

BENUE STATE GOVERNMENT

A BILL FOR A LAW TO MAKE PROVISIONS FOR THE ESTABLISHMENT OF THE BENUE STATE COUNCIL ON PUBLIC PROCUREMENT AND PUBLIC PROCUREMENT COMMISSION AS THE REGULATORY AUTHORITY RESPONSIBLE FOR THE MONITORING AND OVERSIGHTING OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR THE PUBLIC PROCUREMENT IN BENUE STATE AND FOR PURPOSES CONNECTED THEREWITH.

[] *Date of Commencement*

BE IT ENACTED by the Benue State House of Assembly as follows:-

1. This Law may be cited as the **Public Procurement Commission Law** and shall come into force on theday of 2016. *Short title & Commencement*

2. In this Law:- *Definition*

“Accounting Officer” means the person charged with the line supervision of the conduct of all procurement processes.

“Approving Authority” means the person charged with overall responsibility for the functioning of a Ministry, Extra- Ministerial Department or Corporation.

“Assets” includes tangible and intangible things which have been or may be sold or procured for consideration.

“Bid Security” means a form of security assuring that the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time stipulated in the bid.

“Book” includes any register, document or other records of information and any account or accounting records however completed, recorded or stored, whether in written or printed form or micro-film, digital, magnetic or electronic form or otherwise.

“Certificate of No Objection” means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a Procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury.

“Chairman” means the Chairman of the Council on Procurement.

“Commission” means the State Public Procurement Commission (BNSPPC).

“Contract” means an agreement entered in writing.

“Contractor or Supplier” means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, Joint Stock Company, joint ventures or any other legal entity through which business is conducted.

“Council” means the State Public Procurement Council (BNSPPC).

“Debtor” means the naming of a firm, company or natural person on a list of persons ineligible to participate in any procurement proceeding under this Law.

“Excessive Price” means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of a actual value of the item in question plus all reasonable imputations of cost and profit.

“Good” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods.

“Governor” means the Executive Governor of Benue State.

“House” means the Benue State House of Assembly.

“Interim Performance Certificate” means evidence that a contractor or supplier has performed its obligations under a procurement contract up a level stipulated by the contractor but not meaning completion.

“International Competitive Bidder” means the solicitation of bids from both domestics and foreign contractors and suppliers.

“Lowest Evaluated Responsive Bidding” means the lowest price bid against the bids that meets all the technical requirements and standards as contained in the tender document.

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

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

“Monetary Threshold” means the value limit in Naira set by the Commission outside of which an approving authority may not award a procurement contract.

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

“Negotiation” means discussions to determine the term and condition of a contract or procurement.

“Open Competitive Bidding” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services.

“Procurement” means acquisition.

“Procurement Proceeding” means the initiation of the process of effecting procurement up to award of a procurement contract.

“Procuring Entity” means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Department, Government Agency, Parastatals.

“Public Procurement” means the acquisition by any means of goods, works or services by the government.

“Relevant Authority” includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission.

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

“Solicitation Document” means the bid solicitation documents or any other documents for solicitation of offers, proposals or quotations.

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

“State” means Benue State of Nigeria.

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

“Validity Period” means the period during which a bidder agrees, 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 investigation and similar services provided pursuant to the procurement of contract, where the value of this services does not exceed that of the construction itself.

PART I: ESTABLISHMENT OF BENUE STATE COUNCIL ON PUBLIC PROCUREMENT.

- 3.(1) There is hereby established for the State, a Council on Public Procurement (in this Law referred to as **“the Council”**). *Establishment of Council*
- (2) The Council shall consist of the Governor as the Chairman and other members as:
- (a) The Commissioner for Finance.
 - (b) The Hon. Attorney-General and Commissioner for Justice.
 - (c) The Secretary to the Government of the State.
 - (d) The Head of Civil Service of the State.
 - (e) The Economic Adviser to the Government, and
 - (f) Seven part-time members to represent:
 - (i) Chartered Institute of Purchasing and Supply Management of Nigeria.
 - (ii) Nigeria Institute of Quantity Surveyors

- (iii) The Nigerian Bar Association
 - (iv) Benue State Chambers of Commerce, Industry, Mines and Agriculture.
 - (v) Nigerian Society of Engineers
 - (vi) The Civil Society and
 - (vii) The Media
 - (g) The Director-General of the Commission shall be the Secretary to the Council.
- (3) (1) Notwithstanding the provision of sub-section (2) of this Law a member of the Council shall cease to hold office if:
- (a) He resigns his appointment as a member of the Council by notice in writing under his hand addressed to the Council or
 - (b) He becomes incapable of carrying out the functions of his office whether arising from infirmity of mind or body or any other cause.
 - (c) He is convicted of a felony or of any offence involving dishonesty or corruption; or
 - (d) He becomes bankrupt or makes a compromise with his creditor; or
 - (e) The Governor is satisfied that it is not in the interest of the Commission or of the public for the member to continue in office and the Governor removes him from office; or
 - (f) He has been found guilty of a breach of the code of conduct or other serious misconduct in relation to his duties; or
 - (g) In the case of a person possessing a professional qualification disqualified or suspended from practicing his

profession in any part of the world by an order of a competent authority; and

- (h) In the case of a person who became a member by virtue of the office he occupies, he ceases to hold that office.

4. The Council shall:

*Responsibilities
of the Council*

- (a) Consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Law by procuring entities.
- (b) Consider the appointment of the Directors of the Commission.
- (c) Receive and consider, for approval, the audited accounts of the Commission.
- (d) Approve changes in the procurement process to adapt to improvements in modern technology.
- (e) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

5(1) There is hereby established for the State a Public Procurement Commission (in this Law referred to be “**the Commission**”).

*Establishment
of Public
Procurement
Commission*

(2) The Commission:

- (a) Shall be a body corporate with perpetual succession and a common seal.
- (b) May sue and be sued in its corporate name.
- (c) May acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Law.

6. The objectives of the Commission are:

*Objectives of
Commission*

- (a) The harmonization of existing government policies and practices on Public Procurement and ensuring probity, accountability and transparency in the procurement process.
- (b) The establishment of pricing standards and benchmarks.
- (c) Ensuring the application of fair, competitive, transparency, value-for-money standards and public sector procurement system.

