

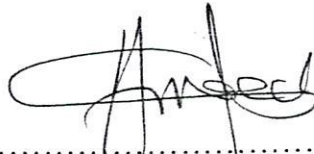
# **RIVERS STATE**

**PUBLIC PROCUREMENT  
LAW**

**NO. 4 OF 2008**



Assented to this 03 day of MAY 2008



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**Rt. Hon Chibuike Rotimi Amaechi**  
Executive Governor of Rivers State of Nigeria

GOVERNMENT OF RIVERS STATE OF NIGERIA



*A LAW TO ESTABLISH THE RIVERS STATE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITY RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES, LIAISING WITH FEDERAL COUNTERPART BODIES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN RIVERS STATE; AND FOR RELATED MATTERS.*

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

*[Faint, illegible handwritten text]*

## **PART 1- ESTABLISHMENT OF RIVERS STATE BUREAU ON PUBLIC PROCUREMENT**

1. (1) There is hereby established the Rivers State Bureau on Public Procurement (in this Law referred to as "The Bureau").
- (2) The Bureau:
  - (a) Shall be a body corporate with perpetual succession and a common seal;
  - (b) may sue and be sued 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.
- (3) The Bureau shall be governed by a Board of Directors which shall consist of:
  - (a) a non Executive Chairman;
  - (b) the Attorney General and Commissioner for Justice;
  - (c) seven other members four of whom shall be experts in procurement law, management and engineering;
  - (d) the Director General of the Bureau.
- (4) (a) The Chairman and members shall be appointed by the Governor for a term of four years subject to the confirmation of the Rivers State House of Assembly.
  - (b) the chairman and members so appointed shall be eligible for reappointment for a further term of four years and no more:
  - (c) the Chairman and members shall be appointed on such terms and conditions as specified in their letters of appointment.
- (5) (1) The Chairman or a member of the Board may cease to hold office if he or she resigns by notice in writing to the Governor.  
(2) The Governor may remove a member from office if he is satisfied that the member:
  - (a) is an undischarged bankrupt ; or
  - (b) is, for whatever reason, permanently incapable of performing the duties of a member; or
  - (c) has neglected the duties of a member or has engaged in misconduct; or
  - (d) has been absent, without leave of the Board for 4 consecutive meetings of the Board; or
  - (e) has been convicted of an indictable offence or an offence against this law.

### **Functions of the Board**

2. The Board Shall:
  - (a) consider, approve and amend the monetary and prior review

thresholds for the application of the provisions of this Law by procuring entities;

- (b) consider and approve policies on public procurement;
- (c) approve the appointment of the Directors of the Bureau;
- (d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;
- (e) approve changes in the procurement process to adapt to improvements in modern technology;
- (f) as far as practicable benchmark the policies on procurement under this Law with policies for procurement approved from time to time by the partner agency created or existing under the Public Procurement Act of the Federal Government of Nigeria; and
- (g) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

### **FUNCTIONS OF THE BUREAU**

3. The Bureau shall:

- (a) formulate the general policies and guidelines relating to public sector procurement for approval by the Board;
- (b) publicize and explain the provisions of this Law;
- (c) supervise the implementation of established procurement policies;
- (d) monitor the prices of tendered items and keep a database of standard prices;
- (e) publish the details of major contracts in the procurement journal;
- (f) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (g) maintain a database of the particulars and classification and categorization of State contractors and service providers;
- (h) collate and maintain in an archival system, all state procurement plans and information;
- (i) undertake procurement research and surveys;
- (j) organize training and development programmes for procurement professionals;
- (k) periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;

- (l) prepare and update standard bidding and contract documents;
- (m) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (n) review the procurement and award of contract procedures of every entity to which this Law applies;
- (o) perform procurement audits and submit such report to the State House of Assembly bi-annually;
- (p) introduce, develop, update and maintain related database and technology;
- (q) establish a single internet portal that shall, subject to section 14 (20) of this Law serve as a primary and definitive source of all information on government procurement, containing and displaying all public sector procurement information at all times;
- (r) coordinate relevant training programs to build institutional capacity; and
- (s) In so far as standards and database are concerned, adopt by official gazette and make applicable in Rivers State, any similar standard or data base, as, for the time being, are applicable in public procurement by the Federal Government of Nigeria; with or without modifications.

#### **POWERS OF THE BUREAU**

4. (1) The Bureau shall have the power to:
- (a) enforce the monetary and prior review thresholds set by the Board for the application of the provisions of this Law by the procuring entities;
  - (b)
    - (i) cause to be inspected or reviewed a procurement transaction to ensure compliance;
    - (ii) determine whether a procuring entity has violated a provision of this Law;
  - (c) de-list a supplier, contractor or service provider that contravenes this Law or regulations made under this Law;
  - (d) maintain a list of firms and persons that have been de-listed and publish same in the procurement journal;

*Enforcement Powers*

- (e) provide guidelines for the classification, and registration of contractors and service providers by the procuring agency and maintain a database of State of contractors and service providers which may be reviewed periodically.
  - (f) request for information in respect of a breach, in a procurement proceeding;
  - (g) recommend to the Board, where there is breach of this Law, for:
    - (i) the suspension of officers concerned with the procurement or disposal proceeding in issue;
    - (ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairman or Chairperson of the Tenders Board as the case may be;
    - (iii) the discipline of the Accounting Officer of any procuring entity;
    - (iv) any other sanction that the Bureau may consider appropriate;
  - (j) call for the production of books of accounts, 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 award which is in contravention of this Law; and
  - (m) do such other things as are necessary for the efficient performance of its functions under this Law;
- (2) The Bureau shall, subject to the approval of the Board have power to:
- (a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
  - (b) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and

- (c) liaise with relevant bodies or institutions national and international for effective performance of its functions under this Law.

