



ANAMBRA STATE OF NIGERIA
2011 NO. ANMH/LAW/2011/07

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A Bill for a Law to establish the State Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for monitoring the oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Anambra State and for related matters.

Be it ENACTED by the Anambra State House of Assembly as follows:

**PART I – ESTABLISHMENT OF STATE COUNCIL
ON PUBLIC PROCUREMENT**

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| <i>Short title and Commencement.</i> | 1. This Law may be cited as the Anambra State Public Procurement Law, 2011, and shall come into force on the 31 st day of May, 2011 |
| <i>Interpretation.</i> | 2. In this Law, unless the context otherwise requires: <ul style="list-style-type: none"> “accounting officer” means the person charged with line supervision of the conduct of all procurement processes; “approval authority” means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department, corporation or parastatal; “assets” includes tangible and intangible things which have been or may be sold or procured for consideration; “bid security” means a form of security assuring the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid; “debar” means the placing of a firm, company or natural person on a list of persons ineligible to participate in any procurement proceedings under this Law; “certificate of no objection” means the 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 the procuring entity to enter into contract or effect payments to contractors or suppliers from the State Treasury; “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; “excessive price” means a 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; |

"interim performance certificate" means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion;

"international competitive bidding" means the solicitation of bids from both domestic and foreign contractors and suppliers;

"lowest evaluated responsible bid" means the lowest price bid amongst the bids that meet all the technical requirements and standards as contained in the tender document;

"margin of preference" means the extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

"minor value" means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau;

"monetary threshold" means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract;

"national competitive bidding" means the solicitation of bids from contractors and suppliers resident anywhere in Nigeria and registered or incorporated to carry on business under Nigeria Law;

"negotiation" means discussions to determine the terms and conditions of a contract or procurement;

"open 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" means acquisition;

"procurement proceedings" means the initiation of the process of effecting a procurement up to award of a procurement contract;

"procuring entity" means any public body engaged in procurement and includes a ministry, extra-ministerial office, government agency, parastatals and corporation;

"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 documents or any other documents for solicitation of offers, proposals or quotations;

"state competitive bidding" means the solicitation of bids from domestic contractors registered or incorporated to carry on business under Nigerian Law;

"substantially responsive" means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents;

"supplier" means a natural or legal person that provides supply of goods, contracting of works or consultants;

"threshold" refers only to the approving and not the actual process of award;

- (b) consider and approve policies on public procurement;
- (c) recommend to the Governor the appointment of a person as the General Manager of the Bureau of Public Procurement;
- (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) as far as practicable, benchmark the policies on public procurement approved pursuant to this Law with international standards;
- (g) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

**PART II – ESTABLISHMENT OF THE BUREAU OF
PUBLIC PROCUREMENT**

*The Establishment
of the Bureau of
Public Procurement.*

5. (1) There is hereby established an Agency to be known as the Bureau of Public Procurement (in this Law referred to as "the Bureau")
- (2) The Bureau:
- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name;
 - (c) may acquire, hold or dispose of any property movable or immovable, for the purpose of carrying out its functions under this Law.

*Objectives of the
Bureau.*

6. The objectives of the Bureau 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; and
 - (d) the attainment of competitiveness, transparency, cost effectiveness and professionalism in the public sector procurement system.

*Functions of the
Bureau.*

7. The Bureau shall:
- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
 - (b) publicize and explain the provisions of this Law;
 - (c) subject to thresholds as may be set by the Council, certify State procurement prior to the award of contract;
 - (d) supervise the implementation of established procurement policies;
 - (e) monitor the prices of tendered items and keep a State data base of standard prices;

- (ii) review and determine whether any procuring entity has violated any provisions of this Law and regulations made pursuant to this Law;
 - (c) debar any supplier, contractor or service provider that contravenes any provision of this Law and regulations made pursuant to this Law;
 - * (f) maintain a state database of contractors and service providers and to the exclusion of all procuring entities, prescribe classifications and categorizations for the companies on the register;
 - (g) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;
 - (h) call for such information, documents, records and reports in respect of any procurement proceeding where a breach, wrong-doing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;
 - (i) where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law recommend to Council:-
 - (i) disciplinary action to be taken against officers concerned with the procurement or disposal proceeding in issue;
 - (ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairman of the Tenders Board as the case may be;
 - (iii) the discipline of the Accounting Officer of any procuring entity;
 - (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
 - (v) any other sanction that the Bureau may consider appropriate.
 - (j) call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceedings;
 - (k) act upon complaints in accordance with the procedures set out in this Law;
 - (l) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
 - (m) do such other things as are necessary for the efficient performance of its functions under this Law.
- (2) The Bureau shall, subject to the approval of the Council, have power to:-

- (a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- (b) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and
- (c) liaise with relevant bodies or institutions, national and international for effective performance of its functions under this Law.

