

THE ABIA STATE PUBLIC PROCUREMENT LAW, 2012

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“**Debar**” means the placing of a firm/company or natural person in 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 the law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury.

“**Contract**” means an agreement entered in writing between parties;

“**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 bidding 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 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 service incidental to the supply of the goods;

- “**Interim Performance Certificates**” means evidence that contractor or supplier has performed its obligations under procurement contract up to a level stipulated by the contractor by not meaning completion;

“**International Competitive Bidding**” means the solicitation of bidding from both domestic and foreign requirements and standard as contained in the tender document.

“**Lowest evaluated responsive bid**” is the lowest price bid among the bids that meet all the technical requirements and standard as contained in the tender document.

“Margin of Preference” means the extra mark up on price allowed to any domestic contractor or supplier bidding under national Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

“Minor Value” means a monetary value which is not in excess the monetary thresholds set for any approving authority by the Bureau.

- **“Monetary Value”** means the value limit in Naira set by Bureau outside of which approving authority may not award procurement contract;

“National Competitive Bidding” means the solicitation of bids for demotic contractors and suppliers registered or incorporated to carry on business under the 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, constructions or services;

“Procurement” means acquisition;

“Procurement Proceedings” means the initiation of the process of effecting procurement up to award of a procurement contrast;

- **“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;
- **“Relevant Authority”** includes Economic and Financial Crime Commission and independent corrupt Practices Commission;

“Service” means the rendering by contractor or supplier of his time and effort and includes any object of procurement other the goods, works or construction;

“Solicitation Documents” means the bid solicitation documents or any other document for solicitation of offers, proposals or quotations;

“Special Purpose Goods” means any object of armaments, ammunition, mechanical, electrical equipment or other thing as may be determined by the President needed by the Armed Force or Police Force as well as the services incidental to the supply of the objects;

“Substantially Responsive” means the response to bid solicitations which virtually answers to all the need of a procuring entity as stipulated in the bid solicitation document

“Supplier” means a real 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

“Validity Period” means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid;

“Works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or material, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photograph seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those service does not exceed that of the construction itself.

PART II – ESTABLISHMENT OF ABIA STATE COUNCIL ON PUBLIC PROCUREMENT

Establishment
of Abia State Council of
Public Procurement
and its membership

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- 3) Notwithstanding the provision of Sub-Section (2) of this section, the Council may co-opt a professional in relevant field(s) who shall have no voting right or be counted towards quorum.
- 4) The Chairman and other members of the Council shall be appointed by the Governor subject to the approval of the State House of Assembly
- 5) Subject to subsection (2) of this section, a member of the Council being:
 - (a) the holder of an elective office under the Constitution of Nigeria shall hold office for a period he remains so elected and no more; and
 - (b) the Director-General of the Bureau, shall hold office on such terms and conditions as may be specified in his letter of appointment

Functions
of the
Council

- 4) The Council shall
 - (a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this law by procuring entities
 - (b) consider and approve policies on public procurement
 - (c) approve the appointment of the Directors of the Bureau
 - (d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement; and
 - (e) “approve changes in he procurement process to adapt to improvements in modern technology”
 - (f) give such other directives and perform such other functions as may be necessary to achieve the objectives of the law

The
Establishment
of the Bureau
of Public
Procurement

- 5) (1) There 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 common seal

- b) may sue and be sued in its corporate name; and
- c) May acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of 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 standard and practices for the procurement and disposal of public assets and services; and
 - (d) the attainment of transparency, competitiveness, 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 the 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 database of standard prices;
 - (f) publish the details of major contracts in the procurement journal
 - (g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;

- (h) maintain a national database of the particulars and classification and categorization of State contractors and service providers;
- (i) collate and maintain in an archival system all State procurement plans and information
- (j) undertake procurement research and surveys
- (k) organize training and development programmes for procurement professionals;
- (l) review the socio-economic effect of the policies on procurement, and advise the Council accordingly from time to time;
- (m) prepare and update standard bidding and contract documents;
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) review the procurement and award of contract procedure of every entity to which this Law applies
- (p) perform procurement audits and submit such report to the State House of Assembly bi-annually;
- (q) introduce, develop, update and maintain related database and technology
- (r) establish a single internet portal that shall, subject to Section 18 (21) to this law serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times; and
- (s) co-ordinate relevant programmes to build institutional capacity.

