

BAYELSA STATE

PUBLIC PROCUREMENT

LAW, 2009

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BAYELSA STATE
PUBLIC PROCUREMENT LAW

A Law to provide for the establishment of a State Council on Public Procurement and for other purposes connected therewith.

(COMMENCEMENT:)

PART I – ESTABLISHMENT OF STATE COUNCIL ON PUBLIC PROCUREMENT

1: ESTABLISHMENT AND COMPOSITION OF THE STATE COUNCIL ON PUBLIC PROCUREMENT

- (1) There is hereby established a State Council on Public Procurement (hereinafter in this Law referred to as “the Council”).
- (2) The council shall consist of:
 - (i) The Commissioner of Finance and Budget, as Chairman;
 - (ii) The Attorney-General & Commissioner of Justice
 - (iii) The Secretary to the State Government
 - (iv) The Head of the Civil Service of the State
 - (v) The Permanent Secretary (General Services), who shall be the Secretary of the Council
 - (vi) Eight part-time members who shall be appointed on the nomination of professional bodies and the private sector and who will represent:

- (a) The Chartered Institute of Purchasing and Supply Management of Nigeria
 - (b) Nigerian Bar Association
 - (c) The Nigerian Union of Journalists
 - (d) The Civil Society,
 - (e) Women group;
 - (f) The Nigerian Society of Engineers.
 - (g) The State Chapter of the National Union of Local Government Employees
- (3) The Chairman and members of the Council shall be appointed by the Governor.
- (4) The Council shall meet whenever the Chairman deems necessary but it shall meet at least two times in a year.

2: FUNCTIONS OF THE COUNCIL

The Council shall:

- (a) Consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Law by procurement entities;
- (b) Consider and approve policies on public procurement; and advise the State Governor regarding delegation of financial authority to public officers enabling them to approve contract awards and charges to contracts of a financial nature and the annual review of such delegations;
- (c) Receive and consider, for approval, the audited accounts of the Due Process Bureau;

- (d) Approve changes in procurement processes to adapt to improvements in modern technology; and
- (e) Give such other directives and perform such other functions as may be necessary to achieve the objectives of the Law.
- (f) The office of the Secretary to the State Government shall serve as the Secretariat for the Council.

PART II – ESTABLISHMENT OF THE DUE PROCESS BUREAU

3. ESTABLISHMENT OF THE DUE PROCESS BUREAU

- (1) There is hereby established, an agency to be known as the Due Process Bureau; 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 in its corporate name; and
 - (c) May acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Law.

4. 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;

- c. Ensuring the application of fair, competitive, transparency, value-for-money standards and practices for the procurement and disposal of public assets and services; and
- d. The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public procurement system.

5. FUNCTIONS OF THE BUREAU

The Bureau shall:

- a. Formulate the general policies relating to public procurement for the approval of the Council, including regulations, guidelines, directives, instructions, technical notes and manuals;
- b. Maintain a list of procurement entities covered by this Law and, subject to the approval of the Council, make regulations or guidelines for the composition, functions, powers and procedure of the Procurement Board of any procurement entity;
- c. Publicize and explain the provisions of this Law;
- d. Subject to thresholds as may be approved by the Council and except as otherwise provided by this Law, certify all procurement prior to award of contract;
- e. The Bureau shall certify all contracts awards within the monetary review thresholds defined by the state council on public procurement;
- f. The Bureau shall certify procurement over N300m before award and shall conduct only process compliance review for procurement below that threshold.
- g. These thresholds shall be subject to periodic review by the State Council on Public Procurement from time to time.
- h. Monitor procurement and ensure compliance with statutory and contract requirements;

- i. Monitor the prices of tendered items and keep a database of standard prices;
- j. Publish, and maintain an archival system for, paper and electronic editions of a procurement journal, which shall contain details of major contracts including proposed procurement notices, notices of invitation to tender and contract award information;
- k. Maintain a database of the particulars and classification and categorization of suppliers, contractors and service providers;
- l. Collate and maintain in an archival system all procurement plans and information covered by this Law;
- m. Undertake procurement research and surveys;
- n. Organize training and development programmes for procurement professionals;
- o. Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;
- p. Issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for use by procurement entities for implementing procurement;
- q. Prevent fraudulent and unfair procurement and, where necessary, apply administrative sanctions;
- r. Advise the State Government on issue relating to public procurement;
- s. Perform procurement audits and submit the audit report to the State House of Assembly annually; and
- t. Perform such other functions as may be assigned to it by the Council

6. POWERS OF THE BUREAU

- (1) The Bureau shall have power to:
 - (a) Enforce the monetary and prior review threshold approved by the Council for the application of the provisions of this Law by procurement entities;
 - (b) Subject to paragraph (a) of this subsection, issue “certificate of No Objection” for contract award” within the prior review threshold for all procurements within the purview of this Law and “certificate of No Objection” for payment at different stages of payment;
 - (c) From time to time stipulate to procurement entities the procedures and documentation prerequisite for the issuance of the certificate of “No Objection” under this Law;
 - (d) Where a reason exists:
 - (i) Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law,
 - (ii) Review and determine whether any procurement entity has violated any provision of this Law or the guidelines made under this Law.
 - (e) Debar any supplier, contractor or service provider that contravenes any provision of this Law and the regulations made under this Law;
 - (f) Maintain a list of firms and persons that have been debarred from participating in public procurement activity in the State and publish them in the procurement journal;
 - (g) Set up a committee to monitor the performance of any procurement requirement by any contractor, supplier or service provider;

- (h) Call for such information, documents, records and reports in respect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against any procurement entity or any contractor, supplier or service provider;
- (i) Recommend to the Council where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law for:
 - (i) The suspension of officers concerned with the procurement proceedings in issue,
 - (ii) The replacement of the head or any member of the procurement entity or Procurement Board as the case may be,
 - (iii) The discipline of the Accounting Officer of any procurement entity,
 - (iv) The temporary transfer of the procurement function of a procurement entity to another procurement entity or consultant, or
 - (v) Any other sanction that the Council may consider appropriate;
- (j) Call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;
- (k) Act upon complaints in accordance with the procedures set out in this Law;
- (l) Nullify the whole or any part of any procurement proceeding or ward which is in contravention of this Law; and
- (m) Do such other directives and perform such other functions as may be necessary to achieve the objectives of this law.

- (2) The Bureau shall, subject to the approval of the council, have power to:
 - (a) Enter into contract or partnership with any company, firm or person which in the opinion of the Bureau shall facilitate the discharge of its functions;
 - (b) Request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and
 - (c) Liaise or collaborate with relevant bodies or institutions national or international for the effective performance of its functions under this Law.

7: THE DIRECTOR-GENERAL OF THE BUREAU

1.
 - (a) There shall be for the Bureau a Director-General who shall be appointed by the Governor on the confirmation by the State House of Assembly.
 - (b) The person appointed as the Director-General shall have the qualification to contest for the State House of Assembly.
2. The Director-General shall be;
 - (a) The Chief Executive and accounting officer of the Bureau;
 - (b) Responsible for the day to day administration of the Bureau
3. The Director-General shall hold office:
 - (a) For a term of four (4) years in the first instance and may be re-appointed for a further term of four (4) years and no more; and
 - (b) On such terms and conditions as may be specified in his letter of appointment.
4. Without prejudice to the provisions of subsection (3) of this section, the State Governor may at any time terminate the appointment of the

Director-General on account of gross misconduct or financial impropriety, fraud or gross incompetence proven by the Council, or an offence of such nature that renders it desirable for this appointment to be terminated.

