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# Acronyms

ARC	Accountable, Responsive & Capable Government
IAC	Inspection and Acceptance Committee
MDAs	Ministries, Departments and Agencies
PE	Procuring Entity
PERL	Partnership to Engage, Reform and Learn
PMU	Procurement Management Unit
PPS	Public Procurement Suite
SBD	Standard Bidding Document
SPARC	State Partnership for Accountability, Responsiveness and Capability

# 1. Introduction

**1.1** Nigerian State Governments, with support from the Federal Government, aim to strengthen their public procurement systems, recognizing that sound public procurement policies and practices are one of the essential elements of good governance. Good procurement practices can help reduce costs, increase quality and produce timely results that support the effective implementation of important development projects and the maintenance of existing services. On the other hand, poor practices lead to waste and delays, and are often the cause of allegations of corruption and government inefficiency. It is desirable that all States should establish a formal procurement system that suits their needs and aligns with applicable international and national models; while allowing for different practices and business customs. This Public Procurement Suite provides a model for each State to consider and adapt in accordance with its needs.

**1.2** Since 2012, a team of international and Nigerian consultants, funded by the UK Government, have been involved in promoting public procurement reform in selected States under the auspices of the State Partnership for Accountability, Responsiveness and Capability (SPARC) and the subsequent Partnership to Engage, Reform and Learn (PERL) programme. Activities under these programmes have included: assessment of needs and of progress made; the development of Procurement Law, Regulations and guidance Manuals; the preparation of Standard Bidding and Contracting Documents; and conducting series of training for practitioners and other stakeholders on familiarisation with, and implementation of, the procurement reforms. This Public Procurement Suite is based on resources and experience garnered from these assignments and the procurement reforms in other African countries.

**1.3** This Public Procurement Suite provides the model documents that State Governments will need when developing their procurement system, including:

A Public  
Procurement  
Law

Public  
Procurement  
Regulations

Standard  
Bidding and  
Contracting  
Documents

A Public  
Procurement  
Manual

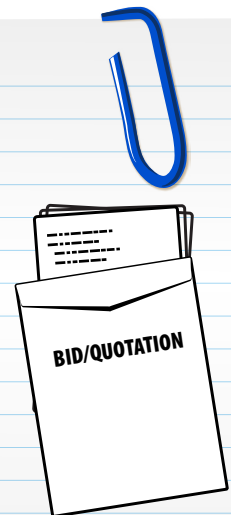
A Training  
Plan



## 2. Application

**2.1** The Procurement Law and other requirements of the procurement system, which are modelled under the Public Procurement Suite, should apply to:

- (a) The State Government and Local Government Councils of the State;
- (b) any public body of the State engaged in procurement, including Ministries, Departments, Bureaus, Offices and Agencies of the State, extra-ministerial offices, parastatals and corporations; these are referred to collectively as Ministries, Departments and Agencies (MDAs) and in their procurement function as Procuring Entities (PE);
- (c) all other entities which derive any funds appropriated or proposed to be appropriated for any type of procurement from the State Government's share of the Consolidated Revenue Fund.



## 3. The present arrangements for procurement in the States of Nigeria

**3.1** In many African countries and in some other developing countries, the traditional procurement system, derived from colonial structures, was highly centralised, with all major procurement decisions taken by a Central Tender Board. In the past, procurement needs were fewer and less complex but as the volume of procurements increased and included items for which considerable technical expertise was required, the centralised system was unable to cope with the level of demand, and bottlenecks developed. Various international bodies, in particular the World Bank, have provided technical support to help governments resolve these problems. The consensus that has emerged from various consultations is that modern public procurement is best carried out through a decentralised system but one that is made subject to central regulation, guidance and inspection. This may be provided for by decentralising procurement to each MDA, local government authority and other public bodies but requiring their procedures and decisions to be taken in accordance with a Public Procurement Law and Regulations, and carried out using standardised bidding and contracting documents. To oversee the workings of the system and to provide training and other support, inspection and enforcement, it has generally been found beneficial for the State to establish a central public procurement regulatory/oversight agency.