General Manager and staff of the Bureau.

- 9.
- (1) There shall be for the Bureau, a General Manager who shall be appointed by the Governor on the recommendation of the Council after competitive selections.
 - (2) The General Manager shall be:-
 - (a) the chief executive and accounting officer of the Bureau;
 - (b) responsible for the execution of the policy and day to day administration of the affair of the Bureau; and
 - (c) a person who possesses the relevant and adequate professional qualification and shall have been so qualified for a period of not less than 15 years.
 - (3) The General Manager shall hold office:-
 - (a) for a term of 4 years in the first instance and may be reappointed for a further term of 4 years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.
 - (4) Without prejudice to the provisions of this Law the General Manager may be removed from office on the recommendation of the Council or at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud and manifest incompetence proven by the Council.

Principal Officers of the Bureau.

- 10.
- (1) The Council shall appoint the principal officers for the Bureau after of the Bureau competitive selection process.
 - (2) The principal officers appointed under subsection (1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective departments and the Bureau as specified under this Law.
 - (3) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureaus duties and functions under this Law.

*Other staff of
Bureau.*

11. (1) The Council may appoint such officers and other employees as may from time to time be deemed necessary for the purposes of the Bureau.
- (2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determine by the Council.
- (3) Without prejudice to the generality of subsection (1) of this section, the Council shall have power to appoint either on transfer or on secondment from the civil service in the State, such number of employees as may be required to assist the Bureau in the discharge of any of its functions under the Law and persons so employed shall be remunerated (including allowances) as the Council may consider appropriate.

*Staff
regulations.*

12. (1) The Council may, subject to the provisions of this Law and within six months of its inauguration, make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:-
- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
- (b) appeals by such employees against dismissal or other disciplinary measures.
- (2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the State shall be applicable.

*Cap 102 Revised
Laws of Anambra State
1991.*

13. Employers of the Bureau shall be entitled to pensions and other retirement benefits as prescribed under the pensions Law.

*Funds of the
Bureau.*

14. (1) The Bureau shall establish and maintain a Fund to be approved by the Council, into which shall be paid and credited:-
- (a) the sums appropriated by the House of Assembly for the running of the Bureau;
- (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
- (c) all other assets which may, from time to time accrue to the Bureau.
- (2) The Bureau shall charge its fund to meet all its expenditure and all the expenditure of the Council.

- (3) The Council may make regulations of the Bureau:-
 - (a) specifying the manner in which assets or the Fund of the Bureau are to be held, and regulating the making of payment into and out of the Fund; and
 - (b) requiring the keeping of proper accounts and records for the purposes of the Fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time apply the proceeds of the Fund for:-
 - (a) the cost of administration of the Bureau and the Council;
 - (b) the payments of salaries, fees and other remuneration of employees of the Bureau or 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 functions of the Bureau under this Law; and
 - (e) any expenditure connected with all or any of the functions of the Bureau under this Law.

*Financial year
budgeting and annual
report.*

15. (1) The financial year of the Bureau shall be the same as that of the State Government.
- (2) Not later than six months 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.
- (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Council may direct.
- (4) The Bureau shall within six months 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.
- (5) The Bureau shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture all the activities of the Bureau during the preceeding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

- Legal Proceedings 16.
- (1) 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 claimant or his agent; and the notice, which shall be served through the State High Court, shall clearly and explicitly state:
 - (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of the legal practitioner of the intending claimant or of the claimant himself; and
 - (d) the relief being sought.
 - (2) The General Manager 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 upon the Bureau, its General Manager, officers employees or agents.
 - (3) A member of the Bureau or the General Manager or any officer or employees of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, General Manager, officer or other employee of the Bureau.
 - (4) 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 or enactment may be served by delivering same to the General Manager or by sending it by registered post and addressed to the General manager at the principal office of the Bureau.

PART III -- SCOPE OF APPLICATION

Scope of Application.

- 17.
- (1) The provisions of this Law shall apply to all procurement of goods, works and services carried out by the State and Local Governments and all procurement entities and by and other body engaged in procurement which derives at least 50% of the funds for the procurement from the Consolidated Revenue Fund of the State or the statutory allocation of a Local government.
 - (2) The provisions of this Law shall not apply to the procurement of special goods, works and services involving security unless the Governor's express approval has been first sought and obtained.

PART IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

Fundamental principles for procurement.

18.