8: PRINCIPAL OFFICERS OF THE BUREAU

1. The Governor shall appoint the directors and other principal officers of the Bureau.
2. The principal officers appointed under subsection (1) of this section shall each have the requisite qualification and experience for the effective performance of the functions of the Bureau and their respective departments.
3. The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the performance of the Bureau's functions.

9: STAFF OF THE BUREAU

1. The Council may appoint such officers and other employees as may, from time to time, be necessary for the purposes of the Bureau, and such officers or employees may be appointed either on transfer or on secondment from any office in the public service of the State.
2. Subject to any pension law that may be applicable to the public service of the State, the terms and conditions of service of officers and employees of the Bureau shall be as determined by the Council.

10: STAFF REGULATIONS

The Council shall, subject to the provisions of this Law, make staff regulations relating generally to the conditions of service of the

employees of the Bureau and such regulation shall provide for matters including appointment, promotion and discipline.

11. PENSIONS

The employees of the Bureau shall be entitled to pensions and other retirement benefits as may be prescribed under any law of the State on pensions.

12. FUNDS OF THE BUREAU

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

13: BUDGETING AND ANNUAL FINANCIAL 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 projected income and expenditure for the next succeeding year.
3. The Bureau shall at the end of each financial year prepare and submit to the Council a report accurately capturing all the activities of

the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

PART III – SCOPE OF APPLICATION

14: SCOPE OF APPLICATION

1. This Law applies to all procurement of goods, works and services carried out by:
 - a. The Bayelsa State Government and all procurement entities of the State Government.
 - b. All entities outside the foregoing description which derive at least 35% of the fund appropriated or proposed to be appropriated for any procurement described in this Law from the Consolidated Revenue Fund of the State Government: provided that this Law shall apply in every case where public funds constitute up to N500,000,000.00 of the cost of procurement of any goods, works or services.
2. Without prejudice to subsection (1) of this section, this Law applies to:
 - a. Ministries, departments and agencies of the State Government;
 - b. Agencies set up by the State Government to provide public service and financed from public fund;
 - c. Public hospitals, schools, colleges and universities; and
 - d. State-owned enterprises that utilize public funds.
3. This Law shall not apply to the procurement of special goods, works and services involving public security unless the governor's approval has been first sought and obtained.

4. This Law shall not apply to procurement for which the funds have been provided by international organizations (donors and lenders, provided that special terms and conditions for procurement as prescribed by them are in compliance with this law.

PART IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

15: FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

1. Subject to any exemption allowed by this Law, all public procurement shall be conducted:
 - a. Subject to the prior review thresholds as may from time to time be set by the Council.
 - b. Based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procurement entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Council, has obtained a 'Certificate of "No Objection" to Award' from the Council;
 - c. By open competitive bidding;
 - d. In the manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and the regulations made under this Law;
 - e. With the aim of achieving value-for-money and fitness for purpose;
 - f. In a manner which promotes competition, economy and efficiency; and
 - g. In accordance with the procedures and timeline laid down in this Law and as may be specified by the Council from time to time.

2. Where the Council has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or bank account of any procurement entity for any procurement falling above the set thresholds unless the cheque, payment or other form of request for payment is accompanied by a certificate of "No Objection" to an award of contract duly issued by the Council.
3. For all cases where the Council shall set prior review thresholds, the Council shall prescribe by regulations and guidelines the conditions precedent to the award of Certificate of "No Objection" under this Law.
4. Subject to the prior review thresholds as may be set by the Council, any procurement purported to be awarded without a "Certificate of "No Objection" to Contract Award" duly issued by the Council shall be null and void.
5. A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting 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.
6. All bidders, in addition to requirements contained in any solicitation documents, shall:
 - a. Posses the necessary:
 - i. Professional and technical qualifications to carry out the particular procurement,
 - ii. Financial capability,
 - iii. Equipment and other relevant infrastructure,
 - iv. Personnel with sufficient skill and experience to perform the obligations of the procurement contract.

- b. Posses the legal capacity to enter into the procurement contract;
 - c. Not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceeding;
 - d. 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;
 - e. Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.
7. The procurement entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this Law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.
8. Whenever it is established by a procurement entity or the Bureau that any or a combination of the situations set out exists, 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 service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a

- procurement entity or the Bureau, or has promised to shield a current or former employee of a procurement entity or the Bureau from a due detriment, in an attempt to influence any action, or decision making of any procurement activity;
- b. A supplier, contractor or service provider during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in the performance of any procurement;
 - c. The bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromise with their creditors within two calendar years prior to the initiation of the procurement proceedings;
 - 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 or payments thereof in installments;
 - e. The bidder has been 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 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 procurement entity participating in the same proceeding or who remains in subordinate relationship with other participants to the proceedings.

9. In such cases the procurement entity shall inform the Bureau and the person referred to in subsection (8) (a)-(g) of this section, 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 procurement proceedings in question.
10. 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.
11. Every procurement entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained from the date of the award.
12. 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 procurement entity and the contractors;
 - b. A brief description of the goods, works or services subject of the procurement;
 - c. The date of the contract award;
 - d. The value of the contract; and
 - e. The detailed records of the procurement proceedings.
13. All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an

administrative charge as may be prescribed from time to time by the Bureau.

14. The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceedings.
15. the burden of proving fulfillment of the requirements for participation in any procurement proceedings shall lie on the supplier, contractor or service provider.
16. A contract shall be awarded to the best evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
17. Notwithstanding the provisions of subsection (15) of this section, the Bureau may refuse to issue a 'Certificate of "No Objection" to Contract Award' on the grounds that the price is excessive.
18. Pursuant to subsection (16) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procurement entity conduct a re-tender.
19. Pursuant to subsection (17) of this Section, the Bureau may direct either that the procurement proceedings be cancelled or that the procuring entity conduct a re-tender.
20. 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.
21. 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.

22. 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.
23. Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they co-operate in any manner with bidders in the course of preparing their tenders.
24. A procurement entity shall not request or stipulate that a bidder should engage a particular sub-contractor as are requirement for participating in any procurement proceedings.
25. All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.
26. 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.
27. All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART V – ORGANIZATION OF PROCUREMENTS

16: THE BAYELSA STATE CENTRAL PROCUREMENT BOARD

1. There is hereby established a Central procurement Board for the State which shall be constituted by the Governor as follows:
 - (a) Commissioner of Special Duties (Governor's Office)– Chairman
 - (b) Commissioner of Finance -Member
 - (c) The Permanent Secretary(General Services), who shall serve as the Secretary

- (d) The Director General of the Due Process Bureau -(in attendance)
 - (e) Commissioners overseeing the MDAs with the top three (3) capital budgets in each financial year.
 - (f) Three other Commissioners appointed by the Governor.
2. The persons mentioned in subsection (1) shall have wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters and shall have relevant experience in public procurement activities.
 3. The Governor shall at any time terminate the appointment of a Board Member who has been guilty of-
 - (a) any misconduct, default or breach of trust in the discharge of his duties;
 - (b) an offence of such nature as renders it desirable that his appointment should be terminated.
 4. The Board may co-opt other persons capable of assisting it with expert advice but no such person shall have the right to vote on any matter considered by the Board.
 5. Where such termination as in (3) above involves the offices of the Chairman or Vice-Chairman, the Governor is at liberty to re-appoint any other person to take over as Chairman.

