



# JIGAWA STATE GOVERNMENT

## A LAW TO PROVIDE FOR THE ESTABLISHMENT OF DUE PROCESS AND PROJECT MONITORING BUREAU, ESTABLISHMENT OF GOVERNING COUNCIL, ITS POWERS AND FUNCTIONS FOR THE EFFECTIVE CONTROL AND MANAGEMENT OF PROJECTS AND PROCUREMENT IN THE STATE

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

- Short title and commencement* 1. This Law may be cited as Due Process and Project Monitoring Bureau Law 2012 and shall come into operation on ..... day of ..... 2012
- Establishment of the Bureau* 2. There is hereby established for the State a body to be known as State Due Process and Project Monitoring Bureau which shall be a body corporate with perpetual succession and a common seal with power to sue and be sued in its corporate name.
- Functions of the Bureau* 3. The Functions of the Bureau include the following:
- (a) to regulate and set standards to enforce harmonized bidding and tender documents for all the State contracts;

- (b) to ensure full compliance with the laid down guidelines and procedures on procurement;
- (c) to develop, update and maintain system wide database for the State on various procurements at the Ministries, Department, Agencies and Local Government levels;
- (d) to uphold professional ethics and report erring procurement personnel, state and local government functionaries, department and private sector companies and their personnel to relevant authorities for appropriate sanctions;
- (e) to monitor prices of tendered items and provide price database advisory services to the procuring entity;
- (f) to perform pre-procurement audits;
- (g) to evaluate and monitor government projects from point of award until completion and issue certificate accordingly;
- (h) to coordinate training to promote capacity building of procurement personnel of the State;
- (i) to sensitize, promote and educate the citizens and other stakeholders in the state on public procurement issues;
- (j) to provide relevant procurement and budget performance information to interested parties;
- (k) to publish the details of major contracts awarded in the state periodically;

- (l) to undertake procurement research and surveys;
- (m) to set and update standard bidding and contract documents;
- (n) to perform all things and carryout such other activities as are necessary and expedient for the full discharge of its functions under or pursuant to this law.

*Powers of the  
Bureau* 4.

The powers of the Bureau shall include the following:

- (a) to certify contract procedures of every entity to which this law applies subject to thresholds as may be set by the council;
- (b) to stipulate to all procuring entities the procedures and documentation required for such certification from time to time;
- (c) to call for such information, documents, records and report in respect of any aspect of any procurement proceedings where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;
- (d) to report and recommend disciplinary action against accounting officers of any procuring entity to the council for appropriate actions;
- (e) to nullify the whole or any part of any procurement proceeding which is in contravention of this law;
- (f) to enter into contract or partnership with any company, firm or person which in its opinion will

facilitate the discharge of its function subject to the approval of the council;

- (g) to register all categories of contractors and issuance of certificates thereof;
- (h) to stipulate a code of conduct subject to council approval for all public officers, suppliers, contractors and service providers with regard to their standard of conduct acceptable in matters involving the procurement and disposal of public assets;
- (i) to do such other things as are necessary for the efficient performance of its functions under this law subject to the approval of the council.

*Establishment  
of the council*

**5.** There is hereby established for the Bureau a Governing Council.

*Composition  
of the  
Council*

**6.** The Council shall consist of the following members to be appointed by the Governor:

- (a) the Chairman who shall be a person of unquestionable integrity and shall have a sound knowledge and experience in the procurement process;
- (b) a representative of each of the following:
  - i) Council Affairs Directorate;
  - ii) Ministry of Justice;
  - iii) Ministry for Local Government;
  - iv) Office of the Accountant General;
  - v) Budget and Economic Planning Directorate;
  - vi) The Director General of the Bureau who shall be

a Secretary of the Council;

- (c) not more than six persons representing public interest to be chosen from the following professions and at least two of whom shall be women;
  - i) the Media;
  - ii) accountancy;
  - iii) purchasing and supply;
  - iv) engineering;
  - v) legal profession;
  - vi) Jigawa State Chamber of Commerce.