Power of the
Bureau

8. (i) The Bureau shall have the power to:
- (a) enforce the monetary and prior review threshold set by the Council for the application of the provisions of this law by the procuring entities.

- (b) subject to paragraph (a) of this subsection, issue certificate of “No Objection” for Contract Award within the prior review threshold for all procurement within the purview of this law;
- (c) stipulate to all procuring entities, the procedure and documentation pre-requisite for the issuance of Certificate of ‘No Objection’ under this law from time to time.
- (d) where a reason exist;
 - i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this law;
 - ii) review and determine whether any procuring entity has violated any provision of this law;
- (e) 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 State contractors and service providers, and to the exclusion of all procuring entities prescribe classifications and categorization 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 aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;
- (i) recommend to the Council, breaches of this Law and or regulations and guidelines made under this Law for:
 - i) the suspension of officers concerned with the procurement or disposal proceeding in issues;

- ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be;
 - iii) the discipline of the Accounting Officer of any procuring entity
 - vi) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to the third party procurement agency or consultant; or
 - v) any other sanction that the Bureau may consider appropriate in accordance with existing laws;
 - (j) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (k) act upon complaints in accordance with the procedures set out in this Law;
 - (i) 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 serve as the Secretariat for the Council
- (3) 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.

Director-
General
and Staff
of the
bureau

9. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor, on the recommendation of the Council after competitive selections
- (2) The Director-General 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 Bureau; and
- (3) The Director-General shall hold office:
- (a) for a term of 3 years in the first instance and may be re-appointed for a further term of 3 years only; and
- (b) on such terms and conditions as may be specified in his letter of appointment
- (4) Without prejudice to the provision of this law, the Director-General of the Bureau may be removed from office at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud and manifested incompetence proven by the Council.

Principal
Officers
of the
Bureau

10. (1) The Council shall appoint the principal officers for the Bureau after competitive selection process.
- (2) The principal officers appointed under section 10 (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 Bureau's duties and functions under this Law.

Other
staff of
the
bureau

11. (1) The Council may appoint such officers and other employees as may from time to time, deem necessary for the purpose of the Bureau.
- (2) Subject to the Pension law, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined 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 any public 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 remunerate (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 the 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 measure(s)
- (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 application.
- Pension Provisions 13. Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the pension 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 State House of Assembly for the running of the Bureau
- (b) all subventions, fee 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
 - (3) The Council may make regulations for 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
 - (b) the payments of salaries, fees and other remuneration, of employees of the bureau or experts or professional appointed by the Bureau.
 - (c) the maintenance of any property acquired by or vested in the Bureau, and
 - (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 6 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, payment, 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 6 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.
- 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 plaintiff or his agents; and the notice shall clearly and explicitly state:

- (a) the cause of action;
 - (b) the particulars of the claim
 - (c) the name and address of legal practitioner of the intending plaintiff; and
 - (d) the relief being sought
- (2) The Director-General of the Bureau, its officers, employees or agents shall not personally be subject to any action, claim or demand by or liable to any person in respect of anything done or omitted to be done in exercise of any function(s) or power conferred by this Law upon the Bureau, its Director-General, officer, employees or agents.
- (3) A member of the Bureau or the Director-General or any officer or employee 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, Director-General, 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 it to the Director-General or by sending it by registered post and addressed to the Director-General 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:
- (a) the Abia State Government of Nigeria and all procurement entities;
 - (b) all entities outside the foregoing description which derive at least 35% of the funds appropriated or proposed to be appropriated, for any type of procurement described in this Law from the State share of Consolidated Revenue Fund.

- (2) The provisions of this Law shall not apply to the procurement of special goods, works and services involving State security unless the Governor's express approval has been first sought and obtained.

