



ANAMBRA STATE BUREAU OF PUBLIC PROCUREMENT (ANSBPP)

PROCUREMENT MANUAL

January, 2021

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SECTION ONE

1.0. GENERAL INFORMATION

When the implementation of an action by Procuring Entity as approved by the Executive Governor, requires procurement, the contract must be awarded following this Procurement manual.

Before starting any procurement of goods or services, of whatever value, the request for it must be passed directly to the Governor, who will ensure, with the help of the Bureau of Public Procurement, that they are processed in accordance with all applicable procurement and financial control requirements.

No commitment to purchase any goods or services, however small, may be made without the prior signature of the Approving Authority (The Executive Governor, Commissioners, Heads of Agencies and Parastatals) depending on the approval thresholds as contained in this manual and as may be approved by the Council from time to time.

Before initiating any procedure, the funds must be provided for in that Budget Year. In order to use budget in most efficient way, contracts shall be awarded in accordance with basic procurement rules and principles:

- (a) ensuring sufficient transparency and fair competition;
- (b) ensuring equal treatment and non-discrimination;
- (c) avoiding conflicts of interests

1.1. Types of Contract

There are three types of contract:

- (a) Supply (Goods);
- (b) Service and
- (c) Works.

1.2. Basic Contracting Processes

The contracting process consists of three main stages:

- (a) Design Stage
- (b) Tendering Stage and
- (c) Contracting.

During the design stage, all the documentation needed to start tendering must be prepared. The documentation prepared during the design phase is used to determine the suitable contractor during the tendering process.

The types of tender documentation to be prepared and specific steps to be undertaken depend on the type of contract, the amount involved and the procedure to be used for tendering.

This Manual lays down the minimum procedures to be followed and it is not precluded that other procedures offering more competition are used subject to approval from the BPP. It also provides the comprehensive information necessary to undertake procurement for Anambra State Government from the very first steps to the award, signature and implementation of contracts. Operational guidelines for

procurement procedures are presented below for each type of procurement procedure.

Maximum value of the contract is calculated on the basis of overall price that Procuring Entity may pay for, VAT excluded.

1.3. Decision on Procurement

The Executive Governor of Anambra State and Anambra State Executive Council are the two Approving Authorities on procurement decision in the State; this is after Procuring Entity must have stated the justification for this procedure and value of the contract. However, this is subject to change from time to time as may be approved by the Council, the Executive Governor and State Executive Council.

1.4. Award Documentations

The Accounting Officer as defined in the Anambra State Public Procurement (Amendment) Law, 2020 shall sign contract award Letters stating the value, the contractor and the completion period.

The Contractor shall be asked to accept the contract condition(s) in writing within a reasonable time frame.

The Contract agreement shall be drafted by the Legal Unit of the Procurement Entity and stamped by the Anambra State Internal Revenue Service (AIRS). Where a Procuring Entity does not have a Legal Unit, the office of the State Attorney General and Commissioner for Justice shall be contacted for the drafting of such contract agreement.

1.5. Implementation and Supervision

The Procuring Entity supervises the contract execution according to the contract documents (Bill of Engineering Measurement and Evaluation (BEME), Technical Drawings and details and execution timelines as contained in the contract agreement). This does not preclude other authorized monitoring units of the Government.

1.6. Exclusion from award of contracts and rejection of tenders

Contracts may not be awarded to candidates or bidders which, during the procurement procedure:

- a) are subject to a conflict of interests;
- b) are guilty of misrepresentation in supplying the information required by the Procuring Entity
- c) by sole discretion right of the Evaluation Committee or the Approving Authority if it is determined to pose possible negative political, legal or General risk.
- d) The bid/tender submitted after the expiration of the deadline for submission of the bids/tenders shall be rejected as overdue.
- e) Requirements not mentioned in tender documentation cannot be reason for rejection of any candidate.

