



# **EBONYI STATE OF NIGERIA**

## **A BILL**

### **FOR A LAW**

**TO REPEAL AND RE-ENACT A LAW TO ESTABLISH THE STATE COUNCIL ON PUBLIC PROCUREMENT AND THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITIES RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN EBONYI STATE AND FOR RELATED MATTERS**

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### **SECTION 1**

*Long Title*

A law to repeal and re-enact a law to establish the State Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of Public Procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Ebonyi State and for other Related Matters thereto.

### **SECTION 2**

*Enactment*

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

### **SECTION 3**

*Short Title*

This law shall be cited as Ebonyi state Public Procurement and Related Matters Law, 2020.

### **SECTION 4**

*Commencement*

This law shall be deemed to have come into effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

### **SECTION 5**

*Interpretation*

In this law, unless the context otherwise requires:  
**“Accounting Officer”** means the person charged with line supervision of conduct of all procurement processes:

***“Approving Authority”*** means the person charged with overall responsibility for the functioning of the State Council, extra-Ministerial department, Corporation, or Parastatal;

***“Assets”*** include tangible and intangible things which have been or may be sold or procured for consideration:

***“Attorney-General”*** means the Attorney-General of Ebonyi State;

***“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 specified in the bid;

***“Debar”*** means the placing of a firm, company or natural person on list of persons ineligible to participate in any procurement proceedings under this law;

***“Commissioner”*** means the Commissioner in charge of the relevant Ministry;

***“Contract”*** means an agreement entered in writing and includes all kinds of binding contractual relationship, whether for supply of goods and/or services or whatsoever and all written document with respect thereto.

***“Contractor or Supplier”*** means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted;

***“E-GP”*** means Electronic Government Procurement.

Electronic Government Procurement means the use of Information and Communication technologies of Government agencies, the building community, sponsors and other project stakeholders in conducting the procurement of goods, works, and services and management of contracts, thereby ensuring good governance and value for money in Public Procurement.

***“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 the actual value of the item in question plus all reasonable imputations of cost and profit;

**“Fund”** means the Fund established by Section 15 of the Principal Law;

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

**“Governor”** means the Governor of Ebonyi State of Nigeria;

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

**“International Competitive bidding”** means the solicitation of bids from both domestic and foreign contractors and suppliers;

**“Lowest evaluated responsive bid”** is the lowest price bid amongst the bids that meet all the technical requirements and standards as contained in the tender documents;

**“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;

**“MDA”** means Ministries, Departments and Agencies;

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

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

**“National Competitive Bidding”** means the solicitation of bids from domestic contracts and suppliers registered or incorporated to carry on business under Nigeria Law;

***“Negotiation”*** means discussions to determine the terms and conditions of a contract or procurement;

**“OCDS”** means Open Contracting Data Standards

Open Contracting Data System entails state having an online portal to record and publish data on all various Contract Procurement Processes in the Procurement Cycle.

***“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;

***“Procuring entity”*** means any public body engaged in procurement and includes a Ministry, extra-Ministerial office, government agency, parastatal, corporation and approving authority.

***“Procurement proceedings”*** means any public body engaged in procurement and includes a Ministry, extra-Ministerial office, Government agency, parastatal and corporation;

***“Public procurement”*** means the acquisition by any means of goods, works or services by the government;

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

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

***“State”*** means the Ebonyi State of Nigeria.

***“State competitive Bidding”*** means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigerian Law;

***“Substantially responsive”*** means the response to bid solicitations which reasonably answers to the needs of a procuring entity as stipulated in the bid solicitation documents;



**“Supplier”** means a real or legal person that provides supply of goods, contracting of works or consultants;

**“Threshold”** refers only to the approving and not the actual process of award;

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

**“Works”** means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or work, 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 those services does not exceed that of the construction itself.

## SECTION 6

- (1) There is hereby established the Ebonyi State Council on Public Procurement (in this Law referred to as the Council).
- (2) The Council shall consist of:
  - (a) The Attorney –General & Commissioner for Justice
  - (b) The Commissioner for works & Transport
  - (c) Commissioner for Finance & Economic Development;
  - (d) Two other Members each to be appointed by the Governor from the membership of the Nigerian Society of Engineers (NSE) and the Nigerian Institute of Quantity Surveyors (NIQS) respectively.
2. The Attorney-General and Commissioner for Justice for the time being shall be the Chairman of the Council.
3. The Executive Secretary of the Bureau shall serve as Secretary to the Council.
4. Notwithstanding the provisions of sub-section (2), the Council may co-opt any person to attend its meeting. Such person so co-opted shall not have a vote or be considered in the determination of quorum.

*Establishment of  
the State Council  
on Public  
Procurement and  
Membership*

## SECTION 7

### **The Council shall:**

#### *Functions 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 and approve policies on public procurement;
- (c) Receive and consider for approval, the audited accounts of the Bureau of Public Procurement; and
- (d) Approve changes in the procurement process to adapt for improvement in modern technology;
- (e) Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law;
- (f) Recommend the award of all jobs or contracts exceeding twenty million Naira to the Governor for approval;
- (g) Have the power to discipline or refer for disciplinary measures any erring officer or staff brought to it by the Bureau, to the appropriate agency of State Government;
- (h) Submit annual report of its operations to the Governor before the end of first quarter of each succeeding year.

## SECTION 8

#### *The establishment of the Bureau of Public Procurement*

- (1) There is hereby established an Agency to be known as Bureau of Public procurement (in this Law referred to as the "Bureau")
- (2) The Bureau
  - (a) Shall be a body corporate with perpetual succession and a common seal;
  - (b) May sue and be sued; and;
  - (c) May acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out its functions under this Law.

## **SECTION 9**

### *Objectives of the Bureau*

The objectives of the Bureau are:

- (a) The harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;
- (b) The establishment of pricing standards and benchmarks, ensuring the application of fair, competitive, transparent, value for money standards and practices for the procurement and disposal of public assets, and services; and
- (c) The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

## **SECTION 10**

The Bureau shall:

### *Functions of the Bureau*

- (a) Formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
- (b) Publicize and explain the provisions of this Law;
- (c) Subject to thresholds as may be set by the Council, certify State procurement prior to the award of contract;
- (d) Supervise the implementation of established procurement policies;
- (e) Monitor the prices of tendered items and keep a state database of standard prices;
- (f) Publish the details of major awarded contracts above the threshold of One Hundred Million Naira (~~₦~~100,000,000) in the procurement journal;
- (g) Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (h) Maintain a State database of the particulars and classification and categorization of contractors and service providers;
- (i) Collate and maintain in an archival system, all State procurement plans and information;
- (j) Undertake procurement research and surveys;

- (k) Organize training and development programmes for procurement professionals;
- (l) Periodically review the socio-economic effect of the policies on procurement and advise the council accordingly;
- (m) Prepare and update standard bidding and contract documents;
- (n) Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) Review the procurement and award of contract procedures of every entity to which this Law applies;
- (p) Perform procurement audits and submit such report to the House of Assembly bi-annually;
- (q) Introduce, develop, update and maintain related database and technology;
- (r) Establish, subject to the provisions of this Law, a single internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times;
- (s) Co-ordinate relevant training programmes to build institutional capacity;
- (t) Approve the employment of staff of the Bureau other than the Executive Secretary;
- (u) Approve changes in the procurement process to adapt to changes in technology;
- (v) Earn out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law; and
- (w) Prepare quarterly report of all major procurement transactions in the State and submit same to the Ebonyi State Executive Council not later than 30 days from the end of each quarter;
- (x) The Bureau shall prepare a comprehensive report each year on all procurement activities, carried out by all procuring entities within the purview of this Law for presentation; and
- (y) The report shall give an accurate account of the conduct of all capital procurements carried out by procuring entities within the purview of this Law.