Part IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

Fundamental
Principles for
Procurements

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 to set by the Bureau pursuant to section 8(1) (a)-(b);
 - (b) based only on procurement plans supported by prior budgetary appropriations 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 threshold in the regulations made by the Bureau;
 - (c) by open competitive bidding
 - (d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this law and regulations deriving there from;
 - (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 timeless 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 threshold in the procurement regulations, no funds shall be disbursed from the State Account or any bank account or any procuring entity for any procurement falling above the set thresholds unless the cheques, payments or other form of request for payments are 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 condition 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 Objections” to contract Award” duly issued by the bureau shall be null and void.
- (5) A supplier, contractor or service providers may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly are 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 capacity;
 - (iii) Equipment and other relevant infrastructure
 - (iv) Shall 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
 - (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 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) Whenever it is established by a procuring entity or the Bureau that any of a combination of the situations set out exist, bidder may have its bid or tender excluded from any particular procurement proceeding if:
- (a) there is verifiable evidence that any supplier, or contractor promised a gift of money or any tangible item, or has promised, offered or given 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 the 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, charger, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, defence of such outstanding payment or payment thereof in installment.
 - (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 or is in any portion owned by any person that has been valid sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; and
 - (g) the bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or whom 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 public procurement proceedings in question.
- (10) All communications and documents issued by procuring entities and the Bureau shall be in English Language
- (11) All communications regarding any matter deriving from this Law or proceedings of public procurements 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 proceedings 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 document 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 contractor would be evaluated shall not be changes in the course of any procurement proceeding.
- (16) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the suppliers 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 (16) of this Section, the Bureau may refuse to issue a "Certificate of "No Objection" to contract Award" on the grounds that the price is excessive.
- (19) Pursuant to subsection (17) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a 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 entity conduct re-tender.
- (21) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and

accountable for any action taken or omitted to be taken either in compliance with or in contravention of this law.

- (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 hereunder.
- (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 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 sub-contractor as a requirement for participating in any procurement proceedings
- (26) All procurement contracts shall contain provisions for arbitral proceedings as the primary forms 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 Nigeria 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 provision and use of genuine materials and inputs in execution.

Part V – ORGANIZATION OF PROCUREMENT

19. Subject to the monetary and prior review thresholds for procurements in this Law as may from time to time be determined by the Governor, the following shall be the approving authorial for the conduct of public procurement.

(a) In the case of:

(i) a government agency, Parastatal, or corporation, a Parastatal Tenders Board;

(ii) a ministry or extra-ministerial entity, the Ministerial Tender Boards; and

(iii) for procurement in excess of the threshold set out in subsection (ii) of this section, the "State Executive Council".

Procurement
planning

20. Subject to regulations as may from time to time be making by the Bureau under the direction of the Council, a procuring entity shall plan procurement by:

(a) preparing the needs assessment and evaluation;

(b) identifying the goods, works or services required

(c) caring appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;

(d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of sale and reduce procurement cost;

(e) integrating its procurement expenditure into its yearly budget;

(f) prescribing any method for effecting the procurement subject to the necessary approval under this Law; and

(g) ensuring that the procurement entity function as stipulated in this section shall be carried out by the Procurement Planning Committee.

Procurement
implantation

21. Subject to regulatin 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 ads may be issued by the Bureau from time to time
- (b) invite two credible persons as observers in every procurement process, one person each representing in this order
 - (i) invite private sector professional organization(s) whose expertise is relevant to the particular goods or service being procure; and
 - (ii) invite non-governmental organization(s) working in transparency, accountability and anti-corruption area and the observers shall not intervene in the procurement process but shall have right to submit their observation to any relevant agency or body including their own organization 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 losers 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 (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

department and corporations the Director-General or officer of co-ordinate responsibility.

- (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 procurement and in particular shall be responsible for;
 - (a) ensuring compliance with the provisions of this Law by this entity and liable in person for the breach or contravention of this Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of this 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 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 unit of the procuring entity
- (v) technical personal of the procuring entity with expertise in the subject matter for each particular procurement, and
- (vi) the legal unit of the procuring entity

Tenders Board

24. (1) There is hereby established by this Law in each procuring entity 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 Boards.
- (3) The Tenders Board shall be responsible for the award of procurements of goods, works and services within the threshold set in the regulations
- (4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation subcommittee of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chairman of the evaluation Sub-Committee.
- (5) The decision of the Tender Board shall be communicated to the Commissioner of implementation

Pre-qualification of bidders

25. (1) Where a procuring entity has made a decision with respect to the minimum of suppliers, contractors or service providers by requesting interested persons to submit applications, to prequalify, 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 the price that a procuring entity may charge for the prequalification documents shall reflect only the costs of printing and provision to suppliers or contractors and consultants.
- (3) The prequalification documents shall include:
 - (a) instructions to prepare and submit prequalification application;
 - (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.
 - (d) the matter and place for the submission of application to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their application, 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 regulation relating to pre-qualify and to the pre-qualification proceeding.
- (4) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification document if the request is made 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 most seven working days so as to enable the supplier, contractor or consultant to take 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 supplier, contractor or consultant shall, without identifying the source of the request be communicated to other suppliers or contractors or consultants provided with the prequalification document 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 supplier(s), contractor(s) who has (have) been pre-qualified.
- (8) Suppliers, contractor or consultant 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 prequalified, the grounds for disqualification
- (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications 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 service provider requested to demonstrate qualifications 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 again if requested to do so.