1.7. Conflict of Interest

- a. A conflict of interest arises in situations in where staffs of the Procuring Entity or the candidates or bidders have directly or indirectly, an economic, financial, or any other personal interest that might be perceived as an element that compromises their impartiality or independence in the context of the award procedure.
- b. In a procurement procedure the Accounting Officer and the members of the Evaluation Committee shall sign statements on conflict of interest (Annex: 2) which become part of the tender dossier.
- c. Potential conflict of interest shall be resolved by self-exemption or exemption upon request of an interested party from the work of the Evaluation Committee and any decision-making in the procedure.
- d. The contractors are prohibited from engaging the staff of the Procuring Entity or other persons who performed the tender evaluation or made the decision on awarding the contract, in the

implementation of the awarded contract.

1.8. Confidentiality

- a. All applicant/tenderer information and tender documents received are to be treated as confidential.
- b. The confidentiality and anonymity of tenderers must be maintained throughout the tender process.
- c. The evaluation reports published on E-Procurement Portal shall only contain information on the applicant to whom the contract was awarded.
- d. All members of the Evaluation Committee, as well as the Accounting Officer, shall sign the Confidentiality Declaration (Annex 3)
- e. Disclosing proposed solutions or information/data subject to intellectual property protection and copyrights from the contents of the tender/bid or negotiations dialogue without the consent of the candidate/bidder, shall be prohibited.

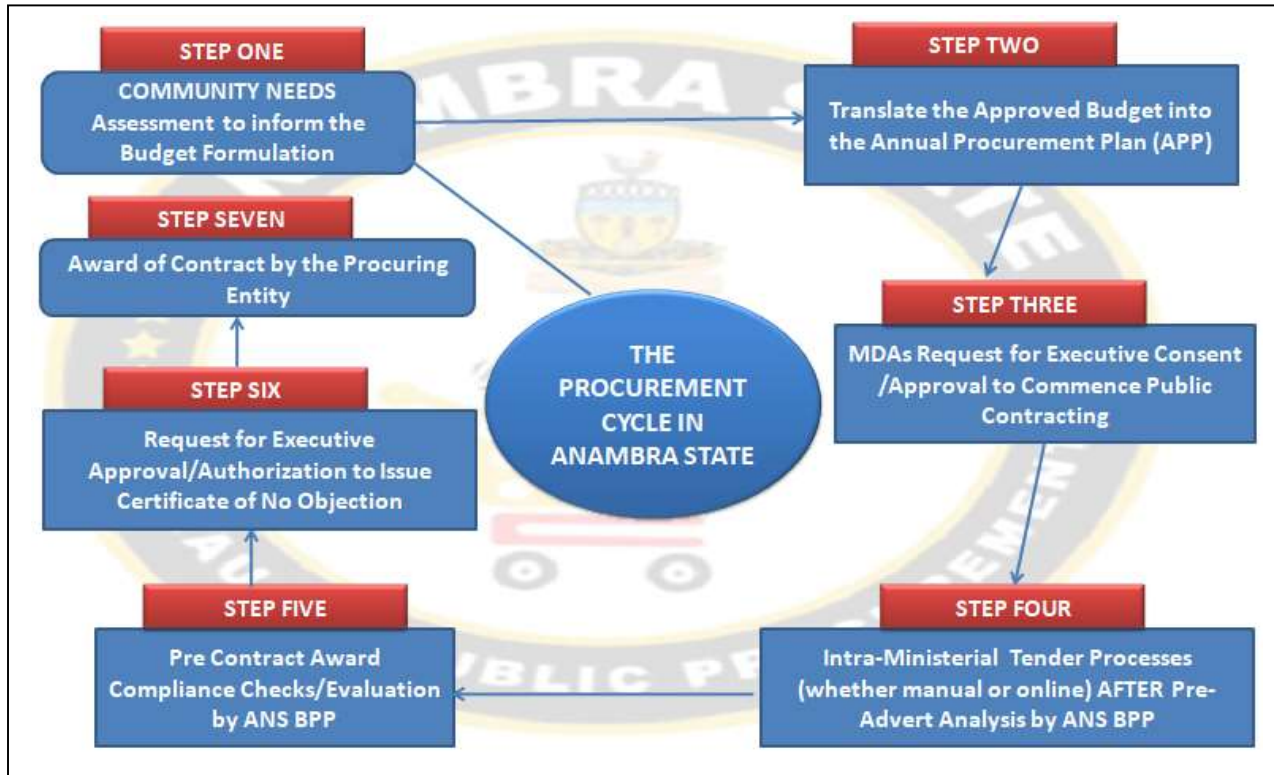
SECTION TWO

2.0. PROCUREMENT GUIDELINES

2.1. Initiation of procurement

Only those goods, works or services identical to or similar to those listed in the approved budget shall be procured.

