

A BILL
FOR

Long title. A Law to establish the Akwa Ibom State Bureau of Public Procurement for the conduct of Public Procurement in the State and for other matters connected thereto.

Commencement. ()

Enactment. BE IT ENACTED BY THE AKWA IBOM STATE HOUSE OF ASSEMBLY as follows:

PART I
Scope and Application

Scope and application. 1. (1) Notwithstanding the provisions of any other law, this Law shall apply to all procurement of goods, works, and services carried out by the State Government, its ministries, departments, authorities, counterpart funded projects, agencies, Judiciary, Legislature, State universities and colleges, government-owned and/or controlled corporations, government institutions and Local Government Councils and their constituent and derivative units and all entities set up under the Constitution or laws of the State House of Assembly and/or whose funding derives from the State Treasury, their own internally generated revenue, the State's share of the Consolidated Revenue Fund and special allocations from the Federal or State Treasury, whatever form this may take.

(2) The provisions of this Law shall apply to the procurement and disposal of goods, works, services, and disposal of assets by all entities covered by subsection (1) of this section.

(3) Nothing in this Law shall absolve the State from any obligation to comply with particular sets of procurement regulations arising from any international treaty, bilateral or grant agreement to which the State is a party.

(4) No law, rule or practice shall operate or be invoked or relied upon by any person to deny, limit or in any way negatively affect

the exercise of the right to information conferred by this Law upon any person, group of persons, institution, body, or Bureau.

Objectives of Law

2. The objectives of this Law are to –

- (a) create a Bureau which shall have powers and responsibility to regulate, monitor, supervise, evaluate and audit the public procurement processes of all procuring entities in the State;
- (b) harmonize the existing government policies and practice on public procurement;
- (c) train personnel and build State-wide institutional capacities for a sustainable and efficient public procurement system;
- (d) ensure probity, accountability and transparency in the conduct of procurement activities in the State;
- (e) ensure the establishment of fair pricing standards and benchmarks;
- (f) ensure the application of fair, competitive, transparent and value-for-money standards and practices in the procurement and disposal of public assets and services;
- (g) create ample opportunities for the citizenry, particularly, small and medium scale enterprises to partake in the economic opportunities and benefits of public procurement in the State;
- (h) create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from the public procurement processes in the State filed by procuring entities, bidders and the general public; and
- (i) enhance transparency, competitiveness and professionalism in the State public procurement system.

PART II

Establishment of Bureau of Public Procurement

- Establishment of Bureau. 3. (1) There is hereby established a body to be known as the Akwa Ibom State Bureau of Public Procurement (referred to in this Law as "the Bureau").
- (2) The Bureau –
- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name; and
 - (c) may acquire, hold or dispose of any property, moveable or immovable for the purpose of carrying out any of its of functions under this Law.
- Powers of Bureau. 4. (1) The Bureau shall have the powers to –
- (a) enforce monetary and prior review thresholds approved by the Council.
 - (b) prepare and issue, for use of all procuring entities, procurement regulations and monetary thresholds for the implementation of this Law;
 - (c) inspect and review any procurement transaction to ensure compliance with the provisions of this Law and regulations made pursuant to this Law;
 - (d) investigate and determine whether any procuring entity has violated any provision of this Law;
 - (e) blacklist or debar any supplier, contractor or consultant adjudged to have contravened any provision of this Law and regulations made pursuant to this Law;
 - (f) enforce the regulations and codes of conduct approved by the Council for the application of this Law to all stakeholders;
 - (g) subject to paragraph (a) of this subsection, certify and issue "Certificate of No Objection" for contract award and Interim Payments Certification in respect of all procurements within the established threshold

that qualify by the provisions of this Law and its implementing regulations;

- (h) stipulate to all procuring entities the procedures and documentations pre-requisite for issuance of "Certificate of No Objection" under this Law;
- (i) register and maintain a database of suppliers, contractors and consultants of all procuring entities in the State;
- (j) prescribe classifications and categorizations for companies on the register, publish invitation to tender, fix and receive tender fees on behalf of procuring entities with the aim of generating revenue for Government;
- (k) maintain a list of firms and persons that have been blacklisted or debarred from participating in the public procurement system and publish them in the State Procurement Journal and the Bureau's website;
- (l) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against any person, procuring entity, contractor or service provider;
- (m) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
- (n) act upon complaints by bidders and public procurement entities in accordance with the procedures set out in this Law, and when the complaint or appeal arising from the decision of an accounting officer relates to conduct of any person in the Bureau, such a complaint or appeal shall be referred to an independent committee, and for the purpose of determining such a complaint any officer(s) of the Bureau implicated by the complaint

shall not participate in arriving at a decision on the complaint;

- (o) nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;
- (p) direct the discontinuance, stoppage or suspension of any payments due from public fund under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law;
- (q) undertake procurement and contract performance audit of all procuring entities under this Law;
- (r) direct any procuring entity to seek and rely on technical advice of any other relevant procuring entity within the State service.
- (s) direct the transfer of the whole or any part of the procuring and disposal function of a procuring entity and disposing entity to a third party procuring entity or consultant for a period of time it may determine;
- (t) where there are persistent or serious breaches of this Law, regulations or any other guideline made under this Law, without prejudice to any existing law or regulation, recommend to the appropriate authority, after an opportunity for a defence in writing has been given to those involved, the appropriate may do any one or more of the following –
 - (i) suspend from office the officer(s) concerned with the procurement or disposal proceeding in issue;
 - (ii) remove from office, the head of any Procuring or Disposal Entity or the Chairperson of a Procurement Planning Committee or Tenders Board as the case may be;
 - (iii) discipline the Accounting Officer of any procuring entity;

- (iv) terminate or dismiss from employment, any staff of a procuring entity; or
 - (v) enforce any other sanction it may consider appropriate; and in addition;
 - (vi) debar any bidder, supplier, contractor or consultant found to be involved in the infractions and recommend to the relevant authority, the investigation and prosecution of any such infractions; and
- (u) 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, relevant authority or body.

(2) The Bureau may in the performance of its functions collaborate with all relevant agencies, persons and entities or hire consultants, provided that any such persons must be bound by the regulations and standards of conduct applicable to the Bureau and the Bureau shall ensure that their contract and or terms of collaboration or engagement so provide.

Management of
Bureau.

5. (1) The Bureau shall have a Management Committee headed by the Executive Secretary of the Bureau.

(2) The Management Committee of the Bureau shall consist of the Executive Secretary of the Bureau and such other heads of departments as may be approved by the Council.

(3) The departments of the Bureau may, subject to approval of the Council, include –

- (a) Public Procurement Department
- (b) Technical Services Department;
- (c) Planning, Research and Statistics Department;
- (d) Administration and Supplies Department;
- (e) Finance and Accounts Department; and
- (f) Legal Services Department

6. The functions of the Bureau shall be to –

- (a) formulate the general policies, guidelines and implementing regulations relating to public procurement in Akwa Ibom State for Council approval;
- (b) disseminate and educate the public and stakeholders on the provisions of the Law and its regulations, policies, guidelines and standard documents;
- (c) supervise the implementation of established procurement policies and regulations;
- (d) monitor the prices of tendered items and keep a database of standard prices which shall be open to the public;
- (e) publish the details of major contracts conducted in the State Procurement Journal, the Bureau's portal and by other means it may deem fit;
- (f) publish paper and electronic editions of the State Procurement Journal and maintain an archival system for it;
- (g) maintain a register and database of the particulars, classification and categorization of contractors and consultants;
- (h) collate and maintain in an archival system all State procurement plans and information;
- (i) undertake procurement research and surveys and advise the Council and government on the socio-economic effect of procurement practices and required improvements;
- (j) provide and co-ordinate training programmes to build the institutional capacity of all procuring entities within the purview of this Law and coordinate the training and development of service-wide procurement cadre;
- (k) act as the secretariat of the Council, request for and obtain from any procurement entity information

including reports, memoranda and audited accounts, tax clearance certificate and other information relevant to its functions under this Law, and liaise with relevant bodies or institutions, national and international, for effective performance of its functions under this Law;

- (l) prepare and update standard bid/tender and contract documents for all procuring entities in the State and the Local Governments;
- (m) respond expeditiously to enquiries from procuring entities;
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) review, for compliance, the procurement and award of contract procedures of every entity to which this Law applies;
- (p) perform procurement audits to determine levels of compliance and recommend criminal investigation to appropriate authorities;
- (q) receive, expeditiously investigate and decide complaints from bidders and the general public against public procurement procedures and practices, and the conduct of any procurement proceeding;
- (r) develop, introduce, update and maintain related database and technology for the conduct of public procurement in the State;
- (s) establish fair technical and pricing standards and benchmarks, enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- (t) build capacity of public officers and stakeholders in the public procurement process; and
- (u) subject to the approval of Council, review, amend and continuously update and publicize the code of ethics, the regulations and standard documents issued pursuant to this Law and ensure transparency,

fairness and the long-term sustainability of the outcome of every State procurement proceeding.