7. The Commission shall:

Functions of the Commission

- (a) Formulate the general public and guidelines relating to public sector procurement for the approval of the Council.
- (b) Publicize and explain the provisions of this Law.
- (c) Subject to thresholds as may be set by the Council, certify the State procurement prior to the award of contract.
- (d) Supervise the implementation of established procurement policies.
- (f) Publish a paper and electronic editions of the procurement journal and maintain an archival system of the procurement journal.
- (g) Maintain a State data base of the particulars and classification and categorization of State contractors and services providers.
- (h) Collate and maintain in an archival system, all State procurement plans and information.
- (i) Undertake procurement research and surveys.
- (j) Organize training and development programmes for procurement professionals.

- (k) Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly.
- (l) Prepare and update standard bidding and contract documents.
- (m) Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions.
- (n) Review the procurement and award of contract procedures of every entity to which this Law applies.
- (o) Perform procurement audits and submit such report to the House of Assembly annually.
- (p) Introduce, develop, update and maintain related database and technology.
- (q) Establish a single internet portal that shall, subject to Section 16 (10) serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times; and
- (r) Co-ordinate relevant training programmes to build institutional capacity.

8(1) The Commission shall have the powers to:

*Powers of the
Commission*

- (a) Enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law by the procuring entities.
- (b) Subject to paragraph (a) above, issue Certificate of **“No Objection for Contract Award”** within the prior review threshold for all procurement within the purview of this Law.

- (c) Stipulate to all procuring entities, the procedures and documents prerequisite for the issuance of Certificate of **“No Objection”** under this Law.
- (d) Where a reason exists:
 - (i) Cause to be inspected or reviewed any procurement or transaction to ensure compliance with the provisions of this Law.
 - (ii) Review and determine whether any procuring entity has violated any provision of this Law.
- (e) Debar any supplier, contractor or service provider that contravenes any provisions of this Law and regulations made pursuant to this Law.
- (f) Maintain a list of firms and persons that have been debarred from participating in public activity and publish them in the procurement journal.
- (g) Recommend to the Council, where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law for:
 - (i) The suspension of officers concerned with the procurement or disposal proceeding in issue.
 - (ii) The replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be.
 - (iii) The discipline of the Accounting Officer of any procuring entity.

- (iv) The temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant, or
 - (v) Any other sanction that the Commission may consider appropriate.
- (h) Call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceedings.
- (i) Act upon complaints in accordance with the procedures set out in this Law.
- (j) Nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law:
 - (1) Do such other things as are necessary for the efficient performance of its functions under this Law.
 - (2) The Commission shall serve as the Secretariat for the Council.
 - (3) The Commission shall, subject to the approval of the Council, have power to:
 - (a) Enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions.
 - (b) Request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law.
 - (c) Liaise with relevant bodies or institutions within and outside the State and International bodies

for effective performance of its functions under this Law.

9 (1) There shall be for the Commission, a Director-General, who shall be appointed by the Governor, on the recommendation of the Council after competitive selections, subject to the confirmation of the House.

*Appointment of
Director-General*

(2) The Director-General shall be:

- (a) The Chief Executive and Accounting Officer of the Commission.
- (b) Responsible for the execution of the policy and day to day administration of the affairs of the Commission; and
- (c) A person who must not be below grade level 15 in the Civil Service of the State and must be a graduate of not less than Ten (10) years and must either be a chartered member of the Chartered Institute of Purchasing and Supply Management of Nigeria or the Nigerian Institute of Quantity Surveyors.

(3) The Director-General shall hold office:

- (a) For four (4) years and or on such terms and conditions as may be specified in his/her letter of appointment.

10(1) The Council shall appoint the principal officers for the Commission after competitive selection process.

*Principal
Officers of the
Commission*

(2) The principal officers appointed under sub-section (1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Department and the Commission as specified under this Law.

- (3) The Council shall have powers to modify the operational structure of the Commission as may be necessary to enhance the Commission's duties and functions under this Law.

11(1) The Council may appoint such officers and other employees as it may deem necessary for the purposes of the Commission. *Staff of the Commission*

- (2) Subject to the Pension Reform Law, the terms and conditions of service (including remuneration, allowance, benefits and pensions) of officers and employees of the Commission shall be determined by the Council and approved by the Governor.

- (3) Without prejudice to the generality of sub-section (1), the Council shall have power to appoint, either on transfer or on secondment from any public service in the State such number of employees as may be required to assist the Commission in the discharge of any of its functions under the Law and persons to be employed shall be remunerated (including allowances) as in the State Civil Service.

12(1) The Council may, subject to the provisions of this Law and within six (6) months of the inauguration, make staff regulations relating generally to the conditions of service of the employees of the Commission and without prejudice to the foregoing, such regulations may provide for: *Staff Regulations*

- (a) The appointment, promotion and disciplinary control (including dismissal) of employees of the Commission; and
- (b) Appeals by such employees against dismissal or other disciplinary measures.

- (2) Until such regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the State shall be applicable.

13. Employees of the Commission shall be entitled to pension and other retirement benefits as prescribed by the Pension Law. *Pension Provision*
- 14(1) The Commission shall establish and maintain a fund, to be approved by the Council into which shall be paid and credited. *Funds of the Commission*
- (a) The sums appropriated by the State House of Assembly for the running of the Commission.
 - (b) All subventions, fees and charges for services rendered or publications made by the Commission; and
 - (c) All other assets which may, from time to time, accrue to the Commission.
- (2) The Commission shall make charges against ist fund to meet all its expenditure.
- (3) The Council may make regulations for the Commission
- (a) Specifying the manner in which assets or the fund of the Commission are to be held, and regulating the making of payment into and out of the fund; and
 - (b) Requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Commission may appoint the proceeds of the funds for:
- (a) The cost of administration of the Commission
 - (b) The payment of salaries, fees and other remuneration of employees of the Commission or experts or professionals appointed by the Commission.
 - (c) The maintenance of any property acquired by or vested in the Commission.