## SECTION 11

### *Powers of the*

### *Bureau*

- (1) The Bureau shall have the power to:
  - (a) Enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law by the procurement entities;
  - (b) Where a reason exists:
    - (i) Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law”;
    - (ii) Review and determine whether any procuring entity has violated any provision of this Law.
  - (c) Debar any supplier, contractor or service provider that contravenes any provision of this Law and regulations made pursuant to this Law;
  - (d) Maintain a State database of contractors and service providers and to the exclusion of all procuring entities prescribe classifications and categorizations for the companies on the register;
  - (e) Maintain a list of firms and persons that have been debarred from participating in public procurement activity and publicize them in the procurement journal;
  - (f) Call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procurement entity or service providers;
  - (g) Recommend to the Council, where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law:

- (i) The suspension of officers concerned with the procurement disposal proceeding in issue;
- (ii) The replacement of the head of 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 Bureau may consider appropriate;
- (h) The call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding;
- (i) To act upon complaints in accordance with the procedures set out in this Law;
- (j) The nullification of the whole or any part of any procurement proceeding or award which is in contravention of this Law;
- (k) Such other things as are necessary for the efficient performance of its functions under this Law;
- (2) The Bureau shall serve as the Secretariat for the Council;
- (3) The Bureau shall, subject to the approval of the Council have power to:
  - (a) Enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
  - (b) Request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law.

- (4)(a) Recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this law;
  - (b) Train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
  - (c) Constitute a Technical Review Committee comprising technical, financial and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest.
- (5) The Bureau may, with the approval of the Governor make general regulations for the proper implementation and enforcement of the provision of this Law, and without prejudice to the generality of the foregoing, make regulations with respect to all or any of the following matters:
- (a) The structure and contents of Annual Procurement Plans;
  - (b) The standard and content of all bid solicitation documents;
  - (c) The standard and content of all procurement contracts;
  - (d) The use of any procurement method;
  - (e) Fees chargeable, by any procuring entity, for matters relating to public procurements; and
  - (f) The prevention and detection of the Bureau of any offence or act that amounts to an infringement of this Law or its Regulations.

## **SECTION 12**

- (1) There shall be for the Bureau, Executive Secretary who shall be appointed by the Governor.
- (2) The Executive Secretary shall be:
  - (a) The Chief Executive and Accounting officer of the Bureau;
  - (b) Responsible for the execution of the policy and day to day administration of the affairs of the Bureau; and
  - (c) A person who possesses the relevant and adequate professional qualification and shall have been so qualified for a period of not less than 10 years.
- (3) The Executive Secretary shall hold office:
  - (a) For a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and

*Executive  
Secretary and  
Staff of the  
Bureau*

- (b) On such terms and conditions as may be specified in his letter of appointment.
- (4) Without prejudice to the provisions of this Law the Executive Secretary may be removed from office at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud or manifest incompetence.

### **SECTION 13**

***Principal Officers  
of the Bureau***

- (1) The Council shall appoint the principal officers for the Bureau after a selection process in consultation with the office of the Head of Service;
- (2) The principal officers appointed under sub-section (1) shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Departments and the Bureau as specified under this Law;
- (3) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureau's functions under this Law.

### **SECTION 14**

***Other Staff of the  
Bureau***

The Council may appoint such officers

- (1) And other employees as may, from time to time, be deemed necessary with approval of the Governor;
- (2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined by the Council.

### **SECTION 15**

***Regulations***

- (1) The Council may, subject to the provisions of this Law make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:



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

### **SECTION 16**

*Pension provision* Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the Pension Law.

### **SECTION 17**

- Funds of the Bureau* (1) The Bureau shall establish and maintain a Fund to be approved by the Council, into which shall be paid and credited;
- (a) The sums appropriated by the House of Assembly for the running of the Bureau;
  - (b) All subventions, fees and charges for services rendered or publications made by the Bureau; and
  - (c) All other assets which may, from time to time accrue to the Bureau.
- (2) The Bureau shall charge its fund to meet all its expenditure.
- (3) The Council may make regulations for the Bureau:
- (a) Specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
  - (b) Requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time, apply the proceeds of the fund for:
- (a) The payments of salaries, fees and other remuneration of employees of the Bureau or experts or professionals appointed by the Bureau;

- (b) The maintenance of any property acquired by or vested in the Bureau; and
  - (c) Any matter connected with all or any of the functions of the Bureau under this Law;
  - (d) Any expenditure connected with all or any of the functions of the Bureau under this Law.
- (5). The Bureau shall operate an account with a bank or banks in the State and the signatories to the account shall be the Chief Executive or in his absence his designated representative as the case may be, and the head of the accounts department or in his absence his designated representative or any person duly authorized by the Council in that behalf.

### **SECTION 18**

- Financial year budgeting and annual report*
- (1) The financial year of the Bureau shall be the same as that of the State Government;
  - (2) Not later than 6 months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year;
  - (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare as statement of account in such form as the Council may direct;
  - (4) The Bureau shall within 6 months after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor- General of the State;
  - (5) The Bureau 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 Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

### **SECTION 19**

- Legal proceedings*
- (1) Subject to the provisions of this Law no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending claimant or his agent; and the notice shall clearly and explicitly state;
    - (a) The cause of action;

- (b) The particulars of the claim;
  - (c) The name and address of legal practitioner of the intending claimant; and
  - (d) The relief being sought.
- (2) The Executive Secretary of the Bureau, its officers, employees or agents shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Law upon the Bureau, its Executive Secretary, officers, employees or agents;
- (3) The Executive Secretary or a member of the Bureau or any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or other employee of the Bureau;
- (4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Law or any other Law or enactment may be served by delivering to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal office of the Bureau.

## **SECTION 20**

***Scope of application***

- (1) The provision of this Law shall apply to all procurement of goods, work and services carried out by;
- (a) The Ebonyi State Government including Local Government Councils and all procurement entities;
  - (b) Any public body in Ebonyi State engaged in procurement, and include Ministries, Departments, Bureaus, Officers and Bureaus of the Ebonyi State Government, extra-ministerial offices, parastatals, institution, Small and Medium Enterprises (SMEs) and corporations;
  - (c) All entities outside the foregoing description which derive any fund appropriated or proposed to be appropriated for any type of

procurement described in this Law from the Ebonyi State Government's share of Consolidated Revenue Fund.

- (3) The procurement of special goods, works and services involving security shall be conducted as provided under this Law, with the Governor's express approval having been first sought and obtained.

## **SECTION 21**

***Fundamental  
principle for  
procurement***

- (1) Subject to any exemption allowed by this Law all public procurements shall be conducted:
  - (a) Subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to paragraph(a) of section 9 (1);
  - (b) By open competitive bidding;
  - (c) In a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and regulations deriving therefrom; With the aim of achieving value for money and fitness for purpose;
  - (d) In a manner which promotes competition, economy and efficiency; and
  - (e) In accordance with the procedures and guidelines laid down in this Law and as may be specified by the Bureau from time to time, or in a manner that guarantees the overriding interest of the State.
- (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the treasury or revenue account or any bank account of any procuring entity for any procurement falling above the set thresholds unless as may be approved by the approving authority.

A supplier, contractor, service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibility arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.

All bidders in addition to requirements contained in any solicitation, documents shall:

- (a) Possess the necessary:
  - (i) Professional and technical qualifications to carry out particular procurement;
  - (ii) Financial capability;
  - (iii) Equipment and other relevant infrastructure.
- (b) Shall have adequate personnel to perform the obligations of the procurement contracts;
- (c) Possess 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 all its obligations to pay taxes, pensions and social security contributions, not have any Director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
- (5) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this Law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders;
- (6) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if:
  - (a) There is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a

- procuring entity or the Bureau, in an attempt to influence any action, or decision making or any procurement activity;
- (b) A supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;
  - (c) The bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding.
  - (d) The bidder is in arrears, regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payment thereof in installments.
  - (e) The bidder has been validly sentenced for a crime committed in connection with a procurement proceeding; or any other crime committed to gain financial profit;
  - (f) The bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding or other crime committed to gain financial profit; and
  - (g) The bidder fails to submit a statement regarding its dominating or subsidiary relationships with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remains in subordinate relationship with other participants to the proceedings.

