurement falls above the set threshold (limits).
4. The procurement must be by open competitive bidding (subject to some exceptions).
5. Promote transparency, timeliness and accountability
6. Promote economic competitiveness, efficiency and value for money
7. Adherence to the procedures and time-line laid down in this Act from time to time by the Bureau.

4.2 General Qualification of Bidders

- 4.2.1 Every bidder interested in a procurement contract or who has been offered a contract must possess the following necessary qualifications or meet these conditions:¹⁹
 - (a) Professional and technical qualifications to carry out particular procurements
 - (b) Financial capability.
 - (c) Adequate equipment and other relevant infrastructure to implement the contract.

¹⁷ Section 15

¹⁸ Thresholds are set under section 7(1)

- Thresholds refer to limits in the amount of values of procurement which a procuring MDA through its accounting officer is allowed approving authority. For example, it could be stated in the regulation that a Permanent Secretary shall not approve any procurement above ten million naira.
- Thresholds are usually set by the Bureau through regulations and wherever this is the case, every request for funds from the procuring entity must be "accompanied by a certificate of "No Objection" to an award of contract duly issued by the Bureau." (section 16(2))
- Any award of contract falling above a given threshold which does not have a "Certificate of 'No Objection' to Contract Award" duly issued by the Bureau is null and void.

¹⁹ These qualifications are in addition to other provided in the bidding documents.

- (d) Adequate personnel to perform the obligations of the procurement contracts.
- (e) Legal capacity to enter into the procurement contract.
- (f) Not be in receivership or subject to any form of insolvency, bankruptcy or winding up petition or proceedings.
- (g) Have fulfilled all necessary taxes, pensions and social security obligations and contributions.
- (h) Must not been owned by or have in its board or management a person convicted of fraud or financial impropriety relating to any matter.
- (i) Provide a verifying affidavit on the facts presented in the bid documents and affirming no business or pecuniary relationship with any member of the relevant committees of the procurement entity or Bureau.
- (j) Provide other documents or information evidencing the bidder's qualification as may be requested by the procuring entity.²⁰

4.3 Definitions and liabilities relating to Bidders

1. A supplier, contractor or service provider may be a natural person (any human being), a legal person (a legally recognised entity such as company or a business concern) or a combination of the two.
2. Suppliers, contractors or service providers acting jointly are jointly and severally (separately) liable for all obligations and or responsibility arising from this Act and the non-performance or improper performance of any contract awarded pursuant to this Act.

4.4 Grounds for disqualification or exclusion of bids

4.4.1 A bidder may have its bid or tender excluded from any particular procurement proceeding if the Bureau is satisfied of any or a combination of the following:²¹

- (a) Evidence of monetary, gift or other form of inducement of employee of a procuring entity or the Bureau by a supplier, contractor or consultant "to influence any action, or decision making of any procurement activity."
- (b) Failure to perform or to provide due care in performance of any public procurement within the past three years.
- (c) The bidder is in receivership or is the subject of an insolvency bankruptcy proceeding.
- (d) Non-payment of due taxes, charges, pensions, or social insurance contributions, unless such bidders have obtained a lawful permits with respect to allowance.
- (e) The bidder or a member of its management has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other financial related crime
- (f) Failure to submit a statement regarding its dominating or subsidiary relationships with respect to other bidders and officials of the procuring entity in the same proceeding.

4.4.2 Every exclusion or disqualification of bidders shall be communicated in writing to the Bureau and the bidder, including the grounds for the exclusion

²⁰ The burden of proving facts and fulfilment of requirements presented in the bid documents rests on the contractor or supplier. Section 16(16)

²¹ Section 16(8)

and a record of same kept in the file pertaining to the public procurement proceeding in question.²²

4.5 General rules of the procurement process

4.5.1 Form and Language of communication:

All communications and documents issued by procuring entities and the Bureau shall be in English language and shall be in writing or such other forms as the Bureau may stipulate.²³

4.5.2 Records of procurement activities

- (a) Procuring entities must keep electronic and file (hard copy) records of contracting for at least 10 years from the date of contract award.
- (b) Within 3 months of the end of each financial year, procuring entities shall transmit all procurement related records to BPP showing the parties, date and value of contract as well as other information relating to the procurement proceedings that BPP may request.
- (c) Procurement related activity records are open to public inspection, on payment of fees prescribed by BPP unless classified.

4.5.3 No change of rules in the middle of the game: The criteria announced to contractors to govern any contracting activity or process cannot be changed midstream.

4.5.4 Other rules of Public Procurements

- (a) Contracts will be awarded to bidders with the lowest quotes provided their bids are substantially responsive to the bid solicitations.
- (b) BPP retains the right, in appropriate circumstances of failed or inchoate contracting process, to cancel the process or require the procuring entity to repeat it.
- (c) Accounting officers of procuring entities are generally responsible for ensuring legal and regulatory compliance in government contracting.
- (d) Conflicts of interest must be avoided: Persons who partook in organising or preparing a particular procurement process or contracting transaction cannot participate in the bid process.
- (e) Procuring entities must not recommend contractors or sub-contractors to bidders.
- (f) The monetary value of procurement must be stated in naira or if in foreign currency, converted to naira “using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.”²⁴
- (g) Government contracts must contain arbitration clauses.
- (h) Government contracts must contain a contractor’s warranty of durability of goods, exercise of requisite skills in providing services, and use of genuine materials and inputs.
- (i) Every decision on Procurement and disposal by a procuring entity shall be in compliance with the provisions of this Act and any regulations made by the Bureau.

