

**A BILL
FOR**

A LAW TO REPEAL THE DELTA STATE PUBLIC PROCUREMENT LAW 2016 AND ENACT THE DELTA STATE PUBLIC PROCUREMENT LAW, 2020 AND FOR OTHER MATTERS CONNECTED THEREWITH

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

PRELIMINARY

1. This Law may be cited as the Delta State Public Procurement Law, 2020 and shall come into force on the 30th day of April, 2020. Short Title and Commencement.

2. In this Law:
“*Accounting Officer*” means the person charged with line supervision of the conduct of all procurement processes; Interpretation.

“*Awarding Authority*” means the person charged with overall responsibility for the functioning of a Ministry, Extra-Ministerial Department or Agencies; the House, the Judiciary, Local Government Council and relevant organs;

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

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

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

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

“*Chairman*” means the Chairman of the Council;

“*Commission*” means the Delta State Public Procurement Commission (DSPPC);

“*Contract*” means an agreement entered in writing;

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

“*Council*” means the State Council on Public Procurement;

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

“*Excessive Price*” means a monetary value proposed by a bidder for any procurement which in the estimation of the Commission is 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;

“*Governor*” means the Governor of Delta State;

“*Guidelines*” means the rules, directives, or principles to give effect to this Law and issued by the Commission from time to time to guide the process of public procurement in the State;

“*High Court*” means the High Court of Delta State;

“*House*” means the Delta State House of Assembly;

“*Interim Performance Certificate*” means evidence that a Contractor or Supplier has performed its obligations under a procurement contract up to a level stipulated by the Terms of the Contract but not meaning completion;

“*Lowest Evaluated Responsive Bid*” means the lowest price bid that meets all the technical requirements and standards contained in the tender document;

“*Margin of Preference*” means the extra markup on price allowed to any national/state contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

“*Members*” includes the Chairman and members of the Council;

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

“*Monetary Threshold*” means the value limit in Naira set by the Council;

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

“*SME’s*” means Small and Medium Enterprises;

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

“*OCDS*” means Open Contracting Data Standards;

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

“*Procurement*” means acquisition;

“*Procurement Proceedings*” means the initiation of the process of effecting a procurement up to award of a procurement contract;

“*Procuring Entity*” means any public body engaged in procurement and includes a Ministry, Extra- Ministerial Department, Government Agency, Parastatal or Institution; the House, the Judiciary or Local Government Councils;

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

“*Prior Review Threshold*” means the value limit in Naira set by the Council for procurements requiring prior review under this Law;

“*Selective Competitive Bidding*” means the offer of the procurement process at the discretion of an approving authority and in the manner as prescribed under this Law;

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

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

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

“*State*” means Delta State of Nigeria;

“*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 the supply of goods, works or services;

“*Tenders Board*” means the State Tenders Board and the Tender Board of each procuring entity;

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

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

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

PART I - ESTABLISHMENT OF THE DELTA STATE COUNCIL ON PUBLIC PROCUREMENT

The
Establishment
of the Delta
State Public
Procurement
Council.

3. (1) There is hereby established for the Commission the State Council on Public Procurement.

(2) The Council shall consist of:

- (a) a Part-time Chairman;
- (b) the Attorney-General and Commissioner for Justice;
- (c) the Commissioner for Finance;
- (d) the Commissioner for Economic Planning;
- (e) the Chief Economic Adviser to the Governor;
- (f) a member of a Civil Society Organization;
- (g) a member of the Chartered Institute of Purchase and Supply (CIPS);
and
- (h) the Director-General of the State Public Procurement Commission.

(3) Save for the Members in subsection (2)(b)-(e) of this Section who shall hold their membership by virtue of their Office, the Chairman and Members of the Council shall subject to confirmation by the House be:

- (a) appointed by the Governor for a term of three years in the first instance;
- (b) eligible for re-appointment for a further term of three years and no more; and
- (c) appointed on such terms and conditions as may be specified in their letters of appointment.

4. (1) The Chairman and other Members of the Council may cease to hold Office if he or she resigns by notice in writing to the Governor.

Tenure and removal of Chairman and Members of the Council.

(2) The Governor shall remove the Chairman or 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 a misconduct; or
- (d) has been absent without leave of the Council for three consecutive meetings of the Council; or
- (e) has been convicted of an indictable offence or an offence against this Law.

5. The Council shall:

Functions of the Council.

- (a) consider, approve and amend the monetary threshold and the prior review thresholds for the application of the provisions of this Law by procuring entities;

- (b) consider and approve policies on Public Procurement;
- (c) consider the appointment of the Directors of the Commission;
- (d) receive and consider for approval, the audited accounts of the Commission;
- (e) approve changes in the procurement process to adapt to improvements in modern technology; and
- (f) give such other directive and perform such other functions as may be necessary to achieve the objectives of this Law.

Meetings of the Council.

6. (1) The Council shall hold its meetings at least once in each quarter of a year.
- (2) An extra-ordinary meeting of the Council may be convened upon a written request of the Chairman or not less than two-third of the members of the Council.
- (3) Subject to the provisions of this Law, the Council shall have power to make regulations with respect to the holding of its meetings, the notices to be given at such meetings, the proceeding and minutes of meetings and any other matter pertaining to its meetings as it may determine.
- (4) The Council shall reach a decision on any subject deliberated in accordance with this Law, upon a two-third majority of members present at a meeting of Council, provided that in the case of a tie, the Chairman shall have a casting vote.

Secretary of the Council.

7. (1) The Secretary to the Council shall be the Director-General of the Commission.
- (2) The Secretary to the Council shall be responsible for:
- (a) arranging meetings of the Council and its constituent committees;
 - (b) preparing the agenda and the minutes of such meetings;
 - (c) conveying decisions of the Council to Members of the Council, an Officer of the Commission or any person to whom it is directed;
 - (d) arranging for the payment of allowances of the Members of the Council and other related matters; and
 - (e) generally performing such duties as may be assigned to him by the Council.

PART II — ESTABLISHMENT OF THE PUBLIC PROCUREMENT COMMISSION

The establishment of the Public Procurement Commission.