16:1.1 SECRETARY OF THE CENTRAL PROCUREMENT BOARD

- (1) The Secretary of the Board shall be the Permanent Secretary (General Services) in the Office of the Secretary to the State Government.
- (2) The Officer referred to in subsection (1) shall be entitled to attend the meetings of the Board and participate in its deliberations, but shall not have voting rights.

16:1.2 STAFF OF THE BOARD

- (1) The Board shall, in the conduct of its business, be assisted by such public officers as may be appointed by the Board under contract terms and conditions.
- (2) Every person referred to in subsection (1) shall be under the administrative control of the Chairperson.

16:1.3 FUNCTIONS OF THE CENTRAL PROCUREMENT BOARD

- (1) The Board shall, in respect of contracts valued at between N50m and N300m.
 - (a) Establish appropriate internal procedures for the operations of the Board and ensure compliance with them;
 - (b) Vet bidding documents and notices submitted to it by MDAs;
 - (c) Receive and publicly open bids;
 - (d) Select persons from a list of qualified and independent evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids;
 - (e) Handle matters of arbitration between MDAs and bidders for contracts and entertain all appeals for reconsideration of outcomes of proceedings by prospective bidders; and
 - (f) Review the recommendations of a bid evaluation committee and-
 - (i) Approve the award of the contract; or
 - (ii) Require the evaluation committee to make a fresh or further evaluation on specified grounds.

- (2) The Board shall have such powers, and exercise such functions, as may be assigned to it under any other enactment.
- (3) The threshold set in sub-section (1) above is subject to periodic review by the Council.

16:1.4 POWERS OF THE CENTRAL PROCUREMENT BOARD

- (1) In the discharge of its functions, the Board may-
 - (a) Call for such information and documents as it may require from any MDA;
 - (b) Examine such records or other documents and take copies or extracts from them;
 - (c) Commission any studies relevant to the determination of the award of contracts;
 - (d) Request any professional or technical assistance from any appropriate person in Bayelsa or elsewhere;
 - (e) Do all such acts and things as it may consider incidental or conducive to the exercise of its functions.
2. Any person to whom a request is made under subsection 1(a) and who fails to comply with the request, or willfully gives any false or misleading answer to any question lawfully put by the Board, shall commit an offence.
3. Where discrepancies in the award of contracts by MDAs come to the knowledge of the Board, it shall forthwith report the matter, in the case of a Civil Servant, to the Head of the civil Service, but in the case of a Political Appointee to the Governor, recommending such action as it may deem appropriate.
4. The Governor or the Head of the Civil Service may, where he/she considers appropriate, refer any matter reported to him under subsection (3) to the Police for enquiry.

16:1.5 MEETING OF THE CENTRAL PROCUREMENT BOARD

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

16:1.6 PROCEDURE OF THE CENTRAL PROCUREMENT BOARD

1. The Accounting Officer of each MDA shall inform the Board in writing of any contract within the authority of the Board that the MDA intends to enter into and shall submit all the relevant documents to the Board.
2. The Board shall, within such time as may be prescribed after having been notified in accordance with subsection (1), authorize the MDA to call for bids or utilize another appropriate procurement method.
3. The Board shall approve the award of every contract (as stipulated in Section 11) after due examination and evaluation of bids by the bid evaluation committee.
4. No MDA shall-
 - a. advertise, invite,, solicit or call for bids in respect of a contract unless authorized by the Board; or

3. The composition of Extra Ministerial Departmental procurement Board shall be as follows:

- | | |
|--|-------------|
| - Accounting Officer | - Chairman |
| - Directors/Heads of Department | - Members |
| - Head of Procurement/Planning,
Research and Statistics | - Secretary |

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

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

16:1.9 FUNCTIONS OF THE MINISTERIAL PROCUREMENT BOARD

1. The Procurement Board shall be responsible for the award of procurement of goods, works and services which have a total cost implication of more than N500,000 but less than N50m in respect of contracts and supplies e.g. trainings, conferences etc.
2. The Board shall oversee the activities of the Technical Evaluation Sub-Committee of the Procurement Board, in cases of bid evaluation, pre-qualification and other times of necessity.
3. The Board shall communicate results of its deliberations and present to the Honourable Commissioner of the respective MDA.

- b. award a contract unless the award has been approved by the Board.
5. The Board shall notify the Executive governor on a weekly basis of all contracts awarded during the week which are valued at between N50m and N300m by submitting a Schedule to the Executive Governor to this effect.
 6. All contracts award effected by the Board for contracts valued at between N300m and N500m shall be ratified by the Executive Governor before its execution. These thresholds are subject to periodic review by the State Procurement Council.
 7. All contracts award effected by the Board for contracts valued at greater than N500m shall be ratified by the State Executive Council before its execution. These thresholds are subject to periodic review by the State Procurement Council.

16:1.7 MINISTERIAL/EXTRA-MINISTERIAL PROCUREMENT BOARDS

1. In line with the Financial Regulations of the State government, each MDA shall have a Procurement Board to oversee and approve the award of contracts for local purchases and supplies in line with established Financial Authority Limits pursuant to section 50.

16.1.8 COMPOSITION OF THE PROCUREMENT BOARD

1. The composition of each Ministerial procurement Board shall be as follows;

- Permanent Secretary	- Chairman
- Directors/Heads of Department	- Members
- Head of Procurement/Planning, Research and Statistics	- Secretary

16:1.10 MINISTRY/PARASTATAL PROCUREMENT PLANNING AND EXECUTION COMMITTEE

1. The Accounting Officers of Ministries/Parastatals shall appoint the Procurement Planning and Execution Committee to carry out procurement actions.

16.1.11 MEMBERSHIP OF THE COMMITTEE

1. The membership of the Committee shall include:
 - a. the Accounting Officer of the parastatal;
 - b. a representative from the procurement function within the MDA (shall be the secretary;)
 - c. a representative of the finance and administration or equivalent department of the MDA;
 - d. a representative of the planning, research and statistics department of the MDA;
 - e. a representative of the legal unit of the MDA.
 - f. a representative of the Due-Process Bureau shall sit in the Tenders Board meetings for the award of contract valued at N20m and below. This is in order to facilitate the efficient certification of the contract award. However, he/she shall not have any voting rights in any matter considered by the Ministerial Tenders Board.

16.2 LOCAL GOVERNMENT PROCUREMENT BOARDS

Local Government Areas should also set up their own Procurement Boards in conformity with this law.

17: PROCUREMENT BOARDS

1. The Bureau shall, with the approval of the Council, by notice declare any entity to be a procurement entity to which this Law shall apply.
2. Each procurement entity shall have a Procurement Board which shall:
 - a. subject to guidelines for membership as shall be prescribed by the Bureau, be constituted by the accounting officer of the procurement entity.
 - b. be responsible for the award of contracts for the procurement of goods, works and services within the threshold set by the Bureau.
3. Subject to such guidelines and regulations as may be made by the Bureau, the functions of the Procurement Boards shall include:
 - a. vetting bid documents and notices submitted to it by the procurement entity;
 - b. receiving and publicly opening bids;
 - c. Selecting firms or persons to be awarded contracts for the procurement of goods, works or services; and
 - d. Awarding procurement contracts.
4. In all cases where there is need for pre-qualification, the Chairman of the Procurement Board shall constitute a technical evaluation committee of the Procurement Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procurement entity and the Secretary of the Procurement Board who shall also be the Chair of the Evaluation Sub-Committee.
5. The decision of the Procurement Board shall be communicated to the accounting officer of the procurement entity and such other relevant authority for implementation.