- (1) Subject to any exemption allowed by this Law all public procurement shall be conducted:-
 - (a) subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to paragraphs (a) and (b) of Section 8 (1) of this Law;
 - (b) based only on procurement plans supported by prior budgetary appropriation and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the thresholds in the regulations made by the Bureau, has obtained a "Certificate of No Objection to Contract Award" from the Bureau;
 - * (c) by open competitive bidding or through any of the procurement method approved under this Law;
 - (d) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and regulations deriving therefrom;
 - (e) with the aim of achieving value for money and fitness for purpose;
 - (f) in a manner which promotes competition, economy and efficiency; and
 - (g) in accordance with the procedures and timeline laid down in this Law and as may be specified by the Bureau from time to time.
- (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or revenue account or any bank account or any procuring entity for any procurement falling above the thresholds unless the cheque, payments or other form or request for payments is accompanied by a "Certificate of No Objection to an award of Contract" duly issued by the Bureau.
- (3) For all cases where the Bureau shall set a prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of Certificate of "No Objection" under this Law.
- * (4) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of No Objection to Contract Award" duly issued shall be null and void.

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- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly shall be jointly and severally liable for all obligations and or responsibility arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.
- * (6) All bidders, in addition to requirements contained in any solicitation documents, shall:-
- (a) possess the necessary:-
 - (i) professional and technical qualifications to carry out particular procurements;
 - (ii) financial capability;
 - (iii) equipment and other relevant infrastructure as well as have adequate personnel to perform the obligations of the procurement contracts.
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions, where applicable;
 - (e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - * (f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or the Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.
- (7) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.
- (8) A bidder may have its bid or tender excluded from any particular procurement proceeding whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out below exist, that is to say, if:-
- (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible items, or has promised, offered or given

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employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or Bureau, in an attempt to influence any action, or decision making of any procurement activity;

- (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or, if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions where applicable, unless such bidder has obtained a lawful permit with respect to allowance, deference of such outstanding payment or payment thereof in installments;
 - (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding or any other crime committed to gain financial profit;
 - (f) the bidder has in its management any person who has been validly sentenced for a crime committed in connection with a procurement proceedings, or other crime committed to gain financial profit; and
 - (g) the bidder fails to submit a statement regarding its dominating or subsidiary relationships with respects to her parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remains in subordinate relationship with other participants to the proceedings.
- (9) In such cases the procuring entity shall inform the Bureau and person referred to in subsection (8) (a) – (g) of this section in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.
- (10) All communications and documents issued by procuring entities and the Bureau shall be in the English language provided that a procuring entity or the Bureau may issue a translated version in a popular local language spoken in the State.

- (11) All communications regarding any matter deriving from this Law or proceedings or public procurement shall be in writing or such other form as may be stipulated by the Bureau.
- * (12) Every procuring entity shall maintain both file and electronic records of all procurement proceeding made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.
- (13) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:-
 - (a) information identifying the procuring entity and the contractors;
 - (b) the date of the contract award;
 - (c) the value of the contract; and
 - (d) the detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau.
- (15) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.
- (16) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
- * (17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding subsection (17) of this Section, the Bureau may refuse to issue a "Certificate of "No Objection" to Contract Award" on grounds that the price is excessive.
- (19) Pursuant to subsection (18) of this Section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct re-tender.
- (20) Pursuant to subsection (18) of this section, the Bureau may either direct that the procurement proceedings be entirely cancelled or that the procuring conduct re-tender.

- (21) The accounting officer of a procuring entity and any officer to whom responsibility is delegated in a procurement process are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.
- ~~X~~(22) The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the Bureau are complied with, and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of this Law or the regulations laid down there under.
- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as may from time to time be laid down by the Bureau.
- (24) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.
- (25) A procuring entity shall not request or stipulate that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings save where such requirements is consistent with local content policy or regulation of the State in any particular industry or is in line with any Law applicable in the State.
- (26) All procurement contracts shall contain provisions for arbitral proceedings as the primary mode of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigeria currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.
- (28) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provisions and use of genuine materials and inputs in execution.