8. (1) There is hereby established, a body to be known as the Delta State Public Procurement Commission.

(2) The Commission:

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; 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.

9. The objectives of the Commission are:

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

The Objectives of the Commission.

10. The Commission shall:

- (a) formulate the general Policies and Guidelines relating to public sector procurement for the approval of the Council;
- (b) publicize and explain the provisions of this Law;
- (c) subject to the thresholds as may be set by the Council, certify procurements prior to the award of contract;
- (d) supervise the implementation of the provisions of this Law, established procurement Policies and Guidelines derived pursuant to this Law;
- (e) monitor the prices of tendered items and keep State database of standard;
- (f) publish in the procurement Journal details of all contracts within the threshold approved for processing at the State Tenders Board;
- (g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (h) maintain a state database of the particulars and classification and categorization of state contractors and service providers including the registration of such State contractors and Service providers;

Functions of the Commission.

- (i) collate and maintain in an archival system, all State procurement plans;
- (j) undertake procurement research and surveys;
- (k) organize training and development programmes for procurement professionals;
- (l) periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;
- (m) prepare and update standard bidding and contract documents;
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) review the procurement and award of contract procedures of every entity to which this Law applies;
- (p) perform procurement audits to determine compliance with the provisions of this Law including such Guidelines and Policies made hereunder and submit such report to the Governor and the House annually;
- (q) introduce, develop, update and maintain related database and technology;
- (r) establish a single internet portal that shall, subject to Section 22(12) serve as a primary and definitive source of all information on government procurement above a threshold as shall be set in the Guidelines in OCDS format and any improved format that may evolve in the future containing and displaying all public sector procurement information at all times; and
- (s) co-ordinate relevant training programmes to build institutional capacity.

Powers of the Commission.

11. (1) The Commission shall have the powers to:
- (a) enforce the monetary threshold and prior review threshold set by the Council for the application of the provisions of this Law by the procuring entity;
 - (b) subject to paragraph (a) of this Section issue “Certificates of No Objection” for Contract Award within the prior review threshold for all procurements within the purview of this Law;
 - (c) from time to time stipulate to all procuring entities the procedures and documents prerequisite for the issuance of “Certificates of No Objection” under this Law;

- (d) where a reason exists:
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;
 - (ii) review and determine whether any procuring entity has violated any provision of this Law;
- (e) debar any supplier, contractor or service provider that contravenes any provisions of this Law and Guidelines made pursuant to this Law;
- (f) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement Journal;
- (g) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and/or collusion has been alleged, reported or proven against a procuring entity or service provider;
- (h) recommend to the Council, where there are persistent or serious breaches of this Law or regulations made under this Law for:
 - (i) the suspension of officers concerned with the procurement or disposal proceeding in issue;
 - (ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be;
 - (iii) the discipline of the Accounting Officer of any procuring entity;
 - (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party or procurement agency or consultant; or
 - (v) any other sanction that the Commission may consider appropriate;
- (i) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceedings;
- (j) act upon complaints in accordance with the procedures set out in this Law;
- (k) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law; and
- (l) do such other things as are necessary for the efficient performance of its functions under this Law including introducing technological trends in public procurement practice.

- (2) The Commission shall serve as the Secretariat for the Council on public procurement matters.
- (3) The Commission shall, subject to the approval of the Council, have power to:
 - (a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
 - (b) request for and obtain from any procurement entity, information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and
 - (c) liaise with relevant bodies or institutions within and outside the State and International Bodies for effective performance of its functions under this Law.

PART III ADMINISTRATIVE STRUCTURE AND CONTROL

Appointment and
Tenure of the
Director- General.

12. (1) There shall be for the Commission, a Director-General who shall be appointed by the Governor, subject to the confirmation of the House.
- (2) The Director-General shall be:
 - (a) the Chief Executive and Accounting Officer of the Commission;
 - (b) responsible for the execution of the policy and day to day administration of the affairs of the Commission; and
 - (c) a person of impeccable character who must not be below Grade Level 15 in the Civil Service of the State or must be a graduate of not less than 15 years with cognate and relevant experience .
- (3) The Director-General shall hold office:
 - (a) for a term of three years in the first instance and may be reappointed for a further term of three years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.
- (4) Notwithstanding the provisions of Section 4(2) of this Law, the Director-General shall only be removed from office by the Governor, acting on an address supported by two-third majority of the House praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct, or being undischarged bankrupt or has been convicted of an indictable offence or an offence against this Law.

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- 13 (1) The Council shall appoint four Directors, who shall be responsible for the departments to be created under this Law and shall also perform such other duties as may be assigned to them by the Director-General. Appointment of Directors.
- (2) The Directors shall have such relevant qualifications as contained in this Law and as the Council may prescribe.
- (3) The Directors shall each hold office:
- (a) for a term of three years in the first instance and may be reappointed for a further term of three years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.
14. (1) There shall be established for the Commission the following Departments: Departments
- (a) Administration and Legal Services;
 - (b) Technical and Evaluation;
 - (c) Procurement, Planning and Research; and
 - (d) Finance and Accounts.
- (2) Subject to the approval of the Council, the Commission shall have the powers to establish and maintain such subsidiary: offices, divisions, units and sections and make other administrative arrangements as may be necessary or expedient for the due performance of its functions.
- 15.(1) Subject to the approval of the Council, the Commission may appoint such officers and other employees as deemed necessary. Staff of the Commission
- (2) Subject to the Pension Reform Law, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Commission shall be as determined by the Council, provided such salaries and allowances are kept broadly in line with what obtains in the Public Service of the State,
- (3) Without prejudice to the generality of subsection (1) of this Section, the Commission shall have power to appoint either on transfer or receive on secondment from any Public Service in the State, such number of employees as may be required to assist the Commission in the discharge of any of its functions under this Law.

Conditions of Service of Employees of the Commission.