6. Notwithstanding the provisions in subsection (4) of this section, the Procurement Board shall submit procurement documents to the Bureau for vetting and certification prior to award of contract.
7. In the performance of its functions, a Procurement Board shall:
 - a. ensure that at every stage of the procurement activity , procedures prescribed in this Law or by the regulations made under this Law are followed;
 - b. exercise sound judgment in making procurement decisions;
 - c. and refer to the Bureau for approval, any procurement above its approval threshold.
8. The Director General of the Due-Process Bureau shall sit in the meetings to provide technical support to the Board and subsequently facilitate the efficient certification of contract awards in line with the monetary review threshold stipulated by the council from time to time. However he/she shall not have any voting rights in any matter considered by the Central Procurement Board.

18: PROCUREMENT PLANNING

1. Subject to regulations as may from time to time be made by the Bureau under the direction of the Council, a procurement entity shall plan its procurement by:-
 - a. preparing the needs assessment and evaluation;
 - b. identifying the goods, works or services required;
 - c. carrying out appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement.
 - d. aggregating its requirements whenever possible, both within the procurement entity and between procurement entities, to obtain economy of scale and reduce procurement cost;

- e. integrating its procurement expenditure into its yearly budget;
- f. prescribing any method for effecting the procurement to the necessary approval under this Law; and
- g. ensuring that the procurement entity functions stipulated in this Section shall be carried out by the Procurement Planning Committee.

19: PROCUREMENT IMPLEMENTATION

1. Subject to regulations as may from time to time be made by the Bureau under direction of Council, a procurement entity shall, in implementing the 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. invite Two (2) credible persons as observers in every procurement process one (1) person each representing a recognized;
 - i. private sector professional organization whose expertise is relevant to the particular goods or service being procured; and
 - ii. non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations;
 - c. received, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;

- d. obtain approval of the approving authority before making an award;
- e. debrief the bid losers on request;
- f. resolve complains and disputes if any;
- g. obtain and confirm the validity of any performance guarantee;
- h. obtain a "Certificate of 'No Objection' to Contract Award" from the Bureau within the prior review threshold as stipulated in Section 5 (d) of this Law;
- i. execute all Contract Agreements; and
- j. announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.

20: ACCOUNTING OFFICER

1. The accounting officer of a procurement 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 corporations the Director-General or officer of co-ordinate responsibility.
2. The accounting officer of every procurement entity shall have overall responsibility for the planning, organization, evaluation of tenders and execution of all procurement and in particular shall be responsible for;
 - a. ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of this Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;

- b. constituting the Procurement Board and approving its decisions;
- c. ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
- d. integrating his entity's procurement expenditure into its yearly budget;
- e. ensuring that no reduction of values or splitting of procurement is carried out such as to evade the use of the appropriate procurement method;
- f. constituting the Evaluation Committee;
- g. liaising with the Bureau to ensure the implementation of its regulations.

21: PROCUREMENT PLANNING COMMITTEE

1. For each financial year each procurement entity shall establish a Procurement Planning committee.
2. The Procurement Planning Committee shall consist of:-
 - a. the accounting officer of the procurement entity or his representative who shall chair the committee;
 - b. a representative of;
 - i. the procurement unit of the procurement entity who shall be the Secretary,
 - ii. the unit directly in requirement of the procurement,
 - iii. the financial unit of the procurement entity,
 - iv. the planning, research and statistics unit of the procurement entity,
 - v. technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
 - vi. the legal unit of the procurement entity.

- b. constituting the Procurement Board and approving its decisions;
- c. ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
- d. integrating his entity's procurement expenditure into its yearly budget;
- e. ensuring that no reduction of values or splitting of procurement is carried out such as to evade the use of the appropriate procurement method;
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 - ii. the unit directly in requirement of the procurement,
 - iii. the financial unit of the procurement entity,
 - iv. the planning, research and statistics unit of the procurement entity,
 - v. technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
 - vi. the legal unit of the procurement entity.

22: PRE-QUALIFICATION OF BIDDERS

1. Where a procurement entity has made a decision with respect to the minimum qualifications of suppliers, contractors or services 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.
2. Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.
3. The pre-qualification document 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, consultants to prepare and submit their applications, taking into account the reasonable need of the procurement entity; and

- e. any other requirement that may be established by the procurement entity in conformity with this Law and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.
4. The procurement entity shall 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 re-qualify.
5. The response by the procurement entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify.
6. The response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the pre-qualification documents by the procurement entity.
7. A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the supplier, contractor or consultant who have been pre-qualified.
8. Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.
9. The procurement entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.

10. The procurement entity may require a supplier, contractor or service provider requested to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
11. The procurement entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procurement.
12. The procurement entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

PART VI – PROCUREMENT METHODS

23: CHOICE OF PROCUREMENT METHOD

1. Subject to subsection (2), the choice of procurement methods available to a procurement entity shall be:
 - a. for the procurement of goods, other services and works, by-
 - i. open competitive bidding;
 - ii. restricted bidding.
 - iii. request for sealed quotations;
 - iv. direct procurement;
 - v. community or end-user participation; or
 - vi. departmental execution; and
 - b. For the procurement of consultancy services, the request for proposals shall be on the basis of:
 - i. quality and cost;
 - ii. quality alone;
 - iii. quality and fixed budget;
 - iv. least cost and acceptable quality; or

- v. Direct procurement
- 2.(a) All procurement shall, in the case of goods, other services or works, be by means of open competitive bidding, to which equal access shall be provided to all eligible and qualified bidders without discrimination.
- b. Open competitive bidding proceedings may include a prequalification stage, or post qualification procedures, before selection of the winning bidder.
 - c. Open competitive bidding proceedings shall be carried out in a single stage or in two stages in the cases referred to in section 34.
 - d. A method of procurement referred to in subsection (1) (a) (ii) to (vi) may be used only if the procurement entity has reason to believe that open competitive bidding-
 - i. will not be efficient or practical for the procurement in question; or
 - ii. will be too costly to apply given the value of the procurement.
 - e. Where a procurement entity uses a method of procurement other than open competitive bidding or, in the case of the procurement of consultancy services, a method other than that specified in subsection (1) (b) (i), it shall note in the record of the procurement proceedings the ground for the choice of the procurement method.

24: OPEN COMPETITIVE BIDDING

Where the open competitive bidding method is used, the invitation to bid, or the invitation to pre-qualify shall be published in at least two national newspapers and one local newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well as at least 6 weeks before the deadline for the submission of bids for the goods, works or services.