Part VI – PROCUREMENT METHODS (GOODS AND SERVICES)

Open
Competitive
Bidding

26. (1) Except as provided by this Law, all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.
- (2) Any reference to open competitive bidding in this Law means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needs.
- (3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regard to work specification and standard.

Invitation
to bids

27. (1) Invitation to bid may be either by way of State Competitive Bidding or National Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurement shall fall under either system.
- (2) Every invitation to an open competitive bid shall.
- (i) In the case of goods and works under National Competitive Bidding, invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.
- (ii) in the case of goods and works valued under National competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity. Any official websites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.
- (iii) In the case of State Competitive Bidding the invitation for bids shall be advertised on the notice board of the procuring entity, the State Newspaper and at least two

national newspapers. Any official websites of the
procuring entity.

28. (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurement 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 conditions of the required bid security in the tender document
- (3) When the procuring entity requires supplier or contractors submitting tenders in writing and in addition to any other format stipulated in the tender document, signed by an official authorized to bind the bidder or a contract and placed in a sealed envelop.

Bid
Security

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 document, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelop
- (2) All submitted bids shall be deposited in a secured tamper-proof bid-box
- (3) All bids submitted shall in English Language
- (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 it.
- (6) No communication shall take place between procuring entities any supplier or contractor after the publication after the publication of a bid solicitation other than as provided in this Law.

Rejection
of Bids

30. A procuring entity may:

Validity Period
of bids 31.
Modification
and withdrawal
of tenders

- (a) reject all bids 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.
- (1) The period of validity for a bid shall be the period specified in the tender document
- (2) A procuring entity may request supplier 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 bid.
- (5) The modification or notice or withdrawal is effective if it is received by the procurement entity before the deadline for the submission and the procuring entity.

Big Opening 32.

- All bids shall be submitted before the deadline or date specified in the tender documents or any extension 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 representative and any interested member of the public;
 - (c) ensure that the bid opening takes place immediately following the deadlines 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 present, the name and address of each bidder, the total amount of each bid, the currently 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 ask 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
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tenders
- (6) A major deviation shall result in rejection of a bid while a minor deviation shall be subjected 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 facts that he is ineligible or not pre-qualified and
 - (ii) the fact that he is uninvited;
 - (c) the fact that he is ineligible or not pre-qualified, and
 - (d) the fact that he is uninvited;
 - (i) any bid received after the date and time for submission stipulated in the solicitation document, and
 - (ii) any bid submitted at the wrong location
- (8) In the cases of major deviation, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reason 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) alternative workmanship
 - (f) modified liquidated damages;
 - (g) omission in minor items
 - (h) discovery of arithmetical errors
 - (i) sub-contracting that is unclear and questionable;
 - (j) different methods of construction
 - (k) difference in delivery schedule;
 - (l) difference in delivery schedule;

- (m) completion period where these are not of essence
- (n) non-compliance with some technical local regulation
- (o) payment terms, and
- (p) any other condition that has little impact on the bid

(11) In case 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 do 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) For the rejection of a bid, a written notice shall be given promptly to the supplier.

Evaluation of 34.
Bids

(1) For the evaluation and comparison of bids that have been adjusted as valid for the purpose 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 lower evaluated responsive bid for bidders that have responded to the solicitation

(3) In the course of its determination of the lowest evaluated responsive bid from the bidder 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 qualification of same;
 - (c) application of discounts, as applicable;
 - (d) clarification with bidders of questionable minor deviations
 - (e) quantification in monetary terms of such questionable deviations
 - (f) conversion to common currency
 - (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 where justifiable;
 - (i) 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 purposes 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 other , 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 damages;
 - (b) for works, in addition to factors stipulated in Section 36(1) of this Law and subject to Section 36(2) of this law if time is a critical factor, the value of early completion; and
 - (c) the value of early completion under Section 37(2) of this law shall not be taken into account unless, in

conformity with criteria pre-set in the bidding document, 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 Nigeria currency, according to the 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 award 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 recommendation 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 the award.