16. (1) The Commission may subject to the Public Service Rules and the approval of the Council, make staff regulations relating specifically to the:
- (a) appointment, promotion, termination, dismissal and disciplinary control of employees of the Commission; and
 - (b) appeals by employees against dismissal or other disciplinary measures as applicable to conditions of service in the Public Service of the State.
- (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 to the Commission.

Pension Provision.

17. Employees of the Commission shall be entitled to pensions and other retirement benefits as prescribed under the Pensions Reform Law.

Funds of the Commission.

18. (1) The Commission shall establish and maintain a fund, to be approved by the Council, into which shall be paid and credited:
- (a) the sums appropriated by the House for the running of the Commission;
 - (b) all subventions, fees and charges for services rendered or publications made by the Commission; and
 - (c) all other assets which may, from time to time, accrue to the Commission.
- (2) The Commission shall make charge against its fund to meet all its expenditure.
- (3) The Director of Accounts and Finance shall be a joint signatory to the Commissions funds and accounts with the Director-General.
- (4) The Director-General of the Commission and all the Directors who are Heads of the Departments of the Commission shall constitute the Ministerial Tenders Board of the Commission within the meaning of this Law.
- (5) The quorum for the Tenders Board of the Commission shall be the Director-General and all the Directors as provided in subsection (4) of this Section.
- (6) No funds shall be expended or award of contract made by the Commission for Public Procurements within the Meaning of this Law and any Guidelines as may be hereinafter made save with the written approval of the Director-General of the Commission.
- (7) No funds shall be expended by the Commission for Public Procurements within the meaning of this Law and such Guidelines hereinafter made without the written approval of the Tenders Board of the Commission duly constituted.

- (8) The Tenders Board of the Commission shall reach a decision for approval or disapproval of the award of contract in any procurement proceedings, tenders or bids made in accordance with the provisions of this Law upon voting on a simple majority decision of the Members of the Board certifying that the provisions of this Law and any Guidelines made in relation thereof have been duly followed.
- (9) Provided that in any such decision as provided in subsection (8) of this Section, the Director-General of the Commission and each Director shall each be entitled to one vote. Where no majority decision is determined and in the event of a tie, the Director-General shall in addition be entitled to a casting vote.
- (10) There shall be a secretary for the Ministerial Tenders Board who shall be the Director of Procurement, Planning and Research.
- (11) The Secretary of the Ministerial Tenders Board of the Commission shall upon a decision of the Board circulate a copy of comprehensive record of the Boards proceedings to each member for authentication upon which a copy of such decision duly authenticated shall be forwarded to the Council.
- (12) The Council may make regulations for the Commission:
 - (a) Specifying the manner in which assets or the fund of the Commission are to be held, and regulating the making of payment into and out of the fund; and
 - (b) Requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified by Regulations.
- (13) The Commission may, from time to time, apply the proceeds of the fund for:
 - (a) the cost of administration of the Commission;
 - (b) the payments of salaries, fees and other remuneration of employees of the Commission or experts or professionals appointed by the Commission;
 - (c) the maintenance of any property acquired by or vested in the Commission;
 - (d) any matter connected with all or any of the functions of the Commission under this Law; and
 - (e) any expenditure connected with all or any of the functions of the Commission under this Law.

Financial
Year,
Budgeting
and Annual
Report

19. (1) The financial year of the Commission shall be the same as that of the State Government.
- (2) Not later than six months before the end of the financial year, the Commission shall submit to the Council, an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Commission shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Council may direct.
- (4) The Commission shall within six months after the end of the financial year to which its accounts relate, cause its accounts to be audited in accordance with Guidelines supplied by the Auditor-General of the State.
- (5) The Commission shall within three months after the end of the financial year to which its accounts relate prepare an itemized financial report of its total income and expenditure for the preceding year in such form as shall accurately capture all its activities, which report shall be duly endorsed by each Director of the Commission in respect of its Departmental expenditure and shall include in the report a copy of the audited accounts of the Commission for the previous year and submit such report to the Council and the Governor.

Legal
Proceedings

20. (1) No suit shall commence against the Commission, a Member of the Council, the Director-General, any officer or employee of the Commission, or a holder of an office under this Law, except 30 days written notice of intention to sue, has been served on the Commission by the intending claimant or his authorized agent.
- (2) The notice referred to in subsection (1) of this Section shall state:
- (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of the intending claimant; and
 - (d) the relief being sought.
- (3) The Director-General of the Commission, its officers, employees, agents or a holder of an office under this Law, shall not be personally subject to any action, claim or demand by, or liable to any person or authority in respect of anything done or omitted to be done in the exercise of any function or power conferred by this Law in their official capacity.
- (4) A Member of the Commission or the Director-General or any Officer or employee of the Commission shall be indemnified out of the assets of the Commission against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a Member, Director-General, Officer or other employee of the Commission.

(5) A notice, summons or other documents required or authorized to be served upon the Commission under the provisions of this Law or any other Law or enactment may be served by delivering it to the Director-General or by sending it by registered post and addressed to the Director-General at the principal office of the Commission.

PART IV - SCOPE OF APPLICATION

21. (1) The provisions of this Law shall apply to all procurement of goods, works, and services carried out by the State Government and all procuring entities.

Scope of Application.

(2) The Provisions of this Law shall not apply to the procurement of Special Goods, Works and Services involving security unless the Governor’s express approval has been first sought and obtained.

PART V - FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

22. (1) Subject to any exemption allowed by this Law, all public procurement shall be conducted:
(a) subject to the prior review thresholds that may from time to time be set by the Council pursuant to Section (5)(a) of this Law;
(b) based on procurement plans supported by budgetary appropriation and subject to the threshold in the Guidelines made by the Council and has obtained a “Certificate of No Objection” from the Commission;
(c) by open competitive bidding;
(d) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and Guidelines 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 procedures and timelines laid down in this Law and as may be specified by the Commission from time to time.

Fundamental Principles for Procurement

(2) Where the Council has set prior review thresholds no funds shall be disbursed from the Treasury to the revenue account 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 under this Law.

(3) For all cases, where the Council shall set a prior review threshold, the Commission shall prescribe by Guidelines and the conditions precedent to the award of a “Certificate of No Objection” under this Law.