2.2. Procurement Cycle



Depending on the threshold, the appropriate procurement procedure will be applied.

2.3. Financial Thresholds

Procurement value in Naira	Approving Authority
Below 30,000,000	The Executive Governor of Anambra State
30,000,000 and above	The Anambra State Executive Council
This is subject to review from time to time as may be approved by the Council on Public Procurement	

2.4 Procurement Method Thresholds

Procurement value in Naira	Minimum Procurement Method allowed
Less than 1,000,000	Single bid procedure (Direct Procurement Method)
1,000,000 – 30,000,000	Restricted Competitive procedure (Selective Procurement Method)
30,000,000 and more	Open procedure
In all cases, refers to Exceptions below	Negotiated Procedure (Direct Procurement Method)
This is also subject to review from time to time as may be approved by the Council on Public Procurement	

2.5 Award Publication Thresholds

Procurement value in Naira	Publication Requirement
Below 100,000,000	Does not require publication by law; Procuring entity is at liberty to publish or not to publish.
Above 100,000,000	Award Publication is required as approved by the Council. Procuring entities are expected to publish on the State OCDS portal or the e-procurement system.
This is subject to review from time to time as may be approved by the Council on Public Procurement	

The basic means of awarding contracts is competitive tendering. The purpose is twofold:

- To ensure that operations comply with the awarding principles; and
- To obtain the quality of services, supplies or works wanted, at the best possible price.

There are several different procurement procedures, each allowing a different degree of competition. This manual describes most common procedures; open, competitive, negotiated and single bid.

Once the funds are available in the budget and activity is approved, the Procuring Entity can proceed with tendering and contracting following these standard procedures. All basic principles must be complied with, regardless of which procedure is used.

2.6. Exceptions (Negotiated Procedure)

The Procuring Entity subject to approval from the Bureau of Public Procurement shall use the negotiated procedures on the basis of a single bid in the following cases:

- a) For reasons of extreme urgency brought about by events which the Procuring Entity could not have foreseen. The circumstances invoked to justify extreme urgency must in no way be attributable to the Procuring Entity.
- b) For extension of contracted activities or introduction of new activities not included in the main

contract, but which, because of unforeseen circumstances, have become necessary. The value of the extension should be limited up to 20% of the value of the main contract and time limited up to 1 year;

- c) For additional deliveries by the original supplier, where a change of supplier would oblige the Procuring Entity to acquire equipment having different technical characteristics which would result in either disproportionate technical difficulties or expenses in operation and maintenance;
- d) For short-term assignments (up to 20 working days), when the individual or vendor has a thorough understanding of the work to be accomplished and charges fees that have been determined to be reasonable and competitive in the market.
- e) When the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, Procuring Entity may negotiate with one or more candidates, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered.

Exceptions to General rules refer also to procurement of hotel services, travel tickets, restaurant services and translation and interpreting services; however market prices should be reviewed and considered for the selection of the suitable for the occasion best value for money.

2.7. Open procedure

A procedure is called open when all potential and eligible bidders may submit a tender. The contract is given maximum publicity through the public invitation issued at E-Procurement System and, if applicable, in other electronic media.

Under the open procedure, any natural or legal person wishing to participate, is granted access to download the tender documents upon payment of applicable tender fees (if such fee is required for such contract) in accordance with the procedures laid down in the public invitation. When the tenders received are examined, the contract is awarded by conducting evaluation and award procedures.

***Steps**

The Accounting Officer having secured the approval of the Executive Governor to procure works, goods or service(s) shall write to notify the General Manager, Bureau of Public Procurement of the intention to start an approved procurement decision; stating funds available, procedure to be followed (in this case open procedure), selection and award criteria, time limits for procedure.

