

**ANALYSIS OF THE BAYELSA STATE PUBLIC PROCUREMENT
BILL, 2008**

By



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SECTION

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PUBLIC PROCUREMENT BILL

**A
BILL
For**

A Law to provide for the establishment of a State Council on public procurement and for other purposes connected there with.

[Commencement:]

Section	Bayelsa Bill	Comparisms	Recommendations	Justification
S.1: Establishment and Composition of the State Council on Public Procurement	(1) There is hereby established a State Council on Public Procurement (hereinafter in this Law referred to as “the Council”). (2) The Council shall consist of (i) the Governor as Chairman; ii. the Commissioner of Finance and Budget, member; iii. the Attorney-General & Commissioner of Justice, member;	Equivalent provisions are found in S.1 of the Federal Law and S.1 of the Model State Law (Model Law) establishing the Council on Public Procurement. But the composition differs from the Federal and Model laws in that the Governor (the equivalent of the President) is the chairman of Council while the Federal Law makes the Minister of Finance the chair. The Model Law makes the Commissioner of Finance and Economic	Amend, to retain the position in the Federal and Model Laws. The Governor should not a member of the Council and the Commissioner for Finance and Budget should preside over the Council.	Considering the very busy schedules of the Governor, he should be excused from the Council. Even if he had a less busy schedule, his “intimidating presence” at Council meetings would forestall any robust debates and proper consideration of issues. Any side that “His Excellency” supports would automatically be taken as the right

	<p>iv. the Secretary to the State Government, member;</p> <p>v. the Head of Service member;</p> <p>f. the Director-General, Due Process and e-Governance Bureau, who shall be the Secretary of the Council; and</p> <p>g. three part-time members who shall be appointed on the nomination of professional bodies and who will represent —</p> <p>i. the Nigerian Institute of Purchasing and Supply,</p> <p>ii. the Media,</p> <p>iii. the Civil Society, and</p> <p>iv. two (2) other persons appointed by the Governor.</p>	<p>Development, the chair of Council.</p> <p>The Bill provides for three part time members in the Council while the there are six part time members in the Federal and Model Laws. The Bar Association, Chambers of Commerce and the Society of Engineers are not represented in the bill.</p> <p>The secretaries of the Councils are same in the Federal Law and the bill while the Model law proposes the General Manager of the Bureau as secretary.</p> <p>The three Councils (federal, Model and the Bill) are gender blind and could as well be composed of only men. On subsection (2) (iv), no similar subsection exists in the Federal and Model Laws.</p> <p>Generally, there are no specific international standards on composition of Council as this is left to the discretion of states but the composition must</p>	<p>Include the Bar Association, Chambers of Commerce and Society of Engineers as part time members.</p> <p>The model of the Director General of the Bureau as secretary of Council is preferred.</p> <p>Include a provision that will ensure gender balance.</p> <p>Consider deleting subsection (2) (iv).</p>	<p>position.</p> <p>It is important that non state actors who are part time members of the Council be increased to ensure strong alternative view points to the official position.</p> <p>A Director General appears higher in rank than a General Manager and will have enough clout to run the Bureau and the secretariat of the Council. Nigeria is a signatory to regional and international standards on gender equality. All the members of the Council are appointees of the Governor and there is no need served by this duplication.</p>
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		guarantee that the Council meets its fundamental objectives.		
S.2: Functions of the Council	<p>The Council shall: -</p> <p>(a) consider, approve and amend the monetary review thresholds for the application of the provisions of this Law by procuring entities;</p> <p>(b) consider and approve policies on public procurement;</p> <p>(c) approve the appointment of the Directors of the Bureau;</p> <p>(d) receive and consider, for approval, the audited accounts of the Due Process and e-Governance Bureau;</p> <p>(e) approve changes in procurement processes to adapt to improvements in modern technology; and</p> <p>(f) give such other directives and perform such other functions as may be necessary to achieve the objectives of the Law.</p>	Same as in the Federal and Model Laws.	Retain the Bill's provisions.	
S.3: Establishment of the Due	(1) There is hereby established, a Due Process and e-Governance Bureau in the Office of the Executive	The Federal Law creates the Bureau of Public Procurement without necessarily domiciling	The provisions of the Federal and Model laws on establishment of the	The establishment of the Bureau in the Federal and Model laws makes the

<p>Process and e-Governance Bureau</p>	<p>Governor.</p> <p>(2) The Due Process and e-Governance Bureau shall be administered by a Director-General appointed by the State Governor.</p> <p>(3) The persons referred to in subsection (1) shall be employed in line with the procedures laid out in the schemes of service of the State Civil Service.</p> <p>(4) The State Governor shall, at any time terminate the appointment of a Director-General who has been found guilty of –</p> <p>(a) Any misconduct, default or breach of trust in the discharge of his duties;</p> <p>(b) An offence of such nature that renders it desirable for his appointment to be terminated.</p>	<p>it in the President’s office and the Model Law took the same position while the Bill automatically domiciles the Bureau in the Governor’s office.</p> <p>The power vested in the State Governor to appoint the DG of the Bureau in the Bill is not the same with the Federal Law and the Model Law where in S.7, the President and Governor appoints on the recommendation of the Council after competitive selections. The Bill prefers the civil service procedure.</p> <p>Also the Bureau in the Federal and Model laws are corporate bodies with perpetual succession and a common seal and may sue and be sued in its name- essentially the have legal personality while the Bureau in the Bill appears to be an extension of the governor’s office.</p> <p>The grounds for termination appear to be same in the Bill</p>	<p>Bureau and appointment of its DG are preferred.</p>	<p>Bureau more independent, clothes it with legal personality and better equipped to discharge its duties without the burden of being an arm of the Governor’s office. And competition is at the heart of procurement reforms, appointing the DG, the chief priest of the Bureau through a competitive process lays the foundation for a functional Bureau.</p>
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		and the two Laws.		
S.4: Tenure of office of the Director General	The Director-General, appointed under Section 4 of this law shall hold office for a period of four years and shall be eligible for re-appointment for one further period of four years; thereafter he shall no longer be eligible for re-appointment.	Same provisions as in the Federal and Model Laws.		
S.5: Staff of the Due-Process and e-Governance Bureau	(1) The Civil Service Commission of Bayelsa State shall appoint professional staff composed of persons of high integrity and substantial experience in the field of procurement, with a strong background in legal, financial and administrative matters for service in the Bureau. (2) The Head of the State Civil Service Commission shall designate such public officers as may be required to assist the Bureau and every person so designated shall be under the administrative control of the Director-General.	This differs from the Federal and Model Laws (sections 8 and 9) where the Council has powers to approve the appointment of directors, appoint principal officers and such other employees as may be deemed necessary for the purposes of the Bureau and Council also has power to appoint either on transfer or secondment from the civil service.	The provisions of the Federal and Model laws are preferred.	The Council and Bureau in the Federal and Model Laws have greater independence and autonomy and the hiring procedure would better facilitate proper management of their human resources rather than leaving their human resources under the omnibus civil service commission.
S.6: Policymaking Responsibility of the Due	(1) The Due Process and e-Governance Bureau shall – (i) Serve as an independent	The Federal and Model Laws in S.54 assign administrative review functions for the resolution of procurement	The Federal and Model Laws provisions are preferred.	Although the Bill's Bureau shall not be subject to the direction and control of any person, subjecting it

<p>Process and e-Governance Bureau</p>	<p>procurement policy making and monitoring body;</p> <p>(ii) Not in anyway be operationally involved in conducting procurement proceedings or resolving procurement disputes; and</p> <p>(iii) Request information from and consult with any MDA in the development of procurement policy for the Government.</p> <p>(2) In the exercise of its functions the Bureau shall act without fear or favour and shall not be subject to the direction or-control of any other person or authority other than the State Governor or an officer designated by the Governor</p>	<p>disputes to the Bureau while the Bill's Bureau is barred from doing so. The Federal and Model Laws also distinguish between objectives, functions and powers of the Bureau (Ss.4, 5 and 6) while the Bill lumps functions and powers together. The Bill's Bureau is also specifically subject to the direction and control of the governor, a provision not found in the Federal and Model Laws. And the relationship between the Bureau and Council is not explicitly stated in the Bill while the Federal and Model laws clearly indicate that the Bureau is the secretariat of Council.</p>		<p>to the direction of the governor rather than the Council may likely shackle the Bureau in the exercise of its powers. The Bureau considering its duties is well positioned to handle administrative review of procurement disputes. Separating objectives, functions and powers makes for clarity in the law. The relationship of the Bureau to the Council should be that the Bureau is the technical arm while the Council is the policy approval and oversight arm.</p>
<p>S.7: Functions of the Due process and e-Governance Bureau.</p>	<p>The Bureau shall -</p> <p>(a) provide guidelines, instructions to public bodies concerning the coordination of their actions with the Bureau and the Board and certify all procurement activities;</p> <p>(b) formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the</p>	<p>The Bureaus established by the Federal and Model Laws have more functions and powers than the Bureau provided in the Bill. The Bill has no provisions for the Bureau to maintain a database of standard prices; database, classification and categorization of all contractors and service providers; database of contractors and</p>	<p>Expand the functions and powers of the Bureau in line with the Federal and Model laws subject to powers and functions assigned to other bodies and agencies in the Bill.</p>	<p>The expansion will make the Bureau more functional for the realization of its objects.</p>