Fund and Resources of
Bureau

7. (1) The Bureau shall establish and maintain a fund from which shall be defrayed all expenses incurred by it.

(2) There shall be paid or credited to the fund –

- (a) all financial donations, sums and gifts to the Bureau, and debenture investments;
- (b) all monies as may be appropriated from time to time to the Bureau by the State Government for its operations or the operations of the Council, which monies shall be on first line charge ; and
- (c) any other monies of the Bureau no matter how earned.

(3) The Bureau shall keep proper accounts and records for the purpose of the fund in such form as may be specified in the regulations and shall –

- (a) charge its fund to meet all its expenditure;
- (b) stipulate the manner in which assets or the fund of the Bureau are to be held, and
- (c) regulate the making of payment into and out of the fund.

(4) The Bureau may, from time to time, apply the proceeds of the fund for –

- (a) the cost of administration of the Bureau;
- (b) the payment of salaries, fees and other remuneration of employees of the Bureau, experts or professionals appointed by the Bureau;
- (c) the maintenance of any property acquired by or vested in the Bureau;
- (d) any matter connected with all or any of the functions of the Bureau under this Law; and
- (e) any expenditure connected with all or any of the functions of the Bureau under this Law.

The Executive Secretary and other officers of the Bureau.

8. (1) There shall be for the Bureau, an Executive Secretary who shall be appointed by the Governor on such terms and conditions as may be specified in his letter of appointment.

(2) The Executive Secretary to be appointed under section 8(1) shall be a Civil Servant vested and experienced in Public Procurement matters and shall manage the affairs of the Bureau.

(3) The Executive Secretary shall be –

(a) the chief executive and accounting officer of the Bureau; and

(b) responsible for the execution of the policy and day-to-day administration of the affairs of the Bureau.

(4) Without prejudice to the provisions of this Law, the Executive Secretary of the Bureau may be removed from office by the Governor on the basis of –

(a) gross misconduct, or

(b) financial impropriety, or

(c) fraud, or

(d) physical inability to carry out the functions of his office, or

(e) manifest incompetence,

(5) The Bureau may from time to time engage such other officers on secondment from the Civil Service to fill positions in the administrative structure approved by the Council as are deemed necessary for the due performance of its functions under this Law.

Revenue generation.

9. The Bureau shall generate its revenue through its activities including publication, sales of bidding documents, "No Objection Certificates" for interim or other certificates related to contract award and such other fees.

Power to make Regulations.

10. The Management Committee, may with the approval of the Council and subject to this Law, make regulations for the proper implementation and enforcement of the provisions of this Law and,

without prejudice to the generality of the foregoing provisions, issue guidelines and make regulations with respect to –

- (a) the structure and composition of tenders boards and procurement planning committees within the purview of this Law;
- (b) the monetary thresholds in accordance with this Law;
- (c) the structure and contents of Annual Procurement Plans;
- (d) the standard and content of all tender solicitation documents;
- (e) the standard and content of all procurement contracts;
- (f) structure, standard and contents of all other documentation in the procurement process;
- (g) the procurement process and the use of any procurement method;
- (h) fees chargeable by any procuring entity for matters relating to public procurement or access to procurement documents, provided that such fees shall be nominal;
- (i) the detection and prevention of the commission of any offence or act amounting to an infringement of this Law and its regulations;
- (j) the creation of a document registry as a unit within appropriate department of each procuring entity and the Bureau, to focus on –
 - (i) receiving,
 - (ii) providing evidence of receipt of,
 - (iii) managing, and
 - (iv) archiving and cataloguing, in an easily retrievable manner, copies of every document generated in the procurement process by a procuring entity; and
- (k) any other matter in respect of which this Law has authorized the making of regulations or incidental to a matter for which the Law has authorized the making of regulations. Provided always that the

regulations and standard documents shall be subjected to public consultation, take account of unique features of local administration and in the case of local governments, the process and standard documents shall be further simplified.

Procurement
Assessment Report.

11 (1) Not later than four months after the end of each year, the Bureau shall prepare a comprehensive report on all procurement activities carried out by all procuring entities within the purview of this Law for presentation to the State Executive Council and State House of Assembly.

(2) The report shall give an accurate account of the conduct of all procurements carried out by procuring entities within the purview of this Law, including resolved and unresolved complaints, and the report shall be published in the State Government Official Gazette.

Bank Account.

12. The Bureau shall operate an account with a bank or banks in the State and the signatories to the account shall be the Executive Secretary and the Head of Finance and Accounts Department.

Account and Audit.

13. (1) The Bureau shall keep and maintain proper records of accounts in respect of all its revenue and expenditure and its accounts shall be audited not later than three months after the end of each financial year by auditors appointed by the office of the Auditor-General of the State.

(2) Not later than four months after the end of each financial year, the Bureau shall furnish the Governor with a copy of its audited account along with a report of the state of affairs of the Bureau for the year reported on.

(3) In compliance with subsections (1) and (2) of this section, the Bureau shall cause the report to be published in the State Government Official Gazette and its website.

PART III

Establishment of Public Procurement Council

Establishment of Council.

14. (1) There is hereby established a body to be known as the Akwa Ibom State Public Procurement Council (referred to in this Law as "the Council").

(2) The Council shall consist –

- (a) the Commissioner for Finance as Chairman;
- (b) the Commissioner for Works as member
- (c) the Attorney General/Commissioner for Justice as member;
- (d) the Commissioner for Economic Development as member;
- (e) the Chairman, Akwa Ibom Investment Corporation;
- (f) the Executive Secretary of the Bureau as Secretary;
- (g) a representative of the Secretary to the State Government;
- (h) a representative of the Head of Civil Service; and
- (i) a representative each of the –
 - (i) Chartered Institute of Purchasing and Supply Management;
 - (ii) Nigerian Bar Association;
 - (iii) Nigerian Society of Engineers;
 - (iv) civil society organisation; and
 - (v) media.

Powers of Council.

15. The Council shall have power to –

- (a) consider and review the monetary thresholds for the application of the provisions of this Law by procuring entities;
- (b) consider and approve policies formulated by the Bureau;
- (c) • approve any procurement guidelines or regulations to be made pursuant to this Law;
- (d) determine an appropriate and sufficiently lean and efficient internal management structure;

- (e) determine rules and guidelines for management and operation of the Bureau;
- (f) receive and consider for approval the audited accounts of the Bureau;
- (g) consider and approve changes in procurement procedure proposed by the Bureau, including changes that support adaptation to modern technology;
- (h) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

PART IV

Governing Principles on Public Procurement

Principles on
procurement.

16. (1) Subject to any exemptions under this Law, all procurements carried out by all procuring entities in the State shall, in all cases, be conducted by –

- (a) open competitive bidding;
- (b) promotion of competition, economy, efficiency, and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
- (c) standardized, simplified, sustainable and uniform processes which shall be adaptable to advancements in public administration and modern technology;
- (d) execution of all public procurement contracts in an effective, efficient, transparent, timely, equitable manner that shall ensure value for money, fitness for purpose and conform with the provisions of this Law and regulations deriving from it;
- (e) ensuring accountability where public officers and persons involved directly or indirectly in the procurement process or in the implementation of procurement contracts, abide by a defined code of ethics, and are, when warranted by circumstances, investigated and held accountable 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 implementing regulations; and that all public contracts are performed strictly according to contract specifications;
- (g) procurement plans supported by prior budgetary appropriations; and no procurement proceedings or contracts shall be formalized until the procuring entity has ascertained that funds are available to meet the maturing obligations.

(2) All regulations, guidelines, procedures, standard documents, templates and timelines to be prescribed pursuant to this Law and specified by the Bureau from time to time shall always conform with the provisions of subsection (1) (a) – (g) of this section.

(3) Where the Bureau has set monetary thresholds in the procurement regulations, no funds shall be disbursed from the State Treasury or any bank account or funds of any procuring entity for any procurement in contravention of the thresholds.

(4) For all cases where the Bureau shall set a monetary threshold, the Bureau shall prescribe by regulation and guidelines the conditions precedent to the award of any contract falling within or outside the set thresholds.

(5) Subject to the monetary thresholds as may be set under this Law, any procurement purported to be awarded in contravention of this Law or regulations issued by the Bureau shall be null and void.

(6) A supplier, contractor or consultant may be a natural or legal person, but when acting jointly, they shall be jointly and severally liable for all obligations and responsibilities arising from the infraction of this Law and the non-performance or improper performance of an contract awarded pursuant to this Law.

(7) All bidders, in addition, to requirements contained in a solicitation documents shall –

- (a) possess the required –

- (i) professional and technical qualifications to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure;
 - (iv) personnel and skill to perform the obligations of the procurement contract;
- (b) possess the legal capacity to enter into the procurement contract;
 - (c) accompany its bid with an affidavit disclosing whether or not any officer of the procuring entity or Bureau is a former, or present director, shareholder of the bidder or has any pecuniary interest in the bidder, listing all attachments or annexure to the bid and verifying that all information and documents presented in its bid are genuine, true and correct in all particulars.