- (d) Any matter connected with all or any of the functions of the Commission under this Law; and
- (e) Any expenditure connected with all or any of the functions of the Commission under this Law.

15(1) The Financial year of the Commission shall be same as that of the State Government.

*Financial year,
Budgeting &
Annual Report*

- (2) Not later than six (6) months before the end of the financial year, the Commission shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Commission shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the council may direct.
- (4) A notice, summons or other documents required or authorized to be served upon the Commission under the provisions of this Law or any other Law or enactment may be served by delivering to the Director-General or by sending it by registered post and addressed to the Director-General at the Principal Office of the Commission.
- (5) The Commission shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture all the activities of the Commission during the preceeding year and shall include in the report, a copy of the audited accounts of the Commission for that year.

16(1) No suit shall be commenced against the Commission before the expiration of thirty (30) days after a written notice of intention to commence the suit shall have been served upon the Commission by the intending claimant or his agent; and the notice shall clearly and explicitly state:

*Legal
Proceedings*

- (a) The cause of action
 - (b) The particulars of the claim
 - (c) The name and address of the claimant; and
- (2) The Director-General of the Commission, its officers, employees or agents shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this law upon the Commission, its Director-General, officers, employees or agents.

PART III: SCOPE OF APPLICATION

- 17(1) The provisions of this Law shall apply to the procurement of goods, works and services carried out by the State government and all procurement entities. *Scope of Application*
- (2) The provisions of this Law shall apply to the procurement of special goods, works and services involving security unless the Governor's express approval has been first sought and obtained.

PART IV: FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

- 18(1) Subject to any exemption allowed by the Law, all public procurement shall be conducted: *Fundamental Principles of Procurement*
- (a) Subject to the prior review thresholds as may be set by the Council pursuant to paragraphs (a) and (b) of section 9 (1).
 - (b) Based only on procurement plans supported by prior budgetary appropriation and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet obligations and subject to the threshold in the regulations made by the Commission, has obtained a **"Certificate of No Objection to Contract Award"** from the Commission.

- (c) By open competitive biddin
 - (d) In a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and regulations deriving there from.
 - (e) The aim of achieving value for money and fitness for purpose.
 - (f) In a manner which promotes competition, economy and efficiency, and
 - (g) In accordance with the procedures and timelines laid down in this Law and as may be specified by the Commission from time to time.
- (2) Where the Commission has set prior review thresholds in the procurement regulation, no funds shall be disbursed from the Treasury to revenue account or any bank account of any procuring entity for any procurement failing above set thresholds unless the cheque payments or other form of request for payment is accompanied by a **“Certificate of No Objection to an Award of Contract”** under this
- (3) For all cases where the Commission shall set a prior review threshold, the Commission shall prescribe, by regulation, guidelines and the condition precedent to the award of ‘Certificate of No Rejection’ under this Law.
- (4) Subject to the prior review thresholds as may be set by the Commission, any procurement purported to be awarded without a ‘Certificate of No Objection’ to Contract Award’ duly issued by the Commission shall be null and void.
- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointing and jointly and

severally liable to all obligations and or responsibilities arising from this Law and the non-performance or improper performance of any contract awarded under this Law.

- (6) All bidders, in addition to requirements contained in any solicitation documents shall:
- (a) possess the necessary:
 - (i) Professional and technical qualifications to carry out a particular procurement.
 - (ii) Financial capacity
 - (iii) Equipment and other relevant infrastructure
 - (b) Have adequate personnel to perform the obligations of the procurement contracts.
 - (c) Posses the legal capacity to enter into the procurement contract.
 - (d) Not be in receivership; the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings.
 - (e) Have fulfilled its obligations to pay taxes, pensions and social security contributions.
 - (f) Not have any Director who has been convicted in any country for criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
 - (g) Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Commission is a former or present Director, shareholder or has any pecuniary interest in the

bid and confirm that the all information presented in its bid are true and correct in all particulars.

7. The procurement entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.
8. Whenever it is established by a procuring entity or the Commission that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any partiucular procurement proceeding if:
 - (a) there is verifiable evidence that any supplier, contractor or consulatnt has given or promised a gift of money or nay tangible item, or has promised, offered or given employment or any other benefit, item or service that can be qualified in monetary terms to a current or former employee of a procuring entity or the Commission, in an attempt to influence any action, or decision making or any procurement activity.
 - (b) A supplier, contractor or consultant during the last three (3) years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement.
 - (c) The bid is in receivership or is subject to any type of insolvency proceedings or if being a private company under Companies and Allied Matters Act is controlled by a person or persons who are declared bankrupt and or have made any compromises with their

creditors within two (2) calendar years prior to the initiation of this procurement proceedings.

- (d) The bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless su bidder has obtained a lawful permit with respect to allowance, difference of such outstanding payments or payment thereof in installments.
 - (e) the bidder has been validly sentenced for a crime committed in connection with a procurment proceeding, or any other crime committed to gakin financial profit.
 - (f) the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed to gain financial profit, and
 - (g) the bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or whom remains in subordinate relationship with other participants to the proceedings.
9. In such cases, the procuring entity shall inform the Bureau and the person referred to in subsection 8(a) – (g) in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.
10. All communications and documents issued by procuring entities and the Commission shall be in the English language.

11. All communications regarding any matter arising from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Commission.
12. Every procurement entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten (10) years from the date of the award.
13. Copies of all procurement records shall be transmitted to the Commission not later than three (3) months after the end of the financial year and shall show:
 - (a) Information identifying the procuring entity and the contractors.
 - (b) The date of the contract award.
 - (c) The detailed records of the procurement proceedings.
14. All classified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus administrative charges as may be prescribed by the Commission.
15. The criteria stipulated as the basis upon which supplier or contractor would be evaluated shall not be charged in the course of any procurement proceeding.
16. The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
17. A contractor shall be awarded to lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.

