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HOUSE OF ASSEMBLY
OGUN STATE OF NIGERIA
THE SEVENTH LEGISLATURE (2011-2015)
ENROLLED HOUSE BILL NO. 43/OG/2013

SPONSOR: HON. BANKOLE, OLUSOLA A.
CO-SPONSORS: HON. OBAFEMI, JOHN
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HON. AKINTAN, JOB OLUFEMI

NO. 43

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OGUN STATE OF NIGERIA
SENATOR IBIKUNLE AMOSUN, FCA
Governor of Ogun State
A BILL FOR A LAW TO

ESTABLISH THE STATE COUNCIL ON PUBLIC PROCUREMENT AND THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITIES RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN OGUN STATE AND FOR RELATED MATTERS

BE IT ENACTED by the House of Assembly of Ogun State, Nigeria as follows:

1. This Law may be cited as the Public Procurement Law, 2014.
2. In this Law, unless the context otherwise requires,

- "Accounting Officer" means the person charged with conduct of all procurement processes;
- "Approving Authority" means the person charged with overall responsibility for the functioning of a Ministry, Extra-Ministerial Department, Corporation, or Parastatal;
- "Assets" include tangible and intangible things which have been or may be sold or procured for consideration;
- "Bid Security" means a form of security assuring the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid;
- "Certificate of No Objection" means the document issued prior to contract award to ensure due process has been followed in the procurement falling within a monetary threshold set by Bureau;
- "Contract" means an agreement entered in writing;
- "Contractor or Supplier" means any potential party to a

Date of Commencement
Short Title Interpretation

48. procurement contract with the procuring entity and includes
49. any service provider, corporation, partnership, individual, sole
50. proprietor, joint stock company, joint venture or any other
51. legal entity through which business is conducted;
52. "Debar" the placing of a firm/company or natural person
53. on a list of persons ineligible to participate in any procurement
54. proceedings under this Law;
55. "Excessive Price" means a monetary value proposed by
56. a bidder for any procurement which is in the estimation of
57. the Bureau unreasonable and injudicious after consideration
58. of the actual value of the item in question plus all reasonable
59. imputations of cost and profit.
60. "Goods" means object of every kind and description
61. including raw materials, products and equipment and objects
62. in solid, liquid or gaseous form and electricity as well as
63. services incidental to the supply of the goods;
64. "Interim Performance Certificates" means documents
65. issued as evidence that a contractor or supplier has performed
66. its obligations under a procurement contract up to a level
67. stipulated by the contractor but not meaning completion;
68. "International Competitive Bidding" means the
69. Solicitations of bids from both domestic and foreign
70. contractors and suppliers;
71. "Margin of Preference" means the extra mark up on
72. price allowed any domestic contractor or supplier bidding
73. under International Competitive Bidding without being
74. otherwise disadvantageous to the bid in terms of price;
75. "Monetary Threshold" means the value limit in Naira set
76. by the Bureau outside of which an approving authority may
77. not award a procurement contract or carry out any other
78. activity specified;
79. "Negotiation" means discussions to determine the terms
80. and conditions of a contract or procurement;
81. "Open Competitive Bidding" means the offer of prices
82. by individual or firms competing for a contract, consultancy
83. services, privilege or right to supply specified goods, works,
84. construction or service;
85. "Person" includes any body of persons, corporate or incorporate;
86. "Procurement Proceedings" means any undertaking being
87. done by a public body engaged in procurement and includes
88. a Ministry, Extra-Ministerial Office, Government Agency,
89. Parastatals and Corporation;
90. "Procuring Entity" means any public body engaged in
91. procurement and includes a Ministry Extra-Ministerial Office,
92. Government Agency, Parastatals and Corporation;
93. "Public Procurement" means the acquisition of goods,
94. works and services by a procuring Entity;
95. "Relevant Authority" includes the Economic and Financial
96. Crimes Commission, the Independent Corrupt Practices
97. Commission and the State Civil Service Commission;

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"Restitution" means refund of the money involved or forfeiture of any vital property procured with such money;
"Services" means the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction;
"Solicitation Documents" means the bid solicitation documents for solicitation of offers, proposals or quotation any object of procurement other than goods, works or construction;
"State Competitive Bidding" means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigerian Law;
"Substantially Responsive" means the response to bid solicitations which give answers to virtually all the needs of a procuring entity as stipulated in the bid solicitation documents;
"Supplier" means a real or legal person that provides supply of goods, contracting of works or consultants;
"Validity Period" means the period during which a bidder cannot withdraw the bids or to remove any components of the bid;
"Works" means all works associated with the construction, reconstruction, demolition repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials decoration and finishing as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, provided that the value of those services does not exceed that of the construction itself.

There is hereby established, the Ogun State Council on Public Procurement.

The Council shall consist of:

- (a) the Commissioner for Budget and Planning who shall be the Chairman of Council;
- (b) the Representatives of the following not below the rank of a Director;
 - (i) the Commissioner for Finance;
 - (ii) the Attorney-General and Commissioner for Justice;
 - (iii) the Secretary to the State Government;
 - (iv) the Head of Service;
 - (v) the Economic Adviser to the Governor;
- (c) Five (5) Part-Time members to represent;
 - (i) Chartered Institute of Purchasing and Supply Management of Nigeria.
 - (ii) Nigerian Bar Association in the State;
 - (iii) Ogun State Chamber of Commerce, Industry, Mines and Agriculture;
 - (iv) the State Branch of the Nigerian Society of Engineers;
 - (v) representative of Professional Accounting Bodies in Nigeria
- (d) the Director-General of the Bureau who shall double as the Secretary of the Council.

Establishment of the
Ogun State Council on
Public Procurement
Membership of the
Council

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- (2) Notwithstanding the provisions of Sub-section (1), the Council may Co-opt any person to attend its meeting but the person so Co-opted shall not have a casting vote or be counted towards quorum.
- (3) For the purpose of this Law, quorum shall be seven (7) Members; The Director-General shall hold office on such terms and conditions as may be specified in his letter of appointment.
- (4) The Members of the Council excluding Ex-officio Members and the Director-General of the Council shall hold office for a period of Three (3) Years and may be re-appointed for One further term and no more; the professional bodies mentioned in section four (4) of this law shall nominate two (2) of their members each from which the governor shall appoint one (1) each as part time members of the council.
- (5) The Members of the Council shall be appointed by the Governor.
- (6) A Member of the Council shall be removed from Office if he has -
- (a) by reason of infirmity of the mind or body become incapable of discharging his duties;
 - (b) been convicted of an offence which involves moral turpitude; or
 - (c) been involved in any act considered to be inimical to the interest of the Council or the State.
 - (d) If found guilty of breach of the code of conduct or other serious misconduct in relation to his duties;
 - (e) in the case of a person possessing professional qualification, if he is disqualified or suspended by properly constituted authority from practising his profession in any part of the World;
 - (f) in the case of a person who is a Member by virtue of the Office he occupies, if he ceases to hold the Office;
 - (g) if he becomes bankrupt or makes compromise with his creditors.
- (7) A Member may resign his membership by notice in writing, addressed to the Governor and his membership shall cease on the date of the acceptance of his resignation by the Governor.
- (8) The members of the Council shall be paid such remunerations and allowances as may be approved by the Governor.
- (9) The Council may regulate its proceedings.
- The Council shall:
- (a) consider, approve and amend the monetary and prior review threshold for the application of the provisions of this Law by procuring entities;
 - (b) consider and approve policies on public procurement;
 - (c) approve the appointment of the Directors of the Bureau;
 - (d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;
 - (e) approve changes in the procurement process to adapt to improvements in modern technology and world best practices; and
 - (f) give such other directives and perform such other functions as may be necessary to achieve this Law.

Functions of the Council

195. Part II-Establishment of the Bureau of Public Procurement
196. 6. (1) There is hereby established a Bureau to be known as the
197. Ogun State Bureau of Public Procurement (hereinafter
198. referred to as "the Bureau")
199. (2) The Bureau shall be a body corporate with perpetual
200. succession and a common seal, with power to sue and be
201. sued in its corporate name and to hold and dispose of
202. property, movable or immovable for the purpose of its functions.
203. (3) The Bureau shall serve as the Secretariat for the Council.
204. 7. The objectives of the Bureau are -
205. (a) the harmonization of existing government policies and
206. practices on Public Procurement and ensuring probity,
207. accountability and transparency in the procurement process;
208. (b) the establishment of pricing standards and benchmarks;
209. (c) ensuring the application of fair, competitive, transparent,
210. value-for money standards and practices for the
211. procurement and disposal of public assets and
212. service; and
213. (d) the attainment of transparency, competitiveness, cost
214. effectiveness and professionalism in the Public Sector
215. Procurement system.
216. 8. The Bureau shall -
217. (a) formulate the general policies and guidelines relating to
218. Public Sector Procurement for the approval of the Council;
219. (b) publicize and explain the provisions of this Law;
220. (c) subject to threshold as may be approved by the Council,
221. certify State procurement prior to the award of contract;
222. (d) supervise the implementation of established Procurement
223. Policies;
224. (e) monitor the price of Procurement Contracts, create
225. and maintain a State Database of Standard prices;
226. in synergy with the State Department of Statistics.
227. (f) publish the detail of contracts above thresholds in
228. the Procurement Journal;
229. (g) publish paper and electronic editions of the Procurement
230. Journal and maintain an archival system for the
231. Procurement Journal;
232. (h) maintain a State Database of the particulars and
233. classification and categorization of Contractors and
234. Service Providers by;
235. (i) collating and maintaining in an archival system,
236. all State Procurement Plans and Information; and
237. (ii) undertaking Procurement Research and Surveys;
238. (j) organize training and development programmes for
239. Procurement Professionals and all the staff of the Bureau;
240. (k) periodically conduct Procurement Surveys and
241. Research to determine the socio-economic impact of
242. public procurement policies and practices and to
243. accordingly advise the Council;
244. (l) prepare and update standard Bidding and Contract
245. documents;