- The bidders shall have at least 10 working days (14 calendar days) after publication to submit the offers.
- The period when evaluation of tenders must be done and Contract award Decision finalized must be stated (this is however subject to the approving authority involved).
- It is also necessary to appoint Evaluation Committee if the Procuring Entity does not have permanent Evaluation Committee appointed.
- Minimum Contract Documents that must accompany this letter from the Procuring Entity under **Open Procedure** includes: Bill of Engineering Measurement and Evaluation (BEME), Drawings and any other relevant technical details about the activity (project).

If the General Manger have certified that the Procuring Entity have secured the approval of the Executive Governor on the Procurement Decision, and relevant information need to publish the online Tender Advertisement is provided, public invitation to tender may be launched on the E-Procurement Portal.

If candidates have questions regarding tender documentation it should be answered prior to submission date. All questions and answers shall be done on the E-Procurement System.

Tender opening session takes place after submission deadline.

- Tenders (offers) are open only when all members of the Evaluation Committee are present.
- Each Tender should be checked whether it satisfies all requirements, and that information should be part of the Evaluation report.

The Evaluation Committee concludes the Evaluation report, which shall contain proposed candidate to whom the contract will be offered. The Report is sent to the Approving Authority (Governor or Executive Council) for approval.

After approval, the selected candidate is offered the contract for signature. If they accept proposed contract, the implementation can start after contract commencement date. If they do not accept it, the contract can be offered to the second best successful candidate.

2.8. Restricted Competitive Procedure

A Procedure is considered to be Restricted Competitive Procedure, when the Procuring Entity invites a selected number (at least three) of eligible candidates of its choice to bid for procurement activity. At the end of the procedure, out of the technically compliant offers, the one that offers the best value for money or the one that is the cheapest is selected (depends which award criterion is set to be used). If the Procuring Entity receives only one offer that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

***Steps**

The Accounting Officer having secured the approval of the Executive Governor to procure works, goods or service(s) shall write to notify the General Manager, Bureau of Public Procurement of the intention to start an approved procurement decision; stating funds available, procedure to be followed (in this case restricted competitive procedure), rational for using the procurement procedure, selection and award criteria, time limits for procedure.

- The bidders shall have at least 5 working days (7 calendar days) after publication to submit the offers.
- The period when evaluation of tenders must be done and Contract award Decision finalized must be stated (this is however subject to the approving authority involved).
- It is also necessary to appoint Evaluation Committee if the Procuring Entity does not have permanent Evaluation Committee appointed.
- Minimum Contract Documents that must accompany this letter from the Procuring Entity under **Restricted Competitive Procedure** includes: Bill of Engineering Measurement and Evaluation (BEME) or Bill of Quantities (BOQ), Drawings (where applicable) and any other relevant technical details about the activity (project).
- List of the choice of vendors (at least three).

If the General Manager have certified that the Procuring Entity have secured the approval of the Executive Governor on the Procurement Decision, and relevant information need to publish the online Tender Advertisement is provided, public invitation to tender may be launched on the E-Procurement Portal.

If candidates have questions regarding tender documentation it should be answered prior to submission date. All questions and answers shall be done on the E-Procurement System.

Tender opening session takes place after submission deadline.

- Tenders (offers) are open only when all members of the Evaluation Committee are present.
- Each Tender should be checked whether it satisfies all requirements, and that information should be part of the Evaluation report.

The Evaluation Committee concludes the Evaluation report, which shall contain proposed candidate to whom the contract will be offered. The Report is sent to the Approving Authority (Governor) for approval. After approval, the selected candidate is offered the contract for signature. If they accept proposed contract, the implementation can start after contract commencement date. If they do not accept it, the contract can be offered to the second best successful candidate.

2.9. Direct purchase and negotiated procedure

Direct purchase is based on single bid. This is provided for in case the sum allotted for a contract is less than N1,000,000 (as stated in this manual). However, artificially splitting of related activities into smaller sized contracts to prevent the requirement for tendering is strictly prohibited (The Bureau reserved the right as contained in the Anambra State Public Procurement (Amendment) Law 2020 to cancel the procedure and barred such officers from participating in public procurement activities).

In case the candidate is technically competent to undertake the contract as asked to, and is able to abide by the financial limitations of the budget, a direct contract procedure may commence.