18. Notwithstanding subsection (1), the Commission may refuse to issue "Certificate of No Objection to Contract Award" on the grounds that the price is excessive.
19. Pursuant to subsection (17), the Commission may direct either that the procurement proceedings be cancelled or that the procuring entity conduct a re-tender.
20. Pursuant to subsection (18), the Commission may either direct that the procurement proceedings be entirely called or that the procuring entity conduct a re-tender.
21. The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.
22. The accounting officer of procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the Commission are complied with, and concurrent approval by any Tender Board shall not absolve the accounting officer from accountability for anything done in contravention of this Law or the regulations laid down hereunder.
23. Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as may be laid down by the Commission.
24. Persons who have been engaged in procuring for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or subcontractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.

25. A procuring entity shall not request or stipulate that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings.
26. All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.
27. The values in procurement document shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria (CBN) valid on the day of opening a tender or bid.
28. All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and input in execution.

PART V: ORGANIZATION OF PROCUREMENT

19. Subject to the monetary and prior review thresholds for procurement in this Law as may be determined by the council, the following shall be approving authority for the conduct of public procurement.

Approving Authority

 - (i) An extra-ministerial department i.e, a government agency, parastatal, or corporation, Tenders Board, and
 - (ii) A ministry or extra-ministerial entity, the Ministerial Tenders Board.
20. Subject to regulations as may from time to time, be made by the Commission under the direction of the Council, a procuring entity shall plan its procurement by:

Procuring Entity

 - (i) Preparing the needs assessment and evaluation.

- (ii) Identifying the goods, works or services required.
- (iii) Carrying appropriate market and statistical surveys and on that basis prepare analysis of the cost implementation of the proposed procurement.
- (iv) Aggregating its requirement whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost.
- (v) Prescribing any method for effecting the procurement subject to the necessary approval under this Law.
- (vi) Ensuring that the procurement entity functions stipulated in this Section shall be carried out by the Procurement Planning Commission.

21. The Commission or a procuring entity, shall, in implementing its procurement plans:

*Regulating
Implementing
Procurement
Plan*

- (a) Advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Commission.
- (b) Invite two credible persons as observers in every procurement process one person each representing a recognized:
 - (i) Private sector professional organization whose expertise is relevant to the particular goods or services being procured, and
 - (ii) Non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organization or association.

- (c) Receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Commission.
- (d) Obtain approval of the approving authority before making an award.
- (e) Debrief the bid losers on request.
- (f) Resolve complaints and disputes if any.
- (g) Obtain and confirm the validity of any performance guarantee.
- (h) Obtain a "Certificate of No Objection to Contract Award" from the Commission within the prior review threshold as stipulated in Section 3.
- (i) Execute all contract agreement, and
- (j) Announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Commission.

22(1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries, the Permanent Secretary and in the case of Extra-ministerial department or parastatal, the Director-General, Executive Secretary or officer of co-ordinate responsibility.

*Accounting
Officer of a
Procuring Entity*

(2) The accounting officer of every procuring entity shall have overall responsibility for the planning or organization of tenders, evaluation of tenders and executive of all procurement and in particular shall be responsible for:

- (a) Ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of

the Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or by any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons.

- (b) Constituting the Procurement Committee and its decisions.
- (c) Ensuring that adequate appropriation is provided specifically for the procurement in the State budget.
- (d) Integrating his entity's procurement expenditure into its yearly budget.
- (e) Ensuring that no reduction of values or splitting of procurement is carried out such as to evade the use of the appropriate procurement method.
- (f) Liaising with the Commission to ensure the implementation of its regulations.

23(1) For each financial year, each procuring entity shall establish a Procurement Planning Committee.

*Procurement
Planning
Committee*

(2) The Procurement Committee shall consist of:

- (a) The accounting officer of the procuring entity or his representative who shall chair the Committee.
- (b) A representative of:
 - (i) The procurement unit of the procuring entity who shall be the Secretary.
 - (ii) The unit directly in requirement of the procurement.
 - (iii) The financial unit of the procuring entity.

- (iv) The planning, research and statistics unit of the procuring entity.
- (v) Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement.
- (vi) The legal unit of the procuring entity.

24(1) There is hereby established by this Law in each procuring unit, a Tender Board (in this Law referred to as **“the Tenders Board”**).

- (2) Subject to the approval of the Council, the Commission shall prescribe guidelines for the membership of the Tenders Board.
- (3) The Tenders Board shall be responsible for the award of procurement of goods, works and services within the threshold set in the regulations.
- (4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall be the Chairman of the Evaluation Sub-Committee.
- (5) The decision of the Tenders Board shall be communicated to the Commission for implementation.

25(1) Where a procuring entity has made a decision with respect of the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify; it shall be out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria out of prequalification documents and no more.

*Criteria for
Qualification*

- (2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.
- (3) The prequalification document shall include:
- (a) Instructions to prepare and submit prequalification applications.
 - (b) A summary of main terms and conditions required for the procurement contract to be entered into as result of the procurement proceedings.
 - (c) Any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualification.
 - (d) The manner and place for the submission of application to prequalify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultant to prepare and submit their applications taking into account the reasonable need of the procuring entity, and
 - (e) Any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations to pre-qualify and to the prequalification proceedings.
- (4) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least ten (10) days before the deadline for the submission of applications to prequalify.

- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven (7) working days so as to enable the supplier, contractor or consultant to make timely submission of its application to prequalify.
- (6) The response to any request that might reasonably be expected to be of interest to other supplier, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to prequalify of whether or not it has been prequalified and shall make available to any member of the general public upon request, the names of the suppliers, contractors, consultants who have been prequalified.
- (8) Suppliers, contractors or consultants who have been prequalified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request, communicate to suppliers, contractors or consultants who have not been prequalified the grounds for disqualification.
- (10) The procuring entity may require a supplier, contractor or consultant or service provider who has been prequalified to demonstrate its qualifications again in accordance with the same criteria used to prequalify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor, or consultant has done so to the satisfaction of the procuring entity.

- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

PART VI: PROCUREMENT METHODS (GOODS AND SERVICES)

- 26(1) Except as provided by this Law, all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding. *Open Competitive Bidding*

- (2) Any reference to open competitive bidding in this Law mean the process by which a procuring entity, based on previously defined criteria, effects public procurements, by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed.