Establishment

Objectives of the
Bureau

Functions of the
Bureau

246. (l) prevent fraudulent and unfair Procurement and where necessary apply administrative sanctions;
- 247.
248. (m) review the Procurement and award of Contract
249. Procedures of every entity to which this Law applies;
250. (n) arrange and perform Internal and External Procurement
251. Audit and submit such report bi-annually to Ogun State
252. House of Assembly
253. (o) develop, update and with the approval of the Council,
254. introduce related technology for improving Public
255. Procurement;
256. (p) establish a single Internet portal that shall, subject to
257. Freedom of Information Act 2011, serve as primary
258. and definitive source of all information on Government
259. Procurement containing and displaying all Public Sector
260. Procurement information at all times; and
261. (q) coordinate relevant training programs to build
262. Institutional capacity.
263. 9. The Bureau shall have power to:
264. (a) enforce the monetary and prior review threshold
265. approved by the Council for the application of the
266. provisions of this Law, by the Procuring Entities:
267. (b) subject to paragraph (a) of this Sub-section, issue
268. Certificate of "No Objection" for "Contract Award"
269. within the prior review threshold for all procurement
270. within the purview of this Law;
271. (c) where a reason exists;
272. (i) cause to be inspected or reviewed any procurement
273. transaction to ensure compliance with the
274. provisions of this Law;
275. (ii) review and determine whether any procuring
276. entity has violated any provisions of this Law; and
277. (d) debar any supplier, Contractor or service provider that
278. contravenes any provisions of this Law and regulations
279. made pursuant to this Law;
280. (e) maintain a State Database of contractors and service
281. providers and to the exclusion of all procuring entities
282. prescribe classifications and categorizations for the
283. companies on the Register;
284. (f) maintain a list of firms and persons that have been
285. debarred from Participating in procurement activity and
286. publish them in the Procurement Journal;
287. (g) call for such information, document, records and
288. reports in respect of any Procurement Proceeding
289. where a breach, wrongdoing, default, mismanagement
290. and or collusion has been alleged, reported or proved
291. against a procuring entity or service provider;
292. (h) recommend to the Council, where there are persistent
293. or serious breaches of this Law or regulations or
294. guidelines made under this Law;
295. (i) the suspension of Officers concerned with the
296. procurement or Disposal proceeding in issue;
297. (ii) the replacement of the head or any of the

Powers of the
Bureau

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- 301. (iii) members of the Procuring or Disposal unit of any entity or the Chairman of the Tenders Board as the case may be;
- 302. (iii) the discipline of the Accounting Officer of any procuring entity;
- 303. (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
- 304. (v) any other sanction that the Bureau may consider appropriate.
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- 308. (i) call for the production of books of accounts, plans and documents and examine persons or parties in connection with any Procurement Proceeding;
- 309. (ii) act upon complaints in accordance with the procedures set out in this Law;
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- 311. (k) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
- 312. (l) do such other things as are necessary for the efficient performance of its function under this Law;
- 313. (m) train personnel and build State-wide institutional capacities for efficient and effective Public Procurement and sustainable development;
- 314. (n) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- 315. (o) request for and obtain from any Procurement Entity information including reports, memoranda and audited accounts and other information relevant to its functions under this Law; and
- 316. (p) liaise with relevant bodies or institutions, National and International, for effective performance of its functions under this Law;
- 317.
- 318. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor on the recommendation of the Council after competitive selection.
- 319. (2) The Director-General shall be:
- 320. (a) the Chief Executive and Accounting Officer of the Bureau;
- 321. (b) responsible for the execution of the policies and day to day administration of the affairs of the Bureau; and
- 322. (c) a person who possesses not less than Fifteen (15) Years of relevant and adequate professional qualification and experience in Procurement and Supply Chain Management.
- 323. (3) The Director-General shall hold Office;
- 324. (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and
- 325. (b) on such terms and conditions as may be specified in his letter of appointment.
- 326. (4) Without prejudice to the provisions of this Law, the Director-General may be removed from Office at the instance of the
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Director-General
and Staff of the
Bureau

346. Governor for reason of gross misconduct, financial impropriety,
 347. fraud or manifested incompetence proven by the Council.
 348. 11. (1) The Council shall appoint the Principal Officers for the Bureau
 349. after competitive selection process;
 350. (2) The Principal Officers appointed under Sub-section (1) of
 351. this Section shall each have the requisite qualification and
 352. experience required for the effective performance of the
 353. functions of their respective Departments and the Bureau
 354. as specified under this Law;
 355. (3) The Council shall have power to modify the operational
 356. structure of the Bureau as may be necessary to enhance
 357. the performance of the Bureau's duties and functions under
 358. this Law.
 359. 12. (1) The Council may, appoint such Officers and other employees
 360. as may from time to time be deemed necessary.
 361. (2) The terms and conditions of service (including remuneration,
 362. allowances, benefits and pensions) of Officers and
 363. employees of the Bureau shall be as determined by the Council.
 364. (3) Without prejudice to the generality of Sub-section (1), the
 365. Council shall have power to appoint either on transfer or
 366. on secondment from the Civil Service in the State, such
 367. number of employees as may be required to assist the
 368. Bureau in the discharge of any of its functions under the
 369. Law and persons so employed shall be remunerated
 370. (including allowances) as the Council may consider
 371. appropriate. Such transfer or appointment shall be on
 372. competitive basis.
 372. 13. (1) The Council may, subject to the provisions of this law and
 373. within twelve (12) months of its inauguration, make staff
 374. regulation relating generally to the conditions of service of the
 375. employees of the Bureau and without prejudice to the
 376. foregoing, such regulations may provide for:
 377. (a) the appointment, promotion and disciplinary control
 378. (including dismissal) of employees of the Bureau; and
 379. (b) appeals by such employees against dismissal or other
 380. disciplinary measures.
 381. (2) Until such regulations are made, any Instrument relating to
 382. the condition of service of Officers in the Civil Service of the
 383. State shall be applicable.
 384. 14. Employees of the Bureau shall be entitled to pensions and
 385. other retirement benefits as prescribed under the Pension
 386. Reform Law, 2008 (as amended).
 387. 15. (1) The Bureau shall establish and maintain a fund, to be
 388. approved by the Council, into which shall be paid and credited:
 389. (a) the sums allocated pursuant to the Appropriation Law
 390. for the running of the Bureau;
 391. (b) all subventions, fees and charges for services rendered
 392. or publications made by the Bureau; and
 393. (c) all other assets which may, from time to time, accrue
 394. to the Bureau.

Principal
of the Bu

Other staff of the
Bureau

Staff Regulation

Pensions
Provisions

Funds of the
Bureau

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- 301. (iii) members of the Procuring or Disposal unit of any entity or the Chairman of the Tenders Board as the case may be;
- 302. (iv) the discipline of the Accounting Officer of any procuring entity;
- 303. (v) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
- 304.
- 305. (vi) any other sanction that the Bureau may consider appropriate.
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- 308. (i) call for the production of books of accounts, plans and documents and examine persons or parties in connection with any Procurement Proceeding;
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- 310. (j) act upon complaints in accordance with the procedures set out in this Law;
- 311.
- 312. (k) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
- 313.
- 314. (l) do such other things as are necessary for the efficient performance of its function under this Law;
- 315.
- 316. (m) train personnel and build State-wide institutional capacities for efficient and effective Public Procurement and sustainable development;
- 317.
- 318. (n) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- 319.
- 320. (o) request for and obtain from any Procurement Entity information including reports, memoranda and audited accounts and other information relevant to its functions under this Law; and
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- 322. (p) liaise with relevant bodies or institutions, National and International, for effective performance of its functions under this Law;
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- 330. 10. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor on the recommendation of the Council after competitive selection.
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- 332. (2) The Director-General shall be:
- 333. (a) the Chief Executive and Accounting Officer of the Bureau;
- 334. (b) responsible for the execution of the policies and day to day administration of the affairs of the Bureau; and
- 335. (c) a person who possesses not less than Fifteen (15) Years of relevant and adequate professional qualification and experience in Procurement and Supply Chain Management.
- 336.
- 337. (3) The Director-General shall hold Office;
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- 339. (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and
- 340.
- 341. (b) on such terms and conditions as may be specified in his letter of appointment.
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- 344. (4) Without prejudice to the provisions of this Law, the Director-General may be removed from Office at the instance of the
- 345.

Director-General
and Staff of the
Bureau

- 395. (2) The Bureau shall charge its fund to meet all its expenditure.
- 396. (3) The Council may make regulations for the Bureau:
- 397. (a) specifying the manner in which the assets or fund of
- 398. the Bureau are to be held, regulating the making of
- 399. payment into and out of the fund; and
- 400. (b) requiring the keeping of proper accounts and records
- 401. for the purposes of the fund in such form as may be
- 402. specified in the rules.
- 403. (4) The Bureau may, from time to time, apply the proceeds of
- 404. the fund for:
- 405. (a) the cost of administration of the Bureau;
- 406. (b) the payment of salaries, fees, and other remuneration
- 407. or payment by the Bureau of experts or professionals
- 408. appointed by the Bureau;
- 409. (c) the maintenance of any property acquired by or vested
- 410. in the Bureau;
- 411. (d) any expenditure connected with all or any of the
- 412. functions of the Bureau under this Law;
- 413. (e) any matter connected with or any of the functions of
- 414. the Bureau under this Law.
- 415. 16. (1) The Financial Year of the Bureau shall be the same as the
- 416. budgeting period of the State Government.
- 417. (2) Not later than 6 months before the end of the Financial
- 418. Year, the Bureau shall submit to the Council an estimate of
- 419. its expenditure and projected income during the next
- 420. succeeding year.
- 421. (3) The Bureau shall keep proper accounts and records of its
- 422. receipts, payments, assets and liabilities and shall in
- 423. respect of each financial year prepare a statement of
- 424. accounts in such form as the Council may direct.
- 425. (4) The Bureau shall within 6 months after the end of the financial
- 426. year to which the accounts relate cause the accounts to
- 427. be audited in accordance with guidelines supplied by the
- 428. Auditor-General of the State.
- 429. (5) The Bureau shall at the end of each financial year, prepare
- 430. and submit to the Council a report in such form as shall
- 431. accurately capture all the activities of the Bureau during
- 432. the preceding year and shall include in the report a copy of
- 433. the audited accounts of the Bureau for that year, both of
- 434. which shall be made public and widely disseminated.
- 435. 17. (1) Subject to the provision of this Law, no suit shall be commenced
- 436. against the Bureau before the expiration of 30 days after
- 437. written notice of an intention to commence the suit shall
- 438. have been served upon the Bureau by the intending claimant
- 439. or his agent; and the notice shall clearly and explicitly state:
- 440. (a) the cause of action;
- 441. (b) the particulars of the claim;
- 442. (c) the name and address of the legal practitioner of the
- 443. intending claimant;
- 444. (d) the relief being sought; and
- 445. (e) except the subject matter of the complaint is one

Financial Year and
Annual Report

Legal Proceeding

446. previously laid before the Bureau by the Claimant.
 447. Provided that on procurement matters, where the complaint
 448. has satisfied all required procedures for laying complaints,
 449. notice of intention to commence suit on a subject matter
 450. already dealt with through the complaint process is not required.
 451. (2) The Director-General of the Bureau, its Officers, employees
 452. or agents shall not personally be subject to any action,
 453. claim or demand by, or liable to any person in respect of
 454. anything done or omitted to be done in exercise of any
 455. functions or power conferred by this Law upon the Bureau,
 456. its Director-General, Officers, employees or agents.
 457. (3) A member of the Council or the Director-General or any
 458. Officer or employee of the Bureau shall be indemnified out of the
 459. assets of the Bureau against any liability incurred by him
 460. in defending any proceeding, whether civil or criminal, if the
 461. proceeding is brought against him in his capacity as a member,
 462. Director-General, Officer or other employee of the Bureau.
 463. (4) A notice, summons or other documents required or authorized
 464. to be served upon the Bureau under the provisions of this
 465. Law or any other Law or enactment may be served by
 466. delivering to the Director-General or by sending it by registered
 467. post and address to the Director-General or at the Principal
 468. Office of the Bureau.