**3.2** The Federal Government and the 36 States of Nigeria have procurement systems at different stages of development. Some States have taken advantage of technical assistance available through the SPARC and the subsequent PERL programmes to develop their procurement systems and other Development Partner projects. The Lagos State Public Procurement Agency Law came into effect in April 2012, establishing a central regulatory agency with functions and powers to regulate public procurement carried out by all MDAs and local governments in the State. Jigawa State also enacted a Due Process and Project Monitoring Bureau Law in 2008 (amended in 2012), establishing a regulatory body with similar functions and powers. Both States have well-developed procurement documentation to support the Law, including Regulations/Guidelines, a manual of good practice and a set of standard bidding and contracting documents that cover the main categories of procurement. The procurement regulatory bodies established by both States' Laws carry out their functions under the direction of a Board, comprising senior public officers and members of the public appointed by the State Governor. Each Agency/Bureau has responsibility, in addition to the aforementioned, for enforcing the Law and providing for capacity development needs. They are also charged with developing systems for electronic tendering. The Laws in both States also detail the organisational structure to be established within each MDA in the State to carry out the procurement function satisfactorily and prescribe the procedures to be followed.

**3.3** It is important that procurement procedures within the MDA should be overseen by officers who have specialised expertise in procurement. It is therefore specified that this function shall be assigned to a Procurement Management Unit (PMU), staffed by officers of the procurement cadre.

**3.4** Some other States are in earlier stages of developing a framework for public procurement but are making good progress towards this goal. For example, Kaduna State enacted a Public Procurement Law in 2016 and implementing regulations in 2018 and is developing standard bidding and contracting documents.

**3.5** On the other hand, there are some States where procurement practices are mainly informal, based on customs that the local business community are familiar with. Such States have much work to do to bring their procurement systems up to internationally recognised standards. This Public Procurement Suite is intended to support these States in their efforts to make further progress in developing their procurement arrangements.



## 4. Contents of the Public Procurement Suite



**4.1** A **Public Procurement Law**, together with implementing **Regulations, Standard Bidding and Contracting Documents** and a **Manual** providing guidance, provide a sound foundation for a procurement system that will have the confidence of the business community and lead to more competitive bids from capable providers.

**4.2** An **advantage** of having a well-developed procurement framework, where **open competitive bidding** is the default procurement method, is that there is less reliance on exclusively local sources. Thus, **new potential suppliers** are able to enter the market, bringing a greater degree of competition and **innovation** that may lead to procurement contracts of **better value**. The rules and procedures are clearly laid down, and each party understands its obligations and responsibilities in clearly written and comprehensive contract documentation. There is thus a legal basis for holding government officials, bidders and contractors to account, and **reducing** opportunities for corruption, collusion and other **malpractices**. Government contracts are based on a **shared understanding of obligations**, so that contractors know the resources they need to deploy to fulfil their contractual obligations and government bodies or agencies do not enter into contracts unless they are able to meet their payment obligations.

**4.3** The **model Public Procurement Law** will be the overarching legislation on public procurement in any State that wishes to adopt it. The subsidiary legislation, such as the Public Procurement Regulations, must always align with the provisions of the Law, otherwise the conflicting provisions will be invalid. The Law establishes the **procurement regulatory agency** that will, among other functions, **oversee the enforcement of the procurement law** and its subsidiary legislation. It provides for the **key features of the procurement framework** to be established. It sets out the **guiding principles** for public procurement, together with the organisational structure to be established in each State and the broad procedures to be followed during the procurement and contract management process. The Law provides a firmer legal foundation for building a State procurement system than adopting only a procurement regulation or other subsidiary legislation. This is because the law (statute) may only be amended or repealed through a rigorous parliamentary process; whereas subsidiary legislation may be reviewed or abrogated by an executive agency or office vested with such powers.

**4.4** The **Public Procurement Regulations support the implementation of the Law** by providing greater detail about certain workings of the organisational structure and the procedures to be followed to uphold the principles in the Law. The aspects of the provisions of the Law that are left to be expatiated by the Regulations relate to matters that may require short or medium-term changes or reviews, such as award or approval thresholds, margin of preference for applying domestic preference, etc. Thus, they should not be contained in the Law, as it will subject the Law to frequent rigours of parliamentary amendment, which will lead to additional legislative burden and reduce the adaptability of the system to needed change. There may not be exhaustive Regulations at the beginning in a State that is commencing adaptation of a modern public procurement system, modelled on the resources in this Procurement Suite. Some procurement matters that could be specified in a Regulation may be left until the State has resolved and is certain about the detail. The Model Regulations in the Procurement Suite are considered sufficient for the initial period of establishing a modern procurement system in a State. Additional Regulations could be issued and gazetted, as the need arises, on specific provisions of the Law for which Regulations applies. It is only the aspects of the Law where the Law expressly directs or permits that Regulations may be made that Regulations could be issued. Thus, Regulations shall not be used for the purpose of amending the Law.