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

- 27(1) Invitations to bid may be either by way of State Competitive Bidding or International Competitive Bidding and the Commission shall set the monetary threshold for which procurement shall fall under either system. *Initiative to Bid*

- (2) Every invitation to an open Competitive bid shall:

- (a) In the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least national newspapers and one relevant internationally recognized publication, any official website of the procuring entity and the Commission as well as the procurement journal not less than six (6) weeks before the deadline for submission of the bids for the goods works.

- 28(1) Subject to the monetary and prior review thresholds as may be set by the Commission all procurements valued in excess of the sums prescribed by the Commission shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity. *Requirement of Bid Security*
- (2) The Commission shall specify the principal terms and conditions of the required security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security, the requirement shall apply to each supplier or contractor.
- 29(1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorizing to bind the bidder to a contract and placed in a sealed envelope. *Bidding to be submitted in writing*
- (2) All submitted bids shall be deposited in a secured tamperproof bid box.
- (3) All bids submitted are to be in English Language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor who submitted it.
- (6) No communication shall take place between procuring entity and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.
30. A procuring entity may: *Rejection of Bids*

- (a) Reject all bids at any time prior to the acceptance of a bid without incurring thereby any liability to the bidders, and
- (b) Cancel the procurement proceedings in the public.

- 31(1) The period of validity for a bid shall be the period specified in the tender documents. *Validity period of bids, modification and withdrawal of tenders.*
- (2) A procuring entity may request supplier or contractor to extend the period of validity for an additional specified period of time.
 - (3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of bid will terminate upon the expiration of the un-extended period of effectiveness.
 - (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
 - (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.
32. All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall: *Opening of Bids*
- (a) Permit attendees to examine the envelopes in which the bid have been submitted to ascertain that the bid have not been tampered with.
 - (b) Cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public.
 - (c) Ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof.

- (d) Ensure that a register is taken of the names of all those present at the bid opening and the organization they represent which is recorded by the Secretary of the Tenders Board, and
- (e) Call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the Secretary to the Tenders Board or his delegate in the minutes of the bid opening.

33(1) All bids shall be first examined to determine if they:

*Examination of
Bids*

- (a) Meet the minimum eligibility requirements stipulated in the bidding documents.
 - (b) Have been duly signed, and
 - (c) Are substantially responsive to the bidding documents.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (3) The following shall not be sought, offered or permitted:
- (i) Changes in prices
 - (ii) Changes of substance in a bid, and
 - (iii) Changes to make an unresponsive bid responsive.
- (4) Notwithstanding subsection 3, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

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

(7) The following shall be considered as major deviation:

(a) with respect to clauses in an offer:

(i) Unacceptable sub-contracting.

(ii) Unacceptable time schedule if time is of essence.

(iii) unacceptable alternative design.

(b) with respect to the status of the bidder:

(i) The fact that he is ineligible or not pre-qualified, and

(ii) the fact that he is uninvited.

(c) with respect to bid documents and unsigned bid.

(d) with respect to time, date and location for submission:

(i) any bid received after the date and time for submission stipulated in the solicitation document.

(ii) any bid submitted at the wrong location.

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

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

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

(a) The use of codes

- (b) The difference in standards
 - (c) The difference in materials
 - (d) Alternative designs
 - (e) Modified liquidated damages
 - (f) Omission on minor errors
 - (g) Discovery of arithmetical errors
 - (h) Sub-contracting that is unclear and questionable
 - (i) Different methods of construction
 - (j) Difference in final delivery date
 - (k) Difference in delivery schedule
 - (l) Completion period where these are not of essence
 - (m) Non-compliance with some technical local regulation
 - (n) Payment terms, and
 - (o) Any other condition that has little impact on the bid.
- (11) In cases not mentioned above and where exists a doubt as to whether a particular condition in a bid is a major deviation, the following rules shall apply:
- (a) Where the impact on the costs is major, it shall be regarded as a major deviation, and
 - (b) Where the impact on the costs is minor, it shall be regarded as a minor deviation.
- (12) In the case of minor deviation, written clarification may be obtained from the supplier or contractor and, where

applicable, and offer made for the correction of the minor deviation.

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

34(1) For the evaluation and comparison of bids that have been adjudged valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents. *Evaluation of Comparison*

- (2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid for bidders that have responded to the solicitation.
- (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable:
 - (a) Checking of deviation.
 - (b) Checking of omissions with qualification of same.
 - (c) Application of discounts, as applicable.
 - (d) Clarification with bidders of questionable minor deviation.
 - (e) Qualification in monetary terms such questionable deviation
 - (f) Conversion to common currency

- (g) Calculation and tabulation of bid among with domestic preference where applicable.
 - (h) Determination of the lowest calculated prices in order to rank, and
 - (i) Post-qualification of bidders, where applicable.
 - (j) Difference in final delivery date
 - (k) Difference in delivery schedule
 - (l) Completion period where these are not of essence.
- (4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
- (a) For goods, among others, cost of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or by damages.
 - (b) For works, in addition to factors stipulated in Section 34(1) and subject to 34(2) if time is a critical factor, the value of early completion, and
 - (c) The value of early completion under Section 35(2) shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provided for commensurate penalties in case of late delivery.

- (6) When bid prices are expressed in two or more currencies, the prices for all bids shall be converted to Nigerian currency, according to the rate and date of rate stipulated in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.
- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and to bidder or to person not officially concerned with the evaluation process until the successful bidder is notified of the award.
- 35(1) The successful bid shall be that submitted by the lowest costs bidder from the bidders responsive as to the solicitation. *Acceptance of bids*
- (2) Notwithstanding subsection (1), the selected bidder need not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.
- 36(1) A procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad. *Margins Preference Evaluation Tenders*
- (2) Where a procuring entity intends to allow domestic preference, the bidder documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.