Part III-Scope of Application

469. 18. (1) The Provisions of this Law shall apply to all procurement of
 470. goods, works, non-consulting services and services carried
 471. out by:
 472. (a) the State Government and all procuring entities in the
 473. State created by virtue of Legislative enactment; and
 474. (b) any public body in the State engaged in procurement,
 475. and shall include Ministries, Departments, Bureaux,
 476. Offices, Corporations and Parastatals, and all entities
 477. outside the foregoing description which derive any
 478. funds appropriated or proposed to be appropriated for
 479. any type of procurement described in this Law.

Scope of
Application

480. (2) The Provisions of this Law shall not apply to the procurement
 481. of goods, works, non-consulting services and services
 482. involving security matters unless the Governor's express
 483. approval has been first sought and obtained.

Part IV-Fundamental Principles of Procurements

484. 19. (1) Subject to any exemption allowed by this Law, all public
 485. procurement shall be conducted:
 486. (a) subject to the prior review thresholds as may from
 487. time to time be set by the Bureau;
 488. (b) based only on procurement plans supported by prior
 489. budgetary appropriation and issuance of a Certificate
 490. of No Objection to Contract Award from the Bureau;
 491. (c) by Open Competitive Bidding;
 492. (d) in a manner which is transparent, timely and equitable
 493. for ensuring accountability and conformity with this
 494. Law and regulations deriving therefrom;
 495.

496. (e) with the aims of achieving value for money and fitness for purpose;
497. (f) in a manner which promotes competition, economy and efficiency; and
498. (g) in accordance with the procedures and time lines laid down in this Law and as may be specified by the Bureau from time to time.
499. (2) Where the Bureau has set prior review thresholds in the procurement regulation, no funds shall be disbursed from the treasury or revenue account or any bank account of any procuring entity for procurement falling above the thresholds unless the cheque, payments or other form of request for payments is accompanied by a "Certificate of No Objection to an Award of Contract" duly issued by the Bureau.
500. (3) For all cases where the Bureau shall set the prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of "Certificate of No Objection" under this Law.
501. (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.
502. (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting together are jointly and severally liable for all obligations and/or responsibility arising from this Law and the non-performance or improper performance of contract awarded pursuant to this Law.
503. (6) All bidders, in addition to requirements contained in any solicitation documents shall;
504. (a) possess the necessary;
505. (i) professional and technical qualifications to carry out particular procurements;
506. (ii) financial capability; and
507. (iii) equipment and other relevant infrastructure.
508. (b) shall have adequate personnel to perform the obligations of the Procurement contracts;
509. (c) possess the legal capacity to enter into the Procurement contract;
510. (d) not be in receivership, or be the subject of any form of winding up petition or proceedings;
511. (e) have fulfilled all its obligation to pay taxes, pensions and social security contributions arising from operations in Nigeria;
512. (f) not have any Director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter; and
513. (g) accompany every bid with an affidavit disclosing whether or not, any Officer of the relevant Committees

546. of the procurement entity or Bureau is a former or
547. present Director, shareholder or has any pecuniary
548. interest in its bid and confirm that all information
549. presented in its bid are true and correct in all particulars.
550. (h) possess current Ogun State Council of Chambers of
551. Commerce, Industry, Mines and Agriculture
552. (OGUNCCIMA) Certificate of Membership
- (7) The procuring entity may require a bidder to provide
553. documentary evidence or other information it considers
554. necessary as proof that the bidder is qualified in accordance
555. with this Law and the solicitation documents and for this
556. purpose any such requirements shall apply equally to all
557. bidders.
- (8) Whenever it is established by a procuring entity or the
559. Bureau that any or combinations of the situations set out below
560. exist, a bidder may have its Bid or Tender excluded
561. from any particular Procurement Proceeding if:
- (a) there is verifiable evidence that any supplier
562. contractor or consultant has given or promised a gift
563. of money or any tangible item or has promised, offered
564. or given employment or any benefit, item or a service
565. that can be quantified in monetary terms to a current
566. or former employee of a procuring entity or the Bureau,
567. in an attempt to influence any action, or decision
568. making of any procurement activity.
- (b) a supplier, contractor or consultant during the last
569. three years prior to the commencement of the
570. procurement proceeding in issue, failed to perform or
571. to provide due care in performance of any public
572. procurement;
- (c) the bidder is in receivership or is the subject of any
573. type of insolvency proceeding or if being a private
574. company under the Companies and Allied Matters Act,
575. is controlled by a person or persons who are subject
576. to any bankruptcy proceeding or who have been
577. declared bankrupt and/or have made any compromises
578. with their creditors within two calendar years prior
579. to the initiation of the Procurement Proceeding;
- (d) the bidder is in arrears regarding payment of due taxes,
580. charges, pensions or social insurance contributions
581. arising from operations in Nigeria, unless such bidders
582. have obtained a lawful permit with respect to
583. allowance, deference of such outstanding payment
584. thereof in installments;
- (e) the bidder has been validity sentenced for a crime
585. committed in connection with a Procurement Proceeding,
586. or any other crime committed to gain financial profit; and
- (f) the bidder has in its management or is in any portion
587. owned by any person that has been validity sentenced
588. for crime committed to gain financial profit; and
- (g) the bidder fails to submit a statement regarding its
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- dominating or subsidiary relationship with respect to other parties to the proceeding and persons acting on behalf of the Procuring Entity participating in the same Proceeding or who remains in subordinate relationship to the proceedings.
- (9) In such cases the Procuring Entity shall inform the Bureau and person referred to in Sub-section (8)(a)-(g) in writing that the bid or tender in question has been excluded and the grounds for the exclusion and keep a record of same in the file pertaining to the public procurement proceeding in question.
- (10) All communications and documents issued by procuring entities and the Bureau shall be in the English Language.
- (11) All communications regarding any matter deriving from this Law or Proceeding of Public Procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (12) Every Procurement Entity shall maintain both file and electronic records of all Procurement Proceedings made within each financial year and the Procurement records shall be maintained for a period of ten (10) years from the date of the award.
- (13) Copies of all Procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:
- (a) information identifying the procuring entity and the contractors
 - (b) the date of the contract and
 - (c) the value of the contract; and
 - (d) the detailed records of the Procurement Proceedings.
- (14) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any Procurement Proceeding.
- (15) The burden of proving fulfillment of the requirement for participation in any Procurement Proceeding shall lie on the supplier or contractor.
- (16) A contract pertaining to goods, works and services shall be awarded to the lowest evaluated Responsive Bid from bidders substantially responsive to the Bid solicitation.
- (17) Notwithstanding Sub-section (16), the Bureau may refuse to issue a "Certificate of No Objection to Contract Award" on the grounds that the price is higher than the prevailing market price;
- (18) Pursuant to Sub-section (17), the Bureau may direct either that the Procurement Proceedings be entirely cancelled or that the Procuring Entity conducts a re-tender.
- (19) 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 this Law.
- (20) The Accounting Officer of a Procuring Entity has the responsibility to ensure that the provisions of this Law and regulations

647. laid down by the Bureau are complied with, and concurrent
648. approval by any Tenders Board shall not absolve the
649. Accounting Officer from accountability for anything done
650. in contravention of this Law or the regulations laid
651. down hereunder.
652. (21) Procurement and disposal decisions of a Procuring Entity
653. shall be taken in strict adherence to the provisions of this
654. Law and any regulations as may from time to time be
655. laid down by the bureau.
656. (22) Persons who have been engaged in preparing for a
657. procurement or part of the proceedings thereof may
658. neither bid for the procurement in question or any part
659. thereof either as main contractor or sub-contractor nor
660. may they cooperate in any manner with bidders in the
661. course of preparing their tenders.
662. (23) A Procuring Entity shall not request or stipulate that a
663. bidder should engage a particular subcontractor as a
664. requirement for participating in any Procurement
665. Proceedings.
666. (24) All procurement contracts shall contain provisions for
667. arbitral proceeding as the primary form of dispute
668. resolution.
669. (25) The value in procurement documents shall be stated in
670. Nigerian currency and where stated in a foreign currency
671. shall be converted to Nigerian currency using the
672. exchange rate of the Central Bank of Nigeria valid on the
673. day of opening a tender or bids.
674. (26) All procurement contracts shall contain warranties for
675. durability of goods, exercise of requisite skills in service
676. provision and use of genuine materials and inputs in execution.
677. **Part V-Organisation of Procurement**
678. 20. Subject to the monetary and prior review thresholds for
679. procurements in this Law as may from time to time be
680. determined by the Council, the following shall be the
681. approving authority for the conduct of public procurement
682. in the case of:
683. (i) a Government Agency, Parastatal or Corporation;
684. a Parastatal's Tender Board;
685. (ii) a Ministry or Extra-Ministerial Entity; the Ministerial
686. Tenders Board; and
687. (iii) a Local Government, the Local Government Tenders Board
688. 21. Subject to regulations as may from time to time be
689. made by the Bureau under the direction of the Council, a
690. Procuring Entity shall plan its Procurement by:
691. (i) preparing the needs assessment and evaluation;
692. (ii) identifying the goods, works or services required;
693. (iii) carrying out appropriate market and statistical
694. surveys and on that basis prepare analysis of the
695. cost implications of the Proposed Procurement;
696. (iv) aggregating its requirements wherever possible, both
697. within the Procuring Entity and between Procuring