(4) Subject to the prior review thresholds as may be set by the Council, any procurement purported to be awarded without a “Certificate of No Objection” duly issued by the Commission shall be null and void.

- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two; the supplier, contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibilities 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 qualifications to carry out particular procurements;
 - (ii) financial capability; and
 - (iii) equipment and other relevant infrastructure;
 - (b) have adequate personnel to perform the obligations of the procurement contracts;
 - (c) possess the legal capacity to enter into the procurement contract;
 - (d) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - (e) have fulfilled all its obligations to pay taxes, pensions and social security contribution;
 - (f) 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;
 - (g) accompany every bid with an affidavit disclosing whether or not any Officer of the relevant committees of the procurement entity or Commission is a former or present Director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars;
 - (h) accompany every bid with its certificate of registration or incorporation with the Corporate Affairs Commission; and
 - (i) any other requirements stated in the standard bidding document.
- (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 Commission that any or a combination of the situations set out exist, a bidder may have its bids 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 items or has promised, offered or given employment or any other benefit, item or a service that can be qualified in monetary terms to a current or former employee of a procuring entity or the Commission, in an attempt to influence any action, or decision making 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 the performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings and or have made any compromise with their creditors within two calendar years prior to the initiation of the procurement proceedings;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding 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.
- (9) Without prejudice to a decision by the Attorney-General to initiate criminal prosecution, if any of the information provided in the given document is found to be prime facie false or forged, the procuring entity shall inform the Commission and the person referred to in subsection (8) (a)-(g) of this Section in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceedings in question.

- (10) All communications and documents issued by procuring entities and the Commission shall be in English Language.
- (11) All communication 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 Commission.
- (12) Every procurement entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.
- (13) Copies of all procurement records shall be transmitted to the Commission not later than 3 months after the end of the financial year and shall show:
 - (a) information identifying the procuring entity and the contractors;
 - (b) the date of the contract award;
 - (c) the value of the contract; and
 - (d) the detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be opened to inspection by the public and the cost of copying and certifying the documents including administrative charges as may be prescribed from time to time by the Commission.
- (15) 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.
- (16) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
- (17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding subsection (17) of this Section, the Commission may refuse to issue a “Certificate of No Objection” to Contract Award on the grounds that the price is excessive.
- (19) Pursuant to subsection (17) of this Section, the Commission may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.
- (20) Pursuant to subsection (18) of this Section, the Commission may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

- (21) The Accounting Officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.
- (22) The Accounting Officer of a procuring entity has the responsibility to ensure that the provisions of this Law and the Guidelines laid down by the commission are complied with, and concurrent approval by the relevant Tender Board shall not absolve the Accounting Officer from responsibility for anything done in contravention of this Law or the Guidelines laid down hereunder.
- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Guidelines as may from time to time be laid down by the Commission.
- (24) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.
- (25) A procuring entity shall not request or stipulate that a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceedings.
- (26) All procurement contracts shall contain provisions for mediation and or arbitration proceedings within the State as the primary form of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency, shall be translated to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening the tender or bid.
- (28) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and input in execution.
- (29) All processes for the procurement of goods and services under this Law can be undertaken electronically as may be specified in the tender documents.

PART VI - ORGANIZATION OF PROCUREMENT

23. Subject to the monetary threshold and prior review threshold for procurement in this Law as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:
 - (i) State Tenders Board; and
 - (ii) Ministerial Tenders Board.

Approving
Authority

Procuring
Entity/Procurement
Plan.

24. Subject to Guidelines as may be made by the Commission under the direction of the Council, a procuring entity shall plan its procurement by:

- (i) preparing the needs assessment and evaluation;
- (ii) identifying the goods, works or services required;
- (iii) carrying appropriate market and statistical surveys and on that basis prepare analysis of the cost implications of the proposed procurement;
- (iv) aggregating its requirement whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (v) integrating its procurement expenditure into its yearly budget;
- (vi) prescribing any method for effecting the procurement subject to the necessary approvals under this Law; and
- (vii) ensuring that the functions of the procuring entity as stipulated in this Section shall be carried out by the Procurement Planning Committee.

Regulating,
Implementing
Procurement plans.

25. Subject to Guidelines as may from time to time be made by the Commission under the direction of Council, a procuring entity shall in implementing its Procurement plans:

- (a) advertise or solicit for bids(open or selective bids) in adherence to this Law and Guidelines as may be issued by the Commission;
- (b) receive, evaluate and make a selection of the bids received in adherence to this Law and Guidelines as may be issued by the Commission;
- (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) obtain a “Certificate of No Objection” to Contract Award from the Commission within the prior review threshold as stipulated in Section 5 of this Law;
- (h) execute all contract agreements of all Government Ministries, Agencies, Departments, Parastatals, Commissions, etc. through the State Ministry of Justice;
- (i) execute all contract agreements as shall be prepared by the Ministry of Justice; and
- (j) announce and publicise the award in the format stipulated by this Law and Guidelines as may be issued by the Commission.

26. (1) The Accounting Officer of a procuring entity shall be the person charged with line supervision of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of Extra-Ministerial Departments or Parastatals, the Director-General, Executive Secretary or Officer of co-ordinate responsibility; and in the House and Judiciary, the Clerk of the House and the Chief Registrar, respectively and in the Local Government Council, Head of Personnel Management or such other officer who exercises the functions of an Accounting Officer.
- Accounting Officer of a Procuring Entity.
- (2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
- (a) ensuring compliance with the provisions of this Law by his entity and liable for the breach or contravention of the Law or any Guidelines made hereunder;
 - (b) constituting the Procurement Planning Committee;
 - (c) ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
 - (d) integrating its entity's procurement expenditure into its yearly budget;
 - (e) ensuring that no reduction of values or splitting of procurement is carried out such as to evade the use of the appropriate procurement method;
 - (f) constituting the Evaluation Committee if so directed; and
 - (g) liaising with the Commission to ensure the implementation of its Guidelines.
27. (1) For each financial year, each procuring entity shall establish a Procurement Planning Committee.
- Procurement Planning Committee
- (2) The Procurement Planning Committee shall consist of:
- (a) the Accounting Officer of the procuring entity or his representative who shall be the Chairman;
 - (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the secretary;
 - (ii) the unit directly in requirement of the procurement;
 - (iii) the financial unit of the procuring entity;
 - (iv) the planning, research and statistics unit of the procuring entity;
 - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
 - (vi) the Legal Officer assigned to the procuring entity.