(8) The Bureau 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.

(9) A bid and/or a tender shall be excluded from any particular procurement proceedings if –

- (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau in an attempt to influence any action, decision making or further his or its interest in any procurement activity;
- (b) the bidder, supplier, contractor or consultant during the three 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 a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two 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 if any is due, unless such bidder has obtained a lawful permit with respect to allowance for deferral or waiver of such outstanding payments;
- (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit within ten years period immediately preceding the bid;
- (f) the bidder has in its management or a reasonable portion of its equity is owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit within ten years period immediately preceding the bid;
- (g) the bidder fails to submit a statement on oath regarding its dominant or subordinate relations with respect to other participants in the procurement proceedings, or with other parties who have a relationship with another participant in the proceedings or it is found that other persons acting on behalf of the procuring entity in the procurement proceedings have been or remain in a subordinate or dominant relationship with it; or

(h) the bidder fails in any particular way to comply with any requirement contained in subsection (7) of this section.

(10) The procuring entity shall inform the bidder in subsection (9) (a) – (h) of this section in writing, the grounds for the exclusion of his or its bid from the procurement process in question and a record to such effect shall be kept in a manner as may be prescribed by the Bureau.

(11) All contract prices shall be considered as fixed and therefore not subject to any upward variations during contract implementation, except under extraordinary circumstances and only upon prior approval of the Bureau which shall from time to time stipulate by regulation, the basis for allowing or computing the quantum of such variations.

(12) All communications and documents issued by procuring entities, the Bureau and all other stakeholders relating to public procurement shall be in English language.

(13) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau, and every person generating every communication hereof shall submit a copy to the procurement document registry within seven days of its creation.

(14) 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 minimum period of ten years from the date of the award; provided that documents relating to on-going or uncompleted contracts shall be preserved and retained till at least ten years after the completion of such contracts.

(15) Copies of all procurement records shall be transmitted to the Bureau by each procuring entity not later than two months after the execution of each contract in the format determined by the Bureau and may include –

- (a) information identifying the procuring entity and the contractors;
- (b) the subject of the contract or procurement;

- (c) the date of the contract award;
- (d) the value of the contract;
- (e) the detailed records of the procurement proceedings; and
- (f) details of individual values of items procured, terms of the contract, technical specifications, standards of goods, works or services to be provided in accordance with the contract.

(16) All procurement records held by the Bureau or any procuring entity shall be open to inspection by the public at no cost; provided that any person requesting for copies of any record or document shall pay money that is enough to produce and certify such copies, if so required.

(17) Criteria stipulated as the basis upon which suppliers, contractors or consultants would be evaluated shall not be changed in the course of any procurement proceeding, and all relevant factors, in addition to price that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

(18) The burden of proving fulfilment of the requirements for participation in any procurement proceeding shall lie on the supplier, contractor or consultant, or any other person asserting such right.

(19) A contract shall, in the case of goods and works, be awarded to the lowest cost evaluated responsive bidder and in the case of services as provided for in section 45 of this Law.

(20) Notwithstanding subsection (19) of this Section, the Bureau may approve or direct any procuring entity not to proceed to a contract award on the grounds that the price is manifestly excessive or unreasonably below the predetermined price and/or that a procurement proceeding has been conducted in a manner that violates this Law: Provided that in cases of unreasonably low prices by a responsive bidder, the procuring entity must give adequate opportunity to the bidder in question to explain how he can accomplish the assignment at such low price and make such explanation public within two weeks of its decision, if the contract is not to be awarded to the low bidder.

(21) Pursuant to subsection (20) of this section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

(22) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, and actual contents of the bid or proposal or quotations submitted by bidders, other than in the summary form stating the result of evaluation and comparison of tender proposals or quotations received, until the successful bidder is notified of the award.

(23) The accounting officer of an entity and any officer to whom responsibility is delegated shall be responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of the provisions of this Law.

(24) The accounting officer of an entity shall ensure that the provisions of this Law and the regulations laid down by the Bureau are complied with and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of the provisions of this Law or its regulations.

(25) Procurement and disposal decisions of a procuring entity shall be made in strict adherence to the provisions of this Law and any regulations made from time to time by the Bureau.

(26) Any person who has been engaged in preparing for a procurement or part of the proceedings shall not bid for the procurement in question or any part thereof either as main contractor or subcontractor and may not cooperate in any manner with bidders in the course of preparing their bids/tenders.

(27) A procuring entity shall not request or stipulate that a bidder engage the services of a particular subcontractor as a requirement for participating in any procurement proceeding.

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

(29) 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 a bid.

(30) All contracts for goods and works shall contain warranties assuring their durability and fitness for purpose during and within a reasonable time after contract execution.

Accounting officers.

17. The following shall be the accounting officers of the respective procuring entities:

- (a) For each of the State Ministries, its Permanent Secretary;
- (b) For the judiciary, the Chief Registrars, respectively, of the High Court and the Customary Court of Appeal of the State;
- (c) For the State House of Assembly, the Clerk to the House;
- (d) For each of the State's extra-ministerial departments, boards, offices, agencies, bureaus and Government-owned and/or controlled corporations, the Executive Secretary, Permanent Secretary or equivalent officer;
- (e) For the State universities, polytechnics, colleges and other higher institutions of learning, the Vice Chancellor, Rector, Provost or equivalent officers.
- (f) For each Local Government Council in the State, the Head of Local Government Service.

PART V

Establishment of Tenders Boards and Procurement Planning Committee

Establishment of
Tenders Boards

18. (1) There is hereby established under this Law, the following bodies:

- (a) For each of the State's ministries, a Ministerial Tenders Board (referred to in this Law as "MTB");
- (b) For the two arms of the judiciary, a High Court and Customary Court of Appeal Tenders Board, respectively;
- (c) For the State House of Assembly, a Legislative Tenders Board (referred to in this Law as "LTB");

- (d) For each of the State's extra-ministerial departments, bureaus, boards, offices and agencies, including State universities, polytechnics and colleges, Government-owned and/or controlled corporations, Extra-ministerial Tenders Board (referred to in this Law as "ETB");
- (e) For each Local Government Council, a Local Government Tenders Board (referred to in this Law as "LGTB").

(2) Subject to monetary thresholds as may be set under this Law, each Tenders Board shall be responsible for the award of all contracts for the procurement of goods, works and services falling within the administrative functions of its procuring entity.

(3) The functions of the Tenders Boards shall be to –

- (a) supervise the development of all bids;
- (b) ensure that the advertisements/publications, specifications and all contents of solicitation for bids and proposals are in conformity with this Law and its regulations as may be issued from time to time;
- (c) pre-qualify bidders, where necessary;
- (d) issue bid documents;
- (e) conduct pre-bid conferences, when necessary;
- (f) constitute Technical Committees comprising technical, financial and legal personnel/experts to assist in the examination and evaluation process for a pending procurement when necessary;
- (g) receive and evaluate any bids received in response to solicitation;
- (h) award contracts;
- (i) recommend the application of any sanctions in accordance with this Law;
- (j) approve the recommendations of the Technical Evaluation Sub-Committees or Procurement Planning Committee as the case may be; and
- (k) any other function provided for directly or by necessary implication by this Law.

Membership of the
Tenders Boards.

19. (1) Membership of all Tenders Boards shall consist of heads of departments and such other officers of the State bureaucracy as may from time to time be stipulated by regulations made by the Bureau, provided that no Tenders Board shall have less than five or more than nine members.

(2) A Tenders Board shall, subject to this Law, where necessary, in addition to its regular members, hire members of the public who it determines have requisite or special knowledge that bring value to its work, but such persons shall only act on their professional capacities and shall not have voting rights.

(3) In all cases, subject only to implementing regulations, the Chairman of a Tenders Board shall constitute a Technical Evaluation Sub-committee of the Board, charged with the responsibility for evaluation of bids, which shall be made up of professional staff of the procuring entity and a member of the Tenders Board who shall chair the sub-committee.

(4) The Local Government Tenders Board shall be chaired by the Accounting Officer or his representative, and have as members all heads of department and such other members as the Bureau may by regulations specify from time to time.

Procurement Planning
Committee.

20. (1) Every procuring entity within the purview of this Law shall constitute a Procurement Planning Committee which shall also act as a Disposal Planning Committee.

(2) The procurement and disposing planning function of each procuring entity shall be carried out by the Procurement Planning Committee.