²² Section 16(9)

²³ Section 16(10) - (11)

²⁴ Section 16(27)

5 PART V – ORGANISATION OF PROCUREMENTS

5.1 Approving Authority for Public Procurements

APPROVING AUTHORITY FOR PUBLIC PROCUREMENTS	
Type of Government Institution	Approving Authority
A Government Agency, Parastatal, or Corporation	A Parastatals Tenders Board
A Ministry or Extra-Ministerial entity	The Ministerial Tender Board.

5.2 Procurement Planning and Implementation

5.2.1 Process of procurement planning: Every procuring entity shall plan its procurement following these processes:²⁵

- (a) Conduct assessment and evaluation of the particular needs of the procuring entity.
- (b) Identification of goods, works or services required
- (c) Conducting market and statistical surveys and then prepare analysis of the cost implications of the proposed procurement
- (d) Aggregating its requirement both within the procurement entity and between procuring entities, to obtain economy of scale and reduce procurement cost.
- (e) Integrating its procurement expenditure into its yearly budget.
- (f) Prescribing any procurement method to the necessary approval under this Act.
- (g) Ensuring that the procurement entity functions stipulated in this Section shall be carried out by the Procurement Planning Committee

5.2.2 Process for Implementation of Procurement: The following procedures shall be observed by a procuring entity in implementing its procurement plans:²⁶

- (a) Advertise and solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau.
- (b) Invite two credible persons representing a private sector organisation and a non-governmental organisation working in accountability and anti-corruption as observers in every procurement process.²⁷
- (c) Receive, evaluate and make a selection of the bids received in adherence to this Act and guidelines issued by the Bureau.
- (d) Obtain approval of the approving authority before making an award.
- (e) Debrief the bid losers on request.
- (f) Resolve complaints and disputes if any.
- (g) Obtain and confirm the validity of any performance guarantee.
- (h) Obtain a "Certificate of 'No Objection' to Contract Award" from the Bureau, if activity is within the approved threshold.
- (i) Execute all Contract Agreements

²⁵ Section 18

²⁶ Section 19

²⁷ Section 19(b)

- (j) Announce and publicize the award in the format stipulated by this Act and guidelines issued by the Bureau.

5.3 Accounting Officer

5.3.1 Who is an Accounting Officer?

The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes.²⁸

Accounting Officer for Public Procurements	
Type of Government Institution	Accounting Officer
A Ministry	Permanent Secretary
Extra-ministerial departments and corporations. ²⁹	The Director-General or officer of co-ordinate responsibility. ³⁰

5.3.2 Functions of the accounting officer

1. General function: The Accounting Officer shall have overall responsibility for the planning, organization, evaluation of tenders and execution of all procurements.³¹
2. Other functions: The Accounting Officer shall also perform the following functions:³²
 - (a) Ensure compliance with the provisions of this Act by his entity and is liable in person for its breach or contravention or those of any regulation made under the Act.³³
 - (b) Constitute the Procurement Committee and its decisions.
 - (c) Ensure that adequate provisions are made in the Federal budget to cover the procurement.
 - (d) Ensure that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method.
 - (e) Constitute the Tenders board in accordance with rules made by the Bureau.
 - (f) Constitute the Evaluation Committee
 - (g) Liaise with the Bureau to ensure the implementation of its regulations.

5.4 Procurement Planning Committee

Section 21 mandates every procuring entity to establish a Procurement Planning Committee in each financial year.

²⁸ Section 20(1)

²⁹ This may include Commissions

³⁰ This may include Executive Secretaries

³¹ Section 20(2)

³² Same as above

³³ Note: The Accounting Officer is still liable whether or not the act or omission was carried out by him personally or any of his subordinates and it is immaterial that he had delegated any function duty or power to any person or group of persons;

MEMBERS OF THE PROCUREMENT PLANNING COMMITTEE	
Chair	Other members
The Accounting Officer of the procuring entity or his representative	<p>A representative of the following units in the procuring entity:</p> <ol style="list-style-type: none"> The procurement unit of the procuring entity who shall be the Secretary. The particular unit in need of the procurement. The financial unit. The planning, research and statistics unit. Technical personnel of the procuring entity with expertise in the subject Matter for each particular procurement. The legal unit.

5.5 Establishment of the Tenders Board

- 5.5.1 The Tenders Board created under the Act shall be responsible for the award of procurements goods, works and services.³⁴ The Bureau shall prescribe guidelines for membership of the Tenders Boards.
- 5.5.2 In all cases of pre-qualifications, the Chairman of the Tenders Board shall constitute a technical evaluation sub-committee made up of professional staff of the procuring entity and the Secretary of the Tender Board as the Chair and charged with the responsibility for the evaluation of bids.