- (7) In such cases the procuring entity shall inform the Bureau and person referred to in subsection 9(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;
- (8) All communications and documents issued by procuring entities and the Bureau shall be in English Language;
- (9) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau;
- (10) Every procurement entity shall maintain file records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of five years from the date of the award;
- (11) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:
  - (a) Information identifying the procuring entity and the contractors;
  - (b) The date of the contract award;
  - (c) The value of the contract; and
  - (d) The detailed records of the procurement proceedings.
- (12) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding;
- (13) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor;
- (14) A contract shall be awarded to the best evaluated responsive bid from the bidders substantially responsive to the bid solicitation or as otherwise provided for in this Law;
- (15) Pursuant to subsection (14) the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender;

- (16) 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;
- (17) The Accounting Officer of procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the Bureau are complied with, and concurrent approval by any Tenders Board shall not absolve the Accounting Officer from accountability for anything done in contravention of this Law or the regulations laid down hereunder;
- (18) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as may from time to time be laid down by the Bureau;
- (19) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders;
- (20) A procuring entity shall not request or stipulate that a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceedings;
- (21) All procurement contracts shall contain provision for arbitral proceedings as the primary forms of dispute resolution;
- (22) The values in procurement documents 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 valid on the day of opening a tender or bid;
- (23) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution;
- (24) (a) Public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are performed, strictly according to specifications; and  
(b) All contractor unit prices shall be considered as fixed, and therefore not subject to any upward or downward variation during the contract implementation, except under extraordinary



circumstances and only upon prior approval of the Governor conveyed through the Bureau for vetting and necessary action which from time to time stipulates by regulation, the basis for allowing or computing the quantum of such variations.

- (25) Notwithstanding subsection (14) of this Section, the Bureau may refuse to endorse the award of a contract for public procurement on the grounds that the cost is manifestly excessive or unreasonably below the predetermined cost or that a procurement proceeding has been conducted in a manner that violates this Law;
- (26). The Bureau, in collaboration with procuring entities, shall promptly and routinely publish on the State website or online portal in Open Contracting Data Standards (OCDS) Format, procurement information for all procurements that are above the threshold prescribed in the regulations or manual made pursuant to this Law.

## **SECTION 22**

### ***E-procurement***

1. Subject to the regulations made by the Bureau and availability of secure centralized E-Procurement infrastructure and system, the Bureau or a procuring entity shall initiate or undertake the following and other procurement related activities and processes to the extent that this Law empowers it, through electronic or internet-based information technologies:
  - (a) Registration of contractors
  - (b) Procurement Planning
  - (c) Publishing/Notification/Stakeholders Access
  - (d) Tendering
  - (e) Evaluation of bids
  - (f) Awards of Contracts; and
  - (g) Contracts Management

## **SECTION 23**

### ***Approving authority***

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

- (a) In the case of:
  - (i) A government Agency, Parastatal, or Corporation – their Tenders’ Boards within their thresholds; and
  - (ii) A Ministry or Extra-Ministerial entity – the Ministerial Tenders’ Board;

subject to the approval of the Governor within the threshold of One Billion Naira and subject to the approval of the State Executive Council if above One Billion Naira.

#### **SECTION 24**

***Procurement  
planning***

Subject to regulations as may from time to time be made by the Bureau under the direction of the Council; a procuring entity shall plan its procurement by:

- (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 implications of the proposed procurement;
- (iv) Aggregating its requirements, whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (v) Integrating its procurement expenditure into its yearly budget;
- (vi) Prescribing any method for effecting the procurement subject to the necessary approval under this Law; and
- (vii) Ensuring that procurement entity functions stipulated in this Section shall be carried out by the procurement Planning Committee.

#### **SECTION 25**

***Procurement  
implementation***

Subject to regulations as may from time to time be made by the Bureau under direction of the Council, procuring entity shall, in implementing its procurement plans:

- (a) Advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (b) Receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;

- (c) Obtain approval of the approving authority before making an award;
- (d) Announce and publicize the award in the format stipulated in Section 21(26) and guidelines as may be issued by the Bureau from time to time;
- (e) Debrief unsuccessful bidders on request;
- (f) Resolve complaints/disputes, if any;
- (g) Obtain and confirm the validity of any performance guarantee; and
- (h) Execute all Contract Agreements.

## **SECTION 26**

### *Supervision*

- (1) The Accounting Officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of extra-ministerial departments and Parastatals; the General Manager, Executive Secretary or officer of co-ordinate responsibility;
- (2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for;
  - (a) Ensuring compliance with the provisions of this Law by his entity to prevent the breach or contravention of the Law or any regulation made hereunder;
  - (b) Overseeing the Procurement Committee and its decisions;
  - (c) Ensuring that appropriation is provided for the procurement in the State budget;
  - (d) Integrating his entity's procurement expenditure into its yearly budget;
  - (e) Ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
  - (f) Constituting the Evaluation Committee;
  - (g) Liaising with the Bureau to ensure the implementation of its regulations.

## SECTION 27

### *Tenders' Board*

- (1) There is hereby established by this Law in each procuring entity a Tenders' Board (in this Law referred to as "the Tenders' Board");
- (2) Subject to the approval of the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders' Board;
- (3) The Tenders' Board shall be responsible for the award of procurements of goods, works and services within the threshold set in the regulations or whose value are:
  - (a) Above Fifty Million Naira (~~₦~~50,000,000.00) but not more than One Hundred Million Naira (~~₦~~100,000,000.00) for Ministerial Tenders' Board and such shall be approved by the Commissioner with the written consent and/or authority of the Governor first sought and obtained";
  - (b) Not above Fifty Million Naira (~~₦~~50,000,000.00) for Agencies and Parastatal's Tenders' Board with the written consent and/or authority of the Governor first sought and obtained".
- (4)
  - (a) Commissioners or Chief Executives of Ministries shall be responsible for or have power to make procurements the value of which do not exceed Fifty Million Naira (~~₦~~50,000,000.00) for a single and/or particular transaction with the written consent and/or authority of the Governor first sought and obtained";
  - (b) Chief Executives or Heads of Agencies or Parastatals shall be responsible for or have power to make procurements the value of which do not exceed Twenty Million Naira (~~₦~~20,000,000.00) for a single and/or particular transaction with the written consent and/or authority of the Governor first sought and obtained".
- (5) In all cases where there is a need for pre-qualification, the Chairman of the Tenders' Board shall constitute a technical Sub-Committee to carry out 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; and

- (6) The decision of the Ministerial Tenders' Board shall be communicated to the Commissioner for approval and implementation.

