



**ENUGU STATE OF NIGERIA
2021, NO. 9**

**THE ENUGU STATE PUBLIC
PROCUREMENT LAW, 2021**

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**A LAW TO REPEAL THE ENUGU STATE
PUBLIC PROCUREMENT LAW NO. 10,
2010 AND RE-ENACT THE ENUGU
STATE PUBLIC PROCUREMENT LAW
TO MAKE PROVISIONS FOR THE
ESTABLISHMENT OF THE ENUGU
STATE PUBLIC PROCUREMENT
AGENCY AND FOR CONNECTED
PURPOSES**

.....

ENACTED BY

**ENUGU STATE HOUSE OF ASSEMBLY
THIS 29TH DAY OF DECEMBER, 2021**



ENUGU STATE PUBLIC PROCUREMENT BILL 2021

ARRANGEMENT OF SECTIONS

PART I

CITATION AND DATE OF COMMENCEMENT, INTERPRETATION, OBJECTIVES OF THE LAW

1. Citation and Date of Commencement
2. Interpretation
3. Objectives of the Law

PART II

ESTABLISHMENT OF THE ENUGU STATE PUBLIC PROCUREMENT AGENCY

4. Establishment of the Enugu State Public Procurement Agency
5. Objectives of the Agency
6. Functions of the Agency
7. Powers of the Agency
8. Director General of the Agency
9. Cessation of Office of the Director General
10. Legal Adviser of the Agency
11. Other Staff of the Agency
12. Staff Regulation and Pensions
13. Remuneration
14. Establishment of the Local Government Department and other Departments of the Agency

PART III

ESTABLISHMENT, COMPOSITION, FUNCTIONS, POWERS OF THE ENUGU STATE PUBLIC PROCUREMENT GOVERNING BOARD

15. Establishment and Composition of the Enugu State Public Procurement Governing Board
16. Powers of the Board
17. Tenure of Office
18. Cessation of Office of Members of the Board
19. Allowances
20. Meetings of the Board
21. Quorum
22. Voting
23. Proceedings
24. Power to co-opt
25. Filling of Vacancy
26. Validity of Proceedings
27. Disclosure of Interest

PART VIII

PROCUREMENT OF CONSULTANCY SERVICES

63. Expression of Interest to Provide Services
64. Request for Proposal to Provide Services for Unascertainable Needs
65. Content of the Request for Proposal
66. Clarification and Modification of Request Proposals
67. Submission of Proposals
68. Criteria for Evaluation of Proposals
69. General Selection Procedure
70. Procedure for Selection where Price is a Factor
71. Selection Procedure where Price is not a Factor

PART IX

SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

72. Special and Restricted Methods of Procurement
73. Direct Procurement
74. Emergency Procurement
75. Restricted Tendering
76. Request for Quotation
77. Electronic Procurement (E-Procurement)

PART X

SUPPLEMENTARY PROVISIONS

78. Register of Awards
79. Domestic Preference
80. Advance Payments
81. Performance Guarantee or Bond
82. Interest on Delayed Payments.
83. Project Certification
84. Tampering Report and Illegal Collection of Gratification
85. Failure of Contractual Performance
86. Record of Procurement Proceedings

PART XI

INVESTIGATION AND CHALLENGE PROCEEDINGS

87. Investigation by the Agency
88. Administrative Review and Procedure for Complaints Against a Procuring Entity to the Agency
89. Judicial Review of the Decision of the Agency

PART XII

DISPOSAL OF PUBLIC PROPERTY

90. Disposal of Public Property

PART XIII

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

91. Legal Proceedings
92. Service of Documents
93. Offences and Penalties

PART XIV

MISCELLANEOUS

94. Scope of Application
95. Common Seal
96. Annual State Procurement Assessment Report
97. Power to Make Regulations
98. Transitional Provision to the Due Process and Budget Monitoring Unit
99. Continuance in Office of Existing Management Staff and Other Staff of the Due Process and Budget Monitoring Unit
100. Transitional Provisions Relating to Existing Departments of the Due Process and Budget Monitoring Unit
101. Transfer to the Agency of Land, Properties, Rights and Obligations
102. Repeal
103. Savings



ENUGU STATE OF NIGERIA 2021, NO. 9

Title.

A Law to Repeal the Enugu State Public Procurement Law No. 10, 2010 and Re-enact the Enugu State Public Procurement Law to make Provisions for the Establishment of the Enugu State Public Procurement Agency and for Connected Purposes.

Enactment.

Enacted by the Enugu State House of Assembly as follows

PART I

CITATION, INTERPRETATION, OBJECTIVES OF THE LAW

*Citation and
Date of
Commencement.*

1. This Law may be cited as the Enugu State Public Procurement Law and shall come into effect on the day the Governor assents to it.

Interpretation.

2. In this Law unless the context otherwise requires,
"Agency" means the Enugu State Public Procurement Agency established by Section 4 of this Law;

"Accounting Officer" means any person charged with responsibility relating to procurement in a procuring entity;

"Alteration" includes but not limited to -

- (a) forged arithmetical correction or calculation;
- (b) insertion of documents such as bid security or tax clearance certificate which were not submitted at the bid opening; and
- (c) request for clearance in a manner not permitted under this Law and its Regulations;

"Approving Authority" includes-

- (a) in the case of a government agency, parastatal or corporation, a parastatal Tender's Board;
- (b) in the case of a ministerial entity, the Ministerial Tender's Board; and
- (c) in the case of a Local Government, the Tenders' Committee;

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

"Board" means the Enugu State Public Procurement Agency Governing Board established by Section 15 of this Law;

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

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

"Governor" means Governor of Enugu State;

"House" means Enugu 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 procuring entity but not meaning completion;

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

"Local Government Area" includes Local Government and Development Centers;

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

"Monetary Benchmark" means the value limit in naira set in accordance with the provisions of this Law and as may be prescribed by the Board from time to time;

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

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

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

"Procurement" means acquisition;

"Procurement proceedings" means the initiation of the process of effecting a procurement up to award of a procurement contract;

"Procuring entity" means any public body in the State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and Agencies of the Enugu State Government, Extra-Ministerial Offices, Parastatals, Corporations, State Universities and Colleges, Government Institutions, Local Government Areas and their derivative Units;

"Professional Body" means the Chartered Institute of Purchasing and Supply Management of Nigeria (CIPSMN);

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

"Public Property" means resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable)-

- (a) created through public expenditure;
- (b) acquired as a gift or through deeds;
- (c) acquired in respect of intellectual or proprietary rights; and
- (d) acquired on financial instruments (including shares, stocks, bonds etc.);

"State" means the Enugu State of Nigeria;

"Self-Accounting Institution" means the arm of government which has full control over its accounting funds and records;

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

"Tenders' Committee" means Committee responsible for Procurement process at the Local Government Councils in the State;

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

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

*Objectives of the
Law.*

3. The Objectives of this Law are to –
- (a) ensure probity, accountability and transparency in procurement process;
 - (b) establish fair pricing standards and benchmarks;
 - (c) ensure the application of fair, competitive value-for-money standards and practices for the procurement and disposal of public assets and services;
 - (d) create ample opportunities for the citizenry particularly, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement;
 - (e) create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by procuring entities, bidders and the general public; and

- (f) attain transparency, competitiveness, professionalism and guarantee integrity and public trust in the public procurement procedure.

PART II
ESTABLISHMENT OF THE ENUGU STATE PUBLIC
PROCUREMENT AGENCY

*Establishment of
the Enugu State
Public
Procurement
Agency.*

4. (1) There is established the Enugu State Public Procurement Agency (referred to in this Law as “the Agency”)
(2) The Agency shall—
(a) be a body corporate with perpetual succession and a common seal;
(b) have power to sue and be sued in its corporate name and
(c) be capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out its functions under this Law.

*Objectives of the
Agency*

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

*Functions of the
Agency.*

6. The Agency shall—
(a) consider, review and recommend the monetary benchmark for the application of this Law subject to the approval of the Board;
(b) approve the employment of staff of the Agency other than the Director General;
(c) approve changes in procurement process to adapt to changes in technology;

- (d) formulate general policies and regulations relating to public sector procurement for the approval of the Governor;
- (e) publicize the provisions of this Law;
- (f) certify all State procurements prior to, during and after the award of any contract;
- (g) supervise the implementation of established procurement policies;
- (h) oversee and superintend compliance by all procuring entities with the procurement policies of the State;
- (i) monitor the prices of tendered items and keep a database of standard prices;
- (j) publish the details of major contracts in the State Procurement Journal;
- (k) publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal;
- (l) register and maintain a database of contractors and service providers to the exclusion of all procuring entities;
- (m) register and maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them in the State Procurement Journal and
- (n) carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law.