	<p>implementation of this Law;</p> <p>(c) issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every MDA implementing procurement;</p> <p>(d) collect from MDAs, information on procurement activities and monitor MDAs' compliance with this Law;</p> <p>(e) recommend, and facilitate the implementation of measures to improve the functioning of the procurement system; including the introduction of information and communication technology and the dissemination of publications, setting up of websites dedicated to procurement etc;</p> <p>(f) prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement;</p> <p>(g) solicit the views of the Bayelsa State business community on</p>	<p>service providers debarred from participating in procurement proceedings; an archival system; discipline and suspension of erring public officers, etc</p> <p>In formulating policies and guidelines, the Bill does not provide for Council approval unlike the Federal and Model laws (S.5 [a]).</p> <p>The Bill's Bureau is to perform procurement audits in MDAs, but it is not under obligation to report to the legislature like in the Federal and Model Laws (S.5 [p]). The Bill's Bureau annual report is to the governor and not the legislature.</p> <p>The provision in the Bill to perform such other function as may be assigned to it by the Governor, instead of the Council questions the need for the Council in the first place.</p> <p>There is no mention of any relationship between the Bureau and the Council in this</p>		
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	<p>the effectiveness of the procurement system;</p> <p>(h) present an annual report to the State Governor regarding the overall functioning of the procurement system and maintain a procurement journal;</p> <p>(i) communicate and cooperate with international institutions and other foreign entities on matters of procurement;</p> <p>(j) advise on and monitor foreign technical assistance (where present) in the field of procurement;</p> <p>(k) advise the State Governor regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and the annual review of such delegations;</p> <p>(l) perform procurement audits in several MDAs; and</p> <p>(m) perform such other functions as may be assigned to it by the State Governor.</p>	<p>functions section.</p>		
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<p>S. 8: The Bayelsa State Central Procurement Board</p>	<p>(1) A Central Procurement Board shall be established, to be responsible for the approval of the award of all contracts valued at N50m and above.</p> <p>(2) The Board shall consist of:</p> <p>(a) the Attorney-General and Commissioner for Justice, who shall serve as a Chairperson;</p> <p>(b) the Commissioner of Finance and Budget who shall serve as the Deputy Chairperson;</p> <p>(c) the Permanent Secretary (General Services) in the Office of the Secretary to the State Government, who shall serve as the secretary;</p> <p>(d) the Director-General of the Due-Process and e-Governance Bureau who shall sit in meetings. This is in</p>	<p>No similar provisions exist in the Federal and Model Laws.</p> <p>In consideration of the functions of the Board in S.11 of the Bill, the composition of the Board makes it non compliant with best practices.</p>	<p>Consider the re-composition of the Central Procurement Board limiting it to only civil servants, and not necessarily the civil servants tied to the Governor's office. The chairman and secretary should also not be tied to the Governor's office.</p>	<p>Nigeria's Country Assessment Report June 2000 had warned against this. The Report had recommended as follows: <i>"Once a law on public procurement has been enacted and regulations, manuals and standard bidding documents issued, carrying out public procurement including contract awards will clearly be an administrative function, the mechanics of which should be disengaged from the executive. Currently, high level politicians such as Governors, Ministers and Commissioners are operationally involved in the procurement process. However, under the reformed procurement</i></p>

	<p>order to facilitate the efficient certification of the contract award. However, he/she shall not have any voting rights in any matter considered by the Central Procurement Board;</p> <p>(e) the Commissioners overseeing the MDAs with the top three capital budgets in each financial year; and</p> <p>(f) two (2) other Officers appointed directly by the State Governor, who shall also be Commissioners.</p> <p>(2) The persons mentioned in subsection (1) shall have wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and shall have relevant experience in public procurement activities.</p> <p>(3) The Governor shall at any time terminate the appointment of a Board Member who has been guilty of-</p> <p>(a) any misconduct, default or breach of trust in the discharge of his duties;</p>	<p>Except the member referred to in (c), every other person on the Board is an appointee of the Governor, why is (f) still necessary?</p>	<p>Consider removing (f).</p>	<p><i>system, high level politicians should maintain their overall managerial oversight responsibilities while leaving administrative and operational matters (including procurement) to the civil servants."</i></p> <p>The Governor's overbearing influence on the Board will not lead to best practices.</p>
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	<p>(b) an offence of such nature as renders it desirable that his appointment should be terminated.</p> <p>(4) The Board may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Board.</p> <p>(5) Where such termination as in (3) above involves the offices of the Chairman or Vice Chairman, the Governor is at liberty to re-appoint any other person to take over as Chairman.</p>			
S.9: Secretary of the Central Procurement Board	<p>(1) The Secretary of the Board shall be the Permanent Secretary (General Services) in Office of the Secretary to the State Government.</p> <p>(2) The Officer referred to in subsection (1) shall be entitled to attend the meetings of the Board and participate in its deliberations, but shall not have the right to vote.</p>	No similar provision exists in the Federal and Model Laws.	Retain provisions of subsection 1 and reconsider the provisions of subsection 2.	Subsection 2 confirms the need for the re-composition of the Board - only the appointees of the Governor have voting rights on the Board.
S.10: Staff of the Board.	(1) The Board shall, in the conduct of its business, be assisted by such public officers as may be appointed		Retain provisions	These provisions are in tandem with the division of powers between the

<p>S.11: Functions of the Central Procurement Board</p>	<p>by the Board under contract terms and conditions.</p> <p>(2) Every person referred to in subsection (1) shall be under the administrative control of the Chairperson.</p> <p>(1) The Board shall, in respect. of contracts valued at between N50m and N200m -</p> <p>(a) establish appropriate internal procedures for the operations of the Board and ensure compliance with them;</p> <p>(b) vet bidding documents and notices submitted to it by MDAs;</p> <p>(c) receive and publicly open bids;</p> <p>(d) select persons from a list of qualified and independent evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids;</p> <p>(e) handle matters of arbitration</p>	<p>Under the Federal and Model Laws, the monetary and prior review thresholds are set by Council -sections 2 (a) and 17.</p> <p>Receiving and opening bids is assigned to the procuring entity in the Federal and Model Laws. Bid evaluation committees are constituted by the Accounting Officer under the Federal and Model Laws as against a list of qualified and independent evaluators to be maintained by the Central Procurement Board. Dispute</p>	<p>Retain provisions.</p>	<p>respective bodies and agencies created by the Bill.</p> <p>These provisions are in tandem with the division of powers between the respective bodies and agencies created by the Bill.</p>
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	<p>between MDAs and bidders for contracts and entertain all appeals for reconsideration of outcomes of proceedings by prospective bidders; and</p> <p>(f) review the recommendations of a bid evaluation committee and –</p> <p>(i) approve the award of the contract; or</p> <p>(ii) require the evaluation committee to make a fresh or further evaluation on specified grounds.</p> <p>(2) The Board shall have such powers, and exercise such functions, as may be assigned to it under any other enactment.</p>	<p>resolution in the Federal and Model Laws involves appealing to the Accounting Officer and where the applicant is dissatisfied with the decision, appeal lies to the Bureau and finally to the courts through the Federal High Court. However every procurement contract shall contain provisions for arbitration as the primary form of dispute resolution - section 16 (26) of the Federal and Model Laws. Under the Federal and Model Laws, the approving authorities are the Ministerial Tenders Board in the case of a Ministry and Parastatal Tenders Board for a government agency, parastatal or corporation.</p>		
<p>S.12: Powers of the Central Procurement Board.</p>	<p>(1) In the discharge of its functions, the Board may -</p> <p>(a) call for such information and documents as it may require from any MDA;</p> <p>(b) examine such records or other documents and take copies or extracts from them;</p>	<p>These powers are assigned to the Bureau in the Federal and Model Laws.</p>	<p>Retain the provisions of the Bill.</p>	

	<p>(c) commission any studies relevant to the determination of the award of contracts;</p> <p>(d) request any professional or technical assistance from any appropriate person in Bayelsa or elsewhere;</p> <p>(e) do all such acts and things as it may consider incidental or conducive to the exercise of its functions.</p> <p>(2) Any person to whom a request is made under subsection I (a) and who fails to comply with the request, or willfully gives any false or misleading answer to any question lawfully put by the Board, shall commit an offence.</p> <p>(3) Where discrepancies in the award of contracts by MDAs come to the knowledge of the Board, it shall forthwith report the matter, in the case of a Civil Servant, to the Head of the Civil Service, but in the case of a Political Appointee to the Governor, recommending such action as it may deem appropriate.</p>			
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	(4) The Governor or the Head of the Civil Service may, where he/she considers appropriate, refer any matter reported to him under subsection, (3) to the Police for enquiry.			
S.13: Meetings of the Central Procurement Board	<p>(1) The Board shall meet as often as is necessary at a designated location.</p> <p>(2) All matters authorized or required to be done by the Board shall be decided by simple majority of the members present and voting.</p> <p>(3) Where the chairman is absent at any meeting, the other members shall designate another Officer to preside over the meeting.</p> <p>(4) At board meetings, the Chairperson and 4 other members shall constitute a quorum.</p> <p>(5) During deliberations on matters of concern, each member shall have one vote on the matter in question and, in the event of an equality of votes; the Officer chairing the meeting shall have a casting vote.</p>	Retain the provisions.		
S.14:	(1) The Accounting Officer of each	There are no similar provisions	The provisions of the	Once projects and