**PART V – PROCUREMENT MANAGEMENT
AND ORGANISATION**

- Approving authority.* 19. Subject to the monetary and prior review thresholds for procurements in this Law as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:
- (a) in the case of:
 - (i) procurement within the approval limit of a government agency, parastatal or corporation, a Parastatal Tenders Board;
 - (ii) procurement within the approval limit of a ministry or extra-ministerial entity, the Ministerial Tenders Board;
 - (b) in any other case:
 - (i) the State Tenders Board;
 - (ii) the Governor and
 - (iii) the State Executive Council where the approval limit exceeds that of the Governor.
- Procurement.* 20. Subject to regulations as may from time to time be made by the Bureau under the direction of the Council, a procuring entity shall plan its procurement by:
- (i) preparing the need assessment and evaluation;
 - (ii) identifying the goods, works or services required;
 - (iii) carrying out appropriate market and statistical surveys and on that basis prepare analysis of the cost implications of the proposed procurement;
 - (iv) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
 - (v) integrating its-procurement expenditure into its yearly budget;
 - (vi) prescribing any method for effecting the procurement subject to the necessary approval under this Law; and
 - (viii) ensuring that the procurement entity functions stipulated in this section shall be carried out by the Procurement Planning Committee.
- Procurement implementations.* 21. Subject to regulations as may from time to time be made by the Bureau under direction of Council, a procuring entity shall in implementing its procurement plans:-
- (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time,
 - (b) invite a representative of the State Due Process Office and two credible persons as observers in every procurement process, one of whom shall represent a recognized:-

- (i) private sector professional organization whose expertise is relevant to the particular goods or service being procured; and
 - (ii) non-governmental organization working in transparency, accountability and anticorruption area, or town union in the case of local governments and the observers shall not intervene in the procurement process but shall have a right to submit their observation report to any relevant agency or body including their own organizations or associations.
- (c) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
 - (d) obtain approval of the approving authority before making an award;
 - (e) debrief the bid loser 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 within the prior review threshold as stipulated in section 4 (1) (a) of this Law;
 - (i) execute all contract Agreements; and
 - (j) announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.

Accounting Officer 22.

- (1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and parastatals, the Managing Director, General Manager, Executive Secretary or officer of co-ordinate responsibility and in the case of local governments the Chairman or Head of the Local Government administration.
- (2) The accounting officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
 - (a) ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of the Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or by any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;

- (b) constituting the Procurement Committee and its decisions;
- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State or Local Government budget;
- (d) integrating his entity's procurement expenditure into its yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) constituting the Evaluation Committee;
- (g) liaising with the Bureau to ensure the implementation of its regulations.

*Procurement
Planning Committee.*

- 23 (1) For each financial year each procuring entity shall establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall consist of:
- (a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
 - (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the Secretary;
 - (ii) the unit directly in requirement of the procurement;
 - (iii) the financial unit of the procuring entity;
 - (iv) the planning, research and statistics units of the procuring entity;
 - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
 - * (vi) the legal unit of the procuring entity but where the procuring entity has no legal unit, a legal officer from the Ministry of Justice.

Tenders Board.

24. (1) There is hereby established by this Law in each procuring entity and at State level a tenders board (in this Law referred to as "the Tenders Board").
- (2) Subject to the approval of the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders Board, provided that the membership of the Tenders Board at State level shall be approved by the Governor.
- (3) The Tenders Board shall be responsible for the award of contracts for the procurement of goods, works and services within the threshold set in the regulations and within approved limits.

- (4) In all cases where there is a need for prequalification, the Chairman of the tenders Board shall constitute a technical evaluation sub-committee of the Tenders Board charged with the responsibility for evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall be the Chairman of the Evaluation Sub-Committee.
- (5) The decision of the Tenders Board shall be communicated to the Chairman, Commissioner, the Governor or the State Executive Council, as the case may be for approval before implementation.

*Prequalification
of Bidders.*

25. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.
- (2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and procuring entity may charge a price for the provision to suppliers or contractors and consultants of the prequalification documents.
- (3) The prequalification documents shall include:-
 - (a) instructions to prepare and submit prequalification applications;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications and competence for the job;
 - (d) the manner and place for the submission of applications to qualify and the deadline for submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications taking into account the reasonable need of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with this law and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

- (4) The procuring entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made in writing and received at least ten days before the deadline for the submission of applications to pre-qualify.
- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at least five working days before the deadline for submission of applications so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify.
- (6) The response to any request that might reasonably be expected to be of interest to other suppliers, contractors or consultants shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been pre-qualified.
- (8) Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified; the grounds for their disqualification.
- (10) The procuring entity may require a supplier, contractor or consultant who has been pre-qualified to demonstrate its qualifications and competence again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or consultant requested to demonstrate its qualifications and competence again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification and competence again if requested to do so.

- Bid Security.* 28. (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.
- (2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier to contractor.
- Submission of Bids.* 29. (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.
- (2) All submitted bids shall be deposited in a secure temper-proof bid box.
- (3) All bids submitted shall be in English Language.
- ~~(4)~~ (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- ✓ (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted the bid.
- (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.
- Rejection of Bids.* 30. A procuring entity may:-
- (a) reject all bids at anytime prior to the acceptance of a bid without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.
- Validity period of Bids, modification and withdrawal of Tenders.* 31. (1) The period of validity for a bid shall be the period specified in the tender documents.