698. Entities, to obtain economy of scale and reduce procurement cost;
- 699.
700. (v) integrating its Procurement expenditure into its yearly budget;
- 701.
702. (vi) Prescribing any method for effecting the Procurement subject to the necessary approval under this law; and
703. (vii) ensuring that the Procurement Entity functions stipulated in this section shall be carried out by the Procurement Planning Committee.
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707. 22. Subject to regulations as may from time to time be made by the Bureau with approval of the council, procuring entity shall, in implementing its procurement plans:
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- 709.
710. (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- 711.
- 712.
713. (b) 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;
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- 715.
716. (c) invite two credible persons as observers in every procurement process, one person each representing a recognised organisation;
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718. (i) private sector professional organisation, whose expertise is relevant to the particular goods or service being procured; and
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722. (ii) non-governmental organisation working in transparency, accountability and anti-corruption areas; the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organisations or associations.
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729. (u) obtain approval of the approving authority before making an award;
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731. (e) debrief the bid losers on request
732. (f) resolve complaints and disputes if any;
733. (g) obtain and confirm the validity of any performance guarantee;
- 734.
735. (h) obtain a Certificate of "No Objection" to Contract Award" from the Bureau within the prior review threshold as stipulated in Section 19 (3);
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738. (i) execute all Contract Agreements; and
739. (j) announce and Publicise the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.
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742. 23.(1) The Accounting Officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of Extra-Ministerial Departments and Parastatals, the General Manager, Executive Secretary or Officer of co-ordinate responsibility.
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- 748. (2) The Accounting Officer of every procuring entity shall have
- 749. overall responsibility for the planning and organisation of
- 750. tenders, evaluation of tenders and execution of all
- 751. procurements and in particular shall be responsible for:
- 752. (a) ensuring compliance with the provisions of this law by
- 753. his entity and liable in person for the breach or
- 754. contravention of the Law or any regulation made
- 755. hereunder whether or not the act or omission was
- 756. carried out by him personally or any of his subordinates
- 757. and it shall not be material that he had delegated any
- 758. function, duty or power to any person or group of persons;
- 759. (b) constituting the procurement planning committee and
- 760. its decisions;
- 761. (c) ensuring that appropriation is provided specifically for
- 761. the procurement in the State budget;
- 763. (d) integrating his entity's procurement expenditure into
- 764. its yearly budget;
- 765. (e) ensuring that no reduction of values or splitting of
- 766. procurements is carried out such as to evade the use
- 767. of the appropriate procurement method;
- 768. (f) Constituting the Evaluation Committee;
- 769. (g) liaising with the Bureau to ensure the implementation
- 770. of its regulations.

771, 24. (1) For each financial year, each procuring entity shall establish a Procurement Planning Committee.

Procurement Planning Committee

772. (2) The Procurement Planning Committee shall consist of:

- 773. (a) The Accounting Officer of the procuring entity or his
- 774. representative who shall chair the Committee.
- 775. (b) a representative of;
- 776. (i) the procurement unit of the procuring entity who
- 777. shall be the Secretary;
- 778. (ii) the unit directly in requirement of the procurement;
- 779. (iii) the financial unit of the procuring entity;
- 780. (iv) the planning, research and statistics unit of the
- 781. procuring entity; and
- 782. (v) the procuring entity with expertise in the subject
- 783. matter for each particular procurement.
- 784. (vi) the Ministry of Justice

785. 786. 25. (1) There is hereby established by this law in each procuring entity, a Tenders Board (in this law referred to as "the Tenders Board").

Tenders Board

- 787. (2) Subject to the approval of the Council, the Bureau shall,
- 788. from time to time, prescribe guidelines for the membership
- 789. of the Tenders Board.
- 790. (3) The Tenders Board shall be responsible for the award of
- 791. procurements of goods, works and services subject to the
- 792. prior review process of the Bureau where applicable.
- 793. (4) In all cases where there is a need for pre-qualification and/
- 794. or examination and evaluation of bids, the Chairman of the
- 795. Tenders Board shall constitute a technical evaluation Sub-
- 796. Committee, which shall be made up of professional Staff of
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698. Entities, to obtain economy of scale and reduce procurement cost;
- 699.
700. (v) integrating its Procurement expenditure into its yearly budget;
- 701.
702. (vi) Prescribing any method for effecting the Procurement subject to the necessary approval under this law; and
- 703.
704. (vii) ensuring that the Procurement Entity functions stipulated in this section shall be carried out by the Procurement Planning Committee.
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707. 22. Subject to regulations as may from time to time be made by the Bureau with approval of the council, procuring entity shall, in implementing its procurement plans:
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- 709.
710. (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- 711.
- 712.
713. (b) 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;
- 714.
- 715.
716. (c) invite two credible persons as observers in every procurement process, one person each representing a recognised organisation;
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719. (i) private sector professional organisation, whose expertise is relevant to the particular goods or service being procured; and
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722. (ii) non-governmental organisation working in transparency, accountability and anti-corruption areas; the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organisations or associations.
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729. (d) obtain approval of the approving authority before making an award;
- 730.
731. (e) debrief the bid losers on request
732. (f) resolve complaints and disputes if any;
733. (g) obtain and confirm the validity of any performance guarantee;
- 734.
735. (h) obtain a Certificate of "No Objection" to Contract Award" from the Bureau within the prior review threshold as stipulated in Section 19 (3);
- 736.
737. (i) execute all Contract Agreements; and
738. (j) announce and Publicise the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.
- 739.
- 740.
- 741.
742. 23. (1) The Accounting Officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of Extra-Ministerial Departments and Parastatals, the General Manager, Executive Secretary or Officer of co-ordinate responsibility.
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748. (2) The Accounting Officer of every procuring entity shall have
749. overall responsibility for the planning and organisation of
750. tenders, evaluation of tenders and execution of all
751. procurements and in particular shall be responsible for:
752. (a) ensuring compliance with the provisions of this law by
753. his entity and liable in person for the breach or
754. contravention of the Law or any regulation made
755. hereunder whether or not the act or omission was
756. carried out by him personally or any of his subordinates
757. and it shall not be material that he had delegated any
758. function, duty or power to any person or group of persons;
759. (b) constituting the procurement planning committee and
760. its decisions;
761. (c) ensuring that appropriation is provided specifically for
761. the procurement in the State budget;
763. (d) Integrating his entity's procurement expenditure into
764. its yearly budget;
765. (e) ensuring that no reduction of values or splitting of
766. procurements is carried out such as to evade the use
767. of the appropriate procurement method;
768. (f) Constituting the Evaluation Committee;
769. (g) liaising with the Bureau to ensure the implementation
770. of its regulations.
771. 24. (1) For each financial year, each procuring entity shall establish
772. a Procurement Planning Committee.
773. (2) The Procurement Planning Committee shall consist of:
774. (a) The Accounting Officer of the procuring entity or his
775. representative who shall chair the Committee.
776. (b) a representative of:
777. (i) the procurement unit of the procuring entity who
778. shall be the Secretary;
779. (ii) the unit directly in requirement of the procurement;
780. (iii) the financial unit of the procuring entity;
781. (iv) the planning, research and statistics unit of the
782. procuring entity; and
783. (v) the procuring entity with expertise in the subject
784. matter for each particular procurement.
785. (vi) the Ministry of Justice
786. 25. (1) There is hereby established by this law in each procuring
787. entity, a Tenders Board. (In this law referred to as "the
788. Tenders Board").
789. (2) Subject to the approval of the Council, the Bureau shall,
790. from time to time, prescribe guidelines for the membership
791. of the Tenders Board.
792. (3) The Tenders Board shall be responsible for the award of
793. procurements of goods, works and services subject to the
794. prior review process of the Bureau where applicable.
795. (4) In all cases where there is a need for pre-qualification and/
796. or examination and evaluation of bids, the Chairman of the
797. Tenders Board shall constitute a technical evaluation Sub-
798. Committee, which shall be made up of professional Staff of

Procurement Planning
Committee

Tenders Board

799. the procuring entity and the Secretary of the Tenders Board
800. who shall be the Chair of the Technical Evaluation Sub-
801. Committee.
802. (5) The decision of the Tenders' Board shall be communicated
803. to the Head of the Procuring Entity for implementation.
804. 26. (1) Where a Procuring Entity has made a decision with respect
805. to the minimum qualifications of suppliers, contractors or
806. service providers by requesting interested bidders to submit
807. applications, to pre-qualify it shall *set out precise criteria*
808. upon which it seeks to give consideration to the applications
809. and in reaching a decision as to which supplier, contractor
810. or service provider qualifies, shall apply only the criteria set
811. out in the pre-qualification documents and no more.
812. (2) Procuring Entities shall supply a set of pre-qualification
813. document to each supplier contractor or consultant that
814. request them, and the price that a Procuring Entity may
815. charge for the pre-qualification documents shall reflect only
816. the cost of printing and provision to suppliers or contractors
817. and consultants.
818. (3) The pre-qualification document shall include:
819. (a) instructions to prepare and submit pre-qualification
820. application;
821. (b) a summary of the main terms and conditions required
822. for the Procurement Proceedings.
823. (c) any documentary evidence or other information that
824. must be submitted by suppliers, contractors or
825. consultant to demonstrate their qualifications.
826. (d) the manner and place for the submission of
827. applications to pre-qualify and the deadline for the
828. submission, expressed as a specific date and time
829. which allows sufficient time for suppliers, contractors
830. or consultants to prepare and submit their application
831. taking into account the reasonable need of the
832. procuring entity; and
833. (e) any other requirement that may be established by the
834. procuring entity in conformity with this Law and
835. procurement regulations relating to the preparation and
836. submission of applications to pre-qualify and to the
837. pre-qualification proceedings.
838. (4) The procuring entity shall respond to any request by a
839. supplier, contractor or consultant for clarification of the pre-
840. qualification documents if the request is made at least Twenty
841. one (21) days before the deadline for the submission of
842. applications to pre-qualify.
843. (5) The response by the procuring entity shall be given within a
844. reasonable time which shall not be more than fourteen (14)
845. working days so as to enable the supplier, contractor or
846. consultant to make a timely submission of its application
847. to pre-qualify.
848. (6) The response to any clarification shall be communicated to
849. all the bidders who purchased the bids or received the

Pre-Qualification

850. proposal without identifying the source of the request.
851. (7) A procuring entity shall promptly notify each supplier,
852. Contractor or Consultant which submitted an application
853. to pre-qualify of whether or not it has been pre-qualified
854. and shall make available to any member of the general
855. public upon request the names of the Suppliers,
856. Contractors or Consultants who have been pre-qualified.
857. (8) Suppliers, Contractors or Consultants who have been pre-
858. qualified may participate further in the Procurement Proceedings.
859. (9) The Procuring Entity shall upon request communicate to
860. Suppliers, Contractors or Consultants who have not been
861. pre-qualified, the grounds for disqualification.
862. (10) As part of the post-qualification of bidders, the Procuring
863. Entity shall require Suppliers, Contractors or service
864. providers who have been pre-qualified to demonstrate their
865. qualifications again in accordance with the same criteria
866. used to pre-qualify the suppliers, contractors or consultants.
867. (11) The procuring entity shall promptly notify each supplier,
868. contractor or service provider requested to demonstrate its
869. qualifications again whether or not the supplier, contractor or
870. consultant has done so to the satisfaction of the procuring entity.
871. (12) The procuring entity shall disqualify any supplier,
872. contractor or service provider who fails to demonstrate
873. its qualification again if requested to do so.
874. **Part VI Procurement Methods (Works, Goods And Non-
875. Consulting Services)**
876. 27. (1) Except as provided by this Law, all procurements of works,
877. goods and non-consulting services shall be conducted
878. by Open Competitive Bidding.
879. (2) Any reference to Open Competitive Bidding in this Law
880. means the process by which a procuring entity, based
881. on previously defined criteria, effects public procurements
882. by offering to every interested bidder equal simultaneous
883. information and opportunity to offer the works, goods and
884. non-consulting services needed.
885. (3) The winning bid shall be the lowest evaluated responsive
886. bid from amongst bids which are adjudged responsive to
887. the bid with regards to specifications and other criteria
888. and conditions stipulated in the bidding documents.
889. 28. (1) Invitations to bid may either be by way of State
890. Competitive Bidding or International Competitive Bidding
891. and the Bureau shall from time to time set the monetary
892. threshold for which procurements shall fall under either system.
893. (2) Every invitation to State and International Competitive
894. bids shall, in the case of works, goods and non-consulting
895. services be advertised in at least two national newspapers
896. and one relevant internationally recognized publication,
897. any official websites of the procuring entity and the
898. Bureau as well as the Procurement Journal not less than
899. six weeks before the deadline for submission of the bids
900. for the goods and works, goods and non-Consulting Services.