<p>Procedure of the Central Procurement Board.</p>	<p>MDA shall inform the Board in writing of any contract within the authority of the Board that the MDA intends to enter into and shall submit all the relevant documents to the Board.</p> <p>(2) The Board shall, within such time as may be prescribed after having been notified in accordance with subsection (1), authorize the MDA to call for bids or utilize another appropriate procurement method.</p> <p>(3) The Board shall approve the award of every contract (as stipulated in Section II) after due examination and evaluation of bids by the bid evaluation committee.</p> <p>(4) No MDA shall –</p> <p>(a) advertise, invite, solicit or call for bids in respect of a contract unless authorized by the Board; or</p> <p>(b) award a contract unless the award has been approved by the Board.</p> <p>(5) The Board shall notify the Executive Governor on a weekly</p>	<p>in the Federal and Model Laws:</p> <ol style="list-style-type: none"> 1. asking MDAs to get prior approval from the Board (Bureau) before advertising for bids or for the Board to direct on appropriate methods of procurement. 2. on notification of executive governor or president. 3. on ratification by Governor or the State Executive Council or its equivalent at the federal level. <p>But it appears that the Federal Executive Council ratifies all major contracts although this practised finds no justification under the provisions of the Public Procurement Act 2007.</p>	<p>Federal and Model laws are preferred.</p>	<p>services are provided for in the yearly appropriation, and there are enough revenues to cover implementation, all that should be required is due process in procurement awards. Ratification by the Governor and Executive Council appears unnecessary.</p>
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	<p>basis of all contracts awarded during the week which are valued at between N50m and N200m by submitting a Schedule to the Executive Governor to this effect.</p> <p>(6) All contracts award effected by the Board for contracts valued at between N200m and N500rn shall be ratified by the Executive Governor before its execution.</p> <p>(7) All contracts award effected by the Board for contracts valued at greater than N500m shall be ratified by the State Executive Council before its execution.</p>			
S.15: Composition of Ministerial Procurement Board	<p>(1) In line with the Financial Regulations of the Federal Government of Nigeria, each MDA shall have a Procurement Board to oversee and approve the award of contracts for local purchases and supplies in line with established Financial Authority Limits.</p> <p>(2) The composition of each Ministerial Procurement Board shall be as follows:</p> <p>(i) Permanent Secretary - Chairman</p>	No similar provision exists in Federal and Model Laws.	Retain provisions of the Bill.	

<p>(ii) Directors/Heads of Departments - Members</p> <p>(iii) Head of Procurement/Planning Research and Statistics - Secretary</p> <p>(3) The composition of Extra Ministerial Departmental Procurement Board shall be as follows:</p> <p>(a) Accounting Officer- Chairman</p> <p>(b) Directors/Heads of Units - Members</p> <p>(c) Head of Procurement/Planning Research and Statistics - Secretary</p> <p>(d) Where a Ministry, Department or Agency has not yet set up a Procurement Unit, the Head of Planning Research and Statistics shall serve as the Secretary to the Tenders Board. However, where the Department or Agency does not have a Planning, Research and Statistics function, the Head of Administration shall serve as the Secretary of the Procurement Board.</p>			
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	(4) Members of the Procurement Boards and other approving authorities in each MDA are obliged to declare any conflict of interest and exclude themselves from the bid evaluation and approval process where a conflict occurs.	Conflict of interest provisions exist in the Federal and Model Laws.		
S.16: Functions of Ministerial Procurement Boards.	(1) The Procurement Board shall be responsible for the award of procurement of goods, works and services which have a total cost implication of more than N500,000 but less than N50m in respect of contracts and supplies e.g. trainings, conferences etc) (2) The Board shall oversee the activities of the Technical Evaluation Sub-Committee of the Procurement Board, in cases of bid evaluation, pre-qualification and other times of necessity. (3) The Board shall communicate results of its deliberations and present to the Honourable Commissioner of the respective MDA.	Unlike the Federal and Model Laws, the monetary thresholds are provided in the Bill for Central Procurement Board (from N50m and above) and Ministerial Procurement Board (from N500,000 to less than N50m).		
S.17: Ministry and Parastatal Procurement	(1) The Accounting Officers of Ministries/Parastatals shall appoint the Procurement Planning and	S. 21 of the Federal and Model Laws provide for a Procurement Planning	Clearly define procurement planning borrowing from Federal	

<p>Planning Committee</p>	<p>Execution Committee to carry out procurement actions.</p> <p>(2) The membership of the Committee shall include:</p> <p>(a) the Accounting Officer of the parastatals;</p> <p>(b) a representative from the procurement function within the MDA (shall be the secretary);</p> <p>(c) a representative of the finance and administration or equivalent departments of the MDA;</p> <p>(d) a representative of the planning, research and statistics department of the MDA;</p> <p>(e) a representative of the legal unit of the MDA;</p> <p>(f) a representative of the Due-Process and e-Governance Bureau shall sit in the Tenders Board meetings for the award of contract valued at N20m and below. This is in order to facilitate the efficient certification of the contract award. However, he/she shall not have any</p>	<p>Committee to be established for each financial year. The Bill extends the mandate of its committee to planning and execution while the other laws appear to stop the mandate at planning. S.18 of the Federal and Model Laws defined procurement planning but this is lacking in the Bill.</p>	<p>and Model Laws.</p>	
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	voting rights in any matter considered by the Ministerial Tenders Board.			
S.18: The Project Monitoring Committee	<p>A Project Monitoring Committee shall be established, to be responsible for the certification of payments on all contracts valued at N50m and above. The Project Monitoring Committee shall consist of the following persons:</p> <p>(a) an appointee of the Executive Governor to serve as Chairperson</p> <p>(b) an appointee of the Executive Governor to serve as Secretary</p> <p>(c) the Director of the Budget and Control Department in the Ministry of Finance and Budget to serve as a member</p> <p>(d) a representative from the Due Process and e-Governance Bureau to serve as a member;</p> <p>(e) a representative from the Ministry of Works and Transport as member;</p> <p>(f) two appointees of the Executive</p>	There is no equivalent provision in the Federal and Model Laws. However the overbearing influence of the Governor appointing virtually everyone on the Committee (4 out of seven members) deprives the Committee of independence of thought and action.	Retain the provision, but consider changing the membership to include non state actors in civil society, the professions and the private sector. Consider their quarterly reporting to the legislature to aid its constitutional oversight functions on the executive.	The bane of official corruption makes it imperative for the membership of the committee to exercise independent judgment.

	Governor to serve as members			
S. 19: Choice of Procurement Method.	<p>(1) Subject to subsection (2), the choice of procurement methods available to an MDA shall be:</p> <p>(a) For the procurement of goods, other services and works, by –</p> <p>(i) open advertised bidding;</p> <p>(ii) restricted bidding; .</p> <p>(iii) request for sealed quotations;</p> <p>(iv) direct procurement;</p> <p>(iv) community or end-user participation; or</p> <p>(vi) departmental execution; and</p> <p>(b) For the procurement of consultancy services, the request for proposals shall be on the basis of:</p> <p>(i) quality and cost;</p> <p>(ii) quality alone;</p> <p>(iii) quality and fixed budget; or</p>	The Federal and Model Laws have no provisions for community or end user participation and departmental execution.	The community or end user participation is innovative. Retain the provisions.	

<p>(iv) least cost and acceptable quality; or</p> <p>(v) direct procurement.</p> <p>(2) (a) All procurement shall, in the case of goods, other services or works, be by means of open advertised bidding, to which equal access shall be provided to all eligible and qualified bidders without discrimination.</p> <p>(b) Open advertised bidding proceedings may include a prequalification stage, or post qualification procedures, before selection of the winning bidder.</p> <p>() Open advertised bidding proceedings shall be carried out in a single stage or in two stages in the cases referred to in section 32.</p> <p>(d) A method of procurement referred to in subsection (l) (a)(ii) to (vi) may be used only if the MDA has reason to believe that open advertised bidding –</p> <p>(i) will not be efficient or practical for the procurement in question; or</p>			
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	<p>(ii) will be too costly to apply given the value of the procurement.</p> <p>(e) Where an MDA uses a method of procurement other than open advertised bidding or, in the case of the procurement of consultancy services, a method other than that specified in subsection (l) (b) (i), it shall note in the record of the procurement proceedings the ground for the choice of the procurement method.</p>			
S.20: Open Advertised Bidding Method	Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify shall be published in at least two national, newspapers and one local newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well.	Compared to the Federal and Model Laws which stipulates a time frame of six weeks for national and international competitive bidding advertisements, no time frame is stipulated in the Bill.	Six weeks time frame for ICB and NCB is recommended.	This is based on the need for standardization and to give equal opportunity to all eligible bidders. It would be a matter of discretion which will be abused if there is no fixed timeframe.
S.21: Open Intra-State Bidding	An MDA may limit participation in open advertised bidding proceedings to citizens of Bayelsa or entities whose primary activities are carried out in Bayelsa only where such limitation is stated in the invitation to bid or, for	There is no equivalent provision in the Federal and Model Laws except the issue of domestic margin of preference in ICB - S34. The domestic margin of preference applies to Nigeria as one	Consider adopting the provisions of the Federal Law.	The recommendation is based on the need for mainstreaming competition, value for money and fitness of purpose in the Bayelsa procurement system.

	prequalification, in the bidding documents and is otherwise in accordance with such criteria as stated in the invitation.	territory and does not differentiate on the basis of state of origin or residence. However, there is a reference in the Model Law to state competitive bidding in sections 25(2) (b) on the length of time for the advertisement of open competitive bidding and 35 (1) (a) for bank guarantee to support mobilization fees.		
S. 22: Restricted Bidding	<p>(1) Restricted bidding may be used –</p> <p>(a) where an MDA has reason to believe that the goods, other services or works are only available from a limited number of bidders;</p> <p>(b) where the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to such thresholds as may be prescribed; or</p> <p>(c) by limiting the participation in a particular procurement to those suppliers included on pre- approved supplier eligibility lists drawn up and maintained by the MDA, in such manner as may be prescribed, so as</p>	Virtually the same provisions in the Federal and Model Laws (S.40) except that the Bill omits the direct provision in the Federal and Model Laws that the provisions of the law in open competitive bidding shall apply to restricted tendering except to the extent they are varied by the section. The UNCITRAL Model Law provides for strict and narrow conditions for the use of restricted tendering.	Insert omission noted under comparism into the Bill and narrowly confine the use of restricted tendering.	To ensure clarity in the implementation of the bill when it eventually becomes law. It is imperative to note that unjustified resort to that method of procurement would impair fundamentally the objects of competitive procurement.