- (2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
- (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders. ✓

Bid opening.

32. All bids shall be submitted (ed) before the deadline or date specified in the tender documents or any extensions of the deadline for submission and the procuring entity shall:
- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
 - (b) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
 - (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
 - * (d) ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the Tenders Board; and
 - (e) call-over to the hearing of all the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

Examination of Bids.

33. (1) All bids shall be first examined to determine if they:-
- (a) meet the minimum eligibility requirements stipulated in the bidding documents;
 - (b) have been duly signed;
 - (c) are substantially responsive to the bidding documents; and
 - (d) are generally in order.
- (2) A procuring entity may request a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

- (3) The following shall not be sought, offered or permitted:
- (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive;

(4) Notwithstanding sub-section (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders and the amounts written in words shall be preferred over the amounts written in figures where there is a conflict.

(5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

* (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

(7) The following shall be considered as major deviations:-

- (a) with respect to clauses in an offer:-
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of essence;
 - (iii) unacceptable alternative design; and
 - (iv) unacceptable price adjustment;
- (b) with respect to the status of the bidder:-
 - (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited;
- (c) with respect to bid documents, an unsigned bid;
- (d) with respect to time, date and location for submission:-
 - (i) any bid received after the date and time for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location.

(8) In cases of major deviations, bids shall not be considered any further and where unopened, shall be returned as such to the bidder.

(9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.

(10) Subject to any provision to the contrary, the following shall be considered as minor deviations:

- (a) the use of codes;
- (b) the difference in standards;
- (c) the difference in materials;
- (d) alternative design;

- (e) modified liquidated damages;
 - (f) omission in minor items;
 - (g) discovery of arithmetical errors;
 - (h) sub-contracting that is unclear and questionable;
 - (i) different methods of construction;
 - (i) difference in final delivery date;
 - (k) difference in final delivery schedule;
 - (l) completion period where these are not of essence;
 - (m) non-compliance with some technical local regulation ;
 - (n) payment terms; and
 - (o) any other condition that has little impact on the bid.
- (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:
- (a) where the impact on the costs is major, it shall be regarded as a major deviation; and
 - (b) where the impact on the costs is minor, it shall be regarded as a minor deviation.
- (12) In cases of minor deviations, written clarification may be obtained from the supplier or contractor and where applicable, an offer made for the correction of the minor deviation.
- (13) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.
- (14) At the stage of evaluation and comparison, all minor deviations shall be qualified in monetary terms.
- (15) In case of rejection of a bid, a written notice shall be given promptly to the supplier.
- Evaluation of Bids* 34. (1) For the evaluation and comparison of bids that have been adjudged valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from the bidders that have responded to the solicitation.

In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the

following processes as applicable:

- (a) checking of deviations;
 - (b) checking of omissions with quantification of same;
 - (c) application of discounts, as applicable;
 - (d) clarification with bidders of questionable moor deviations;
 - (e) quantification in monetary terms of such questionable deviations;
 - (g) calculation and tabulation of bid amount with domestic preference where applicable;
 - (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; and
 - (m) writing up of the bid evaluation report.
- (4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
- (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damage;
 - (b) for works, in addition to factors stipulated in Section 36 (1) and subject to section 36 (2), if time is a critical factor, the value of early completion; and
 - (c) the value of early completion under Section 37 (2) shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.
- (6) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed

at the time of award of contract and may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of award.

Acceptance of Bids and Contract.

35. (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation.
- (2) Notwithstanding subsection (1) of this section, the selected bidder need not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

Domestic Preference

36. (1) A procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of preference shall apply only to tenders under international competitive bidding.
- (4) The Bureau shall be regulation from time to time set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.

Mobilization fees

- 37: (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 15% may be paid to a supplier or contractor supported by the following:-
- (a) in the case of State Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and

(b) in the case of National or International Competitive Bidding an unconditional bank guarantee issued by a Banking institution acceptable to the procuring entity.

(2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement, provided that the contract agreement must include a clause providing for phased deduction of the mobilization fee from the first interim performance certificate.

*Contract
Performance Guarantee.*

38. The provision of a Performance Guarantee shall be a condition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however that it shall not be less than 10% of the contract value in any case of an amount equivalent to the mobilization fee to be paid to the supplier or contractor whichever is higher.

*Interest on
delayed payment.*

39. (1) Payment for the procurement of goods, works and services shall be settled promptly and diligently.

(2) Any payment due for more than ninety days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by a Ministry, Extra-Ministerial Office, Government Agency, Parastatals or Corporation shall be deemed a delayed payment.

(3) All delayed payments shall attract interest at the rate specified in the contract document which shall in no case be more than the prevailing Central Bank of Nigeria rate as at the due payment date.