(3) The procurement planning committee shall, in consultation with relevant departments and units of the procuring entity and subject to regulations made from time to time by the Bureau oversee –

- (a) the preparation of the entity's procurement needs, assessment and evaluation;
- (b) the identification of the goods, works or services required to be procured;

- (c) the carrying out of appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;
- (d) the development of technical specifications of all goods, works and services;
- (e) the aggregation of procurement needs whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement costs;
- (f) the integration of procuring entity's procurement expenditure into its yearly budget within any existing budgetary framework;
- (g) the recommendation of a method for effecting the procurement, subject to the approval of the Tenders Board, coordinate the entity's procurement process and serve as the secretariat of the Tenders Board;
- (h) the preparation of all solicitation documents in accordance with minimum standard specifications;
- (i) the maintenance of procurement records; and
- (j) the preparation of the procurement entity's procurement plan.

(4) The procurement planning committee shall in addition to other persons that may be provided for by the regulations consist –

- (a) the accounting officer of the procuring entity or his representative who shall chair the committee;
- (b) a representative of the following –
 - (i) the unit directly in need of the procurement;
 - (ii) the financial unit of the procuring entity;
 - (iii) the planning, research and statistics unit of the procuring entity;
- (c) technical personnel of the procuring entity with expertise in the subject area for each procurement; or
- (d) such other persons as may be specified from time to time in the implementing regulations.

Establishment of
Procurement
Planning Committee.

21. (1) There is hereby established a Procurement Planning Committee in every Local Government in Akwa Ibom State.

(2) The Local Government Procurement Planning Committee shall comprise –

- (a) the Head of Service of the Local Government Council or his appointee who must be a civil servant of not less than the rank of a director in the Local Government as Chairman;
- (b) one representative each of all departments in the Local Government, except for the works department which shall have two representatives;
- (c) technical staff of the Local Government with expertise in the subject matter for each procurement;
- (d) any other persons as may be prescribed by the regulations issued pursuant to this Law.

(3) The Procurement Planning Committee may, when necessary, subject to this Law and in addition to its regular members, co-opt persons from within or outside the service or hire members of the public who it determines have requisite or specialized knowledge that brings value to its work, but such persons shall have no voting right.

Procurement Planning
and Budget Linkage.

22. (1) All procuring entities shall prepare Annual Procurement Plans listing out the goods, works and services to be procured, the timelines and procedure for such procurement.

(2) The contents of procurement plans may, subject to the regulations, include results of needs analysis, market surveys and cost implication analysis, and where applicable indicate evidence of aggregation of needs or such other items as the ministry, department or agency may consider necessary.

(3) Annual Procurement Plans shall be based strictly on the appropriations approved in the yearly budgets of procuring entities.

(4) No procurement shall be carried out unless it is in accordance with the approved Annual Procurement Plan of the procuring entity.

(5) Procurement planning may commence before budget approval, but can only be finalized after budget approval.

Approving authority: 23. (1) Notwithstanding the provisions of any other law, the following shall be the approving authorities for the conduct of public procurement in the State:

- (a) The State Executive Council in respect of procurement above or of a higher threshold than the "No Objection" threshold;
- (b) In the case of a ministry, the Ministerial Tenders Board, and for procurement below a threshold stipulated by the regulations without prejudice to the powers of the Ministerial Tenders Board, the Permanent Secretary;
- (c) In the case of the judiciary, the Tenders Board of the various arms of the judiciary;
- (d) In the case of the House of Assembly, the Legislative Tenders Board;
- (e) In the case of each Local Government, the Local Government's Tenders Board;
- (f) In the case of extra-ministerial departments, bureaus, boards, offices and agencies, including State universities, polytechnics and colleges, Government-owned and/or controlled corporations, Extra-Ministerial Tenders Board.

(2) Subject to any thresholds provided for under this Law, the decision of the Tenders Board shall be communicated to the Commissioner in the case of a ministry, the Speaker in the case of the House of Assembly, Local Government Chairman in the case of a Local Government, in the case of extra-ministerial department, bureaus, boards, offices and agencies, including State universities, polytechnics and colleges, Government owned/or controlled corporations, the Chairman of the Governing Board, for monitoring of implementation.

24. Subject to regulations as may from time to time be issued by the Bureau, a procuring entity shall implement its procurement plans as follows:

- (a) Advertise/solicit for bids;
- (b) Invite at least two monitors one representing a non-governmental organization and one representative of a professional body whose expertise relates to the goods, works and service being procured and, in the case of Local Governments, at least two community-based organizations, to monitor the procurement process, and they shall be given adequate written notice of the procurement activity subject to regulations issued by the Bureau;
- (c) Provide adequate information on the procurement for monitors;
- (d) Receive, evaluate and make a selection of the bids received;
- (e) Obtain approval of the approving authority before making an award;
- (f) Debrief the bid losers upon request;
- (g) Obtain and confirm the validity of any advance payment guarantee, performance bond/guarantee; or take such other step as required by the regulations;
- (h) Execute the contract agreement for sums within its approval threshold, and submit others for approval of higher approving authority after informing the bid winner of his or its success; and
- (i) Announce, publicize the award and submit appropriate reports to the Bureau in the format stipulated by this Law, guidelines and regulations as may be issued by the Bureau from time to time.

PART VI

Bidding

Open competitive bid. 25. (1) Procurement of goods, works and services by all procuring entities shall be conducted by open competitive bidding, except as may be otherwise provided by this Law.

(2) Unless otherwise provided for by this Law or the regulations issued hereunder, no negotiations shall be conducted with suppliers, contractors or consultants and the winning bidder shall be that which is –

- (a) in the case of goods and works, the lowest cost evaluated responsive bid to the bid solicitation;
- (b) in the case of services, as provided for in section 45 of this Law.

Invitation to bid. 26. (1) Invitations to bid may be either by way of International Competitive Bidding or National Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either category.

(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 national newspapers, one relevant internationally recognized publication, the official websites of the procuring entity and the Bureau, if any, the State Procurement Journal and the Federal Government Procurement Journal not less than six weeks before the deadline for submission of the bids for the goods, works and services.

(3) In the case of goods, works and services valued under National Competitive bid, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, the State Procurement Journal and at least one local newspaper, if any, and one national newspaper not less than four weeks before the deadline for submission of the tenders for the works, goods or services or such other time as the regulations may stipulate.

(4) The Bureau shall issue guidelines for the advertisement/publication of invitations to bid.

Pre-qualification of bidders.

27. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or consultants 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 consultant qualifies; and it shall apply only the criteria set out in the prequalification documents and no more.

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

(3) In accordance with subsections (2) and (3) this section, the Bureau shall make regulations stipulating the guidelines for the prequalification of bids in any public procurement process, including the minimum time period required to submit pre-qualification documents.

Bid documentation.

28. (1). The bid solicitation documentation shall be prepared by procuring entities based on the standard forms and manuals issued under regulation by the Bureau and shall include—

- (a) invitation to bid, with precise instructions to bidders, including criteria for eligibility, bid evaluation and as well as the date, time and place of the pre-bid conference, where applicable, deadline for submission of bids and opening of bids with enough time for bidders to prepare and submit their bids taking into account reasonable needs of the procuring entity;
- (b) terms of reference;
- (c) eligibility requirement and precise criteria upon which it seeks to give consideration to the bids;
- (d) plans and or technical specification;
- (e) form of tender, price form, and list of goods or bill of quantities;
- (f) delivery time or completion schedule;

- (g) form and amount of bid security;
- (h) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualification or as may be required by any regulation made pursuant to this Law;
- (i) form and amount of performance guarantee;
- (j) form of contract, and general and special conditions of contract; and
- (k) any other requirement that the procuring entity may establish pursuant to this Law or the implementing regulations made pursuant to this Law.

(2) Procuring entities may in addition require all bidders in a procurement proceeding to provide additional documentation or specifications reasonably necessary to complement the information contained in their respective bids.

Bid security.

29. (1) Subject to the monetary thresholds as may from time to time be issued by the Bureau, all public procurements shall be accompanied by a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

(2) The Bureau shall from time to time specify the principal terms and conditions of the bid security to be posted by bidders, which shall apply to all bidders.

Submission of bid.

30. (1) All bids in response to an invitation shall be submitted in writing or any other format stipulated in the bid solicitation, signed by an official authorized to bind the bidder to a contract and placed in a properly sealed envelope or other package.

(2) All submitted bids shall be deposited in a secured tamper-proof bid-box.

(3) All bids submitted shall be in English language.

(4) Every bidder submitting a bid shall be issued a receipt showing the date and time the bid was received.

(5) Any bid received after deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or consultant who submitted it.

(6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law or in the regulations issued pursuant to this Law.

Bid failure.

31. (1) There is a bid failure if –
- (a) no bid was received;
 - (b) none of the bids received was responsive to the solicitation; or
 - (c) the number of bids received fell short of such minimum number of bids as may be specified in the regulation for effective competition;
 - (d) the successful bidder refuses to accept the award of the contract, and the next responsive bidder in line also refuses to accept an award.

(2) Where there is bid failure any of the following shall take place:

- (a) The contract may, subject to the regulations, be re-advertised and the bidding process repeated;
- (b) If re-advertised, the procuring entity shall observe the same process and set the new periods according to the same regulations followed during the first bid.