Steps

The Accounting Officer having secured the approval of the Executive Governor to procure works, goods or service(s) shall write to notify the General Manager, Bureau of Public Procurement of the intention to start an approved procurement decision; stating funds available, procedure to be followed (in this case Direct Purchase), rational for using the procurement procedure, selection and award criteria, time limits for procedure.

- Basic Documents that must accompany this letter from the Procuring Entity under **Direct Purchase Procedure** includes: Bill of Quantities (BOQ), or a simple invoice, purchase order and any other relevant details about the activity (project).
- Name of vendors.

If the General Manager have certified that the Procuring Entity have secured the approval of the Executive Governor on the Procurement Decision, and relevant information needed to publish the online Tender Advertisement is provided, the vendor shall be invited to continue the process online on the E-Procurement Portal.

In the cases when the Procuring Entity has a prior knowledge or experience of numerous service/goods providers, it can be appropriate to pre-qualify the bidders. Such list shall be placed at the disposal to the staff of the Procuring Entity in some form of internal list of vendors that will be used as an initiation for such procurement. Pre-qualification criteria vary and can be set on a yearly basis, with an ongoing open call for potential new vendors.

2.10. Canceling procurement procedure

The Procuring Entity may decide to (subject to approval from the Bureau of Public Procurement) cancel the tender procedure at any stage particularly if:

- a) the tender procedure has been unsuccessful i.e. no qualitatively or financially worthwhile bid has been received or there is no response at all,
- b) the economic or technical data of the project have been fundamentally altered,
- c) exceptional circumstances of force majeure render normal performance of contract impossible,
- d) all technically compliant bids exceed the financial resources available,
- e) There have been irregularities in the procedure, in particular where these have prevented fair competition.

The bidders shall be informed on the cancellation. In the case of open procedure, cancellation is published at same places as public invitation to tender. Bidders shall not be entitled to compensation of any kind whatsoever.

After cancelling a tender procedure, the Procuring Entity may decide to (subject to approval from the Bureau of Public Procurement) launch a new tender procedure if applicable, to negotiate with one or more bidders, provided that the original terms of the contract have not been substantially altered.

The Accounting Officer signs Decision on procurement cancellation, upon the request from the Bureau of Public Procurement.

2.11. Selection and award criteria

The Procuring Entity must draw up clear and non-discriminatory selection criteria for the purpose of assessing that the candidate has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen criteria shall be proportionate and may not go beyond the scope of the contract.

When deciding on the appropriate selection criteria, it must be considered whether compliance can be proved and what type of documentary evidence the candidate may submit as proof. These criteria may be different for natural and legal persons, and they should be tailored for each procurement.

Selection criteria are:

- a) the financial and economic capacity of the candidate
- b) technical and professional capacity of the candidate

Example of criterion a): Annual turnover of candidate is equal or higher than contract value

Proof to be requested for criteria a): Balance sheet of previous financial year

Example of criteria b): the educational or professional qualifications of candidate, or previous experience

Proof to be requested for criteria b): University degree diploma, company registration form or a copy of employment contracts.

2.12. Contract award criteria:

- a) lowest price (of the tender satisfying selection criteria and is technically compliant)
- b) the best-value-for-money (i.e. the most economically advantageous tender)

An award criterion is applied after the tender is evaluated for satisfying selection criteria and is technically compliant.

Usually, criteria a) is used when procuring goods, and criteria b) for procuring services. Nevertheless, it can be decided differently or combined criteria can be applied. The Evaluation Committee, in its Evaluation Report, proposes the contractor selected on the basis of these, previously set, selection and award criteria. The Accounting Officer approves Evaluation report and signs Contract award Decision.

Only after Contract award Decision is taken, the bidder (who afterwards becomes contractor) is notified on the Decision, and the Contract may be signed.

In order to inform candidates how they will be assessed, it is useful to use evaluation grid which includes all criteria on which tenders will be evaluated. Since the evaluation of the Tenders will be based on the evaluation grid which is contained in the tender documentation and candidates pay special attention to the items in the grid that could potentially give a high number of points, it must not be changed after it is set up to the specific contract. It must be also noted that if there are too many criteria in the grid, the comparison of Tenders could be more complicated as each item would give a relatively small number of points and some differences between the offers would not be reflected in the number of points. Points are given only in case an award criterion is the-best-value-for-money.