*Powers of the
Agency.*

- 7.** (1) The Agency shall have the power to-
- (a) enforce the rules and review benchmarks set pursuant to this Law;
 - (b) inspect and review any procurement transaction to ensure compliance with the provisions of this Law;
 - (c) investigate and determine whether any procuring entity has violated any provision of this Law;
 - (d) blacklist or ban any supplier, contractor or consultant that contravenes any provision of this Law and Regulations made pursuant to this Law;
 - (e) prescribe classifications and categorizations for Companies or Limited Liability Partnerships (LLPs) on the register;

- (f) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrong-doing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider;
 - (g) call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (h) act on complaints by entities, bidders and the general public in accordance with the procedures set out in this Law;
 - (i) nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;
 - (j) recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law;
 - (k) undertake procurement and contract performance audit;
 - (l) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
 - (m) recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of this Law;
 - (n) constitute a Technical Review Committee comprising of technical, financial and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest;
 - (o) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law and
 - (p) ensure that set standards in the Monitoring and Enforcement Department are maintained.
- (2) Where there is persistent or serious breach of this Law, its Regulations or any other Law, the Agency shall recommend to the Governor the following—
- (a) suspension from office of officers concerned with the procurement or disposal proceeding in issue;

- (b) removal from office of the head of any Procuring or Disposal Unit;
 - (c) discipline of the Accounting Officer of any procuring entity;
 - (d) temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third-party procuring entity; or
 - (d) any other sanction that the Agency may consider appropriate.
- (3) The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law, and may carry on in that behalf either alone or in association with any other person or body.

*Director General
of the Agency.*

8. (1) There shall be appointed for the Agency a Director General
- (2) The Director General shall be—
- (a) a person who possesses relevant and adequate professional qualification(s) and shall have been so qualified for a period not less than fifteen (15) years;
 - (b) the Chief Executive and Accounting Officer of the Agency and
 - (c) responsible for the execution of the policy and day to day administration of the affairs of the Agency.
- (3) The appointment of the Director General shall be subjected to a competitive exercise and shall be advertised, listing the requirements for qualifications to the public from where the best candidate amongst the shortlisted and interviewed, shall be appointed by the Governor subject to the confirmation of the House.
- (4) The Director General shall hold office for a term of four years renewable for another term of four years only on such terms and conditions as may be specified in the contract of appointment.

*Cessation of
Office of the
Director General.*

9. (1) The Director General shall cease to hold office if the Director General—
- (a) resigns by notice in writing, addressed to the Governor;
 - (b) by reason of infirmity of mind or body becomes incapable of discharging duties of the office; or
 - (c) has been involved in any act considered to be inimical to the interest of the Agency.

(2) Notwithstanding the provisions of subsection (1) above, the Governor may remove the Director General from office if satisfied that it is in the interest of the public to do so subject to the approval of the House

*Legal Adviser of
the Agency.*

- 10.** (1) There shall be a Legal Adviser for the Agency to be appointed by the Attorney-General from the public service of the State, not below grade level 15.
(2) The Legal Adviser shall be the head of the Legal Department.
(3) The Legal Adviser shall be responsible to the Director General in the performance of the functions of the Office.
(4) The Legal Adviser shall be responsible for the following matters –
(a) provide legal advice with respect to the duties of the Agency;
(b) handling of day-to-day legal issues affecting the Agency; and
(c) generally performing all other duties affecting the Agency as may be assigned by the Director General.
(5) The Legal Adviser shall serve for a minimum of three (3) years in the Agency before being considered for redeployment if necessary by the parent Ministry.

*Other Staff of the
Agency.*

- 11.** (1) The Agency may appoint such officers and other employees as it may, from time to time, deem necessary for the purposes of its work under this Law, subject to prior approval by the Board.
(2) The terms and conditions of service (including remuneration, allowances, pensions and benefits) of officers and employees of the Agency shall be as determined by the Board.
(3) Without prejudice to the generality of subsection (1) of this section, the Agency shall have power to appoint either on transfer, on posting or on secondment from any public service in the State, such number of employees as may, be required to assist the Agency in the discharge of any of its functions under this Law.

*Staff Regulation
and Pensions.*

- 12.** (1) The Agency may subject to the approval of the Governor, within six (6) months of its inauguration, make staff regulations relating generally to the conditions of

service of its employees, without prejudice to the forgoing; such regulations may provide for —

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

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

(3) Employees of the Agency shall be entitled to pension and other retirement benefits as may be prescribed by Law.

Remuneration

- 13.** The Agency shall, subject to the approval of the Governor, determine the remuneration to be paid to its officers and may require any officer to give such security as may be deemed proper, for the execution of the officer's functions.

Establishment of the Local Government Department and other Departments of the Agency.

- 14.** (1) There is Established a Department under the Agency to be called Local Government Due Process Department which shall be headed by an officer not below the rank of a Director.
- (2) The function of the Department shall be to ensure full compliance and implementation of the provision of this Law as applicable to Local Government.
- (3) The Agency shall have power to establish departments and units as may be necessary or required for the effective organization and execution of its functions.

PART III

ESTABLISHMENT, COMPOSITION, FUNCTIONS, POWERS OF THE ENUGU STATE PUBLIC PROCUREMENT GOVERNING BOARD

Establishment and Composition of the Enugu State Public Procurement Governing Board.

- 15.** (1) There is established the Enugu State Public Procurement Agency Governing Board (referred to in this Law as "the Board").
- (2) The Board shall consist of-
- (a) the Commissioner for finance who shall be the Chairman;
 - (b) the Commissioner for Economic Planning and Budget;
 - (c) the Attorney-General and Commissioner for Justice;
 - (d) three (3) other persons from the public who shall be of unquestionable character, to represent —

- (i) Chartered Institute of purchasing and Supply Management of Nigeria (CIPSMN);
 - (ii) Past Member of the State Legislature and
 - (iii) A representative of Civil Society Organization knowledgeable in the act of public procurement and
 - (e) the Director General of the Agency who shall be the Secretary to the Board.
- (3) Members of the Board except the ex-officio Members shall be appointed by the Governor subject to confirmation of the House.
- (4) The Agency shall serve as the Secretariat for the Board.

Powers of the Board.

- 16.** The Board shall have powers to -
- (a) consider and approve policies on public procurement;
 - (b) make recommendations in respect of any procurement guidelines or Regulations to be made pursuant to the provisions of this Law;
 - (c) approve the employment of the Directors of the Agency;
 - (d) receive and consider for approval, the audited accounts of the Agency; and
 - (e) give such other directives and or perform such other functions not being inconsistent with the provisions of this Law, as may be necessary to achieve the objectives of this Law.

Tenure of Office.

- 17.** The Chairman and Members of the Board except the ex-officio Members shall hold office on a part time basis for a term of five (5) years and may be re-appointed for another term of five (5) years only.

Cessation of Office of Members of the Board.

- 18.** (1) A Member of the Board shall cease to hold office if the Member-
- (a) resigns by giving one (1) month notice in writing to the Governor;
 - (b) is unfit or unable to discharge the functions of the office either by reason of infirmity or mental incapacity;
 - (c) has been convicted for offences involving dishonesty;
 - (d) is an undischarged bankrupt or is in obvious financial distress; or

(e) is guilty of gross misconduct in relation to the duties of the office.

(2) Notwithstanding the provisions of sub-section (1) above, the Governor may remove any Member of the Board, if satisfied that it is in the public interest to do so.

Allowances

- 19.** Members of the Board shall be paid such remuneration and allowances as may be approved by the Governor.

Meetings of the Board.

- 20.** (1) The Board shall in each year hold a general meeting as its Annual General Meeting in addition to any other meetings in that year, and it shall specify the meeting as such.
(2) The Annual General Meeting shall be held within six (6) months after the close of each financial year, and it shall be open to the public who shall be given adequate notice of the meeting and salient points from the Annual Report'
(3) The Board shall ordinarily meet for dispatch of business not less than three (3) times in any financial year.
(4) The Chairman shall preside at all meetings of the Board when present, and when not present, any other Member of the Board may be appointed by the Members present at the meeting to preside.
(5) Where not less than five (5) Members of the Board request the Chairman, by notice in writing signed by them, to convene an extraordinary meeting of the Board for the purposes specified in the notice, the Chairman shall, upon receipt of such notice, convene an extraordinary meeting of the Board for those purposes at the earliest convenient date.