- Acceptance
of Bid
35. (1) The successful bid shall be that submitted by the lower cost bidder from the bidder responsive as to the bid solicitation.
- (2) Notwithstanding subsection (1) of this Section, the selected bidder needs 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
performance
36. (1) A procuring entity may grant margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders domestic suppliers offering goods manufacturing locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall 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 by regulation from time to time set the limits and the formula for the computation of margins of preference and determine the contents of goods manufactured locally.
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 National competitive Bidding – an unconditional bank guarantee or insurance Bond issued by a banking institution acceptable to the procuring entity
 - (b) in the case of international competitive Bidding – an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.
 - (c) Notwithstanding any provision in this Law as limit, Public Procurement shall be initiated and concluded in the case of International Competitive Bidding (ICB) – 160 days National Competitive Bidding (NCB) 45 days and Local Competitive
- (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 and interim performance certificate issued in accordance with the contract agreement.
- Contract performance guarantee 38. The provision of a Performance Guarantee shall be a precondition for the ward of any procurement contract upon which any mobilization fee is to be paid provided however it shall not be less than 10% of the contract value in any case or any amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher.
- Interest on performance 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 sixty days from the date of the submission of the invoice, valuation certificate or confirmation

or authentication by the Ministry, extra-Ministerial Office government agency, parastatal or corporation shall be deemed a delay payment.

(3) All delayed payments shall attract interest at the rate specified in the contract documents.

(4) All contracts shall include terms, specifying in interest for late payment of more sixty days

Recorded
procurement
proceedings

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

(2) The portion of the record referred to in this Section shall, or request be made available to:

(a) any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and

(b) suppliers, contactors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposal, offer or quotation has been accepted or procurement proceeding have been terminated without resulting in a procurement contract.

(3) A disclosure of procurement proceeding records, prior to award of contract may be ordered by a court, provided that when ordered to do so by an account, the procurement entity shall not disclose such information, if its disclosure would

(a) be contrary of law;

(b) impede law enforcement; or

(c) 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 investigator appointed by the Bureau and the Auditor-General upon requests, and where donor funds have been used for the procurement, donor official shall also have access upon request for procurement file for the purpose of audit and review.

Part VII - SPECIAL AND RESTRICTED METHODS 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 services, to identify their characteristics and where it seeks tenders, proposal or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurements needs.
- (b) where the character of the good or works are subject to rapid technological advances; 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 to recover research and development costs, 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 procurements 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 a 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, initiate 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 qualifications 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 tender proceedings the procuring entity
 - (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tender with prices on a single set or specifications;
 - (b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristics 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 tender;
 - (c) may add new characteristics or criteria that conform with this Law;

Restricted
Tendering

- (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 contractors who do 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 tender as defined in an open competitive bid.
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 for a limited number of suppliers or contractors.
 - (b) the time and cost required to examine and evaluate a large number of tenders in disproportionate to the value of the goods works or services to be procured; or
 - (c) the procedure is used as an exception rather than a norm.
- (2) where a procuring entity engages in restricted tendering on the basis that:
- (a) the goods works an services are available only form a limited number of suppliers or contractors, it shall invite tenders from all the supplier and contractors who can provide the goods, works or services; and
 - (b) the time and cost required to examinee 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 of the number of suppliers or contractors to ensure effective competition;
- (3) For the purposes of subsection (2) of this Section, the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.

- (4) The provisions of the Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings except to the extent that those provisions are varied by the section.
- Request for 43. Quotations
- (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) Generally quotations shall be obtained from at least 3 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, customs 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 a contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lower price responsive quotation.
- (6) Where the total value of the procurement is not more than a sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.
- Direct 44. procurement
- (1) A procuring entity may carry out any emergency procurement where
- (a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive right in respect of the goods, works or services and no reasonable.