**4.5** Together the Law and Regulations provide for:

- (a) A **Public Procurement Agency** for the State, with the necessary functions and powers to enforce the Law, to support and enhance good practice and to develop the system to meet future requirements and capabilities, such as electronic procurement. There are detailed provisions on how the Agency will be structured, financed and made accountable.
- (b) The **organisational structure for procurement** at the MDA level: each MDA shall establish or identify from among its staff:
  - An **Accounting Officer**, who would usually be the Permanent Secretary, Chief Executive Officer or other senior official and who would be made responsible for putting in place a system that provides for the efficient conduct of the MDA's procurement in accordance with the Law;
  - A **Procurement Planning Committee** to plan procurements for the coming financial year and to ensure that procurements do not proceed unless the necessary funds have been allocated;
  - A **Tenders Board** to ensure that correct procedures have been followed and to take decisions on contract awards;
  - An **Evaluation Committee** for each major procurement to provide relevant expertise on the bids received; and
  - A **Procurement Management Unit (PMU)** with a key role in managing important procedures, including supporting the preparation and continuous review of the annual procurement plan, maintaining a list of suitable



suppliers, preparing and issuing invitations to tender and tender documents, receiving bids and providing support during the evaluation process and subsequent contract management, supporting arrangements for bid challenge and for initiating disciplinary action against bidders and contractors who breach ethical standards or fail to complete their contractual obligations satisfactorily, and maintaining procurement records.

- (c) The **key principles and general rules** by which public procurement shall be conducted and the procedures to be followed in the procurement of goods, works, consultancy and non-consultancy services, with provision for preference to be given to domestic suppliers and contractors in appropriate circumstances.
- (d) Comprehensive arrangements for:
  - Record keeping;
  - Investigations by the Agency;
  - The conduct of administrative reviews, under which dissatisfied bidders may challenge the conduct of procurement proceedings and decisions on contract award that have been taken on an improper basis (such arrangements can build confidence among the business community in the integrity of the procurement system and facilitate better enforcement);
  - Taking disciplinary measures against bidders and contractors who commit malpractices or fail to deliver satisfactory work; and
  - Disposal of public property.

**4.6** The Suite includes **standard bidding documents (SBDs)** for each category of procurement, i.e. goods, works, consulting services and non-consulting services, together with **simplified documents for the procurement** of low-value supplies, works and services through requests for quotations. The bidding document for each procurement should be based on the appropriate SBD. The SBDs are designed to provide a fair basis for competition among eligible and qualified companies by enabling potential bidders to understand clearly what the PE requires them to provide, so that they can estimate the cost of meeting these requirements and price their bid accordingly. The SBDs include standard contracting documents that would be used to form a contract with the successful bidder.

**4.7** The SBDs consist of:

- (a) The **standard rules for submitting bids**, which apply to all procurements in the State and should not be altered for any particular procurement;
- (b) **Detailed rules for the procurement** in hand: these modify the standard rules to provide necessary detail, but do not depart from the principles in the standard rules; the evaluation criteria would be included in the detailed rules to provide for transparency in the evaluation of bids;
- (c) A **statement of requirements** that provides detailed information about the goods, works or services to be procured, including quantities, technical specifications and the delivery time or completion schedule; the technical specifications should be written by persons who are experts in the technical features of the goods being procured or the works or services to be performed; the technical specifications should state the purpose for which the item is to be used and include all essential details without being so restrictive that variations, perhaps based on technological innovation, would be deemed to be non-conforming;
- (d) The **general conditions of contract** that apply to all procurement contracts made by the State (variation of these conditions is not permitted); and
- (e) The **special conditions of contract**, which are permitted variations to the general conditions to meet the requirements of the contract in hand.

Items (b), (c) and (e) are templates that would be developed by the PE specifically for each procurement.

**4.8** The **Public Procurement Manual** is designed to provide advice and assistance to procurement staff to help them carry out their procurement responsibilities, in accordance with the Procurement Law and Regulations. It explains how specific aspects of procurement should be handled. Thus, it expatiates relevant principles and procedures contained in the Procurement Law and Regulations. It is a source of "how-to" information about the tasks and elements that comprise the procurement process and may be used as an aid in training programmes. It also advises on additional structures to be established, including:

- An **Inspection and Acceptance Committee (IAC)** or other arrangements for inspecting goods received and confirming that the specifications in the bidding and contract documents have been complied with;
- For major works projects, a **Contract Management Committee** to oversee the project until completion; and
- A **Records Officer**, who may be an officer in the PMU, who would be charged with opening and maintaining the procurement file for each procurement.

**4.9** The final component of the Procurement Suite is the **Training Plan**, which identifies the training needs of the various practitioners and suggests how these should be met through induction and more specialised training courses.