## **SECTION 28**

### *Criteria*

- (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more;
- (4) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or consultant that requests them, and the price that a procuring entity may charge for the pre-qualification documents;
- (5) Not later than six months after the enactment of this Law, the Bureau shall make Regulations stipulating the guidelines for the pre-qualification of bidders in any public procurement process;
- (6) The pre-qualification documents shall include:
  - (a) Instructions to prepare and submit pre-qualification application;
  - (b) A summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
  - (c) Any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
  - (d) The manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants

- to prepare and submit their applications taking into account the reasonable need of the procuring entity; and
- (e) Any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations relating to the preparation and submission of applications to prequalify and to the pre-qualification proceedings.
- (5) The procurement entity may respond to any request by a supplier, contractor or consultant for clarification of the pre-qualification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify;
  - (6) A procuring entity shall notify each supplier, contractor or consultant which submitted an application to pre-qualify whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been pre-qualified;
  - (7) Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings;
  - (8) The procuring entity may upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification;
  - (9) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant;
  - (10) The procuring entity shall promptly notify each supplier, contractor or service provider that requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity;
  - (11) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

## **SECTION 29**

- Open competitive bidding*
- (1) Except as provided by this Law all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding;
  - (2) Any reference to open competitive bidding in this Law means the process by which a procuring entity, based on previously defined criteria, carries out 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 has been responsive to the bid with regards to work specification and standard;
  - (4) No negotiations unless otherwise provided for by this Law shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is:
    - (i) in case of goods and works, the lowest cost evaluated responsive bid from the bidders' response to the bid solicitation and
    - (ii) in the case of services, the highest rated evaluated bid from the bidders' responses to the bid solicitation.
  - (5) The Provision of this Law on open competitive bidding shall apply to procurement of goods and services with monetary value as may be stipulated by the Bureau in a Legal Notice published in the State official Gazette from time to time.

## **SECTION 30**

- Invitation to bid*
- (1) Invitation to bid may be either by way of State competitive bidding or International competitive bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system;
  - (2) Every invitation to an open competitive bid shall:
    - (a) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized newspaper, any official website of the procuring entity and the Bureau, and the State Procurement Journal not less than four weeks before the deadline for submission of the bids for the goods, works and services;

- (b) In the case of goods, works and services under State Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official website of the procuring entity, the State procurement Journal and at least one (1) national newspaper not less than 1 week or more than 4 weeks before the deadline for submission of the bids for the works, goods and services; and
  - (c) Not later than six months after the enactment of this law, the Bureau shall issue guidelines for the advertisement of this law, the Bureau shall issue guidelines for the Advertisement/publication of Invitation to Bid.
- (3) Bid Solicitation Document shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Bureau. The Bidding Documents shall include the following:
- a) Instruction to bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
  - b) Eligibility Requirement;
  - c) Plans and Technical Specification;
  - d) Form of Bid, Price Form, and List of Goods or Bills of Quantities;
  - e) Delivery Time or Completion Schedule;
  - f) Form and Amount of Bid Security;
  - g) Form and Amount of Performance Guarantee; and
  - h) Form of Contract, and General and special Conditions of Contract.
- (3) Procuring entities may require additional document or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

### **SECTION 31**

- Bid Security/Bank Guarantee*** (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank or Insurance bond acceptable to the procuring entity;



- (2) The Bureau shall from time to time specify the principal terms and conditions of time required for bid security in the tender documents.
- (4) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

### **SECTION 32**

*All Bids to be in writing*

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

### **SECTION 33**

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 interest, without incurring any liability to the bidders.

### **SECTION 34**

*Validity period of bids, modification and withdrawal of tenders*

- (1) The period of validity for a bid shall be the period Specified in the tender documents;

- (2) A procuring entity may extend the period of validity for an additional specified period of time;
- (3) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids;
- (4) The modification or notice of withdrawal is effective if received by the procurement entity before the deadline for the submission of tenders;
- (5) A supplier, contractor or service provider may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.

### **SECTION 35**

There shall be a failure of bidding if:

*Failure of  
bidding*

1. (a) No bids are received;
  - (b) No bid qualifies as the lowest cost evaluated responsive bid or highest rated responsive bid; and
  - (c) Whenever the bidder with the highest rated or lowest cost calculated responsive bid refuses, without justifiable cause to accept the award of the contract, provided the bid goes to the next rated evaluated responsive bidder
2. (a) The contract shall be re-advertised and re-bided at the occurrence of any of the instances stated in sub-section (1) of this Section;
  - (b) The procuring entity shall observe the same process and set the new periods, according to the same rules followed during the first bidding. After the second failed bidding, however, the procuring entity may resort to an alternate method or procurement as provided for by this Law.

### **SECTION 36**

*Examination of  
bids*

All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:

- (a) Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;

- (b) Cause all the bids to be opened in public in the presence of the bidders or their representatives and any interested member of the public;
- (c) Ensure that the bid opening takes place following the deadline stipulated for the submission of bids or any extension thereof;
- (d) Call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the Secretary of the Tenders' Board or his delegate in the Minutes of the bid opening; and
- (e) Ensure that a register is taken of the names and addresses of all those present at the bid opening and the organization they represent which is recorded by the Secretary of the Tenders' Board.

### **SECTION 37**

***Examination  
of Bids order***

- (1) All bids shall be first examined to determine if they:
  - (a) Meet the minimum eligibility requirements stipulated in the bidding documents;
  - (b) Have been duly signed;
  - (c) Are substantially responsive to the bidding documents; and
  - (d) Are generally in order.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids;
- (3) The following shall not be sought, offered or permitted:
  - (a) Changes in prices;
  - (b) Changes of substance in a bid; and
  - (c) Changes to make an unresponsive bid responsive.
- (5) Notwithstanding sub-section (3) above, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders;
- (6) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the bid;
- (7) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification;

- (8) The following shall be considered as major deviations:
- (a) With respect to clauses in an offer:
    - (i) unacceptable sub-contracting;
    - (ii) unacceptable time schedule if time is of essence;
    - (iii) unacceptable alternative design; and
    - (iv) unacceptable price adjustment.
  - (b) With respect to the status of the bidder:
    - (i) the fact that he is ineligible or not pre-qualified; and
    - (ii) the fact that he is uninvited.
  - (c) With respect to bid documents, an 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; and
    - (ii) Any bid submitted at the wrong location.
- (9) In cases of major deviations, bid shall not be considered any further and, where unopened, shall be returned as such to the bidder;
- (10) 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;
- (11) Subject to any provision to the contrary, the following shall be considered as minor deviations:
- (a) The use of codes;
  - (b) The difference in standards;
  - (c) The difference in materials;
  - (d) Alternative design;
  - (e) Modified liquidated damages;
  - (f) Omission in minor items;
  - (g) Discovery of arithmetical errors;
  - (h) Sub-contracting that is unclear and questionable;
  - (i) Difference in methods of construction;
  - (j) Difference in final delivery date;
  - (k) Difference in delivery schedule;
  - (l) Completion periods 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.
- (12) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:
- (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.
- (13) In cases of minor deviations, written clarification may be obtained from the supplier or contractor and, where applicable an offer made for the correction of the minor deviation;
- (14) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected;
- (15) At the stage of evaluation and comparison, all minor deviations shall be qualified in monetary terms; and
- (16) For the rejection of a bid, a notice shall be given promptly to the supplier.

### **SECTION 38**

- Evaluation of bids*
- (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;
- (2) The objective of bid evaluation shall be to determine and select the best evaluated responsive bid from bidders that have responded to the solicitation, or those in the best interest of the State;
- (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 deviations;
  - (b) Checking of omissions with quantification of same;
  - (c) Application of discounts, as applicable;
  - (d) Clarification with bidders of questionable minor deviations;

- (e) Quantification in monetary terms of such questionable deviations;
  - (f) Conversion to common currency;
  - (g) Calculation and tabulation of bid amount with domestic preference where applicable;
  - (h) Ranking of the calculated bid prices;
  - (i) Post-qualification of bidders, where applicable;
  - (j) Listing of rejection of bids, where applicable;
  - (k) Decision of rejection of all bids where justifiable;
  - (l) Recommendation for award;
  - (m) Writing up of the bid evaluation report; and
  - (n) General interest of the State.
- (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, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
  - (b) for works, in addition to factors stipulated in section 37(1) and subject to section 37(2), if time is a critical factor, the value of early completion; and
  - (c) the value of early completion under section 38 shall not be taken into account unless in conformity with criteria preset in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.
- (6) Where bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents;
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for pre-qualification shall be

confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract; and

- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidders are notified of the award.