(3) If however, there is a bid failure on a second occasion, the procuring entity may with approval of the Bureau resort to an alternative method of procurement as provided for by this Law.

Rejection of bid.

32. (1) A procuring entity may –
- (a) reject all bids at any time prior to the acceptance of the a bid; and
 - (b) cancel the procurement proceedings in the public interest.

(2) No suit shall lie against a procuring entity, its officers or agents as a result of the cancellation of a procurement process or rejection of all bids under this section.

Validity period of bid, modification or withdrawal of tenders.

33. (1) The period of validity for a bid shall be the period specified in the bid solicitation documents.

(2) A procuring entity may request supplier, contractor or consultant to extend the period of validity for an additional specified period of time.

(3) A supplier, contractor or consultant 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 or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.

(5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of bids or any extension thereof.

Bid opening.

34. 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 envelope in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) cause all bids to be opened in public, in the presence of the bidders or their representatives and any interested members of the public;
- (c) ensure that the bids opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- (d) ensure that a register is taken of names and addresses of all those present at the bids opening and the organization they represent which is recorded by the Secretary of the Tenders Board or any person nominated on his behalf; and

- (e) call out, to the hearing by all present, the names and addresses of each bidder, the total amount of each bid, the bid currency and shall ensure the these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening, which shall be made available to every bidder and procurement monitor.

Examination of bid.

35. (1) After bid opening, every bids shall be first examined to determine if it –

- (a) meets the minimum eligibility requirements stipulated in the bid documents;
- (b) has been duly signed;
- (c) is substantially, responsive to the bid 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 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 and if the correction is not accepted by the bidder, its bid shall be immediately excluded from the evaluation process.

(6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

(7) The Bureau shall issue regulations stipulating the guidelines for the opening and examination of bids and the grounds for any deviation.

Evaluation of bid.

36. (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 responsive bid from the bids responsive to the bid solicitation.
- (b) in the case of services, to determine the lowest cost evaluated responsive proposal or the responsive proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted or the highest rate evaluated bid from the bids responsive to the bid solicitation, depending on which of the criteria is chosen and stipulated in the solicitation documents by the procuring entity.

(3) The Bureau shall issue regulations stipulating the guidelines and any further criteria for the evaluation of bids.

Domestic preference.

37. (1) A procuring entity may grant a margin of preference in the evaluation of bids, when comparing bids from domestic bidders with those from foreign bidders or when comparing bids from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign country.

(2) Where a procuring entity intends to allow domestic preference, the bid document shall clearly indicate any preference to be granted to domestic bidders and the criteria for eligibility of a bid for such preference.

(3) Margins of preference shall apply only to tenders under international competitive bidding.

(4) The Bureau shall by regulation from time to time set the limit and the formulae for the computation of margins of preference.

Acceptance of bid.

38. (1) Notice of the success of its bid shall immediately be given to the successful bidder.

(2) Notwithstanding the provision of subsection (2) of this section, where the procurement proceeding is with regard to a value for which approval should be sought from an approving authority, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award.

(3) Where the procurement proceeding is with regard to a value below prior review threshold, subject to the fulfilment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

(4) Whether or not suppliers were pre-qualified, verification of information provided in the submission for pre-qualification and or as part of the bid, may be confirmed at the time of award of contract.

(5) An award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

Limitation of time for procurement awards.

39. Without prejudice to any provision of this Law, all procuring entities and approval authorities shall endeavour to ensure that the period between the opening of bids and the award of contract should not exceed three months, except there are cogent and verifiable reasons for such and such reasons are communicated in writing to the Bureau.

Mobilization fees and advance payment guarantees.

40. (1) In addition to any other regulation as may be prescribed by the Bureau, mobilization fees of not more than 15% of value of a contract may be paid to a supplier or contractor supported by the following –

- (a) in the case of National Competitive Bid, an unconditional bank guarantee or insurance bond issued by a reputable banking institution acceptable to the procuring entity;
- (b) in the case of International Competitive Bid, a unconditional bank guarantee issued by a reputable banking institution acceptable to the procuring entity.

(2) The provision of an advance payment guarantee shall be a precondition for the payment of any or all advance payments or mobilization fees under this law, provided, however, that its value shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee to be paid to the supplier or contractor, whichever is higher.

(3) No further payment shall be made to a supplier or contractor without an interim performance certificate issued in accordance with the contract agreement after the payment of mobilization fee to the supplier or contractor.

Performance guarantee.

41. (1) Prior to the signing of the contract, the successful bidder may, as a measure of guarantee for the faithful performance of and compliance with his obligations under the contract, be required to post a performance security in such form and amount as specified in the bid solicitation.

(2) The Bureau shall from time to time make regulations relating to requirement and issuance of performance guarantees and prescribe the threshold above which a performance guarantee must be issued by a winning bidder.

Interest on delayed payment.

42. (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.

(2) Any payment due for more than ninety days from the date of issuance of performance certificate or valuation certificate by the ministry, extra ministerial office, Government agency, parastatal or corporation or other procuring entity that an ascertained value of work has been done, shall be deemed a delayed payment.

(3) All delayed payments shall attract interest at the rate specified in the contract documents.

(4) All contracts shall include terms, specifying the interest payable on any sum outstanding for more than ninety days in accordance with subsection (2) of this section.

Record of procurement proceeding. 43. (1) Every procuring entity shall keep a detailed record and documentation of all procurement activity and processes in a format as shall be prescribed in the regulations issued by the Bureau.

(2) Such information shall include names and qualification of all bidders, specifications and quantities of goods, works and services involved, prices quoted by each bidder, award prices and conditions, contracts, warranties and performance guarantee provided by the contractor, supplier or consultant.

(3) All records of procurement proceedings shall, on request, be made available to any person once a winner has been selected by the Tenders Board or the procurement contract has been terminated without a contract, upon payment of not more than the moderate cost of reproduction and certification, if required, of the document as prescribed by the Bureau.

Procurement of goods and works.

44. (1) For the avoidance of doubt but save as may be permitted under this Law or regulations issued hereunder, all procurements of goods and works within the purview of this Law shall proceed only by open competitive bid;

(2) The Bureau shall issue regulations in conformity with this Law outlining the procedure for conduct of all open competitive bidding and other methods of procurement herein specified and such other procedures, conditions prerequisite for the use or adoption of such methods and procedures for the procurement of goods and works within the purview of this Law.

(3) Any regulations in force on the date of assent to this Law shall remain in force until the date on which a new regulation is issued by the Bureau.

PART VII

Procuring Services

Expression of interest to provide services for ascertained needs.

45. (1) Where a procuring entity wishes to procure services for its needs which are precise and ascertainable it shall solicit for expressions of interest or applications to shortlist consultants to provide the precise

services by publishing a notice to that effect in at least two national newspapers and the procurement journal.

(2) Where the value of the services to be procured is of such low value set in the regulations that only local consultants would be interested, the procuring entity, with the approval of the Bureau, may without placing a notice pursuant to subsection (1) of this section, request at least five and not more than nine consultants or service providers to make proposals for the provision of the services in a format stipulating –

- (a) a statement of qualifications of the consultant to provide the service;
- (b) a statement of understanding of the procuring entity's needs;
- (c) the methodology for providing the service;
- (d) the time frame for providing the service; and
- (e) the cost or fee for the service.

Content of request for proposals.

46. Request for proposals must include –

- (a) the name and address of the procurement entity;
- (b) a requirement that the proposals are to be prepared in English language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) criteria and procedures for the examination and evaluation of the qualifications of the consultants;
- (f) the requirements as to qualification or documentary evidence of qualification, experience or other information that shall be submitted by suppliers or contractors to demonstrate their qualifications including an affidavit verifying the accuracy of the information given and authenticity of the accompanying documents;
- (g) the nature and required characteristics of the services to be procured including the location where the

services are to be provided and the time when the services are to be provided;

- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian currency;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) whether the procedure to ascertain the successful responsive 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;
- (l) the criteria to be used to determine the successful proposal, including any margin of preference and the relative weight of the criteria;
- (m) a statement on alternatives to the characteristics of the consulting services, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;
- (n) the name, functional title and detailed address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary;
- (o) the means by which consultants may seek clarification on the invitation for proposals and a statement whether the procurement entity intends to convene a meeting of consultants; and

- (p) the terms and conditions of the consultancy contract and the contract form to be signed by the parties.

Procuring entity to provide same information.

47. The procuring entity shall provide the same information to every consultant requested to submit proposals.

Clarification and modification of request for proposal.

48. (1) A consultant may request for clarification on the request for proposals from the procuring entity which may, 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.

(2) 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, but the procuring entity shall, where it considers it necessary as a result of an addendum and pursuant to regulations issued by the Bureau, grant an extension of time for submission of the proposal.

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

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

(5) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals, and shall in no case give less than thirty days between the issue of the notice or request and the deadline for submission.