Open
Bidding

901. 29. (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

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907. (2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

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910. (3) When the Procuring Entity requires Suppliers or Contractors submitting tenders to provide a bid security, the requirement shall apply to each Supplier or Contractor.

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913. 30. (1) All Bids in response to an Invitation to Open Competitive Bidding shall be submitted in writing and in addition to any other form stipulated in the tender documents, signed by an Official authorised to bind the Bidder to a Contract and placed in a sealed envelope.

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918. (2) All submitted bids shall be deposited in a secured tamper-proof bid box.

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920. (3) All Bids submitted shall be in English Language.

921. (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.

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923. (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.

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926. (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.

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929. 31. A procuring entity may:

930. (a) reject all bids at any time prior to the acceptance of a bid, without incurring any liability to the bidders; and

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933. (b) cancel the procurement proceeding in the public interest, without incurring any liability to the bidders.

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935. 32. (1) The period of validity for a bid shall be the period specified in the tender documents.

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937. (2) A procuring entity may request supplier or contractors to extend the period of validity for an additional specified period of time.

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940. (3) A supplier or contractor may refuse the request for the extension of bids, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.

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944. (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.

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946. (5) The modification or notice of withdrawal is effective, if it is received by the procurement entity before the deadline for the submission of tenders.

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949. 33. All Bids shall be submitted before the deadline or date specified in the tender documents or any extension of

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Bid Security

Submission of Bid

Rejection of Bid

Validity period of bids, modification and withdrawal of tenders

Bid Opening

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the deadline for submission and the Procuring Entity shall:

- (a) permit attendees to examine the envelopes in which the Bids have been submitted to ascertain that the Bids have not been tampered with;
- (b) cause all the Bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- (c) ensure that the opening takes place immediately following the deadline stipulated for the submission of Bids or any extension thereof;
- (d) ensure that a register is taken of all those present at the bid opening and the organisations they represent which are recorded and endorsed by the Secretary of the Tenders' Board or his delegate and any other official of the Bureau present; and
- (e) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the Bid opening.

All Bids shall be first examined to determine if they:

- (a) meet the minimum eligibility requirements stipulated in the Bidding documents;
- (b) have been duly signed;
- (c) are substantially responsive to the Bidding documents; and
- (d) are generally in order.

A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

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.

Notwithstanding Sub-section (3), the procuring entity may correct purely Arithmetical errors that are discovered during the examination of tenders.

The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the Tender.

A major deviation shall result in a rejection of Bid while a minor deviation shall be subject to clarification.

The following shall be considered as examples of major deviations:

- (a) With respect to clauses in an offer:
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of essence;
 - (iii) unacceptable alternative design; and
 - (iv) unacceptable price adjustment.
- (b) With respect to the status of the Bidder;

Bid Evaluation

- 1001. (i) the fact that he is ineligible or not pre-qualified, and
- 1002. (ii) the fact that he is uninvited;
- 1003. (c) with respect to Bid documents, an unsigned Bid;
- 1004. (d) with respect to time, date and location for submission:
- 1005. (i) any Bid received after the date and time for submission stipulated in the Solicitation Document; and
- 1006. (ii) any Bid submitted at the wrong location
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- 1010. (8) In cases of major deviations, Bids shall not be considered any further and where unopened, shall be returned as such to the bidder.
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- 1013. (9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
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- 1017. (10) Subject to any provision to the contrary, the following shall be considered as examples of minor deviations;
- 1018. (a) the use of codes;
- 1019. (b) alternative design;
- 1020. (c) modified liquidated damages;
- 1021. (d) omission in minor items
- 1022. (e) discovery of arithmetical errors;
- 1023. (f) sub-contracting that is unclear and questionable;
- 1024. (g) different methods of construction;
- 1025. (h) difference in final delivery date;
- 1026. (i) difference in delivery schedule;
- 1027. (j) completion period where these are not of essence;
- 1028. (k) non-compliance with some technical local regulation;
- 1029. (l) payment terms;
- 1030. (m) any other condition that has little impact on the Bid; and
- 1031. (n) literature, brochures, audited accounts, certificate of registration.
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- 1034. (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation; the following rules shall apply;
- 1035. (a) where the impact on the costs is minor, it shall be regarded as minor deviation;
- 1036. (b) in cases of minor deviations, written clarification may be obtained from the supplier or contractor and, where applicable, an offer made for the correction of the minor deviation.
- 1037. (c) where a supplier or contractor does not accept the correction of a minor deviation his Bid shall be rejected;
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- 1045. (d) at the stage of evaluation and comparison, all minor deviations shall be qualified in monetary terms.
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Evaluate
Compare
Bids

- 1050. (12) For the rejection of a Bid, a written notice shall be given promptly to the supplier.
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- 1052. 35. (1) For the evaluation and comparison of bids that have been adjudged valid for the purpose of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
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- 1056. (2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from bidders that have responded to the solicitation.
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- 1059. (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable:
 - 1060. (a) checking of deviations;
 - 1061. (b) checking of omissions with quantification of same;
 - 1062. (c) application of discounts, as applicable;
 - 1063. (d) clarification with bidders of questionable deviations;
 - 1064. (e) quantification with bidders of questionable deviations;
 - 1065. (f) conversion to common currency;
 - 1066. (g) calculation and tabulation of bid amount with domestic preference where applicable;
 - 1067. (h) determination of the lowest calculated prices in order of rank;
 - 1068. (i) post-qualification of bidders, where applicable;
 - 1069. (j) listing of rejection of bids, where applicable;
 - 1070. (k) decision of rejection of all bids where justified;
 - 1071. (l) recommendation for award; and
 - 1072. (m) writing up of the bid evaluation report.
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- 1077. (4) All relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
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- 1080. (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
 - 1081. (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
 - 1082. (b) for works, in addition to factors stipulated in Section 35 (1) and subject to Section 34(10) if time is a critical factor, the value of early completion; and
 - 1083. (c) the value of early completion under Section 34(10) shall not be taken into account unless in conformity with criteria pre-set in the
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- bidding documents, the conditions of contract provide for commensurate penalties. In case of late delivery.
- (6) Where bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate specified in the solicitation documents.
 - (7) If suppliers were pre-qualified, verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award may be denied to a Bidder who no longer has the capability or resources to successfully perform the contract.
 - (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to Bidders or to persons not officially concerned with the evaluation process until the successful Bidder(s) is notified of the award.
36. (1) The successful Bid shall be that submitted by the lowest evaluated responsive Bidder from the Bidders who responded to the Bid solicitation.
- (2) Notwithstanding Sub-section (1), the selected bidder need not be the lowest cost Bidder provided the Procuring Entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the acceptance of the Bid shall immediately be given to the successful Bidder.
37. (1) A Procuring Entity may grant a margin of preference in the evaluation of Tenders when comparing Tender from domestic Bidders with those from foreign Bidders or when comparing Tenders from domestic suppliers offering goods manufactured abroad.
- (2) Where a Procuring Entity intends to allow domestic preference, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and Contractors and the information required to establish the eligibility of a Bid for such preference.
- (3) Margins of preference shall apply only to Tenders under International Competitive Bidding.
- (4) The Bureau shall by regulation from time to time set the limits and the formula for the computation of margins of preference and determine the contents of goods manufactured locally.
38. (1) Subject to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 25% may be paid to a Supplier or Contractor who shall provide the following:
- (a) In the case of State Competitive Bidding, an unconditional bank guarantee or insurance bond

Award of Contract

Domestic preference

Mobilization Fee

1151. Issued by an institution acceptable to the procuring entity; and
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1153. (b) In the case of International Competitive Bidding, an unconditional bank guarantee issued by an institution acceptable to the procuring entity.
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1156. (2) Once a mobilization fee has been paid to any Supplier or Contractor, no further payment shall be made to the supplier or contractor without an Interim performance certificate issued in accordance with the contract agreement.
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1161. 39. The provision of a Performance Guarantee shall be a precondition for the award of any contract. Performance Guarantee
- 1162.
1163. 40. Payment for the procurement of goods, works, and services shall be settled Promptly and diligently. Payment
- 1164.
1165. 41. (1) Every procuring entity shall maintain a comprehensive record of procurement proceedings. Record Procure
- 1166.
1167. (2) The records and documents maintained by Procuring Entities on Procurement shall be made available for inspection by the Bureau, an Investigator appointed by the Bureau and the Auditor-General upon request and where donor funds have been used for the Procurement, donor Officials shall also have access upon request to Procurement files for the purpose of audit and review.
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1175. Part VII-Special and Restricted Method of Procurement
1176. 42. (1) Notwithstanding the provisions of this Law, the Bureau may issue Certificate of No Objection upon conditions hereinafter prescribed. Two St
- 1177.
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1179. (2) A Procuring Entity shall engage in Procurement by two-stage Tendering process
- 1180.
1181. (a) where it is not feasible for the Procuring Entity to formulate detailed specifications for the goods or works or in the case of service, to identify their characteristics and where it seeks Tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its Procurement needs;
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1188. (b) where the character 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 recover research and development cost;
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1201. (c) where the Tender proceedings have been utilized

