

**PUBLIC PROCUREMENT
(REPEAL AND RE-ENACTMENT)
LAW, 2020**

GOVERNMENT OF BAYELSA STATE OF NIGERIA
PUBLIC PROCUREMENT (REPEAL AND RE-ENACTMENT) LAW, 2020

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2. 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; and advise the State Governor regarding delegation of financial authority to public officers enabling them to approve contract awards and charges to contracts of a financial nature and the annual review of such delegations,
 - (c) Receive and consider, for approval, the audited accounts of the Due Process Bureau,
 - (d) Approve changes in procurement processes to adapt to improvements in modern technology,
 - (e) Approve the appointment of the Directors of the Due Process Bureau after competitive selection process,
 - (f) Give such other directives and perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law.
3. (1) A member of Council shall cease to hold office if he:
- (a) resigns at any time by notice in writing under his hands and addressed to the Governor;
 - (b) becomes of unsound mind or incapable of carrying out duties of his office;
 - (c) is guilty of misconduct relating to the duties of his office;
 - (d) is convicted of a felony or any offence involving dishonesty;
 - (e) is removed from office by the Governor if the Governor is satisfied that it is not in the interest of the Council or the public that the member should continue in office.
- (2) Where there is a vacancy, the Governor shall appoint a person to replace the member of the Council whose office has been vacated in accordance with the provisions of this Law and such person shall hold office for the rest of the unexpired term of the office of that member.
4. Members of the Council shall be paid such remunerations and allowances as may be approved by the Governor.
5. The supplementary provisions set out in the Schedule to this Law shall have effect with respect to the proceedings of the Council and the other matters contained in it.

*Functions of
the Council*

*Cessation of
Office*

*Remuneration and
Allowances*

*Proceedings of the
Council*

PART II
ESTABLISHMENT OF THE DUE PROCESS BUREAU

6. (1) There is established an agency known as the Due Process Bureau in this Law referred to as “**the Bureau**”.
- Establishment of the Due Process Bureau*
- (2) The Bureau:
- (a) Shall be a body corporate with perpetual succession and a common seal,
 - (b) May sue and be sued in its corporate name, 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.
7. The objectives of the Bureau are:
- Objective of the Bureau*
- (a) To harmonize existing government policies and practices on public procurement and ensuring probity, accountability, and transparency in the procurement process,
 - (b) To establish fair pricing standards and benchmarks,
 - (c) To ensure the application of fair, competitive value- for-money, and fit-for-purpose standards and practices for the procurement and disposal of public assets and services,
 - (d) To create ample opportunities for the citizenry particularly, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement,
 - (e) To create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by Procuring Entities, bidders, and the general public, and
 - (f) To see to the attainment of transparency, competitiveness, cost effectiveness, professionalism and guarantee integrity and public trust in the public procurement procedure.
8. (1) The Bureau shall:
- Functions of the Bureau*
- (a) Formulate the general policies relating to public procurement for the approval of the Council, including regulations, guidelines, directives, instructions, technical notes, and manuals,
 - (b) Maintain a list of Procurement Entities covered by this Law and, subject to the approval of the Council, make regulations or guidelines for the composition, functions, powers, and procedure of the Procurement Board of any Procuring Entity,
 - (c) Publicize and explain the provisions of this Law,
 - (d) Subject to thresholds as may be approved by the Council and except as otherwise provided by this Law, certify all procurement prior to award of contract,

- (e) Certify all contracts awards within the monetary review thresholds defined by the state council on public procurement,
- (f) Certify procurement over N300m before award and shall conduct only process compliance review for procurement below that threshold. These thresholds shall be subject to periodic review by the State Council on Public Procurement from time to time,
- (g) Review and recommend for the Council's approval changes in procurement process to adapt to changes in technology,
- (h) Monitor procurement and ensure compliance with statutory and contract requirements,
- (i) Monitor the prices of tendered items and keep a database of standard prices,
- (j) Publish, and maintain an archival system for, paper and electronic editions of a procurement journal, which shall contain details of major contracts including proposed procurement notices, notices of invitation to tender and contract award information,
- (k) Maintain a database of the particulars and classification and categorization of suppliers, contractors, and service providers,
- (l) Collate and maintain in an archival system all procurement plans and information covered by this Law,
- (m) Undertake procurement research and surveys,
- (n) Organize trainings, development programmes and certification training in collaboration with recognized institutions for procurement professionals and other staff of the Bureau,
- (o) Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly,
- (p) Prepare/update and Issue standard forms of contracts, bidding documents, prequalification documents, requests for proposals and other similar documents for use by Procuring Entities for implementing procurement,
- (q) Prevent fraudulent and unfair procurement and, where necessary, apply administrative sanctions,
- (r) Advise the State Government on Issue relating to public procurement,
- (s) Perform procurement audits and submit the audit report to the State House of Assembly annually,
- (t) Deploy or post procurement officers and assistants to procuring entities to carry out all procurement processes and functions, and
- (u) Perform such other functions as may be assigned to it by the Council.

9. (1) The Bureau shall have the power to:
- (a) Enforce the monetary and prior review threshold approved by the Council for the application of the provisions of this Law by 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 procurements within the purview of this Law and "certificate of No Objection" for payment at different stages of payment,
 - (c) From time to time stipulate to Procuring Entities the procedures and documentation prerequisite for the issuance of the certificate of "No Objection" under this Law,
 - (d) Where a reason exists:
 - (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 procurement entity has violated any provision of this Law or the guidelines made under this Law.
 - (e) Debar any supplier, contractor or service provider that contravenes any provision of this Law and the regulations made under this Law,
 - (f) Maintain a list of firms and persons that have been debarred from participating in public procurement activity in the State and publish them in the procurement journal,
 - (g) Set up a committee to monitor the performance of any procurement requirement by any contractor, supplier or service provider,
 - (h) Call for such information, documents, records and reports in respect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against any Procurement Entity or any contractor, supplier or service provider,
 - (i) Recommend to the Council where there are persistent or serious breaches of this Law, regulations or guidelines made under this Law for:
 - (i) The suspension of officers concerned with the procurement proceedings in issue,
 - (ii) The replacement of the head or any member of the Procuring Entity or Procurement Board, as the case may be,
 - (iii) The discipline of the Accounting Officer of any Procuring Entity,
 - (iv) The temporary transfer of the procurement function of a Procuring (iv) Entity to another Procuring Entity, or

- (v) Any other sanction that the Council may consider appropriate,
 - (j) Call for the production of books of account, 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,
 - (l) Nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law; and
 - (m) Do such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.
- (2) The Bureau shall, subject to the approval of the Council, have powers to:
- (a) Enter into contract or partnership with any company, firm or person which in the opinion of the Bureau shall facilitate the discharge of its functions,
 - (b) Request for and obtain from any Procuring Entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law, and
 - (c) Liaise or collaborate with relevant bodies or institutions national or international for the effective performance of its functions under this Law.

10. (1) The Bureau shall maintain a fund into which shall be paid:
- (a) Monies appropriated for it by the House of Assembly of the State to meet its expenditure
 - (b) All subventions, fees and charges for services rendered or publications made, or which may accrue from assets held, by the Bureau.
- (2) The Council may make regulations for the Bureau:
- (a) Specifying the manner in which assets or funds of the Bureau are to be held or utilized, and
 - (b) Requiring the keeping of proper accounts and records for the purposes of the fund.

Funding the Bureau

11. (1) There shall be appointed for the Bureau, a Director-General who shall also function as the Secretary of the Council, who shall be appointed by the Governor subject to the confirmation of the House.
- (2) The Person appointed as the Director-General shall possess a first degree from a tertiary institution and with a minimum of 15 year of relevant post-qualification experience.
- (3) The Director-General shall be:
- (a) The Chief Executive and Accounting Officer of the Bureau, and

The Director-General

- (b) Responsible for the execution of the policy and day to day administration of the affairs of the Bureau.
- (4) The Director-General shall hold office:
 - (a) For a term of four (4) years, in the first instance, and may be reappointed for another term of four (4) years and no more,
 - (b) On such terms and conditions as may be specified in his/her contract of appointment.
- (5) Without prejudice to the provisions of subsection (3) of this section, the Governor may terminate the appointment of the Director-General on account of:
 - (a) gross misconduct;
 - (b) financial impropriety;
 - (c) gross incompetence as proven by the Council;
 - (d) infirmity of the mind or body;
 - (e) being found guilty, by a court of competent jurisdiction, of a felony or an offence involving fraud or dishonesty; or
 - (f) any other condition or circumstance of such a nature that renders it undesirable or impracticable for him to remain in office.

- 12. (1) The Governor shall appoint 3 Principal Directors as follows:
 - (a) Director Ethics and compliance.
 - (b) Director Price Intelligence.
 - (c) Director Contract monitoring.
- (2) The Principal Directors shall hold office:
 - (a) For a term of four (4) years, in the first instance, and may be reappointed for another term of four (4) years and no more,
 - (b) On such terms and conditions as may be specified in the contract of appointment.
- (3) The Directors shall have a minimum of first degree with 10 years post qualification in any of the following disciplines: Law, Administration, Economics, Quantity Survey, Engineering, Architecture, Procurement and Technical matters.
- (4) 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 the Law.

*Principal Officers
of the Bureau*

- 13. The Council shall appoint procurement officers and other employees as may, from time to time, be necessary for the purpose of the Bureau. Such officers or employees may be appointed either on transfer or on secondment from any office in the public service of the State.

*Other staff of the
Bureau*

- 14. The Council shall, subject to the provisions of this Law and any other Law, make staff regulations relating generally to the conditions of service of the employees of the Bureau. Such regulation shall provide for matters including appointment, promotion, and discipline.

Staff Regulations

15. The Bureau shall, subject to recommendation of the Governor and the approval of the House of Assembly, determine the remuneration to be paid to its officers and may require any officer to give such security deemed proper for the execution of his functions. *Staff Remuneration*
16. The employees of the Bureau shall be entitled to pensions and other retirement benefits as may be prescribed under any law of the State on pensions. *Pension Provisions*
17. The Bureau may, with the recommendation of the Council, make regulations for the proper implementation and enforcement of the provisions of this Law and without prejudice to any other provision, make regulations subject to the approval of the Governor with respect to all or any of the following matters: *Power to make Regulations*
- (a) the structure and contents of Annual Procurement Plans,
 - (b) the standard and content of all bid solicitation documents,
 - (c) the standard and content of all procurement contracts,
 - (d) the use of any procurement method,
 - (e) fees chargeable by any procuring entity for matters relating to public procurements, and
 - (f) the prevention and detection by the Bureau of any act amounting to an infringement on the provisions of this Law and its Regulations.
18. (1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Bureau by the intending claimant, plaintiff or his agent; and the notice shall clearly and explicitly state: *Legal Proceedings*
- (a) the cause of action,
 - (b) the particulars of claim,
 - (c) the name and address of legal practitioner of the intending claimant, if any, 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 to anything done or omitted to be done in exercise of any functions or power conferred by this Law upon the Bureau, its Director-General, officers, employees or agents.
- (3) A member of the Council or the Director-General or any officer or employee of the Bureau shall be indemnified from the assets of the Bureau against any liability incurred by him in defending any proceedings, whether civil or criminal, if the proceeding is brought against him in his capacity as a member of the Council, Director-General, officer or employee of the Bureau.