- Tenders Board.
28. (1) There is hereby established by this Law:
- (a) The State Tenders Board; and
 - (b) In each procuring entity, the Ministerial Tenders Board.
- (2) The Council shall constitute the State's Tenders Board
Subject to confirmation of the Governor.
- (3) The Tenders Board shall be responsible for the award of procurements of goods, works and services within its threshold as set in the Guidelines.
- (4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation sub-committee which shall be made up of professional staff of the procuring entity with relevant expertise in the procurement in question and the Secretary of the Tenders Board who shall be the Chairman of the Evaluation Sub-Committee and, the decision of the Tenders Board shall be transmitted to the Commission for certification of the prequalification.
- Criteria for Prequalification Document.
29. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in prequalification documents and no more.
- (2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them if the procuring entity deems it necessary 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 or consultants.
- (3) The prequalification document shall include:
- (a) instructions to prepare and submit prequalification application;
 - (b) a summary of main terms and conditions required for the procurement Contract to be entered into as a result of the procurement proceedings;
 - (c) any document, evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) the manner and place for the submission of application to prequalify 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 Guidelines to prequalify and to the prequalification proceedings.
- (4) The procurement entity shall respond to any request by suppliers, contractors or consultants for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of application to prequalify.
- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of 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-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the 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, if necessary.

PART VII- PROCUREMENT METHODS
(GOODS AND SERVICES)

- 30. (1) Except as provided by this Law, all procurement of goods, works and services by all procuring entities shall be conducted by open or selective competitive bidding. Open or
Selective
Competitive
Bidding
- (2) Any reference to open or selective 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, works and services 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 specifications and standards in relation to the tender document.

- Invitations to Bid. 31. (1) Invitations to bid may be by way of Competitive Bidding and the Commission shall set the monetary threshold for which procurement shall fall.
- (2) Every invitation to a Competitive bid shall in the case of goods and works valued under State Competitive Bidding, the invitation for bid shall be advertised on the notice board of the procuring entity, any official website of the procuring entity and at least one national newspaper, a relevant state newspaper and if available the procurement journal, not less than two weeks before the deadline for submission of the bids for the goods and works.
- Bid Security. 32. (1) Subject to the monetary threshold and prior review thresholds as may be set by the Commission, all procurements value in excess of the sums as prescribed by the Commission shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee/insurance bond issued by a reputable bank/insurance company acceptable to the procuring entity.
- (2) The Commission shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractor submitting tenders to provide a bid security, the requirement shall apply to each supplier or contractor.
- (4) The Commission shall from time to time issue Guidelines that will waive or reduce the terms and conditions of the required bid security in the tender documents to encourage the participation of SME's under State Competitive Bidding.
- Requirement for Bidding. 33. (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.
- (2) All submitted bids shall be deposited in a secured tamper-proof bid box.
- (3) All bids submitted shall be in English Language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission of bids shall not be opened.
- (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.

34. A procuring entity may:
- (a) reject all bids at any time prior to the acceptance of a bid without incurring any liability to the bidders; and
 - (b) cancel the procurement proceedings in the public interest without incurring any liability to the bidders.
35. (1) The period of validity for a bid shall be 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.
36. 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 addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the Tenders Board; and
 - (e) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

Rejection of Bids

Validity period of bids, modification and withdrawal of Tenders.

Examination of Bids

Requirement stipulated in bidding documents.

- 37.(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; and
 - (c) are substantially responsive to the bidding documents.
- (2) A procuring entity may ask a supplier or contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (3) The following shall not be sought, offered or permitted unless with the prior consent in writing of the approving entity or authority:
- (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive.
- (4) Notwithstanding subsection (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 while minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations:
- (a) with respect to clauses in an offer:
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule, if time is of essence;
 - (iii) unacceptable alternative design; and
 - (b) with respect to the status of the bidder:
 - (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited;
 - (c) with respect to bid documents, an unsigned bid;
 - (d) with respect to time, date and location for submission:
 - (i) any bid received after the date and time for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.

- (8) In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
- (9) In cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - (a) the use of codes;
 - (b) the difference in standards;
 - (c) the difference in materials;
 - (d) acceptable alternative design;
 - (e) modified liquidated damages;
 - (f) omission on minor items;
 - (g) discovery of arithmetical errors;
 - (h) sub-contracting that is unclear and questionable;
 - (i) different methods of construction;
 - (j) difference in final delivery date;
 - (k) difference in delivery schedule;
 - (l) completion period where these are not of essence;
 - (m) non-compliance with some technical local regulations;
 - (n) payment terms; and
 - (o) any other condition that has little impact on the bid.
- (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:
 - (a) where the impact on the costs is major, it shall be regarded as a major deviation; and
 - (b) where the impact on the costs is minor, it shall be regarded as a minor deviation.

- (12) In cases of minor deviations, written clarification may be obtained from the supplier or contractor and where applicable, an offer made for the correction of the minor deviation.
- (13) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.
- (14) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
- (15) For the rejection of a bid, a written notice shall be given promptly to the supplier.

Evaluation of
Bid

38. (1) For the evaluation and comparison of bids that have been adjudged valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid.
- (3) In the course of its determination of the lowest evaluated responsive bid from bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable:
 - (a) checking of deviations;
 - (b) checking of omissions with quantification of same;
 - (c) application of discounts, as applicable;
 - (d) clarification with bidders of questionable minor deviations;
 - (e) quantification in monetary terms of such questionable deviations;
 - (f) conversion to common currency;
 - (g) calculation and tabulation of bid amount with domestic preference where applicable;
 - (h) determination of the lowest calculated prices in order of rank; and
 - (i) Post-qualification of bidders, where applicable.