In case award criteria is the lowest price, other technical requirements must be tailored to each tender in a YES/NO format to allow a clear assessment of whether or not the tender meets the technical requirements set out in the tender dossier.

SECTION THREE

3.0. EVALUATION COMMITTEE

The Evaluation Committee is established to ensure consistent and correct application of procurement practices. Committee members are primarily responsible for monitoring and verifying executing procurement actions and ensuring that approved procurement procedures have been applied properly.

Evaluation Committee:

- Ensures compliance with the Procurement Policy;
- Approves notices, tender documents, terms of the service agreement and all other material documents related to the procurement process;
Corresponds with bidders;
- Considers the proposals received by the bidders;
Evaluates as per defined criteria; (Evaluation grid)
- Prepares Evaluation report that shall contain as a minimum the following data:
 - subject of the procurement and estimated value of the procurement contract,
 - names/titles of the candidates/bidders whose proposals are compliant,
 - names/titles of candidates/bidders whose proposals are non-compliant, with information about the reasons for rejection
 - proposal for contract award – the name/title of the candidate or bidder whose tender is selected.
- Reports to the Accounting Officer on a regular basis on the progress of the procurement process;
- Proposes a contract award decision to the Approving Authority.

Accounting Officer shall be obliged to approve the Evaluation report in which the proposal for contract award is stated unless he/she finds that the procurement procedure was not respected or if determined reasons for exclusion from award of contracts and rejection of tenders in accordance with this Manual.

The decision on rejection of the proposal for contract award must be delivered to the Evaluation Committee in written containing the information on reasons for rejection and corrective measures/further steps to be undertaken.

SECTION FOUR

4.0. TENDER DOCUMENTATION

Tender documentation should be carefully drafted, to ensure that procurement procedure is carried out correctly and the contract is complete. Given the technical complexity of some contracts, the preparation of (part of) tender documentation may require external assistance. Tender documentation should contain all relevant information that candidates need in order to submit their tender:

- Procedure to be followed
- Instruction to bidders
- Grounds for exclusion.
- Statement template and/or documents to provide as proof
- Selection and award criteria
- Description of supply/service/works that are subject of procurement
- Evaluation grid
- Time limits
- Contact information

In order to maintain fair competition, requirements must not be tailored to the specific contractor.

If candidate has additional questions about tender documentation, or Procuring Entity decides it is necessary to share additional information, it should be done in written before submission date, so candidate can adjust its tender timely.

Depending on the procurement subject, the technical part of the documentation should contain all information related to minimal technical requirements, state of goods, minimum quality, delivery time, after sales service, warranty conditions, etc.

SECTION FIVE

5.0. TRANSPARENCY

The Procuring Entity shall promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships.

In order to achieve this end, the Procuring Entity shall make sure that:

- Relevant information is updated on the E-Procurement Portal at each stage of the open procedure cycle: tender notice, bidding/tender documents, technical specifications, qualification criteria, evaluation criteria, award notice, and contract award decision.
- Criteria that set the timeframe for publication of procurement of opportunities and submission of proposals to allow sufficient time to:
 - Prepare for the tender
 - Ask questions
- Conditions that will enable potential suppliers to determine their participation are disclosed.

All candidates/bidders taking part in an open procurement procedure shall have the right to inspect the document of the completed procurement procedure with the exception of personal data non-relevant for contrasting tender/bid competitiveness or proper procurement procedure and information/data subject to intellectual property protection and copyrights.

All invitations to tender in open procedure and in restricted competitive procurement procedure for amounts higher than N1,000,000 and all open calls/announcements for awarding service contracts for provision of expertise (regardless of value or procurement procedure, budgetary or extra-budgetary funding), as well as any questions and answers, the related evaluation reports, procurement decisions, statements, shall be published in OCDS Format on OCDS Portal or E-Procurement System.

Published documents shall be in a processed version in which the following data/information is removed:

- personal data non-relevant for contrasting tender/bid competitiveness or proper conduct of procurement procedure; and
- information/data subject to intellectual property protection and copyrights.