### **DIRECTOR-GENERAL OF THE BUREAU**

- 5. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor on the recommendation of the Board after competitive selections.
- (2) The Director-General is:
  - (a) the Chief Executive and Accounting Officer of the Bureau;
  - (b) responsible for the execution of the policy and day to day administration of the affairs of the Bureau; and
  - (c) a person who possesses the relevant professional qualification and shall have been so qualified for a period of not less than 15 years.
- (3) The Director-General shall hold office:
  - (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and
  - (b) on such terms and conditions as may be specified in his letter of appointment.
- (4) Without prejudice to the provisions of this Law, the Director-General of the Bureau may be removed from office at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud, and manifest incompetence upon the recommendation of the Board.

### **PRINCIPAL OFFICERS OF THE BUREAU**

- 6. (1) The Board shall appoint the principal officers for the Bureau after competitive selection process.
- (2) The Principal Officers appointed under sub-section (1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Departments and the Bureau as specified under this Law.

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

#### **OTHER STAFF OF THE BUREAU**

7. (1) The Bureau may appoint such officers and other employees as it may from time to time, deem necessary for the purposes of the Bureau.
- (2) Subject to the provisions of any Law of the State regulating pensions, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined by the Board.
- (3) Without prejudice to the generality of subsection (1) of this section, the Board shall have power in consultation with the Head of Service to appoint either on transfer or on secondment from any public service in the State, such number of employees as may, be required to assist the Bureau in the discharge of its functions under the Law and persons so employed shall be remunerated (including allowances) in accordance with existing remunerations in the public service.

#### **STAFF REGULATIONS**

8. (1) The Board may, subject to the provisions of this Law and within six months of the inauguration, make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:
    - (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
    - (b) appeals by such employees against dismissal or other disciplinary measures.
- note* → (2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the State shall be applicable.

#### **PENSION PROVISIONS**

9. Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the Law of the State regulating Pensions.

#### **FUNDS OF THE BUREAU**

10. (1) The Bureau shall establish and maintain a Fund, to be approved by the Board into which shall be paid and credited:



- (a) the sums appropriated by the State House of Assembly for the running of the Bureau;
  - (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
  - (c) all other assets which may, from time to time, accrue to the Bureau.
- (2) The Bureau shall charge its Fund to meet all its expenditure.
- (3) The Board may make regulations for the Bureau:
- (a) specifying the manner in which assets or the Fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
  - (b) requiring the keeping of proper accounts and records for the purposes of the Fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time, apply the proceeds of the fund for:
- (a) the cost of administration of the Bureau;
  - (b) the payment of salaries, fees and other remuneration of employees of the Bureau, experts or professionals appointed by the Bureau;
  - (c) the maintenance of any property acquired by or vested in the Bureau;
  - (d) any matter connected with all or any of the functions of the Bureau under this Law; and
  - (f) Any expenditure connected with all or any of the functions of the Bureau under this Law.

#### **FINANCIAL YEAR, BUDGETING AND ANNUAL REPORT**

11. (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 Governor an estimate of its expenditure and projected income during the next succeeding year.

- (3) The Bureau shall keep proper accounts and records of receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Board may direct.
- (4) The Bureau shall within 6 months after the end of the financial year to which the accounts relate, cause the accounts to be audited in accordance with guidelines supplied by the Auditor General of the State.
- (5) The Bureau shall at the end of each financial year, prepare and submit to the Governor a report in such form as shall accurately capture all the activities of the Bureau during the preceding year and shall include in the receipt a copy of the audited accounts of the Bureau for that year.

### **LEGAL PROCEEDINGS**

12. (1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending claimant, plaintiff or his agent; and the notice shall clearly and explicitly state:
  - (a) the cause of action;
  - (b) the particulars of the claim;
  - (c) the name and address of legal practitioner of the intending Plaintiff; and
  - (d) the relief being sought.
- (2) The members of the Board, Director-General of the Bureau, its officers, employees or agents shall not personally be subject to any action, claim or demand, or liable to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Law.

### **PART II - SCOPE OF APPLICATION**

13. (1) The provisions of this Law shall apply to all procurement of goods, works, and services carried out by:
  - (a) the Government of Rivers State and all procurement entities;

(b) all entities outside subsection (1)(a) of this Section which derive funds appropriated or proposed to be appropriated for any type of procurement described in this Law from public funds; and

(c) public procurement by Local Governments in the State.

(2) The provisions of this Law shall not apply :

(a) to the procurement of special goods, works and services involving state security;

(b) to any public procurement which the State Government and the Federal Government are jointly executing; Provided however that this Law shall apply to any public procurement solely executed by the State Government in respect of which a reimbursement may be claimed from the Federal Government.

√ (c) to procurement by the state Government in an emergency .

3. Where a provision of this law conflicts with the procurement rules of a Funding agency, which application is mandatory the procurement rules of the funding agency shall prevail.

4. The Government may enter into a concession contract with a corporate body for the provision and operation of public utilities and services through a "Build Own Operate", "Build Operate Transfer" or "Build Own Operate Transfer" agreement under joint public and private sector participation.