19. 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 through registered post and addressed to the Director-General at the principal office of the Bureau. *Service of Documents*

20. (1) The Bureau shall maintain a fund into which shall be paid:
(a) monies appropriated for it by the State House of Assembly of the State to meet its expenditure; and
(b) all subventions, fees and charges for services rendered or publications made, or which may accrue from assets held, by the Bureau;
(2) The Council may make regulations for the Bureau:
(a) specifying the manner in which assets or funds of the Bureau are to be held or utilized; and
(b) requiring the keeping of proper accounts and records for the purposes of the fund. *Funds of the Bureau*

21. (1) The financial year of the Bureau shall be the same as that of the State Government. *Budgeting and Annual Financial Report*
(2) Not later than 6 months before the end of a financial year, the Bureau shall submit to the Council an estimate of its projected income and expenditure for the succeeding year.
(3) The Bureau shall keep proper account of all its expenditure and revenue and shall cause its account to be audited, not later than six (6) months after the end of each financial year, by external auditors appointed by the Auditor-General of the State.
(4) The Bureau shall, within six (6) months after the end of each financial year, prepare and submit to the Council a report accurately capturing all the activities of the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for the year reported on.

PART III
SCOPE OF APPLICATION

22. (1) This Law applies to all procurement of goods, works, and services carried out by the: *Scope of Application*
(a) The Bayelsa State Government and all Procuring Entities of the State and Local Governments.
(b) All entities outside the foregoing description which derive at least 35% of the fund appropriated or proposed to be appropriated for any procurement described in this Law from the Consolidated Revenue Fund of the State Government: provided that this Law shall apply in every case where public

- funds constitute up to ₦500,000,000.00 of the cost of procurement of any goods, works or services.
- (2) Without prejudice to subsection (1) of this section, this Law applies to:
- (a) Ministries, Departments and Agencies of the State and Local Governments,
 - (b) Agencies set up by the State and Local Governments to provide public service and financed from public fund,
 - (c) Public Hospitals, Schools, Colleges and Universities, and
 - (d) State and Local Government owned Enterprises that utilize public funds.
- (3) This Law shall not apply to procurement for which the funds have been provided by an international organization (donors and lenders), provided that special terms and conditions for procurement as prescribed by the donor are in compliance with this Law.

PART IV

FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

23. (1) Subject to the exceptions under this Law, all procurements carried out by any Procuring Entity shall be governed by the following rules:
- (a) Subject to the prior review thresholds as may from time to time by the Bureau,
 - (b) Based only on procurement plans supported by prior budgetary appropriations. 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, has obtained a 'Certificate of "No Objection" to Award' from the Bureau
 - (c) By open competitive bidding, using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed,
 - (d) in a manner that is transparent, timely and equitable for ensuring accountability and conformity with this Law and the regulations made under this Law,
 - (e) with the aim of achieving value-for-money and fitness for purpose,
 - (f) in a manner that promotes competition, economy, and efficiency, and
 - (g) in accordance with the procedures and timeline laid out in this Law and as may be specified by the Bureau from time to time.
- (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the

*Governing Rules
on Public
procurement*

State Treasury or any bank account of any Procuring Entity for any procurement falling above the set thresholds benchmark unless the cheque, payment or other form of request for payment is accompanied by a certificate of 'No Objection' to an award of contract duly issued by the Bureau.

- (3) For all cases where the Bureau shall set prior review thresholds, the Bureau shall prescribe by regulations and guidelines the conditions precedent to the award of the Certificate of 'No Objection' under this Law.
- (4) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a 'Certificate of "No Objection" to Contract Award' duly issued by the Bureau shall be null and void.
- (5) A supplier, contractor, or service provider may be a natural person, a legal person, or a natural/legal person. Suppliers, contractors, or service providers acting jointly are jointly and severally liable for all obligations and responsibilities 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 document shall:
 - (a) Possess the necessary:
 - (i) Professional and technical qualification to carry out particular procurement,
 - (ii) Financial capacity,
 - (iii) Equipment and other relevant infrastructure, and
 - (iv) Personnel with sufficient skill and experience to perform the obligations of the procurement contract.
 - (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) Not have directors who have 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
 - (e) Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the Procuring 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 Bureau or any 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 the

provisions of this Law and the solicitation documents. For this purpose, any such requirement shall apply equally to all bidders.

(8) Whenever it is established by a Procuring Entity or the Bureau that any or a combination of the situation set out exists, a bidder shall have its bid or tender excluded from any particular procurement proceedings if:

- (a) There is verifiable evidence that any supplier, contractor or service provider has given or promised, a gift of money or any tangible item or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a Procuring Entity or the Bureau, or has promised to shield a current or former employee of a Procuring Entity or the Bureau from a due detriment, in an attempt to influence any action, or decision making on any procurement activity,
- (b) A supplier, contractor or service provider during the last three (3) years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in the 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 compromise with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding,
- (d) The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in installments,
- (e) The bidder has been convicted 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 convicted 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 domination 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 who remain in subordinate relationship with other participants to the proceedings.

- (9) (a) Where a bid and or tender is excluded under the provisions of subsection(7) and (8) (a - g) of this section, the Bureau shall inform the bidder in writing the grounds for the exclusion of the bid or tender from the procurement proceedings.
- (b) A Procuring Entity shall keep a record of the proceeding in a manner prescribed by the Bureau.
- (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 procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (12) Every Procuring Entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten (10) years from the date of the award.
- (13) Copies of all procurement records shall be forwarded to the Bureau not later than three (3) months after the end of the financial year and shall include:
 - (a) Information identifying the procuring entity and the contractors,
 - (b) A brief description of the goods, works, or services subject of the procurement,
 - (c) The date of the contract award,
 - (d) The value of the contract, and
 - (d) The detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed from time to time by the Bureau.
- (15) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceedings.
- (16) The burden of proving fulfillment of the requirement for participation in any procurement proceedings shall lie on the supplier, contractor, or service provider.
- (17) A contract shall be awarded to the best evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding the provision of subsection (17) of this section, the Bureau may refuse to issue a 'Certificate of "No Objection" to Contract Award' on the grounds that the price is manifestly excessive or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law.
- (19) Pursuant to subsection (18) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-bid.

- (20) A Procuring Entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of a bids/proposals or quotations other than in the summary form stating the evaluation and comparison of bids/proposals or quotations received until the successful bidder or consultant is notified of the award.
- (21) The Accounting Officer of a Procuring Entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its Regulations.
- (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 the Procurement Board or any Approving Authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions 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 made from time to time by the Bureau.
- (24) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they co-operate in any manner with bidders in the course of preparing their bids.
- (25) A Procuring Entity shall not request or stipulate that a bidder should associate with a particular contractor or subcontractor as a requirement for participating in any procurement proceeding.
- (26) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening the 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
ORGANISATION OF PROCUREMENT

24. (1) There is established a Central Procurement Board for the State (in this Law referred to as the “Board”. The Board shall consist of:
- (a) a Chairman who shall be appointed by the Governor among Commissioners in the State Executive Council;
 - (b) three other Commissioners to be appointed by the Governor as members;
 - (c) a Permanent Secretary nominated by the Secretary to the State Government from his office;
 - (d) the Permanent Secretary, Ministry of Finance as member;
 - (e) the Permanent Secretary, Ministry of Budget as member;
 - (f) the Director-General, Due Process Bureau as member;
 - (g) three other persons to be appointed by the Governor who have cognate experience in public procurement and from any of the following areas: Law, administration, economics, finance, engineering, quantity surveying, science and technical matters.
- (2) In the absence of Commissioners, the Governor shall appoint Permanent Secretaries of the related ministries pending the appointment of Commissioners.
- (3) The Chairman shall preside at every meeting of the Board, and in his absence, the members present shall elect a Chairman amongst themselves to preside at that specific meeting.
- (4) The persons mentioned in subsection (1) shall have wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and shall have relevant experience in public procurement activities.
- (5) The Governor shall at any time terminate the appointment of a Board Member who is guilty of:
- (a) any misconduct, default or breach of trust in the discharge of his duties;
 - (b) an offence of such nature as renders it desirable that his appointment should be terminated.
- (6) The Board may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Board.
- (7) Where such termination as in subsection (5) of this Section involves the offices of the Chairman or Vice-Chairman, the Governor is at liberty to re-appoint any other person to take over.
25. (1) The Secretary of the Board shall be the Permanent Secretary (General Services) in the Office of the Secretary to the State Government.

*Bayelsa State
Central
Procurement
Board*

*Secretary of the
Central
Procurement
Board*

- (2) The Officer referred to in subsection (1) shall be entitled to attend the meetings of the Board and participate in its deliberations but shall not have voting rights.
26. (1) The Board shall, in the conduct of its business, be assisted by such public officers as may be appointed by the Board under contract terms and conditions. *Staff of the Board*
- (2) Every person referred to in subsection (1) shall be under the administrative control of the Chairperson.
27. (1) The Board shall, in respect of contracts valued at between ₦50m and ₦300m. *Functions of the Central Procurement Board*
- (a) Establish appropriate internal procedures for the operations of the Board and ensure compliance with them,
- (b) Vet bidding documents and notices submitted to it by MDAs,
- (c) Receive and publicly open bids,
- (d) Select persons from a list of qualified and independent evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids,
- (e) Handle matters of arbitration between MDAs and bidders for contracts and entertain all appeals for reconsideration of outcomes of proceedings by prospective bidders, and
- (f) Review the recommendations of a bid evaluation committee and:
- (i) Approve the award of the contract; or
- (ii) Require the evaluation committee to make a fresh or further evaluation on specified grounds.
- (2) The Board shall have such powers, and exercise such functions, as may be assigned to it under any other enactment.
- (3) The threshold set in sub-section (1) above is subject to periodic review by the Council.
28. (1) In the discharge of its functions, the Board may:
- (a) Call for such information and documents as it may require from any MDA,
- (b) Examine such records or other documents and take copies or extracts from them,
- (c) Commission any studies relevant to the determination of the award of contracts,
- (d) Request any professional or technical assistance from any appropriate person in Bayelsa or elsewhere,
- (e) Do all such acts and things as it may consider incidental or conducive to the exercise of its functions.
- (2) Any person to whom a request is made under subsection 1(a) and who fails to comply with the request, or willfully gives any false or

misleading answer to any question lawfully put by the Board, shall commit an offence.

