

**UNDERSTANDING THE PROVISIONS OF THE BAUCHI STATE PUBLIC
PROCUREMENT BUREAU LAW, 2020**

BY THE

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BAUCHI STATE**

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1. INTRODUCTION

Public procurement involves the entire process of acquiring goods, services or works using public funds by a procuring entity. The process of procurement is intended to promote global best practices and to achieve value for money through fair and open competitive bidding and at the same time to minimize any kinds of leakages, fraud and corruptions. Due process in public procurement can also be recognized as a machinery meant to guarantee fairness, justice and liberty in any step of the public procurement process.

The pioneer legal framework of the public procurement in Bauchi State was the Procurement Law, of 2008 which established the Due Process Office as a Unit domiciled under the office of the Executive Governor of Bauchi State not as an independent Agency. The Procurement Law, 2008 also recognized a Special Adviser as Chief Executive and Accounting Officer of the Unit who shall be appointed by the Governor.

Thereafter, during the administration of the former Governor M.A. Abubakar, the Procurement Law of 2008 was repealed and the Public Procurement Law 2017 was re-enacted in which the status of the Unit of the Due Process was elevated to a status of an Agency.

The present administration of Senator Bala Muhammad (Kauran Bauchi) also repealed the Procurement Law of 2017 with a view to introducing some new innovations to ensure transparency, accountability and value for money in the procurement process in the

state. The new Procurement Law is titled: **Bauchi State Public Procurement Bureau Law, 2020.**

2. ESTABLISHMENT, SCOPE OF APPLICATIONS AND POWERS OF THE BUREAU

Section 2 of the Public Procurement Bureau, Law 2020 establishes the structure of the Bureau which shall be recognized as a body corporate with perpetual succession and a common seal. The Bureau has power to sue and be sued in its corporate name and be capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out any of its functions under this law.

Section 4 of the Law provides for the scope of the applications which shall apply to all procurements of goods, works and services carried out by the Bauchi State Government, its ministries, departments, agencies, Judiciary, Legislature, state owned universities, Collages and Local Government Areas whose funding derives from the state treasury, internally generated revenue, the state share of the Consolidated Revenue Fund and special allocation from the Federal or state Treasury.

The provisions of the Law shall also apply to the procurement and disposal of goods, works, services and disposal of assets by all entities as provided above.

3. POWERS OF THE BUREAU

For an effective and proper implementation of the provisions of the Bauchi State Public Procurement Bureau Law , 2020; the Bureau has the following powers:

- a. Inspection and review of any procurement transaction to ensure compliance with the provisions of the law.
- b. Engage in public enlightenment on the need for the Procuring Entity and all other stake holders to comply with the provisions of the Procurement Law.
- c. Monitor the prices of tendered items and keep a database of standard prices which shall be open to the public.
- d. Issue Certificate of No objection to the contractors who duly comply with the provisions of the Procurement Law.
- e. Investigate and determine whether any Procuring Entity has violated any provisions of the Public Procurement Law.
- f. Blacklist any contractor or supplier found wanting or in breach of the provisions of the law or any Regulations made pursuant to the Public Procurement Law.
- g. Stipulate to all procuring entities the procedures and documentations pre-conditions for issuance of the Certificate of no Objections.
- h. Register and maintain a data base of all contractors and consultants.
- i. Maintain a list of contractors and persons that have been blacklisted from participating from public procurement system and publish them in the state procurement journal or Bureau's website.
- j. Call for information, documents or any records in respect of any aspect of any procurement proceedings where a breach,

- mismanagement, default or collusion has been alleged, report or proved against any person, procuring entity, or any contractor.
- k. Nullify the whole or part of any procurement proceedings or award which is in contravention of the Law.
 - l. Direct the discontinuance, stoppage or suspension of any payments due from public fund under any procurement contract which has contravened or is likely to contravene any provisions of the Public Procurement Law.
 - m. Monitor and evaluate all ongoing projects to insure due compliance with the provisions of the Procurement Law.
 - n. Where there is prove of the breach of the procurement Law and the affected person is given an opportunity to put his defence in writing; the Bureau has a power to recommend to the appropriate authority one or more of the following: suspension, removal, transfer, dismissal or termination from employment of any person involved or any Accounting Officer.
 - o. The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its function.

4. PROCEDURE OF LODGING COMPLIANTS BY BIDDERS

A prospective bidder may apply for the review for any omission or breach of the provisions of the Procurement Law by a procuring entity during the process of procurement.