### **PART III- FUNDAMENTAL PRINCIPLES FOR PROCUREMENT**

**14.** (1) Subject to an exemption allowed by this Law, a public procurement shall be conducted:

(a) subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to section 4(1) (a)-(b) of this Law;

(b) based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and, subject to the threshold in the regulations made by the Bureau;

(c) by open competitive bidding;

(d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Law and regulations deriving therefrom;

- (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 Bureau from time to time.
- (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Account of the State or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payments or other form of request for payments is accompanied by a certificate of "No Objection" to an award of contract duly issued by the Bureau.
- (3) For all cases where the Bureau shall set a review threshold the Bureau shall prescribe by regulations, guidelines and the conditions for the award of the contract.
- (4) Subject to the prior review thresholds set by the Bureau, a procurement contract awarded above the threshold shall be void.
- (5) A supplier, contractor or service provider may be a natural person, a legal person, a registered business enterprise or a combination of the three. Suppliers, contractor or service providers acting jointly are jointly and severally liable for all obligations and 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) possess the necessary :
    - (i) professional and technical qualification to carry out particular procurements;
    - (ii) Financial capability;
    - (iii) equipment and other relevant infrastructure; and
    - (iv) shall have adequate personnel to perform the obligations of the procurement contracts .
  - (b) possess 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 proceedings; but where such status is the subject of pending litigation the bidder may bid subject to disclosing its said status in the bid and the substance and stage of the legal disputation on the status;
  - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
  - (e) 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.
  - (f) accompany every bid with a duly sworn 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 bid and confirming that all information presented in its bid are true and correct in all particulars.
- (7) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this Law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.
- (8) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exits, a bidder may have its bid or tender excluded from any particular procurement proceeding if:
- (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau, in an attempt to influence any action, or decision making of any procurement activity;
  - (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;
  - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the

Companies and Allied Matters Law, is controlled by a person or persons who are subject to any bankruptcy proceedings (not excepted by the disclosure requirement in section 4(1) (c) or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding;

- (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contribution, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or payment thereof in installments;
  - (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
  - (f) the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; and
  - (g) The bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remains in subordinate relationship with other participants to the proceedings.
- (h) In such cases the procuring entity shall inform the Bureau and 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 public procurement proceeding in question.
- (9) All communications and documents issued by procuring entities and the Bureau shall be in English Language; but a translated version in a popular local language within the state may also be issued where it is thought desirable to do so.
  - (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) A procuring entity shall maintain records of procurement proceedings made within a financial year which record shall be maintained for a period of 10years from the date of award.
  - (12) A copy of a procurement record shall be transmitted to the Bureau not later

than 30 days from the date of the contract and shall disclose the:

- a) Identity of the procuring entity and contractor;
  - b) date of the contract award;
  - c) value of the contract; and
  - d) 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 proceeding.
  - (15) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the supplier or contractor.
  - (16) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
  - (17) Pursuant to subsection (16) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.
  - (18) Pursuant to subsection (17) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.
  - (19) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.
  - ✓ (20) The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Law and 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.
  - (21) 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.

- (22) 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 party thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.
- (23) procuring entity shall not request or stipulate that a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceedings; save where such requirement is consistent with local content policy, regulation or Law of the state or Act of the Federal Government in any particular industry; particularly in the oil and gas and associated industry in which the State Government is financially committed.
- (24) All procurement contracts shall contain provisions for arbitral proceedings as the primary mode of dispute resolution.
- (25) 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.
- (26) 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.

#### **PARTIV- ORGANIZATION OF PROCUREMENT**

##### **APPROVING AUTHORITY**

15. Subject to the monetary and prior review thresholds for procurements in this Law as may from time to time be determined by the Bureau, the following shall be the approving authority for the conduct of public procurement:
- (a) in the case of,
- (i) a government agency, parastatal, or corporation, a Parastatal Tenders Board; and
- (ii) a ministry or extra-ministerial entity, the Ministerial Tenders Board.

##### **PROCUREMENT IMPLEMENTATION**

16. Subject to regulations set by the Board a procuring entity shall, in implementing a procurement plan.



- (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (b) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (c) obtain approval of the approving authority before making an award;
- (d) debrief the bid losers on request;
- (e) Resolve complaints and disputes if any;
- (f) Obtain and confirm the validity of any performance guarantee;
- (g) Execute all Contract Agreements; and
- (h) 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.

#### **ACCOUNTING OFFICER**

17. (1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries, the Permanent Secretary and in the case of extra - ministerial departments and corporations the Director-General or officer of coordinate responsibility.
- (2) The accounting officer of a procuring entity shall have responsibility for the planning, organization, evaluation and execution of tenders of all procurements and in particular shall be responsible for:
- (a) ensuring compliance with the provisions of this Law and is liable for the contravention of this Law or any regulation made hereunder whether or not the act or omission was carried out by him or his subordinates;
  - (b) constituting the Procurement Committee 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 the 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.

### **PROCUREMENT PLANNING COMMITTEE**

18. (1) For each financial year each procuring entity shall establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall consist of:
- a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
  - b) a representative of:
    - (i) the procurement unit of the procuring entity who shall be the Secretary,
    - (ii) the unit directly in need of the procurement ;
    - (iii) the financial unit of the procuring entity;
    - (iv) the planning, research and statistics unit of the procuring entity,
    - (v) the legal unit of the procuring entity or legal officer of the department of government responsible for the legal affairs of that entity, if the entity has no legal unit.