- (3) Where discrepancies in the award of contracts by MDAs come to the knowledge of the Board, it shall forthwith report the matter, in the case of a Civil Servant, to the Head of the civil Service, but in the case of a Political Appointee to the Governor, recommending such action as it may deem appropriate.
- (4) The Governor or the Head of the Civil Service may, where considered appropriate, refer any matter reported to him under subsection (3) to the Police for enquiry.

- 29. (1) The Board shall meet as often as necessary at a designated location.
- (2) All matters authorized or required to be done by the Board shall be decided by simple majority of the members present and voting.
- (3) Wherein the two (2) presiding officers are absent at any meeting, the other members shall designate another Officer to preside over the meeting.
- (4) At board meetings, the Chairperson and 4 other members shall constitute a quorum.
- (5) During deliberations on matters of concern, each member shall have one vote on the matter in question and, in the event of any equality of votes; the Officer chairing the meeting shall have a casting vote.

*Meetings of the
Central
Procurement
Board*

- 30. (1) The Accounting Officer of each MDA shall inform the Board in writing. of any contract within the authority of the Board that the MDA intends to enter into and shall submit all the relevant documents to the Board.
- (2) The Board shall, within such time as may be prescribed after having been notified in accordance with subsection (1), authorize the MDA to call for bids or utilize another appropriate procurement method.
- (3) The Board shall approve the award of every contract between N50m and N300m after due examination and evaluation of bids by the bid evaluation committee.
- (4) No MDA shall:
 - (a) advertise, invite, solicit or call for bids in respect of a contract unless authorized by the Board, or
 - (b) award a contract unless the award has been approved by the Board.The Board shall notify the Executive governor on a weekly basis of all contracts awarded during the week which are valued at between N50m and N300m by submitting a Schedule to the Executive Governor to this effect.
- (5) All contracts award effected by the Board for contracts valued at between N300m and N500m shall be ratified by the Executive

*Procedure of the
Central
Procurement Board*

Governor before its execution. These thresholds are subject to periodic review by the State Procurement Council.

- (6) All contracts award effected by the Board for contracts valued at greater than N500m shall be ratified by the State Executive Council before its execution. These thresholds are subject to periodic review by the State Procurement Council.

31. Subject to the monetary and prior review thresholds for procurements as may from time to time be determined by the Council, the following shall be the Approving Authority for the conduct of public procurement:

*Approving
Authority*

- (a) In the case of a government agency, parastatal or corporation, a Parastatal Procurement Board; and
- (b) In the case of a ministry or extra-ministerial entity, the Ministerial Procurement Board.

32. (1) There is established by this Law in each of the State's Ministry, Extra-Ministerial Office/Department/Agency, Parastatal and Corporation, a Procurement Board.

*Approving
Authority*

(2) The composition of each Ministerial procurement Board shall be as follows:

- (a) Permanent Secretary as Chairman;
- (b) Directors/Heads of Department as Members;
- (c) Head of Procurement or Planning, Research and Statistics as Secretary

(3) The composition of Extra-Ministerial/Departmental Procurement Board shall be as follows:

- (a) Accounting Officer as Chairman
- (b) Directors/Heads of Department as members
- (c) Head of Procurement or Planning, Research and Statistics as Secretary

(4) Where a Ministry, Department or Agency has not yet set up a Procurement Unit, the Head of Planning, Research and Statistics shall serve as the Secretary to the Tenders Board. However, where the Ministry, Department or Agency does not have a Research, Planning and Statistics function, the Head of Administration shall serve as the Secretary of the Procurement Board.

(5) Members of the Procurement Boards and other approving authorities in each MDA are obliged to declare any conflict of interest and exclude themselves from the bid evaluation and approval process where a conflict occurs.

(6) The Procurement Board shall have power to award and be responsible for the procurements of goods, works and services within the benchmark set in the Regulations to this Law.

- (7) In all cases where there is a need for pre-qualifications, the Chairman of the Procurement Board shall constitute a technical evaluation subcommittee of the Procurement 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 Procurement Board who shall also be the Chairman of the Evaluation subcommittee.

33. (1) The Procurement Board shall be responsible for the award of procurement of goods, works and services which have a total cost implication of more than five hundred thousand naira (₦500,000.00) but less than fifty million naira (₦50m) in respect of contracts and supplies. *Functions of the Ministerial Procurement Board*
- (2) The Procurement Board shall oversee the activities of the Technical Evaluation Sub-Committee of the Procurement Board in cases of bid evaluation, pre-qualification and other types of necessity.
- (3) The Procurement Board shall present the decisions of its deliberations to the Commissioner of the respective MDA's for implementation.
34. (1) The Accounting Officer of a Procuring Entity shall be the person charged with the supervision of the conduct of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of extra-ministerial departments and corporations, the Director General or officer of coordinate responsibility. *Accounting Officer*
- (2) The Accounting Officer of every Procuring Entity shall have overall responsibility for the planning and organisation 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 his 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 his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons,
 - (b) constituting the Procurement Planning 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 Evaluations Committee, and
- (g) liaising with the Bureau and ensure the implementation of its regulations.

35. Subject to regulations as may from time to time be issued by the Bureau, a Procuring Entity shall plan its procurement by: **Procurement Planning**

- (a) Preparing needs assessment and evaluation,
- (b) Identifying based on (a) above, the goods, works or services required,
- (c) Conducting appropriate market survey 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 scale and reduce procurement cost,
- (e) Integrating its procurement expenditure into its yearly budget,
- (f) Ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method, and
- (g) Ensuring that the Procurement Entity functions stipulated in this Section shall be carried out by a Procurement Planning Committee.

36. (1) For every financial year, each Procuring Entity establish a Procurement Planning Committee. **Establishments and Composition of Procurement Planning Committee**

- (2) The Procurement Planning Committee shall comprise of the following members:
 - (a) The Accounting Officer of the Procuring Entity or his representative who shall be the Chairman of the committee,
 - (b) A representative of the procurement function of the Procuring Entity who shall be the Secretary,
 - (c) A representative of the Unit directly in requirement of the procurement,
 - (d) A representative of the financial management function of the Procuring Entity,
 - (e) A representative of the planning, research, and statistics function of the Procuring Entity,
 - (f) Technical personnel of the Procuring Entity with expertise in the subject matter for each particular procurement, and
 - (g) A representative of the legal Unit of the Procuring Entity.

37. Subject to regulations as may from time to time be issued by the Bureau, a Procuring Entity shall implement its procurement plans as follows: **Establishments and Composition of Procurement Planning Committee**

- (a) Solicit/advertise for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time,
- (b) Invite two (2) credible persons as observers in every procurement process for contracts within the prior review threshold; one person each representing a recognized:
 - (i) Private sector professional organization whose expertise is relevant to the particular goods or service being procured, and
 - (ii) Non-Governmental Organization working in transparency, accountability, and anti-corruption areas.

The observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency or body including their own Organizations or Association,
- (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 Bid Security or Performance Guarantee,
- (h) Obtain a “Certificate of ‘No Objection’ to Contract Award: from the Bureau, for contracts within the prior review threshold as stipulated in Section 10(d) of this Law.
- (i) Execute the Contract Agreement, 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.

38. A Procuring Entity within the provisions of this Law shall establish a Procurement Office whose functions shall be to:

Procurement Office

- (a) Initiate the entity’s procurement process,
- (b) Conduct appropriate market surveys and prepare analysis of cost implication of a proposed procurement,
- (c) Aggregate its requirement, within and between Procuring Entities to obtain economical and reduce procurement cost,
- (d) Conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite expression of interest,
- (e) Conduct pre-bid conferences when necessary,
- (f) Ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Law and Regulations as may be issued from time to time,
- (g) Prepare bidding documents,
- (h) Issue bidding documents,

- (i) Supervise the development of all tenders,
- (j) Organise communications with bidders,
- (k) Receive bids, issue receipts for received bids, and keep bids in safe custody until opening,
- (l) Open and evaluate any bids received in response to solicitation,
- (m) Maintain procurement records, and
- (n) evaluate expression of interest by suppliers, contractors, or consultants and forward lists of qualified submissions to the Board.

39. (1) There is established a Local Government Procurement Committee. *Establishment of the Local Government Procurement Committee*
- (2) Subject to the regulations as may from time to time be made by the Bureau, the following shall be Members of the Local Government Procurement Committee:
- (a) Head of Local Government as Chairman;
 - (b) Treasurer of the Local Government Council as member;
 - (c) Head of Department (Works) as member;
 - (d) Three Supervisory Councillors to be appointed by the Chairman of the Local Government Council;
 - (e) A representative of Due Process Bureau in attendance.
- (3) In the absence of the Chairman, the members present shall elect a Chairman amongst themselves to preside at the meeting of the Committee.
- (4) At Committee Meetings, two-third of members present shall constitute a quorum.
40. Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community shall participate in the delivery of services in accordance with such procedure as may be prescribed. *Community End-User Participation in Procurement*

PART VI

PROCUREMENT METHODS FOR GOODS, WORKS, AND NON-CONSULTING SERVICES

41. (1) The procurement of works, goods, and services by all Procuring Entities shall be conducted by Open Competitive Bidding, except it is otherwise provided by this Law. *Open Competitive*
- (2) Any reference to Open Competitive Bidding in this Law means the process by which a Procuring Entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed.

- (3) The winning bid shall be that which is the lowest evaluated responsive bid with regards to requirement specifications and standard.