*Functions of  
the Council* 7.

The Council shall have the following functions:

- (a) to review the procurement and award of contract procedures of every entity to which this law applies subject to thresholds as may be set by the Council;
- (b) to consider, amend or approve the monetary thresholds of procuring entities under this law;
- (c) to formulate policies on public procurements;
- (d) to approve the appointment of Directors and Unit heads of the Bureau;
- (e) to receive and consider for approval the audited account of the bureau;
- (f) to approve changes in the procurement process;
- (g) to review periodically the socio-economic effects of procurement policies;

- (h) to advise the Governor on the status of the State government procurement in relation to annual appropriation;
- (i) to give such other directives and perform such other function as may be necessary to achieve the objectives of this law.

*Powers of the Council* **8(1)**

The Council shall have the following powers:

- (a) to make guidelines for the regulation of public procurement and may from time to time review or update the said regulations under this law and periodically set monetary thresholds for procuring entities in the State;
- (b) to make regulations for the bureau specifying the manner in which assets or funds of the bureau are to be held and the making of payments into and out of the funds;
- (c) to require the keeping of proper accounts and records for the purpose of the funds in such forms as may be specified in the regulations;
- (d) to determine the applicable policies and practices in relation to disposing of all public property;
- (e) to issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property;

- (f) to control all finances and accounts of the bureau;
- (g) to do all things and carry out such other activities as are necessary and expedient for the full discharge of its functions under or pursuant to this law.

(2)

At any time before the coming into operation of this law or the constitution of the Governing Council hereunder, the Director General of the bureau may exercise such powers of the Governing Council as may be necessary for the smooth operation of the bureau subject to the approval of the Governor.

*Tenure of members*

9(1) Members of the Council with the exception of Ex-officio members shall be appointed for a first term of four years and may be eligible for re-appointment for a like term only.

*Ex-officio members*

(2) The members specified in section 6(b) are herein referred as ex-officio members.

*Vacation of membership*

(3) The office of a member other than ex-officio member shall become vacant where:

- (a) he resign his appointment by a written notice addressed to the Governor;
- (b) death, permanent incapacity or infirmity of mind;
- (c) the Governor may revoke at any time the

appointment of a member or dissolve the council.

- Remuneration of Council members* (4) The members of the Council shall be paid such remuneration and allowances as the Governor may determine.
- Office of the Director General* 10(1) There shall be for the Bureau a Director-General to be appointed by the Governor.
- Qualification of the Director-General* (2) A person shall be qualified to hold the office of the Director-General where he possesses relevant professional qualification for a period of not less than ten years and is of proven integrity.
- Functions of the Director-General* (3) The Director-General shall be the chief executive and accounting officer of the bureau and shall also be responsible for the execution of the policy and day to day administration of the bureau.
- Tenure and removal of the Director-General* (4) The Director-General shall hold office for such a period as may be determined by the Governor.
- (5) Where a person has been appointed from the public service of the State he shall be entitled to return to the service of the State at the end of his tenure.
- (6) The Governor may at any time remove the Director General if he satisfies himself that the Director General has behaved in such a manner that is unbecoming of the status of the office.
- Employment of staff* 11(1) The Council may employ such number of staff for the Bureau as may be required for the due discharge of its



functions under this law and may accept such number of staff on transfer or secondment from the service of the Federal, State or Local Government subject to the prevailing rules or guidelines obtainable from the State Civil Service Commission.

*Remuneration of staff*

(2) The persons employed shall be remunerated including allowances as obtained in the State Civil Service.

*Transfer of service.*

(3) The person so seconded under subsection (1) may choose to be transferred to the service of the bureau and any previous service he may have rendered in the public service shall count as service to the bureau for the purpose of any pension.

(4) Without prejudice to subsection (5) of this section, the condition, remuneration, and staff regulation of the bureau shall be as obtained in the State Civil Service.

(5) The Governor may approve any other allowances to the staff of the Bureau in addition to what is obtained in the civil service of the State.