### **TENDERS BOARD**

19. (1) There is hereby established by this Law in each procuring entity a tenders board (in this Law referred to as "the Tenders Board").
- (2) Subject to the approval of the Board, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders Board.
- (3) The Tenders Board shall be responsible for the award of procurement of goods, works and services within the threshold set in the regulations.
- (4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation subcommittee

of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the secretary of the Tenders Board who shall also be the Chairman of the Evaluation Sub-committee.

- (5) The decision of the Tenders Board shall be communicated to the Commissioner or the senior officer responsible for implementation.

### **PREQUALIFICATION OF BIDDERS**

20. (1) Where a procuring entity has made a decision with respect to the minimum qualification of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or a service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.
- (2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.
- (3) The prequalification document shall include:
- (a) Instructions to prepare and submit prequalification 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 and competence on the job;
  - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications, taking into account the reasonable need of the procuring entity; and
  - (e) any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
- (4) The procurement entity shall respond to any request by a supplier,

contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.

- (5) The response to the procuring 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 suppliers, contractors or consultants shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualification 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 suppliers, contractors or consultants who have been pre-qualified.
- (8) Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.
- (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualification again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

## **PART V -PROCUREMENT METHODS (SERVICES AND WORKS )**

### **Open Competitive Bidding**

21. (1) Except as provided by this Law, all procurement of goods, services and

works by all procuring entities shall be conducted by open competitive bidding.

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

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

(4.) Notwithstanding, the provisions of this law, with respect to the award of contract, the Governor shall have power to award contract for the execution of projects and other jobs which total value shall not exceed 30% of the total annual budget approved for the execution of projects and other jobs in the State: PROVIDED ALWAYS that the Bureau shall exercise supervisory powers in the execution of such projects.

#### **INVITATION TO BID**

22. (1) Every invitation to an open competitive bid shall:

(i) in the case of goods and works, under international competitive bidding, the invitation for bids shall be advertised in not less than two national newspapers and one relevant international publication, an official websites of the procuring entity and the Bureau as well as the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works,

(ii) in the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two newspapers (one of which must have national circulation), and in the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works.

#### **BID SECURITY**

23. Where the procuring entity requires supplies or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

## **SUBMISSION OF BIDS**

- 24** (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contractor and placed in a sealed envelop.
- (2) All submitted bids shall be deposited in a secured tamper proof bid box.
- (3) All bid submitted shall be in English Language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.
- (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.

## **REJECTION OF BIDS**

- 25.** A procuring entity may:
- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

## **VALIDITY PERIOD OF BIDS, MODIFICATION AND WITHDRAWAL OF TENDER**

- 26.** (1) The period of validity for a bid shall the period specified in the tender documents.
- (2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.

- (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

#### **BID OPENING**

27. (1) All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:
  - (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
  - (b) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
  - (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
  - (d) ensure that a register is taken of the names and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the tenders board; and
  - (e) call-over to the hearing of all present the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

#### **EXAMINATION OF BIDS**

28. (1) All bids shall be first examined to determine if they:
  - (a) meet the minimum eligibility requirements stipulated in the bidding documents;
  - (b) have been duly signed;
  - (c) are substantially responsive to the bidding documents; and

- (d) are generally in order.
- (2) A procuring entity may request suppliers for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
  - (3) The following shall not be sought, offered or permitted! -
    - (a) changes in prices;
    - (b) changes of substance in a bid; and
    - (c) changes to make an unresponsive bid responsive
  - (4) Notwithstanding sub-section (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
  - (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
  - (6) A major deviation shall result in a rejection of bid.
  - (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;
      - (iv) unacceptable price adjustment
      - (v) the difference in standards;
      - (vi) the difference in materials;
      - (vii) omission in minor items;
      - (viii) sub-contracting that is unclear and questionable; and
      - (ix) different methods of construction.
    - (b) with respect to the status of the bidder:
      - (i) the fact that he is ineligible or not pre-qualified; and
      - (ii) the fact that he is uninvited.



- (c) with respect to bid documents, an unsigned bid;
- (d) with respect to time, date and location for submission:-
  - (i) any bid received after the date and time for submission stipulated in the solicitation document;
  - (ii) any bid submitted at the wrong location.
  - (iii) difference in final delivery date;
  - (iv) difference in delivery schedule; and
  - (v) non-compliance with some technical local regulations.
- (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 all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
- (10) For the rejection a bid, a written notice shall be given promptly to the supplier.

#### **EVALUATION OF BIDS**

29. (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 lowest evaluation responsive bid from bidders that have responded to the bid solicitation.
- (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable:
- (a) checking of deviations;
  - (b) checking of omissions with quantification of same;
  - (c) application of discounts, as applicable;
  - (d) calculation and tabulation of bid amount with domestic preference where applicable;

- (e) determination of the lowest calculated prices in order or rank;
  - (f) post-qualification of bidders, where applicable;
  - (g) listing of rejection of bids, where applicable;
  - (h) decision of rejection of all bids where justifiable;
  - (i) recommendation for award; and
  - (j) writing up of the bid evaluation report.
- (4) All relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
- (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
  - (b) for works, in addition to factors stipulated in section 31( I) of this Law, and subject to section 32(2) of this Law, if time is a critical factor, the value of early completion; and
  - (c) the value of early completion under section 32(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 all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.
- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and 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.