- (4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
 - (5) Such factors shall be calculated in monetary terms as stipulated in 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 40(1) and subject to this Section, if time is a critical factor, the value of early completion; and
 - (c) the value of early completion shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provided for commensurate penalties in case of late delivery.
 - (6) When bid prices are expressed in two or more currencies, the prices for all bids shall be translated to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
 - (7) If suppliers were pre-qualified, verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.
 - (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 person not officially concerned with the evaluation process until the successful bidder is notified of the award.
39. (1) The successful bid shall be that submitted by the lowest cost bidder in response to the solicitation documents. Successful bid.
- (2) Notwithstanding subsection (1) of this Section, the selected bidder need not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
 - (3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

- Domestic Preferences.
40. (1) A procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of preference shall apply only to tenders under International competitive bidding.
- (4) The Council by Guidelines shall from time to time set the limits and the formula for the computation of margins of preference and determine the contents of goods manufactured locally.
- Margins of Domestic Preference/Evaluation Tenders/Determination of Mobilisation.
41. (1) In addition to Guidelines as may be prescribed by the Commission, a mobilization fee as may be determined by the Council may be paid to a supplier or contractor in the case of State competitive bidding; provided that the Supplier or Contractor shall be required to furnish an Advance Payment Guarantee (APG) or Insurance bond issued by a reputable financial institution acceptable to the procuring entity.
- (2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.
- Performance Guarantee
42. The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however, that it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher.
- Payment of Goods, works and Services.
43. Payment for the procurement of goods, works and services shall be settled promptly and diligently.
- Records of Procurement proceedings.
44. (1) Every procuring entity shall maintain a record of the comprehensive procurement Proceedings.
- (2) The record referred to in this Section shall, on request, be made available to:
- (a) any person or persons after 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 proposal or offer for quotation has been accepted or where procurement proceedings have been terminated without resulting in a procurement contract.
- (3) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this Section.
- (4) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Commission, an investigator appointed by the Commission and the Auditor-General upon request and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

PART VIII - SPECIAL AND RESTRICTED METHOD OF PROCUREMENT

45. (1) Notwithstanding the provisions of this Law, the Commission may issue “Certificate of No Objection” upon conditions hereinafter prescribed. Two Stage Tendering.
- (2) A procuring entity shall engage in procurement by two-stage tendering:
- (a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) where the specification of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development; except where the contract includes the production of goods in sufficient quantities to establish their commercial viability, or recover research and development costs; where the procuring entity applied this Law, to procurement concerned with state or national security and determines that the selected method is the most appropriate method of procurement; or

- (c) where the tender proceedings have been utilized but were not successful or the tenders were rejected in an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract, by the procuring entity.
- (3) The provisions of this Law as regards the process for open competitive bidding shall apply to two stage tender 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 the two stage tender proceedings, initial tenders which contains their proposal 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 qualification of the suppliers or contractors.
- (5) The procuring entity may, in the initial 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 next stage and if necessary in subsequent stages of the 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 characteristic of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tenders;
 - (c) may add new characteristics or criteria that conform with this Law;

- (d) shall communicate to suppliers or contractors in the invitation to submit final tenders, any deletion, modification or addition; and
 - (e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.
- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.
46. (1) Subject to the thresholds as contained in the guidelines made pursuant to this Law, a procuring entity may for reasons of economy and efficiency engage in procurement by means of selective tendering if:
- Selective Tendering
- (a) the goods, works or services are available only from a limited number of suppliers or contractors; or
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.
- (2) Where a procuring entity engages in selective tendering on the basis that:
- (a) the goods, works and services are available only from a limited number of suppliers or contractors, it shall if necessary 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 the goods, works or services, it shall if necessary select in a non-discriminatory manner the number of suppliers or contractors to ensure effective competitive biddings.
- (3) For the purpose 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 these Sections.
47. (1) A procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be in the procurement Guidelines.
- Request for Quotations.

- (2) Generally, quotations shall be obtained from three 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 the contractor or supplier with respect to a quotation unless it is deemed necessary and expedient, taking the prevailing circumstances into consideration.
- (5) The procurement shall be awarded to the qualified contractors or suppliers that give the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than the sum that shall be set out in the Guidelines, the procurement entity may not obtain the Commission's approval.

Direct
Procurement.

48. (1) A procuring entity may carry out a direct procurement where:
 - (a) goods, works or services are only available from a particular supplier or contractor or if a particular supplier has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists; or
 - (b) there is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is impractical due to unforeseeable circumstance giving rise to the urgency which is not a result of dereliction conduct on the part of the procuring entity; or
 - (c) owing to a catastrophic event, there is an urgent need for the goods, works or services making it impractical to use other methods of procurement because of the time involved in using these methods;
 - (d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that:
 - (i) additional supplies need to be procured from that supplier or contractor;

- (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; and
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merit the decision;
- (e) the procuring entity seeks to enter into a contract for research, experiment , study or development except where the contract includes; the production of goods in quantities to establish commercial viability or recover research and development costs; or
- (f) the procuring entity applied this Law for procurement that concern State security and determines that single-source procurement is the most appropriate source of procurement.
- (2) The procuring entity may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor.

49. (1) A procuring entity may for the purpose of this Law, carry out an emergency procurement where:

Emergency
Procurement.

- (a) the State is either seriously threatened by or actually confronted with a challenge which is economic, social, legal in nature, disaster, epidemic, pandemic, catastrophe, war, insurrection, or act of God;
 - (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - (c) a public project may be seriously delayed for want of an item of a minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
- (3) All procurement made under emergencies shall be handled expeditiously but along the principles of accountability due consideration being given to the gravity of each emergency.

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

PART IX - PROCUREMENT OF CONSULTANCY SERVICES

Expression of Interest to provide Services for ascertained needs.