*Pensions*

12. Employees of the bureau shall be entitled to pensions and other retirement benefits as prescribed under the pension laws of the State.

*Funds of the Bureau*

13(1) The bureau shall establish and maintain a fund to be approved by the council into which shall be paid and credited:

- (a) such sums as may be appropriated by the Appropriation Law of the State;
- (b) grants and donations from donor agencies;
- (c) all other assets which may from time to time accrue to the bureau.

(2) The bureau shall charge its funds to meet all its

expenditure as may be appropriated by the State House of Assembly.

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

*Budget and Annual Reports*

- 15(1)** The financial year of the bureau shall be the same as that of the State Government.

*Submission of Annual estimate*

- (2)** Not later than six month before the end of the financial year the bureau shall submit to the council an estimate of its expenditure and projected income during the next succeeding year.

*Keeping Records of the Bureau*

- (3)** The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall keep in respect of each financial year a Statement of Account in such form as the Council may direct.

*Account and audit*

- (4)** The bureau shall within six month after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor General of the State.

*Annual reports*

- (5)** The Bureau shall at the end of each financial year prepare and submit to the Council a report in such forms



in the course of any procurement proceedings.

- (5) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the supplier or contractor.
- (6) All procurement contracts shall contain provisions for arbitral proceedings as the primary form of dispute resolution.
- (7) The values in procurement document shall be stated in Nigerian currency and where stated in any foreign currency shall be converted to Nigerian currency using the exchange rate of Central Bank value on the day of opening tender or bid.
- (8) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provisions and use of genuine materials and input in execution.
- (9) All procurements under this law shall either be Open, Selective, Nominated or otherwise as prescribed by the guidelines under this law.

*Accounting  
Officer*

- 18(1)** The Accounting Officer of a procuring entity, shall be the person charged with supervision of the contract of all procurement processes, in the case of Ministries, the Permanent Secretaries; and in the case of Agencies and Corporations, the Director General or officer of coordinate responsibility and in the case of a Local Government, the Secretary of the Local Government.
- (2) The accounting officer shall have the overall responsibility for the planning, organization, evaluation of tenders and execution of all procurements and in particular shall be responsible for:

- (a) ensuring compliance with this law by his entity;
- (b) constituting the procurement committee;
- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
- (d) integrating his entity's procurement expenditure into its annual budget;
- (e) ensuring that no splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) liaising with the Bureau to ensure the implementation of its regulations.

*Procurement  
and Planning  
Committee*

- 19(1)** For each financial year each procuring entity shall establish a procurement planning committee.
- (2)** The procurement planning committee shall consist of the following:
- (a) The accounting officer or his representative who shall be the Chairman;
  - (b) a representative of each of the following:
    - i) the Procurement Unit of the procuring entity who shall be the Secretary;
    - ii) the unit directly in requirement of procurement;
    - iii) the financial unit of the procurement entity;
    - iv) planning, Research and Statistic Unit;
    - v) technical personnel of entity with expertise in

the subject matter for each procurement.

*Direct  
procurement*

**20(1)** A procuring entity may carry out 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 impracticable due to unforeseeable circumstances giving rise to the urgency which is not the result of any conduct on the part of the procuring entity;
- (c) owing to catastrophe event, there is an urgent need for the goods, works or services making it impracticable to use other methods of procurement because of the time involved in using these methods;
- (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor determines that:
  - i) additional supplies need to be procured from that supplier or contractor because of standardization;
  - ii) there is 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

procuring 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 suitability of alternatives to the goods or services in question merits the decision.

(2) The procuring entity may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor and shall include in the record of procurement proceeding, a statement of the grounds for its decision and the circumstances in justification of single source procurement.

*Emergency  
procurement*

**21(1)** A procuring entity may for the purpose of this law carry out an emergency procurement where:

(a) the state is confronted with a disaster, catastrophe or other act of God;

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

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

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

(3) All procurements made under emergencies shall be handled with expedition but along with principles of

accountability, due consideration being given to the gravity of each emergency.

- (4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detail report thereof with the Bureau which shall verify same.