42. (1) Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary threshold for which procurements shall fall under either system. *Invitation to Bid*
- (2) Every invitation to open competitive bidding shall:
- (a) For goods, works and non-consulting services to be procured through International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized publication, the official website of the Procuring Entity, the Bureau and the State Procurement Journal not less than six weeks before the deadline for submission of the bids for the goods, works and non-consulting services.
 - (b) In the case of goods, works and non-consulting services to be procured through National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, the official website of the Procuring Entity, at least two (2) national newspapers, and the State Procurement Journal not less than four (4) weeks before the deadline for submission of the bids for the goods, works and non-consulting services.
43. (1) Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. While Prequalification is not on its own a procurement method, it enables the Procuring Entity, where necessary, to reduce the number of bids to be evaluated technically and financially as this is a complex and costly task without reducing the level of competition as the prequalification stage is open to all competitors but simply seeks to evaluate the technical and financial capabilities of competitors. *Prequalification of Bidders*
- (2) Where a Procuring Entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications. In reaching a decision as to

- which supplier, contractor or service provider qualifies, the Procuring Entity shall apply only the criteria set out in the pre-qualification documents and no more.
- (3) Procuring Entities shall supply a set of pre-qualification documents to each supplier, contractor or service provider that requests them; and the price that a Procuring Entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery.
 - (4) The prequalification document 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 manner and place for the submission of applications to pre-qualify and the deadline for the submission. expressed as a specific date and time which allows sufficient time for suppliers, contractors, or service providers to prepare and submit their applications, taking into account the reasonable need of the Procuring Entity, and
 - (e) Any other requirement that may be established by the Procuring Entity in conformity with this Law and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
 - (5) The Procurement Entity shall respond to any request by a supplier, contractor, or service provider for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.
 - (6) 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 service provider to make a timely submission of its application to pre-qualify.
 - (7) The response to any request that might reasonably be expected to be of interest to other supplier, contractor or service provider shall, without identifying the source of the request, be communicated to other suppliers or contractors or service providers provided with the prequalification documents by the Procuring Entity.
 - (8) A Procuring Entity shall promptly notify each supplier, contractor or service provider which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the

suppliers, contractors or service provider who have been pre-qualified.

- (9) Suppliers, contractors, or service provider who have been pre-qualified may participate further in the procurement proceedings.
- (10) The Procuring Entity shall upon request communicate to suppliers, contractors or service providers who have not been pre-qualified, the grounds for disqualification.
- (11) 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 service provider.
- (12) The Procuring Entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the Procuring Entity.
- (13) The Procuring Entity shall disqualify any bidder who fails to demonstrate its qualification again if requested to do so.

44. (1) Regardless of whether there has been a prequalification or not, the bidding document shall be prepared by Procuring Entities based on the standard forms and manuals issued under regulation by the Bureau. The bidding documents shall include the following:

Bidding Document

- (a) Instruction to Bidders (ITB): The sub-section provides information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. The sub-section contains provisions stipulated by the Bureau that are to be used by the Procuring Entity without modification.
- (b) Bid Data Sheet (BDS): This sub-Section consists of provisions that are specific to the procurement package. The BDS provides supplementary information or additional requirements to what is included in sub-section I, Instructions to Bidders. Whenever there is a conflict, the provisions in the data sheet prevails over those in the ITB.
- (c) Evaluation and Qualification Criteria: This sub-section provides the criteria to determine the lowest evaluated responsive bid and the qualifications of the Bidder to perform the contract.
- (d) Bidding Forms: This sub-section contains the forms for the Bid Submission, Price Schedules, Bid Security, and the Manufacturer's Authorization to be completed by the Bidder and submitted as part of his Bid.
- (e) Schedule of Requirements: This sub-section provides the List of Goods, Works and/or Services, the Delivery and Completion Schedules, the Technical Specifications and the

Drawings that describe the Goods and Related Services to be procured.

- (f) General Conditions of Contract (GCC): This sub-section provides the general clauses to be applied in all contracts. The text of the clauses in this sub-section shall be used as prescribed in the Standard Bidding Documents provided by the Bureau hence should not be modified by the Procuring Entity.
- (g) Special Conditions of Contract (SCC): This sub-section consists of Contract Data and Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement, but not over-write the General Conditions and shall be prepared by the Procuring Entity.
- (h) Contract Forms: This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

- (2) Procuring Entities may require additional document or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

45. (1) Subject to the monetary and prior review benchmark as may be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the Procuring Entity or an insurance bond issued by an insurance company acceptable to the Bureau. *Bid Security*

- (2) The Bureau shall from time to time specify the principal terms and conditions of bid security to be provided by bidders.

46. (1) The period of validity for a bid shall be the period specified in the bidding documents. *Bid Validity Period*
- (2) A Procuring Entity may request bidders to extend the period of validity for an additional specified period of time.
 - (3) A bidder provider may refuse the request; consequently, the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
 - (4) A bidder who refuses to extend its bid validity period shall not forfeit its bid security.
 - (5) A bidder who agrees to the request for the extension of the validity period shall also furnish a corresponding extension of his bid security, if security was required for the original bid submission

47. (1) A bidder may modify, substitute, or withdraw its bid prior to the deadline for the submission of bids. *Modification, Substitution, or Withdrawal of Bids*
- (2) The modification, substitution or notice of withdrawal is effective if it is received by the Procurement Entity before the deadline for the submission of bids.
48. (1) All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and any other additional format stipulated in the bidding document, signed by an official authorized to bind the bidder to a contract and placed in sealed envelopes. *Submissions of Bids*
- (2) All submitted bids shall be deposited and kept in a secured tamper-proof bid box.
- (3) All submitted bids must be in English Language.
- (4) The Procuring Entity shall issue a receipt showing the date and time the bid was received.
- (5) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or service provider which submitted it.
- (6) No communication shall take place between Procuring Entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.
49. There shall be a failure of bidding if: *Failure of Bidding*
- (a) No bids are received.
- (b) Non of the bids received are responsive, or
- (c) Non of the responsive bidders accept the award of the contract.
- (d) The contract shall be re-advertised and re-bid at the occurrence of any of the instance stated in sub-section (a) of this section.
- (e) The Procuring Entity shall investigate the cause of failure (e.g. technical specification, medium/duration of invitation for bid, contract terms etc.) and make necessary amends where applicable. Thereafter, the Procuring Entity shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the procuring entity may resort to an alternate method of procurement as provided for by this Law.
50. A Procuring Entity may: *Rejection of Bids*
- (a) reject any bids at any time prior to the acceptance of a bid, without incurring any liability to the bidders, and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

- 51. The Procuring Entity shall open in the public all bids received by the deadline at the date, time and place specified in the bidding documents or any extension of the deadline for submission. 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) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension,
 - (c) allow all the bidders or their representatives and any interested member of the public to witness the bid opening exercise,
 - (d) ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the Tenders board or his delegate; and
 - (e) call-over to the hearing of all present, the name and address of each bidder, the total Bid Prices, per lot (contract) if applicable, including any discounts and alternative bids, and shall ensure that these details are recorded by the Secretary of the Tenders board or his delegate in the minutes of bid opening.
 - (f) No decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.

- 52. (1) Every bid shall be first examined to determine if it:
 - (a) meets the minimum of eligibility requirements stipulated in the bidding documents,
 - (b) has been duly signed,
 - (c) is substantially responsive to the bidding documents, and
 - (d) is generally in order.
- (2) A Procuring Entity may ask a bidder 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 the provisions of subsection (3) of this Section, the Procuring Entity may correct purely arithmetical errors that are discovered during the examination of bids.
- (5) The Procuring Entity shall give prompt notice of the correction to the bidder concerned.
- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations:
 - (a) with respect to clauses in an offer:
 - (i) unacceptable sub-contracting,

- (ii) unacceptable time schedule if time is of the essence,
 - (iii) unacceptable alternative design, and
 - (iv) unacceptable price adjustment.
- (b) with respect to the status of the bidder:
 - (i) the fact that he is ineligible or not prequalified.
- (c) with respect to bid documents an unsigned bid; and
- (d) with respect to time, date, and location for submission:
 - (i) any bid received after the date and time for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, bid 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 reasons for rejection shall be sent and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - (a) the use of codes,
 - (b) acceptable difference in standards,
 - (c) acceptable difference in material,
 - (d) acceptable alternative design,
 - (e) alternative workmanship
 - (f) modified liquidated damages,
 - (g) omission in minor items,
 - (h) arithmetical errors,
 - (i) sub-contracting that is unclear and/or questionable,
 - (j) different method of construction,
 - (k) difference in final delivery date, where there are no serious consequences,
 - (l) difference in delivery schedule, where there are no serious consequences,
 - (m) completion period where these are not of essence,
 - (n) non-compliance with some technical local regulations,
 - (o) payment terms, and
 - (p) any other condition that has little impact on the bid.
- (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or 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 bidder and, where applicable, an offer made for the correction of the minor deviation.

- (13) Where a bidder does not accept the correction of the minor deviation, his bid shall be rejected.
- (14) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
- (15) For the rejection of a bid, a written notice shall be given promptly to the bidder.

53. (1) For the evaluation and comparison of bids that have been adjudged *Evaluation of Bids* Bids as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (2) The objective of bid evaluation shall be to determine and select the best evaluated responsive bid from the bidders that have responded to the bid solicitation.
 - (3) In the course of its determination of the best evaluated responsive bid from the bidders that responded to the solicitation, the Procurement Board shall, in particular, undertake the following as applicable:
 - (a) checking of deviation
 - (b) checking of omissions and quantification of same
 - (c) application of discounts, where provided
 - (d) clarification with bidders having questionable minor deviation
 - (e) quantification in monetary terms of such questionable deviations
 - (f) conversion to single 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 bids, where justifiable
 - (l) recommendation for award, and
 - (m) writing up of the bid evaluation report.
 - (4) All relevant factors, in addition to prices, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
 - (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents, and shall include:
 - (a) for goods, among others, cost of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility, of the equipment, availability of services and spare parts, related training, safety, environment benefits or losses by damages.

- (b) for works, in addition to factors stipulated in Section 48(1) of this Law, and subject to 48(2) of this Law, if time is a critical factor, the value of early completion, and
 - (c) the value of early completion shall not be taken into account unless, in conformity with the criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late completion.
- (6) When bid prices are expressed in two or more currencies, the prices of bids shall be converted to Nigerian Currency, according to the exchange rate of the date specified in the solicitation documents.
- (7) (a) Regardless of whether bidders were pre-qualified or not, the authenticity of the information provided in the bid by the best evaluated responsive bidder, with respect to its capacity and resources to successfully perform the contract, shall be confirmed before the award of contract. An affirmative post-qualification shall be a prerequisite for award of the Contract to the Bidder.
- (b) Where the best evaluated substantially responsive bidder fails the post-qualification checks, the bid shall be rejected, and the same checks shall be applied to the next ranked bid. The exercise shall continue until the Procuring Entity can achieve a positive post-qualification result within the list of bidders that have been found responsive to the solicitation documents.
- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or persons not officially concerned with the evaluation process until the successful bidder is notified of the award.
54. (1) A Procuring Entity may grant a margin of preference in the evaluation of bids, when comparing bids from domestic bidders with those from foreign bidders or when comparing bids from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign country.
- (2) Where a procuring entity intends to allow domestic preference, the bidding document shall clearly indicate any preference to be granted to domestic bidders and stipulate the criteria for eligibility for such preference.
- (3) Margin of Preference shall apply only to bids under International Competitive Bidding.
- (4) The Bureau shall by regulation from time to time set the limit and the formulae for computation of margins of preference and determine the contents of goods manufactured locally.