### ACCEPTANCE OF BIDS

30. (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation.
- (2) Notwithstanding subsection (1) of this section, the selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

### DOMESTIC PREFERENCE

31. (1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of preference shall apply only to tenders under international competitive bidding.
- (4) The Bureau shall by regulation from time to time set the limits and the formulate for the computation of margins of preference and determine the contents of goods manufactured locally.
- (5) government shall provide maximum opportunities for small and medium size entrepreneurs in the State to participate as suppliers, contractors, sub-contractors consultants in public procurement.
- (6) a procurement of works, goods or services that has value not exceeding specified threshold shall at first instance be reserved for indigenous firms, failing which offers shall be solicited without restrictions.

### MOBLIZATION FEES

32. (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% of the contract sum shall be

paid to a supplier or contractor supported by a contract performance bond:

- (a) in the case of National Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity; and
  - (b) in the case of International Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.
- (2) Where a mobilization fee has been paid to a 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.

### **CONTRACT PERFORMANCE GUARANTEE**

33. 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 it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher.

### **INTEREST ON DELAYED PAYMENT**

34. (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.
- (2) Any payment due for more than six days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, government agency, parastatal or corporation shall be deemed a delayed payment.
- (3) All delayed payments shall attract interest at the rate specified in the contract document.
- (4) All contracts shall include terms, specifying the interest rate for late payment of more than sixty days, which rate shall not exceed the commercial bank lending rate at the time of contract award.

### **RECORD OF PROCUREMENT PROCEEDINGS**

35. (1) A procuring entity shall maintain a comprehensive record of procurement proceedings.

- (2) The portion of the record referred to in this section shall, on request, be made available to:
  - (a) any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and
  - (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposals, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
- (3) A disclosure of procurement proceeding, shall not be made to a person prior to award of contract unless the portion of the record is required to be disclosed at an earlier time pursuant to a regulation or an order of court
- (4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.
- (5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General upon request; or upon request of a law enforcement agency in pursuance of its statutory duty where a criminal offence is suspected to have been committed in the course of a specific procurement; and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

**PART VI-SPECIAL AND RESTRICTED  
METHODS OF PROCUREMENT**

**TWO STAGE TENDERING**

36. (1) A procuring entity shall engage in procurement by two-stage tendering:
- (a) Where it is not feasible for the procuring entity to formulate detailed specification for the goods or works 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) Where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs, where the procuring entity, applies this Law to procurement concerned with state security and determines that the selected method is the most appropriate method of procurement; or
  - (c) Where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a procurement contract.
- (3) The provisions of this Law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.
- (4) The invitation documents:
- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
  - (b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualifications of the suppliers or contractors.
- (5) The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.
- (6) In the second stage of the two tender proceedings the procuring entity:
- (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
  - (b) may, in formulating the specifications, delete or modify any

aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tender;

- (c) may add new characteristics or criteria that conform with this Law;
  - (d) shall communicate to suppliers or contractors in the invitation to quotation from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.
- (2) Generally, quotations shall be obtained from at least 3 unrelated contractors or suppliers.
  - (3) Each contractor or supplier from whom a quotation is requested shall:
    - (a) be informed whether any factors other than the charges for the goods, works, or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price; and
    - (b) give only one quotation and shall not be allowed to change or vary the quotation.
  - (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
  - (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.
  - (6) Where the total value of the procurement is not more than a sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.

### **RESTRICTED TENDERING**

- 37. (1) Subject to regulations made by the Bureau, a procuring entity may for reasons of economy and efficiency, or legitimate affirmative action backed by an official government policy, engage in procurement by means of restricted tendering if:
  - a. the goods, works or services are available only from a limited number of suppliers or contractors;
  - b. the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be

procured; or

- c. the procedure is used as an exception rather than norm; or
  - d. in the overriding public interest in pursuance of a legitimate affirmative action backed by an official government policy.
- (2) Where a procuring entity engages in restricted tendering on the basis that:
- (a) the good works and services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
  - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of goods, works or services, it shall select in a non-discriminatory manner of the number of suppliers or contractors to ensure effective competition.
- (3) For the purposes of subsection (2), of this section, the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.
- (4) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.

### REQUEST FOR QUOTATION

38. (1) A procuring entity may carry out procurements by requesting for quotation from supplies or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.
- (2) Quotations shall be obtained from at least 3 unrelated contractors or suppliers.
- (3) A contractor or suppliers from whom a quotation is requested shall:
- (a) be informed whether any factors other than the charges for the goods, works, or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price; and
  - (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.



- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.
- (6) Procurements by request for quotation shall be conducted in accordance with the regulations made by the Bureau.

### **DIRECT PROCUREMENT**

39. (1) A procuring entity may carry out a direct procurement where:
- (a) goods, works or services are only available from a particular supplier of contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
  - (b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;
  - (c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
  - (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor when it determines that:
    - (i) additional supplies need to be procured from that supplier or contractor because of standardization;
    - (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
    - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
    - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;
    - (e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or

- (f) the procuring entity applies this Law for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.
- (2) The procuring entity:
- (a) may procure the goods works or services by inviting a proposal or price quotation from a single supplier or contractor;
  - (b) shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

### **EMERGENCY PROCUREMENT**

40. (1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where:
- (a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;
  - (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
  - (c) a public project may be seriously delayed for want of an item of a minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
- (3) All procurements made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.