5.6 Pre-qualification of suppliers, contractors or service providers³⁵

- 5.6.1 Every procuring entity shall decide on a minimum qualification for suppliers, contractors or service providers and shall set out these qualifications in the request/advert for pre-qualification as well as apply these criteria in its selection.
- 5.6.2 Procuring entities requests shall supply a set of prequalification documents to every bidder that requests them. These documents shall contain:
- Instructions relating to the preparation and submission of prequalification applications including the mode, deadline and time for the submission of applications taking into cognisance the need for bidders to prepare adequately.
 - Terms and conditions required for the procurement contract to be entered into.
 - Other information evidencing qualification of bidders.
 - Any other requirement from the procuring entity on the preparation and submission of prequalification applications.

Note:

The price that a procurement entity may charge for the prequalification documents shall reflect only the cost of printing and provision to the applicants.

5.6.3 Request for clarifications³⁶

- Every bidder is entitled to make a request for clarification not later than ten days to the dateline for submission of documents to the procurement

³⁴ Section 22

³⁵ Section 23

³⁶ Section 23(4)-(7)

- entity, which shall respond in not more than seven working days so that the bidder will have sufficient time to submit application.
2. Other responsibilities of the procuring entities relating to requests for clarifications include:
 - (a) Communicating the response to other bidders if it is of interest to them.
 - (b) Informing each bidder of the result of the prequalification – whether or not the bidder has been pre-qualified
 - (c) Making information on the names of bidders who have been pre-qualified available to members of the public upon request.
 - (d) Upon request, communicate to bidders who have not been pre-qualified, the grounds for disqualification or the basis for not being pre-qualified. etc.

Notes:

1. *A pre-qualified bidder may be required by the procuring entity to submit again information/documents demonstrating its qualifications for further appraisal based on the same prequalification criteria.*
2. *The procuring entity may disqualify a prequalified bidder if it is not satisfied with the bidder's response.*

6 PART VI – PROCUREMENT METHODS (GOODS AND SERVICES)

6.1 Open Competitive Bidding

6.1.1 Meaning:

- *...the process by which a procuring entity, based on previously defined criteria, effects public procurements, by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed.*

6.1.2 The General Rule:

...all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding.³⁷

6.1.3 The winning bid: This shall be the lowest evaluated responsive bid with regards to work specification and standard.³⁸

6.2 Invitations to bid³⁹

Systems of Invitations to bid⁴⁰	Modes of advertisement	Deadline
International Competitive Bidding	(i). At least two national news papers (ii). One relevant internationally recognized publication, (iii). Any official website of the procuring entity and	Not less than six weeks before the deadline for submission of the bids for the goods works.

³⁷ This general principle has some exceptions which will be shown later.

³⁸ Section 24(3)

³⁹ Section 25(2)

⁴⁰ The Bureau shall set the monetary thresholds for which procurements shall fall under either system.

	the commission (iv). The procurement journal	
National Bidding	(i). On the notice board of the procuring entity, (ii). Any official website of the procuring entity (iii). At least two national newspapers (iv). The procurement journal	Not less than six weeks before the deadline for submission of the bids for the goods works.

6.3 Bid Security⁴¹

1. Subject to the monetary and prior review threshold as may be set by the Bureau, the procurement value in excess of the sum prescribed by the Bureau would require Bid Security in an amount not more than 2% of the bid price.
2. The bid security shall be deposited in the form of a Bank Guarantee from a reputable bank.

6.4 Submission of Bids⁴²

1. Bids are to be submitted in writing, signed and placed in a sealed envelope.
2. All submitted bids shall be deposited in a secured tamper-proof bid box.
3. All bids submitted shall be in English Language.
4. Bid shall be registered in a bid submission register at the time of submission.
5. The procuring entity shall issue a receipt showing the date and time the bid was delivered.
6. Bids submitted after the deadline must be returned to the bidder.
7. There shall be no correspondence between the bidder and the procuring entity except as the Act provides.

6.5 Rejection/Cancellation of bids⁴³

The procuring entity can reject all bids at any time prior to the acceptance of a bid or cancel the procurement proceedings in the public interest without incurring any liability to the bidders.

6.6 Validity period of bids⁴⁴

1. The period of validity for a bid shall be the period specified in the tender documents.
2. A procuring entity may request bidders to extend the period of validity.
3. If the request is refused, the bid will terminate upon the expiration of the original period of effectiveness.

6.7 Modification and withdrawal of bids⁴⁵

1. Bidders may modify or withdraw bid.
2. Such modification or withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

⁴¹ Section 26

⁴² Section 27

⁴³ Section 28

⁴⁴ Section 29

⁴⁵ Section 29(4) and (5)

6.8 Bid Opening⁴⁶

1. All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall observe the following:
 - (a) Permit the attendees to examine the bid envelopes to ascertain that they have not been tampered with.
 - (b) Have the bids opened in public in the presence of the bidders or their representatives and other interested member of the public.
 - (c) Ensure that the bid opening takes place immediately following the deadline stipulated for submission.
 - (d) Record of bid particulars and attendance should be taken by the Secretary of the Tenders Board.

6.9 Examination of bids⁴⁷

6.9.1 Preliminary examination of bids is meant to ascertain the following:

1. Conformity with the minimum eligibility.
2. Signature in bid documents.
3. Substantially responsiveness of bids to the bidding documents.
4. General compliance.