Domestic Preference

55. A Procurement Entity shall disqualify a bidder who submits documents containing false information or documents forged for purposes of qualification at any time, such disqualification shall be published in the State Official Gazette. *Disqualification of Bidder*
56. (1) Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, Procurement Entities shall not disclose information forwarded to them by bidders labeled as confidential, such information includes technical aspects, trade secrets and confidential information of bidders. *Confidentiality of Bids*
- (2) Confidential information contained in any bid concerning commercial, financial, or technical information or trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances.
57. (1) A Procuring Entity may, at any time prior to the acceptance of a bid, reject all bids, or cancel the procurement proceedings where: *Cancellation of Bidding Process*
- (a) all the bids are non-responsive
- (b) the price of the best evaluated bid is substantially higher than the applicable cost estimate
- (c) the goods, works or services are no longer required, or
- (d) it has been established that there has been collusion among bidders.
- (2) Written notice of the rejection of all bids, or cancellation of the procurement proceedings, shall be given to all bidders that submitted bids.
- (3) There shall be no invitation to re-bid for the procurement on the same specifications and contract conditions unless the rejection of all bids or cancellation of procurement proceedings is made on a ground specified in subsection (1)(a) or (b).
- (4) Where the invitation for the procurement is to be repeated, the reason for the rejection of all bids or the cancellation of the procurement proceedings shall be examined by the Procuring Entity, and the Technical Specifications, or the Contract Conditions shall be suitably modified.
58. (1) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation. *Acceptance of Successful Bids / Award of Contract*
- (2) Notwithstanding the provision of subsection (1) of this Section and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the Procuring Entity can show good grounds derived from the provisions of this Law to that effect.

- (3) There shall be no negotiation between a Procuring Entity and a selected bidder or other bidders except in such special circumstances as may be prescribed.
- (4) Notice of the acceptance of the bid shall immediately be communicated to the successful bidder, after obtaining approval from the applicable approving authority.
- (5) A successful bidder may be asked to submit a Performance Security and sign the Contract within a period specified in the bidding documents.
- (6) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine material and inputs in execution
- (7) Where the bidder whose bid has been accepted fails to sign a contract when required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the Procuring Entity shall cancel the award and select the next ranked bidder from among the remaining responsive bidders for the award. The bidder awarded a Contract but fails to sign the Contract or provide the required Performance Security shall forfeit the Bid Security. Subsections (5) to (7) shall apply to the new selection.
- (8) Accounting Officers of Procuring Entities shall ensure that all Contracts are denominated in Nigerian Currency, except in exceptional circumstances
- (9) Procuring Entities shall promptly publish, in such manner as may be prescribed, the notice of every procurement award.

59. Procuring Entities shall promptly, on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful, where the request for such debriefing was submitted within 30 days of the publication referred to in section 52(9).

Debriefing of Unsuccessful Bidders

60. (1). In addition to any other regulations as may be prescribed by the Bureau, a contractor may be provided with an Advance payment of not more than 20% of the contract value.
- (2) Advance payment shall be subject to the following:
 - (a) in the case of National Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the Procuring Entity, and
 - (b) in the case of International Competitive Bidding, an unconditional bank guarantee issued by a bank acceptable to the Procuring Entity.
- (3) Once an Advance payment has been made to a contractor, no further payment shall be made to such contractor without an

Advance Payments

interim performance certificate issued in accordance with the contract agreement.

61. (1) Prior to the signing of the contract, the successful bidder may be required in the circumstances deemed necessary by the Bureau as a further measure of guarantee for the faithful performance of the procurement contract and compliance with the contractor's obligation under the contract, to present a performance security in such form and amount as specified in the bid solicitation. *Performance Security*
- (2) Performance Security, which shall not be less than 10% and not more than 20% of the Contract value shall be:
- (a) in the case of National Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the Procuring Entity, and
 - (b) in the case of International Competitive Bidding, an unconditional bank guarantee issued by a bank acceptable to the Procuring Entity.
62. (1) Notwithstanding the provisions of this Law, the Bureau may issue Certificate of 'No Objection' for a Procuring Entity to undertake a Two-Stage Bidding. *Two Stage Bidding*
- (2) A Procuring Entity shall undertake Two-Stage Bidding under the following conditions:
- (a) where it is not feasible for the Procuring Entity to develop detailed (b)specification for the goods or works, or in the case of non-consulting services, to identify their characteristics and where it seeks bids, proposals or offers on various means of meeting its needs in order to the most satisfactory solution to the procurement needs'
 - (b) where the nature of the goods 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 State Security and determines that the selected method is the most appropriate method of procurement ; or
 - (c) where the bidding 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 with respect to the process for open competitive bidding shall apply to Two-Stage Bidding except to the extent that those provisions are varied by this section.
- (4) The invitation documents:
 - (a) shall request suppliers or contractors to submit, in the first stage, bids that contain their proposals without an indication of 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 bid has not been rejected under an open competitive bidding procedure with respect to any aspect of its bid.
- (6) In the second stage, the procuring entity:
 - (a) shall invite suppliers or contractors whose bids have not been rejected to submit final bids with prices on a single set of 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 bids and ascertain the successful bid,
 - (c) may add new characteristics or criteria that conform with this Law,
 - (d) shall communicate to suppliers or contractors in the invitation to submit firm bids, any deletion, modification, or addition, and
 - (e) may permit a supplier or contractor who does not wish to submit a final bid to withdraw from the bidding process.
- (7) The final bids shall be evaluated and compared in order to ascertain the successful bid as defined in an open competitive bidding.

63. Where Open Competitive Bidding is not applicable for reasons of economy and efficiency and subject to the approval of the Bureau, a Procuring Entity may carry out the procurement of goods, works, or non-consulting services through other methods such as Restricted Bidding, Request for Quotations, Direct Procurement or Emergency Procurement. *Other Methods of Procurement*

64. (1) Subject to the approval of the Bureau, a Procuring Entity may by reasons of economy, efficiency, special skills, experience and proven track record of a contractor or service provider over a period of time, initiate procurement by means of restricted bidding if: *Restricted Bidding*

- (a) the goods, works or services are available only from a limited number of suppliers or contractors; or

- (b) the time and cost required to examine and evaluate a large number of bids is disproportionate to the value of the goods, works or services to be procured; or
 - (c) the procedure is used as an exception rather than norm.
- (2) Where a Procuring Entity engages in restricted bidding on the basis that:
- (a) the goods and services are available from a limited number of suppliers or contractors; it shall invite bids from all the suppliers and contractors who can provide the goods, works or services; and
 - (b) the time and cost required to examine and evaluate a large number of bids is disproportionate to the value of the goods, works or services; it shall select in a non-discriminatory manner the number of suppliers or contractors that will ensure effective competition.
- (3) The provisions of this Law regarding the open competitive bidding shall apply to selective bids proceedings, except to the extent that those provisions are varied by this section.

65. (1) A Procuring Entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the good, works, or non-consulting services required does not exceed a sum set as threshold for such procurement method in the procurement regulations. Procurement through Request for Quotations (RfQs) is also known as Shopping. *Request for Quotations*
- (2) Generally, quotations shall be obtained from at least three (3) unrelated suppliers or contractors
- (3) Each supplier or contractor from whom a quotation is requested shall:
- (a) be informed whether any factors other than the charges for the goods, works, or non-consulting 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 supplier or contractor with respect to a quotation.
- (5) The Contract shall be awarded to a qualified supplier or contractor that gives the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than the sum set in the regulations as threshold for such method, the Procuring Entity may not obtain the Bureau's approval.

66. A Procuring Entity may carry out a direct procurement where: *Direct Procurement*
- (a) goods, works, or non-consulting services are only available from a particular supplier or contractor, or if a particular supplier or

contractor has exclusive rights in respect of the goods, works or non-consulting services, and no reasonable alternative or substitute exists, or

- (b) there is an urgent need for the goods, works, or non-consulting services thereby making open competitive bidding or any method of procurement impractical due to unforeseeable circumstances giving rise to the urgency. Urgency, as a reason for direct procurement must not be as a result of dilatory conduct on the part of the Procuring Entity,
- (c) owing to a catastrophic event, there is an urgent need for goods, works, or non-consulting services, making it impractical to use other methods of procurement because of the time involved in using those methods.
- (d) a Procuring Entity which has procured goods, equipment, technology or services from a supplier or contractor determines that:
 - (i) additional supplies need to be procured from that supplier or contractor to ensure 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 Procuring Entity,
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification,
 - (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, experiment,
- (f) that by reasons of economy, efficiency, special skills, experience and proven track record of a contractor or service provider over a period of time, initiate procurement by means of restricted tendering if:
- (g) the goods, works or services are available only from a limited number of suppliers or contractors; or
- (h) the time and cost required to examine and evaluate a large number of bids is disproportionate to the value of the goods, works or services to be procured; or

67. (1) Subject to the approval of the Council, a procuring entity may initiate emergency procurement where:

*Emergency
Procurements*

- (a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an Act of God; or
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain them in their actual value or usefulness.

- (2) Subject to the approval of the Council, in an emergency situation, a procuring entity may initiate direct contracting of goods, works and services.
- (3) All procurements made under emergency shall be handled expeditiously having due regard to accountability.

PART VII

METHODS AND PROCEDURES FOR SELECTING CONSULTANTS

- 68. Where a Procuring Entity wishes to procure services for its needs which are precise and ascertainable:
 - (a) It shall publish, in at least two (2) national newspapers and the State procurement journal, a notice seeking for expression of interest in submitting proposals for the assignment: *Request for/Expression of Interest*
 - (b) The Bureau shall, from time to time, provide threshold and make regulations regarding low value services. Where the value of the services to be procured is within the threshold so stipulated, or with the approval of the Bureau, of such a low value service 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 submission of qualifications of the consultant to provide the service,
 - (ii) a submission 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.

- 69. (1) The Procurement Entity is responsible for the preparation of a shortlist of consultants to be considered to participate in the selection process. *Shortlisting of Consultants*
- (2) The shortlist may comprise only national consultants but shall comprise at least three and not more than six consultants.