25: RESTRICTED BIDDING

1. Subject to the approval of the Bureau, a procurement entity may for reasons of economy and efficiency engage in procurement by means of restricted bidding-
 - a. where a procurement entity has reason to believe that the goods, other services or works are only available from a limited number of bidders;
 - b. where the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to such thresholds as may be prescribed; or.
 - c. by limiting the participation in a particular procurement to those suppliers included on pre-approved supplier eligibility lists drawn up and maintained by the procurement entity, in such manner as may be prescribed, so as to ensure that suppliers of specialized goods and services have and maintain the necessary technical and financial capability to provide them.
2. (a) Where restricted bidding is used on the ground referred to in subsection (1) (a), all known suppliers capable of supplying the goods, other services or works shall be directly solicited.
- (b) Where restricted bidding is used on the ground referred to in subsection (1) (b), the procurement entity shall, as far as reasonably possible, directly solicit bids from a minimum of five bidders.

26: REQUEST FOR SEALED QUOTATIONS

1. The request for sealed quotations method shall only be used for the procurement of-

- a. readily available commercially standard goods not specially manufactured to the particular specifications of the procurement entity;
 - b. small works; or
 - c. other small services, where the estimated value of the procurement does not exceed the prescribed amount.
2. Sealed quotations shall be requested in writing from not less than 3 bidders, unless the item in question is not available from 3 suppliers.
 3. The request shall contain a clear statement of the requirements of the procurement entity as to quality, quantity, terms and time of delivery and other special requirements, together with such other information as maybe prescribed.
 4. Each bidder may submit one sealed quotation, which may not be altered or negotiated.

27: EMERGENCY PROCUREMENT

1. A procurement entity may purchase goods, other services or works from a single supplier without competition in cases of extreme urgency.
2. The scope of the emergency procurement shall as far as possible be limited to the period of the emergency, so that appropriate competitive procurement methods may be utilized at the conclusion of the emergency period.
3. Immediately after the cessation of the situation warranting any emergency procurement, the procurement entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of "No Objection".
4. For the purposes of this section, "extreme urgency" includes a situation wherein-

- a. the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war or Act of God;
- b. life, or the quality of life or environment may be seriously compromised;
- c. the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; and
- d. an investment project may be seriously delayed for want of an item of a minor value.

28: COMMUNITY AND END-USER PARTICIPATION

Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services in accordance with such procedure as may be prescribed.

29: MINISTRY, DEPARTMENT AND AGENCY EXECUTION

Subject to the prior approval of the Bureau, a procurement entity may by itself effect procurement where one or more of the following conditions are present, namely where;

- a. an activity is not likely to attract bidders, at least not at a reasonable price, in view of its size, nature, location or scattered location or financing or high mobilization costs for outside suppliers;

- b. an activity is such that, if carried out by a contractor, it would impose an unacceptable risk on the contractor because the cost cannot be determined in advance.
- c. the risk of unavoidable work interruptions is better borne by the procurement entity than by a contractor;
- d. it has been demonstrated that departmental execution is the only practical method for construction, maintenance and conservation works under special circumstances;
- e. an activity for a pilot project of a particular nature for the development of a technology work method cannot be carried out by a contractor;
- f. works must be carried out without disrupting existing operations by the staff of the procurement entity because they are familiar with those operations; or
- g. there is an emergency such as a natural disaster which calls for immediate action.

30: REQUEST FOR PROPOSALS

1. Where, in respect of consultancy services, the request for proposals method is used, the procurement entity shall draw up a shortlist of consultants, to ensure effective competition among those who have the capacity to perform the required services.
2. a. Where the estimated value of the procurement exceeds the prescribed threshold, the procurement entity shall, in order to draw up the shortlist, seek expressions of interest by publishing a notice in a national newspaper of wide circulation as well as a local newspaper and include in the list those who have expressed interest in the procurement.

- b. Where the estimated value of the contract does not exceed the prescribed threshold, the shortlist may be drawn up on the basis of the procurement entity's own knowledge and information
3. The procurement entity shall issue a request to the short-listed consultants, asking them to confirm their interest by submitting a proposal, which shall include such information as may be prescribed that, enables them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procurement entity.
4. The selection of the successful proposal shall be based on:
 - a. the technical quality of the proposal, the consultant's relevant experience, the expertise of his key staff, the proposed work methodology, as well as the price quoted in the proposal;
 - b. the quality of the technical proposal submitted within a predetermined fixed budget;
 - c. where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or the economy of the State, exclusively on the technical quality of the proposal.
5. The procurement entity shall evaluate each technical proposal on the basis of criteria which shall include:
 - a. the consultants relevant experience for the assignment;
 - b. the quality of the methodology proposed;
 - c. the qualifications of the key staff proposed;
 - d. transfer of knowledge, if required in the request for proposals;and

- e. in the case of interstate competition, the extent of participation by indigenes among key staff in the performance of the assignment.
6. The financial proposals of bidders who have secured the minimum pass mark in the technical evaluation shall then be considered and evaluated by the procurement entity after a public announcement of the results of the technical evaluation.
7. Where the choice of consultancy services is made in relation to quality and cost, fixed budget, or least cost considerations, the financial proposals of all consultants whose technical proposals attained the required minimum pass mark shall be read out to the bidders who wish to attend, in accordance with the prescribed procedure.
8. Where the choice of consultancy services is made in relation to quality alone, only the financial proposal of the consultant whose technical proposal achieved the highest ranking shall be evaluated.
9.
 - a. The contract may be negotiated with the winning consultant with regard to the terms of the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided by Government, and the financial proposal.
 - b. Where price has been a factor the fee for services shall not be subject to negotiation and only the cost of reimbursable items may be negotiated in such manner as may be prescribed.
 - c. Where the negotiations fail to result in an acceptable contract, the procurement entity shall notify the consultant accordingly and proceed to the next ranked bidder, and so on.
10. The consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for

proposals, or the one with the least cost in the case of the least cost method of selection, shall be selected for award, subject to satisfactory conclusion of negotiations.

11. The procurement entity shall notify the successful consultant of its selection for award and shall simultaneously notify all other short-listed consultants of the decision.
12. In the absence of a challenge by any other consultant within 15 days of a notice under subsection (11), the contract shall be awarded to the successful consultant indicated.

31: DIRECT PROCUREMENT

1. Direct procurement method, which allows a procurement entity to purchase goods, other services or works from a single source without competition is permitted-
 - a. where the value of the procurement does not exceed the prescribed threshold;
 - b. where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;
 - c. within the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the procurement entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;
 - d. within the prescribed limits, where additional works, which were not included in the initial contract would be difficult for technical or economic reasons;

- e. where the nature, of the consultancy services requires that a particular consultant be selected due to unique qualifications; or
 - f. where continuity of consultancy services is essential to meet the objectives of the consultancy assignment.
2. The procurement entity shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of the single source procurement.

PART VII – THE BIDDING PROCESS

32: ELIGIBILITY FOR SUBMISSION OF BIDS

All suppliers, contractors and consultants shall be entitled to a fair opportunity to tender for provision of goods, works and services in procurement entity. Pursuant to section 25 of this Law, a procurement entity may exclude certain suppliers, contractors and consultants from tendering for procurement opportunities.

33: EXCLUSION OF PROSPECTIVE SUPPLIERS, CONTRACTORS OR CONSULTANTS

A Procurement entity may exclude a bidder from consideration for award of contracts if:

- a. there is tangible evidence that such bidder has promised or given a gift of money or material items to a current or former employee of a procurement entity or the Bureau in an attempt to influence action on the course of the procurement activity;
- b. the supplier, consultant, or contractor in question has during the last five years failed to perform or give proper attention to awarded contracts;
- c. such a bidder is in arrears regarding payment of taxes, charges, pensions, social insurance contributions etc;

- d. the bidder has been validly convicted for a crime in connection with a procurement proceeding or any other crime, to gain financial profit; and
- e. such bidder has been blacklisted or debarred from participating in public procurement activities, in Bayelsa State and at a national level.