6.9.2 Prohibited changes in a bid:⁴⁸

1. Changes in prices
2. Changes of substance in a bid
3. Changes to make an unresponsive bid responsive

Exception: Corrections of arithmetical errors are allowed.⁴⁹

Notes:

1. *A procuring entity may seek for clarifications from bidder to assist in the examination, evaluation and comparison of bids.*
2. *The Tender Board may modify the bid if clarification given amounts to minor deviation.*
3. *Clarifications shall not be allowed if they will result in major deviations.*

6.10 Major and minor deviations

	Examples	Effect/result
Major Deviations	<ol style="list-style-type: none">1. Clauses in an offer:<ol style="list-style-type: none">(a) Unacceptable sub-contracting(b) Unacceptable time schedule if time is of essence(c) Unacceptable alternative design(d) Unacceptable price adjustment.2. Status of the bidder:<ol style="list-style-type: none">(a) Ineligibility or non pre-qualification(b) the fact that he is uninvited3. An unsigned bid	<ol style="list-style-type: none">1. Rejection of bid2. The bid shall not be considered any further3. Where unopened, shall be returned as such to the bidder. [Section 31(8)]

⁴⁶ Section 30

⁴⁷ Section 31

⁴⁸ Section 31(3)

⁴⁹ Section 31(4)

	4. Time, date and place of submission: (a) Receipt of bid after the deadline stipulated in the solicitation document (b) Submission of bid at the wrong location. [Section 31(7)]	
Minor Deviations	1. The use of codes 2. The difference in standards 3. The difference in materials 4. Alternative design 5. Alternative workmanship 6. Modified liquidated damages 7. Omission in minor items 8. Discovery of arithmetical errors 9. Sub-contracting that is unclear and questionable 10. Different methods of construction 11. Difference in final delivery date 12. Difference in delivery schedule 13. Completion period where these are not of essence 14. Non-compliance with some technical local regulation 15. Payment terms 16. Any other condition that has little impact on the bid. [Section 31 (10)]	1. Shall be clarified. [Section 31(6)] 2. A written clarification may be obtained from the supplier or contractor 3. An offer made for the correction of the minor deviation. [Section 31(12)]

Notes:

1. *In cases of doubt as to whether a deviation is major or minor, regards would be had to the impact of the deviation on the cost.*⁵⁰
2. *Any rejection as a result of the above shall be communicated to the bidder and no further amendments shall be entertained from the bidder.*⁵¹
3. *If a bidder does not accept the correction of a minor deviation, his bid shall be rejected.*⁵²

6.11 Evaluation of Bids⁵³

6.11.1 What is the objective of evaluation of bids? *To determine and select the lowest evaluated responsive bid from bidders that have responded to the solicitation.*

6.11.2 For the purpose of evaluation and comparison of bids, no other criteria shall be used except as stipulated in the solicitation documents.

6.11.3 Process for the evaluation of bids⁵⁴

- (a) Checking of deviations
- (b) Checking of omissions with quantification of same
- (c) Application of discounts, as applicable
- (d) Clarification with bidders of questionable minor deviations
- (e) Quantification in monetary terms of such questionable deviations
- (f) Conversion to common currency
- (g) Calculation and tabulation of bid amount with domestic preference where applicable

⁵⁰ Section 31 (11)

⁵¹ Section 31 (9) and (15)

⁵² Section 31(13)

⁵³ Section 32

⁵⁴ Section 32(3)

- (h) Determination of the lowest calculated prices in order of rank
- (i) Post-qualification of bidders, where applicable
- (j) Listing of rejection of bids where applicable
- (k) Decision of rejection of all bids where justifiable
- (l) Recommendation for award
- (m) Writing up of the bid evaluation report.

Notes:

1. *Every other factor that shall be considered in the process of evaluation of bids shall be as stated in the solicitation documents.*
2. *When bid prices are denominated in other currencies, they shall be converted to naira based on the rate at date specified in the solicitation documents.*⁵⁵
3. *In cases where pre-qualification was carried out, verification/confirmation of qualification may be carried out after selection and a bidder who no longer has the resources or qualification may be denied award.*
4. *Information relating to examination and evaluation will not be communicated to any person until the bid winner has been notified.*⁵⁶

6.12 Acceptance of bids⁵⁷

1. General rule: The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive to the bid solicitation.
2. Exception: The selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Act to that effect.
3. Notice of the acceptance of the bid shall immediately be given to the successful bidder

6.13 Domestic Preferences⁵⁸

1. A procuring entity may grant a margin of preference in the evaluation of tenders in the following instances:
 - (a) When comparing tenders from domestic bidders with those from foreign bidders.
 - (b) When comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
2. If domestic preferences will be allowed, the procuring entity must state this fact in the bidding documents including the eligibility information for domestic suppliers and contractors.
3. Margins of preference shall apply only to tenders under international competitive bidding and the Bureau shall by regulation set the limits and the procedure for the computation of margins of preference and determine the contents of goods manufactured locally.

⁵⁵ Section 32(6)

⁵⁶ Section 32(8). Indeed it is a crime to give information relating to bid evaluation to any person not involved in the evaluation before a bid winner is announced.