SECTION SIX

6.0. CODE OF CONDUCT FOR ANAMBRA STATE GOVERNMENT CONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Pursuant to its functions and powers as provided for in the Act setting up the Bureau, the Anambra State Bureau of Public Procurement hereby issues this Code of Conduct for Contractors, Suppliers and Service Providers.

The Contractors, Suppliers and Service Providers are expected to participate in the State's procurement proceedings in strict conformity with the following Code:

1. They shall at all times uphold the provisions of the Law, Regulations, Manuals and other subsidiary instruments issued pursuant to the Law by the Bureau.
2. They shall register with ANS BPP, and ensure that their details are on the database of contractors, suppliers and service providers maintained by the Bureau
3. They shall comply with all lawful directives issued by ANS BPP.
4. They shall respond to solicitation document(s) in an honest, fair, and comprehensive manner which accurately represents their capacity to fulfill the requirements and conditions set out in the Law and solicitation document(s) issued by a Procuring Entity for a particular procurement activity.
5. They shall participate in procurement processes in a manner that is transparent, fair, accountable and honest.
6. They shall not offer or attempt to offer any gift, employment, favour or other benefits, items or services that can be quantified in monetary terms to a public officer involved with any procurement proceedings in which they have bided, prior to, during and after such proceedings.
7. All issues of potential or actual conflicts of interest as stated in the Standard Bidding Documents shall be fully disclosed in writing to the Accounting Officer of the Procuring Entity.
8. They shall at all times in the implementation of contracts ensure warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution of works contracts.
9. Information, data, know-how and documents obtained from a Procuring Entity during the implementation of a procurement activity shall not be used for any other purposes except as expressly stated in the contract document and must not be made available to a third party in order to gain advantage in another procurement proceeding.
10. Contractors, Suppliers and Service Providers shall assist the ANS BPP in any form of administrative review procedure, or investigation concerning any procurement activity, and extend such assistance to any investigative agency or body if the need arises.
11. Contractors, Suppliers and Service Providers shall participate in enlightenment/capacity building exercises for enhanced understanding of the Law, Manuals, Regulations and other subsidiary instruments, especially programmes organized or supported by ANS BPP.
12. Contractors, Suppliers and Service Providers shall at all times participate in procurement proceedings in a manner that upholds the ethical standards under the Law, national and international leading procurement practices and standards.
13. A breach of this Code of Conduct constitutes a violation of the Anambra State Public Procurement Law 2011 as amended.

Name of Firm: _____

Address: _____

Firm's Representative: _____

Designation of Firm's Representative: _____

Phone Number: _____

Email: _____

Signature: _____ Date: _____

SECTION SEVEN

7.0. THRESHOLDS DETAILS

7.1. PREAMBLE

In order to help administer the Public Procurement law and in line with the power to make regulations conferred on the Agency in Section 18 and in pursuance of Sections 10 (1)(a) & 36 (1) of the Anambra State Public Procurement Law 2020 the Agency hereby issue these Guidelines or monetary thresholds for Statewide Public Procurement Implementation which supersedes previous volumes

PROCUREMENT METHODS

PROCUREMENT METHODS

S/N	Procurement Methods	Goods	Works	Non Consulting Services	Applicable Circumstances	Mandatory Requirements	Remark (s)
A	SHOPPING						
A1	National Shopping (NS)	≤ (less than or equal to) N 20 million	≤ (less than or equal to) N 20 million	≤ (less than or equal to) N 10 million	i. Readily available off the shelf goods of low value. ii. Small value goods of standard specification iii.Minor works	Adequate Budgetary Provision Project is captured in the annual procurement plan Obtain approval to commence procurement. Issue Request for quotation to a minimum of three (3) unrelated vendors from the pool of registered Vendors. Evaluation Committee evaluates submissions and recommend a winner in a formal report to the Tender's Board Obtain approval from appropriate authority to award contract.	Contracts in this Category are subject to post review. Request for quotation may be sent electronically and quotation received electronically. Basis of award shall be lowest cost evaluated responsive bidder Where necessary, negotiations shall be with the winning vendor
A2	International Shopping (IS)	>(greater than) N20 million but (less than or equal to) N200 million	>(greater than) N20 million and (less than or equal to) N200 million		i Readily available off the shelf goods. ii. Goods of standard specification not readily available locally.	4Adequate budgetary provision Project is captured in the annual procurement plan Obtain approval to commence procurement Obtain approval from the Agency to use this method	Contracts in this category are subject to prior review. Requests for quotation may be sent electronically and quotation may be received electronically Where necessary, negotiation shall be with the winning vendor. Basis of award shall be least cost evaluated responsive bidder