1202. but were not successful or the Tenders were rejected
1203. by the Procuring Entity under an open competitive
1204. Bid procedure and the Procuring Entity considers
1205. that engaging in new tendering proceedings will not
1206. result in a Procurement Contract.
1207. (3) The provisions of this Law, as regards the process for
1208. open competitive Bidding shall apply to Two-Stage
1209. tendering proceedings except to the extent that those
1210. provisions vary from this section.
1211. (4) The invitation documents:
1212. (a) shall call upon Suppliers or Contractors to submit
1213. in the first stage of a Two-Stage Tendering
1214. Proceedings, initial Tenders which contain their
1215. proposals without a Tender Price; and
1216. (b) may solicit proposals that relate to technical
1217. quality or other characteristics of the goods,
1218. works or services as well as contractual
1219. terms and conditions of supply and may
1220. stipulate the professional competence and
1221. technical qualification of the suppliers or
1222. contractors.
1223. (5) The Procuring Entity may, in the first stage, engage
1224. in negotiations with any Supplier or Contractor
1225. whose Tender has not been rejected under an open
1226. competitive Bidding procedure with respect to any
1227. aspect of its Tender.
1228. (6) In the second stage of the two-stage Tender proceedings,
1229. the Procuring Entity;
1230. (a) shall invite Suppliers or Contractors whose Tenders
1231. have not been rejected to submit final Tenders with
1232. prices on a single set of specifications;
1233. (b) may, in formulating the specifications, delete
1234. or modify any aspect of the technical or
1235. quality characteristic of the goods, works
1236. or service to be procured together with any
1237. criterion originally set out in these tenders
1238. documents, evaluate and compare and
1239. ascertain the successful tenders;
1240. (c) may add new characteristics or criteria that conform
1241. to this Law;
1242. (d) shall communicate to suppliers or contractors in
1243. the invitation to submit final Tender any deletion,
1244. modification or addition; and
1245. (e) may permit a supplier or contractor who does not
1246. wish to submit final tenders to withdraw from the
1247. tendering proceedings.
1248. (7) The final tenders shall be evaluated and compared in
1249. order to ascertain the successful Tenders as defined in
1250. an open competitive Bid.

1251. 43. (1) Subject to the approval by the Bureau, a Procuring Entity
1252. may engage in procurement by means of restricted
1253. tendering if:
1254. (a) the good, works or non-consulting services are
1255. available only from a limited number of suppliers
1256. or contractors nationwide; and
1257. (b) the procedure is used as an exception rather than
1258. the norm.
1259. But the process shall follow the laid down procedure for
1260. Open Competitive Bidding.
1261. (2) Where a Procuring Entity engages in restricted tendering,
1262. (a) it shall invite Tenders from the Suppliers and
1263. Contractors who can provide the goods, works or
1264. service; and
1265. (b) it shall select in a non-discriminatory manner the
1266. number of Suppliers or Contractors to ensure
1267. effective competition;
1268. (3) For the purposes of Sub-section (2), the Procuring Entity
1269. shall cause a notice of the selected tendering
1270. proceedings to be published in the Procurement
1271. Journal.
1272. (4) The provisions of this Law regarding the Open
1273. Competitive Bidding Procedure shall apply to the selective
1274. tendering proceedings, except to the extent that those
1275. provisions are varied by this section.
1276. 44. (1) A Procuring Entity may carry out Procurements by
1277. requesting for quotations from Suppliers or Contractors
1278. where the value of the goods or works to be procured
1279. does not exceed a sum that shall be set in the
1280. Procurement Regulation.
1281. (2) Generally quotations shall be obtained from a minimum
1282. of three Contractors or Suppliers from within or outside
1283. the State
1284. (3) Each Contractor or Supplier from whom a quotation is
1285. requested shall;
1286. (a) be informed whether any factors other than the
1287. charges for the goods, works or services, such
1288. as any applicable transportation and insurance
1289. charge, custom duties and taxes are to be
1290. included in the price; and
1291. (b) give only one quotation and shall not be allowed
1292. to change or vary the quotation.
1293. (4) No negotiation shall take place between procuring
1294. entity and the contractor or supplier with respect
1295. to a quotation.
1296. (5) The procurement shall be awarded to the qualified
1297. contractor or supplier that gives the lowest evaluated
1298. responsive Bid.
1299. (6) Where the total value of the Procurement is not more
1300. than the sum that shall be set in the regulation, the

Resu
Tender

Request for
Quotation

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procuring entity may not obtain the Bureau's approval.
 A Procuring Entity may carry out any direct Procurement where:

- (a) goods, works or non-consultancy services are only available from a particular supplier or contractor or if a particular supplier has exclusive rights in respect of the goods, works or non-consultancy services, and no reasonable alternative or substitute exists;
- (b) a procuring entity which has procured goods, equipment, technology or non-consultancy services from a supplier or contractor, determines that:
 - (i) additional supplies need to be procured from that supplier or contractor because of standardization;
 - (ii) there is a need for compatibility with existing goods, equipment, technology or non-consultancy services, taking into account the effectiveness of the original Procurement in meeting the needs of the Procurement Entity;
 - (iii) the limited size of the proposed Procurement in relation to the original Procurement provides justification;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or non-consultancy services in question merits the decision;
 - (v) the Procuring Entity seeks to enter into a contract for experiment, study or development, except where the contract includes the production of goods in quantities to which there is commercial viability or recover research and development costs; or

The Procuring Entity:

- (a) may procure the goods, works or non-consultancy services by inviting a proposal or price quotation from a single Supplier or Contractor;
- (b) shall include in the record of Procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source Procurement.

A Procuring Entity may for the purpose of this Law, carry out an emergency Procurement where:

- (a) the Country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may

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- seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness;
- (c) a public project may be seriously delayed for want of an item of a minor value;
 - (d) there is an urgent need for the goods, works or non-consultancy services and engaging in tender proceeding or any other method of procurement is impractical due to unforeseeable circumstance giving rise to the urgency which is not as a result of dilatory conduct on the part of the Procuring Entity; or
 - (e) owing to a catastrophic event, there is an urgent need for the goods works or non-consultancy services, making it impractical to use other methods of procurement because of the time involved in using those methods.
- (4) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and non-consultancy services.
- (5) All procurement made under emergencies shall be handled expeditiously in conformity with principles of accountability, due consideration being given to the gravity of each emergency.
- (6) Immediately after the cessation of the situation warranting any emergency Procurement, the Procuring Entity shall file a detail report thereof with the Bureau which shall verify same and if appropriate, issue a Certificate of No Objection. The Bureau may from time to time approve the use of other Procurement methods such as Limited International Competitive Bidding and Force Account. The circumstances under which these Procurement methods shall be used shall be specified in the regulations.
- Part VIII-Procurement of Consultancy Services**
- (a) Where a Procuring Entity wishes to Procure services for its needs which are precise and ascertainable it shall solicit for the expressions of interest or applications to Prequalify to provide for services by publishing a notice to that effect in at least two national newspapers and the Procurement Journal
 - (b) provide for selective tendering and direct request for abridged proposals where services are of such low value stipulated from time to time by the Bureau
 - (c) provide for contents of such abridged proposals; and
 - (d) provide for Request for Proposals following

Other Procurement Methods

Introduction

1404.		shortlisting from an Expression of Interest process.	
1405.	48.	The Procuring Entity shall be responsible for preparing and implementing the project, selecting the consultant, awarding and subsequently administering the contract.	General Consideration
1406.			
1407.			
1408.		While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, five main considerations shall guide the selection process:	
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1412.		(a) the need for high-quality services;	
1413.		(b) the need for economy and efficiency;	
1414.		(c) the need to give all eligible consultants an opportunity to compete;	
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1416.		(d) Government's interest in encouraging the development of local capacity and	
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1418.		(e) the need for transparency in the selection process.	
1419.	49.	The Procuring Entity shall be responsible for preparing the TOR for the assignment. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants preparation of their proposals.	Terms of Reference (TOR)
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1425.	50.	The selection methods shall be based either on quality or a combination of quality and cost based on the threshold established by the Bureau. The different selection methods shall be defined in the regulations made pursuant to this Law.	Selection Methods
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1430.	51.	The Selection process shall include the following steps as applicable:	Selection Procedure
1431.			
1432.		(a) preparation of the Terms of Reference;	
1433.		(b) preparation of cost estimate and the budget, and short listing criteria;	
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1435.		(c) advertising;	
1436.		(d) Expression of Interests and preparation of the short list of consultants.	
1437.			
1438.		(e) preparation and issuance of the Request For Proposal (which should include the Letter of Invitation (LOI); Instructions To Consultants (ITC), the TOR and the proposed draft Contract;	
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1442.		(f) receipt of proposals;	
1443.		(g) evaluation of Technical Proposals and consideration of quality	
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1445.		(h) public opening of Financial Proposals;	
1446.		(i) evaluation of Financial Proposal;	
1447.		(j) final evaluation of quality and cost; and	
1448.		(k) negotiations and award of the contract to the selected firm.	
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1450.	52. (1)	Where a procuring entity wishes to procure services, an Expression of Interests shall be advertised in one national newspaper and the Procurement Journal	Expression of Interest to provide services
1451.			
1452.			
1453.	(2)	The expressions received shall be evaluated using the evaluation criteria disclosed in the advert.	
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1455. (3) A maximum of six (6) firms shall be shortlisted and issued
 1456. with the Request for Proposal.
 1457. (4) A short list shall be made of consultants for consulting
 1458. services within a set threshold in the Procurement
 1459. regulation provided that such consultants possess such
 1460. requisite skills.
 1461. 53. Request for Proposal shall include:
 1462. (1) (a) the name and address of the Procuring Entity;
 1463. (b) a requirement that the proposals are to be
 1464. prepared in the English language;
 1465. (c) the manner, place and deadline for the submission
 1466. of proposal;
 1467. (d) a statement to the effect that the Procuring Entity
 1468. reserves the right to reject proposals;
 1469. (e) the criteria and procedure for the evaluation of
 1470. the qualifications of the consultants.
 1471. (f) the requirement on documentary evidence or
 1472. other information that shall be submitted by
 1473. consultants to demonstrate their qualification;
 1474. (g) the nature and required characteristics of the
 1475. services to be provided and the time when the
 1476. services are to be provided;
 1477. (h) whether the Procuring Entity is seeking proposals
 1478. on various possible ways of meeting its needs;
 1479. (i) a requirement that the proposal price is to be
 1480. expressed in Nigerian Currency;
 1481. (j) the manner in which the proposal price is to be
 1482. expressed, including a statement on whether
 1483. the price covers elements apart from the cost
 1484. of services, such as reimbursement for
 1485. transportation, lodging, insurance, use of
 1486. equipment, duties or taxes;
 1487. (k) whether the procedure to ascertain the
 1488. successful proposal shall be based on the lowest
 1489. cost or quality and/or a combination of the lowest
 1490. cost, quality and criteria other than cost but
 1491. stipulated in the request for proposals; and
 1492. (l) a short list shall be made of only national consultants
 1493. for consulting assignment, contract within a set
 1494. of threshold in the procurement regulation
 1495. provided that the national consultants possess
 1496. such requisite skills.
 1497. (2) The Procuring Entity shall provide uniform information in
 1498. the request for proposals sent to all consultants.
 1499. 54. (1) A consultant shall be allowed to request for clarification on
 1500. the request for proposal from the Procuring Entity and such
 1501. requests may be made within a reasonable time to be
 1502. specified in the Request for Proposal.
 1503. (2) A Procuring Entity may, whether on its initiative or as
 1504. a result of a request for clarification by a consultant,