	<p>to ensure that suppliers of specialized goods and services have and maintain the necessary technical and financial capability to provide them.</p> <p>(2) (a) Where restricted bidding is used on the ground referred to in subsection (1) (a), all known suppliers capable of supplying the goods, other services or works shall be directly solicited.</p> <p>(b) Where restricted bidding is used on the ground referred to in subsection (1) (b), the MDA shall, as far as reasonably possible, directly solicit bids from a minimum of five bidders.</p>			
<p>S.23: Request for Sealed Quotations</p>	<p>(1) The request for sealed quotations method shall only be used for the procurement of-</p> <p>(a) readily available commercially standard goods not specially manufactured to the particular specifications of the MDA;</p> <p>(b) small works; .or</p> <p>(c) other small services, where the</p>	<p>Virtually the same as S.41 of the Federal and Model Laws on request for quotations.</p>	<p>Retain the provisions of the Bill.</p>	<p>The provisions conform to best practices.</p>

	<p>estimated value of the procurement does not exceed the prescribed amount.</p> <p>(2) Sealed quotations shall be requested in writing from not less than 3 bidders, unless the item in question is not available from 3 suppliers.</p> <p>(3) The request shall contain a clear statement of the requirements of the MDA as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as may be prescribed.</p> <p>(4) Each bidder may submit one sealed quotation, which may not be altered or negotiated.</p>			
S.24: Emergency Procurement	<p>(1) An MDA may purchase goods, other services or works from a single supplier without competition in cases of extreme urgency.</p> <p>(2) The scope of the emergency procurement shall as far as possible be limited to the period of the emergency, so that appropriate competitive procurement methods</p>	<p>Virtually the same with provisions of the Federal and Model Laws- S.43. But the need to report to the Bureau at the end of the emergency is missing in the Bill.</p>	<p>Retain the provisions of the Bill but consider the inclusion of a subsection on reporting to the Bureau at the end of the emergency period.</p>	<p>The provision conforms to best practices.</p>

	<p>may be utilized at the conclusion of the emergency period.</p> <p>(3) For the purposes of this section, "extreme urgency" includes a situation wherein –</p> <p>(a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war or Act of God;</p> <p>(b) life, or the quality of life or environment may be seriously compromised:</p> <p>(c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; and</p> <p>(d) An investment project may be seriously delayed for want of an item of a minor value.</p>			
S.25: Community and End User Participation	Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or	No equivalent provision exists in the Federal and Model Laws. Although the UNCITRAL Model Law has no	Retain the provisions.	Considering the volatile nature of the Bayelsa population and terrain in the Niger Delta,

	sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services in accordance with such procedure as may be prescribed.	such provisions, it recognizes the need to domesticate international models to suit local circumstances to the extent that the fundamental objectives of procurement are still respected.		promoting popular participation in procurements through community participation is a welcome development. The reasons are already stated in the body of the bill.
S.26: Ministry, Department and Agency Execution	<p>In the case of works which are carried out with government resources, procurement may be effected by the MDA itself where one or more of the following conditions are present, namely where;</p> <p>(a) an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location or scattered location or financing or high mobilization costs for outside suppliers;</p> <p>(b) an activity is such that, if carried out by a contractor, it would impose an unacceptable risk on the contractor because the cost cannot be determined in advance;</p> <p>(c) the risk of unavoidable work interruptions is better borne by the</p>	No equivalent provision exists in the Federal and Model Laws. The objectives of paragraph (e) of the Bill can be met through a two stage tendering process where the procuring entity cannot formulate detailed specifications.	The use of this procurement method should be very restricted and a subsection should be inserted demanding prior justification by the MDA and approval by the Bureau before the method can be used.	The rough terrain and the volatile nature of the Niger Delta may justify this methodology.

	<p>MDA than by a contractor;</p> <p>(d) it has been demonstrated that departmental execution is the only practical method for construction, maintenance and conservation works under special circumstances;</p> <p>(e) an activity for a pilot project of a particular nature for the development of a technology work method cannot be carried out by a contractor;</p> <p>(f) works must be carried out without disrupting existing operations by the MDA's staff because they are familiar with those operations; or</p> <p>(g) there is an emergency such as a natural disaster which calls for immediate action.</p>			
S.27: Request for Proposals	<p>(1) Where, in respect of consultancy services, the request for proposals method is used, the MDA shall draw up a shortlist of consultants, to ensure effective competition among those who have the capacity to perform the required services.</p> <p>(2) (a) Where the estimated value of the procurement exceeds the</p>	The provisions of the Federal and Model laws on this subject are more detailed.	Retain the provisions of the Bill but consider making it more detailed.	

<p>prescribed threshold, the MDA shall, in order to draw up the shortlist, seek expressions of interest by publishing a notice in a national newspaper of wide circulation and include in the list those .who have expressed interest in the procurement.</p> <p>(b) Where the estimated value of the contract does not exceed the prescribed threshold, the shortlist may be drawn up on the basis of the MDA's own knowledge and information.</p> <p>(3) The MDA shall issue a request to the short-listed consultants, asking them to confirm their interest by submitting a proposal, which shall include such information as may be prescribed that enables them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the MDA.</p> <p>(4) The selection of the successful proposal shall be based on:</p> <p>(a) the technical quality of the proposal, the consultant's relevant</p>			
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	<p>experience, the expertise of his key staff, the proposed work methodology, as well as the price quoted in the proposal;</p> <p>(b) the quality of the technical proposal submitted within a predetermined fixed budget;</p> <p>(c) where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or national economy, exclusively on the technical quality of the proposal.</p> <p>(5) The MDA shall evaluate each technical proposal on the basis of criteria which shall include:</p> <p>(a) the consultants relevant experience for the assignment;</p> <p>(b) the quality of the methodology proposed;</p> <p>(c) the qualifications of the key staff proposed;</p> <p>(d) transfer of knowledge, if required in the request for proposals; and</p>			
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	<p>(e) in the case of interstate competition, the extent of participation by indigenes among key staff in the performance of the assignment.</p> <p>(6) The financial proposals of bidders who have secured the minimum pass mark in the technical evaluation shall then be considered and evaluated by the MDA after a public announcement of the results of the technical evaluation.</p> <p>(7) Where the choice of consultancy services is made in relation to quality and cost, fixed budget, or least cost considerations, the financial proposals of all consultants whose technical proposals attained the required minimum pass mark shall be read out to the bidders who wish to attend, in accordance with the prescribed procedure.</p> <p>(8) Where the choice of consultancy services is made in relation to quality alone, only the financial proposal of the consultant whose technical proposal achieved the highest ranking shall be evaluated.</p>			
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	<p>(9) (a) The contract may be negotiated with the winning consultant with regard to the terms of the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided, by Government and, the financial proposal.</p> <p>(b) Where price has been a factor the fee for services shall not be subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.</p> <p>(c) Where the negotiations fail to result in an acceptable contract, the MDA shall notify the consultant accordingly and proceed to the next ranked bidder, and so on.</p> <p>(10) The consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for proposals, or the one with the least cost in the case of the least cost method of selection, shall be selected for award, subject to satisfactory conclusion of</p>			
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	<p>negotiations.</p> <p>(11) The MDA shall notify the successful consultant of its selection for award and shall simultaneously notify all other short-listed consultants of the decision.</p> <p>(12) In the absence of a challenge by any other consultant within 15 days of a notice under subsection (11), the contract shall be awarded to the successful consultant indicated.</p>			
S.28: Direct Procurement	<p>(1) The direct procurement method allows an MDA to purchase goods, other services or works from a single source without competition.</p> <p>(2) Direct procurement is permitted –</p> <p>(a) where the value of the procurement does not exceed the prescribed threshold;</p> <p>(b) where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;</p>	<p>Virtually the same provisions in the Federal and Model Laws. But missing in the Bill is the need for inclusion in records of proceedings of the grounds justifying the recourse to direct procurement.</p>	<p>Retain provision but include the need for a statement of the justification in the record of proceedings.</p>	<p>In conformity with best practices.</p>

	<p>(c) within .the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the MDA to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;</p> <p>(d) within the prescribed limits, where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons; -</p> <p>(e) where the nature, of the consultancy services requires that a particular consultant be selected due to unique qualifications; or</p> <p>(f) where continuity of consultancy services is essential to meet the objectives of the consultancy assignment.</p>			
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S.29: Eligibility for Submission of Bids	All suppliers, contractors and consultants shall be entitled to a fair opportunity to tender for provision of goods, works and services in MDAs. Pursuant to section (see restricted bidding), MDAs may exclude certain suppliers, contractors and consultants from tendering for procurement opportunities.	Unlike the Federal and Model Laws which explicitly states the detailed qualifications of bidders in S.16 under the “fundamental principles for procurement”, the bill is silent on this.	Consider including the equivalent provisions of S.16 (6) of the Federal and Model Laws.	This will enhance the transparency of the process.
S.30: Exclusion of Prospective Suppliers, Contractors or Consultants	<p>(1) An MDA may exclude a tenderer from consideration for award of contracts if:</p> <p>(a) there is tangible evidence that such persons have promised or given a gift of money or material items to a current or former employee of a procuring entity (MDA) or the Bureau in an attempt to influence action on the course of the procurement activity;</p> <p>(b) the supplier, consultant, or contractor in question has during the last three years failed to perform or give proper attention to awarded contracts;</p> <p>(c) such a bidder(s) is in arrears regarding payment of taxes, charges, pensions, social insurance contributions etc.;</p>	The Bill omitted some issues contained in the Federal and Model Laws - of a company being in receivership or the subject of insolvency proceedings or if a private company, controlled by a bankrupt persons or persons who have made a compromise with creditors in the last two years. Also failure to submit a statement regarding a dominating position by any other parties to the procurement proceedings, or is in any portion owned by any person that has been validly sentenced for a crime in respect of procurement proceedings or a crime for financial gain as grounds for exclusion.	<p>Retain the Bills provisions but include the other disqualification provisions found in the Federal and Model Laws except the issue of the company being part owned by any person convicted of a crime.</p> <p>In subsection (e), include bidders blacklisted in other states, not just Bayelsa state and at the federal level.</p>	<p>The inclusion makes the provisions more comprehensive. However, in large public companies with thousands of shareholders, keeping track of the conviction status of all its members will be an impossible task. The restriction should be for companies with convicted directors and managers and persons who own up to a certain percentage - 5% of the shares of the company.</p> <p>Including other states will make the provisions more effective.</p>