34: BIDDING DOCUMENTS

A procurement entity shall provide the bidding documents to all bidders that respond to an invitation to bid or, if pre-qualification proceedings have taken place, to all bidders that have been pre-qualified.

35: TWO-STAGE BIDDING

1. Open competitive bidding may be held in two stages where-
 - a. it is not feasible for the procurement entity to formulate detailed specifications for the goods or works or, in the case of services, 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. the character of the goods or works are subject to rapid technological advances; where the procurement entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs, where the procurement entity applies this Law to procurement concerned with the security of the State and

- determines that the selected method is the most appropriate method of procurement; or
- c. the tender proceedings have been utilized but were not successful or the tenders were rejected by the procurement entity under an open competitive bid procedure and the procurement entity considers that engaging in new tendering proceedings will not result in a procurement contract.
2. In the first stage, the bidding documents shall-
 - a. outline-
 - i. the purpose;
 - ii. the expected performance;
 - iii. the broad specifications of the equipment or work to be procured; and
 - iv. the qualifications required to perform the contract; and
 - b. call upon bidders to submit technical bids without a bid price and their comments on the proposed contract conditions.
 3. The procurement entity may engage in discussions with any bidder with a view to understanding a technical bid or to indicating changes required to make it acceptable and seeking the bidder's willingness to make such changes.
 4. At the end of the first stage, the procurement entity may-
 - a. reject those bids which do not, and cannot be changed to, meeting the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non-responsive; or
 - b. modify the technical specifications, evaluation criteria, and contract conditions in order to maximize competition and

articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

5. In the second stage, the procurement entity shall invite bidders whose bids have not been rejected to submit final bids with prices to the revised bidding documents.

36: BID SECURITY

1. A procurement entity shall, where applicable and in such manner as may be prescribed, include in the bidding documents the requirements for bid security, such bid security being not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procurement entity.
2. Forfeiture of bid security shall be imposed by the procurement entity only in the event of-
 - a. a modification or withdrawal of a bid after the deadline for submission of bids during its period of validity;
 - b. refusal by a bidder to accept a correction of an error appearing on the face of the bid;
 - c. failure by a successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
 - d. failure by a successful bidder to provide security for the performance of the procurement contract if required to do so by the bidding documents.

37: SUBMISSION OF BIDS

1. Subject to this section, a bid shall be submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents.

2. Invitations for prequalification and bidding documents may contain provision that allows submission of applications to pre-qualify or bids by hand or mail or by courier at the option of the bidder.
3. All submitted bids shall be deposited in a secured temper-proof bid-box.
4. All bids submitted shall be in English Language.
5. No communication shall take place between procurement entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.
6. The bidding documents may authorize other methods for the submission of bids where it is so prescribed.

38: DEADLINE FOR SUBMISSION OF BIDS

1. A procurement entity shall set a deadline for the submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation. And submission, with a view to maximizing competition, which shall not be less than such minimum period as may be prescribed.
2. A bid in a sealed envelope received after the deadline for submission shall be returned unopened to the bidder.

39: WITHDRAWAL AND MODIFICATION OF BIDS

A bidder may modify, substitute, or withdraw its bid after submission, where the written notice of the modification, substitution or withdrawal is received by the procurement entity before the deadline for the submission of bids.

40: BID VALIDITY PERIOD

1. Every bid shall remain valid for the period of time indicated in the bidding documents which shall not be more than 180 days.
2. The validity period of a bid may be extended only with the agreement of the bidder concerned.
3. A bidder who agrees to an extension of the validity period of his bid shall also furnish a corresponding extension of his bid security, if security was required for the original bid submission.

41: DISQUALIFICATION OF BIDDERS AND SUPPLIERS

1. Every procurement entity shall ensure that no disqualified supplier, contractor or consultant is permitted to receive a procurement contract or otherwise participate in procurement proceedings.
2. The Bureau shall, by regulations, make provision concerning the disqualification standards and procedures for suppliers, contractors and consultants.

42: OPENING OF BIDS

1. Every bid shall be opened at the time and place indicated in the bidding documents.
2. The time of bid opening shall coincide with the deadline for the submission of bids, or follow immediately thereafter, if this is necessary for logistic reasons.
3. Every bidder or his representative shall be authorized to attend the bid opening.
4. The name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, shall be read out and recorded, and a copy of the record shall be made available to any bidder on request.

5. No decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.

43: EXAMINATION OF BIDS

1. All bids shall be first examined to determine if they:-
 - a. meet the minimum eligibility requirements stipulated in the bidding document;
 - b. have been duly signed;
 - c. are substantially responsive to the bidding documents; and
 - d. are generally in order.
2. A procurement 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 irresponsible bid responsive.
4. Notwithstanding sub-Section (3) of this Section, the procurement entity may correct purely arithmetical errors that are discovered during examination of tenders.
5. The procurement entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
6. A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
7. The following shall be considered as major deviations;-
 - a. with respect to clauses in an offer:
 - i. unacceptable sub-contracting,
 - ii. unacceptable time schedule if time is of essence,
 - iii. unacceptable alternative design, and

- iv. unacceptable price adjustment.
 - b. with respect to the status of the bidders;
the fact that he is ineligible or not pre-qualified, and 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;
Any bid received after the date and time for submission stipulated in the solicitation document
any bid submitted at the wrong location.
8. In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
 9. In cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become complaint
 10. Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - the uses of codes
 - the difference in standards
 - the difference in materials
 - alternative design
 - alternative workmanship
 - modified liquidated damages
 - omission in minor items
 - discovery of arithmetical errors
 - sub-contracting that is unclear and questionable
 - different methods construction
 - difference in final delivery date
 - difference in delivery schedule
 - completion period where these are not of essence

non-compliance with some technical local regulation payment terms; and any other condition that has little impact on the bid.

11. In cases not mentioned above and where there exists a doubts as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:
where the impact on the costs is major, it shall be regarded as a major deviation; and
where the impact on the costs is minor, it shall be regarded as a minor deviation.
12. In cases of minor deviations, written clarification may be obtained from the supplier or contractor and, where applicable, an offer made for the correction of the minor deviation.
13. Where a supplier or contractor does not accept the correction of minor deviation, his bid shall be rejected.
14. At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
15. For the rejection of a bid, a written notice shall be given promptly to the supplier.

44: EVALUATION OF BIDS

1. For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
2. The objective of bid evaluation shall be to determine and select the best evaluated responsive bid from bidders that have responded to the bid solicitation.
3. In the course of its determination of the best evaluated responsive bid from the bidders that have responded to the bid solicitation the

Procurement Board shall, in particular, undertake the following processes as applicable:-

checking of deviations

checking of omissions with quantification of same.

application of discounts, as applicable

clarification with bidders of questionable minor deviations

quantification in monetary terms of such questionable deviations

conversion to common currency

calculation and tabulation of bid amount with domestic preferences where applicable.

determination of the lowest calculated prices in order of rank.

post-qualification of bidders, where applicable

listing of rejection of bids, where applicable

decision of rejection of all bids where justifiable

recommendation for award; and

writing up of the bid evaluation report.