### **SECTION 39**

*Selected Bids*

- (1) The successful bid shall be that submitted by the best evaluated bid from the bidders responsive as to the bid solicitation;
- (2) Notwithstanding subsection (1) of this Section, the selected bidder need not be the lowest cost bidder provided the procuring entity has good grounds for doing so;
- (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder;
- (4) Notwithstanding the provision of subsection (3) of this Section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice given to a successful bidder shall:
  - (a) Without prejudice to any provision of the law, "Contract Award must be made within the bid validity period".

### **SECTION 40**

*Domestic preference*

- (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;
- (2) Where a procuring entity intends, to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference;

- (3) Margins of preference shall apply only to tenders under international competitive bidding; and
- (4) The Bureau shall by regulation from time to time set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.

#### **SECTION 41**

***Mobilization  
fees***

- (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% may be paid to a supplier or contractor supported by the following:
  - (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 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;
- (3) Mobilization fee of more than 30% may however be paid with the approval of the Governor to a contractor or supplier of goods and/or services in special cases where there is urgency with respect to the time for the completion of the contract or the supply of goods and/or services”;
- (4) Notwithstanding or furtherance to subsection (1) of this Section, the Government of Ebonyi State may upon the award of a contract insist that the contractor or supplier of goods and/or services shall be paid by milestone completion, the scope of which shall be defined in the contract agreement”;
- (5) Where a mobilization fee of 30% or more has been or is to be paid the Government of Ebonyi State may request the contractor or the supplier of goods and/or services to deposit with the Accountant-General of the State one or more undated cheques including instructions to their bank or banks to transfer a specific sum of money to any bank account of the



Government, its Ministry, Department or Agency or to honour and pay the cheque or cheques or transfer instrument upon their failure to abide by any of the terms of the contract, whether with respect to quality, completion time or whatsoever”; and

- (6) The totality of the contractor’s equipment deployed or to be deployed in execution of the contract shall further be used as collaterals and same shall be stated in the affidavit not to be moved out of site without the prior express authority of the Governor of Ebonyi State”.

### **SECTION 42**

***Performance  
guarantee***

The provision of a performance guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however that 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.

### **SECTION 43**

***Prompt  
payment and  
Liquidated  
damages***

- (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently; and
- (2) Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by a Ministry, Extra-Ministerial office, government Agency, Parastatal or Corporation and approved by the Governor, shall be deemed a delayed payment.
  - (a) The Governor upon receiving any certificate for approval may refer the document to another Ministry, Committee or person(s) for vetting and evaluation
  - (b) In operation of 2(a) above, the contractor may be required to submit a valuation to justify his claim and the referred Ministry, Committee or person(s) may request for joint site measurement with the originating MDA and the contractor.
  - (c) Where a remeasurement of work done by a contractor is carried out, whether the contractor participates or not, the

outcome and advice to the Governor by the referred Ministry, Committee or person(s) shall be binding and shall form the final approval of such certificate by the Governor.

(d) The invitation to a contractor for joint measurement shall be said to be duly served on the contractor through Minutes of site meeting, SMS to his mobile phone, publication in the Local and National Newspapers or Local Radio and Television announcements.

(e) Notwithstanding any provisions in this Law, no contractor shall be paid any interest on purported job done where the matter is under litigation in any Court of Law.

(3) Where a delayed payment occurs, the contractor shall receive additional payment of his banker's borrowing rate and shall last throughout the period of the delayed payment(s) and this right is subject to the right of the contractor and the privilege of the client to negotiate.

(a) On the request of the client to the contractor to negotiate subject to subsection 3 of this Section, and the contractor accepts to enter into negotiation, the outcome of the negotiation if accepted by the contractor shall form part of the contract agreement and where negotiation is not allowed or failed, subsection 3 of this Section shall apply and shall form part of the contract agreement.

(4) Every contractor shall have a Timetable for project, goods or services execution, schedule of workers to be used, equipment and materials submitted to the client and shall form part of every bidding document and contract agreement.

(5) The Client shall receive from the Contractor such sum of money arising from any delayed item of work subject to subsection 4 of this Section and the amount calculated as 1% (one percent) of the value of such delayed work per month and shall run until such work(s) is/are completed in line with subsection 4 of this Section. This is without prejudice to the right of the Client and the privilege of the contractor to negotiate.

(a) On the request of the contractor to the client to negotiate subject to subsection 3 of this Section, and the client accepts to enter into

negotiation, the outcome of the negotiation if accepted by the client shall form part of the contract agreement and where negotiation is not allowed or failed, subsection 3 of this Section shall apply and shall form part of the contract agreement.

- (6) A Client shall have the powers to increase or reduce scope of work upon a letter approved by the Governor to the MDA to effect such; and such action shall be binding on the Contractor and the Client.

#### **SECTION 44**

*Recorded  
procurement  
proceedings*

- (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings;
- (2) The record referred to in this section may, on request, be made available to:
- (a) any person after a tender proposal, offer or quotation has been accepted or after, procurement proceedings have been terminated without resulting in a procurement contract; and
- (b) suppliers, contractors or consultants that submitted tenders, proposal offers or quotations, or applied for pre-qualification, after a tender, proposal offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
- (3) 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.
- (4) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General upon request, and where donor funds have been used for the procurement, donor officials shall also have access upon request, to procurement files for the purpose of audit and review.

## SECTION 45

### *Two-stage tendering*

- (1) A procuring entity may engage in procurement by two-stage tendering.
  - (a) Where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
  - (b) Where the character of 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 applies 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 were not successful or the tenders were rejected by the procuring entity under an open “competitive bid procedure” and the procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract.
- (2) The provisions of this Law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section;
- (3) The invitation documents:
  - (a) Shall 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) May solicit proposals that relate to technical quality or other characteristics or the goods, works or services as

well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors.

- (4) The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender;
- (5) In the second stage of the two-tender proceedings, the procuring entity:
  - (a) Shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
  - (b) May, in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tender;
  - (c) May add new characteristics or criteria that conform with this Law;
  - (d) Shall communicate to suppliers or contractors in the Invitation to submit firm tenders, any deletion, modification or addition; and
  - (e) May permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.
- (6) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bidding.

## **SECTION 46**

- Restricted tendering*** (1) A procuring entity, subject to prior approval of the Bureau, may for reasons of economy and efficiency engage in procurement by means of restricted tendering if:
- (a) The goods, works or services are available only 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 engages 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 the suppliers and contractors who can provide the goods, works or services; or
  - (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 a non-discriminatory manner the number of suppliers or contractors.
- (3) Subject to the approval of the Governor, a procuring entity may for reasons of economy efficiency, special skills, experience and proven track record of the contractors or service providers over a period of time initiate procurement by means of restricted procurement if:
- (4) The Provision of this Law regarding the open competitive procedure shall apply to the selective tendering proceedings except to the extent that those provisions are varied by this Section.
- (5) A procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted tendering if the procuring entity determines that the use of any other competitive method of procurement is not appropriate for the protection of essential security interest of the State.

#### **SECTION 47**

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

- (2) Generally, quotations shall be obtained from two or three 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 quotation.
- (4) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation, or whose services are considered best in the interest of the entity or State.

