

PART XI - OFFENCES

OFFENCE RELATING TO PUBLIC PROCUREMENT

- 55.** (1) A person who contravenes a provision of this Law commits an offence and is liable to a term of imprisonment for 2 years or to a fine of N200.000 or to both.
- (2) The following shall constitute offence under this Law:
- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders/ proposals or quotations or would be higher than it would have been the case had there not been collusion between the persons concerned;
 - (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption;
 - (c) directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
 - (d) splitting of tenders to enable, the evasion of monetary thresholds set;
 - (e) bid-rigging;
 - (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
 - (g) uttering or using fake documents or encouraging their use and
 - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (3) An alteration pursuant to sub-section (2)(f) shall include:
- (a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and.
 - (b) request for clarification in a manner not permitted under this Law.
- (4) Collusion shall be 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 a 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 provision of this Law.

- (5) Bid-rigging pursuant to subsection (2)(e) means an agreement between persons whereby:
 - (a) offers submitted have been pre-arranged between them; or
 - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the state treasury.
- (6) For the purposes of the presumption under sub-section (4) of this section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question whether total or partial.
- (7) For the purposes of section 55(2) (c) of this section, it shall be sufficient to prove that a reasonable business person should have known that his or her action would result in his or her company or firm having an undue advantage over other bidders to the detriment of the state treasury.
- (8) A procurement contract awarded in contravention of this Law, shall not bind the Government, and shall not be enforceable at the instance of a supplier, contractor or consultant who procured or benefited from the breach; but nothing in this subsection shall be construed so as to prevent the Government from seeking recovery of monies already paid out of the state treasury under the contract, or from seeking indemnity or damages under the said contract against the supplier, contractor or consultant as the case may be.