## **PART VII-PROCUREMENT OF CONSULTANTS (SERVICES)**

### **EXPRESSION OF INTERESTS TO PROVIDE SERVICES FOR ASCERTAIN NEEDS**

41. Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:
- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least 2 newspapers (one of which shall have national circulation) and the procurement journal (if any);

- (b) where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only low profile consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:
- (i) a statement of qualifications of the consultant to provide the service;
  - (ii) a statement of understanding of the procuring entity's needs;
  - (iii) the methodology for providing the service;
  - (iv) the time frame for providing the service; and
  - (v) the cost or fee for the service.

#### **REQUEST FOR PROPOSALS TO PROVIDED SERVICES FOR UNASCERTAIN NEEDS**

42. (1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.
- (2) The procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in 2 newspapers (one of which shall have national circulation) and the procurement journal.
- (3) A procuring entity may make direct requests to a limited number of consultants, requesting proposals for the provision of a service if:
- (a) the services are only available from no more than 3 consultants;
  - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
  - (c) it is in the public interest and state security or similar reason of confidentiality.

#### **CONDUCT OF THE REQUEST FOR PROPOSALS**

43. (1) Request for proposals shall include:
- (a) the name and address of the procurement entity;

- (b) a requirement that the proposals are to be prepared in the English language;
  - (c) the manner, place and deadline for the submission of proposals;
  - (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
  - (e) the criteria and procedures for the evaluation of the qualifications of the consultants;
  - (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
  - (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
  - (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
  - (i) a requirement that the proposal is to be expressed in Nigerian currency;
  - (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
  - (k) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
  - (l) a short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that national consultants possess such requisite skills.
- (2) The procuring entity shall provide the, same information to every consultant requested to submit proposals.

#### **CLARIFICATION AND MODIFICATION OF REQUESTS FOR PROPOSALS**

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

- (2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.
- (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.
- (5) The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultant participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.

#### **SUBMISSION OF PROPOSAL**

- 45.
- (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than 30 days between the issue of the notice on request and the deadline for submission.
  - (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
  - (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
  - (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.
  - (5) The technical evaluation committee shall not have access to or insights to the financial proposals until the evaluations including any Tender Boards review are concluded.

#### **CRITERIA FOR EVALUATION OF PROPOSALS**

- 46.
- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:
    - (a) the qualification ,experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;

- (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
  - (c) the proposal price, including any ancillary or related cost;
  - (d) (the effect that the acceptance of the proposal will have on the revenue profile and projection of the State for the contract period, the extent of participating by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
- (2) A procuring entity may accord a margin of preference for domestic consultants or service providers, which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

#### **GENERAL SELECTION PROCEDURE (SERVICES)**

- 47** (1) The procuring entity shall select the successful proposal by either choosing the proposal with:
- (i) the lowest evaluated price, or
  - (ii) the best combined evaluation in terms of the general criteria set out in the request for proposal and the price quoted.
- (2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures in subsection (1) of this section.
- (3) Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

#### **PROCEDURE FOR SELECTION OF PROPOSAL WHERE PRICE IS A FACTOR**

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

attained a rating at or above the threshold.

- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6) The successful proposals shall be:
  - (a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) of this section from price in the case of quality and cost-based selection;
  - (b) the proposals with the lowest price in the case of least-cost selection; or
  - (c) the highest ranked technical proposal within the budget.
- (7) The consultants with the winning proposal shall be invited for negotiation, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

#### **SELECTION PROCEDURE WHERE PRICE IS NOT A FACTOR**

49. (1) Where the procuring entity elects to make a quality-based selection, based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section.
- (2) The procurement entity shall:
  - (i) establish a weight with respect to quality and price of the proposals;
  - (ii) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this section;
  - (iii) inform the consultants that attained ratings above the weight that may

be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurement contractor; and

- (iv) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that consultant, invited under section 31(6) will not result in a procurement contract.
- (3) The procuring entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.
- (4) The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

### **PART V III - PROCUREMENT SURVEILLANCE AND REVIEW**

#### **BUREAU TO RECOMMEND INVESTIGATION**

- 50. (1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract, where it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law.
- (2) The relevant authority may in the course of investigation:
  - (a) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
  - (b) search premises for any books, records, accounts or documents;
  - (c) examine and make extracts from copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
  - (d) remove books, records, accounts, or documents of the procuring entity, bidder, supplier, contractor, or consultant for as long as may be necessary to examine them or make extracts from such copies but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
  - (e) require an officer, employee or agent of the procurement entity or



bidder, supplier, or contractor or consultant;

- (i) to explain an entry in the books, records, accounts or document;
  - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required;
- (3) The Bureau may, pursuant to the advice of the procuring entity results of its review of a procurement or report of investigation by a relevant government agency, issue a variation order requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract of award.
- (4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulations in relation to procurement proceedings or procurement contract, take action to rectify the contravention which action shall include:
- (a) nullification of the procurement proceedings;
  - (b) cancellation of the procurement contract;
  - (c) ratification of anything done in relation to the proceedings; or
  - (d) a declaration consistent with any relevant provisions of this Law.
- (5) On completion of the investigation, the relevant authority shall if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.

#### **ADMINISTRATIVE REVIEW**

51. (1) A bidder may seek administrative review of any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer:
- (a) within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier;
  - (b) on reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems

it necessary and giving reasons for his decision.