	<p>(d) the bidder has been validly convicted .for a crime in connection with a procurement proceeding or any other crime, to gain financial profit; and</p> <p>(e) such bidder has been blacklisted or debarred from participating in public procurement activities, in Bayelsa State and at a national level.</p>			
S.31: Prequalification Proceedings.	<p>(1) Prequalification shall be effected for the procurement of large or complex works.</p> <p>(2) In other cases of particularly high value or complex procurement, such as; industrial plant, an MDA may engage in prequalification proceedings, with a view to identifying bidders that are qualified, before the invitation to bid.</p> <p>(3) Where prequalification proceedings are held, the MDA shall provide prequalification documents to all bidders responding to the invitation to pre-qualify, so as to provide them with the information required to prepare and submit</p>	<p>The bill's provisions are not as detailed as the Federal and Model Laws. The bill is also not as detailed as the UNCITRAL Model law on prequalification. Such issues as the contents of prequalification documents and clarifications have been left out in the bill.</p>	<p>Beef up the provisions of the bill in line with UNCITRAL, Federal and Model Laws.</p>	<p>Conformity with best practices.</p>

<p>S.32: Bidding Documents.</p>	<p>applications for prequalification.</p> <p>(4) On the completion of pre-qualification proceedings, the MDA shall promptly make available to each applicant a list of the applicants who have been successfully pre-qualified.</p> <p>An MDA shall provide the bidding documents to all bidders that respond to an invitation to bid or, if pre-qualification proceedings have taken place, to all bidders that have been pre-qualified.</p>	<p>Both the Federal and Model Laws have similar provisions implicit in their provisions but not directly stated as in this section.</p>	<p>Retain the provisions of the bill.</p>	<p>Conformity with best practices.</p>
<p>S. 33: Two Stage Bidding</p>	<p>(1) Open advertised bidding may be held in two stages where –</p> <p>(a) it is not feasible to fully define the technical or contractual aspects of the procurement to elicit competitive bids; or</p> <p>(b) because of the complex nature of the goods, other services or works to be procured, the MDA wishes to consider various technical or contractual solutions, and to discuss with bidders the relative</p>	<p>The provisions of the Federal and Model Laws are more detailed and specific and are more in conformity with article 46 of the UNCITRAL Model Law relating to the conditions for two stage tendering. The bar on the use of two stage tendering where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs is not</p>	<p>Make the bill more UNCITRAL compliant by including provisions from the Federal and Model laws.</p>	<p>Conformity to best practices, reduction of discretion which is subject to abuse and enhancement of transparency and accountability.</p>

	<p>merits of those variants before deciding on the final technical specifications and contractual conditions.</p> <p>(2) In the first stage, the bidding documents shall —</p> <p>(a) Outline —</p> <p>(i) the purpose;</p> <p>(ii) the expected performance;</p> <p>(iii) the broad specifications of the equipment or work to be procured; and</p> <p>(iv) the qualifications required to perform the contract; and</p> <p>(b) Call upon bidders to submit technical bids without a bid price and their comments on the proposed contract conditions.</p> <p>(3) The MDA may engage in discussions with any bidder with a view to understanding a technical bid or to indicating changes required to make it acceptable and seeking the bidder's willingness to make</p>	<p>included in the bill.</p>		
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	<p>such changes.</p> <p>(4) At the end of the first stage, the MDA may - .</p> <p>(a) reject those bids which do not, and cannot be changed to, meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non- responsive; or</p> <p>(b) modify the technical specifications, evaluation criteria, and contract conditions in order to maximize competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.</p> <p>(5) In the second stage, the MDA shall invite bidders whose bids have not been rejected to submit final bids with prices to the revised bidding documents.</p>			
S. 34: Bid Security	(1) An MDA shall, where applicable and in such manner as may be prescribed, include in the bidding documents the requirements for bid security.	The Federal and Model Laws (S.26) specify bid security to be an amount not more than 2% of the bid price and it should be by way of a bank	Specify the quantum of bid security in the Bill and further consider the IBRD alternative in lieu of bid security.	There is the need for clarity in the law to reduce discretion conferred on procuring entities. And the Declaration increases

	<p>(2) Forfeiture of bid security shall be imposed by the MDA only in the event of-</p> <p>(a) a modification or withdrawal of a bid after the deadline for submission of bids during its period of validity;</p> <p>(b) refusal by a bidder to accept a correction of an error appearing on the face of the-bid;</p> <p>(c) failure by a successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or</p> <p>(d) failure by a successful bidder to provide security for the performance of the procurement contract if required to do so by the bidding documents.</p>	<p>guarantee.</p> <p>As an alternative to bid security, the IBRD Guidelines on Declaration as an Alternative to Bid Security, may require bidders to sign a declaration that if they withdraw or modify their bids during the period of validity or are awarded the contract but fail to sign, the bidder shall stand suspended for a period of time indicated in the declaration from being eligible to bid in any contract with the procuring entity.</p>		<p>the options open to procuring entities.</p>
<p>S.35: Submission of Bids.</p>	<p>(1) Subject to this section, a bid shall be submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents.</p> <p>(2) Invitations for prequalification and bidding documents may contain provision that allows submission of applications to pre-qualify or bids by</p>	<p>The Federal and Model Laws further require that the bid should be in English language and be deposited in a tamper proof box (S.27) and bidding documents to authorize any other method of submission is not provided in the Federal and Model Laws. The Bill has little or no provisions on</p>	<p>Include the fact that bids shall be kept in a tamper proof box and English Language requirement since English is the official language of Bayelsa. Include provisions generally barring communications and</p>	<p>Conformity with best practices.</p>

	<p>hand or mail or by courier at the option of the bidder.</p> <p>(3) The bidding documents may authorize other methods for the submission of bids where it is so prescribed.</p>	<p>communications between procuring entities and contractors after publication of bid solicitation documents. However, the Federal and Model Laws and UNCITRAL Model Law made provisions for the modus operandi of such communications.</p>	<p>the modus of such communications where it is desirable.</p>	
S.36: Deadline for Submission of Bids.	<p>(1) An MDA shall set a deadline for the submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation. and submission, with a view to maximizing competition, which shall not be less than such minimum period as may be prescribed.</p> <p>(2) A bid in a sealed envelope received after the deadline for submission shall be returned unopened to the bidder.</p>	<p>Same as Federal and Model Laws.</p>	<p>Retain provisions of bill.</p>	
S.37: Withdrawal and Modification of Bids	<p>A bidder may modify, substitute, or withdraw its bid after submission, where the written notice of the modification, substitution or withdrawal is received by the MDA before the deadline for the submission of bids.</p>	<p>Same as in the Federal and Model Laws - S.29 (4).</p>	<p>Retain provision of the Bill.</p>	
S.38: Bid	<p>(1) Every bid shall remain valid for</p>	<p>Federal and Model Laws tie</p>	<p>Retain provisions of the</p>	

Validity Period	<p>the period of time indicated in the bidding documents which shall not be more than 180 days.</p> <p>(2) The validity period of a bid may be extended only with the agreement of the bidder concerned.</p> <p>(3) A bidder who agrees to an extension of the validity period of his bid shall also furnish a corresponding extension of his bid security, if security was required for the original bid submission.</p>	<p>the validity period to the provisions of the tender documents without a maximum period of life like the 180 days provided in the Bill. The Bill's provision of 180 days is innovative.</p>	Bill.	
S.39: Disqualification of Bidders and Suppliers	<p>(1) Every MDA shall ensure that no disqualified supplier, contractor or consultant is permitted to receive a procurement contract or otherwise participate in procurement proceedings.</p> <p>(2) The Due Process and E-Governance Bureau shall, by regulations, make provision concerning the disqualification standards and procedures for suppliers, contractors and consultants.</p>	<p>Similar provisions exist in Federal and Model Laws (S16).</p>	Retain provisions of the Bill.	
S.40: Opening of Bids	<p>(1) Every bid shall be opened at the time and place indicated in the</p>	<p>Virtually the same as in the Federal and Model Laws.</p>	Retain the provisions of the Bill.	

	<p>bidding documents.</p> <p>(2) The time of bid opening shall coincide with the deadline for the submission of bids, or follow immediately thereafter, if this is necessary for logistic reasons.</p> <p>(3) Every bidder or his representative shall be authorized to attend the bid opening.</p> <p>(4) The name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, shall be read out and recorded, and a copy of the record shall be made available to any bidder on request.</p> <p>(5) No decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.</p>			
S.41: Examination and Evaluation of Bids	(1) An MDA may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.	Virtually the same provisions in the Federal and Model Laws (S.31) but the last two Laws defined the concept of major and minor deviations which is lacking in the Bill.	Retain provisions of the Bill but define major and minor deviations and consider including the equivalent of S.32 of the Federal and Model Laws.	In conformity with best practices.