4. All relevant factors, in addition to prices, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
5. Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
 - a. for goods, among others, cost of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment availability of services and spare parts, related training, safety, environment benefits or losses by damages.
 - b. for works, in addition to factors stipulated in Section 45(1) of this Law, are subject to Section 45(2) of this Law, if time is a criteria factor, the value of early completion; and

- c. the value of early completion under Section 46(2) of this Law shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.
6. When bid prices are expressed in two or more currencies, the prices of 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 that 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 successfully perform the contract.
8. After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award.

45: MARGIN OF PREFERENCE

1. A procurement entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from outside the State or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured outside the State.
2. Where a procurement entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to the eligibility of a bid for such preference.

3. 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.

46: MOBILISATION FEES

1. In addition to any other regulations as may be prescribed by the Bureau, a contractor shall be paid a mobilization fee of:
 - a. not less than 25% and not more than 50% for the procurement of works and services; or
 - b. not more than 60% for the procurement of supplies of goods.
2. The mobilization fee shall be supported by an unconditional bank guarantee or insurance bond issued by a financial institution acceptable to the procurement entity.
3. 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.

47: 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 an amount equivalent to the mobilization fee requested by the supplier contractor, whichever is higher.

48: POST QUALIFICATION

1. Where there was no prequalification procedure, the qualifications of the best evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents.
2. Where the bid fails to conform to those criteria, the bid shall be rejected and the same check shall be applied to the next ranked bid.

49: CANCELLATION OF BIDDING PROCESS

1. A procurement entity may, at any time prior to the acceptance of a bid, reject all bids, or cancel the public procurement proceedings where-
 - a. all the bids are non-responsive;
 - b. the best evaluated bid is substantially above the applicable updated cost estimate;
 - c. the goods, works or services are no longer required; or
 - d. it has been established that there has been collusion among the bidders.
2. Written notice of the rejection of all bids, or cancellation of the public procurement proceedings, shall be given to all bidders that submitted bids.
3. There shall be no invitation to re-bid for the procurement on the same specifications and contract conditions unless the rejection of all bids or cancellation of procurement proceeding is made on a ground specified in subsection (1) (a) or (b).
4. Where the invitation for the procurement is to be repeated, the reason for the rejection of all bids or the cancellation of the procurement proceedings shall be examined by the procurement entity and the technical specifications, or contract conditions shall be suitably modified.

50: AWARD OF PROCUREMENT CONTRACT

1. All contracts shall be awarded in line with the Procurement policy of the State.
2. A procurement contract shall be awarded to the bidder having submitted the best evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents following the steps outlined in subsections (4) and (5).
3. There shall be no negotiation between a procurement entity and a selected bidder or other bidders except in such special circumstances as may be prescribed.
4. A successful bidder may be asked to submit a performance security and sign a contract within the period specified in the bidding documents.
5. 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.
6. Where the bidder whose bid has been accepted fails to sign a contract, if required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the procurement entity shall select another bidder from among the remaining valid bids, and subsections (4) to (6) shall apply to the new selection.
7. Accounting Officers of a procurement entity shall ensure that all contracts are denominated in local currencies, except in exceptional circumstances.
8. Procurement entities shall promptly publish, in such manner as may be prescribed, notice of every procurement award.

51: DEBRIEFING OF UNSUCCESSFUL BIDDERS

Procurement entities shall promptly, on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid, or its application for prequalification, was unsuccessful where the request for such debriefing was submitted within 30 days of the publication referred to in section 50(8).

52: AUDITORS CERTIFICATE

The auditor of every procurement entity shall state in his annual report whether the provisions of this Part has been complied with.

53: APPLCIATION OF PART VII

1. Subject to subsection (2), this Part shall apply to bids for every procurement contract.
2. All activities relating to procurement of items shall be handled entirely by the procurement entity concerned. Items costing exceptionally high amounts, or which have a highly significant impact on the State's economy shall be referred to the Central procurement Board set up pursuant to section 17(3).

PART VIII – CHALLENGE AND REVIEW**54: RIGHT OF CHALLENGE**

1. A bidder who claims to have suffered, or to be likely to suffer loss or injury due to a breach of a duty imposed on a procurement entity by this Law shall have the right to challenge the procurement proceedings at any time before the entry into force of the procurement contract.

2. A complaint by a bidder against a procurement or disposing entity shall first be submitted in writing to the accounting officer of the procurement entity and identify the specific act or omission alleged to contravene this Law.
3. A challenge shall not be entertained unless it is submitted before the entry into force of the procurement contract.
4. Unless the challenge is resolved, the accounting officer of the procurement entity shall suspend the public procurement proceedings and shall, within 15 days, issue a written decision stating his reasons and, if the challenge is upheld, indicating the corrective measures to be taken.

55: RIGHT OF REVIEW

1. An unsatisfied bidder shall be entitled to ask the Bureau to review the procurement proceedings where-
 - a. the Chief Executive Officer of the MDA does not issue a decision within the time specified in section 54(4);
 - b. he is not satisfied with the decision of the accounting officer; or
 - c. before or after the entry into force of a procurement contract the value of which is above the prescribed threshold, he is not satisfied with the procurement proceedings on a ground specified in section 54(1).
2. An application for review under subsection (1) shall-
 - a. be in writing
 - b. specify the reasons for making the application; and
 - c. be made within such time as may be prescribed in this law
3. Where an application for review is made in accordance with this section, the procurement proceedings shall, subject to subsection

- (5), be suspended until the appeal is heard and determined by the Bureau.
4. The suspension provision by subsection (3) shall not apply where the procurement entity certifies that urgent public interest considerations require the procurement proceeding to proceed.
 5. A certificate issued by a procurement entity pursuant to subsection (4) shall expressly state the grounds of the urgent public interest considerations and shall be made part of the record of the public procurement proceedings.
 6. A certificate issued by a procurement entity pursuant to subsection (4) shall be binding on the Bureau and the procurement proceedings shall proceed unless an application for leave to seek a judicial review is successful.
 7. The Bureau shall make a decision under this section within one month of the date of submission of an application for review under subsection (2).
 8. Where the procurement proceedings have not been suspended under subsection (4) and the application for review of an unsatisfied bidder is determined in his favour, the Bureau shall award him compensation limited to the recovery of the costs of bid preparation and participation in the procurement proceedings.
 9. The Bureau may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies-
 - a. prohibit the procurement entity from acting or deciding in an unauthorized manner or from following an incorrect procedure;
 - b. recommend the annulment in whole or in part of any unauthorized act or decision of the procurement entity;

- c. recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation.

PART X – PROCUREMENT CONTRACT

56: CONTENTS OF CONTRACTS

1. A procurement contract shall include the terms and conditions that are set out in the bidding documents or request for proposals as well as-
 - a. the names, addresses and telephone and fax numbers, of the contact persons of the parties to the contract;
 - b. the scope of the work;
 - c. the order of priority of contract documents;
 - d. the contract price or its mode of determination;
 - e. the conditions of acceptance;
 - f. the conditions and mode of payment;
 - g. the modalities of “force majeure”;
 - h. the price adjustment mechanisms;
 - i. the milestones to be utilized for billing and payment;
 - j. the provisions for termination of the contract;
 - k. the procedure for dispute resolution; and
 - l. the applicable law.
2. Any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed to by the parties in writing.
3. An amendment to the contract that will increase the contract value by more than 25 percent shall require fresh procurement proceedings.