(4) All contracts shall include terms specifying the interest for the late payment of more than ninety days.

*Record of
Procurement Proceedings.*

40. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.

(2) The record referred to in this sections shall, on request be made available to:-

- (a) any person after a tender, proposal, offer or quotation has been accepted after procurement proceedings have been terminated without resulting in a procurement contract; and
- (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposal, offer or quotation has been terminated without resulting in a procurement contract.

- (3) A disclosure or procurement proceeding records prior to award of contract may be ordered by a court, if its disclosure would:
 - (a) not be contrary to law;
 - (b) not impede law enforcement; or
 - (c) not prejudice legitimate commercial interest of the parties.
- (4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.
- (5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

PART VII – SPECIAL AND RESTRICTED METHOD OF PROCUREMENT

*Two Stage
Tendering.*

41. (1) Notwithstanding the provisions of this law, the Bureau may issue "Certificate of No Objection" upon conditions hereinafter prescribed.
- (2) A procuring entity shall engage in procurement by two-stage tendering:-
 - (a) Where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) Where the character of the goods or works are subject to rapid technological advances or where the procuring entity seeks to enter into a contract for research, experiment study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or recover research and development costs or where the procuring entity applies this Law to procurement concerned with national security and determines that the selected method is the most appropriate method of procurement; or

- (c) where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract.
- (3) The provisions of this Law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.
- (4) The invitation documents:
- (a) shall call upon suppliers or contractors to submit in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
 - (b) may solicit proposals that relate to technical quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors.
- (5) The procuring entity may, in the first stage engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.
- (6) In the second stage of the two-stage tender proceedings the procuring entity:
- (a) shall invite supplier or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications; 2 3
 - (b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristic of the goods, works or services to be procured together with any criterion originally set out in these documents evaluate and compare tenders and ascertain the successful tenders;
 - (c) may add new characteristic or criteria that conform with this Law;
 - (d) shall communicate to suppliers or contractors in the invitation to submit firm tenders, any deletion, modification or addition; and
 - (e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.

**Restricted
Tendering.**

42. (1) Subject to the approval by the Bureau, a procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted tendering if:-

- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
- (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
- How ?? (c) the procedure is used as an exception rather than the norm.

- (2) Where a procuring entity engages in restricted tendering on the basis that:-

- (a) the goods, works and services are available only from a limited number of supplier or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
- (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services, it shall select in a non-discriminatory manner the number of suppliers or contractors to ensure effective competition.

- (3) For the purposes of subsection (2), the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.


- (4) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.

**Request for
Quotations.**

43. (1) A procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.

- (2) General quotations shall be obtained from three unrelated contractors or suppliers.

- (3) Each contractor or supplier from whom a quotation is requested shall:-

- (a) be informed whether any factors other than the charges for the goods, works or services themselves such as any applicable transportation and insurance charges, custom duties and taxes are to be included in the price; and
 -  (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and the contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than the sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.

- Direct Procurement.* 44. (1) A procuring entity may carry out any emergency direct procurement where:
- (a) goods, works or services are only available from a particular supplier who has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
 - (b) there is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is impractical due to unforeseeable circumstance giving rise to the urgency which is not a result of dilatory conduct on the part of the procuring entity;
 - (c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those 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 a 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 procurement entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;

*Emergency
Procurement.*

- (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;
 - (c) the procuring entity seeks to enter into a contract for research, experiment study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or
 - (f) the procuring entity applies this Law for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.
 - (2) The procuring entity:
 - (a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;
 - (b) shall include in the record procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.
45. (1) A procuring entity may for the purpose of this Law, carry out in emergency procurement where:
- (a) the Country or State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God;
 - (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - (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 procurement made under emergencies shall be handled with expedition but along 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 detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of No Objection.

PART VIII – PROCUREMENT OF CONSULTANCY SERVICES

Expressions of Interest to provide services for ascertained needs.

46. Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:-
- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two State or National newspapers and the procurement journal;
 - (b) where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least three and not more than ten consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - (i) a statement of qualifications of the consultant to provide the service;
 - (ii) a statement of understanding of the procuring entity's need;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service; and
 - (v) the cost or fee for the service;
- (c) Every consultant shall register with the State Ministry of Works.

Request for Proposals to provide services contract for unascertained needs.

47. (1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods sufficient to establish their commercial viability or to recover research and development cost.
- (2) The procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in two State or national newspapers and the procurement journal.
- (3) A procuring entity may make direct requests to a limited number of consultants requesting proposals for the provisions of a service if:
- (a) the services are only available from no more than three consultants;

- (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
- (c) it is in the interest of state security or similar reason of confidentiality.