## 5. Implementation

**5.1** The procurement reform programme should proceed by stages, as indicated below and would also be dependent on the current status of Public Procurement in the state.

STAGE	EVENT
1	There should be consultation on the purpose of the procurement reform programme and the expected benefits, in order to gain stakeholders' support and commitment for the part they are expected to play. A provisional Public Procurement Agency without executive authority may be established to manage the reform programme. The implementation costs should be established and accepted by the State Government.
2	A Public Procurement Law should be adapted/drafted by the State Ministry of Justice and agreed with stakeholders, after which it is submitted as a legislative bill to the State House of Assembly for its passage, and subsequently presented for the Governor's assent. This would be followed by adapting/drafting the Regulations and the Standard Bidding and Contracting Documents by the Public Procurement Agency, subject to the approval of the Board.
3	The Law should provide for an implementation period, to allow time for the Regulations and Standard Bidding and Contracting Documents to be prepared, approved and promulgated. Without these supporting documents, there will be some aspects of the Law that cannot be applied effectively. Experience has shown that it can take considerable time for these supporting documents to be prepared and agreed by stakeholders, though it is hoped that the standard models provided in the Suite should enable more rapid progress to be made.
4	The central regulatory Public Procurement Agency should be formally established and staff recruited to key positions within it.
5	The Agency should develop a website to promulgate the Law and the various procurement documents.
6	MDA should establish the structure and positions for managing procurement under the reformed system.
7	An extensive training programme should be launched for practitioners and other stakeholders, using the model Training Plan under this Suite.
8	The new system should become operational on the commencement date stipulated in the Law.
9	The workings of the various arrangements under the procurement reform programme should be monitored, and consultations held with stakeholders on the remedies and improvements needed.

## 6. Other issues to be addressed

**6.1** Adoption of the Procurement Suite will provide a basis for improvement of a State's procurement system. However, based on assessments made of the implementation of procurement reforms, including those made on the system in Lagos State in 2014 and on Jigawa and Kaduna State in 2017, there are certain issues that need to be addressed. These issues are set out below, together with suggested remedies.

ITEM	ISSUE	SUGGESTED REMEDY
1	The central regulatory body needs to be adequately staffed by officers who have the skills, resources and necessary authority to carry out their statutory responsibilities.	There is no standardised staffing level for the central regulatory body in a State, as this should depend on the volume and complexity of the State's procurement activities. However, a commitment to adequate staffing should be made part of any decision to proceed with procurement reform and should be made part of the cost-benefit analysis used to justify the reforms. A recommended organisational structure is contained in Chapter 5 of the Public Procurement Manual.
2	At the MDA level, the PMU needs to be adequately staffed and equipped. In some MDAs, accommodation, storage facilities and equipment are inadequate for effective performance of duties. Consequently, business processes are predominantly paper-based, as is the procurement system. Access to desktops/laptops with Internet access is very limited and this factor, together with the lack of electronic processes in the procurement system, lead to inefficiency and delays. Moreover, the status and expertise of officers in the PMU is not always as expected, so that they perform mainly a clerical role without sufficient control of the procurement process.	The State Government should accept a commitment to making these adequate provisions as part of the decision to proceed with procurement reform. It should be noted that automation of business processes in State Government offices would be a pre-requisite for the development of e-procurement. Efforts should be made to build up a professional procurement cadre by promoting courses leading to professional qualifications and membership of professional bodies.
3	Bidding and contracting documents are insufficiently promulgated and understood by practitioners. Technical specifications, particularly for the procurement of goods, are inadequate, sometimes amounting to little more than the basic description of requirements in the Invitation to Bid.	Introduction of the standard bidding and contracting documents should be accompanied by training programmes to familiarise staff with their use. During the prior review process, the central regulatory agency should vet carefully the documents that are proposed to be used in major procurements to ensure that they are satisfactory.
4	Bid challenge systems are rarely used, partly out of fear of recriminations or delayed information about the proposed contract award.	It is important that the support of the business community should be obtained for the whole procurement reform programme and their role in effective enforcement should be made clear.
5	Cash is not released for payment of approved procurements when payment milestones are reached or when the project has been certified as completed. This is a principal cause of delayed commencement and completion of a project. Bidders may factor in the risk of delayed or non-payment when pricing their bids, leading to less value for money being obtained	There should be clear alignment between procurement and financial planning and a commitment made to meeting the financial cost of approved programmes. Improved estimation techniques should reduce the instances where the bids received are not in line with the estimate made in the annual procurement plan. Where resources are insufficient to meet the cost of the goods, works or services that are planned, the scope could be reduced to bring the cost into line with available funds.



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