#### **SECTION 48**

- Direct procurement*
- (1) A procuring entity may carry out any procurement where:
    - (a) goods, works or services are only available from a particular supplier or contractor or if a particular supplier has exclusive rights in respect of the goods, works or 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 impractical due to unforeseeable circumstance giving rise to the urgency; or
    - (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; or
    - (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that:
      - (i) additional supplies need to be procured from the supplier or contractor because of standardization; or
      - (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; or
  - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification; or
  - (e) 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 quantities to establish commercial viability or recover research and development costs; or
  - (f) the procuring entity applies 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 may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor.
  - (3) Without prejudice to any provisions of this Law, all procurements whose value fall below the amounts stated in Section 24 shall be made as direct procurement by:
    - (a) The Commissioner, for goods, services or contracts not exceeding Five Million Naira; the Chief Executive or Head of the Agency or Parastatal for goods, services or contracts not exceeding Two Million Naira.

#### **SECTION 49**

- (1) Subject to the Regulations that may be made by the Bureau, a procuring entity may for the purposes of this Law, carry out an emergency procurement where:
  - (a) The State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God;
  - (b) the condition or quality of goods, equipment, building or publicly-owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or

*Emergency procurement*



- (c) a public project may be seriously delayed for want of an item or 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) The provisions of Section 43(3) relating to direct procurement shall also apply to emergency procurement.

## SECTION 50

*Expressions of interest to provide services for ascertained needs*

Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:

- (1) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two newspapers;
- (2) where the value of the service to be procured is not more than Twenty Million Naira, or of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least 2 or more consultants or service providers to make proposals for the provision of the services in a format stipulating:
  - (a) a statement of qualifications of the consultant to provide the service;
  - (b) a statement of understanding of the procuring entity's need;
  - (c) the methodology for providing the service;
  - (d) the time frame for providing the service; and
  - (e) the cost or fee for the service.
- (3) Every consultant may be required to register with the relevant Ministry or Agency

## SECTION 51

*Request for proposals to provide services for unascertained needs*

- (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.

- (2) The procuring entries shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect.
- (3) A procuring entity may make direct requests to a limited number of consultants, requesting proposals for the provision of a service if:
  - (a) the services are only available from no more than two consultants;
  - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
  - (c) it is in the interest of State Security or similar reason of confidentiality; or
  - (d) due to reputation or past good records, it is in the interest of the entity or State to engage a particular consultant.
  - (f) A procuring entity shall procure the service of consultants by soliciting for expressions of interest by publishing a notice to that effect in the Local Newspaper and any other National Newspaper and the Procurement Journal.

## **SECTION 52**

***Contents of the  
Requests for  
proposals***

Request for proposal may include:

- (a) The name and address of the procurement entity;
- (b) a requirement that the proposals are to be prepared in English Language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedure 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 qualification;

- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian currency;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) whether the procedure to ascertain the 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 proposals; and the procuring entity shall provide the same information to every consultant requested to submit proposals.
- (l) A short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.
- (m) The procuring entity shall provide the same information to every consultant requested to submit proposals.

### **SECTION 53**

- (1) A consultant may be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specified.
- (2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted

*Clarification and modification of Requests for proposals*

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 the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.
- (5) The Minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the selection proceedingsto enable them take the Minutes into account in their proposals.

#### **SECTION 54**

##### ***Submission of proposals***

- (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 14 days between the issue of the notice or request and the deadline for submission.
- (2) The technical and financial proposal shall be submitted simultaneously but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
- (5) The technical evaluation committees shall not have access to or insights to the financial proposals until the evaluation including Tenders'Board's reviews are concluded.

#### **SECTION 55**

##### ***Criteria for Evaluation of Proposals***

- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe therelative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:
  - (a) The qualification, experience, reliability, professional and managerial competence of the consultant or service

- provider and of the personnel to be involved in providing the services;
- (b) The effectiveness of the 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 balance of payments 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 operational skills and the counter trade arrangements offered by consultant or service providers; and
  - (e) Security consideration.
- (3) 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 Bureau and shall be reflected in the record of the procurement proceedings.

## **SECTION 56**

***General selection  
procedure  
(services)***

- (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; or considered in the best interest of the entity or State.
- (2) The procuring entity shall include in the record or procurement a statement of the ground and circumstances on which it relied to select either of the procedures in subsection (1) of this Section.

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

## **SECTION 57**

*Procedure for  
selection of  
proposal where  
price is a factor*

- (1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity may notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a reasonable time after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants, and the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the Minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6) The successful proposals shall be:
  - (a) the proposals 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; or
  - (b) the proposals with “the lowest price in the case of least-cost selection; or
  - (c) the highest ranked technical proposals within the budget or considered in the best interest of the entity or State.

- (7) The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposal.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons

### **SECTION 58**

*Selection procedure  
where price is not a  
factor*

- (1) Where the procuring entity elects to make a quality-based selection procedure based on consultant's qualifications or single source selection, it shall engage in negotiations with consultants in accordance with this section.
- (2) The procurement entity shall:
  - (a) Establish a weight with respect to quality and price of the proposals;
  - (b) Invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this Section;
  - (c) Inform the consultants that attained ratings above the weight that may be considered for negotiation if the negotiations with the consultant with the best rating do not result in a procurement contract; and
  - (d) Inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant invited under paragraph 2(b) will not result in a procurement contract
- (3) The procuring entity shall, if negotiations with the consultant with the best rating fail, invite the consultant that obtained the second best rating, and if the negotiations with the consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.
- (4) The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

## SECTION 59

- Retainers, Advisers and special consultants* (1) Without prejudice to any provisions of this Law, the Governor may approve the engagement of any person as retainer, adviser or consultant to render professional services to the Government or its Agency on any terms and conditions as he may deem fit.

## SECTION 60

- Bureau to recommend investigation*
- (1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law, based on any allegation or suspicion declared or made on oath.
- (2) The Bureau may in the course of the investigation.
- (a) At any time during normal office hours, enter the premises of the procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceeding under review;
  - (b) Require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
  - (c) Search premises for any books, records, accounts or documents;
  - (d) Examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant;
  - (e) Remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
  - (f) Require an officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in the books, records, accounts or documents;
  - (g) Provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.



- (3) The Bureau may, pursuant to the advice of the procuring entity, result of its review of a procurement or report of investigation by a relevant government agency issue a variation order requiring a contractor at his own expense to require, 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 of award.
- (4) The Bureau 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 proceedings; or a declaration consistent with any relevant provisions of this Law.
- (5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to report to the Attorney-General for possible prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

### **SECTION 61**

*Administrative review*

- (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.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
- (3) On reviewing a complaint, the Accounting Officer shall make a decision in writing within a reasonable time 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 Bureau within 10 working days from the date of communication of the decision of the Accounting Officer for possible consideration.

## **SECTION 62**

***Disposal of public property***

- (1) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (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 Bureau shall, with the approval of the Council:
  - (a) Determine the applicable policies and practices in relation to the disposal of all public property;
  - (b) Issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
  - (c) Issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (4) For the purposes 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 or through deeds;
  - (c) Acquired in respect of intellectual or proprietary rights;
  - (d) Acquired on financial instruments (including shares, stocks, bonds etc.); and
  - (f) Acquired by goodwill and any other gifts of the State Government.
- (5) The means of the disposal of public assets shall include:
  - (a) Sale or rental;
  - (b) Lease or hire purchase;

- (c) Licences or tenancies;
- (d) Franchise or auction; and
- (e) Transfers from one government department to another with or without financial adjustments; or offer to the public at an authorized variation.

### **SECTION 63**

*Planning of disposals*

- (1) Before slating any public property for disposal the Accounting Officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a valuation report for such property by an evaluator or such professional with the appropriate competence to carry out the valuation.
- (2) The disposal of assets whether or not listed in the assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (3) The disposal of assets referred to in subsection (2) shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government.
- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders' Board.