*Content of the
Requests for Proposals.*

48. (1) Request for proposal shall include:-
- (a) the name and address of the procuring 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 to the effect that the procuring entity reserves the right to reject proposals;
 - (e) the criteria and procedure for the evaluation of the qualifications of the consultant;
 - (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;
 - (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;
 - (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 or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposal; and
 - (l) a shortlist to be made of only State or National Consultants for consulting assignments, contract within a set threshold in the procurement regulation provided that State or National Consultants possess such requisite skills.

*Clarification and
Modification of
Request for Proposals.*

49. (1) A Consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified.

- (2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.
- (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.
- (5) The minutes shall be provided promptly before the deadlines for submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in their proposals.

Submission of Proposals.

- 50.
- (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than ninety days between the issue of the notice or request and the deadline for submission.
 - (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
 - (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
 - (4) Immediately after the deadline for submission of proposals, 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 or insights to the financial proposals until the evaluation including any Tenders Board's review are concluded.

Criteria for Evaluation of Proposals.

- 51.
- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:-
 - (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;

- (b) the effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposal price, including any ancillary or related cost;
- (d) ~~the effect that acceptance of the proposal will have on the balance of payments position and savings of the government,~~ the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultants or service providers; and
- (e) national/state security considerations.

(2) A procuring entity may accord a margin of preference for domestic consultants or service providers which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

General Selection Procedure (Services) 52.

- (1) The procuring entity shall select the successful proposal by either choosing the proposal with:
 - (a) the lowest evaluated price ; or
 - (b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (2) The procuring entity shall include in the record of procurement statement of the grounds and circumstances on which it relied to select either of the procedures in subsection (1).
- (3) Nothing in this Section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

Procedure for Selection of Proposal where price is a factor. 53.

- (1) Where the procuring entity elects to choose the successful 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 other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application criteria as stipulated in the request for proposals, and then.

- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants and the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6) The successful proposals shall be:-
 - (a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) from price in the case of quality and cost-based selection.
 - (b) the proposals with the lowest price in the case of least-cost selection; or
 - (c) the highest ranked technical proposal within the budget.
- (7) The Consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

Selection Procedure 54.
where Price is

- (1) Where the procuring entity elects to make a quality based selection procedure based on consultant's qualifications or single source selection, it shall engage in negotiations with consultants in accordance with this Section.
- (2) The procurement entity shall:-
 - (a) establish a weight with respect to quality and price of the proposals;
 - (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this Section;
 - (c) inform the consultants that attained ratings above the weight that may be considered for negotiation if the negotiations with the consultants with the best rating do not result in a procurement contract; and

- (d) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant invited under paragraph (b), will not result in a procurement contract.
- (3) The procuring entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.
- (4) The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

PART IX – PROCUREMENT SURVEILLANCE AND REVIEW

*Bureau to
recommend
investigation.*

55. (1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or 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 Law.
- (2) The relevant authority may in the course of investigation:-
- (a) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
 - (b) search premises for any books, records, accounts or documents;
 - (c) examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
 - (d) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of books, records, accounts or documents removed;
 - (e) require an officer, employee or agent of the procurement entity or bidder, supplier, or contractor or consultant:
 - (i) to explain an entry in the books, records or documents,

- (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably require;
 - (f) explain an entry in the books, records, accounts or documents; and
 - (g) provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.
- (3) The Bureau may, pursuant to the advice of the procuring entity, review the result review of a procurement or report of investigation by a relevant government agency, issue a variation order requiring a contractor at his own expense to require, replace, or to 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 of award.
- (4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include:
- (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contract;
 - (c) ratification of anything done in relation to the proceedings or
 - (d) a declaration consistent with any relevant provisions of this Law.
- (5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

*Administrative
Review.*

56. (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen 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.

- (3) On reviewing a complaint, the accounting officer shall make a decision in writing within fifteen working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary or dismissing the complaint if he finds it baseless and giving reasons for his decision.
- (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within ten working days from the date of communication of the decision of the accounting officer or where no decision is made by the accounting officer, within ten days from the expiration of the period allowed the accounting officer to make a decision.
- (5) Upon receipt of a complaint, the Bureau shall promptly:-
 - (a) 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;
 - (b) unless it dismisses the complaint:-
 - (i) prohibit a procuring or disposing entity from taking any further action;
 - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
 - (ii) declare the rules or principles that govern the subject matter of the complain null and void; and
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision or such a decision.
- (6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (7) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the High Court within thirty days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

PART X – DISPOSAL OF PUBLIC PROPERTY

Cap. 106 Revised
Laws of ANS 1991

Disposal of
Public Property.