⁵⁷ Section 33

⁵⁸ Section 34

6.14 Mobilisation fees⁵⁹

1. The Act permits a mobilisation fee of not more than 15% to be paid a supplier or contractor upon the presentation of the following:
 - (a) For a National Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity
 - (b) For an International Competitive Bidding, an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.
2. After the mobilization fee has been paid, the supplier or contractor shall receive no further payment unless an interim performance certificate has been issued in accordance with the contract agreement.
3. A Contract Performance Guarantee of not less than the mobilisation fee or 10% of the contract value (whichever is higher) shall be provided before the award of any procurement contract upon which any mobilization fee is to be paid.⁶⁰

6.15 Interest on Delayed payments⁶¹

1. Payment for the procurement of goods, works, and services shall be settled promptly and diligently.
2. Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the procuring entity of satisfactory completion, shall be deemed a delayed payment and shall attract interest at the rate specified in the contract document.

6.16 Record of Procurement Proceedings⁶²

1. Every procuring entity shall maintain a record of the comprehensive procurement proceedings.
2. Such records shall on request, be made available to:
 - (a) Any person after a tender, proposal, offer or quotation has been accepted
 - (b) Suppliers, contractors or consultants after a tender, proposal, offer or quotation has been accepted
 - (c) Any person, suppliers, contractors or consultants after procurement proceeding have been terminated without resulting in a procurement contract
3. A court can order the disclosure of procurement proceeding records prior to award of contract. Such records will not be disclosed if it will be illegal, prejudicial to legitimate interests of the parties or if it will impede law enforcement.

⁵⁹ Section 35

⁶⁰ Section 36

⁶¹ Section 37

⁶² Section 38

4. No liability shall arise on the part of the procuring entity to suppliers, contractors or service providers for damages due to failure to maintain a record of the procurement proceedings.
5. The records and documents kept by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General and officials from donor agencies where donor funds have been used for the procurement.⁶³

7 PART VII – SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

7.1 Two-stage Tendering

7.1.1 Circumstances:⁶⁴

- (a) Where the formulation of ‘detailed specifications’ for the good or works is not possible or where due to this characteristics of the services, the MDA requires or needs to further assess various means of meeting the need.
- (b) Where the character of the goods or works are subject to rapid technological advances
- (c) Where the procuring entity seeks to enter into a contract for research, experiment, study or development costs, which does not include production of goods in sufficient quantity to establish commercial viability.
- (d) Where the procurement is concerned with national security
- (e) Where initial tender process was not successful and a new process would produce similar result.

7.1.2 First stage:⁶⁵

- (a) Invitation for submission of initial tenders/proposals without price.
- (b) Initial tenders may contain technical quality and specifications of goods, works and services as well as indicating the contractual terms and professional competence required.
- (c) Procuring entity may enter into negotiations with a bidder whose tender was not rejected in the open competitive bidding, with a view to clarifying technical proposal it has put forward.

7.1.3 Second stage:

- (a) Prior to request for submission of final tenders with pricing and technical specifications.
- (b) Procuring entity may do the following:
 - i. Delete or modify any aspect of the technical or quality characteristics
 - ii. Add new characteristics or criteria
 - iii. Communicate the above fact to the suppliers or contractor
 - iv. Permit a supplier or a contractor who wants to withdraw to do so.

⁶³ Section 38(5)

⁶⁴ Section 39(2)

⁶⁵ Section 39(4) and (5)

- v. Set forth its final description of goods, works or service in the invitation to those selected to submit full proposals based on the detailed specifications now set forth by the procuring entity.

Note:

1. *The final evaluation and comparison shall be governed by the principles of open competitive bidding.*

7.2 Restricted /Selective Tendering (The Exception)⁶⁶

7.2.1 A procuring entity may (subject to the approval of the Bureau) for reason of economy and efficiency engage in procurement by means of restricted tendering if:

- (a) Goods, works and services are available from only a limited number of qualified suppliers or contractors
- (b) Time and cost for evaluating tenders disproportionate to the value of the goods, works or services to be procured.

Note:

1. *This procedure is an exception and should not be the norm*
2. *Invitation should be extended to all the contractors and suppliers who can provide the good, works and services.*
3. *Selection shall be in a non-discriminatory manner.*
4. *Procuring entity shall publish procedures adopted in procurement journal.⁶⁷*
5. *Other provisions of the Act relating to open complete bidding shall apply except as varied.*

7.3 Request for Quotation⁶⁸

1. This is usually deployed where the value of the goods or works to be procured does not exceed a low sum that shall be set in the procurement regulation.
2. Generally quotations shall be obtained from at least 3 unrelated contractors or suppliers.
3. Procuring entity shall inform the contractor or supplier of factors that should be included in the price, eg transport, insurance, freight, duties etc
4. Each bidder shall give only one quotation and shall not be allowed to change or vary the quotation or enter into any negotiation with the procuring entity.
5. The successful contractor or supplier shall be the one that gives the lowest priced responsive quotation.