### **SECTION 64**

*Establishment of Direct Labour Committee*

- (1) Notwithstanding anything or other Law in force, the Governor of Ebonyi State shall have the power to set up a standing or adhoc MDA or Inter-Ministerial Committee in the MDAs to be known as and called "the Direct Labour Committee" in such manner as he deems fit to execute any project not more than Three Hundred Million Naira for MDA and not more than One Billion Naira for Inter-Ministerial Committee in any Ministry, Department and/or Agency.
  - (a) It shall be the sole responsibility of the Accounting Officer and or Chief Executive Officer to request for the approval of the Governor names of the MDAs and Inter-Ministerial Committee members and shall use them for the execution of direct labour projects, goods or services.

- (b) Each MDA's Accounting Officer and or Chief Executive Officer shall have the responsibility to use sub-contractors, suppliers, personnel from MDAs or the public through the MDA's or Inter-Ministerial Committee in carrying out their responsibilities.
  - (c) It shall be the responsibilities of the MDA's Accounting Officers and or Chief Executive Officers to retire any direct labour fund through the MDA's or Inter-Ministerial Committee to the Governor within sixty days of the completion of the direct labour project, goods or services.
  - (d) Failure to retire expenditure to the Governor or to retiring the expenditure after the sixty days of project, goods or services completion shall be a breach of this Law by the Accounting Officer and or Chief Executive Officer and the members of the MDA Committee or Inter-Ministerial Committee.
  - (e) Governor may refer the retirement of the expenditure of any MDA or Inter-Ministerial Committee to a Committee, Procurement Council, Fiscal Responsibility Commission or any person(s) for verification and their findings when approved by the Governor shall be binding and shall be subject to this Law.
2. The Ebonyi State House of Assembly, the Judiciary and Local Government Councils may subject to their approved budgets, set up a Direct Labour Committee to execute any project for supply of goods and/or services for a total sum not exceeding One Hundred Million Naira (~~₦~~100,000,000.00) only.
  3. All proposals exceeding Twenty Million Naira (~~₦~~20,000,000.00) for execution of projects or jobs by direct labour shall be made subject to appropriate vetting by the State Procurement Council, provided, however, that the Governor and the State Executive Council may, in each case, approve any such proposals not exceeding Two Hundred Million Naira and Four Hundred Million Naira respectively, without recourse to the State Procurement Council.
  4. A Direct Labour Committee to be set up shall use and employ the staff and machinery of the Government of Ebonyi State for the

purpose of the efficient and effective execution of the direct labour projects of the Government.

5. All expenditures or payments made in consequence of the execution of any project of the Government of Ebonyi State by direct labour may not be subject to any form of taxation or levy other than 1% (one percent) education levy, 1% (one percent) empowerment and/or security levy, and 7.5% VAT for goods and services; and 7.5% Value Added Tax and 5% Withholding Tax for projects.

## **SECTION 65**

*Composition of  
the Direct Labour  
Committee*

1. The Direct Labour Committee shall consist of such officers, sub-contractors and person(s) as shall be nominated by the Chief Accounting Officer or Chief Executive Officer and approved by the Governor in relevant Ministries, Departments, Agencies and all the Parastatals within the Executive Arm of Government.
2. The Direct Labour Committee shall consist of such officers as may be nominated by the Speaker of House of Assembly.
3. The Direct Labour Committee shall consist of such officers as may be nominated by the Chief Judge of Ebonyi State.

## **SECTION 66**

*Functions of the  
Direct Labour  
Committee*

The Direct Labour Committee shall perform the following functions:

- (1) Carry out thorough evaluation of any Government project recommended and/or requested for Direct Labour Execution and make recommendations to the relevant Commissioner or Head of Parastatal for approval and implementation subject to the approval by the Governor.
- (2) Be responsible for the implementation or execution and/or supervision of the project.

## **SECTION 67**

*Establishment  
and/or registration  
of Government  
Company(ies)*

- (1) The Government of Ebonyi State shall have the power to establish, set up and or register her own company or companies and such company/companies shall be accorded

the full status of private and/or public companies limited by shares in all procurement matters notwithstanding that Government Agent(s) or employee(s) plays/play any management role in the company or companies or anything whatsoever to the contrary.

- (2) Any company established, set up and registered by the Government as provided in subsection (1) of this Section shall be eligible to participate in any bidding process for any projects, jobs, goods and/or services in the State where offered through competitive or selective bidding.
- (3) A company may be blacklisted from further doing any job or executing any contract in Ebonyi State if a previous contract executed by it was found by any Ministry, Department and/or Agency to be deficient in quality and/or in any material in particular, provided that the Bureau of Public Procurement shall also communicate other agencies outside the Government of Ebonyi State for the purposes of due compliance.

#### **SECTION 68**

- Code of conduct for public Procurement*
- (1) The Bureau shall, with the approval of the Council, stipulate a Code of Conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets.
  - (2) the conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
  - (3) All officers of the Bureau, members of Tenders' Boards and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
  - (4) All persons in whose hands public funds may be trusted for whatever purpose should bear in mind that its utilization should be judicious.

- (5) Where a transaction involves the disposal of assets principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (6) These principles shall apply at all times, particularly when:
  - (a) Making requisition for or planning of procurements;
  - (b) Preparing solicitation documents;
  - (c) Receiving offers in response to any form of solicitation towards a procurement or disposal;
  - (d) Evaluating and comparing offers confidentially and in complete neutrality;
  - (e) Protecting the interest of all parties without fear or favour; and
  - (f) Obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:
  - (a) Ensuring adequate time for preparing offers;
  - (b) Complying with this Law and all derivative regulations; and
  - (c) Receiving strict confidentiality until completion of a contract.
- (8) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons, real or corporate, who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (9) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:
  - (a) Divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlying principles of this Law; and

- (b) Not engage or participate in any commercial transaction involving the State Government, its Ministries, 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.
- (10) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (11) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.
- (12) A conflict of interest exists where a person:
- (a) Possesses an interest outside his official duties that materially encroached 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 construed to be, or make possible personal gain due to the person's ability to influence dealings;
  - (c) Entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality or the person's business judgments;
  - (d) Places by acts or omissions the procuring entity he represents or the government in an equivocal, embarrassing or ethically questionable position;



- (e) Entertains relationships compromising the reputation for integrity of the procuring entity he represents or the government;
  - (f) Receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;
  - (g) 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; and
  - (h) Discloses confidential information being either the property of his procuring entity, the government or to a supplier, contractor or service provider of unauthorized persons.
- (13) A person involved on the disposal of assets shall not either by a third party or by himself being 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.

## **SECTION 69**

*Offences relating  
to Public  
procurement*

- (1) Any natural person not being a public officer who contravenes any provision of this Law commits an offence and is liable on Conviction to a term of imprisonment not less than two years but not exceeding five years without an option of fine.
- (2) Any offence in contravention of this Law shall be tried by the State High Court.
- (3) The following shall also constitute offences under this Law: 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:
  - (a) Been the case had there not been collusion between the persons concerned.

- (b) To conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other action.
  - (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) Bid rigging;
  - (f) Altering any procurement document with intent to influence the outcome of a tender proceeding;
  - (g) Altering or using fake documents or encouraging their use;
  - (h) Willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (4) Any person whilst carrying out his duties as an officer of the Bureau, 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 2 years with an option of fine and/or; summary dismissal from government service.
- (5) Any legal person that contravenes any provision of the Law commits an offence and is liable on conviction to a cumulative penalty of:
- (a) Debarment from all public procurements for a period of 5 years;
  - (b) A fine equivalent to 25% of the value of the procurement in issue.
- (6) 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.
- (7) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law.