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

(7) Any proposal received after the deadline for submission of proposals shall be returned to the sender unopened.

(8) 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.

(9) The Technical Evaluation Committee shall have no access to or insights into the financial proposals until the evaluations including any resident Tenders Board's review are concluded.

Criteria for evaluation
of proposal.

49. (1) In all cases the procuring entity shall establish, prior to issuing the request for proposals, criteria for evaluation of 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 proposals.

(2) The criteria shall take into consideration the –

- (a) the qualifications, 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, subject to any margin of preference applied, including any ancillary or related costs in the case of quality and cost Based selection;
- (d) the effect if any that the acceptance of the proposal will have on the balance of payments position and foreign reserves of the Government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of local employment, the transfer of technology, the development of local managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
- (e) State defence and security considerations.

Margin of preference.

50. A procuring entity may accord a margin of preference for domestic consultants or service providers, which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

Criteria for choosing successful proposal.

51. (1) A procuring entity shall select the successful proposal by choosing the –

- (a) responsive proposal with the lowest price (the lowest evaluated responsive proposal) or;
- (b) responsive proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted; or
- (c) highest ranked responsive technical proposal within the budget.

(2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select any of the procedures in subsection (1) above.

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

(4) Whatever criteria chosen and its detailed implications must be simultaneously communicated to all participants through the solicitation documents.

Selection based on price only.

52. (1) Where a procuring entity elects to choose the successful proposal based on price only, it shall establish a threshold with respect to quality and technical aspects 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 then compare the prices of those proposals that have attained a rating at or above the threshold.

(3) The procuring entity shall, within a period of fourteen working days after the decision has been taken by the procurement

entity, notify the consultants whose proposals did not meet the minimum qualifying mark or were nonresponsive to the invitation for proposals and terms of reference after the evaluation of quality is completed.

(4) The procuring entity shall ensure that at the opening of the financial proposals, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider.

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

(6) The Consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.

(7) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

Quality based selection
of consultant.

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

(2) The procurement entity shall –

- (a) establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposal 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;
- (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with paragraph (a) above;
- (c) inform the suppliers or contractors that attained ratings above the threshold that they 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 that consultant, invited under paragraph (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 the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

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

E-Procurement.

54. (1) Upon the passage of this Law the Bureau shall set up the State e-Procurement Portal, which shall be the primary and definitive source of information for all public procurement matters and opportunities within the purview of this Law or regulations issued hereunder.

(2) As soon as practicable pursuant to the enactment of this Law the Bureau shall design and set up a secure electronic portal to be known as Akwa Ibom State Electronic Procurement System (herein referred to as "the State-EPS").

(3) Subject to other provisions of this Law and regulations as may be issued by the Bureau from time to time, it shall be lawful for any procuring entity to conduct any or all of its bid by electronic auction and/or simulation on the State-EPS.

(4) The State-EPS shall include modules under e-Registration, e-Publishing, e-Awarding, e-Tendering, e-Contract Management, e-Purchasing, e-Auction/Reverse Auction, Vendor Management, e-Payment, Management Information System, Grievance Redressal.

Special and restricted procurement methods.

55. Notwithstanding any provisions of this Law, the following shall be considered special and restricted methods of procurement within the

purview of this Law and may be used by procuring entities only in special cases:

- (a) Two-stage Tendering;
- (b) Limited Source Tendering;
- (c) Single Source Contracting;
- (d) Repeat Orders;
- (e) Request for Sealed Quotations; and
- (f) Negotiated Procurement.

Two-stage Tendering

56. (1) A procuring entity may engage in procurement by Two-stage Tendering where –

- (a) it is not feasible for the procuring entity to formulate detailed specification for the goods or works or in the case of services to identify their characteristics;
- (b) it seeks bids, proposals or offers on various means of meeting its needs, in order to obtain the most satisfactory solution to its procurement needs;
- (c) the character of the goods or works or services are subject to rapid technological advances;
- (d) the procuring entity seeks to enter into a contract for research, experiment study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs; or
- (e) the open competitive bid method has been utilized without success or the bids were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging new bidding proceeding will not result in a procurement contract.

(2) The provision of this Law as regard the process for open competitive bidding shall apply to Two-stage Tendering proceeding except to the extent that those provisions vary from this section.

(3) The procedure for Two-stage Tendering shall be as provided for in the regulations to be made from time to time by the Bureau.

Limited Source or
Restrictive Bidding

57. (1) Limited Source Bidding or Restrictive Bidding may only be used for procurement –

- (a) of highly specialized types of Goods, Works and Consulting Services which are known to be obtainable only from a limited number of sources;
- (b) of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole; or
- (c) where the time and cost required to examine and evaluate a large number of bids or proposals will be disproportionate to the value of the goods, works or services to be performed, provided that in this instance the procuring entity invites enough consultants to ensure transparent competition.

(2) The provisions of this Law regarding open competitive bidding shall apply to limited source or restricted tendering, except to the extent that those provisions may be varied by this section.

(3) The detailed procedure for limited source or selective bidding shall be as provided for in the regulations to be made from time to time by the Bureau.

Single Source
Procurement

58. (1) Under Single Source Procurement, a procuring entity may only engage in direct contracting for procurement of –

- (a) goods, works or services of proprietary nature, which can be obtained only from the proprietary source, when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- (b) critical components from a specific manufacturer, supplier or distributor which is a condition precedent to hold a contractor to guarantee its project

performance, in accordance with the provisions of his contract;

- (c) goods sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government;
- (d) goods, works or services in cases where a state of external aggression, war, calamity, epidemic whether man-made or by natural causes, require immediate action, not otherwise contemplated, to prevent damage or the endangerment or loss of life or property;
- (e) goods, works or services to restore vital public services and or preserve the operation of public utilities or infrastructure; or

(2) The procedure for limited source procurement shall be as provided for in the regulations to be made from time to time by the Bureau.

Repeat Order
Procurement.

59. (1) A procuring entity may only engage in procurement by Repeat Order if –

- (a) the unit price is equal to or lower than that provided in the original contract;
- (b) the Repeat Order does not result in splitting of requisitions or purchase orders; or
- (c) the Repeat Order is requisitioned not later than six months from completion of the original contract or , if during the currency of a contract, not earlier than one half of the period given for execution of the contract.

(2) The repeat order shall not exceed a percentage set in the regulations of the quantity of each item of the original contract.

(3) The detailed procedure for repeat orders shall be as provided for in the regulations to be made from time to time by the Bureau.

Request for Sealed
Quotations/Shopping

60. (1) A procuring entity may only engage in Shopping if –
- (a) the Procurement is strictly for the purchase of ordinary or regular office supplies and equipment for the use of the procuring entity involving an amount not exceeding a specific amount provided for in the implementing regulations; or
 - (b) when the time and cost that may be required to examine and evaluate a large number of bids is considered disproportionate to the value of the goods, works or services to be procured.

(2) The procuring entity shall select a minimum of five price sealed quotations from bona fide suppliers selected in a non-discriminatory manner to ensure effective competition and avoid collusion and related malpractices.

(3) The detailed procedure for sealed quotations shall be as provided for in the regulations to be made from time to time by the Bureau.

Negotiated
Procurement

61. (1) A procuring entity may only engage in Negotiated Procurement –

- (a) in cases of two failed bids, as provided in Section 33 of this Law;
- (b) where the subject contract is adjacent or contiguous to an on-going infrastructure project: Provided that –
 - (i) the original contract is the result of a competitive bidding;
 - (ii) the subject contract to be negotiated has similar or related scope of work;
 - (iii) it is within the contracting capacity of the contractor;
 - (iv) the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
 - (v) the amount involved does not exceed one half of the amount of the ongoing project;

- (vi) the contractor has no negative slippage;
- (vii) the negotiations for the procurement are commenced before the expiry of the original contract; and
- (viii) the contract to be negotiated has not resulted from the dilatory conduct of responsible officers.

(2) Whenever applicable, this principle shall also govern consultancy contracts, where the consultant has unique experience and expertise to deliver the required service;

(3) In all instances, the procuring entity shall ensure that the most advantageous price is obtained for the Government, and that the principles of transparency, accountability and value for money are adhered to.

(4) The procedure for negotiated procurement shall be as provided for in the regulations to be made from time to time by the Bureau.

Special and restricted procurement methods.

62. The Bureau shall issue regulations regarding special and restricted procurement methods.

Review by the Bureau.

63. (1) The Bureau may conduct a review of any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract, if it considers that a review is necessary or desirable to prevent or detect a contravention of this Law.