- (3) if the bidder is not satisfied with the decision of the accounting officer or the accounting officer does not make a decision within the period specified in subsection 2(b), the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer or on the expiration of the time within which the accounting officer was expected to act and failed to do so.
- (4) Upon receipt of a complaint, the Bureau shall promptly:
  - (a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;
  - (b) unless it dismisses the complaint;
    - (i) prohibit a procuring or disposing entity from taking any further action;
    - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
    - (iii) declare the rules or principles that govern the subject matter of the complaint; and
    - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (5) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (6) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (7) where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may take the following action;

#### **MEDIATION**

- (a) refer such dispute or claim without legal representation to mediation by a single mediator who shall be selected by Agreement between the parties and failing such an agreement, shall be nominated by the president of the professional body of

the nature of the project in Rivers State. Where such a dispute concerns a legal matter or a matter relating to the interpretation of the agreement, the mediation shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA), to be mutually agreed upon between the parties, failing such agreement, to be nominated by the Chairman of the Nigerian Bar Association of any of the branches in Rivers State.

### **ARBITRATION**

- (b) If either party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such a party; may with the consent of the other party, refer the dispute for arbitration by a single arbitrator to be mutually agreed upon by both parties. Where the parties fail to agree on such a single arbitrator, to be nominated by the president of the professional body of the nature of the project in Rivers State. Should the dispute concern a legal matter or a matter relating to the interpretation of the Agreement, the arbitration shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA), to be mutually agreed upon between the parties, failing such agreement, to be nominated by the Chairman of the Nigerian Bar Association of any of the branches in Rivers State and such decision of the Arbitrator shall be final.

## **PART IX - DISPOSAL OF PUBLIC PROPERTY**

### **DISPOSAL OF PUBLIC PROPERTY**

52. (1) This section shall apply notwithstanding anything to the contrary in any Law made for the time being for the divestment of government interest in public enterprises or in any company.
- (2) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (3) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (4) The Bureau shall;
- (a) determine the applicable policies and practices in relation to the disposal for all public property;
- (b) Issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and

- (c) Issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (5) For the purposes of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable)
- (a) created through public expenditure;
  - (b) acquired as a gift or through deeds;
  - (c) acquired in respect of intellectual or proprietary rights;
  - (d) acquired on financial instruments (including shares, stocks, bonds, etc);  
and
  - (e) acquired by good will and any other gifts of the State Government.
- (6) The means of the disposal of public assets shall include:
- (a) sale and rental;
  - (b) lease and hire purchase;
  - (c) licenses and tenancies;
  - (d) franchise auction;
  - (e) transfers from one government department to another with or without financial adjustments; and
  - (f) offer to the public at an authorized valuation.

### **PLANNING OF DISPOSALS**

53. (1) Before slating any public property for disposal, the accounting officer (whether acting on his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a valuation report for such property by an independent evaluator or such professional with the appropriate competence to carry out the valuation.
- (2) The disposal of assets whether or not listed in the assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (3) The disposal of assets referred to in subsection (2) of this section shall be timed to take place when the most advantageous returns can be obtained for the assets in order to maximize revenue accruing to the government.

- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

**PART X - CODE OF CONDUCT**  
**CODE OF CONDUCT FOR PUBLIC PROCUREMENT**

54. (1) The Bureau shall stipulate a code of conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets; and such code shall be consistent with the provisions of the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999.
- (2) The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, Fairness and equity.
- (3) All officers of the Bureau, members of Tenders Board and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
- (4) 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, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (6) These principles shall apply at all times, particularly when:
- (a) making requisition for or planning of procurements;
  - (b) preparing solicitation documents;
  - (c) receiving offers in response to any form of solicitation towards a procurement or disposal;
  - (d) evaluating and comparing offers confidentially and in complete neutrality;
  - (e) protecting the interest of all parties without fear or favour; and
  - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by:

- (a) ensuring adequate time for preparing offers;
  - (b) complying with this Law and all derivative regulations; and
  - (c) maintaining strict confidentiality until completion of a contract.
- (8) All public officer involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationships 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 and disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (11) Such a declaration shall be given such consideration at the relevant level as is necessary so that where it is seen that remedial action is taken, a conflict of interest is present.
- (12) A conflict of interest exists where a person:
- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
  - (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed 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 procuring entity he represents or the Government in an equivocal, embarrassing or ethically questionable position;
  - (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the governments;
  - (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;
  - (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and
  - (h) discloses confidential information being either the property of his procuring entity, the government or to a supplier, contractor or service provider to unauthorized persons.
- (13) 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 ten years after the disposal.

## **PART XI - OFFENCES**

### **OFFENCE RELATING TO PUBLIC PROCUREMENT**

55. (1) A person who contravenes a provision of this Law commits an offence and is liable to a term of imprisonment for 2 years or to a fine of N200.000 or to both.
- (2) The following shall constitute offence under this Law:
- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotations or would be higher than it would have been the case had there not been collusion between the persons concerned;
  - (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption;
  - (c) directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
  - (d) splitting of tenders to enable the evasion of monetary thresholds set;

- (e) bid-rigging ;
  - (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
  - (g) uttering or using fake documents or encouraging their use; and
  - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (3) An alteration pursuant to sub-section (2)(f) shall include:
- (a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
  - (b) request for clarification in a manner not permitted under this Law.
- (4) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which a person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provision of this Law.
- (5) Bid-rigging pursuant to subsection (2)(e) means an agreement between persons whereby:
- (a) offers submitted have been pre-arranged between them; or
  - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the state treasury.
- (6) For the purposes of the presumption under sub-section (4) of this section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question whether total or partial.
- (7) For the purposes of section 55(2) (c) of this section, it shall be sufficient to prove that a reasonable business person should have known that his or her action would result in his or her company or firm having an undue advantage over other bidders to the detriment of the state treasury.
- (8) A procurement contract awarded in contravention of this Law, shall not bind the Government, and shall not be enforceable at the instance of a supplier,



contractor or consultant who procured or benefited from the breach ; but nothing in this subsection shall be construed so as to prevent the Government from seeking recovery of monies already paid out of the state treasury under the contract, or from seeking indemnity or damages under the said contract against the supplier, contractor or consultant as the case may be.