- (8) Bid rigging pursuant to subsection (3) (e) mean an agreement between persons whereby:
- (a) Offers submitted have been pre-arranged between them; or
  - (b) Their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the State Treasury.
- (9) All alleged breaches of provisions of this Law shall be reported to the State Attorney-General on oath for possible prosecutions.
- (10) It shall be an offence under this Law to:
- (a) Open or tamper with any sealed Bid or any and all documents required to be sealed or divulging their contents prior to the appointed time for the public opening of Bids or other documents;
  - (b) Delay, without justifiable cause, the screening for eligibility, opening of bids, evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or regulations made hereunder;
  - (c) Enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposal or quotations are or would be high than would have been the case has there not been collusion between the persons concerned;
  - (d) Engaged in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue influence, agreement, corruption, bribery or other actions;
  - (e) Bid-rigging;
  - (f) Use fake documents or encouraging their use;
  - (g) Withdraw a bid after it shall have qualified as the lowest Evaluated Bid or Highest Rated Bid, or refusal to accept an award, without just cause or for the purpose of forcing the procuring entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements, such as, but limited to performance Guarantee, preparatory to the final award of the contract.

- (11) Where a body corporate or firm is convicted pursuant to the provisions of this Law, every Director of the Company or every partner in the firm shall be guilty of an offence and is liable on conviction to a term of imprisonment for not less than 3 years but not exceeding 5 years without an option of fine unless the offence upon which the conviction was based was committed without his knowledge, consent or connivance.
- (12) An alteration pursuant to subsection (3)(f) of this section, shall include but not limited to:
  - (a) Forged arithmetical correction;
- (13) For the purpose of subsection (8) of this section consideration shall be given to a person's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial, directly or indirectly.
- (14) For the purpose of subsections (3) and (8) of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the State Treasury.

## **SECTION 70**

### *Miscellaneous*

- (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the Executive Secretary or of any other person generally or specially authorized to act for that purpose by the Council.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal, but may be made or executed on behalf of the Bureau by the Executive Secretary or any person generally or specially authorized to act for that purpose by the Council.
- (3) Any document purporting to be a document duly executed under the seal of the Bureau shall be received in evidence and shall, unless and until the contrary is proved be presumed to be executed.
- (4) The validity of any proceeding of Councilor 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 of a Committee, or by

reason that a person not entitled to do so took part in the proceedings of the Council or committee.

(5) This Law shall not apply to procurements that are pending as at the date of commencement of this law. The Law shall apply to procurements after a transitory period of three months after the assent to this Law.

(6) Tenure of office of members of Council

Notwithstanding anything contained in the instrument by which he/she is appointed, a member of the Council may resign his/her appointment in writing under his/her hand and addressed to the Governor, and upon receipt of the letter of resignation the appointment of the member shall cease.

(7) Powers of the Council to co-opt persons

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

(8) Meeting of the Council

- (a) The Council shall in each year hold a general meeting as its annual meeting, in addition to any other meetings in that year, and it shall specify the meeting as such;
- (b) The Annual General Meeting shall be held within six months after the close of each financial year and it shall be open to the public who shall be given adequate notice of the meeting and salient points from the annual report;
- (c) The Council shall ordinarily meet for the dispatch of business at such times and places as the Chairman may from time to time appoint, but not less than three times in any financial year;
- (d) The Chairman shall preside at all meetings of the Council when he is present, and when he is not present any other member of the Council may be appointed by the members present at the meeting to preside;

- (e) Where not less than five members of the Council request Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Council for the purpose specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Council for those purposes at the earliest convenient date.
- (f) Notwithstanding anything in the foregoing provisions of this paragraph the first ordinary meeting of the Council shall be summoned by the Governor, who may give such directions as he thinks fit as to the procedure which shall be followed at that meeting.

(9) Voting

- (a) All questions at a meeting of the Council shall be determined by a majority of votes of the members of the Council present and voting, being members who under this paragraph are entitled to vote at such meeting.
- (b) At the meeting of the Council each member other than the Chairman shall have a deliberative vote, and if there is equality of votes, the Chairman of the meeting shall, if entitled to a deliberative vote, have a second or casting vote.

(10) Standing Order

- (a) Subject to the provisions of this Law, the Council may make Standing orders with respect to the holding of meetings of the Council, the notice to be given of such meetings, the proceedings at the meetings, the keeping of Minutes of such proceedings and custody or the production for inspection of such Minutes.
- (b) Subject to any standing order made under subparagraph (1) of this paragraph, the procedure of the Council with respect to the holding of meetings shall be such as the Council may from time determine.

(11) Disclosure of interest by Members of the Council

- (a) A Member of the Council who is in any way directly or indirectly interested in a transaction or project of the Council shall disclose the nature of his interest at a meeting of the

Council, and such disclosure shall be recorded in the Minute Book and the member shall not take part in any deliberation or decision of the Council with respect to that transaction or project;

- (b) For the purpose of subparagraph (I) of this paragraph a general notice given at a meeting of the Council by a member to the effect that he is associated with any trade or business or he is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Council concerning that trade, business, company or firm shall be regarded as sufficient disclosure of his interest in relation to that transaction or project; and
- (c) A member of the Council may not attend in person a meeting of the Council in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

(12) Office of the Council

- (a) The Secretariat of the Council shall be the office of the Regulatory Bureau.

(13) Common Seal

- (a) The Common Seal of the Council shall be such as may be determined by the Council, and the affixing of the common seal shall be authenticated by the signature of the Chairman and the Secretary, or of some other members authorized generally or specifically by the Council to act for that purpose.
- (b) Any document purporting to be a document duly executed under the common seal of the Council shall be received in any Court and shall, unless the contrary is proved be deemed to be so executed.

(14) Validity of Proceedings

The validity of any Proceedings of the Council shall not be affected by any vacancy in the membership of the Council or any defect in the appointment of a member to the Council, or by reason that a person not entitled to do so took part in the proceedings.

## **SECTION 71**

### **Repeal**

The Ebonyi State Public Procurement and Related Matters Law, No. 012 of 2009, Ebonyi State Public Procurement and Related Matters (Amendment) Law, No. 008 of 2016 and Ebonyi State Public Procurement and Related Matters Law, No. 009 of 2020, are hereby repealed.

## **SECTION 72**

### **Object and Purpose**

The object and purpose of this Law is to establish the State Council on Public Procurement and the Bureau of Public Procurement as the Regulatory Authorities responsible for the monitoring and oversight of Public Procurement, Harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for Public Procurement in Ebonyi State.



APPENDIX

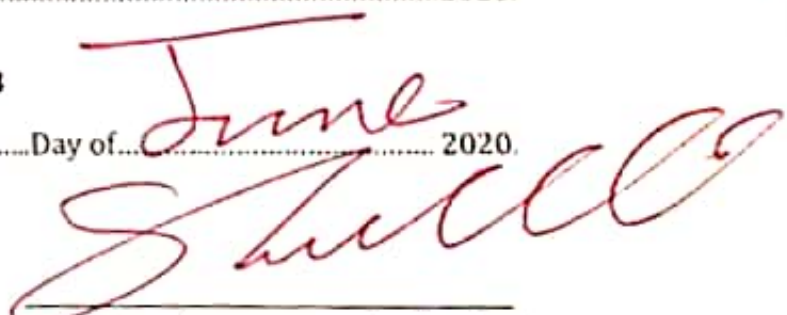
FORM A

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

  
ANASI PATRICIA O. (MRS.)  
CLERK OF HOUSE OF ASSEMBLY,  
EBONYI STATE OF NIGERIA.

Dated this 10<sup>th</sup> Day of June 2020.

Assented to by me this 10<sup>th</sup> Day of June 2020.

  
ENGR.CHIEF DAVID UMAHI NWEZE  
(FNSE, FNATE)  
GOVERNOR, EBONYI STATE OF NIGERIA

FORM C

I withhold my assent.

\_\_\_\_\_  
GOVERNOR  
EBONYI STATE OF NIGERIA

Dated this.....Day of.....2020.