- (b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstance giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity.
- (c) owing to a catastrophic vent, there is an urgent need for the goods, work 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 suppliers contractor, determine that:
 - (i) additional suppliers 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 justify
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.
- (e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiments, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development cost; or
- (f) the procuring entity applies this Law for procurement that concerns State 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 service by inviting a proposal or price quotation from a single supplier or contractor.
 - (b) shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source

Emergency
procurement

45. (1) A procuring entity may for the purpose of this Law carry out an emergency procurement where:
 - a. the 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 in their actual value or usefulness or
 - c. a public project may be serious delayed for want of an item of a minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of foods, works and service
- (3) All procurements 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 CONSULTANT (SERVICES)

Expressions
of interest to
provide
service 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 application to prequalify to provide the services by publishing a notice to that effect in at least 2 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 national consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 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 needs;
 - (iii) the methodology for providing the service
 - (iv) the time frame for providing the service, and
 - (v) the cost or fee for the service.

Content of
the request
for proposal

47. (1) Request for proposal shall include
- (a) the name and address of the procurement entity
 - (b) a requirement that the proposal are to be prepared in the English language
 - (c) the manner, place and deadline for the submission of the proposals:
 - (d) a statement to the effect that the procuring entity reserves the right to reject proposal;
 - (e) the criteria and procedures for the evaluation of the qualifications of the consultants:
 - (f) the requirements on documentary evidence or other information that shall be submitted by the 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 of taxes.
- (k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
- (l) a short list to be made of only national consultants for consulting assignment contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.

(2) The procuring entity shall provide the same information to every consultant requested to submit proposals

Clarification
and
modification
or requests
for proposal

48. (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 proposal 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 bidding 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 request for clarifications.

Request for proposals to provide services for unascertained needs

49. (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 in quantities 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 2 national newspapers and the procurement journal.
- (3) A procuring entity may make direct request to a limited number of consultants, requesting proposal for the provision of a service if:
- (a) the series are only available from no more than 3 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 the interest of national defence and security or similar reason of confidentiality of the request for proposal and its responses to those issues, without identifying the sources of the request for clarifications.
- (4) The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultants

participating in the selection proceedings to enable them take the minutes into account in prepare their 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 30 days between the issue of the notice or request and the deadline for submission.
- (2) The technical and financial proposal shall be submitted simultaneously but in separate envelops.
- (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 proposal shall remain sealed and kept in a secure bid box until they are opened publicly.
- (5) The technical evaluation committee shall not have access to or in sights to the financial proposals until the evaluations including any Tender Boards review are concluded.

Criteria for
evaluation
of
proposal

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 proposal 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 the acceptance of the proposal will have on the balance of payments position and foreign reserves of the government, the extent of participation by Local personnel, the economic development

potential offered by the proposal, including domestic investment or other business activities, the encouragement of employment, the transfer of technology, the development of counter trade arrangements offered by consultant or service providers; and

(e) national defence and 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.

52. (1) The procuring entity shall select the successful proposal by either choosing the proposal with:

(i) the lowest evaluated price, or

(ii) the best combined evaluation in terms of the general criteria set out in the request for the price quoted.

(2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstance on which it relied to select either of the procedures in subsection (1) of this Section

(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 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 of the 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 proposals and terms of reference after the evaluation of quality is complete within a period of 14 working days after the decision has been taken by the procurement entity;
- (4) the name of the qualifying consultants, the quality scores for the technical component of the proposal shall be read along 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 proposal with the best combine evaluation in terms of the criteria established under subsection (1) of this Section 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
- (7) The consultant 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 54.
procedure
where price is
not a factor

- (1) Where the procuring entity to make a quality-based selection, 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:
 - (i) establish a weight with respect to quality and price of the proposal

- (ii) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of the Section.
 - (iii) inform the Consultant that attained rating above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurements contract; and
 - (iv) Inform the Consultant with the best rating, that it is terminating the negotiations if it becomes apparent to he procuring entity that the negotiations with that Consultant. Invited under subsection (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 of 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 procure as confidential and avoid the disclose their contents to competing Consultants.

Part IX – PROCUREMENT SURVEILLANCE AND REVIEW

Bureau to
recommend
negotiation

55. (1) Where the procuring entity elects to make a quality-based selection, based on Consultant’s qualification or single-source selection, it shall engage in negotiations with Consultants in accordance with this Section.
- (2) The procurement entity shall:
- (i) establish a weight with respect to quality and price of the proposals;
 - (ii) invite for negotiations on the price of its proposal Consultant that has attained the best rating in accordance with subsection (1) of this Section.