- (3) Margins of preference shall apply only to tenders under International Competitive Bidding.
- (4) The Commission may by regulations, set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.
- 37(1) In addition to any other regulations as may be prescribed by the Commission, a mobilization fee of not more than 15% of contract sum may be paid to a supplier or contractor supported by the following: *15% of contract as Mobilization Fee.*
- (a) In the case of State Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity, and
 - (b) In the case of International Competitive Bidding, an unconditional bank guarantee or insurance bond issued by a banking institution acceptable to the procuring entity.
- (2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.
- 38 The provision of a Performance Guarantee shall be a precondition for the award of procurement contract upon which any mobilization fee is to be paid, provided however, it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor, whichever is higher. *Contract Performance Guarantee*
- 39(1) Payment for the procurement of goods, works and services shall be settled promptly and diligently. *Payment of Goods, Works and Services*
- (2) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate or confirmation

or authentication by a Ministry or an extra-Ministerial Office shall be deemed a delayed payment.

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

(4) All contracts shall include terms, specifying the interest for late payment of more than sixty (60) days.

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

*Records of
Procurement
Proceedings*

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

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

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

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

(a) Be contrary to Law

(b) Impede Law enforcement, and

(c) Prejudice legitimate commercial interest of the parties.

(4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a

record of the procurement proceedings in accordance with this Section.

- (5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Commission, an investigator appointed by Commission and the Auditor-General upon request and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

PART VII: SPECIAL AND RESTRICTED METHOD OF PROCUREMENT

41(1) Notwithstanding the provisions of this Law, the Commission may issue 'Certificate of No Objection' upon conditions hereinafter prescribed. *Certificate of No Objection*

- (2) A procuring entity shall engage in procurement by two-stage tendering:

- (a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works in the case of service, to identify their characteristics and where it seeks tenders, proposals or offer on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs.
- (b) Where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability, or recover research and development costs; where the procuring entity applied in this Law, procurement concerned with national security and

determines that the selected method is the most appropriate method of procurement, or

- (c) Where the tender proceedings have been utilized but where not successful or the tenders were rejected, an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract by the procuring entity.
- (d) The provision of this law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.

(4) The invitation documents shall:

- (a) Call upon suppliers or contractors to submit in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price, and
- (b) Solicit proposals that relate to technical quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competitive and technical qualification of the suppliers or contractors.

(5) The procuring entity may, in the first stage engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tenders.

(6) In the second stage of the two tender proceedings, the procuring entity shall:

- (a) Invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications.
 - (b) In formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents evaluate and compare tenders and ascertain the successful tenders.
 - (c) Add new characteristics or criteria that conform with this Law.
 - (d) Communicate to suppliers or contractors in the invitation to submit firm tenders, and deletion, modification or addition, and
 - (e) Permit a supplier or contractor who does not wish to submit final tender to withdraw from the tendering proceedings.
- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.
- 42(1) Subject to the approval by the Commission, a procuring entity may for reasons of economy and efficiency, engage in procurement by means of restricted tendering if: *Restricted Tendering*
- (a) The goods, works or services are available only from a limited number of suppliers or contractors.
 - (b) The time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured, or
 - (c) The procedure is used as an exception rather than the norm.

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

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

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

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

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

*Request for
Quotation*

(2) Generally quotations shall be obtained from three (3) contractors or suppliers.

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

- (a) Be informed whether any factors other than the charges for the goods, works or services themselves, such as any

applicable transportation and insurance charges, custom duties and taxes are to be included in the price, and

- (b) Give only one question and shall not be allowed to change or vary the question.

(4) No negotiation shall take place between a procuring entity and the contractor or supplier with respect to a quotation.

(5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.

(6) Where the total value of the procurement is not more than the sum that shall be set out in the regulation, the procurement entity may not obtain the Commission's approval.

44(1) A procuring entity may carry out any emergency procurement where:

*Direct
Procurement*

- (a) Goods, works or services are only available from a particular supplier or contractor or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists, or
- (b) There is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity.
- (c) Owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods.

- (d) A procuring entity which has procured goods, equipment, technology or services from a supplier or contractors, determines that:
 - (i) Additional suppliers need to be procured from that supplier or contractor because of standardization.
 - (ii) There is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity.
 - (iii) The limited size of the proposed procurement in relation to the original procurement provides justification.
 - (iv) The reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.
- (e) The procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the procurement of goods in quantities to establish commercial viability or recover research and development costs, or
- (f) The procuring entity applied this Law for procurement that concerns national security and determines that single-source procurement is the most appropriate method of procurement.

(2) The procuring entity shall:

- (a) Procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor.

- (b) Include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of since source procurement.

45(1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where: *Emergency Procurement*

- (a) The country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God.
- (b) The condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness, or
- (c) A public project may be seriously delayed for want of an item of a minor value.

(2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.

(3) All procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.

(4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Commission which shall verify same and if appropriate, issue a Certificate of "No Objection".

PART VIII: PROCUREMENT OF CONSULTANCY SERVICES

46. Where a procuring entity wishes to procure services for its needs which are precise and ascertainable: *Expression of interest to provide services.*

- (a) It shall solicit for expression of interest or application to pre-qualify to provide the services by publishing a notice to the

effect in at least two (2) national newspapers and the procurement journal.

- (b) Where the value of the services to be procured is less than one million naira, or with the approval of the Commission, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least three (3) and not more than ten (10) consultants or service providers to make proposals for the provision of the services in a format stipulating.
 - (i) A statement of qualification of the consultant to provide the service.
 - (ii) A statement of understanding of the procuring entity's need.
 - (iii) The methodology for providing the service.
 - (iv) The time frame for providing the service.
 - (v) The cost or fee for the service.
- (c) Every consultant shall register with the Ministry of Works and appropriate authority.

47(1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods sufficient to establish their commercial viability to recover research and development cost.

*Request for
Proposal to
Provide Services
for
unascertained
goods.*

- (2) The procuring entity shall procure the services of consultant by soliciting for expression of interest by publishing a notice to that effect in two national newspapers and the procurement journal.

(3) A procuring entity may make direct requests to a limited number of consultants, requesting proposal for the provision of a service if:

- (a) The services are only available from nonmore than three (3) consultants.
- (b) The time cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition, or
- (c) It is in the interest of State security or similar reasons of confidentiality.