(2) The Bureau may in the course of the review –

- (a) at any time during normal office hours, enter the premises of the procuring entity, bidder, supplier, contractor, or consultant concerned with the procurement proceedings under review;
- (b) require an officer, employee or agent of a procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts, documents, soft copy of documents or object relating to a procurement activity;

- (c) examine and make extracts from and copies of books, records, accounts or documents of any 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 Bureau shall give a detailed receipt for the books, records, accounts, objects or documents removed;
- (d) remove books, records, accounts or documents of the procuring entity, Bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts for the books, records, accounts or documents removed;
- (e) require an officer, employee or agent of the procurement entity or bidder, supplier, contractor or consultant to explain an entry in the books, records, accounts or documents;
- (f) require any person to provide it with information concerning the management or activities of the procurement entity or Bidder as may be reasonably required; or
- (g) debar a bidder who fails to comply with its written request for information and production of documents or things or obstructs its efforts to review a procurement exercise.

(3) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action may include –

- (a) nullification of the procurement proceedings;
- (b) cancellation of the procurement contracts;
- (c) ratification of anything done in relation to the proceedings;
- (d) making a declaration of the principle or procedure to be followed consistent with relevant provisions of this Law; or

(e) referring the case to relevant authority for criminal investigation and, if appropriate, prosecution.

(4) On completion of its review, the Bureau shall send a summary of its findings and recommendations to the procuring entity and to any bidder, supplier, contractor or consultant whose conduct was the subject of the review.

(5) The Bureau shall afford any procuring entity, bidder, supplier, contractor opportunity to make representation in writing in a matter, before taking any action in terms of subsection (4) of this section which may adversely affect the rights or property of that person or a procurement conducted by that procuring entity.

(6) Any person who obstructs the Bureau, fails or neglects to provide public procurement or related information or records required by the Bureau in performance of its functions commits an offence.

Code of Ethics.

64. The standard of conduct applicable in matters connected to the provisions of this Law shall be regulated by this Law and a Code of Ethics as may be issued from time to time by the Bureau.

Disposal of assets.

65. (1) For the purposes of this Law, every procuring entity shall also be a disposing entity.

(2) Open competitive bidding shall be the primary source of receiving offers and procuring purchasers for the purchase of any public property offered for sale, and the regulations issued hereunder shall specify other methods, and the conditions for their application.

(3) The Bureau shall –

(a) determine the applicable policies, regulations and practices in relation to the disposal of all public properties;

(b) issue guidelines detailing operational principles and organizational procedures to be adopted by all procuring entities engaged in the disposal of public property;

(c) issue standardized documents, monitor implementation, enforce compliance and set

reporting standards that shall be used by all procuring entities involved in the disposal of public property.

(4) Subject to this section and for the purposes of this Law, "Public Property" is defined as resources in the form of tangible and non-tangible assets, whether serviceable and/or non-serviceable, –

- (a) created through public expenditure;
- (b) acquired as a gift or through deeds;
- (c) acquired in respect of intellectual or proprietary rights;
- (d) acquired by goodwill or any other rights of the State Government.

(5) The methods of the disposal of public assets shall subject to section 65(2) and regulations to be issued by the Bureau include –

- (a) sales and rentals;
- (b) hire-purchase;
- (c) licenses, tenancies and leases;
- (d) franchise and auction;
- (e) transfers from one government department to another with or without financial adjustments; and
- (f) offers to the public.

Administrative
review/complaints by
bidders.

66. (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law or any regulation or guidelines made under this Law or the provisions of bidding documents.

(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer of the entity within fifteen working days from the date the bidder first become aware of the circumstances.

(3) On reviewing a complaint, the accounting officer shall make a decision in writing within fifteen working days from the date of receipt of the complaint, addressed to the complainant and all others affected, indicating the corrective measure to be taken if any, including the suspension of the proceedings where he deems it necessary, and giving reason for his decision.

(4) The complainant, or any other bidder affected by the decision of the accounting officer, may further complain to the Bureau should the accounting officer fail to decide his complaint or communicate him with his decision within the time given, or if dissatisfied by any decision of the accounting officer.

(5) The bidder may appeal to the Akwa Ibom State High Court by way of judicial review, if the Bureau fails to decide his complaint within twenty-one working days or to communicate him in writing with their decision or if he is dissatisfied with the Bureau's decision.

(6) The Bureau may from time to time and subject to this Law make regulations to regulate the process of filing and determination of complaints under this Law.

(7) Without prejudice to any existing laws or regulations, the Chief Judge shall issue Practice Directions for the accelerated hearing of matters arising from bidders' complaints and/or other disputes connected with public procurement, such that suits/proceedings to the State High Court for Mandamus, or Certiorari and related reliefs within the purview of this Law shall be dispensed with expeditiously.

(8) Any bidder aggrieved by anything done, omitted to be done or improperly done by a procuring or disposing entity, its staff and officers prior to award or execution of a procurement contract shall first seek administrative review under this section before having recourse to any court of law.

(9) Where the complaint is against the conduct of the Bureau, a complainant may wish to approach the State High Court or lay a complaint to an independent investigation panel to be set up by the Council within one year of assenting to this Law and to be chaired by a member of Council.

(10) Where the complainant has chosen to complain to the independent investigation panel, the panel shall have twenty-one working days to resolve the dispute and communicate its decision in writing to the complainant, and where it fails to so decide or where the complainant is dissatisfied with the decision of the panel in that instance, he may approach the State High Court.

(11) Without prejudice to the provisions of subsection (7) of this section, procurement cases shall be given priority consideration in the scheduling of cases by the State High Courts.

67. (1) Any natural person not being a public officer who contravenes any provision of this Law, for which no specific punishment is herein provided for, commits an offence and is liable on conviction to a term of imprisonment of not less than three months, but not exceeding one year with an option of fine of not less than two hundred thousand Naira only.

(2) Subject to subsection (1) of this section any person who –

- (a) opens or tampers with any sealed bid or any and all documents required to be sealed and or divulging their contents to any person prior to the appointed time for the public opening of bids, commits an offence punishable, on conviction, with not less than one year imprisonment with an option of a fine not less than five hundred thousand Naira;
- (b) delays without justifiable cause, the screening for eligibility, opening of bids evaluation and post evaluation of bids and awarding of contracts beyond the prescribed limits/periods of action provided for in this Law or regulations made hereunder, commits an offence punishable, upon conviction, with a minimum prison term of three months and a fine not less than two hundred thousand Naira;
- (c) enters or attempts to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective bids, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned, commits an offence punishable, upon conviction, with a prison term of not less than two years and or a fine of not less than one million Naira

or the exact value loss occasioned by the action of the accused person(s), if determinable;

- (d) conducts procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other similar actions, commits an offence punishable, where no other higher penalty is prescribed, upon conviction with a prison term not less than of three years with an option of a fine of not less than the amount lost by Government as a result of the crime;
- (e) directly, indirectly, or in any manner attempts to influence the procurement process to obtain an unfair advantage in the award of a procurement contract commits an offence punishable upon conviction with a prison term of not less than two years;
- (f) splits tenders to enable the evasion of monetary thresholds set, commits an offence punishable upon conviction with a minimum of one year imprisonment with an option of fine of not less than one million Naira;
- (g) participates in bid-rigging, commits an offence punishable with a prison term of not less than three years or a fine not less than 10% of the value of procurement in issue;
- (h) alters any procurement document with intent to influence the outcome of a bid proceeding commits an offence punishable upon conviction with one year imprisonment or an option of a fine of not less than five hundred thousand Naira;
- (i) uses fake documents or encourage their use, commits an offence punishable upon conviction with a prison term of one year and or a fine of not less than five hundred thousand Naira;
- (j) wilfully denies the Bureau or its officers access to any procurement records, commits an offence

punishable upon conviction with a minimum imprisonment of six months; and

- (k) withdraws a bid, after it shall have qualified as the lowest calculated responsive bid/highest rated bid, and/or refuses to accept an award without just cause for the purpose of forcing the procuring entity to award the contract to another bidder commits an offence punishable upon conviction with a prison term of not less than six months and a fine of not less than 5% five percent of the value of the procurement: For the purpose of this paragraph "withdrawal" includes deliberate non-submission within the prescribed time or delaying the submission of requirements such as but not limited to performance guarantee preparatory to the final award of the contract.

(3) Any person who, whilst carrying out his duties as an public officer or employee of the Bureau or any procuring or disposing entity, contravenes any provision of this Law, not otherwise provided for commits an offence and is liable on conviction to –

- (a) a term of imprisonment not less than one year without any option of fine; and
- (b) dismissal from government service without any severance benefits.

(4) Any legal or juristic person that contravenes any provision of this Law commits an offence and is liable on conviction to a penalty of –

- (a) debarment from all public procurement for a period not less than three years; or
- (b) a fine equivalent to not less than 5% of the value of the procurement in issue.

(5) Where any legal person is convicted of an offence pursuant to subsection (4) of this section, the director of the company shall subject to subsection (11) hereof be deemed to have committed an offence and liable on conviction to a term of imprisonment not less than

six months but not exceeding three years with an option of fine of not less than five hundred thousand Naira.