Quorum

- 21** The quorum at any meeting of the Board shall be five (5) Members including the Chairman.

Voting

- 22.** (1) All questions at a meeting of the Board shall be determined by a majority vote of Members of the Board present and voting, being Members who under this paragraph are entitled to vote at such meeting.
(2) At any meeting of the Board, each Member other than the Director General shall have a deliberative vote, and if there is equality of votes, the Chairman of the meeting shall have a second or casting vote.

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- Proceedings* **23.** Subject to the provisions of this Law, the Board may make standing orders with respect to the holding of meetings of the Board, the notices to be given of such meetings, the proceedings at the meetings, keeping of minutes of such meetings and custody or the production for inspection of such minutes.
- Power to Co-opt.* **24.** Where the Board desires to obtain the advice of a person on any matter, the Board may co-opt such person as a Member for such period as may be required, and the person shall whilst so co-opted, have all the rights and privileges of a Member of the Board but will not be entitled to vote on any question or count towards a quorum.
- Filling of Vacancy.* **25.** (1) If a Member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Governor shall subject to the confirmation of the House appoint a person to fill the vacancy and the person so appointed shall complete the remainder of the term of office of the Member whose death, resignation, retirement, disqualification or removal occasioned the vacancy.
(2) A person appointed under subsection (1) of this section is eligible for another term of five (5) years only.
- Validity of Proceedings.* **26.** The validity of any proceeding of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of a member to the Board, or by reason that a person not entitled to do so took part in the proceeding.
- Disclosure of Interest.* **27.** (1) A Member of the Board who is in any way directly or indirectly interested in a transaction or project of the Board, shall disclose the nature of the interest at a meeting of the Board, and such disclosure shall be recorded in the minute book and the Member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.
(2) For the purpose of subsection (1) of this section, a general notice given at a meeting of the Board by a Member to the effect that the Member is interested in any trade or business or is a Member of a specified company or firm shall be regarded as sufficient disclosure of the Member's interest in relation to that transaction or project.

(3) A member of the Board may not attend in person a meeting of the Board in order to make a disclosure which is required to be made under this section, if the Member takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

PART IV

FINANCIAL PROVISIONS FOR THE AGENCY

*Funds of the
Agency.*

- 28.** (1) The Agency shall establish and maintain a fund, to be approved by the Board from which shall be defrayed all expenditure incurred by the Agency.
- (2) There shall be credited to the fund all-
- (a) monies appropriated to the Agency by the House from the first line charge on revenue of the State;
 - (b) subventions, fees and charges for services rendered or publications made by the Agency and
 - (c) other assets which may from time to time, accrue to the Agency.
- (3) The Agency may specify the manner in which assets or fund of the Agency are to be held, and regulate the payment into and out of the fund.
- (4) The Agency shall require the keeping of proper accounts and records of the fund in such form as may be specified in the Regulations to this Law.
- (5) The Agency may apply proceeds of the fund for—
- (a) the cost of administration of the Agency;
 - (b) the payment of salaries, fees and other remuneration of employees of the Agency or experts or professionals appointed by the Agency;
 - (c) the maintenance of any property acquired by or vested in the Agency and
 - (d) any expenditure connected with all or any of the functions of the Agency under this Law.

Bank Account.

- 29.** The Agency shall operate an account with a bank or banks in the State and the signatories to the account shall be the Director General, in the Director General's absence a designated representative and the head of the accounts department, in the head of account's absence, a designated representative or any person duly authorised by the Board in that behalf.

*Financial Year,
Budgeting and
Annual Report.*

- 30.** (1) The Financial year of the Agency shall be the same as that of the Government.
(2) Not later than six (6) months before the end of the financial year, the Agency shall submit to the Board an estimate of its expenditure and projected income during the succeeding year.
(3) The Agency shall keep proper accounts and records of its receipts, payment, assets and liabilities, and shall in respect of each financial year prepare a statement of account in such form as the Board may direct.
(4) The Agency shall at the end of each financial year, prepare and submit to the Board, a report in such form as shall accurately capture all the activities of the Agency during the preceding year and shall include in the report a copy of the audited accounts of the Agency for that year.

Account Audit.

- 31.** (1) The Agency shall keep proper account of all its expenditure and revenue and shall cause its account to be audited, not later than six (6) months after the end of each financial year, by external auditors appointed by the Auditor- General of the State, in accordance with the Audit Law.
(2) The Agency shall within six (6) months after end of each financial year, furnish the Governor with a copy of its audited account along with a report of the state of affairs of the Agency for the year reported on.
(3) In compliance with the provisions of subsections (1) and (2) of this Section, the Board shall cause the Report to be published in the State Official Gazette and its website.

PART V

GOVERNING RULES ON PUBLIC PROCUREMENT

*Governing Rules
on Public
Procurement.*

- 32.** (1) Subject to the exceptions under this Law, all procurements carried out by any procuring entity shall be governed by the following rules: -
(a) open competitive bidding using clearly defined criteria, and offering to every interested bidder equal information and opportunities to offer the works, goods and services needed;
(b) promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;

- (c) simple, sustainable, and standardized with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology;
 - (d) executing in an effective, efficient, transparent, timely and equitable manner to ensure accountability which shall conform with the provisions of this Law and its Regulations with the aim of achieving value for money and fulfillment of purpose;
 - (e) a system of accountability where public officers and persons involved directly or indirectly in the procurement process or its implementation are when warranted by circumstances to be investigated and held liable for their actions;
 - (f) public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of this Law and its Regulations, and that all public contracts are performed strictly according to specifications and
 - (g) procurement plans shall be supported by prior budgetary appropriation; no procurement proceeding shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.
- (2) All regulations, procedures and timelines to be prescribed pursuant to this Law and specified by the Agency shall always conform to the provisions of paragraphs (a)-(g) of subsection (1) above.
- (3) Where the Agency has set prior review or monetary benchmark pursuant to this Law, no fund shall be disbursed from the State Treasury or any bank account of any procuring entity for any procurement falling above the set benchmark without having obtained an appropriate approval instrument from the Agency.
- (4) A supplier, contractor or service provider acting jointly and severally shall be liable for all obligations and responsibilities arising from this Law and the non-performance or improper performance of any contract awarded pursuant to the provisions of this Law.
- (a) a supplier, contractor or service provider may be a natural or legal person;

- (b) suppliers, contractors or service providers acting jointly and severally shall be liable for all obligations and responsibilities arising from this Law and the nonperformance of any contract awarded pursuant to this Law and
 - (c) a supplier, contractor or service provider shall be duly registered with the Public Procurement Agency within the appropriate category.
- (5) All bidders, in addition to requirements contained in any solicitation document shall possess the following-
- (a) (i) professional and technical qualification to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure and
 - (iv) personnel to perform the obligations of the procurement contract;
- (b) possess the legal capacity to enter into the procurement contract;
- (c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding-up petition or proceedings;
- (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions and
- (e) not have any directors who have been convicted in any country for any criminal offence relating to fraud, financial impropriety, criminal misrepresentation or falsification of facts relating to any matter.
- (6) The Agency or any 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 the provisions of this Law, and for this purpose any such requirement shall apply equally to all bidders,
- (7) A bid or a tender shall be excluded from any particular procurement proceeding if-
- (a) there is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or

- former employee of a procuring entity or the Agency, in an attempt to influence any action, decision making or any procurement activity;
- (b) a supplier, contractor or service provider during the last three (3) years prior to the commencement of the procurement proceeding in issue failed to perform or to provide due care in performance of any public procurement;
 - (c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made compromises with their creditor within two (2) calendar years prior to the initiation of the procurement proceeding;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance or deference of such outstanding payment in installments;
 - (e) the bidder has been convicted 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 convicted for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; or
 - (g) the bidder fails to submit a statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in the same proceeding or who remains in subordinate relationship with other participants to the proceeding.
- (8) (a) Where a bid or tender is excluded under the provisions of subsections (6) and (7) (a - g) of this section, the Agency shall inform the bidder in writing