Content of
 Requests for
 Proposals

Clarification and
 Modification of
 Request for
 Proposals (RFP)

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- 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 at least fourteen (14) days before the deadline for the Submission of proposals to the consultants that received the Request for Proposal.
- (4) If the Procuring Entity convenes a pre-proposal conference, it shall prepare minutes of meeting containing all the issues discussed;
- (5) The minutes shall be provided to all the consultants participating in the selection proceedings to enable them take the minutes into account in their proposals at least fourteen (14) days before the deadline for the Submission of proposals.
55. (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 thirty (30) days between the issuance of the RFP and the deadline for Submission.
- (2) The Technical and Financial Proposals shall be submitted simultaneously in separate envelopes or in one envelope, depending on the selection method.
- (3) A proposal received after the deadline for Submission of proposals shall be returned to the sender unopened.
- (4) Where the two-envelope procedure applies, immediately after the deadline for Submission of proposals, the technical proposals shall remain sealed and kept in a secure Bid-box to be opened publicly.
- (5) The Evaluation Committee members shall not have access to or insights to the financial proposals until the completion of the technical evaluation, including Tender Boards review and approval, are concluded.
- (6) 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 and return their financial proposals within a period of fourteen (14) working days after the decision has been taken by the Procurement Entity.
- (7) Upon approval of Technical Evaluation Report by the Tenders Board, the financial proposals shall be opened publicly.
- (8) The Committee shall then carry out a combined technical and financial evaluation report for review and approval of the Tenders Board.
56. (1) The successful proposals shall be:
- (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.

Submission and
Evaluation of
Proposals

Negotiation and
Award of Contract

1557. (2) The consultant with the winning proposal shall be
 1558. invited for negotiations.
1559. (3) The final recommendation, including the minutes of
 1560. negotiation and draft contract, shall be submitted to
 1561. the Tenders Board for review and approval.
1562. (4) Upon approval by the Tenders Board, the winning
 1563. consultant shall be invited for contract signature. A
 1564. synopsis of the combined evaluation report should be
 1565. published in accordance with thresholds established
 1566. by the Bureau.
1567. Part IX-Procurement Surveillance and Review
1568. 57. (1) The Bureau may review and recommend for
 1569. investigation by any relevant authority any matter
 1570. related to the conduct of procurement proceedings by
 1571. a Procuring Entity, or the conclusion or operation of a
 1572. procurement contract if it considers that a criminal
 1573. investigation is necessary or desirable to prevent or
 1574. detect a contravention of this Law.
1575. (2) The relevant authority may in the course of
 1576. investigation:
1577. (a) require an Officer, employee or agent of the
 1578. Procuring Entity or Bidder, Supplier, Contractor or
 1579. consultant to produce any books, records
 1580. accounts or documents;
1581. (b) search premises for any books, records,
 1582. accounts or documents;
1583. (c) examine and make extracts from the copies of
 1584. books, records, accounts or documents of any
 1585. Procuring Entity, Bidder, Supplier, Contractor or
 1586. Consultant;
1587. (d) remove books, records, accounts or documents
 1588. of the Procuring Entity, Bidder, Supplier,
 1589. Contractor or Consultant for as long as may be
 1590. necessary to examine them or make extracts
 1591. from or copies of them but investigator shall give
 1592. a detailed receipt for the books, records,
 1593. accounts or documents removed;
1594. (e) require an Officer, employee or agent of the
 1595. Procuring Entity or Bidder, Supplier, or Contractor
 1596. or Consultant to:
1597. (i) explain an entry in the books, records, accounts
 1598. or documents; and
1599. (ii) provide the investigator with information
 1600. concerning the management or activities of
 1601. the Procurement Entity or Bidders as may
 1602. be reasonably required.
1603. (3) The Bureau may, pursuant to the advice of the
 1604. Procuring Entity, as a result of its review of a Procurement
 1605. or report of investigation by a relevant Government
 1606. agency issue a variation order requiring a Contractor

Bureau to
 recommend
 investigation

1607. at his own expense to repair, replace, or to do
 1608. anything in his or her contract left undone or found to
 1609. have been carried out with inferior or defective materials
 1610. or with less skill and expertise than required by the
 1611. contract of award;
1612. (4) The Bureau shall, if satisfied that there has been a
 1613. contravention of this Law, or any regulation in
 1614. procurement proceedings or a procurement contract,
 1615. take action to rectify the contravention, such action
 1616. shall include;
1617. (a) nullification of the procurement proceedings;
 1618. (b) cancellation of the procurement contract;
 1619. (c) ratification of anything done in relation to the
 1620. proceedings; or
 1621. (d) a declaration consistent with any relevant
 1622. provisions of this Law.
1623. (5) On the completion of the investigation, the relevant authority
 1624. shall, if an offence is disclosed take all necessary steps to
 1625. commence prosecution and inform the Bureau and the
 1626. Procuring Entity accordingly, but where no offence is
 1627. disclosed, the file shall be closed and the Bureau and
 1628. Procuring Entity shall be duly informed.
1629. 58. (1) A Bidder may seek administrative review for any
 1630. omission or breach by a procuring or disposing entity
 1631. under the provisions of this Law, or any regulations or
 1632. guidelines made under this Law, or the provisions of
 1633. Bidding documents.
1634. (2) A complaint by a Bidder against a procuring or disposing
 1635. entity shall first be submitted in writing to the Accounting
 1636. Officer within fifteen (15) working days from the date the
 1637. Bidder first became aware of the circumstances giving
 1638. rise to the complaint or should have become aware of the
 1639. circumstances, whichever is earlier.
1640. (3) On reviewing a complaint, the Accounting Officer shall
 1641. make a decision in writing within fifteen (15) working days
 1642. indicating the corrective measures to be taken, if any,
 1643. including the suspension of the proceeding where he
 1644. deems it necessary and giving reasons for his decision.
1645. (4) If the Bidder is not satisfied with the decision of the
 1646. Accounting Officer or the Accounting Officer does not
 1647. respond to the complaints within the period specified in
 1648. Sub-section 3 above, the bidder may make a complaint
 1649. to the Bureau within ten (10) working days from the date
 1650. of communication of the decision of the Accounting Officer.
1651. (5) Upon receipt of a complaint, the Bureau shall promptly:
1652. (a) Give notice of the complaint to the respective
 1653. procuring or disposing entity and suspend any
 1654. further action by the procuring or disposing entity
 1655. until the Bureau has settled the matter;
 1656. (b) unless it dismisses the complaint;

Complaint
 Mechanism

1657. (i) Prohibit a procuring or disposing entity from taking any further action;
- 1658.
1659. (ii) Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
- 1660.
1661. (iii) Declare the rules or principles that govern the subject matter of the complaint; and
- 1662.
1663. (iv) Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- 1664.
- 1665.
1666. (6) Before taking any decision on a complaint the Bureau shall notify parties concerned of the complaint and may take into account, representations from the parties.
- 1667.
- 1668.
1669. (7) The Bureau shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- 1670.
- 1671.
1672. (9) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the High Court within thirty (30) days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.
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1678. **Part X-Disposal of Public Property**
1679. 59. (1) The Bureau shall, with the approval of the Council:
1680. (a) determine the applicable policies and practices in relation to the disposal of all public property;
- 1681.
1682. (b) issue guidelines detailing operational principle and organisational modalities to be adopted by all Procuring Entities engaged in the disposal of public property and;
- 1683.
1684. (c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all Procuring Entities involved in the disposal of public property.
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- 1686.
- 1687.
- 1688.
1689. (2) For the purpose of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to unserviceable):
- 1690.
1691. (a) created through public expenditure;
1692. (b) acquired as a gift or through Deed;
1693. (c) acquired in respect of intellectual or proprietary rights;
1694. (d) acquired on financial instruments (including shares, stocks, bonds etc); and
1695. (e) acquired by goodwill and any other gifts of the State Government.
- 1696.
1697. (3) The means of the disposal of public assets shall include;
1698. (a) sale and rental;
1699. (b) lease and hire purchase
1700. (c) licenses and tenancies;
1701. (d) franchise and auction;
1702. (e) transfers from one Government Department to another with or without financial adjustments and;
- 1703.
- 1704.
- 1705.

1706. (f) offer to the public at an authorized variation.
1707. 60. (1) Before stating any public property for disposal, the
1708. Accounting Officer (whether acting in his own authority
1709. or at the direction of any superior or other authority) in
1710. charge of any public property set for disposal shall
1711. authorise an independent Evaluator or such professional
1712. with the appropriate competence to carry out the
1713. valuation subject to regulations issued by Bureau.
1714. (2) The disposal of assets whether or not listed in the assets
1715. *register for a Procuring Entity shall be planned and*
1716. *integrated in the income and expenditure budget*
1717. *projection of the Procuring Entity.*
1718. (3) The disposal of assets referred to in Sub-section (2) shall
1719. be timed to take place when the most advantageous
1720. returns can be obtained for the assets in order to
1721. maximize revenue accruing to the government.
1722. (4) All Procuring Entities shall distribute responsibilities for
1723. the disposal of public property between the procurement
1724. unit and the Tenders Board.
1725. Part XI-Code of Ethics
1726. 61. (1) The Bureau shall with the approval of the Council, stipulate
1727. a code of ethics for all public officers, suppliers,
1728. contractors and service providers with regards to the
1729. standards of conduct acceptable in matters involving the
1730. procurement and disposal of public assets.
1731. (2) The conduct of all persons involved with public
1732. procurement, whether as official of the Bureau, a
1733. procuring entity, supplier, contractor or service provider
1734. shall at all times be governed by principles of honesty,
1735. accountability, transparency, fairness and equity.
1736. (3) All Officers of the Bureau, members of Tenders Board
1737. and other persons that may come to act regarding the
1738. conduct of public procurements shall subscribe to an
1739. oath approved by Council;
1740. (4) All persons in whose hands public funds may be
1741. entrusted for whatever purpose should bear in mind that
1742. utilization should be judicious.
1743. (5) Where a transaction involves the disposal of assets,
1744. principles of honesty, accountability, transparency,
1745. fairness and equity shall continue to apply to the same
1746. extent as where it involves procurement.
1747. (6) These principles shall apply at all times particularly when;
1748. (a) making requisition for or planning of procurements;
1749. (b) preparing solicitation document;
1750. (c) receiving offers in response to any form of
1751. solicitation towards a procurement or disposal;
1752. (d) evaluating and comparing offers confidentially and
1753. in complete neutrality;
1754. (e) protecting the interest of all parties without fear or favour