*Consultancy Services*     **22.**     All Consultancy Services procurements shall be in accordance with the procedures as laid down in the regulations of this law.

*Investigation*     **23(1)**     The Bureau may subject to the Council approval recommend for investigation by any relevant authority any matter related to the conduct of procurement implementation by a procuring entity or the operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent or detect a contravention of this law.

- (2) The Bureau may upon investigation issue a variation order requiring a contractor at his own expense to repair, replace or do anything in his contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract award.

- (3) The Bureau shall if satisfied that there has been contravention of this law or any regulations in relation to procurement proceedings or contracts, take action to rectify same by either:

(a) Nullification of the procurement proceedings.

(b) Order the procurement entity or contractor to comply with the specific provisions of the law.



(c) Recommend for the cancellation of the contract by the awarding body.

*Administrative  
Review*

- 24(1)** A bidder may seek administrative review for any breach by a procuring or disposing entity under the provisions of this law or any other regulations or guidelines or the provisions of the bidding document.
- (2) A complaint by a bidder against a procuring entity or disposing entity shall first be submitted to the accounting officer who shall within thirty (30) days make a decision in writing indicating the correct measures to be taken if any.
- (3) Such decision as mentioned in subsection (2) of this section may include suspension of the proceedings where he deems it necessary and giving reasons.
- (4) Where the accounting officer does not make a decision within the period specified or bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau.
- (5) Upon receipt of a complaint the bureau shall promptly give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter.
- (6) Before taking any decision on a complaint, the bureau shall notify all interested bidders of the complaint and take into account representation from the bidders and the respective procuring or disposing entity.
- (7) The bureau shall make its decision within 21 days after receiving the complaint stating reasons for its decision and remedies granted if any.

- (8) Where a bidder is not satisfied with the decision of the bureau he shall within fourteen (14) days appeals to the Council and the decision of the council shall be final.

*Disposal of  
Public  
Property*

- 25(1) For the purpose of this law, every procuring entity shall also be a disposing entity.
- (2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (3) The Bureau shall, with the approval of the Council;
- a. determine the applicable policies and practices in relation to the disposal of all public properties;
  - b. issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public properties; and
  - c. issue a standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public properties.

*Offences and  
punishments*

- 27(1) An offence under this law shall include:
- (a) altering any procurement document with intent to influence the outcome of a procurement proceedings;
  - (b) bid rigging;

- (c) directly or indirectly attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
  - (d) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favor, agreement, bribery and corruption;
  - (e) uttering or using fake documents or encouraging their use;
  - (f) willful refusal to allow the officers of the bureau to have access to any procurement records;
  - (g) collusion or attempting to collude with any party to the procurement in order to alter the prices or quotation to their advantage. For the purpose of this subsection. It shall be sufficient that a reasonable business person should have known that his action would result his company or firm having an undue advantage over other bidders to the detriment of the State.
  - (h) any other act which contravenes either directly or indirectly any of the provisions of this law.
- (2) Any person who contravenes the provision of subsection (1) of this section shall be liable on conviction to a term of imprisonment not exceeding three years with option of fine which shall be five percent (5%) of the value of the procurement in issue.
- (3) Where a person is convicted under this section he shall be barred from all public procurement in the state for a

minimum of three years including the directors of a company as the case may be.

- Governors' General Directives*      27(1)      The Governor may give to the Council or the Bureau such directives of specific or general nature and the Council or the Bureau shall comply with such directives.
- (2)      Notwithstanding anything contained in this law or any other law, the Governor may where he satisfies himself that all due process procedures are followed, consider and give executive approval for the award of any contract, such approval shall be forwarded to the State Executive Council for ratification where it exceeds One Hundred million Naira.