- the grounds for the exclusion of the bid or tender from public procurement; and
- (b) a procuring entity shall keep records of the proceeding in a manner prescribed by Agency.
- (9) All contract prices shall be considered as fixed, and not subject to any upward variation during the contract implementation, except under extraordinary circumstances and only upon prior approval of the Agency which shall from time to time be stipulated by Regulations, the basis for allowing or computing the quantum of such variations.
- (10) All communications and documents issued by procuring entities and the Agency shall be in English Language.
- (11) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Agency.
- (12) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period often (10) years from the date of the award.
- (13) Copies of all procurement records shall be forwarded to the Agency not later than three (3) months after the end of the financial year and shall include -
- (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 open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed by the Agency.
- (15) 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 cost evaluated and qualified bidder from the bidders that substantially respond to the bid solicitation.
- (18) Notwithstanding subsection (17) of this Section, the Agency may refuse to endorse the award of a contract for public procurement on the grounds that the price is manifestly excessive or unreasonably below the predetermined price, or that a procurement proceeding has been conducted in a manner that violates the provisions of this Law,
- (19) Pursuant to subsection (18) of this section, the Agency may direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a retender amongst the bidders substantially responsive to the initial bid solicitation based only on the price.
- (20) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposal or quotations other than in the summary form stating the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award.
- (21) The Accounting Officer of an entity and any officer to whom responsibility is delegated to is responsible and accountable for any action taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law or its Regulations.
- (22) The Accounting Officer of an entity shall ensure that the provisions of this Law and the Regulations made under are complied with and approval by the approving authority shall not absolve the Accounting Officer from accountability for anything done in contravention of the provisions of this Law or its Regulations.
- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made by the Agency.
- (24) Any person who has been engaged in preparing for a procurement or part of the proceedings may not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not 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 the services of a particular subcontractor as a requirement for participating in any procurement proceeding.

(26) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.

(27) The values in procurement documents shall be stated in Nigerian currency and where stated in foreign currency shall be converted to Nigerian currency using the prevailing rate of the Central Bank of Nigeria valid on the day of opening the tender.

Warranties

- 33.** All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART VI

ORGANISATION OF PROCUREMENT

Tenders' Board.

- 34.** (1) There is established by this Law in each of the State's Ministry, Extra-ministerial Office/Department/Agency, Parastatal and Corporation, a Tenders' Board.
(2) Subject to the approval of the Board, the Agency shall prescribe the membership of the Tenders' Board.
(3) The Tenders' Board shall have power to award and be responsible for the procurement of goods, works and services within the benchmark set in pursuant to this Law.
(4) In all cases where there is a need for prequalifications, the Chairman of the Tenders' Board shall constitute a technical evaluation subcommittee of the Tenders' Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders' Board who shall also be the Chairman of the Evaluation subcommittee,
(5) The Political Head of the Procuring Entity shall be notified about the decision Tenders' Board.

Procurement Office.

- 35.** (1) A procuring entity within the provisions of this Law shall establish a Public Procurement Office whose functions shall be to-
(a) initiate the entity's procurement process;

- (b) carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
 - (c) aggregate its requirement, within and between procuring entities to obtain economical gains and reduce procurement cost;
 - (d) conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite expression of interest;
 - (e) develop technical specifications;
 - (f) conduct pre-bid conferences when necessary;
 - (g) ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Law and Regulations as may be issued from time to time;
 - (h) prepare bid documents;
 - (i) supervise the development of all tenders;
 - (j) organize communications with bidders;
 - (k) issue receipts and keep bids in safe custody until opening;
 - (l) maintain procurement records and
 - (m) coordinate the evaluation of expression of interest documents submitted by consultants and forward list of qualified submissions to the Agency.
- (2) The procuring entity shall notify the Agency of the list of qualified submissions and the preferred mandate.
- (3) The procuring entity shall award a procurement contract after the Agency has issued a Certificate of Compliance.

*Offices Outside
the State.*

- 36.** The Board may with the approval of the Governor, open branch offices outside the State.

*Approving
Authority.*

- 37.** Subject to the monetary and prior review benchmark for procurements as may be determined by the Agency, the following shall be the Approving Authority for the conduct of public procurement -
- (a) in the case of a government agency, parastatal or corporation, a Parastatal Tenders' Board;
 - (b) in the case of a ministry or extra-ministerial entity, the Ministerial Tenders' Board; and
 - (c) in the case of a Local Government, a Tenders' Committee.

*Procurement
Planning.*

- 38.** Subject to Regulations as may be issued by the Agency, a procuring entity shall plan its procurement by –
- (a) preparing a needs assessment and evaluation;
 - (b) identifying based on (a) above, the goods, works or services required;
 - (c) carrying out appropriate market and statistical survey and on that basis, prepare an analysis of the cost implications of the proposed procurement;
 - (d) determining the appropriate method of procurement;
 - (e) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
 - (f) integrating its procurement expenditure into its yearly budget;
 - (g) identifying the period for implementing each Step of the procurement process and
 - (h) ensuring that the procurement entity function stipulated in this Section shall be carried out by a Procurement Planning Committee.

*Establishment
and Composition
of Procurement
Planning
Committee.*

- 39.** (1) For each financial year each procuring entity shall establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall comprise of the following Members –
- (a) the Accounting Officer of the procuring entity or a representative who shall be the Chairman of the Committee;
 - (b) Heads of all Departments and Units in the procuring entity;
 - (c) the Head of the procurement function of the procuring entity who shall be the Secretary;
 - (d) a representative of the financial function of procuring entity;
 - (e) a representative of the planning, research and statistics function of the procuring entity;
 - (f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement and
 - (g) a representative of the legal function of the procuring entity.

*Procurement
Implementation.*

- 40.** Subject to Regulations as may be issued by the Agency, a procuring entity shall implement its procurement plans as follow -
- (a) advertise/solicit for bids in adherence to this Law and Regulations as may be issued by the Agency;
 - (b) invite as an observer of the process, at least a non-governmental organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their observation report to the Agency and any other relevant agency or body including their own organization or association;
 - (c) receive, evaluate and make a selection of the bids received in adherence to this Law and Regulations as may be issued by the Agency;
 - (d) obtain approval of the Approving Authority before making an award;
 - (e) debrief the bid losers on request;
 - (f) resolve complaints/disputes if any;
 - (g) obtain and confirm the validity of any performance guarantee;
 - (h) ensure the execution of the Contract Agreement and
 - (i) announce and publicize the award in the format stipulated by this Law and Regulations as may be issued by the Agency.

*Accounting
Officer.*

- 41.** (1) The Accounting Officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and corporations the General Manager/Director-General, Council Manager of Local Governments and or officer of coordinate responsibility.
- (2) The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all procurement, and in particular shall be responsible for -
- (a) ensuring compliance with the provisions of this Law by the entity and liable in person for the breach or contravention of this Law or any regulation made hereunder, Whether or not the act or omission was carried out personally or by any subordinate and it

shall not be material that the Accounting Officer delegated any function, duty or power to any person or group of persons;

- (b) constituting the Procurement Planning Committee and its decisions;
- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State Budget;
- (d) integrating the 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 Evaluations Committee and
- (g) liaising with the Agency and ensuring the implementation of its Regulations.

*Composition of
the Evaluation
Committee.*

- 42.** (1) The Evaluation Committee of a procuring entity shall comprise of a representative each of the following-
- (a) Accounts/Finance Department;
 - (b) Legal Department;
 - (c) User Office;
 - (d) Subject Matter Expert; and
 - (e) Procurement Officer.
- (2) The most senior officer of the Evaluation Subcommittee shall be the Chairman, and the Procurement Officer shall be the Secretary of the Committee.

*Local
Government Area
Tenders'
Committee.*

- 43.** (1) There shall be a Tender's Committee of the Local Government Area which shall consider and approve all contracts which are forwarded to it from the executive committee of Local Government Area.
- (2) The Tender's Committee shall be a clearing house for award of contracts and consideration of professional competency of the contractors.

*Membership of
the Local
Government
Tenders'
Committee.*

- 44.** (1) The membership of the Local Government Tender's Committee of each Local Government Area shall consist of the -
- (a) Vice-Chairman who shall be the Chairman of the Committee;
 - (b) Secretary to the Local Government;
 - (c) Supervisor for works;
 - (d) Council Manager;

- (e) Legal Officer;
 - (f) Council Engineer; and
 - (g) Procurement Officer who shall be the Secretary of the Committee.
- (2) The Head of Department where the project is being initiated will formally present the project to the Committee.
- (3) The activities of the Committee shall be guided by the provisions of this Law, financial memoranda and other Regulations in the State.
- (4) The quorum of the Committee shall be five (5) Members including the Chairman of the Committee.