- A complaint shall be in writing and addressed to the Accounting Officer of the relevant Procuring Entity within fifteen days from the date the aggrieved bidder becomes aware of the breach.
- On reviewing the complaint the Accounting Officer shall make his decision within fifteen days from the date of the receipt of the complaint. The Accountant Officer shall specify the

- corrective measures to be taken if any, including the suspension of the entire proceedings where he deems it necessary and shall give reason for his decision.
- The complainant shall in a situation where the Accounting Officer failed to respond to the complaint within fifteen days or dissatisfied with the decision may forward further complaint to the Bureau.
 - Both the Accounting Officer and Bureau as the case may be shall ensure the observance of the principle of fair hearing before making any decision against or in favour of the complainant.
 - The bidder may appeal to Bauchi State High Court if the Bureau fails to decide his complaint or the complainant dissatisfied with the decision of the Bureau within 21 working days. The decision of the High Court shall be final.
 - Where the complaint is against the conduct of the Bureau, the first line of complaint shall be to the Governing Council of the Bureau which has 21 days to resolve the dispute and communicate its decision in writing to the complainant; and where it fails to so decide or the complainant is dissatisfied with the decision of the Council; the complainant may commence legal action against the Bureau.

5. OFFENCES AND PUNISHMENTS

Section 74 of the Public Procurement Law, 2020 identifies some offences in public procurement and goes further to recommend

some punishments for any natural or artificial persons that contravene the provisions of the Law. Section 36 (12) of the 1999 constitution as amended defined offences and punishment to mean “..... a person shall not be convicted for a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection written law refers to an Act of the National Assembly or a Law of a State, any subsidiary Legislation or instrument under the provisions of the Law”.

Section 76 provides as follows: “Any person not being a public Officer who contravenes any of the provisions of this Law commits an offence and is liable on conviction to a term of imprisonment of not less than 6 months but not exceeding two calendar years or an option of fine of 500,000.00.”

Interestingly, in the reported case of **Bala James Inggilari V. The State & others reported in (2017) LPELR-42985 (CA)**. The court of Appeal by the operations of the above provision of the procurement law has decided on whether public officers are exempted from the operations of the Adamawa State Public Procurement Law. The Appellant was a sitting Governor of Adamawa State at the material time the transaction took place.

The Court of Appeal therefore held as follows: **“if by the provisions of section 58 of the law, the Governor as public officer is exempted from the operations of the law, that is the Adamawa State Public Procurement Law 2013, then he cannot under the same law and in the same section be held bound by and prosecuted for contravening the provisions of the same law. The legislative intent is to exclude all public officers from the**

operation of the law by reason of section 58 (1), this is the full point.” Per Omoloye , J.C.A. (Pp. 78-80, Paras, F-E)

The Law also recognizes that both natural and legal personality or artificial person can commit an offence under the provisions of the Procurement Law of Bauchi State. The offences as contained in the Law are as follows:

- a. Tempering with any sealed bid or any document required to be sealed prior to the appointed time for public opening of bids or other documents.
- b. Using fake documents in the public procurement process.
- c. Delay without justifiable cause, the screening eligibility, opening of bid evaluations and post evaluation of bids and award of contract beyond the prescribed periods of action as provided in this Law or any regulation.
- d. Conduct procurement fraud by means of fraudulent or corrupt acts, promises, threats, unlawful influence, corruption or bribery.
- e. Alteration of any procurement documents with intent to influence the outcome of any bid proceedings.
- f. Split tenders to enable the evasion of monetary thresholds.

- g. Intentional refusal to allow Agency or any of its officers to have access to any procurement records.

Any person while carrying out his duties as an employee of an Agency or any procuring or disposing entity who committed the aforesaid offences is liable on conviction to the following punishments:

- A term of imprisonment not less than 2 years or an option of fine of N500,000.00 or
- Dismissal from service without any benefits.

Any legal or juristic personality that contravenes any provisions of this law commits an offence and is liable on conviction to a penalty of blacklisting from all public procurement for a period not less than three years or a fine equivalent to the value of the procurement in issue.

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Where a legal person is convicted pursuant to the provision of the Law; the Director of the Company shall be liable on conviction to a term of imprisonment not less than one year but not exceeding five years with an option of fine of 1,000,000.00.

The provisions of the procurement Law recognize the possibility of plea bargain. This is because where any person artificial or natural is charged with a crime under this law, before the commencement of hearing of the charge admits his guilt and make prompt and complete refund or restoration of any benefits he obtained in relation to the contravention or crime, and full disclosure of any other relevant facts in the commission of the crime; the court shall have the power to impose lesser punishment than those prescribed by the Procurement Law.

6. CONTRACT AGREEMENT AND ITS BASIC REQUIREMENTS UNDER THE PROCUREMENT LAW

Contract agreement means the agreement entered into between the employer and the contractor, together with the contract documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein to execute, complete, and maintain the works. The following documents shall form part of the contract agreement.

- a. The letter of notification of award and letter of acceptance.
- b. The completed tender submission sheet as submitted by the tenderer.
- c. The mutually agreed priced Bill of quantities as submitted by the contractor.
- d. The special or general condition of the contract.
- e. The particular and general specifications.
- f. The drawings and any other documents listed and forming part of the contract.