4. No formal amendment of the contract shall be required where the procurement entity wishes to make a variation or invokes a contract price adjustment which is expressly authorized in the contract.

57: PAYMENT

1. Subject to such specific terms of a procurement contract, as may be prescribed, payment shall be made on the basis of the submission of a proper invoice.
2. Payments due to a supplier shall be made in accordance with the deadlines set out in the procurement contract and the supplier shall be compensated if the payment is made more than sixty (60) days after the date on which it becomes due, such compensation to be made by payment of interest in accordance with the rate specified in the contract or, if no such rate is specified, at the legal rate.

58: TERMINATION AND BREACH

Notwithstanding any other enactment-

- a. a procurement entity may terminate a procurement contract for its convenience at any time upon a determination that because of changed circumstances the continuation of the contract is not in the public interest, provided that such termination has been approved by the Bureau; and
- b. upon such a termination, the contractor will be entitled to reimbursement of expenses incurred in the performance of the contract, but will not be entitled to recover profits anticipated on the completion of the contract.

PART XI – PROCUREMENT INTEGRITY**59: ARTIFICIAL DIVISION**

No procurement entity may artificially divide the modalities of procurement in such a way as to avoid any monetary thresholds laid down in this Law or in an instrument drawn up pursuant to this Law.

60: DUTIES OF MINISTRIES, DEPARTMENTS AND AGENCIES

1. Every procurement entity shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Bureau.
2. Every procurement entity shall-
 - a. engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Law;
 - b. make an annual plan for budgeting purposes and plan each step of procurement for contracts in such manner as may be prescribed in this law.
3. Every procurement entity shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.
4. Subject to this Law, all documents, notifications, decisions and other communication referred to in this Law shall be in writing.
5. Where it is so prescribed, a procurement entity may authorize the use of other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payment.

6. Where other means of communication are used in accordance with subsection (5), the procurement entity shall ensure that-
 - a. a record of the content of the communication is preserved;
 - b. an adequate level of security and confidentiality is provided;
 - c. the bidders' access to the records of the procurement proceedings is preserved; and
 - d. any other requirement of this Law is complied with.

61: CONDUCT OF PUBLIC OFFICIALS

1. The Bureau shall, with the approval of the Council, prescribe a code of conduct for all public officers, suppliers, contractors and service providers with regard to their standard of conduct acceptable in matters involving the procurement and disposal of public assets.
2. The conduct of all persons involved with public procurement, whether as official of the Bureau or of a procurement entity, supplier, contractor or service provider shall at all times be governed by the principles of honesty, accountability, transparency, fairness and equity.
3. All officers of the Bureau, members of Procurement Boards and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by the Council.
4. All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.
5. Where a transaction involves the disposal of assets, the principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
6. These principles shall apply at all times, particularly when:

- a. making requisition for or planning procurements;
 - b. preparing solicitation documents;
 - c. receiving offers in response to any form of solicitation towards a procurement or disposal;
 - 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 officers;
 - b. complying with this Law and all regulations made under it; and
 - c. maintaining strict confidentiality until completion of a contract.
8. All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
9. Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:
- a. divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law; and
 - b. not engage or participate in any commercial transaction involving the State Government, its ministries, extra-ministerial departments, corporations where his capacity as public officer

is likely to confer any unfair advantage – pecuniary or otherwise – on him or any person directly related to him.

10. Any person engaged in the public procurement or disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationships that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
11. A conflict of interest exists where a person:
 - a. possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of government;
 - b. possess a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed so to be, or make possible personal gain due to the person's ability to influence dealings;
 - c. entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - d. places by acts or omissions the procurement entity he represents or the Government in an equivocal, embarrassing or ethically questionable position;
 - e. entertains relationships compromising the reputation or integrity of the procurement entity he represents or the Government;
 - f. receives benefits by taking personal advantage of an opportunity that properly belongs to the procurement entity he represents or the Government;

- g. create a source of personal revenue or advantage by using public property which comes into his hands either in the course of his work or otherwise; or
 - h. discloses confidential information being either the property of his procurement entity, the Government or to a supplier, contractor or service provider to unauthorized persons.
- 12. A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.
- 13. After the opening of bids, each member of the Procurement Board shall fill a form indicating whether he or she is related to the bidders, and to rescue himself if the relationship is of a prohibited kind.

62: DECLARATION OF ASSETS

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

63: CONDUCT OF BIDDERS AND SUPPLIERS

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

64: SUSPENSION AND DEBARMENT OF BIDDERS AND SUPPLIERS

1. Subject to subsection (2) the Bureau may, under such conditions as may be prescribed, suspend or debar a potential bidder or supplier from participation in procurement on the following grounds-
 - a. supplying false information in the process of submitting a bid or prequalification application;
 - b. collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;
 - c. interference by a supplier with the participation of competing bidders;
 - d. misconduct relating to the submission of bids, including corruption, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
 - e. conviction for an offence relating to obtaining or attempting to obtain a procurement contract; or
 - f. conviction for an offence related to dishonesty or fraud in his professional activity.
2. A suspension of debarment of a bidder or supplier under subsection (1) shall not be effected unless the Bureau-
 - a. reviews and considers the factual record developed by the procurement entity that proposes the action;
 - b. gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and
 - c. gives reasonable opportunity to the bidder or supplier to respond to the proposed action.
3. A period of debarment under subsection (1) shall not exceed 5 years.

PART IX – MISCELLANEOUS

65: UNDUE INFLUENCE

Any person who directly or indirectly, in any manner, influences, or attempts to influence, any member or public official or any member of the Bureau or a Procurement Board or a procurement entity in the performance of his duties under this Law, shall commit an offence.

66: OFFENCES

Any person who contravenes any provision of this Law commits an offence and shall be liable to be tried and, where found guilty, punished under the criminal laws of the Federal Republic of Nigeria.

67: INTERPRETATION

In this Law, except where the context otherwise requires –

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

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

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

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

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

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

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

“Challenge” means a challenge made pursuant to sections 22 or 50;

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

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

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

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

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

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

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

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

“Officer” means a person who is assigned to, or employed by, the Due Process Bureau, or a member of a procurement Board;

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

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

“Performance guarantee” means a security guaranteeing the performance of a contract;

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

“Procurement” means the acquisition by an entity to which this Law applies by any contractual means of goods, works, consultant services or other services;

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

“Procurement entity” means any entity conducting public procurement under this Law;

“Procurement unit” means the person or unit in the procurement entity that is dedicated to providing technical procurement services for the Procurement Board;

“MDA” means any Ministry, Department and Agency of the State Government;

“Public Fund” includes the Consolidated Revenue Fund of the State government, the Contingency Fund or such other funds as may be established by the Bayelsa State House of Assembly;

“Public Official” means-

- a. an officer;
- b. a public officer or other person employed by a procurement entity;

“Public Security” means a condition where security takes priority over economic consideration and efficiency;

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

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

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

68: SHORT TITLE AND COMMENCEMENT

This Law may be cited as the Public Procurement Law and comes into force on the Day of..... 2009