7.4 Direct Procurement / Single Source⁶⁹

7.4.1 Circumstances for Direct Procurement - First scenario:

- (a) If a particular supplier has an exclusive right eg (patent) or where an alternative does not exist.
- (b) Extreme urgency (which is not fault of the procuring agency)

⁶⁶ Section 40

⁶⁷ Section 40(3)

⁶⁸ Section 41

⁶⁹ Section 42

- (c) Situation of urgency arising as a result of catastrophe or disasters, making it impracticable to use any methods of procurement.
- (d) Procuring entity which has procured goods, works or services from a contractor may decide to procure more of such goods, equipment, technology or services already procured from the same supplier or contractor because of the following:
 - i. Limited size of the additional procurement in relation to the original procurement.
 - ii. Need to maintain compatibility with existing goods taking into account, effectiveness of the original goods.
 - iii. Reasonableness of price and unsuitability of alternatives.
- (e) Procurement involves research, experiment, study or development.
- (f) Procurement involving national security.

Note: In the case of direct procurement;

1. Goods, works and services may be procured by inviting a single supplier or contractor to submit a proposal or quotation.
2. In this case, the procuring entity shall make record of the procurement proceeding and state the grounds for its decisions and circumstances relating to the procurement.⁷⁰

7.4.2 Second scenario – Emergency Procurement:⁷¹

Procuring entity may engage in direct procurement of goods, works and services in emergency situations under the following circumstances:

- (a) National/public emergency involving disaster, war, or Act of God
- (b) Deterioration of the condition and quality of public goods
- (c) Likely delay of a public project due to the absence of an item of minor value.

Note:

1. Need to observe principles of accountability.
2. Post-emergency report to be filed before the Bureau after the cessation of emergency and the procurement for approval.⁷²

8 PART VIII – PROCUREMENT OF CONSULTANT (SERVICES)

8.1 Expression of Interest (EoI)

1. An entity with precise and ascertainable needs can solicit for EoI (or applications to pre-qualify to provide the services) by publishing in at least 2 national dailies and the procurement journal.
2. If cost is below one million naira or with the approval of the Bureau, the services is such that only national consultants would be interested, request can be made to at least 3 consultants/service providers (and not more than ten) to present proposals for the provision of the services stating the following:

⁷⁰ Section 42(2)

⁷¹ Section 43

⁷² Section 43(4)

- (a) Qualifications of the consultant to provide the service
- (b) Understanding of the procuring entity's needs
- (c) Methodology for providing the service
- (d) The time frame for providing the service
- (e) The cost or fee for the service

8.2 Request for proposals to provide services for unascertained needs

8.2.1 Open request

1. A procuring entity may request for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development
2. Solicitation for expressions of interest shall be by the publication of a notice in 2 national newspapers and the procurement journal.

8.2.2 Direct request⁷³

1. Requests to a limited number of consultants requesting proposals for the provision of a service if :
 - (a) The services are only available from no more than 3 consultants:
 - (b) The time and cost required to examine and evaluate proposals would be disproportionate to the value of the services to be performed,
 - (c) It is in the interest of national defense and security or similar reason of confidentiality.

Note: Procuring entity shall invite enough consultants to ensure transparent competition.

8.3 Contents of a proposal⁷⁴

- (a) The name and address of the procurement entity.
- (b) A requirement that the proposals are to be prepared in the English language.
- (c) The manner, place and deadline for the submission of proposals.
- (d) A statement that the procuring entity reserves the right to reject proposals
- (e) The criteria and procedures for the evaluation of the qualifications of the consultants.
- (f) The requirements on documentary evidence or other information that shall be submitted by consultants 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.

⁷³ Section 45(2)

⁷⁴ Section 46

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

Note: The procuring entity shall provide the same information to every consultant requested to submit proposals.

8.4 Clarification and modification of request for proposal⁷⁵

- 1. Request for clarification from the procuring entity shall be made within a reasonable time to be specified.
- 2. A procuring entity may, on its own or upon request for clarification by a consultant, modify the request for proposals by issuing an addendum to the short listed consultants at any time prior to the deadline for submission of proposals.
- 3. Any meeting convened by the procuring entity shall be recorded with all the views and anonymous requests for clarifications sought and responses.

8.5 Submission of proposals:⁷⁶

- 1. Sufficient time shall be allowed for submission but not less than thirty days between the issue of the notice or request and the deadline for submission.
- 2. Technical and financial proposals shall be submitted together but in separate envelopes.
- 3. Late proposals shall be returned to the sender unopened.
- 4. Immediately after the submission deadline, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
- 5. The Technical Evaluation Committees shall not have access to the financial proposals until the evaluation including Tenders Board reviews are concluded.

8.6 Evaluation of proposals⁷⁷

- 8.6.1 Procuring entity shall determine the criteria and weight to be attached to each of the following criterion in the evaluation of proposals:
 - (a) The qualification, experience, professional and managerial competence of the consultant or service provider and its personnel to be involved in providing the services.

⁷⁵ Section 47

⁷⁶ Section 48

⁷⁷ Section 49

- (b) The effectiveness of the proposal in meeting with the needs of the procuring entity as well as the costs of the proposal.
 - (c) The impact of proposal on Government's financial position, impact on socio-economic and technological development and participation local personnel.
 - (d) National defence and security considerations, where they exist.
- 8.6.2 Procuring entity may also accord some level of preference to local consultants or service providers which shall be according to guidelines issued by the Bureau.⁷⁸

8.7 Selection Procedure

8.7.1 General Selection Procedure (Services)⁷⁹

- (a) Selection can be based on any or a combination of the following:
 - i. Lowest evaluated price or based on a combination of criteria set out in the request for proposal.
 - ii. Proposal with the highest technical ranking that is within the budget.
- (b) Procuring entity shall include in the record of proceeding a statement on the grounds which it relied to select a winner
- (c) Procuring entity can use an impartial panel of experts to make a selection.