The underlisted clauses shall form parts of the contract agreement and unless contractual parties mutually agreed on them; parties shall not benefit from them. The legal implications of not recognizing the under-listed clauses in the contract agreement is that whenever there is breach of any terms and conditions of the contract agreement; the contractual parties shall not raise any of the clauses in their defence before any court of competent jurisdictions.

In the case of Okonko V. C.C.B. (Nig.) Plc (1997) 6 NWLR (Pt. 507) at page 48; The court of Appeal held as follows: “The law is that written contract agreement freely entered into by the parties is binding on them. A court of law is only bound by the terms and conditions of the contract agreement. Where the intentions of the parties to the contract is clearly expressed in a document; the court cannot go outside the contract agreement to give effects to the intention of the parties. Therefore, any extrinsic evidence is not admissible to add to, vary, substract from or contradict the terms and conditions of the written contract agreement.”

Some of the very important terms and conditions which shall form part of the contract agreement are as follows:

- a. **Non-waiver clause:** simply means no relaxation or delay by either party in enforcing any of the terms and conditions as contained in the contract agreement. Any waiver of the party’s right or powers under the contract must be in writing by the parties or their representatives and it must specify the extent to which any right is being waived.
- b. **Severibility Clause:** means if any provision or terms and conditions of the contract is prohibited or rendered invalid or unenforceable; such prohibition shall not affect the validity of the remaining provisions and conditions of the contract.

- c. **Governing Law:** The contract shall be governed by and interpreted in accordance with the laws of the Federal Republic of Nigeria.
- d. **Assignment Clause:** The contractor shall not assign in whole or in part, its obligations under the contract, except with the employer prior written consent.
- e. **Scope of works clause:** The works to be executed, completed and maintained shall be as specified in the Bill of Quantities, the general and particular specifications and drawings. Bill of Quantities shall contain items for the constructions, installations, testing and commissioning work to be done by the contractor. Bill of Quantities is used to calculate the contract price. The contractor is paid for the quantity of the work done at the rate in the bill of quantities of each items.
- f. **Defect Liability Period and Retention clause:** The appointed Engineer shall give notice to the contractor, with a copy of the employer, of any defects before the end of the defects liability period, which begins at completion. The defects liability period shall be extended for as long as defects remain to be corrected. The percentage of the money deducted from the contract sum shall not be released to the contractor until such a defects is corrected.
- g. **Mode of payments clause:** After the initial payments of mobilization fees; any subsequent payments shall be based on the issuance of valuation certificate issued by

the contractor and vetted by the appointed engineer at site.

- h. **Variation/Price adjustment clause:** Price shall be adjusted for fluctuations during execution of the contract. Unless mutually agreed by the parties the contract is for a fixed sum. If the contractor signifies in writing any change by addition of any items from the works; which such additions amount to variations in the work; the employer shall request the contractor to submit its estimates of costs, work details and time required to satisfy the variations and such additional costs if agreed by the parties form parts of the contract.
- i. **Liquidated damages clause:** The contractor shall pay the damages at the rate per day stated and agreed in the contract agreement for each after the expiration of the completion date as mentioned in the contract. The employer may deduct the damages from the payments due to the contractor.
- j. **Cost of repairs clause:** Any loss or damage to the works occurred between the start date and the end of the defects liability period shall be remedied by the contractor at the contractors cost if the loss or damage arises from the contractors act or omissions.
- k. **Completion clause:** The contractor shall request the appointed Engineer to issue a certificate of completion

of the works and the Engineer will do so upon deciding that the work is completed.

- l. **Property clause:** All materials on the site, plant, equipment, temporary works and all other works shall be deemed to be the property of the employer if the contract is terminated because of the contractor's default.

- m. **Frustration of contract clause:** If the contract is frustrated by the occurrence of Force merjure like revolutions, fire outbreak, quarantine restrictions during the present covid19 pandemic, riots and unrest at site. All the contractual obligations of the parties will be suspended until the disappearance of the Force merjure.

7. CONCLUSION

It is very important to know that the creation of the Due Process Office in Bauchi State has resulted in a more efficient, transparent and effective procurement system which guarantees equal treatment in any bidding process. Unnecessary wastages and leakages in the economy is also successfully detected and minimized.

Potential bidders should be aware that the Bauchi State Government views corruption in the procurement process as a serious matter. Corruption, could be in form of offering, giving, receiving or soliciting of anything of value to a public official in procurement or in contract execution purposely to prevent any procurement process from being properly monitored and evaluated by the

procuring entity. This poor monitoring and evaluation of the most of the contracts prevents the electorates from benefiting the dividends of democracy.

Its very important at this juncture to inform you that the present administration of Bala Muhammad (Kauran Bauchi) has initiated a lot of positive innovations and policies with a view to correcting all public procurement anomalies committed by the previous administration one of which is the Committee for the review of the capital projects awarded by the previous administrations.

The committee had succeeded in detecting a lot of leakages, contract inflation and of course retrieved and saved millions of naira from the existing contractors for the benefit of Bauchi State Government.