- (iii) inform the Consultants that attained rating above the weight that may be considered for negotiation if the negotiations with the Consultant with the best rating do not result in a procurement contract; and
 - (iv) inform the Consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity with that Consultant, invited under subsection (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 the 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 procure as confidential and avoid the disclosure of their contents to competing Consultants.

Part IX – PROCUREMENT SURVEILLANCE AND REVIEW

Bureau to 56.
recommend
investigation

- (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 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, account, or documents;
 - (b) search premises for any books, records accounts or document
 - (c) examine and make extracts from and 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 them but the investigator shall give a detailed receipt for the books, records, accounts or document 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, accounts or document;
 - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required
 - (f) explain an entry in the books, records, accounts or document; 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 results of its reviews of a procurement or report of investigation by a relevant government agency issue a variation order requiring a contractor to at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have 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 regulations in relation to procurement proceedings or procurement contract, 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 the investigation, the relevant authority shall if any 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 guide be closed and the Bureau and procuring entity shall be duly informed.

Administrative
review

57. (1) A bidder may seek administrative review for any omission or breach by 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 who shall:

(a) within fifteen working days from the date the bidder first became aware of the circumstance giving rise to the complaint or should have become aware of the circumstance, whichever is earlier.

(b) on reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decisions; or

(c) where the accounting officer does not make a decision within the period specified in sub-section (2) (b).

(3) The bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.

(4) 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 procuring or disposing entity
 - (iii) declare the rules of principles that govern the subject matter of the complaint, and
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision
- (5) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representation from the bidders and from the respective procuring or disposing entity.
- (6) 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.
- (7) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with decision of the Bureau the bidder may appeal to the Federal High Court within 30 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

Disposal of 58.
Public property

- (1) This Section shall apply subject to the Public Enterprises (Commercialization) law.
- (2) For the purposes of this Law every procuring entity shall also be a deposing 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 purpose of this Law public property is defined as resource in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):
 - (a) created through public expenditure
 - (b) acquired as a gift or through deeds
 - (c) acquired in respect of intellectual or property right;
 - (d) acquired on financial instrument (including share, stocks, bonds etc) and
 - (e) acquired by goodwill and any other gift of the Federal Government
- (6) The means of the disposal of public assets shall include
 - (a) sale and rental;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auction
 - (e) transfers from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorized variation

Planning of
disposal

59. (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 or any 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) of this Section 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.
- (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 60
conduct of
public
procurement

- (1) The bureau shall, with the approval of the council, stipulate a Code of Conduct for all public officers, suppliers, contractors and services providers with regards to their 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 providers shall, at all times, be governed by principles of honesty, accountability, transparency, fairness 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 subscribe to an oath as approved by Council.
- (4) All persons in whole hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.

- (5) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (6) 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 situation likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:
 - (a) ensuring adequate time for preparing offer
 - (b) complying with this Law and all derivative regulations; and
 - (c) receiving strict confidentially until completion of a contract
- (8) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationships with persons real or corporate who seek government commence whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such person.
- (9) Every public officer involved directly or indirectly in matters of public procurement and disposal of asset 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 department, corporation 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.
- (10) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (11) 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.
- (12) A conflict of interest exist 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 or indirect interest in or relationship with a bidder, supplier, contractor or services provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person’s ability to influence dealings;
 - (c) entertains relationship which are unethical, rendering his attitude partial toward the outsider for personal reasons or other wise inhibit the impartiality of the person’s business judgment;
 - (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) receive benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represent or the Government
 - (g) creates a source of personal revenue or advantage of an opportunity that property which comes into his hands either in course of his work or otherwise; and
 - (h) disclose confidential information being either the property of his procuring entity, the Government or to a supplier contractor or service provider to unauthorized persons.
- (13) A persons 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

61. (1) Any natural person not being a public officer who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than 5 calendar years but not exceeding 10 calendar years without an option of fine.
- (2) Any offence in contravention of this Law shall be tried by the state High Court
- (3) Prosecution of offences under this Law shall be instituted in the name of Abia State in the Federal Republic of Nigeria by the Attorney General of the State or such other officer of the State Ministry of Justice as he may authorize so to do, and in addition, without prejudice to the constitution of the Federal Republic of Nigeria 1999, he may:
- (a) after consultation with the Solicitor General of the State authorize the Solicitor General or any other officer of the Ministry of Justice of the State; or