### MISCELLANEOUS

- Meetings*      28(1)      The Council shall hold meetings quarterly and such other meetings as the situation may warrant.
- Presiding at a meeting*      (2)      The meeting shall be presided over by the Chairman and in his absence, the members shall choose one of them to be the Chairman of that meeting.
- Quorum*      (3)      The quorum of all meetings of the Council shall be two-third of the total number of council members.
- Voting*      (4)      All members shall be entitled to one vote at all meetings of the council except the Chairman who shall have a casting vote.
- Validity of proceedings*      (5)      The validity of any proceeding of the council shall not be affected by any vacancy or in its membership or by any defect in the appointment of any member.
- Co-option of persons*      (6)      The council may co-opt any person or persons to be a member of such meeting or meetings of the council only

if the need arises.

- Privilege of the co-opted person* (7) The person so co-opted shall have the rights and privileges of a member and that such person shall not be entitled to vote upon any question.
- Committees, power of delegation* 29. The council subject to such conditions as it may decide may appoint committees to perform any of its functions where necessary.
- Authentication of Seal* 30. The seal of the Bureau shall be authenticated by the signature of the Chairman, Secretary or any other person as may be authorized generally or specifically by the Council.
- Standing orders* 31. The Council shall make standing orders to regulate its own procedure and conduct of its meetings and may amend such orders.
- Non liability of members* 32. No member of the Council shall be sued in his personal capacity for any act done or omitted to be done in the lawful performance of his duties under this law.
- Representation in Court* 33. In any suit instituted by or against the Council it shall be represented in court by a State Counsel duly delegated by the Attorney-General of the State or any other Legal Practitioner appointed by the Council.
- Pre-action notice* 34. Subject to the provisions of this law, no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending plaintiff or his agent; and the notice shall clearly state:

- (a) the cause of action;

(b) the particulars of the claim;

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

(d) the reliefs sought.

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

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

*Savings*

**35(1)** All assets and liabilities including monies standing to the credit of the Bureau before the coming into operation of this law shall without further assurances vest in the council.

(2) All contracts and agreements relating to dealing and activities entered into or carried out by the Bureau prior to the coming into operation of this law shall be deemed to have been entered or carried out under the provision of this law and by the council.

*Scope of the law*

**36(1)** The provisions of this law shall apply to:

(a) the procurement of goods, works and services, financed in whole or in part from public funds by the State Government and all its procurement

entities;

(b) the disposal of public properties;

(c) procurement with funds or loans taken or guaranteed by the State Government and foreign aid funds except where the applicable loan agreement, guarantee, contract or foreign agreement provides otherwise.

*Interpretation* 37. In this law:

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

“Alteration” includes insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening and request for clarification in a manner not permitted under his law.

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

“Bid rigging” means offers submitted have been pre-arranged between them; or their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the State;

“certification” means issuing a document evidencing and authenticating that due process and the letters of this

Law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury;

“Chairman” means Chairman of the Council or any other person appointed by the members of the Council in accordance with the provision of this law;

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

“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, individual, sole-proprietor, joint stock company. Joint venture or any other legal entity through which business is conducted;

“Council” means the Governing Council of the Board;

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

“Director-General” means Director General of the Bureau;

“Disposing entity” means procuring entity;

“Excessive Price” means monetary value proposed by a



bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit;

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

“Government” means the Government of Jigawa State;

“Governor” means Governor of Jigawa State;

“Lowest evaluated bid” is the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document;

“Member” means a member of the Council;

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

“Negotiation” means discussions to determine the terms and conditions of a contract of procurement;

“Opening competitive bidding” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;

“Procurement proceedings” means the initiation of the process of offering procurement up to award of a procurement contract;

“Procuring entity” means any public body engaged in

procurement and it includes a ministry, extra-ministerial office, Government agency, parastatals corporation and Local Government;

“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;

“Solicitation Documents” means the bid solicitation of offers, proposals or quotations;

“State” means Jigawa State of Nigeria;

“Supplier” means a real or legal person that provides supply of goods, contracting of works or consultations;

“Suit” means criminal and civil actions;

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

“Works” means all the works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction where their value does not exceed that of the construction.

*Repeal*

- 39.** The Due Process and Project Monitoring Bureau Law 2009 is hereby repealed.