	<p>(2) An MDA shall, in order to evaluate bids, set up a bid evaluation committee, selected from a list of qualified and independent evaluators maintained by it.</p> <p>(3) Following the opening of bids, an MDA shall –</p> <p>(a) examine the bids in order to determine whether they are complete and in accordance with the bidding documents; and</p> <p>(b) ascertain whether</p> <p>(i) they are properly signed; and</p> <p>(ii) the documents required to establish their legal validity and the required security have been furnished.</p> <p>(4) Where a prequalification procedure is applicable, a bid received from an entity other than a pre-qualified bidder shall be rejected.</p> <p>(5) Where a bid discloses an arithmetical error, the error shall be corrected and the bidder notified.</p>	<p>Although this section of the Bill is on “Examination and Evaluation of Bids” the Bill has no equivalent of S. 32 of the Federal and Model laws on “Evaluation of Bids”</p>		
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	<p>(6) Where there is a discrepancy between figures and words, the amount in words shall prevail, and the mistake shall be corrected and the bidder notified.</p> <p>(7) Where a bidder refuses to accept a correction made pursuant to subsection (5) or (6), his bid shall be rejected and the bid security forfeited in accordance with section 33 (2) (b).</p> <p>(8) Where there is a minor deviation in any bid that did not warrant rejection of the bid at an earlier stage, such minor variation shall be quantified in monetary terms, as far as possible.</p> <p>(9) Every bid shall be evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid shall be compared with the evaluated cost of other bids to determine the lowest evaluated bid.</p> <p>(10) Where a prequalification procedure is applicable, the qualifications of the lowest</p>			
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	<p>evaluated bidder shall be verified newly to take account of any change since the original prequalification.</p> <p>(11) The bid evaluation committee shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the lowest evaluated bid that meets the qualification criteria.</p> <p>(12) In the exercise of its function, the bid evaluation Committee shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.</p>			
S.42: Post Qualification	<p>(1) Where there was no prequalification procedure, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents.</p> <p>(2) Where the bid fails to conform to those criteria, the bid shall be rejected and the same check shall be applied to the next ranked bid.</p>	Similar provisions exist in the Federal and Model Laws in S. 32 (3) (i).	Retain provisions of the Bill.	
S.43: Cancellation of	(1) An MDA may, at any time prior to the acceptance of a bid, reject all	S.28 of the Federal and Model Laws make provisions for	Retain provisions of the Bill.	

<p>Bidding</p>	<p>bids, or cancel the public procurement proceedings where -</p> <p>(a) all the bids are non-responsive;</p> <p>(b) the lowest evaluated bid is substantially above the applicable updated cost estimate;</p> <p>(c) the goods works or services are no longer required; or</p> <p>(d) it has been established that there has been collusion among the bidders.</p> <p>(2) Written notice of the rejection of all bids, or cancellation of the public procurement proceedings, shall be given to all bidders that submitted bids.</p> <p>(3) There shall be no invitation to re-bid for the procurement on the same specifications and contract conditions unless the rejection of all bids or cancellation of procurement proceeding is made on a ground specified in subsection (1) (a) or (b).</p> <p>(4) Where the invitation for the procurement is to be repeated, the</p>	<p>cancellation of bids but the Bill is more detailed and extensive. The Bill's provisions are supported by UNCITRAL Model Law.</p>		
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	<p>reason for the rejection of all bids or the cancellation of the procurement proceedings shall be examined by the MDA and the technical specifications, or contract conditions shall be suitably modified.</p>			
<p>S.44: Award of Procurement Contract</p>	<p>(1) A contract shall be awarded as a result of competition by tender, unless there are specific reasons to the contrary; where the MDA must consult with the Due Process and E-Governance Bureau.</p> <p>(2) A procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents following the steps outlined in subsections (4) and (5).</p> <p>(3) There shall be no negotiation between an MDA and a selected bidder or other bidders except in such special circumstances as may be prescribed.</p> <p>(4) An MDA shall notify the successful bidder in writing of the</p>	<p>The Bill's provisions are more detailed and specific compared to the Federal and Model Laws which is headed "acceptance of bids".</p>	<p>Retain the Bill's provisions.</p>	

	<p>selection of its bid for award and a notice in writing shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract.</p> <p>(5) In the absence of a challenge by any other bidder within 15 days of that notice, in the case of inter-state procurement, and 7 days in the case of local procurement, the contract shall be awarded to the successful bidder.</p> <p>(6) A successful bidder may be asked to submit a performance security and sign a contract within the period specified in the bidding documents.</p> <p>(7) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.</p> <p>(8) Where the bidder whose bid has been accepted fails to sign a contract, if required to do so, or fails to provide any required security for the performance of the contract</p>			
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	<p>within the prescribed time limit, the MDA shall select another bidder from among the remaining valid bids, and subsections (4) to (6) shall apply to the new selection.</p> <p>(9) Accounting Officers Of MDAs shall ensure that all contracts are denominated in local currencies, except in exceptional circumstances.</p> <p>(10) MDAs shall promptly publish, in such manner as may be prescribed, notice of every procurement award.</p>			
S.45: Debriefing of Unsuccessful Bidders.	MDAs shall promptly, on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful where the request for such debriefing was submitted within 30 days of the publication referred to in section 33 (7).	The first point to note is that the Bill's section 33 ended in subsection (5) and there is no subsection (7). However, there are no specific sections on debriefing but there is a provision for giving access to records of proceedings to bidders in the Federal and Model Laws under "recorded procurement proceedings" in S.38 (2) (b).	Retain the provisions of the Bill.	
S.46: Auditors Certificate.	The auditor of every MDA shall state in his annual report whether the provisions of this Part has been complied with.	This is an innovative provision which is not available in the Federal and Model Laws which merely grants access to record of procurement proceedings to	Retain provisions of the Bill.	

		a number of persons including the Auditor.		
S.47: Application of Part V	<p>(1) Subject to subsection (2), this Part shall apply to bids for every procurement contract.</p> <p>(2) All activities relating to procurement of items shall be handled entirely by the MDA concerned. Items costing exceptionally high amounts, or which have a highly significant impact on the State's economy shall be referred to the State Central Procurement Board for evaluation, deliberation and approval.</p> <p>(3) Procurement of items costing below N100,000 shall be approved by the Accounting Officer of the MDA concerned.</p> <p>(4) The right of approval of items costing between N100,000 and N500,000 shall be solely in the hands of the Honourable Commissioner of the MDA concerned (or may be designated to the Accounting Officer, by the Honourable Commissioner).</p> <p>(5) Items not exceeding N500,000</p>	The Bill places monetary thresholds in the body of the law, a provision which is absent in the Federal and Model Laws - these are to be determined by National Council on Public Procurement. Also, there is no equivalent provision in the Federal Law or Model Law for a minister or commissioner to approve award of contracts.	Retain the provisions of the Bill but consider removing a political appointee like the commissioner from the award and approval process.	<p>The merit of placing the thresholds in the body of the law is that it introduces clarity while it may require an amendment of the law to change it, if the monetary values change due to inflation.</p> <p>The Nigerian Country Procurement Assessment recommends that political officers should disengage from the procurement award and approval process and allow the administrative process to be handled by civil servants, while political office holders exercise oversight and managerial control.</p>

	<p>other than contracts and supplies (e.g. training, conferences etc) shall be approved by the Accounting Officer and the Honourable Commissioner of the MDA concerned.</p> <p>(5) Procurement activities related to contracts and supplies, which cost above N500,000 shall be approved by the Ministerial/Departmental Tenders Board and ratified by the Honourable Commissioner of the MDA concerned.</p>			
S.48: Right of Challenge	<p>(1) A bidder who claims to have suffered, or to be likely to suffer loss or injury due to a breach of a duty imposed on an MDA by this Law shall have the right to challenge the procurement proceedings at any time before the entry into force of the procurement contract.</p> <p>(2) A challenge shall be in writing to the Commissioner of the MDA concerned and identify the specific act or omission alleged to contravene this Law.</p> <p>(3) A challenge shall not be entertained unless it is submitted —</p>	<p>Similar provisions exist in the Federal and Model Laws but the first challenge is forwarded to the Accounting Officer rather than the Commissioner of the MDA.</p> <p>However, the Federal and Model Laws require the bidder to lodge his complaint within 15 days from the day he became aware or should have become aware of the circumstances giving rise to the complaint. And they also give the Accounting officer 15 days to resolve the dispute</p>	<p>Retain the thrust of the provisions of the Bill but consider appeals to be first lodged with the Accounting Officer and provide a time frame for the complaint and a decision by the Accounting officer.</p>	<p>If political officers are removed from the award and approval process, then the complaint to the commissioner may not have any basis. A time frame is necessary so as not to unduly delay public procurements or disrupt the implementation of already awarded contract.</p>

	<p>(a) in the case of a challenge under section 26(12) or 43(4) within the time specified in the relevant subsection; or</p> <p>(b) in any other case within such time as may be prescribed.</p> <p>(4) Unless the challenge is resolved, the Commissioner of the MDA shall suspend the public procurement proceedings and shall, within such time period as may be prescribed, issue a written decision, stating his reasons, and, if the challenge is upheld, indicating the corrective measures to be taken.</p>			
<p>S.49: Right of Review.</p>	<p>(1) An unsatisfied bidder shall be entitled to ask the Board to review the procurement proceedings where -</p> <p>(a) the Chief Executive Officer of the MDA does not issue a decision within the time specified in section 47(4),</p> <p>(b) he is not satisfied with the decision; or</p>	<p>Appeals lie from the Commissioner's decision to the Central Procurement Board while in the Federal and Model laws, appeals lie from the Accounting Officer's decision to the Bureau for Public Procurement.</p> <p>The Bill provides for a deposit as a requirement for filing an appeal with the Board and this deposit may be forfeited if the</p>	<p>The requirement of a deposit before lodging an appeal with the Central Procurement Board should be waived. Otherwise retain the provisions of the Bill.</p>	<p>Asking an applicant to make a deposit which may be forfeited if he loses the appeal as a precondition to the hearing of his appeal penalizes the applicant and unduly favours the MDA. It may be contrary to the constitutional right to fair hearing.</p>