## **PART XII - MISCELLANEOUS**

### **MISCELLANEOUS**

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

### **POWER TO MAKE REGULATIONS**

- 57.** The Bureau may make regulations for carrying into effect the provisions of this Law.

### **INTERPRETATION**

- 58.** In this Law:

"Accounting officer" means the person charged with the supervision of the conduct of all procurement processes.

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

"Assets: includes tangible and intangible thing which have been or may be sold or procured for consideration;

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

"Contract" means an agreement entered in writing;

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

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

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

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

Gross misconduct – very obvious and unacceptable behaviour which amounts to a grave violation or breach of the previous of this law.

"High Court" means the High Court of Rivers State.

"Interim Performance Certificate" means evidence that a contractor or supplier as performed its obligations under a procurement contract up to a level stipulated by the contract but not meaning completion;

"International Competitive Bidding" means the solicitation of bids from both domestic and foreign contractors and suppliers;

"Lowest Evaluated Responsive Bid" means the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document;

"Margin of Preference" means the extra mark up on price allowed any domestic contractor or supplier bidding under international competitive bidding without being otherwise disadvantageous to the bid in terms of price;

"Misconduct" A dereliction of duty; unlawful or improper behaviour.

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

"Monetary Threshold" means the value limit in Naira set by the Bureau outside of which an

x Certificate of No Objection

approving authority may not award a procurement contract;

"National Competitive Bidding" means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Laws of Nigeria;

"Negotiation" means discussions to determine the terms and conditions of contract or procurement;

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

"Procurement" means acquisition;

"Procurement Proceedings" means the initiation of the process of effecting procurement up to award of a procurement contract.

"Procuring Entity" means any public body engaged in procurement and includes a ministry, extra - ministerial office, government agency, parastatal and corporation;

"Collusive" to work together secretly and illegally in order to take undue advantage of other persons, companies and or the State Government.

"Public Procurement" means the acquisition by any means of goods, works or services by the government;

"Public Fund" means any monetary resources appropriated to procuring entities under Government Budget or revenue generated by statutory bodies, corporations, aids, grants and credits put at the disposal of procuring entities by the development partners through the Government.

"Relevant Authority" includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission in so far as their Laws are applicable in the State;

Relevant qualification means a professional of not less than 15 years cognate experience in the following vocations: Law; Accountancy; Purchasing, and Marketing.

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

"Solicitation Documents" means the bid solicitation documents or any other documents, for solicitation of offers proposals or quotations;

"Special Purpose Goods" has the meaning assigned to it under the Public Procurement Act, 2007.

"State Treasury" means the revenue of the State Government from which its budgetary appropriations are funded, and includes where applicable, revenue of Local Governments in the State, where this Law applies to public procurement by such Local Governments;

"Substantially Responsive" means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents.

"Supplier" means a real or legal person that provides or supplies of goods contracting of works or consultants;

"Threshold" refers only to the approving and not the actual process of award;

"Unclassified" – Documents or information that are not officially secret.

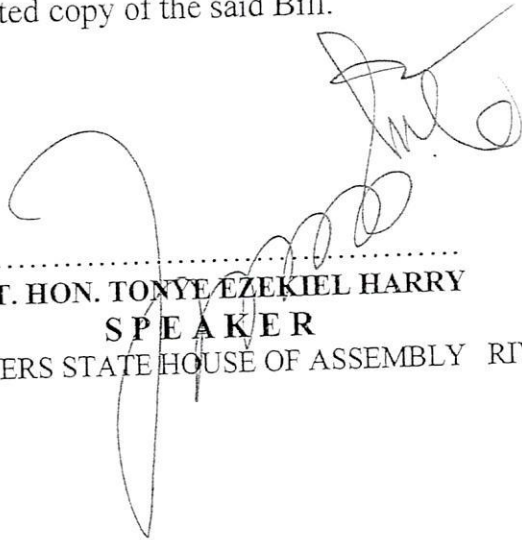
"Validity Period" means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid.

"Works" means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement or contract, where the value of those services does not exceed that of the construction itself.

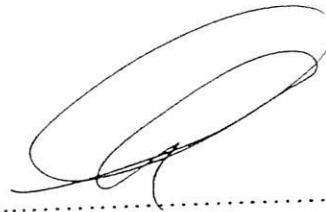
#### **CITATION**

59. This Law may be cited as the Public Procurement Law, No. 2008.

This printed impression has been carefully compared by me with the Rivers State Public Procurement Bill No. 4 of 2008 which has been passed by the Rivers State House of Assembly and found by me to be a true and correct printed copy of the said Bill.



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RT. HON. TONYE EZEKIEL HARRY  
S P E A K E R  
RIVERS STATE HOUSE OF ASSEMBLY



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MR. A. E. NWALA  
C L E R K

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