- 50. (1) 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 one national newspaper, a relevant state newspaper and the procurement journal;
 - (b) Where the value of the services to be procured is in line with the Guidelines, or with the approval of the Commission, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice request at least three and not more than ten 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 need;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service; and
 - (v) the cost or fee for the service.
- (2) Every Consultant shall register with the State Contractors Registration Board or any other appropriate authority.

Request for proposal to provide services for unascertained needs.

- 51. (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 include the production of goods sufficient to establish their commercial viability or to recover research and development cost.

- (2) The procuring entities shall procure the services of consultant by soliciting for expressions of interest by publishing a notice to that effect in one national newspaper, a relevant state newspaper and the procurement journal.
 - (3) A procuring entity may make direct requests to a single or limited number of consultants, requesting proposal for the provision of services if:
 - (a) the services are only available from no more than three consultants;
 - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
 - (c) it is in the interest of state security or similar reason of confidentiality.
52. (1) Request for proposal shall include:
- (a) the name and address of the procurement entity;
 - (b) a requirement that the proposals are to be prepared in English Language;
 - (c) the manner, place and deadline for the submission of proposals;
 - (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
 - (e) the criteria and procedures for the evaluation of the qualifications of the consultant;
 - (f) the requirement on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;
 - (g) the nature and required characteristic 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;

Contents of
the Request
for
Proposals.

- (i) a requirement that the proposal price is to be expressed in Nigerian Currency;
 - (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
 - (k) whether the procedure to ascertain successful proposal shall be based on the lowest cost, or quality and or a combination of the lowest cost, quality and criteria other than cost but, stipulated in the request for, proposal; and
 - (l) a short list to be made of only domestic consultants for consulting assignment, contract within a set threshold in the procurement Guidelines provided that the domestic consultants possess such requisite skills.
- (2) The procuring entity shall provide the same information to every consultant requested to submit proposals.

Classification and modification of requests for Proposals.

53. (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 proposal 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 proposal to the consultants participating in the selection proceedings to enable them take the minutes into account in their proposal.

54. (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than thirty days between the issue of the notice or request and the deadline for submission. Submission of Proposals
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
- (3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid box, until they are opened publicly.
- (5) The Technical Evaluation Committees shall not have access to or insights into the financial proposals until the evaluation including Tenders Board reviews are concluded.
55. (1) The procuring entity shall establish the 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: Criteria for Evaluation of Proposals.
- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- (b) the effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposal price, including any ancillary or related cost.
- (2) A procuring entity may accord margin of preference for domestic consultants or service provider which shall be calculated in accordance with the Guidelines issued by the Council and shall be reflected in the record of the procurement proceedings.

- General Selection procedure (Services).
56. (1) The procuring entity shall select the successful proposal by either choosing the proposal with:
- (a) the lowest evaluated competitive price; or
 - (b) the best combined evaluation in terms of the general criteria set out in the request for proposals 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.
57. (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 such 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 if necessary notify the consultants whose proposals did not meet the minimum qualifying mark or were not responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants and the quality scores for the technical component of the proposals 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 best evaluated 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 negotiations, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.
58. (1) Where the procuring entity elects to make a quality based selection procedure based on consultant's qualification or single-source selection, it shall engage in negotiation with consultant in accordance with this section. Selection of Proposal where price is not a factor.
- (2) The procurement entity shall:
- (a) establish a weight with respect to quality and price of the proposals;
 - (b) invite for negotiations on the price of the proposal, the Consultant that has attained the best rating in accordance with subsection (1) of this Section;
 - (c) inform the Consultants that attained ratings above the weight that may be considered for negotiation if the negotiations with the Consultant with the best rating do not result in a procurement contract; and
 - (d) inform the Consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that Consultant invited under paragraph (b) of this subsection, 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 X - PROCUREMENT SURVEILLANCE AND REVIEW

Power of
commission to
Recommend
Investigation.

59. (1) The Commission may review and recommend for investigations by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity or the conclusion or operation of a procurement Contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law.
- (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 document;
 - (b) search premises for any books records, accounts or documents;
 - (c) examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
 - (d) require an officer, employee or agent of the procuring entity, bidder, or supplier to:
 - (i) explain an entry in the books, record, accounts or documents;
 - (ii) provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required;
 - (e) explain an entry in the books, records, accounts or documents.
- (3) The Commission may, pursuant to the advice of the procuring entity, result of the 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 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 as required by the contract of award.
- (4) The Commission shall, if satisfied that there has been a contravention of this Law or any Guidelines to procurement proceedings or procurement contract, take action to rectify the contravention which action shall be:
- (a) nullification of the procurement proceedings
 - (b) cancellation of the procurement contract;
 - (c) ratification of anything done in relation to the proceeding; or
 - (d) a declaration consistent with any relevant provisions of this Law.

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- (5) On completion of the investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Commission and the procuring entity accordingly, but where no offence is disclosed, the file shall be closed and the Commission and procuring entity shall be duly informed.
60. (1) A bidder may seek administrative review for any omission or breach under the provisions of this Law or any derivative documents under this Law by a procuring or disposing entity. Administrative Review
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
- (3) On reviewing a complaint, the Accounting Officer shall make and communicate a decision in writing within fifteen working days, indicating the corrective measures to be taken if any, including the suspension of the proceedings where necessary and giving reasons for his decisions.
- (4) If the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Commission within ten working days from the date of communication of the decision of the Accounting Officer.
- (5) Upon receipt of a complaint, the Commission shall promptly:
- (a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Commission has settled the matter;
 - (b) unless it dismisses the complaint:
 - (i) prohibit a procuring or disposing entity from taking any further action;
 - (ii) nullify, in whole or in part, an unlawful act or decision made by the procuring, or disposing entity; and
 - (iii) declare the rules or principles that govern the subject matter of the complaint.
- (6) Before taking any decision on a complaint, the Commission shall notify interested bidders of the complaint and may take into account representations from the bidders and the respective procuring or disposing entity.

- (7) The Commission shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for the decisions and remedies granted, if any.
- (8) Any other review after the decision of the Commission shall be by Judicial Review.

PART XI- DISPOSAL OF PUBLIC PROPERTY

Disposal of
Public
Property.