PART VII
PROCUREMENT METHODS FOR GOODS, WORKS AND
SERVICES

*Open Competitive
Bidding.*

- 45.** (1) The procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding except it is otherwise provided by this Law.
- (2) Any reference to Open Competitive Bidding in this Law means the process by which a procuring entity based on previously defined criteria, effect public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services needed.
- (3) No negotiations unless otherwise provided for by this Law shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is
- (a) in the case of goods and services the lowest cost evaluated responsive bid with regards to specifications and standard from the bidders Who responded to the bid solicitation; and
 - (b) in the case of services, the highest rated evaluated proposal from the firm which responded to the request for proposal.
- (4) The applicable procurement method based on monetary benchmark shall be determined by the Regulations of the Agency.

Invitation to Bid.

- 46.** (1) Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the State Executive Council, through the recommendation of the Board, shall set the monetary

benchmark appropriately for procurement under either system.

(2) In the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one relevant internationally recognized journal or other such publications, the official website of the procuring entity, the Agency's website and the State Procurement Journal not less than three (3) weeks before the deadline for submission of the bids for the goods, works and services.

(3) In the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity and the State Procurement Journal not less than four (4) weeks before the deadline for submission of the bids for the goods, works and services.

(4) Not later than six (6) months after the enactment of this Law, the Agency shall issue Regulations for the advertisement/publication of Invitations to Bid.

*Prequalification
of Bidders.*

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

(2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or service provider that requests them and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and delivery.

(3) Not later than six (6) months after the enactment of this Law, the Agency shall make Regulations stipulating the pre-qualification of bidders in any public procurement process.

(4) Bid Documentation shall be prepared by procuring entities based on the standard forms and manuals issued under the Regulations by the Agency.

*Bid
Documentation.*

48. (1) The Bidding Documents shall include the following-
(a) approve budget for the contract;

- (b) instruction to Bidders, including criteria for eligibility, bid evaluation as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
 - (c) terms of reference;
 - (d) eligibility requirement;
 - (e) description of the products, services or works concerned;
 - (f) plans and technical specification;
 - (g) form of Bid, price form, and list of goods or Bill of Quantities;
 - (h) delivery time or completion schedule;
 - (i) form and amount of bid security;
 - (j) form of contract, general and special conditions of contract.
- (2) Procuring entities may require additional document or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

Bid Security.

- 49.** (1) Subject to the monetary and prior review benchmark as may be set by the Agency, all procurements valued in excess of the sums prescribed by the Agency shall require a bid security in an amount not less than one per cent of the bid price by way of a Bid Guarantee issued by a reputable bank acceptable to the procuring entity or a Bid Bond issued by an insurance company acceptable to the Agency.
- (2) The Agency shall from time to time specify the principal terms and conditions of bid security to be posted by bidders.

Submission of Bids.

- 50.** (1) All bids in response to an invitation to Open Competitive Bidding shall be signed by an official authorized to bind the bidder to a contract and placed in a sealed envelope.
- (2) All bids shall have two (2) components, namely the technical and financial components, which shall be in separate sealed envelopes and submitted simultaneously; except where prequalification had earlier been conducted and financial bid only is subsequently requested.
- (3) All submitted bids shall be deposited and kept in a secured tamper proof bid box.
- (4) All submitted bids must be in English Language.

(5) The procuring entity shall issue a receipt showing the date and time the bid was received.

(6) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or service provider that submitted it.

(7) 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.

*Failure of
Bidding.*

- 51.** (1) There shall be a failure of bidding if –
- (a) no bid is received;
 - (b) no bid is qualified as the lowest cost evaluated responsive bid or biggest rated responsive bid; or
 - (c) where the bidder with the highest rated or lowest calculated responsive bid refuses, without justifiable cause to accept the award of the contract.
- (2) The contract shall be re-advertised and re-bided at the occurrence of any of the instances stated in subsection (1) of this Section except paragraph (c) in which case the next second best evaluated bid may be offered the contract.
- (3) The procuring entity shall observe the same process and set the new periods according to the same rules followed during the first bidding.
- (4) After the second failed bidding however, the procuring entity may resort to an alternate method of procurement as provided for by this Law.

Rejection of Bids

- 52.** A procuring entity may reject any bid at any time prior to the acceptance of a bid, without incurring any liability to the bidders.

*Cancellation of
the Procurement
Proceedings.*

- 53.** (1) A procuring entity may cancel any procurement proceedings in the public interest with the approval of the Agency, without incurring any liability to the bidders.
- (2) Procurement proceedings may be cancelled based on any of the following grounds-
- (a) no bid is submitted within the specified final time limit;
 - (b) none of the received bids are compliant;
 - (c) all compliant bids contain prices which substantially exceed the procuring entity's budget;

(d) the number of qualified candidates is less than a number that ensures a genuine competition on the envisaged contract; or

(e) any event beyond the procuring entity's control and unpredictable at the time of launching the award procedure, which frustrates the procurement proceeding.

(3) Where a contract award procedure is cancelled without the award of a contract or conclusion of a framework agreement, a cancellation notice shall be published in the State Official Gazette, the website of the Agency or any other publicly accessible media.

*Validity Periods
of Bids.*

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

Bid Opening.

- 55.** 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;
- (d) ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the Tenders' Board or the Secretary of the

Tenders' Committee at the Local Government Level and

- (e) call-over to the hearing of all present the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary of the Tender's Board or a delegate in the minutes of the bid opening.

*Examination of
Bids.*

- 56.** (1) Every bid shall be first examined to determine if it –
- (a) meets the minimum eligibility requirements stipulated in the bidding documents;
 - (b) has been duly signed;
 - (c) is substantially responsive to the bidding documents and
 - (d) is generally in order.
- (2) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (3) The following shall not be sought, offered or permitted-
- (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive.
- (4) Notwithstanding the provisions of subsection (3) of this Section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of bids.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the bid.
- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations –
- (a) with respect to clauses in an offer:
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule, if time is of the essence;
 - (iii) Unacceptable alternative design; and
 - (iv) unacceptable price adjustment;
 - (b) with respect to the status of the bidder, the fact that the bidder is ineligible or not prequalified;
 - (c) with respect to bid documents an unsigned bid; and
 - (d) with respect to time, date and location for submission;

- (i) any bid received after the date and location for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, the bid 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 the 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) alternative design;
 - (c) alternative workmanship;
 - (d) omission in minor items;
 - (e) arithmetical errors;
 - (f) completion period where these are not of essence; and
 - (g) any other condition that has little impact on the bid.
- (11) Not later than six (6) months after the enactment of this Law, the Agency shall issue Regulations for the opening and examination of bids.

*Evaluation of
Bids.*

- 57.** (1) For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (2) The objective of bid evaluation shall be -
- (a) in the case of goods and works to determine and select the lowest cost evaluated bidders from the bidders responsive to the bid solicitation; and
 - (b) in the case of services; to determine the highest rated bidder from the bidders responsive to the bid solicitation.
- (3) Not later than six (6) months after the enactment of this Law the Agency shall issue Regulations stipulating the mode for the evaluation of bids.

*Disqualification
of Bids.*

- 58.** A procuring entity shall disqualify at any time, a bidder who submits documents containing false information or documents forged for purposes of qualification and, such disqualification shall be published in the State Official Gazette.

*Confidentiality of
Bid.*

- 59.** (1) Without prejudice to the provisions of this Law relating to advertisement of award of contract and to information to bidders, procuring entities shall not disclose information forwarded to them by bidders labeled as confidential, such information includes technical aspects, trade secrets and confidential information of bids.
- (2) Confidential information contained in any bid concerning commercial, financial, technical information, trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process, under any circumstances.
- (3) After the public opening of bids, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the contracting authority or the procuring entity shall be disclosed to any bidder or any third party until the award decision is notified to the successful bidder.

*Acceptance of
Successful Bids.*

- 60.** (1) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation.
- (2) Notwithstanding the provision of subsection (1) of this section and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.
- (3) Notice of the Success of its bid shall immediately be communicated to the successful bidder.
- (4) The procuring entity shall notify the Agency of the list of qualified submissions and the preferred bidder.
- (5) The Procuring entity shall award a procurement contract after the Agency has issued a Certificate of No Objection.
- (6) Notwithstanding the provision of subsection (3) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice communicated to a successful bidder shall serve only for notification purposes only and shall not howsoever be construed as a procurement award.

*Limitation of
Time for
Procurement
Award.*

- 61.** Without prejudice to the provisions of this Law the period between the opening of bids and the award of contract shall be as specified in the Regulations to this Law.