- 70. (1) A Procuring Entity shall provide the Request for Proposals to the shortlisted consultants selected on the basis of quality, or the most qualified or single sourced consultant selected on the basis of the consultant's qualifications. *Request for Proposals*
- (2) A Procuring Entity may make direct requests to a limited number of consultants, requesting proposals for the provision of a service if:
 - (a) the services 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 in the interest of State/National defence and security or similar reason of confidentiality.

71. (1) The Procurement Entity shall use the Standard Request for Proposals prepared by the Bureau. The specific requirements for each assignment shall be introduced in data sheets and the special conditions of contract sections of the standard document.

*Contents of the
Request for
Proposals*

- (2) Request for proposals shall include:
 - (a) the name and address of the Procurement Entity,
 - (b) a requirement that the proposals are to be prepared in English language,
 - (c) the manner, place, and deadline for the submission of proposals,
 - (d) a statement to the effect that the Procuring Entity reserves the right to reject proposals,
 - (e) the criteria and procedures for the evaluation of the qualifications of the consultants,
 - (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications,
 - (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, unless otherwise expressly approved by the Bureau,
 - (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes,
 - (k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality, and criteria other than cost but stipulated in the request for proposals.
 - (l) the criteria to be used to determine the successful proposal, including any margin of preference to be used and the relative weight of the criteria,
 - (m) Where the Request for Proposal allows for pricing currencies other than the Nigerian currency, the currency that will be

used to evaluate and compare proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used,

- (n) a statement on alternatives to the characteristics of the consultancy services, contractual terms and conditions or other requirements set out in the request for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared,
 - (o) the name, functional title, and address of one or more officers or employees of the Procurement Entity who are authorized to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary,
 - (p) the means by which consultants may seek clarification on the request for proposals and a statement whether the Procurement Entity intends to convene a pre-proposal meeting of consultants, and
 - (p) the terms and conditions of the consultancy contract as known to the Procurement Entity and the contract form to be signed by the parties.
- (3) The Procuring Entity shall provide the same information to all the consultant requested to submit proposals.

72. (1) A consultant shall be allowed to request for clarification on the request from the Procuring Entity and such request may be made within a reasonable time to be specified.
- (2) A Procuring Entity may whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted consultants to whom the Procuring Entity has provided the request for proposals and shall be binding on those consultants.
- (4) If the Procuring Entity convenes a pre-proposal meeting with 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 request for clarifications.
- (5) The minutes shall be provided promptly before the deadline for submission of proposals to the consultants participating in the selection proceedings to enable them to take the minutes into accounts in preparing their proposals.

*Clarification and
Modification of
Request for
Proposals*

73. (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 twenty-eight (28) days between the issue of the notice or request and the deadline for submission. *Submission of Proposals*
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
- (5) The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any review by the Bureau is concluded.

74. (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 proposals. *Criteria for Evaluation of Proposals*
- (2) The consultants shall be notified of the criteria in the request for proposals and the criteria may comprise of the following:
- (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 extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific, and operational skills and the counter trade arrangements offered by consultant or service providers, and
- (e) security considerations.
- (3) A Procuring Entity may grant additional points for participation of nationals who are key staff in foreign and national firms. These points 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.

75. (1) The Procuring Entity shall select the successful proposal by either choosing the proposal with:
- (a) the lowest evaluated price or,
 - (b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (2) The Procuring Entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures in sub section (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.
76. (1) Where the Procuring Entity elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request of proposals.
- (2) The Procuring Entity shall compare the prices of those proposals that have attained a rating at or above the benchmark.
- (3) The Procuring Entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non-responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the Procurement Entity.
- (4) The name of the qualified consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The Procuring Entity shall prepare the minutes of public opening of financial proposal which shall be part of the evaluation report and shall retain the record.
- (6) The successful proposals shall be:
- (a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) of this section from price in the case of Quality and Cost-Based Selection (QCBS),
 - (b) the proposals with the lowest price in the case of Least-Cost Selection (LCS), or
 - (c) the highest ranked technical proposal within the budget in the case of Fixed Budget Selection (FBS).

General Selection Procedure

Procedure for Selection of Proposal where Price is a Factor

- (7) The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.

77. (1) Where the Procuring Entity elects to select proposals through Quality Based Selection (QBS), Consultant's Quantification (CQs) or Single Source Selection (SSS), it shall engage in negotiations with consultants in accordance with this Section.

Procedure for selection of proposal where price is not a factor

- (2) The Procurement Entity shall:
 - (a) establish a weight with respect to quality and price of the proposals,
 - (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this section,
 - (c) inform the consultants that attained ratings above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurement contract; and
 - (d) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant invited under subsection (2) (ii) 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 consultants for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.
- (4) The Procuring Entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

78. (1) The Quality and Cost Based Selection (QCBS) is the most preferred method because it provides adequate consideration for quality and cost, promotes competition, and provides the best in terms of value for money,

Condition for use of the Various Selection Methods for Consultants

- (2) A Procuring Entity may select consultants through Quality Based Selection (QBS) for the following types of assignment:
 - (a) complex or highly specialized assignments, where:
 - (i) it is difficult to define precise terms of reference and the required input from the consultants,
 - (ii) the client expects the consultants to demonstrate innovation in their proposals,
 - (b) assignments that have a high downstream impact where the objectives is to have the best experts, and

- (c) assignments that can be carried out in substantially different ways where proposals will not be comparable
- (3) A Procuring Entity may use Fixed Budget Selection (FBS) where the assignment is simple and can be precisely defined.
- (4) The Least Cost Selection (LCS) is appropriate for small value assignments subject to the threshold set by the Bureau, where the assignment is of a standard or routine nature and well-established practices and standards exist.
- (5) A Procuring Entity may adopt the Consultants' Qualification Selection (CQS) method for very small value assignments, subject to the threshold set by the Bureau, where the need to prepare and evaluate competitive proposals is not justified.
- (6) Single Source Selection (SSS) of consultant is appropriate where there is:
 - (a) only one eligible consultant,
 - (b) an emergency situation, or
 - (c) a follow-up assignment

PART VIII
CHALLENGE AND REVIEW

79. (1) Any bidder, contractor, or consultant that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on a Procuring Entity by this Law may seek review in accordance with this part. *Right to Challenge*
- (2) Notwithstanding subsection (1) of this section, the following shall not be subject to the review:
- (a) the choice of a Procurement Method, in case of goods, works, or non-consulting services,
 - (b) the choice of a Selection Method, in case of consulting services,
 - (c) the Regulations/limitations regarding a particular procurement proceeding,
 - (d) a decision by the Procuring Entity to reject bids, proposals, offers, or quotations.
80. (1) A complaint shall, in the first instance, be submitted in writing to the Accounting Officer of the Procurement Entity if the procurement contract has not already entered into force. *Review by Procuring Entity*
- (2) The Accounting Officer of the Procurement Entity shall not entertain a complaint unless it was submitted within fifteen (15) days after the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or when that supplier, contractor, or consultant should have become aware of those circumstances, whichever is earlier.

- (3) The Accounting Officer of the Procurement Entity may entertain a complaint or continue to entertain a complaint after the procurement contract has entered into force notwithstanding subsection (1).
- (4) A Procurement Entity shall attempt to resolve a complaint by mutual agreement of the supplier or contractor and the Procurement Entity.
- (5) The Accounting Officer of the Procurement Entity shall, within twenty-one days after the submission of the complaint, issue a written decision.
- (6) The decision shall:
 - (a) state the reasons for the decision; and
 - (b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.
- (7) If the Accounting Officer of the Procurement Entity does not issue a decision by the time specified in subsection (5), the supplier, contractor, or consultant, submitting the complaint is entitled to institute proceedings for administrative review under section 75.
- (8) After the institution of the proceedings, the competence of the Accounting Officer of the Procuring Entity to entertain the complaint ceases.

81. (1) A supplier, contractor, or consultant not satisfied with the decision of the Accounting Officer, may make a complaint to the Bureau within ten (10) working days from the date of communication of the decision of the Accounting Officer, and seek administrative review of any omission or breach by a Procuring Entity under the provisions of this Law and its Regulations.
- (2) Upon receipt of a complaint, the Bureau shall promptly:
 - (a) give notice of the complaint to the respective Procuring Entity and suspend any further action on the subject matter by the Procuring Entity until the Bureau settles the matter,
 - (b) unless it dismisses the complaint:
 - (i) prohibit the Procuring Entity from taking further actions on the subject matter,
 - (ii) nullify in whole or in part an unlawful act or decision made by the Procuring Entity,
 - (iii) declare the rules or principles that govern the subject matter of the complaint, and
 - (iv) revise an improper decision by the Procuring Entity or substitute its own decision for such decision.
- (3) Before taking any decision on a complaint, the Bureau shall notify all interested suppliers, contractors, or consultants of the complaint and may consider representations from the suppliers, contractors, or consultants, as well as from the respective Procuring Entity.

*Administrative
Review*

- (4) The Bureau shall make its decision within thirty (30) working days after receiving the complaint, stating the reasons for its decision and remedies granted; if any.
- (5) Where the Bureau fails to render its decision within the stipulated time, or the complainant is not satisfied with the decision of the Bureau, the complainant may appeal to the State 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 IX
DISPOSAL OF PUBLIC PROPERTY

- 82. (1) For the purposes of this Law every Procuring Entity shall also be a disposing entity. *Planning for Disposal of Public Property*
- (2) Before slating any public property for disposal, the Accounting Officer (whether acting in his/her own authority or at the direction of any superior or other authority) in charge of 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.
- (3) 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.
- (4) The disposal of assets referred to in subsection (3) 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.
- (5) All Procuring Entities shall assign responsibilities for the disposal of public property between the Procurement Unit and the Tenders Board.

- 83. (1) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale. *Methods of Disposal of Public Property*
- (2) The Bureau shall, with the approval of the Council:
 - (a) determine the applicable policies and practices in relation to the disposal of all public properties,
 - (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 documents, monitor implementation, enforce and set reporting standards that shall be used by all Procuring Entities involved in the disposal of public property.
- (3) The means of the disposal of public property shall include:
 - (a) sales and rentals,
 - (b) lease and hire purchase,

- (c) licences and tenancies,
- (d) franchise and auctions,
- (e) transfer from one government department to another with or without financial adjustments, and
- (f) offer to the public at an authorized variation.