8.7.2 Where price is a factor(Quality and Cost Based)

- (a) Where the procuring entity decides to choose a proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria. The weight represented by a score to be awarded for a certain level of compliance with requirements.
- (b) The procuring entity shall record the name of each consultant as well as record the scores for the technical component of the proposal and the price proposed by each consultant.
- (c) The successful proposals shall be the one with the best technical and cost effective proposal (Quality and cost based) or the one with the least cost or the highest ranked technical proposal within the budget, depending on which of these three bases of selection the procuring entity chose in its request for proposal document.
- (d) Where however least price is the basis, after the evaluation of the technical, the consultants that failed to meet the qualifying mark or whose proposals were not-responsive shall be notified within fourteen days, and their financials shall not be opened.
- (e) Minutes of the opening of the financial proposals shall be prepared and kept.

8.7.3 Where price is not a factor

Where price is not a factor, the procuring entity will undertake the following:

- (a) Establish a weight with respect to quality and price.
- (b) Enter negotiation with the consultant with the best rating on price.

⁷⁸ Section 49(2)

⁷⁹ Section 50

- (c) Inform the second consultant that attained ratings above the weight that may be considered if negotiations with the consultant with the best rating do not result in a procurement contract; and inform the former of the subsequent termination.
- (d) Note that this process continues until a decision is made or a total rejection of all the proposals is made.
- (e) The procuring entity need to maintain confidentiality and avoid disclosure to competing consultants.

9 PART IX – PROCUREMENT SURVEILLANCE AND REVIEW

9.1 Power to recommend Investigation⁸⁰

9.1.1 The Bureau has mandate to review and recommend for investigations by any relevant authority any matter related to the following:

- (a) The conduct of procurement proceeding by a procuring entity
- (b) The conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Act.

9.1.2 Investigations could lead to any of the following:

- (a) Production, removal and examination of books, record, accounts or documents.
- (b) Search of premises.
- (c) Explanation of entry into books of accounts.
- (d) Production of further information concerning the management of the procurement process.

9.1.3 If contravention of this law is established, the Bureau shall take any of the following actions:

- (a) Nullification of the procurement proceedings.
- (b) Cancellation of the procurement contract.
- (c) Ratification of anything done in relation to the proceeding.
- (d) A declaration consistent with any relevant provisions of this law.

Note

1. *A completed investigation may be followed by criminal prosecution by the relevant authority.⁸¹*
2. *The Bureau may on the advice of a procuring entity or any relevant government agency issue a variation order requiring the contractor to repair, replace or remedy any defect or undone part of the contract at his expense.⁸²*

9.2 Administrative Review⁸³

⁸⁰ Section 53

⁸¹ Section 53(5)

⁸² Section 53(3)

⁸³ Section 54

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

	RECEIVING AUTHORITY	TIME WITHIN WHICH TO SUBMIT A PETITION	TIME LIMIT TO ACT/MAKE A DECISION	ACTION
FIRST STAGE	Accounting Officer of procuring or disposing entity	Fifteen (15) working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.	Fifteen (15) working days	Make a decision indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision
SECOND STAGE	Bureau	Ten (10) working days from the date of communication of the decision of the accounting officer	Twenty-one (21) working days	Make any of the following decisions and stating reasons for such including remedies (if any) granted: <ul style="list-style-type: none"> i. Dismissal of the complaint ii. Prohibit a procuring or disposing entity from taking any further action. iii. Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity. iv. Declare the rules or principles that govern the subject matter of the complaint v. Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
THIRD STAGE	Federal High Court	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	None	

Note: In reaching its decision, the Bureau shall notify the bidders and take into account representations from the bidders and from the procuring or disposing entity.

10 PART X – DISPOSAL OF PUBLIC PROPERTY

- 10.1** *What is public property?* ...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.
 - (c) Intellectual or proprietary rights.
 - (d) Financial instruments (including shares, stocks, bonds etc).
 - (e) Acquired by goodwill and any other gifts of the State Government.

- 10.2 Every Procuring entity shall also be a disposing entity.

- 10.3 The Bureau shall determine applicable policies and practices and issue guidelines and standard documentation relating to the disposal of public property.
- 10.4 Rules for disposal of public property
- (a) Open Competitive Bidding shall be the primary source of receiving offers for the purchase of public property.
 - (b) Methods of disposal shall include: sale and rental, lease and hire purchase, licenses and tenancies, franchise and auction.
 - (c) Planning of disposal is compulsory and shall include valuation by independent professional.⁸⁴
 - (d) Disposal must be integrated into budget of procuring entity and be timed to take place at a most economically advantageous time.
 - (e) Responsibility for disposal shall be shared between the procurement unit and the Tenders Board.

Note:

Assets covered under the Public Enterprises (Privatization and Commercialization) Act 1999 are excluded from operation of the provisions on disposal of assets.