*Termination of
Award.*

- 62.** (1) When a contract award procedure has been launched by publication of a procurement notice, it may be terminated where –
- (a) a contract of framework agreement is concluded;
 - (b) the award procedure is cancelled for one of the following reasons –
 - (i) no tenders submitted within the specified final time limit;
 - (ii) none of the received tenders are compliant;
 - (iii) all compliant tenders contained prices substantially exceeding the procuring entity's budget;
 - (iv) the number of the received compliant tenders is less than three (3) and does not ensure a genuine competition on the contract concerned; or
 - (v) the number of qualified candidates is less than three (3) and does not ensure a genuine competition on the envisaged contract; and
 - (c) the award procedure is cancelled for other reasons beyond the procuring entity's control and unpredictable at the time of launching the award procedure.
- (2) Where a contract award procedure is cancelled without the award of a contract or conclusion of a framework agreement, a cancellation notice shall be published in the State Official Gazette.

PART VIII PROCUREMENT OF CONSULTANCY SERVICES

*Expression of
Interest to
Provide Services.*

- 63.** (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 (1) national newspaper and the procurement journal;
 - (b) where the value of the services to be procured is less than Ten Million Naira ₦10,000,000.00 or with the approval of the Agency, 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 (10) consultants or service providers to make proposals for the provision of the services in a format stipulating-

- (i) a statement of qualifications of the consultant to provide the service;
- (ii) a statement of understanding of the procuring entity's needs;
- (iii) the methodology for providing the service;
- (iv) the time frame for providing the service; and
- (v) the cost or fee for the service.

(2) Notwithstanding the provisions of subsection (1) above; the amount applicable to Self-Accounting Arms of Government shall be as stipulated in the Regulations to this Law.

*Request for
Proposal to
Provide Services
for
Unascertainable
Needs.*

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

*Content of the
Request for
Proposal.*

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

*Clarification and
Modification of
Request
Proposals.*

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

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

(4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues without identifying the sources of request for clarifications.

(5) The minutes shall be provided promptly before the deadline for submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into accounts in preparing their proposals.

*Submission of
Proposals.*

67. (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 ten (10) days between the issue of the notice or request and the deadline for submission.

(2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.

(3) A proposal received after the deadline for Submission of proposals shall be returned to the sender unopened.

(4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly.

(5) The technical evaluation committee shall not have access to or insight to the financial proposals until the evaluations including any review by the Agency is concluded.

*Criteria for
Evaluation of
Proposals.*

68. (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of-

(a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;

- (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposal price, including any ancillary or related cost;
- (d) the extent of participation by local personnel, the economic development potential offered by the proposal including domestic investment or other business activity, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultants or service providers; and
- (e) security considerations.

(2) A procuring entity may accord a margin of preference for domestic consultants or service providers which shall be calculated in accordance with the Regulations, as issued by the Agency and shall be reflected in the record of the procurement proceedings.

General Selection Procedure.

- 69.** (1) The procuring entity shall select the successful proposal by either choosing the proposal with -
- (a) the lowest evaluated price; or
 - (b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (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 where Price is a Factor.

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

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

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

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

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

(6) The successful proposals shall be-

(a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) of this section, from price in the case of quality and cost-based selection;

(b) the proposals with the lowest price in the case of least-cost selection: or

(c) the highest ranked technical proposal within the budget in the case of fixed budget selection.

(7) The consultants with the winning proposal shall be invited for negotiations which shall focus mainly on the technical proposals.

*Selection
Procedure where
Price is not a
Factor.*

71. (1) Where the procuring entity elects to make a quality based selection based on consultants' qualification or single source selection, it shall engage in negotiations with consultants in accordance with this section.

(2) The procuring entity shall-

(a) establish a weight with respect to quality and price of the proposals;

(b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this section;

(c) inform the consultant that attained ratings above the weight that may be considered for negotiations, if the

negotiations with the consultant with the best rating do not result in a procurement 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 the consultant invited under subsection (2)(b) 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 other suppliers or contractors for negotiations on the basis of their ratings until it arrives at a contract or rejects the remaining proposals.

(4) The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

PART IX

SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

*Special and
Restricted
Methods of
Procurement.*

72. A Procurement entity may with the approval of the Agency conduct procurement by other methods other than open tendering such as-

- (a) Direct Procurement;
- (b) Emergency Procurement;
- (c) Restricted Tendering (Selective/Nominative);
- (d) Request for Quotation;
- (e) Electronic Procurement (E-Procurement);

*Direct
Procurement.*

73. (1) A procuring entity may carry out direct procurement where-

(a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive right in respect of the goods, works or services, and no reasonable alternative or substitute exists;

(b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impracticable due to any unforeseeable circumstances giving rise to the urgency

which is not the result of any conduct on the part of the procuring entity;

(c) owing to catastrophe event, there is an urgent need for the goods, works or services making it impracticable 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 because of standardization;

(ii) there is 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 procuring entity.

(iii) the limited size of the proposed procurement in relation to the original procurement provides justification;

(iv) the reasonableness of the price and the suitability of alternatives to the goods, works or services in question merits the decision.

(2) The procuring entity may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor and shall include in the record of procurement proceeding, a statement of the grounds for its decision and the circumstances in justification of single source procurement.

*Emergency
Procurement.*

74. (1) Subject to the approval of the Governor, a procuring entity may initiate emergency procurement where-

(a) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an act of God;

(b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken to maintain them in their actual value or usefulness;

(c) a public project may be seriously delayed for want of an item of a minor value; or

(d) human life is threatened.

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

(3) All procurements made under emergency shall be handled expeditiously having due regard to 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 Agency which shall verify same.

*Restricted
Tendering.*

- 75.** (1) Subject to the approval of the Agency, a procuring entity may by reasons of economy, efficiency, special skills, experience and proven track record of a contractor or service provider over a period of time, initiate procurement by means of restricted procurement if –
- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
 - (c) the procedure is used as an exception rather than the norm.
- (2) The Agency shall by its Regulations specify instances where restrictive or direct contract tendering may be applicable to procuring entities.
- (3) Where a procuring entity engages in restricted tendering on the basis that-
- (a) the goods, works and services are available from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services; it shall select in a non-discriminatory manner the number of suppliers or contractors that will ensure effective competition.
- (4) The provisions of this Law regarding open competitive bidding shall apply to restrictive tender proceedings only to the extent of the variance by this section.

*Request for
Quotation.*

- 76.** (1) A procuring entity may carry out procurement by requesting for quotations from suppliers or contractors where the value of the good, works or services to be

procured does not exceed a sum that shall, be set in the procurement regulation.

(2) Generally, quotations shall be obtained from at least three (3) unrelated contractors or suppliers.

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

(a) be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes are to be included in the price: and

(b) give only one quotation and shall not be allowed to change or vary the quotation.

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

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

*Electronic
Procurement (E-
Procurement).*

77. (1) Not later than twelve (12) months from the commencement of this Law or at such other time as the Governor may consider appropriate, the Board shall design and set up a secured electronic portal to be known as the Enugu State Government Electronic Procurement System, which shall be the primary source of information for all public procurement matters and opportunities within the purview of this Law and the Regulations issued under this Law.

(2) Subject to the provisions of this Law and its Regulations, it shall be lawful for any procuring entity to consider any or all or its tenders by electronic auction and or simulation on its electronic portal, provided that the use of the electronic system shall be transparent, efficient, and economical.

PART X

SUPPLEMENTARY PROVISIONS

*Register of
Awards.*

78. The Agency shall maintain a register of awards, where the details of all procurement awards awarded by the procuring entities shall be kept.

*Domestic
Preference.*

79. (1) The 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 in a foreign Country.

(2) Where the procuring entity intends to allow domestic preferences the bid document shall clearly indicate any preference to be granted to domestic suppliers and contractors and the criteria for eligibility for such preference.

(3) Margin of preference may apply to tenders under all International competitive bidding.

(4) The Agency shall, by Regulation, set the limit and the formulae for computation of margins of preference.