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1752. (d) evaluating and comparing offers confidentially and
1753. in complete neutrality;
1754. (e) protecting the interest of all parties without fear or favour

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1758. (7) All public Officers involved in public Procurement and
1759. disposal of assets shall:
1760. (a) ensure adequate time for preparing offers
1761. (b) comply with this Law and all derivative regulations; and
1762. (c) ensure strict confidentiality of bids submitted and
1763. the examination and evaluation processes until
1764. notice has been issued to a winning Bidder that he
1765. has been selected.
1766. (8) All public Officers involved in public procurement and
1767. disposal of assets must maintain the highest standards
1768. of ethics in their relationship with persons, real or
1769. corporate, who seeks Government commerce whether
1770. as a Bidder, Supplier, Contractor or Service Provider by
1771. developing transparent, honest and professional
1772. relationships with such persons.
1773. (9) Every public Officer involved directly or indirectly in
1774. matters of public procurement and disposal of assets shall:
1775. (a) divest himself of any interest or relationships which
1776. are actually or potentially inimical or detrimental to
1777. the best interest of Government and the underlining
1778. principles of this Law; and
1779. (b) not engage or participate in any commercial
1780. transaction involving the State Government, its
1781. ministries, extra-ministerial departments or
1782. corporations where his capacity as a public Officer
1783. is likely to confer any unfair advantage pecuniary or
1784. otherwise, on him or any person directly related to him.
1785. (10) Any person engaged in the public procurement and
1786. disposal of assets who has assumed or is about to
1787. assume, a financial or other business relationship that
1788. might involve a conflict of interest, must immediately
1789. declare to the authorities any actual or potential interest.
1790. (11) Such a declaration shall be given such consideration as
1791. is necessary to effectively protect the integrity of the
1792. procurement process.
1793. (12) A conflict of interest exists where a person:
1794. (a) possesses an interest outside his Official duties that
1795. materially encroaches on the time or attention which
1796. should otherwise be devoted to affairs of government;
1797. (b) possesses a direct or indirect interest in or relationship
1798. with bidder, supplier, contractor or service provider
1799. that is inherently unethical or that may be implied
1800. or construed to be, or make possible personal gain
1801. due to the person's ability to influence dealings;
1802. (c) entertains relationships which are unethical
1803. rendering his attitude partial toward the outsider for

- 1804. personal reasons or otherwise inhibit the impartiality
- 1805. of the person's business judgements;
- 1806. (d) places by acts of omission or commission the Procuring
- 1807. Entity he represents or the government in an embarrassing
- 1808. or ethically questionable position;
- 1809. (e) entertains a relationship compromising the reputation or
- 1810. integrity of the Procuring Entity he represents or the Government;
- 1811. (f) receives benefits by taking personal advantage of an
- 1812. opportunity or property that belongs to the procuring entity he
- 1813. represents or the government;
- 1814. (g) creates a source of personal revenue or advantage by
- 1815. using public property which comes into his hands either
- 1816. in the course of his work or otherwise; and
- 1817. (h) discloses confidential information being either the property
- 1818. of his Procuring Entity or the Government to a Supplier,
- 1819. Contractor, Service provider or unauthorized persons.
- 1820. (13) A person involved in the disposal of assets shall not either
- 1821. by a third party or by himself be interested in any manner
- 1822. in buying directly or indirectly these assets and shall not
- 1823. have or obtain any type of advantage or revenue from the
- 1824. the disposal for a period of three years after the disposal.
- 1825. Part XII-Offences

- 1826. 62. (1) Any person, not being a public Officer who contravenes
- 1827. any of the provisions of this Law, shall be guilty of an offence
- 1828. and on conviction be liable to a term of imprisonment of not
- 1829. less than one (1) year, the upon conviction, shall debar
- 1830. such person for a period of not less than three (3) years and
- 1831. shall order full restitution of any loss to the Government or to a
- 1832. competitor in the process.
- 1833. (2) In addition to the Jurisdiction conferred on the Ogun State High Court,
- 1834. the Court shall have power to try the offences specified under this Law.
- 1835. (3) The following shall also constitute offences under this Law;
- 1836. (a) Bidding for a public procurement based on false
- 1837. pretences, fraud and/or deliberate misrepresentation;
- 1838. (b) entering or attempting to enter into a collusive
- 1839. agreement, whether enforceable or not, with a
- 1840. supplier, contractor or service provider where the
- 1841. prices quoted in their respective tenders, proposals
- 1842. or quotations are or would be higher than would have
- 1843. been the case had there not been collusion between
- 1844. the persons concerned.
- 1845. (c) conduct or attempting to conduct procurement fraud
- 1846. by means of fraudulent and corrupt acts, promises,
- 1847. threats, unlawful influence, undue interest, agreement,
- 1848. corruption, bribery or other actions;
- 1849. (d) directly or indirectly influencing in any manner the
- 1850. procurement process to obtain an unfair advantage in the
- 1851. award of a procurement contract or an attempt of same;

Offences and Penalties

1804. personal reasons or otherwise inhibit the impartiality
 1805. of the person's business judgements;
 1806. (c) places by acts of omission or commission the Procuring
 1807. Entity he represents or the government in an embarrassing
 1808. or ethically questionable position;
 1809. (e) entertains a relationship compromising the reputation or
 1810. integrity of the Procuring Entity he represents or the Government;
 1811. (f) receives benefits by taking personal advantage of an
 1812. opportunity or property that belongs to the procuring entity he
 1813. represents or the government;
 1814. (g) creates a source of personal revenue or advantage by
 1815. using public property which comes into his hands either
 1816. in the course of his work or otherwise; and
 1817. (h) discloses confidential information being either the property
 1818. of his Procuring Entity or the Government to a Supplier,
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 1831. shall order full restitution of any loss to the Government or to a
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 1841. prices quoted in their respective tenders, proposals
 1842. or quotations are or would be higher than would have
 1843. been the case had there not been collusion between
 1844. the persons concerned.
 1845. (c) conduct or attempting to conduct procurement fraud
 1846. by means of fraudulent and corrupt acts, promises,
 1847. threats, unlawful influence, undue interest, agreement,
 1848. corruption, bribery or other actions;
 1849. (d) directly or indirectly influencing in any manner the
 1850. procurement process to obtain an unfair advantage in the
 1851. award of a procurement contract or an attempt of same;

Offences and
Penalties

- 1852 (e) splitting of tenders to enable the evasion of monetary
1853. threshold set;
1854. (f) Bid rigging
1855. (g) altering any procurement document with intent to influence
1856. the outcome of a tender proceeding;
1857. (h) altering or using fake documents or encouraging their use; and
1858. (i) willful refusal to allow the Bureau or its Officers to
1859. have access to any procurement records.
1860. (4) Any person whilst carrying out his duties as an Officer of the Bureau
1861. or any procuring entity who contravenes any provision of this Law,
1862. commits an offence and is liable on conviction to a cumulative
1863. punishment of;
1864. (a) a term of imprisonment of Two (2) years and restitution
1865. (where applicable); and
1866. (b) Summary Dismissal from Government service.
1867. (5) Any legal person that contravenes any provision of this Law,
1868. commits an offence and is liable on conviction to a cumulative
1869. penalty of;
1870. (a) debarment from all Public Procurements for a period
1871. of not less than five (5) calendar years; and
1872. (b) a fine equivalent to the value of the Procurement in issue.
1873. (8) (a) where any legal person is convicted pursuant to Sub-section
1874. (5) every Director of the company as listed on its records at
1875. the Corporate Affairs Commission shall be guilty of an offence
1876. and is liable on conviction to a term of imprisonment of not
1877. less than three (3) years but not but exceeding five (5) years
1878. with an option of fine and restitution (where applicable).
1879. (b) A Director shall not be liable if he can show that;
1880. (i) it is the first time the company has been found
1881. complicit in a public procurement dispute by a
1882. Court, relevant Agency or the Bureau; or
1883. (ii) he was not negligent took reasonable steps and
1884. and exercised due diligence to prevent the
1885. company's contravention of this Law.
1886. (7) An alteration pursuant to Sub-section 3 (g) shall include but
1887. not limited to;
1888. (a) insertion of documents such as bid security or tax
1889. clearance certificate which were not submitted at Bid
1890. opening; and
1891. (b) request for clarification in a manner not permitted under
1892. this Law.
1893. (8) Collusion shall be presumed from a set of acts from which
1894. it can be assumed that there was an understanding, implicit
1895. formal or informal, over or covert under which each person
1896. involved reasonably expected that the other would adopt a
1897. particular course of action which would interfere with the
1898. faithful and proper application of the provisions of this Law.
1899. (9) Bid rigging pursuant to Sub-section (3) (f) means an
1900. agreement between persons whereby;

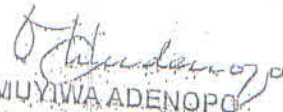
- 1901 (a) offers submitted have been pre-arranged between
1903. them; or
1904. (b) their conduct has had the effect of directly or indirectly
1905. restricting free and open competition, distorting the
1906. competitiveness of the Procurement Process and
1907. leading to an escalation or increase in costs or loss
1908. of value to the State Treasury.
1909.

PART XIII - MISCELLANEOUS


- 1910.63. (1) The fixing of the seal of the Bureau shall be authenticated
1911. by the signature of the Chairman, the General Manager or
1912. of any other person generally or specially authorized to act
1913. for that purpose by the Council.
1914. (2) Any contract or instrument which is made or executed by a
1915. person not being a body corporate, would not be required
1916. to be under seal. It may be made or executed on behalf of
1917. the Bureau by the General Manager or any person generally
1918. or specially authorized to act for that purpose by the Council.
1919. (3) Any document purporting to be a document duly executed
1920. under the seal of the Bureau shall be received in evidence
1921. and shall, unless and until the contrary is proved, be presumed
1922. to be so executed.
1923. (4) The validity of any proceeding of the Council or of a
1924. Committee thereof shall not be adversely affected by any
1925. vacancy in the membership of the Council or Committee,
1926. or by any defect in the appointment of a member of the
1927. Council or of a Committee, or by reason that a person not
1928. entitled to do so took part in the proceedings of the Council
1929. or Committee.

1. This printed impression has been carefully compared by me
2. with the Bill which has been passed by the Ogun State House of
3. Assembly and found by me to be a true and correct printed
4. copy of the said Bill.

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MUYIWA ADENOPO
Clerk of the Ogun State House of Assembly

Assented to by me this 08th day of JUNE 2015


SENATOR IBIKUNLE AMOSUN, CON, FCA
Governor, Ogun State of Nigeria.