11 PART XI – CODE OF CONDUCT

11.1 Guiding Principles:

1. Every person involved with public procurement and disposal of public property, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
2. All public officers involved in the conduct of public procurements shall subscribe to an oath as approved by Council.
3. Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as in procurement.
4. These principles shall apply at all times, particularly when:
 - (a) Making requisition for or planning of procurements.
 - (b) Preparing solicitation documents.
 - (c) Receiving offers in response to any form of solicitation towards a procurement or disposal.
 - (d) Evaluating and comparing offers confidentially and in complete neutrality.
 - (e) Protecting the interest of all parties without fear or favour.
 - (f) Avoiding all situations likely to render an officer vulnerable to embarrassment or undue influence.
5. All public officers shall handle public procurement and disposal of assets by:

⁸⁴ Section 56(1)

- (a) Ensuring adequate time for preparing offers.
- (b) Complying with this Act and all derivative regulations.
- (c) Maintaining strict confidentiality until completion of a contract.
- (d) Maintaining the highest standards of ethics in their relationships with individuals and companies who seek to do business with government whether as a bidder, supplier, contractor or service provider and in particular shall-
 - i. Divest himself of any interest or relationships which are contrary to the Act and inimical to the interest of government.
 - ii. Not engage or participate in any commercial transaction involving the federal government or its agencies where he or any person directly related to him would have an unfair advantage - pecuniary or otherwise.
- (e) Make a declaration in any case where conflict of interest is likely to arise.

11.2 Conflict of interest situations

- (a) Possessing an interest outside his/her official duties that materially influenced the outcome of the tender
- (b) Possessing a direct or indirect interest in or relationship with a bidder, supplier, contractor, or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings
- (c) Entertaining relationships which are unethical, rendering his/her attitude partial towards the outsider for personal reasons or otherwise inhibits the impartiality of the person's judgments.
- (d) Placing by acts or omissions the procuring entity he/she represents or the Government in an equivocal, embarrassing or ethically questionable position
- (e) Entertaining relationships compromising the reputation or integrity of the procuring entity he/she represents or the Government
- (f) Receiving benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he/she represents or the Government
- (g) Creating a source of personal revenue or advantage by using public property which comes into his/her hands either in course of his work or otherwise
- (h) Disclosing confidential information being either the property of his/her procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons in bid to influence bidding outcomes
- (i) Participating directly or by a third party in buying a public property in which he was involved in disposal processes.

12 PART XII– OFFENCES

12.1 Offences

- (a) Collusion or collusive agreements whether or not enforceable.
- (b) Procurement fraud using undue influence, favour, bribery, threats, promises, agreement etc.
- (c) Directly or indirectly trying to influence in any manner the procurement process to gain an unfair advantage.
- (d) Bid Rigging – Pre-arrangement of offers where winners have been predetermined.

- (e) Splitting of tenders to evade thresholds.
- (f) Altering procurement document (insertion of vital documents or requesting for clarification in a manner not permitted by law).
- (g) Willful refusal to allow Commission and its officers access to any procurement records.
- (h) Using fake documents or encouraging their use.

12.2 Prosecution of offences

12.2.1 Prosecution of offences under this Act shall be instituted in the name of the Federal Republic of Nigeria by the following:

- (a) Attorney-General of the Federation or such other officer of the Federal Ministry of Justice as he may authorize.
- (b) The Attorney-General of a state or any other officer of the Ministry of Justice of that state.
- (c) Upon request by any relevant authority, any legal practitioner in Nigeria.

12.3 Trial of offences shall be by the Federal High Court

12.4 Punishment upon conviction:

	OFFENDER	PUNISHMENT
1.	A natural person not being a public officer (eg, individual contractors, consultants, suppliers etc)	Imprisonment term of not less than 5 calendar years but not exceeding 10 calendar years without an option of fine. [Section 58(1)]
2.	An officer of the Bureau, or any procuring entity	A cumulative punishment of: <ul style="list-style-type: none"> i. A term of imprisonment of not less than 5 calendar years without any option of fine ii. Summary dismissal from government services. [Section 58(5)]
3.	A legal person (eg, registered businesses, companies or corporations)	A cumulative penalty of: <ul style="list-style-type: none"> i. Debarment from all public procurements for a period not less than 5 calendar years. ii. A fine equivalent to 25% of the value of the procurement in issue. iii. A term of imprisonment not less than 3 calendar years but not exceeding 5 calendar years without an option of fine for every director of the company as listed on its records at the Corporate Affairs Commission. [Section 58(6) and (7)]

Notes

1. *To determine presumption, considerations shall be given to the suspect's ability to control the outcome of the procurement proceedings in question, whether total or partial.*⁸⁵
2. *In proving undue influence, proof that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the national treasury is sufficient.*⁸⁶

⁸⁵ Section 58(11)

⁸⁶ Section 58(12)

13 PART XIII - MISCELLANEOUS

1. Authentication of fixing of the Bureau's seal shall be done by the signature of the Chairman, the Director-General or of any other person authorized generally or specially to act for that purpose by the Council.
2. Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorized to act for that purpose by the Council.
3. There is a presumption of regularity on any document duly executed under the seal of the Bureau and shall be received in evidence.
4. The validity of any proceeding of the Council or a committee shall not be adversely affected by any vacancy or defect in the appointment into its membership or the fact that a person not entitled to do so took part in its proceedings.