*Advance
Payments.*

- 80.** (1) Advance payment of Forty per cent (40%) may be paid to a supplier or contractor, except where it is agreed with the contractor that the sum of twenty per cent (20%) be paid as initial payment in respect of heavy capital project(s).
- (2) Advance payment shall be guided by Regulations made by the Agency.
- (3)(a) In the case of national competitive bidding, an unconditional advance payment guarantee or bond issued by a reputable bank, or institution acceptable to the Tender's Board;
- (b) In case of international competitive bidding, an unconditional advance payment guarantee issued or advance payment bond by a reputable bank, acceptable to the Tender's Board; or
- (c) In the case mentioned in (a) and (b) above, the Tender's Board may accept other forms of security which it considers sufficient to guarantee performance.
- (4) After advance payment has been made to a supplier or contractor, no further payment shall be made to such supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

*Performance
Guarantee or
Bond.*

- 81.** Prior to the signing of the contract, the successful bidder may be required in the circumstances deemed necessary by the Board, as a further measure of guarantee for the faithful performance of the procurement contract and compliance

with obligation under the contract, to post a performance security in such form and amount as specified in the bid solicitation.

*Interest on
Delayed
Payments.*

- 82.** (1) Payment for procurement of goods, works and services shall be settled promptly and diligently.
(2) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate, confirmation or authentication by the Ministry, Extra-Ministerial Office, Government Agencies, Parastatals or Corporations shall be deemed a delayed payment.
(3) All delayed payments shall attract interest at the rate specified in the contract document.
(4) All contracts shall include terms, specifying the penalty for late payment of more than sixty (60) days.

*Project
Certification.*

- 83.** (1) A team of project officers which must include an engineer from the Agency shall be in charge of supervision and certification of projects undertaken by the Office.
(2) The duly authorized project officers shall inspect and certify that the project is duly completed in accordance with the contractual terms and agreement.

*Tampering
Report and
Illegal Collection
of Gratification.*

- 84.** (1) As from the commencement of this Law, an officer or project management consultant charged with monitoring and reporting on a project who connives with a contractor to write a fake report or a report that conceals the inadequacy of a project inspected commits an offence, and is liable on conviction to three (3) months imprisonment and the appropriate disciplinary action(s) in the Civil Service Rules.
(2) An officer that demands for bribe or gratification in carrying out the duties and obligations under this Law commits an offence and is liable under the provisions of Section 126 of the Criminal Code.

*Failure of
Contractual
Performance.*

- 85.** A contractor/concessionaire who fails to perform the contractual agreement or deliver on the contract after collection of advance payment from the government shall have the contract terminated immediately and will be liable to the sum collected.

*Record of
Procurement
Proceedings.*

- 86.** Every procuring entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Agency.

PART XI

INVESTIGATION AND CHALLENGE PROCEEDINGS

*Investigation by
the Agency.*

- 87.** (1) The Agency may conduct an investigation into 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 it necessary or desirable to prevent or detect a contravention of this Law.
- (2) The Agency may in the course of its investigation-
- (a) at any time during normal office hours, enter the premises of a procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceedings under investigation;
 - (b) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document;
 - (c) search the premises for any book, records, account or document;
 - (d) examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant;
 - (e) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
 - (f) require any officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in their books, records, accounts or documents; and
 - (g) provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.
- (3) The power to enter and search conferred by subsection (2)(a) and (b) of this section shall not be exercised except the Agency has first obtained an order of the State High Court without the necessity of putting the procuring entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.

- (4) The Agency shall, if satisfied that there has been a contravention of the provisions of this Law or any of its Regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which shall include recommending-
- (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contracts;
 - (c) ratification of anything done in relation to the proceedings; or
 - (d) a declaration consistent with any relevant provisions of this Law.
- (5) On completion of an investigation, the Agency shall send a summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant.
- (6) The Agency shall afford any procuring entity, bidder, supplier or contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under subsection (4) of this section.
- (7) The Agency may pursuant to an advice of a procuring entity, as a result of its review on a procurement or report of investigation by a relevant government Agency, issue a variation order, requiring a contractor at own expense to repair, replace, or to do anything in the contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required under the contract.

*Administrative
Review and
Procedure for
Complaints
Against a
Procuring Entity
to the Agency.*

- 88.** (1) A bidder may seek administrative review of any omission or breach by a procuring entity of the Agency under the provisions of this Law and its Regulations.
- (2) The following procedure shall apply to complaints against a procuring or disposing entity -
- (a) a complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer of the procuring entity or disposing entity, who shall on receiving the complaint make a decision in writing within fifteen (15) working days indicating the corrective measures to be taken, including the suspension of the proceedings where the accounting officer deems it necessary and gives reasons for this decision;

- (b) where the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Agency within ten (10) working days from the date of communication of the decision of the accounting officer;
 - (c) upon receipt of a complaint, the Agency shall promptly 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 Agency settles the matter;
 - (d) before taking any decision on a complaint, the Agency shall notify all interested bidders of the complaint considering representations from the bidders and from the respective procuring or disposing entity and
 - (e) the Agency shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted.
- (3) The Director General shall constitute a Review Committee comprising of technical, financial and legal experts to assist in the review process.
- (4) In taking its decision on an application that it has entertained, the Agency may-
- (a) dismiss the complaint;
 - (b) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity or the Board;
 - (c) declare the rules or principles governing the subject matter of the complaint and
 - (d) revise an improper decision by the procuring or disposing entity or the Board substituting same with its own decision.

*Judicial Review
of the Decision of
the Agency.*

- 89.** (1) A bidder not satisfied with the decision of the Agency may apply to the State High Court for review of the decision.
- (2) Upon receipt of an application for review, the court may do any of the following-
- (a) order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; or
 - (b) order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force; if and for as long as it deems such a suspension necessary to protect the interest of the applicant unless the court decides that

urgent public interest considerations require the procurement proceedings, the procurement contract or the framework agreement, as applicable to proceed.

(3) The court may extend or set aside any suspension order made under the provisions of subsection (2) of this section, taking into account the consideration provided under subsection (2) of this section.

(4) The court shall-

(a) order the suspension of the procurement proceedings for a period of ten (10) working days where an application is received prior to the deadline for presenting submissions of bid; or

(b) order the suspension of the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement as the case may be, where an application is received after the deadline for presenting submissions and where no standstill period has been applied;

Unless the court decides that urgent public interest considerations require the procurement proceeding, the procurement contract or the framework agreement, as applicable, to proceed.

(5) Promptly upon receipt of the application, the court shall-

(a) suspend or decide not to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement, as the case may be in accordance with subsections 3 and 4 of this section;

(b) notify the procuring entity and all parties in the procurement proceedings of the application and its substance;

(c) notify all parties in the procurement proceedings-

(i) of its decision on suspension, where the court decides to suspend the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement;

(ii) the period of the suspension;

(iii) where it decides not to suspend, the reason for its decision.

(6) The Court shall dismiss the application and shall set aside any suspension order where it finds that-

(a) the application is without merit; or

(b) the applicant has no locus standi.

(7) The Court shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceedings of the dismissal and the reason thereof and that any suspension in force is set aside; such a dismissal constitutes a decision on the application.

(8) The notice to the applicant, the procuring entity and other participants to the procurement proceedings under subsections 5 and 7 of this Section shall be given after the receipt of the application.

(9) Promptly upon receipt of a notice under subsection (5)(b) of this Section, the procuring entity shall provide the court with effective access to all documents relating to the procurement proceedings in its possession in a manner appropriate to the circumstances.

(10) In taking its decision on an application that it has entertained, the court- (a) may declare the legal rules or principles that govern the subject matter of the application; and

(b) shall address any suspension in force and take one or more of the following actions, as appropriate-

(i) prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Law;

(ii) require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Law to act, take a decision or to proceed in a manner that is in compliance with the provisions of this Law;

(iii) cancel in whole or in part an act or a decision of the procuring entity or the Agency that is not in compliance with the provisions of this Law;

(iv) review a decision by the procuring entity or the Agency that is not in compliance with the provisions of this Law;

(v) affirm a decision of the procuring entity or the Agency;

(vi) cancel the award of a procurement contract or framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Law and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of the cancellation award;

(vii) order that the procurement proceedings be terminated;

- (viii) dismiss the application; and
- (ix) take such alternative action as is appropriate in the circumstances.
- (11) The decisions of the court under subsection (10) of this section shall be issued as soon as possible.
- (12) The court shall immediately thereafter communicate the decision to the procuring entity, the Agency, the applicant and to all other parties in the review proceedings.
- (13) The Chief Judge shall make a practice direction to facilitate expeditious conduct of the judicial review.

PART XII

DISPOSAL OF PUBLIC PROPERTY

*Disposal of
Public Property.*

- 90.** (1) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (2) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (3) The Board shall, with the approval of the Governor -
- (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue Regulations detailing operational principles and organisational modalities to be adopted by all procuring entities engaged in the disposal of public property and
 - (c) issue standardized documents, monitor implementation, enforce and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (4) The means of the disposal of public property shall include -
- (a) sales and rentals;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auctions;
 - (e) transfer from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorised variation.