- (b) if the relevant authority so requests, authorize any legal practitioner in the State to undertake such prosecution directly or assist therein
- (4) The following shall also constitute offences under this Law:
- (a) entering or attempting to enter into a collusive agreement, whether enforcement or not, with a supplier, contractor or consultant 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, unlawful influence, undue interest, favour, agreement, bribery or corruption;
 - (c) directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
 - (d) altering of tenders to enable the version of monetary thresholds set;
 - (e) bid-rigging;
 - (f) altering any procurement document with intent to influence the outcome of a tender procurement.
 - (g) uttering or using fake documents or encouraging their use and
 - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records
- (5) Any person who while carrying out his duties as an officer or the Bureau, or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to an accumulative punishment of:
- (a) a term of imprisonment of not less than 5 calendar years without any option of fine; and

- (b) summary dismissal from government services
- (6) 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 calendar years; and
 - (b) a fine equivalent to 25% of the value of the procurement in issue
- (7) Where any legal person shall be convicted pursuant to subsection (4) 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 not less than 3 calendar years but not exceeding 5 calendar years without an option of fine.
- (8) An alternation pursuant to subsection 4 (f) shall include
 - (a) insertion of document 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.
- (9) 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.
- (10) Bid-rigging pursuant to subsection 4(e) means an agreement between persons whereby
 - (a) offers submitted have been pre-arranged between them; or
 - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and

leading to and escalation or increase in costs or less of value to the State treasury.

- (11) For the purpose of the presumption under Section 53(6) of this section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial.
- (12) For the purpose of Section 58(5) of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the document of the State treasury.

Part XIII – MISCELLANEOUS

- Miscellaneous 62.
- (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the Director-General or of any other person authorized generally or specially 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 Director-General 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 Council or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Council or committee, or by any defect in membership of the Council or committee, or by any defect in the appointment of a member of the Council or of a Committee, or by reason that a person not entitled to do so took part in the proceedings of the Council or Committee

SCHEDULE

FORM A

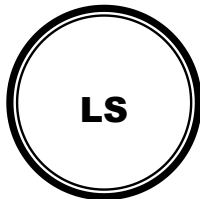
This printed impression has been carefully compared by me with the Bill which has been passed by the House of Assembly and found by me to be a true correctly printed copy of the said Bill.

.....
JOHNPEDRO NNAMDI IROKANSI
Clerk of the House of Assembly
Abia State of Nigeria

DATED this day of 2012

FORM B

I ASSENT

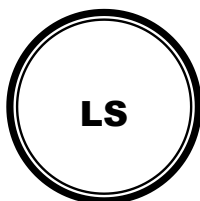


.....
CHIEF T. A. ORJI
Governor
Abia State of Nigeria

DATED this day of 2012

FORM C

I WITHHOLD MY ASSENT



.....
CHIEF T. A. ORJI
Governor
Abia State of Nigeria

DATED this day of 2012

FORM D

This Bill to which the Governor has by a letter Reference No. dated the day of, 2012 signified the withholding of his Assent, has again been passed by the House of Assembly by a two-third majority this day of, 2012

.....
JOHNPEDRO NNAMDI IROKANSI
Clerk of the House of Assembly
Abia State of Nigeria

DATED at Umuahia this day of 2012

FORM E

Assented to on the day of, 2012

Or

Passed by the House of Assembly by a two-third majority this day of, 2012

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 a true and correctly printed copy of the Bill

.....
JOHNPEDRO NNAMDI IROKANSI
Clerk of the House of Assembly
Abia State of Nigeria

Dated day of, 2012

SCHEDULE

FORM A

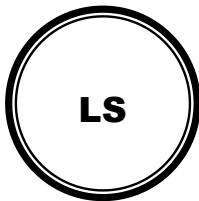
This printed impression has been carefully compared by me with the Bill which has been passed by the House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

(1)
JOHNPEDRO NNAMDI IROKANSI
Clerk of the House of Assembly
Abia State of Nigeria

DATED this day of, 2012

FORM B

I ASSENT



.....
CHIEF T. A. ORJI
Governor
Abia State of Nigeria

DATED this day of 2012