(6) An alteration pursuant to subsection (2) (h) of this section shall include but not limited to –

- (a) forged arithmetical correction;
- (b) insertion of documents such as bid security or tax clearance certificate which were not submitted together with the bid; and
- (c) requests for clearance in a manner not permitted under this Law.

(7) Collusion shall be presumed from a set of acts from which it can be inferred 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 cause of action which would interfere with the due and proper application of the provisions of this Law.

(8) Bid-rigging pursuant to subsection (2) (g) of this section means an agreement between persons where –

- (a) offers submitted have been prearranged between them; or
- (b) 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.

(9) 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 total or partial, directly or indirectly.

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

(11) For the purpose of subsection (5) of this section, considerations shall be given, in arriving at a conviction, to whether a

director is involved in the day-to-day management of the company, proof of his personal knowledge, or encouragement or approval of the actions constituting the offence.

(12) Where any person charged with an offence under this Law, before the commencement of hearing of the charge admits his guilt and makes prompt and complete refund or restoration of any benefits he obtained in relation to the contravention or offence, and full disclosure of all facts including disclosing all other persons involved in the commission of the offence, the court shall have the power to impose lesser punishment than those prescribed by this Law, and in exceptional cases a suspended sentence.

Power of court.

68. (1) The court to which any person is charged for the contravention of any of the provisions of this Law shall have the power to order the recovery of any benefit, whether financial or not, derived from the offence and return same to the State.

(2) Where the proceeds of procurement related offence is not financial or where financial, it has been converted to a non-financial form, the object or thing shall be forfeited to the State.

Interpretation.

69. In this Law, unless the context otherwise requires, the following words and expressions shall have the meaning respectively assigned to them –

“accounting officer” means the Permanent Secretary, Director General, General Manager, Managing Director, Executive Secretary, Vice Chancellor, Provost, Rector or persons of equivalent rank charged with the day to day supervision of the conduct of all procurement processes in a procuring entity under this Law;

“approving authority” means the Tenders Board;

“assets” include tangible and intangible things which have been or may be sold or procured at a consideration;

“Board” means the Akwa Ibom Public Procurement Board;

“Bureau” means the Bureau of Public Procurement established under this Law;

“bid” means tender and tender means bid;

- “bid security” means a form of security assuring that a bidder shall not withdraw his bid within the period specified in the bid and shall execute a contract in accordance with his bid;
- “Certificate of No Objection” means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a procurement proceeding;
- “contract” means an agreement entered into in writing;
- “contractor or supplier” means any party to a procurement contract with the procuring entity and includes any person corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted;
- “Council” means the Council established under section 14 of this Law;
- “debar” means the placing of a firm, company or natural person on a list of persons ineligible to participate in any procurement proceedings under this Law;
- “dominant/dominating relationship” section 16(9) means affiliates, part owner of another participant, associates, owner or part owner of another person who owns in part or full another participant in the procurement proceeding;
- “excessive price” means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau or a procuring entity unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit;
- “Fund” means the Akwa Ibom State Public Procurement Bureau Fund;
- “goods” means object of any kind and descriptions including raw materials, products, and equipment and objects in solid, liquid or gaseous form, and electricity as well as service incidental to the supply of goods;
- “Government” means the Government of Akwa Ibom State;
- “Governor” means the Governor of Akwa Ibom State;
- “House of Assembly” means House of Assembly of Akwa Ibom State of Nigeria;
- “interest” with respect to conflict of interest, shall mean and include personal interest of a staff or officer of a procuring or disposing

entity, direct personal interest of a brother or brother of the half blood, sister or sister of the half blood, member of the extended family, friend, partner or business associate, whether pecuniary or otherwise;

“Interim Performance Certificate” means certificate or document evidencing that a contractor or supplier has performed its obligations under the procurement contract up to a level stipulated by the certificate or document in accordance with the contract;

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

“lowest cost evaluated responsive bid” means the lowest price bid amongst the bid that meets all the requirements, conditions and standard as contained in the tender document;

“Limited Source or Restricted Bidding” means conduct of procurement by invitation to tender by the procuring entity directed to a set of pre-selected suppliers with known experience and proven capability relative to the requirements of a particular contract;

“margin of preference” means the extra markup on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

“member” includes Chairman;

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

“monetary threshold” means the value limit in Naira prescribed by the Bureau 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;

“negotiated procurement” means the conduct of procurement by a procuring entity directly negotiating a contract with a technically, legally and financially capable supplier, contractor or consultant under conditions specified in this Law;

“negotiation” means discussion to determine the terms and conditions of a contract of procurement;

"open competitive bidding" means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested candidate, equal simultaneous information and opportunity to offer the goods, works and services needed;

"procurement" means acquisition;

"procurement of goods" means the acquisition by any procuring entity within the purview of this Law of all items including supplies, products, equipment, objects and raw materials whether in solid, liquid or gaseous form and such general services incidental to the supply and maintenance of the goods but to the exclusion of Consulting Services and Works;

"procurement of services" means the retainer or hire by procuring entities of technical and/or professional expertise of any type whether of an intellectual, proprietary or non-proprietary nature for purposes such as, but not limited to –

- (i) advisory and review services;
- (ii) pre-investment or feasibility studies;
- (iii) design;
- (iv) construction supervision;
- (v) management, and related services; and
- (vi) other technical services or special studies;

"procurement of works" means site preparation, excavation, erection, construction, improvement, rehabilitation, repair, restoration, maintenance or demolition of all manner of civil works including buildings, roads, bridges, railways, airports, seaports, sanitation, sewage and water supply systems, shore protection, energy/power and electrification facilities, civil works components of technology projects, materials, decoration and finishing etc., as well as the services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to a construction contract, provided the value of such services do not exceed that of the construction itself;

- “procurement proceeding” means the process from procurement planning (initiation) up until award of contract, project implementation, assessment and evaluation of impact;
- “procuring entity” means and includes the Akwa Ibom State Government, all ministries, extra-ministerial departments, government agencies, parastatals, public corporations, tertiary institutions, local governments, State Judiciary and Legislature;
- “proposal” means a tender for a service contract;
- “public funds” means monies derived or derivable from the state or Local Government Treasury, whether internally generated or the State and Local Government share of the Consolidated Revenue Fund, Special Allocation from the Federal Treasury and all other monies belonging to the State Government or its Local Governments, judiciary, legislature, ministries, extra ministerial departments, agencies, corporations, institutions and all bodies and institutions to which this Law applies;
- “public procurement” means the acquisition of goods, works or services by a procuring entity;
- “relevant authority” means the Nigerian Police Force, Independent Corrupt Practices and other Offences Commission, Economic and Financial Crimes Commission or any other appropriate criminal investigating agency created by Law;
- “Repeat Order Method of Procurement” means the direct procurement of goods from the previous winning bidder /supplier, whenever there is a need to replenish goods procured under a contract previously awarded through a competitive bid subject to the regulations;
- “service” means the rendering by a contractor or supplier of his time and skill and includes any object of procurement other than goods, works or construction;
- “Shopping” subject to section 60 in this Law means conduct of procurement by a procuring entity requesting for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualification;
- “Single Source Procurement” subject to section 58 of this Law, means conduct of procurement without the use of elaborate bid

procedure and documents, simply by the supplier being asked to submit a proposal or price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately with or without negotiations;

“solicitation document” means any document seeking or soliciting for offers, proposals or quotations for the procurement of goods, works or services by a procuring entity;

“State” means Akwa Ibom State of Nigeria;

“subordinate relationship” in section 16(9) of this Law, means affiliates, part owned by another participant in the process, junior partners to, associates or any other persons with interest in the particular procurement, or who being participants in the procurement process have a subordinate relationship to another person to whom this other participant also has such a relationship with;

“supplier” means a natural or legal/juristic person that provides supply of goods or services;

“technical qualification” means specifically relevant experience backed up by required professional qualification and certification;

“Threshold” is stipulated monetary ceiling and refers only to the approval of procurement and not the actual process of award;

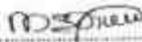
“Two-Stage Bidding” means a procurement method where the procuring entity calls upon bidders to submit in the first stage of bidding, their proposals only without a price, such proposals in addition to any other requirements that the regulations may impose, will relate to design, technical quality or other characteristics of the goods or works or services, as well as proposed contract terms, conditions of supply, professional competence, technical qualification of bidders, whilst the second stage of the bid will relate to price, based on a single set of specifications, with an opportunity to all qualified bidders to bid on the single approved set of specifications;

“validity period” means the period during which a bidder agrees not to increase the cost of its bids or remove any components of the bid.

Short title and commencement

72. This Law may be cited as the Akwa Ibom State Public Procurement Law, and shall come into force on the ^{30th} day of December 2019.

This printed impression has been compared by me with the Bill which has been passed by the Akwa Ibom State House of Assembly and is found to be true and correctly printed copy of the Bill.


MRS. MANDU UMOREN
CLERK OF THE HOUSE

I assent.


MR. UDOM EMMANUEL
GOVERNOR

Dated this 30th Day of December 2019