PART X
PROCUREMENT CONTRACT

84. Each Procurement Entity shall maintain a register of awards, where the details of all procurement contracts awarded by the Procuring Entity shall be kept. Similarly, the Bureau shall maintain registers of awards, where the details of all procurement contracts awarded by each MDA shall be kept. *Register of Awards*
85. (1) A procurement contract shall include the terms and conditions that are set out in the bidding document or the request for proposals as well as: *Content of a Procurement Contract*
- (a) the names, addresses, telephone and fax number (where applicable), of the contact persons of the parties to the contract,
 - (b) the scope of work,
 - (c) the order of priority of contract documents,
 - (d) the contract price or its mode of determination,
 - (e) the conditions of acceptance,
 - (f) the conditions and mode of payment,
 - (g) the modalities of “force majeure”,
 - (h) the price adjustment mechanisms (if applicable),
 - (i) the milestones to be utilized for Lawing and payment,
 - (j) the provisions for termination of contract,
 - (k) the procedure for dispute resolution, and
 - (i) the applicable law
- (2) Any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed to by the parties in writing.
- (3) An amendment to the contract that will increase the contract value by more than 25% shall require the express approval of the Bureau
- (4) No formal amendment of the contract shall be required where the Procuring Entity wishes to make a variation or invoke a contract price adjustment that is expressly provided for in the contract.

86. (1) Subject to such specific terms of a procurement contract, as may be prescribed, payment shall be made on the basis of the submission of a proper invoice. *Payment*
- (2) Payments due to a supplier, contractor or consultant shall be made in accordance with the deadlines set out in the procurement contract.
87. (1) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra- Ministerial Office, Government Agencies, parastatals or corporations shall be deemed a delayed payment. *Interest on Delayed Payment*
- (2) All delayed payments shall attract interest at the rate specified in the contract document, or at the legal rate.
- (3) All contracts shall include terms, specifying the penalty for late payment of more than sixty (60) days.
88. Notwithstanding any other enactment:
- (a) a Procuring Entity may terminate a procurement contract for its convenience at any time upon determination that because of changed circumstances the continuation of the contract is not in the public interest, provided that such termination has been approved by the Bureau, and *Termination and Breach of Contract*
- (b) upon such termination, the contractor or consultant will be entitled to reimbursement of expenses incurred in the performance of the contract but will not be entitled to recover profits anticipated on the completion of the contract.

PART XI

PROCUREMENT INTEGRITY

89. No Procuring Entity shall deliberately reduce the value of a procurement package or divide the modalities of procurement in such a way as to avoid any monetary threshold set pursuant to this Law and the appropriate procurement method. *Splitting of Contract*
90. (1) Every Procuring Entity shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Bureau. *Duties of Ministries Department and Agencies*
- (2) Every Procuring Entity shall:
- (a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Law,

- (b) make an annual plan for budgeting purposes and plan each step of procurement for contracts in such manner as may be prescribed in this Law.
- (3) Every Procuring Entity shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.
- (4) Subject to this Law, all documents, notification, decisions and other communications referred to in this Law shall be in writing.
- (5) Where it is so prescribed, a Procuring Entity may authorize the use of other forms of communication, including electronic communication, for publication of invitation for bids, transmission of bidding documents, submission of bids, conclusion of contracts, and processing of payment.
- (6) Where other means of communication are used in accordance with subsection (5), the Procuring Entity shall ensure that:
 - (a) a record of the content of the communication is preserved,
 - (b) an adequate level of security and confidentiality is provided,
 - (c) the bidders' access to the records of the procurement proceedings is preserved, and
 - (d) any other requirement of this Law is complied with.

91. (1) The Bureau shall, with the approval of the Council, prescribe a code of conduct for all public officers, suppliers, contractors and service providers with regard to their standard 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 or of a procurement entity, supplier, contractor or service provider shall at all times be governed by the principles of honesty, accountability, transparency, fairness and equity.
 - (3) All officers of the Bureau, members of Procurement Boards and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by the Council.
 - (4) All persons in whose 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, the 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 procurements
 - (b) preparing solicitation documents
 - (c) receiving offers in response to any form of solicitation towards a procurement or disposal

Conduct of Public Officials

- (d) evaluating and comparing offers confidentially and in complete neutrality,
 - (e) protecting the interest of all parties without fear or favour, and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:
- (a) ensuring adequate time for preparation,
 - (b) complying with this Law and all regulations made under it, and
 - (c) maintaining strict confidentiality 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 relationship with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (9) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:
- (a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law, and
 - (b) not engage or participate in any commercial transaction involving the State Government, its ministries, extra-ministerial departments, corporations where his capacity as public officer is likely to confer any unfair advantage - pecuniary or otherwise - on him or any person directly related to him.
- (10) Any person engaged in the public procurement or disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationships that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (11) A conflict of interest exists where a person:
- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of government,
 - (b) possess a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed so to be, or make possible personal gain due to the person's ability to influence dealings,
 - (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or

otherwise inhibit the impartiality of the person's business judgments,

- (d) places by acts or omissions the procurement entity he represents or the Government in an equivocal, embarrassing or ethically questionable position,
 - (e) entertains relationships compromising the reputation or integrity of the Procuring Entity he represents or the Government,
 - (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the Procuring Entity he represents or the Government,
 - (g) create a source of personal revenue or advantage by using public property which comes into his hands either in the course of his work or otherwise, or
 - (h) discloses confidential information being either the property of his Procuring Entity, the Government or to a supplier, contractor or service provider to unauthorized persons.
- (12) A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.
- (13) After the opening of bids, each member of the Procurement Board shall fill a form indicating whether he or she is related to the bidders, and to rescue himself or herself if the relationship is of a prohibited kind.

92. (1) Subject to subsection (2), every officer involved in the procurement process shall file with the appropriate authority a declaration of his assets and liabilities in such form and manner as may be prescribed:

Declaration of Assets

- (a) within 30 days of his appointment and
 - (b) on the termination of his appointment.
- (2) Where, subsequent to a declaration made under subsection (1), his or her assets or liabilities are so altered as to be reduced or increased in value by not less than a predetermined amount, the member or officer shall make a fresh declaration.
- (3) No declaration of assets filed under this section shall be disclosed to any person except with the express consent of the member or officer concerned or by order of a Judge on reasonable cause shown.

93. (1) A bidder, contractor or consultant shall not engage in or abet any corrupt or fraudulent practice, including the offering or giving, directly or indirectly, of improper inducements, in order to influence a procurement process or the execution of a contract, including

Conduct of Bidders, Contractors and Consultants

interference in the ability of competing bidders to participate in procurement proceedings.

- (2) A bidder, contractor or consultant shall not engage in any coercive practice threatening to harm, directly or indirectly, any person or his property to influence his participation in a procurement process or affect the execution of a contract.
- (3) A bidder, contractor or consultant shall not engage in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive a Procuring Entity of the benefit of free and open competition.
- (4) A Procuring Entity shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) and promptly notify the rejection to the bidder concerned and to the Bureau.
- (5) Subject to paragraph (b), a bidder, contractor or consultant who is responsible for preparing the specifications or bidding documents for, or supervising the execution of a procurement contract or a related company of such a bidder or supplier shall not:
 - (a) participate in such bidding.
 - (b) apply to the several bodies (consultants, contractors or suppliers) that together may be performing the supplier's obligations under a turnkey or design-build contract.

94. (1) Subject to subsection (2) the Bureau may, under such conditions as may be prescribed, suspend or debar a potential contractor or consultant from participation in procurement on the following grounds:
- (a) supplying false information in the process of submitting a bid, prequalification application, expressions of interest, or proposals,
 - (b) collusion between the bidders/consultants or a bidder/consultant and a public official concerning the formulation of any part of the bidding documents or request for proposals,
 - (c) interference by a bidder or consultant with the participation of competing bidders or consultants,
 - (d) misconduct relating to the submission of bids/proposals, including corruption, price fixing, a pattern of under-pricing bids/proposals, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the contractor or consultant,
 - (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract, or

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Debarment of
Contractors and
Consultants*

- (f) conviction for an offence related to dishonesty or fraud in his professional activity.
- (2) A suspension of debarment of a contractor or consultant under subsection (1) shall not be effected unless the Bureau:
 - (a) reviews and considers the factual record developed by the Procuring Entity that proposes the action,
 - (b) gives reasonable notice to the contractor or consultant involved of the basis for the proposed action, and
 - (c) gives reasonable opportunity to the contractor or consultant to respond to the proposed action.
- (3) A period of debarment under subsection (1) shall not exceed 5 years.

PART XII
MISCELLANEOUS

- 95. (1) Not later than twelve (12) months from the enactment of this Law or at such other time as the Governor may consider appropriate, the Board shall design and set up a secure electronic portal to be known as the Bayelsa Government Electronic Procurement System which shall be the primary source of information for all public procurement matters and opportunities within the purview of this Law and its regulations issued under this Law. *E-procurement*
- (2) Subject to the provisions of this Law and its regulations, it shall be lawful for any Procuring Entity to consider any or all of its bids by electronic auction and or simulation on its electronic portal, provided that the use of the electronic system shall be transparent, efficient, and economical.
- (3) The Bureau in collaboration with procurement entities shall promptly and routinely publish procurement information on the Government electronic procurement system under Subsection (1) of this Section in Open Contracting Data Standards (OCDS) format, for all procurements that are above the threshold prescribed in the regulations or guidelines made pursuant to this Law.
- 96. Every procuring entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Bureau. *Records of procurement proceedings*
- 97. (1) The Bureau may conduct an investigation into 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 it necessary or desirable to prevent or detect a contravention of this Law. *Investigation by the Bureau*
- (2) The Bureau may in the course of its investigation:

- (a) at any time during normal office hours, enter the premises of Procuring Entity, bidder, supplier, contractor, or consultant concerned with the procurement proceedings under investigation,
 - (b) require an officer, employee or agent of the Procuring Entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document,
 - (c) search premises for any books, records account or documents,
 - (d) examine and make extracts from books, records, accounts or documents of any Procuring Entity, bidder, supplier, contractor, or consultant,
 - (e) 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 documents removed;
 - (f) require any officer, employee or agent of the Procuring Entity or bidder, supplier, contractor or consultant to explain an entry in their books, records, accounts or documents; and
 - (g) provide the investigator with information concerning the management or activities of the Procuring Entity or bidders as may be reasonably required.
- (3) The power of entry and search conferred by subsection (2) (i) and (ii) of this Section shall not be exercised except the Bureau has first obtained an order of the State High Court without the necessity of putting the Procuring Entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.
- (4) The Bureau shall, if satisfied that there has been a contravention of the provisions of this Law or any of its Regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which shall include recommending:
 -)a) nullification of the procurement proceedings,
 -)b) cancellation of the procurement contracts,
 - (c) ratification of anything done in relation to the proceedings, or
 - (d) a declaration consistent with any relevant provisions of this Law.
- (5) On completion of an investigation, the Bureau shall send a summary of its findings and recommendations to the concerned Procuring Entity, bidder, supplier, contractor or consultant.
- (6) The Bureau shall afford any Procuring Entity, bidder, supplier or contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under subsection (4) of this Section.