48(1) Request for proposal shall include:

*Content of the
Request
Proposals*

- (a) The name and address of the procurement entity.
- (b) A requirement that the proposal is to be prepared in the English Language.
- (c) The manner, place and deadline for the submission of proposal.
- (d) A statement to the effect that the procuring entity reserves the right to reject proposals.
- (e) The criteria and procedures for the evaluation of the qualifications of the consultant.
- (f) The requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications.
- (g) The nature and required characteristic of the services to be procured including the location and time where the services are to be provided.

- (h) Whether the procuring entity is seeking proposals on various possible ways of meeting its needs.
- (i) A requirement that the proposal price is to be expressed in Nigerian Currency.
- (j) The manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes.
- (k) Whether the procedure to ascertain successful proposal shall be based on the lowest cost, or quality and or a combination of the lowest cost quality and criteria other than cost but stipulated in the request for proposal, and
- (l) A short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skill.

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

*Clarification and
Qualification of
Interest for
Proposals*

(2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.

(3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

- (4) If the procuring entity convenes a meeting of consultants it shall prepare minutes of meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarification.
- (5) The minutes shall be provided promptly before the deadline for the submission of proposal to the consultants participating in the selection proceedings to enable them take the minutes into account to prepare their proposal.
- 50(1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case, give less than thirty (30) days between the issue of the notice or request and the deadline for submission. *Submission of Proposals*
- (2) The technical and financial proposals shall be submitted simultaneously, but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for the submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secured bid-box until they are opened publicly.
- (5) The Technical Evaluation Committee shall not have access to or insights to the financial proposals until the evaluation including Tenders Board reviews are concluded.
- 51(1) The procuring entity shall establish a criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criteria and the manner in which they are to be applied in the evaluation of: *Criteria for Evaluation of Proposals*

- (a) The qualification, experience, reliability, professional and managerial competence of the consultant or service provider and the personnel to be involved in providing the services.
 - (b) The effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity.
 - (c) The proposal price including any ancillary or related cost.
 - (d) The effect that acceptance of the proposal will have on the Government's financial position and reserves of the Government, the extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operation skills and the counter trade arrangements offered by consultant or service providers, and
 - (e) National defence and security consideration.
- (2) A procuring entity may accord margin of preference for domestic consultants or service providers which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Commission and shall be reflected in the record of the procurement proceedings.
- 52(1) The procuring entity shall select the successful proposal by either choosing the proposal with:
- (a) The lowest evaluated price, or
 - (b) The best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- General
Selection
Procedure
(Services)*

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

(3) Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

53(1) Where the procuring entity elects or choose the successful proposal based on technical and, price factors, it shall establish a weight with respect to quality and technical price factors to the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals.

*Procedure for
Selection of
Proposal where
price is a factor*

(2) The procuring entity shall compare the prices of those proposals that have attained rating or above the threshold.

(3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the initiation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen (14) working days after the decision has been taken by the procurement entity.

(4) The name of the qualifying consultant and the quality scores for the technical component of the proposals shall be read aloud and recorded alongside the price proposals by each consultant or service provider when the financial proposals are opened.

(5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

(6) The successful proposal shall be:

- (a) The proposal with the best combined evaluation in terms of the criteria established under subsection (1) from price in the case of quality and cost-based selection.
 - (b) The proposal with the lowest price in the case of least-cost selection, or
 - (c) The higher ranked technical proposal within the budget.
- (7) The consultant with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.
- 54(1) Where the procuring entity elects to make a quality-based election procedure based on consultant's qualification or single-source selection, it shall engage innegotiation with consultant in accordance with this selection. *where price is a factor*
- (2) The procurement entity shall:
- (a) Establish a weight with respect to quality and price of the proposals.
 - (b) Invite for negotiations on the price of its proposals, the Consultant that has attained the best rating in accordance with subsection (1).
 - (c) Inform the Consultant that attained ratings above the weight that may be considered for negotiation if the negotiation with the best rating do not result in a procurment contract, and
 - (d) Inform the Consultant with the best rating that, it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that Consultant invited under paragraph (b) will not result in procurement contract.

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

PART IX: PROCUREMENT SURVEILANCE AND REVIEW

55(1) The Commission may review and recommend for investigations by any relevant authority any matter related to the conduct of procurement proceeding by a procuring entity or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law. *Commission to recommend investigation*

- (2) The relevant authority in the course of investigation may:
 - (a) Require an officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to produce any books, records, accounts or documents.
 - (b) Search premises for any books, records, accounts or documents.
 - (c) Examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant.
 - (d) Require an officer, employee or agent of the procuring entity or bidder, supplier:

- (i) To explain an entry in the books, records, accounts or documents.
 - (ii) To provide the investigator with information concerning the management or activities of the procurement entity or bidder as may be reasonably required.
- (e) Explain an entry in the books, records, accounts or documents, and
- (f) Provide the investigator with information concerning the management or activities of the procurement entity or bidder as may be reasonably required.
- (3) The Commission may, pursuant to the advice of the procuring entity, results of its review of a procurement report or report of investigation by a relevant government agency, issue a variation order requiring a contractor, at his own expense, to repair, replace or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract or award.
- (4) The Commission shall, if satisfied that there has been a contravention of this Law or any regulation to procurement proceedings or procurement contract, take action to rectify the contravention, which action shall include:
 - (a) Nullification of the procurement proceedings.
 - (b) Cancellation of the procurement contract.
 - (c) Ratification of anything done in relation to the proceeding.
 - (d) A declaration consistent with any relevant provision of this Law.

- (5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Commission and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Commission and procuring entity shall be duly informed.

56(1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.

*Administrative
Review*

- (2) A complaint by a bidder against a procuring or disposing entity shall, first be submitted in writing to the accounting officer within fifteen (15) working days from the date the bidder first became aware of the circumstances, whichever is earlier.

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

- (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Commission within ten (10) working days from the date of communication of the decision of the accounting officer.

- (5) Upon receipt of a complaint, the Commission shall promptly:

- (a) Give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Commission has settled the matter.
- (b) Unless it dismisses the complaint:

- (i) Prohibit a procuring or disposing entity.
 - (ii) Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity.
 - (iii) Declare the rule or principles that govern the subject matter of the complaint, and
 - (iv) Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (6) Before taking any decision on a complaint, the Commission shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (7) The Commission shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.
- (8) Where the Commission fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Commission, the bidder may appeal to the High Court within thirty (30) days after the receipt of the decision of the Commission to deliver a decision.