PART XIII

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

*Legal
Proceedings.*

- 91.** (1) Subject to the provisions of this Law, no suit expiration of thirty (30) days after written notice of intention to

commence such suit has been served upon the Agency by the intending claimant or claimant's agent; and the notice shall clearly state-

- (a) the cause of action;
- (b) the particulars of claim;
- (c) the name and address of legal practitioner of the intending claimant and
- (d) the relief sought

(2) The Director General, officers, employees or agents of the Board shall not be liable for any act or omission done in the exercise of any function or power conferred by this Law upon the Board and or its Director General, officers, employees or agents.

(3) An officer or employee of the Agency shall be indemnified from the assets of the Agency against any liability incurred in defending any civil proceeding, if the proceeding is brought against the officer in the capacity as an officer or employee of the Agency.

*Service of
Documents.*

- 92.** A notice, summons or other documents required or authorised to be served upon the Agency under the provisions of this law or any other enactment, may be served by delivering it to the Director General or sending it by registered post and addressed to the Director General at the principal office of the Agency.

*Offences and
Penalties.*

- 93.** (1) A person who contravenes any provision of this Law commits an offence and is liable on conviction to a term of imprisonment not less than five (5) years but not exceeding ten (10) years without an option of fine.
- (2) It shall be an offence to-
- (a) open or tamper with any sealed bid or any document required to be sealed, divulging their contents prior to the appointed time for the public opening of bids or other documents;
 - (b) delay, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or its Regulations;
 - (c) enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted

in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned;

- (d) engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way;
- (e) directly or indirectly attempting to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract;
- (f) split tenders to enable the evasion of monetary benchmark set;
- (g) bid- rigging;
- (h) alter any procurement document with intent to influence the outcome of a tender proceeding;
- (i) use fake documents or encouraging their use;
- (j) withdraw a bid after it has qualified as the lowest cost evaluated bid/highest rated bid;
- (k) willful refusal to allow the Agency or its duly authorised officer to have access to any procurement record and
- (l) refuse to accept an award without just cause or for the purpose of forcing the procuring entity to award the contract to another bidder, this shall include the non-submission within the prescribed time, or delaying the submission of requirements.

(3) Any person whilst carrying out duties as an officer of the Agency, or any procuring entity who contravenes any provision of this Law and its Regulations, commits an offence and is liable on conviction to a cumulative punishment of -

- (a) five (5) years imprisonment without option of fine and
- (b) summary dismissal from Government Service.

(4) Any corporate body or firm that contravenes any provision of this Law and its Regulations commits an offence and is liable on conviction to a cumulative penalty of -

- (a) being barred from all public procurement for a period not less than ten (10) years and
- (b) a fine equivalent to the value of the procurement in issue

(5) Where a corporate body or firm is convicted pursuant to subsection (4) of this Section, every Director of the Company shall be guilty and be liable on conviction to a term of imprisonment for not less than three (3) years but not exceeding five (5) years without an option of fine, unless it is proven that the offence upon which the conviction was based was committed without the Director's knowledge, consent or connivance

(6) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law

(7) Bid-rigging pursuant to subsection (2)(g) of this Section means an agreement between persons where

(i) offers submitted have been prearranged between them; or

(ii) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and or loss of value to the State Treasury

(8) For the purpose of subsection (7) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether totally or partially, directly or indirectly

(9) For the purposes of subsections (2), (5) and (8) above, it shall be sufficient to prove that a reasonable business person should have known that an action would result in the company/firm having an undue advantage over other bidders to the detriment of the State Treasury.

PART XIV MISCELLANEOUS

*Scope of
Application.*

- 94.** (1) The provisions of this Law shall apply to all procurement of goods, works and services carried out by -
- (a) the State Government, Local Governments and all procuring entities in the State;
 - (b) any public body in the State engaged in procurement, and shall include Ministries, Departments, Bureaus,

Offices and Agencies of the State, Extra-ministerial Offices, Parastatals and Corporations; and

- (c) all entities mentioned above which derive any fund appropriated or proposed to be appropriated for any type of procurement described in this Law from the State Government Consolidated Revenue Fund or other funds such as revolving funds and grants.

Common Seal.

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

Annual State Procurement Assessment Report.

- 96.** (1) The Agency Shall prepare a comprehensive report each year on all procurement activities not being of a recurrent nature; carried out by all procuring entities within the purview of this Law to the House.
(2) The annual report shall give an accurate account of the conduct of all capital procurement carried out by procuring entities within the purview of this Law.

Power to make Regulations.

- 97.** The Agency may with the recommendation of the Board make Regulations for the proper implementation and enforcement of the provisions of this Law and without prejudice to any other provision, make Regulations subject to the approval of the State Executive Council with respect to all or any of the following matters-
- (a) the structure and content of Annual Procurement Plans;
 - (b) the standard and content of all bid solicitation documents;
 - (c) the standard and content of all procurement contracts;
 - (d) the use of any procurement method;
 - (e) fees chargeable by any procuring entity for matters relating to public procurements; and

- (f) the prevention and detection by the Agency of any act amounting to an infringement on the provisions of this Law and its Regulations.

*Transitional
Provision to the
Due Process and
Budget
Monitoring Unit.*

- 98.** The Due Process and Budget Monitoring Unit of the State Government existing immediately before the coming into effect of this Law shall be deemed to be the Agency established by virtue of this Law until restructured.

*Continuance in
Office of Existing
Management
Staff and other
Staff of the Due
Process and
Budget
Monitoring Unit.*

- 99.** (1) Any person who held office as Management Staff, Head of Department or any other position at the Due Process and Budget Monitoring Unit of the State Government immediately before the commencement date shall as from the commencement date be deemed to have been appointed thereto as the case may be under or by virtue of this Law and shall continue in such office until replaced by the provisions or arrangement under this Law.
(2) Any person (not being a person with respect to whom sub-section (1) of this section applies) who held office as a member of staff of the Due Process and Budget Monitoring Unit of the State Government immediately before the Commencement date shall, as from the commencement date, be deemed to have been appointed thereto under or by virtue of this Law and shall hold such appointment until such retirement time as prescribed by Law.

*Transitional
Provisions
Relating to
Existing
Departments of
the Due Process
and Budget
Monitoring Unit.*

- 100.** The Departments and other units existing immediately before the commencement date shall, as from the commencement date, be deemed to be the Departments and units of the Agency until the same may be reconstituted or replaced in accordance with the provisions of this Law.

*Transfer to the
Agency of Land,
Properties, Rights
and Obligations.*

- 101.** (1) All properties vested in the Due Process and Budget Monitoring Unit of the State Government immediately before the Commencement date shall as from the commencement date vest in the Agency by virtue of this Law and without further assurance, and as from the commencement date the Agency shall have all rights and be subject to all liabilities which the Due Process and Budget Monitoring Unit of the State Government had or to which it was subject immediately before the commencement date.

(2) Subject to the provisions of this Law, every Deed, Agreement or other instrument or any arrangement whatsoever, to which the Due Process and Budget Monitoring Unit of the State Government, either by itself or through any other authority or person was a party immediately before the commencement date shall, as from the commencement date, have effects as if the Agency had been a party to the same.

Repeal.

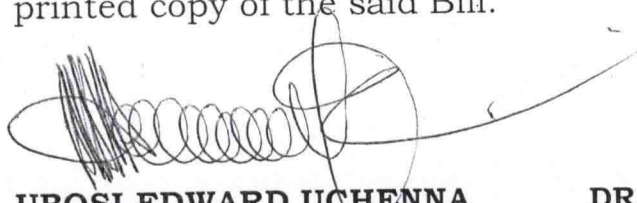
102. The Enugu State Public Procurement Law No. 10, 2010 is repealed.

Savings.

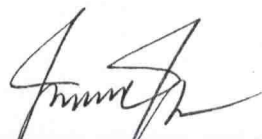
103. Nothing in this Law shall invalidate any action done under the repealed Law.

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



UBOSI EDWARD UCHENNA
Speaker of the House of Assembly



DR. EMMANUEL OKEY UDAYA, CNA, ACArb
Clerk of the House/Perm. Sec.

Assented to this ^{30th}..... Day of ^{December}....., 2021.



RT. HON. IFEANYI UGWUANYI
Governor of Enugu State