57. (1) This Section shall apply subject to the commercialization and Privatization Law.
- (2) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (3) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (4) The Bureau shall, with the approval of the Council:-
- * (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
 - (c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (5) For the purposes of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from the serviceable to the unserviceable):-
- (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including shares, stocks, bonds etc); and
 - (e) acquired by goodwill and any other gifts of the State Government.
- (6) The means of the disposal of public assets shall include:-
- (a) sales and rental;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auction;
 - (e) transfer from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorized variation.
58. (1) Before slating any public property for disposal the accounting officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property

Planning
disposals of Public
Property.

set for disposal shall authorize the preparation of a valuation report for such property by an independent evaluator or such professional with the appropriate competence to carry out the valuation.

- (2) The disposal of assets whether or not listed in the assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (3) The disposal of assets referred to in subsection (2) shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government.
- ~~A~~(4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

PART XI – CODE OF CONDUCT

Code of Conduct 59.
for Public Procurement.

- (1) The Bureau shall with the approval of the Council, stipulate a Code of Conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets.
- (2) The conduct of all persons involved with public procurement, 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, adherence to due process and equity.
- (3) All officers of the Bureau, members of Tenders Board and other persons that may come to act regarding the conduct of public procurements shall first subscribe to an oath as approved by Council.
- (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; and
 - (f) obviating 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:-
 - (a) ensuring adequate time for preparing offers;
 - (b) complying with this Law and all derivative regulations; and
 - (c) observing strict confidentiality until completion of a contract.
- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons, real or corporate, who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal shall:-
 - (a) divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law; and
 - (b) not engage or participate in any commercial transaction involving the State Government, its ministries, extra-ministerial departments, or corporations where his capacity as public officer is likely to confer any unfair advantage, pecuniary or otherwise, on him or any person directly related to him.
- (8) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (9) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.
- (10) A conflict of interest exists where a person:-
 - (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
 - (b) possesses 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 construed to be, or make possible personal gain due to the person's ability to influence dealings;

- (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - (d) places by acts or omissions the procuring entity he represents or the government in an equivocal, embarrassing or ethically questionable position;
 - (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the government;
 - (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;
 - (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and
 - (h) discloses confidential information being either the property of his procuring entity, the government or a supplier, contractor or service provider to unauthorized persons.
- (11) A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

PART XII – OFFENCES

Offences Relating to Public Procurement. 60.

- (1) Any natural person not being a public officer who contravenes any provision of this Law commit offence and is liable on conviction to a term of imprisonment of not less than 5 years but not exceeding 10 years with an option of N500,000.00 fine.
- (2) Any offence in contravention of this Law shall be tried by the High Court.
- (3) The following shall also constitute offences under this Law:-
 - (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than 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, promises, threats unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (c) directly or indirectly influencing 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;
 - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (4) Any person who whilst carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of:-
- (a) a term of imprisonment of 55 years with an option of N250,000.00 fine; and
 - (b) summary dismissal from government service.
- (5) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:-
- (a) debarment from all public procurement for a period not less than 5 years.
 - (b) a fine equivalent to 25% of the value of the procurement in issue.
- (6) Where any legal person shall be convicted pursuant to subsection (5) of this section, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment of not less than 3 years but not exceeding 5 years with an option of fine equivalent to 10% of the value of the procurement in issue.
- (7) An alteration pursuant to subsection 3 (f) shall include but not limited to:-
- (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.

- (8) 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 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.
- (9) Bid rigging pursuant to subsection (3) (e) means 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 the competitiveness or the procurement process and leading to an escalation or increase in costs or loss of value to the State Treasury.

PART XIII – MISCELLANEOUS

miscellaneous.

61. (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the General Manager or of any other person generally or especially authorized 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 General Manager or any person generally or specially authorized to act for that purpose by the Council.
- (3) Any document purporting to be a document duly executed under the seal of the Bureau shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.
- (4) The validity of any proceeding of the Council or a Committee thereof shall not be adversely affected by any vacancy in the membership of the Council or Committee, or by reason that a person not entitled to do so took part in the proceedings of the Council or Committee.

FIRST SCHEDULE
(Section 3)

This printed impression has been carefully compared by me with the Bill which has been passed by the House of Assembly and found by me to be a true and correctly printed copy of the said Bill.



PIUS O. UDOH
Ag. Clerk of the Legislature

SECOND SCHEDULE
(Section 4 (1))

I assent/~~Do not assent~~



MR. PETER OBI
Governor

Dated the 7th day of July, 2011.

THIRD SCHEDULE
(Section 8 (2))

Assented to on the 7th day of July, 2011.