PART X: DISPOSAL OF PUBLIC PROPERTY

57(1) For the purposes of this Law, every procuring entity shall also be disposing entity

*Disposal of
Public Property*

- (2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (3) The Commission shall, with the approval of the Council:

- (a) Determine the applicable policies and practices in relation to the disposal of all public property.
- (b) Issue guideline detailing operational principle and organisational modalities to be adopted by all procuring entities engaged in the disposal of public property, and
- (c) Issue standard document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.

(4) For the purpose of this Law, “Public Property” is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):

- (a) Created through public expenditure
- (b) Acquired as a gift through deeds
- (c) Acquired in respect of intellectual or proprietary rights.
- (d) Acquired on financial instruments (including shares, stocks, bonds, etc).
- (e) Transfer from one government department to another with or without financial adjustment, and
- (f) Offer to the public at an authorized variation.

58(1) Before putting up any public property for disposal, the accounting officer (whether acting in his own capacity or at the direction of any superior or other authority) in charge of any public property set for disposal, shall, authorize the preparation of a valuation report for such property by an independent evaluator or such professional with the appropriate competence to carry out the valuation.

*Planning of
Disposals*

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

PART XI: CODE OF CONDUCT

- 59(1) The Commission shall, with the approval of the Council stipulate a Code of Conduct for all public officers, suppliers, contractors and service providers with regard to the standard of conduct acceptable in matters involving the procurement and disposal of public assets. *Code of*
- (2) The conduct of all persons involved with public procurement, whether as official of the Commission, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
 - (3) All officers of the Commission, members of Tenders Board and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
 - (4) These principles shall apply at all times, particularly when:
 - (a) Making requisition for or planning of procurements
 - (b) Preparing solicitation document

- (c) Receiving offers in response to any form of solicitation towards a procurement or disposal.
 - (d) Evaluating and comparing offers confidentiality and in complete neutrality.
 - (e) Protecting the interest of all parties without fear or favour, and
 - (f) Obviating all situations likely to render an officer vulnerable to embarrassment of undue influence.
- (5) All public officers shall handle public procurement and disposal of assets by:
- (a) Ensuring adequate time for preparing offers, and
 - (b) Comply with this Law and all derivative regulations.
- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standard of ethics in their relationship with person, real or corporate, who seeks government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationship with such persons.
- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:
- (a) Divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law, and
 - (b) Not engage or participate in any commercial transaction involving the State Government, its ministries or extra ministerial departments, or corporations where his capacity as public officer is likely to confer any unfair advantage,

pecuniary or otherwise, on him or any person directly related to him.

- (8) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (9) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.
- (10) A conflict of interest exist where a person:
 - (a) Possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of Government.
 - (b) Possesses a direct or indirect interest in or relationship with bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed to be, or make possible gain due to the person's ability to influence dealings.
 - (c) Entertain relationships which are unethical, rendering his attitude partial toward the outside for personal reasons or otherwise inhibit the impartiality of the person's business judgment.
 - (d) Places by act or omissions, the procuring entity he represents or the government in equivocal, embarrassing or ethically questionable positions.
 - (e) Entertains relationships compromising the reputation or integrity of the procuring entity he represents or the government.

- (f) Receives benefits by taking personal advantages of an opportunity that properly belongs to the procuring entity he represents or the government.
 - (g) Creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise, or
 - (h) Discloses confidential information being either the property of his procuring entity, the government or to a supplier, contractor or service provider to unauthorized persons.
- (11) A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

PART XII: OFFENCES

- 60(1) Any person not being a public officer who contravenes any provision of this Law commits an offence and is liable on conviction to term of imprisonment not less than five (5) years but not exceeding ten (10) years without an option of fine.
- (2) Any offence in contravention of this Law shall be tried by the High Court.
- (3) The following shall also constitute offences under this Law.
- (a) Entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the person concerned.

- (b) To conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, favour, bribery or other actions.
 - (c) Directly, indirectly, or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract.
 - (d) Splitting of tenders to enable the evasion of monetary thresholds set.
 - (e) Altering any procurement document with intent to influence the outcome of a tender proceeding.
 - (f) uttering or using fake documents or encourage their uses and
 - (g) Willful refusal to allow the Commission or its officers to have access to any procurement records.
- (4) Any person whilst carrying out his duties as an officer of the Commission, or any procuring entity, who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of:
- (a) A term of imprisonment of five (5) years without any option of fine and resolution.
 - (b) Summary dismissal from government services.
- (5) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:
- (a) Debarment from all public procurement for a period not less than five (5) years.
 - (b) A fine equivalent to 25% value of the procurement in issue.

- (6) Where any legal person shall be convicted pursuant to subsection (5), every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than three (3) yearss but not exceeding five (5) years without an option of fine.
- (7) An alteration pursuant to subsection 3(f) shall include:
- (a) Insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
 - (b) Request for clarification in a manner not permitted under this law.
- (8) Collusion shall be presumed from a set which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involves reasonably expected that the other would adopt a particular course of actionwhich would interfere with the faithful and proper application of the provisions of this Law.
- (9) Bid rigging pursuant to subsection(3) (e) means, an agreement between persons:
- (a) Offers submitted have been pre-arranged between them, or
 - (b) Their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs of loss of value to the State Treasury.

PART XIII: MISCELLANEOUS

- 61(1) The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman, the Director-General or any other

Miscellaneous

person generally or specifically authorized to act for the purpose by the Council.

- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Commission by the Director-General or any person generally or specifically authorized to act for the purpose by the Council.
- (3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.
- (4) The validity of any proceeding of Council or of a Committee thereof, shall not be adversely affected by any vacancy in the membership of the Council or Committee, or by any defect in the appointment of a member of the Council or for a committee, or by reason that a person not entitled to do so took part in the proceeding of the Council, or Committee.

I assent /withhold assent thisday of2016

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SAMUEL ORTOM

Executive Governor of Benue State