	<p>(c) before or after the entry into force of a procurement contract the value of which is above the prescribed threshold, he is not satisfied with the procurement proceedings on a ground specified in section 47(1).</p> <p>(2) An application for review under subsection (1) shall -</p> <p>(a) be in writing;</p> <p>(b) specify the reasons for making the application; and</p> <p>(c) be made within such time as may be prescribed.</p> <p>(3) An applicant for a review shall –</p> <p>(a) be required to make a deposit as may be prescribed for filing the application; and</p> <p>(b) where the Board determines that the application was frivolous, the deposit made shall be forfeited.</p> <p>(4) Where an application for review is made in accordance with this section, the procurement</p>	<p>appeal is frivolous but there are no equivalent provisions in the Federal and Model Laws.</p> <p>Filing a certificate of urgent public interest consideration by an MDA so as not to stop the procurement proceedings is also not in the Federal and Model Laws while the timing in the Federal and Model Laws for the lodging of the appeal with the Bureau is 10 working days from the date of the communication of the decision of the Accounting Officer. Also the Bureau has to arrive at a decision within 21 working days after receiving the complaint while the Bill provides for 1 month timing from the date of the submission of the application for review.</p>		
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	<p>proceedings shall, subject to subsection (5), be suspended until the appeal is heard and determined by the Board.</p> <p>(5) The suspension provided by subsection (4) shall not apply where the MDA certifies that urgent public interest considerations require the procurement proceedings to proceed.</p> <p>(6) A certificate issued by an MDA pursuant to subsection (5) shall expressly state the grounds of the urgent public interest considerations and shall be made a part of the record of the public procurement proceedings.</p> <p>(7) A certificate issued by an MDA pursuant to subsection (5) shall be binding on the Board and the procurement proceedings shall proceed unless an application for leave to seek a judicial review is successful.</p> <p>(8) The Board shall make a decision under this section within 1 month of the date of submission of an application for review under</p>			
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	<p>subsection (2).</p> <p>(9) Where the procurement proceedings have not been suspended under subsection (5). and the application for review of an unsatisfied bidder is determined in his favour, the Board shall award him compensation limited to the recovery of the costs of bid preparation and participation in the procurement proceedings</p> <p>(10) The Board may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies –</p> <p>(a) prohibit the MDA from acting or deciding in an unauthorized manner or from following an incorrect procedure;</p> <p>(b) recommend the annulment in whole or in part of any unauthorized act or decision of the MDA;</p> <p>(c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation.</p>			
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<p>S.50: Contents of Contracts</p>	<p>(1) A procurement contract shall include the terms and conditions that are set out in the bidding documents or request for proposals as well as –</p> <p>(a) the names, addresses and telephone and fax numbers, of the contact persons of the parties to the contract;</p> <p>(b) the scope of the work;</p> <p>(c) the order of priority of contract documents;</p> <p>(d) the contract price or its mode of determination;</p> <p>(e) the conditions of acceptance;</p> <p>(f) the conditions and mode of payment;</p> <p>(g) the modalities of “force majeure”;</p> <p>(h) the price adjustment mechanisms;</p> <p>(i) the milestones to be utilized for billing and payment;</p>	<p>There is no equivalent provision in the Federal and Model Laws but the provisions are innovative and commendable.</p>	<p>Retain provisions of the Bill</p>	<p>The provisions will help streamline the drafting of sound contracts and facilitate resolution of disputes and contract implementation.</p>
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	<p>(j) the provisions for termination of the contract;</p> <p>(k) the procedure for dispute resolution; and</p> <p>(l) the applicable law.</p> <p>(2) Any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed by the parties in writing.</p> <p>(3) An amendment to the contract that will increase the contract value -by more than 25 percent shall require fresh procurement proceedings except where the amendment must be effected for a reason specified in section 27 (2) (c) or (d).</p> <p>(4) No formal amendment of the contract shall be required where the MDA wishes to make a variation or invokes a contract price adjustment which is expressly authorized in the contract.</p>			
S.51: Payment	(1) Subject to such specific terms of a procurement contract, as may be prescribed, payment shall be made	Similar provisions are found in S.37 of the Federal and Model Laws but they move a step	Retain provisions in the Bill but adopt the 60 days definition in the	This will ensure uniformity of practice among Bayelsa MDAs and a

	<p>on the basis of the submission of a proper invoice.</p> <p>(2) Payments due to a supplier shall be made in accordance with the deadlines set out in the procurement contract and the supplier shall be compensated for late payment by payment of interest in accordance with the rate specified in the contract or, if no such rate is specified, at the legal rate.</p>	<p>further by defining late payment to be a payment after 60 days from the date of the submission of the invoice, valuation certificate, confirmation or authentication by the MDA.</p>	<p>Federal and Model Laws.</p>	<p>proper appreciation of the time frame for payment by MDAs.</p>
<p>S.52: Termination and Breach</p>	<p>Notwithstanding any other enactment -</p> <p>(a) an MDA may terminate a procurement contract for its convenience at any time upon a determination that because of changed circumstances the continuation of the contract is not in the public interest, provided that such termination has been approved by the approving authority; and</p> <p>(b) upon such a termination, the contractor will be entitled to reimbursement of expenses incurred in the performance of the contract, but will not be entitled to recover anticipated profits on the completion</p>	<p>Apparently, the provisions of the Federal and Model Laws stop at acceptance of bids and award of contract. The post contract award provisions are not there in the two Laws.</p> <p>This section of the Bill appears too one sided in favour of the state to the detriment of contractors and service providers. The normal law of contract including actions in damages, specific performance etc should apply. The state should not be allowed to approbate and reprobate.</p>	<p>Consider expunging this provision.</p>	<p>When a contractor or service provider enters a contract with the state, he commits his time and resources to the contract and may even secure a bank facility. He should be entitled under the law of contract to fulfill his obligations to the state and the state should be duty bound to fulfill its own side of the bargain. The state should not start a procurement, if it is not ready to conclude it.</p> <p>Imagine the converse; what happens if a</p>

	of the contract.			contractor decides to back out of the contract at any time for its own convenience?
S. 53: Artificial Division	No MDA may artificially divide the modalities of procurement in such a way as to avoid any monetary thresholds laid down in this Law or in an instrument drawn up pursuant to this Law.	S.20 (2) (e) of the Federal and Model Laws on the duties of Accounting Officers makes similar provisions.	Retain provisions of the Bill.	This provision will encourage due process and respect for laid down rules and procedures.
S.54: Duties of Ministries, Departments and Agencies	<p>(1) Every MDA shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Due Process and E-Governance Bureau.</p> <p>(2) Every MDA shall —</p> <p>(a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act;</p> <p>(b) make an annual plan for budgeting purposes and plan each step of procurement for contracts in such manner as may be prescribed.</p>	<p>The provision of subsection 1 is reflected in the Federal and Model Laws as duties of the Accounting Officer in S.20. Procurement planning is provided in S.18 of the Federal and Model Laws and the provisions are more detailed.</p> <p>Keeping of records of proceedings are provided for in the Federal and Model Laws - S. 16 (12) and (13) and S.38.</p> <p>Federal and Model Laws impliedly expect documents, notifications and communications to be in writing. There are also provisions for bidder's access to records of procurement proceedings - S.38.</p>	Retain the provisions of the Bill.	Conforms to best practices.

<p>(3) Every MDA shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.</p> <p>(4) Subject to this Act, all documents, notifications, decisions and other communication referred to in this Law shall be in writing.</p> <p>(5) Where it is so prescribed, an MDA may authorize the use of other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payment.</p> <p>(6) Where other means of communication are used in accordance with subsection (5), the MDA shall ensure that –</p> <p>(a) a record of the content of the communication is preserved;</p> <p>(b) an adequate level of security and confidentiality is provided;</p> <p>(c) the bidders' access to the</p>	<p>All the provisions of this section have equivalents in the UNCITRAL Model Law.</p>		
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	<p>records of the procurement proceedings is preserved; and</p> <p>(d) any other requirement of this Law is complied with.</p>			
S.55: Conduct of Public Officials.	<p>(1) A public official involved in planning or conducting public procurement proceedings or contract administration, shall –</p> <p>(a) discharge his duties impartially so as to ensure fair competitive access to procurement by suppliers;</p> <p>(b) act in the public interest, and in accordance with the objectives and procedures set out in this Act;</p> <p>(c) avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself;</p> <p>(d) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;</p> <p>(e) keep confidential any information that comes into his possession relating to procurement proceedings and to bids, including bidder's</p>	Similar provisions exist in the Federal and Model Laws under the Code of Conduct.	Retain provisions of the Bill.	The provisions are in line with best practices.