61. (1) For the purpose of this Law every procuring entity shall also be a disposing entity.
 - (2) The open or selective bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
 - (3) The Commission shall, with the approval of the Council:
 - (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue 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 documents, monitor implementation, enforce compliance and set reporting standards that shall be binding on all procuring entities involved in the disposal of public property.
 - (4) For the purposes of this Law public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):
 - (a) created through public expenditure;
 - (b) acquired as a gift 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.

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62. (1) Before slating any public property for disposal, the Accounting Officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal, shall, authorize the preparation of a valuation report for such property by an Independent Evaluator or such professional with the appropriate competence to carry out the valuation. Planning of Disposal
- (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 return can be obtained for the asset in order to maximize revenue accruing to the government.
- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

PART XII- CODE OF CONDUCT

63. (1) The Commission shall, with the approval of the Council stipulate a Code of Conduct for all Public Officers, suppliers, contractors and service providers with regard to the standards acceptable in matters involving the procurement and disposal of public assets. Code of Conduct for Public procurement
- (2) The conduct of all persons involved with public procurement, whether as officials of the Commission, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
- (3) All officers of the Commission, members of Tender Boards and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by the Council.
- (4) 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 in confidentiality and in complete neutrality;

- (e) protecting the interest of all parties without fear or favour; and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (5) All public officers shall handle public procurement and disposal of assets by:
- (a) ensuring adequate time for preparing officers; and
 - (b) complying with this Law and all derivative Guidelines.
- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons, real or corporate, who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall divest himself of any interest or relationships which are actually or potentially detrimental to the best interest of Government and the underlining principles of this Law.
- (8) Any person engaged in the public procurement and disposal of asset who has assumed, or is about to assume, a financial or other business interest that might involve a conflict of interest must immediately disclose same.
- (9) Such a declaration shall be given due consideration at the relevant level as is necessary so that where it is seen that remedial action is taken, a conflict of interest is present.
- (10) A conflict of interest exists when a person:
- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of government.
 - (b) possesses a direct or indirect interest in or relationship with the bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or construed to be or make possible gain due to the person's ability to influence dealings.
 - (c) entertains relationships which are unethical, rendering his attitude partial towards the outside for personal reasons or otherwise inhibits the impartiality of the person's personal judgment.

- (d) places by acts or omissions the procuring entity he represents or the government in an equivocal embarrassing or ethically questionable positions.
 - (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the government.
 - (f) receives benefit by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or government.
 - (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in the course of his work or otherwise; and
 - (h) discloses confidential information being either the property of his procuring entity, the government or to a supplier, contractor or service provider to an unauthorized person.
- (11) A person involved in the disposal of assets shall neither by a third party nor by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

PART XIII –OFFENCES

64. (1) Any person not being a public officer who contravenes any provisions of this Law commits an offence and is liable on conviction to a term of imprisonment not less than five years but not exceeding ten years or with an option of a fine of five hundred thousand Naira. Offences.
- (2) Any officer in contravention of this Law or Guidelines made hereunder shall be tried by the High Court of the State with the written consent of the Attorney-General of the State first sought and obtained. The Attorney-General and Commissioner for Justice shall be entitled to receive written communication and recommendations directly from the Director-General and Commissioner for Justice on any matter involving a contravention of the provisions of this Law and thereupon give such declaration or undertake such action as is consistent with the provisions of this Law or as is necessary to bring such action in conformity with the provisions of this Law; Provided that notwithstanding anything contained to the contrary in this Law, the Attorney-General and Commissioner for Justice may recommend that such officer rather than face criminal prosecution should be subjected to disciplinary proceedings under the Civil Service Rules and dealt with accordingly.

- (3) The following shall also constitute offences under this Law:
- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
 - (b) to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (c) to directly, indirectly, or attempting to influence in any manner the procurement process, to obtain an unfair advantage in the award of a procurement contract;
 - (d) splitting of tenders to enable the evasion of monetary thresholds set;
 - (e) bid rigging;
 - (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
 - (g) altering or using fake documents or encouraging their use; and
 - (h) willful refusal to allow the Commission or its Officers to have access to any procurement records.
- (4) Any person while carrying out his duties as an Officer of the Commission, or any procuring entity, who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of:
- (a) a term of imprisonment of five years or an option of fine; and
 - (b) summary dismissal from government service.
- (5) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of;
- (a) debarment from all public procurements for a period not less than five years; and
 - (b) a fine equivalent to the value of the procurement in issue.

- (6) Where any legal person is convicted in pursuance to subsection (5) of this Section, every Director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than three years but not exceeding five years, or with an option of fine of One Million Naira.
- (7) The alteration pursuant to sub-section (3) (f) of this Section 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.

PART XIV MISCELLANEOUS

- 65. (1) The fixing of the Seal of the Commission shall be authenticated by the signature of the Chairman, Members of Council, the Director-General, the Directors or any other person generally or specially authorized to act for that purpose by the Council in accordance with this Law Miscellaneous.
- (2) Any contract or instrument which if made or executed by a person not being a body corporate, would not be required to be under the seal may be made or executed on behalf of the Commission by the Director-General or any other person generally or specially authorized to act for that purpose by the Council.
- (3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and till the contrary is proven, be presumed to be so executed.
- (4) The validity of any proceedings of the Council or of a Committee thereof shall not be adversely affected by any vacancy in the membership of the Council or of a Committee, or by any defect in the appointment of a Member of the Council or of a Committee, or by reason that a person not entitled to do so, took part in the proceeding of the Council or Committee.
- 66. Any action validly undertaken in accordance with the Delta State Public Procurement Law, 2016 prior to the commencement of this Law, by a Public Officer, a Member of the Commission or the Council remains valid. Savings and Transitional Provisions
- 67. The Delta State Public Procurement Law, 2016 is hereby repealed. Repeal of Public Procurement Law, 2016.

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

Lynabiy

Clerk
Delta State House of Assembly.

ASSENTED to/~~not assented~~ to this *7th* day of *May*, 2020.

[Signature]

Governor
Delta State of Nigeria