- (7) The Bureau may pursuant to an advice of a Procuring Entity, result of its review on a procurement or report of investigation by a relevant government Agency, issue a remediation order, requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required under the contract.

98. (1) Any person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than Five (5) years but not exceeding Ten (10) years with or without an option of fine.

Offences

(2) It shall be an offence to:

- (a) open or tamper with any sealed Bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of Bids or other documents,
- (b) enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned,
- (c) engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way,
- (d) directly or indirectly attempt to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract,
- (e) split procurement to enable the evasion of monetary benchmark set,
- (f) bid- rigging,
- (g) alter any procurement document with intent to influence the outcome of a tender proceedings,
- (h) use of fake documents or encouraging their use, and
- (i) willfully refuse to allow the Bureau or its officer to have access to any procurement record,

(3) Any person whilst carrying out his duties as an officer of the Bureau, or any Procuring Entity which contravenes any provision of this Law and its Regulations commits an offence and shall be liable on conviction to a cumulative punishment of:

- (a) a term of imprisonment of five (5) years with or without an option of fine, and
- (b) summary dismissal from government service.

(4) Any corporate body or firm that contravenes any provision of this Law and its regulation commits an offence and is liable on conviction to a cumulative penalty of:

- (a) being barred from all public procurement for a period not less than five (5) years; and
 - (b) a fine equivalent to 25% of the value of the procurement in issue.
- (5) Where a Corporate body or firm is convicted pursuant to subsection (4) of this Section, every Director of the Company shall be guilty of an offence and is liable on conviction to a term of imprisonment for not less than three (3) years but not exceeding five (5) years with or without an option of fine unless it is proven that the offence upon which the conviction was based was committed without his or her knowledge, consent or connivance.
- (6) An alteration pursuant to subsection (2) (g) of this Section shall include but not limited to:
 - (a) forged arithmetical correction or calculation,
 - (b) insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening, and
 - (c) request for clarification in a manner not permitted under this Law and its regulations.
- (7) 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.
- (8) Bid-rigging pursuant to subsection (2) (f) of this Section means an agreement between persons where:
 - (a) offers submitted have been prearranged between them; or
 - (b) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the State Treasury.
- (9) For the purpose of subsection (7) 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 totally or partially, directly or indirectly.
- (10) For the purposes of subsections (2), (5) and (8) 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/firm having an undue advantage over other bidders to the detriment of the State Treasury.

99. The Bayelsa State Public Procurement Law, 2009 (as amended) is repealed *Repeal*

100. In this Law, except where the context otherwise requires –

"Accounting Officer" means the person charged line supervision of the conduct of all procurement processes.

"Approving Authority" means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department or corporation.

"Bid" means a proposal given by a bidder prepared for the procurement entity according to the defined request of the entity and shall be the basis for concluding a contract for the delivery of goods, services or works.

"Bidder" means a participant or potential participant in procurement proceedings.

"Bidding Document" means any documents issued by a procurement entity on the basis of which bidders prepare bids; and includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, Laws of quantities, conditions of contract or other similar items.

"Bid Security" means the security instrument required to ensure that a bid will remain valid during the period stated in the bidding document.

"Certificate of No Objection" means the document evidencing and authenticating that due process and the provisions of this Law have been followed in the conduct of a procurement proceeding and allowing the procurement entity to enter into contract or effect payments to contractors or suppliers from the funds of the State Government.

"Challenge" means a challenge made pursuant to section 73.

"Consultant" means a person under contract to provide consultancy services to an MDA in relation to a procurement contract.

"Consultancy Services" means services of an intellectual and advisory nature, not incidental to the supply of goods or to the execution of works, such as design, supervision, training, analysis, auditing, software development, and similar services.

"Contractor" means a person who has entered into a procurement contract with an MDA.

"Council" means the Bayelsa State Council on Public Procurement.

"Debar" means the placing of a firm, company or natural person on a list of persons ineligible to participate in any procurement proceedings under this Law.

"Domestic bidder" means an indigene of Nigeria who is a supplier, contractor or service provider, or a corporate body with a majority shareholding owned by indigenes which is a supplier, contractor or service provider.

"Donor Organization" means an organization which provides, or joins in providing grants, credits or loans to the Government or its agencies.

"Goods" means objects of every kind and description including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well

as services incidental to the supply of tile goods such a freight and Insurance.

"**Governor**" means the Governor of Bayelsa State, Nigeria

"**House**" means Bayelsa State House of Assembly.

"**International Competitive Bidding**" means the solicitation of bids from both domestic and foreign contractors and suppliers.

"**Monetary threshold**" means the value limit in Naira or other currency set by the Bureau outside of which a Procurement Board or an approving authority may not award a procurement contract.

"**National Competitive Bidding**" means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigerian Law.

"**Officer**" means a person who is assigned to, or employed by, the Due Process Bureau, or a member of a procurement Board.

"**Open Competitive bidding**" means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works or services.

"**Other Services**" Means any services other than consultancy services or services incidental to the supply of goods or the execution of works.

"**Performance guarantee**" means a security guaranteeing the performance of a contract.

"**Pre-qualification**" of procurement contract tenderers is a procedure, prior to the issue of invitations, for bids for exceptional projects in which some potential contractors are notified prior to the general invitation.

"**Procurement**" means the acquisition by an entity to which this Law applies by any contractual means of goods, works, consultant services or other services.

"**Procurement contract**" means a contract between a procurement entity and a supplier, contractor or consultant resulting from procurement proceedings.

"**Procurement entity**" means any entity conducting public procurement under this Law.

"**Procurement Proceedings**" means the initiation of the process of effecting a procurement up to award of a procurement contract.

"**Procurement unit**" means the person or unit in the procurement entity that is dedicated to providing technical procurement services for the Procurement Board.

"**MDA**" means any Ministry, Department and Agency of the State Government.

"**Public Fund**" includes the Consolidated Revenue Fund of the State government, the Contingency Fund or such other funds as may be established by the Bayelsa State House of Assembly.

"**Public Official**" means a. an officer; b. a public officer or other person employed by a procurement entity.

"**Public Security**" means a condition where security takes priority over economic consideration and efficiency.

"**Responsive**" in relation to a bid, means responsive to the basic requirements of a bid regarding ability to perform and complete on time.

"**State**" means the Bayelsa State, Nigeria.

"**Supplier**" means a person delivering goods, works, consultancy services or other services.

"**Works**" means any work 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 materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.

101 This Law may be cited as the **Public Procurement Law, 2020** and shall come into force on the day of, 2020.

Short Title and Commencement

SCHEDULE

SUPPLEMENTARY PROVISIONS

1. Where the Council desires to obtain the advice of any person on any matter, the Council may co-opt such person to be a member for the meeting or meetings as may be required, and the person shall whilst so co-opted, have all the rights and privileges of a member of the Council save that he shall not be entitled to vote on any question or count towards a quorum. *Powers of the Council to co-opt*

PROCEEDINGS OF THE BOARD

2.
 - (1) The Council shall in each year hold a general meeting as its annual meeting, in addition to any other meetings in that year, and it shall specify the meeting as such. *Meetings of the Council*
 - (2) The Annual General Meeting shall be held within six (6) months after the close of each financial year and it shall be open to the public who shall be given adequate notice of the meeting and salient points from the annual report.
 - (3) The Council shall ordinarily meet for dispatch of business at such times and places as the Chairman may from time to time appoint, but not less than three (3) times in any financial year.
 - (4) The Chairman shall preside at all meetings of the Council when he is present, and when he is not present any other member of the Council may be appointed by the members present at the meeting to preside.
 - (5) Where not less than five members of the Council request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Council for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Council for those purposes within fourteen (14) working days
 - (6) Notwithstanding anything in the foregoing provisions of this paragraph the first ordinary meeting of the Council shall be summoned by the Governor, who may give such directions as he thinks fit in respect of the procedures to be followed at the meeting.
3.
 - (1) All questions at a meeting of the Council shall be determined by a majority vote of members of the Council present and voting, being members who under this paragraph are entitled to vote at such meeting. *Quorum*
 - (2) At any meeting of the Council, each member other than the Director General of the Bureau shall have a deliberative vote, and if there is

equality of votes, the Chairman of the meeting shall, have a second or casting vote.

4. (1) Subject to the provisions of this Law, the Council may make standing orders with respect to the holding of meetings of the Council, the notices to be given of such meetings, the proceedings at the meetings, the keeping of minutes of such meetings, custody or the production for inspection of such minutes. *Standing Order*
- (2) Subject to any standing order made under subparagraph (1) of this paragraph, the procedure of the Council with respect to the holding of meetings shall be such as the Council may from time to time determine.
5. (1) A member of the Council who is in any way directly or indirectly interested in a transaction or project of the Council shall disclose the nature of his interest at a meeting of the Council, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Council with respect to that transaction or project. *Disclosure of interest by members of the Council*
- (2) For the purpose of subparagraph (1) of this Paragraph a general notice given at a meeting of the Council by a member to the effect that he is interested with any trade or business or he is a member of a specified company. or firm and is to be regarded as interested in any transaction or project of the Council concerning that trade, business, company or firm, shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.
- (3) A member of the Council may not attend in person a meeting of the Council in order to make a disclosure which he is required to make under this Paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.
6. (1) The Common Seal of the Council shall be such as may be determined by the Council, and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Director General/Secretary, or of some other members authorised generally or specifically by the Council to act for that purpose. *Common seal*
- (2) Any document purporting to be a document duly executed under the common seal of the Board shall be received in any Court and shall, unless the contrary is proved, be deemed to be so executed.
7. The validity of any Proceeding of the Council shall not be affected by any vacancy in the membership of the Council or any defect in the appointment of a member to the Council, or by reason that a person not entitled to do so took part in the proceeding. *Validity of Proceedings*

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



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MR. ADOGU, TENEDIA KENT

Ag. Clerk of the House

Assented the TH 14TH day of **DECEMBER**, 2020.



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SENATOR DOUYE DIRI

Governor of Bayelsa State