	<p>proprietary information;</p> <p>(f) for a period of 2 years after leaving the public service not accept a position of authority in any private concern with which he had official dealings; and</p> <p>(g) declare his assets in such manner as may be prescribed.</p> <p>(2) (a) No public official, or his close relative, shall participate as a bidder in procurement proceedings of that MDA and no award of a procurement contract shall be made directly to such official or to any body in which he or his close relative, is employed in a management capacity or has a substantial financial interest.</p> <p>(b) In the subsection, "close relative includes spouse, child, grandchild or parent.</p>			
<p>S.56: Conduct of Bidders and Suppliers.</p>	<p>(1) A bidder or a supplier shall not engage in or abet any corrupt or fraudulent practice, including the offering or giving, directly or indirectly, of improper inducements, in order to influence a procurement process or the execution of a</p>	<p>Similar provisions exist under the Code of Conduct and Offences provisions of the Federal and Model Laws.</p>	<p>Retain the provisions of the Bill.</p>	<p>This is in line with best practices.</p>

	<p>contract, including interference in the ability of competing bidders to participate in procurement proceedings.</p> <p>(2) A bidder or a supplier shall not engage in any coercive practice threatening to harm, directly or indirectly, any person or his property to influence his participation in a procurement process, or affect the execution of a contract.</p> <p>(3) A bidder shall not engage in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive an MDA of the benefit of free and open competition.</p> <p>(4) An MDA shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) and promptly notify the rejection to the bidder concerned and to the Due Process and E-Governance Bureau.</p> <p>(5) Subject to paragraph (b), a bidder or supplier who is responsible</p>			
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	<p>for preparing the specifications or bidding documents for, or supervising the execution of a procurement contract, or a related company of such a bidder or supplier shall not—</p> <p>(a) participate in such bidding.;</p> <p>(b) apply to the several bodies (consultants, contractors or suppliers) that together may be performing the supplier's obligations under a turnkey or design-build contract.</p>			
<p>S.57: Suspension and Debarment of Bidders and Suppliers.</p>	<p>(1) Subject to subsection (2), the Due Process and E-Governance Bureau may, under such conditions as may be prescribed, suspend or debar a potential bidder or supplier from participation in procurement on the following grounds-</p> <p>(a) supplying false information in the process of submitting a bid or prequalification application;</p> <p>(b) collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;</p>	<p>Similar provisions exist in the Federal and Model Laws under "Code of Conduct and Offences".</p>	<p>Retain the provisions of the Bill.</p>	

	<p>(c) interference by a supplier with the participation of competing bidders;</p> <p>(d) misconduct relating to the submission of bids, including corruption, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;</p> <p>(e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract; or</p> <p>(f) conviction for an offence related to dishonesty or fraud in his professional activity.</p> <p>(2) A suspension or debarment of a bidder or supplier under subsection (1) shall not be effected unless the Due Process and E-Governance Bureau –</p> <p>(a) reviews and considers the factual record developed by the MDA that proposes the action;</p>			
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	<p>(b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and .</p> <p>(c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.</p> <p>(3) A period of debarment under subsection (1) shall not exceed 5 years.</p>			
S.58: Oath of Office	Every member and officer shall, on assumption of duty, take such oath as may be prescribed.			
S.59: Disclosure of Interest	<p>A member or officer having any direct or indirect interest in any matter brought before the Due Process and E-Governance Bureau or the Board-</p> <p>(a) shall immediately inform the Director or the Chairperson, as the case may be; and</p> <p>(b) shall not participate in the deliberations or any part of the decision-making process in relation to that matter.</p>	Similar provisions exist in the Federal and Model Laws under Code of Conduct in S.57 (10), (11) and (12) and S.57 (8), (9) and (10) respectively although under the conflict of interest discussions. But the provisions of the Federal and Model Laws are more detailed.	Consider adapting the expanded provisions of the Federal and Model Law to beef up the section.	This will enhance transparency and accountability and introduce more certainty into the law.

<p>S.60: Declaration of Assets</p>	<p>(1) Subject to subsection (2), every officer involved in the procurement process shall file with the appropriate authority a declaration of his assets and liabilities in such form and manner as may be prescribed –</p> <p>(a) within 30 days of his appointment and</p> <p>(b) on the termination of his appointment.</p> <p>(2) Where, subsequent to a declaration made under subsection (1), his assets or liabilities is so altered as to be reduced or increased in value by not less than a predetermined amount, the member or officer shall make a fresh declaration.</p> <p>(3) No declaration of assets filed under this section shall be disclosed to any person except with the express consent of the member or officer concerned or by order of a Judge on reasonable cause shown.</p>	<p>There is no provision for declaration of assets in the Federal and Model Laws. This provision in the Bill is innovative.</p>	<p>Retain the provisions of the Bill.</p>	<p>The provisions would facilitate transparency, probity and accountability in the procurement system.</p>
<p>S.61: Funds</p>	<p>The Due Process and E-Governance Bureau and the Board</p>	<p>The similar provision in the Federal and Model Laws is</p>	<p>Consider adopting the format of the Federal</p>	<p>The Federal and Model Law provisions are more</p>

	shall derive their funds from the Consolidated Fund and from any fees and charges levied by the respective institutions.	S12. However, S.12 is more detailed and apart from indicating sources of funding establishes a Fund for the Bureau. The Fund is to be established by approval of Council and the Council is vested with powers to make certain regulations relating to payments into and out of the Fund.	and Model laws	comprehensive.
S.62: Undue Influence	Any person who directly or indirectly, in any manner, influences, or attempts to influence, any member or public official or any member of the Due Process and e-Governance Bureau or the Board or an MDA in the performance of his duties under this Law, shall commit an offence.	Similar provisions exist in the Federal and Model Laws under Offences [(S.58 (4) (b)]	Retain the provisions of the Bill.	
S.63: Immunities	No action shall lie against the Due Process and e-Governance Bureau or the Board, or any member or officer, for any act or omission, except in so far as the act or omission complained of was done in bad faith.	The Bill confers immunity from suit and legal process on the Bureau and Board or any member or officer except in situations of actions and omissions in bad faith while the Federal and Model Laws require pre-action notice. The two laws further state that the officials of the Bureau shall not incur personal liability in the exercise of their functions and	The Bill should consider adopting the provisions of the Federal and Model laws which appear more suitable in the light of the Nigerian experience with the immunity clause.	Immunity from suit and legal process conferred on some officers of state has already caused a lot of mischief in the accountability process. A new law should tread with caution in expanding persons and offices with access to the protection of the immunity clause.

		powers and are to be indemnified against liability incurred in any civil or criminal proceeding in any action brought against them in their official capacity.		
S.64: Offences	Any person who contravenes this Law shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million naira and to penal servitude for a term not exceeding 3 years.	The Federal and Model Laws contain provisions on Offences which are more detailed than the Bill's provisions. The Federal and Model law segments the punishment for public officers, natural and artificial persons. However, the punishments in the Federal and Model Laws appear harsh and excessive.	Consider segmenting the punishment and sentences in the Bill in accordance with the provisions of the Federal and Model Law. However, the terms of imprisonment and fines in the Federal and Model Laws should be slightly reduced.	Lumping together all violations of the law under one punishment appears either too lenient on very serious offenders or too harsh on minor offenders. The impact of all offences in relation to the Law will not be the same. The harsh punishment in the Federal and Model Laws will discourage prosecution and conviction of offenders.
Other Issues: There are a number of issues that were not addressed by the Bill and they are as follows. Unlike the Federal and Model Laws, the Bill has no scope of application in the main body of the law. The scope of application appears on the explanatory pages after the interpretation section. There is also no indication whether it will apply to local governments under the state. The Bill is also silent on mobilisation fees. There is no provision for Observers to monitor the procurement process. And the Bill grants little powers to the Due Process and E-Governance Bureau. There is also no provision for disposal of assets in the Bill as against similar provisions in the Federal Act.				

S.65: Interpretation

In this Law; except where the context otherwise requires -

“Bid” includes a proposal submitted in response to a request issued pursuant to section 24;

“Bidder” means a participant or potential participant in procurement proceedings;

“Bidding document” –

- a. Means any documents issued by MDA on the basis of which bidders prepare bids; and
- b. includes any document which contains instructions to bidders, specification, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or other similar items;

“**Bid security**” means the security instrument required to ensure that a bid will remain valid during the period stated in the bidding document;

“**Board**” means the Central Procurement Board (see Part III);

“**Chairperson**” means the Chairperson of the Central Procurement Board; “**Challenge**” means a challenge made pursuant to sections 26, 43 or 47;

“**Consultant**” means a person under contract to provide consultancy services to an MDA in relation to a procurement contract;

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

“**Contractor**” means a person who has entered into a procurement contract with an MDA

“**Donor organization**” means an organization which provides, or joins in providing; grants, credits or loans to the Government or its agencies;

“**Exempt organization**” means a body which is, by regulations, excluded from the application of this Law;

“**Goods**” means objects of every kind and description including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the goods such as freight and insurance;

“**Member**” —

- a. means a member of the Due Process and E-Governance Bureau or the Board; and
- b. includes the Director of the Bureau and Chairperson of the Board, as the case may be;

“**Commissioner**” means the Commissioner to whom responsibility for the subject of finance and budgeting is assigned;

“**Officer**” means a person who is assigned to, or employed by, the Due Process and E-Governance Bureau, or a member of the Central Procurement Board;

“**Other services**” means any services other than consultancy services or services incidental to the supply of goods or the execution of works;

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

“**Procurement**” means the acquisition by an MDA by any “contractual means of goods, works, consultant services or other services;

“Procurement contract” means a contract between an MDA and a supplier, contractor or consultant resulting from procurement proceedings;

“**MDA**” -

- a) means any Ministry, Department-or other agency of the State Government;
- b) does not include an exempt organization;

“**Public Official**” means—

- a) an Officer;
- b) a public officer or other person employed by an MDA;

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

“**Supplier**” means a person delivering goods, works, consultancy services or other services;

“**Works**” means any work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.

66. Short title and commencement

This Law may be cited as the Public Procurement Law and comes into force on the day of2008.

Application of the Law

- This Law shall not apply to procurement undertaken to select a partner under a Public not limited to BOT, BODT and such other arrangements.
- This Law applies to any other procurement effected by an MDA.

- Where any provision of this Act conflicts with the procurement rules of a donor organization, the application of which is mandatory pursuant to an obligation entered into by the State under any treaty or other form of agreement, the terms of the treaty shall prevail.