						Issue request for quotation to at least three (3) unrelated international vendors with track record of performance	
						Evaluation Committee evaluates submissions and recommends a winner in a formal report to BPP.	
						Obtain Certificate of No Objection from BPP.	
						Obtain approval from appropriate authority before award of contract.	
B	RESTRICTED/LIMITED COMPETITIVE BIDDING						
B1	Limited National Competitive Bidding	>(greater than) N20 million but ≤(less than or equal to) N50 million	> (greater than) N20 million but ≤ (less than or equal to)N50 million		i. Limited availability of vendors with requisite expertise. ii. Cost and time to evaluate a large number of bids are disproportionate to the value of procurement .	Adequate budgetary provision Project is captured in the annual procurement plan Obtain approval to commence Procurement Obtain approval from the Agency to use this method for procurement values in excess of fifty million naira (N50,000,000.00) Issue invitation to Tender to a minimum of three(3) unrelated vendors with track record of performance from the pool of registered vendors Apply Open Competitive Bidding Procedures hereafter	Contracts in this category are subject to prior review by the Agency. Requests for quotation may be sent electronically and quotation may be received electronically Where necessary, negotiation shall be with the winning vendor. Basis of award shall be least cost evaluated responsive bidder
B2	Limited International Competitive Bidding	>(greater than) N50 million but ≤(less than or equal to) N200 million	> (greater than) N50 million but ≤(less than or equal to)		i. Limited availability of vendors with requisite expertise.	Adequate budgetary provision Project is captured in the annual procurement plan	Contracts in this category are subject to prior review by the Agency. Requests for

			N200 million		ii. Cost and time to evaluate a large number of bids are disproportionate to the value of procurement	Obtain approval to commence Procurement Obtain approval from the Agency to use this method for procurement values in excess of fifty million naira (N50,000,000.00) Issue invitation to Tender to a minimum of three (3) unrelated vendors with track record of performance from the pool of registered vendors. Apply Open Competitive Bidding Procedures thereafter	quotation may be sent electronically and quotation may be received electronically Where necessary, negotiation shall be with the winning vendor. Basis of award shall be least cost evaluated responsive bidder
C	Open Competitive Bidding						
	(This method of Procurement is to be used at all times except as otherwise permitted or provided for in the law or regulations, there from)						
C1	National Competitive Bidding (NCB)	≥ (greater than or equal to) N50 million	≥ (greater than or equal to) N50 million	≥ (greater than or equal to) N50 million	i. Default method of procurement ii. Competition is the key consideration iii. Services required can be sourced within national boundaries	Adequate budgetary Provision Project is captured in the annual procurement plan Obtain approval to commence procurement Prepare bid solicitation documents using the State's Standard Bidding Templates Obtain clearance from BPP for the bid solicitation documents	Contracts in this category are subject to prior review by BPP. Issuance of Tender Documents as well as submission through electronic means may be acceptable

						Advertise in at least one national daily and /or in the State website or Procuring Entities website for 2 - 6 weeks Conduct public bid opening with relevant stakeholders in attendance Evaluation Committee evaluates submissions and recommends a winner (s) in a formal report to BPP. Obtain Certificate of Compliance from BPP. Obtain approval from the appropriate authority prior to award of contract Award and enter into a contract	
C2	International Competitive Bidding	≥(greater than or equal to) N200 million naira	≥(greater than or equal to) N200 million naira		i. Default method of procurement ii. Procurement has international components iii. Wider Competition is the key consideration	Adequate budgetary provision Project is captured in the annual procurement plan Obtain approval to commence procurement Prepare bid solicitation document using the State Standard Bidding Document Obtain from the Agency for the bid solicitation documents	Contracts in this category are subject to prior review by the Agency Issuance of Tender Document as well as submission through electronic means may be acceptable

						Advertise in at least 2 national newspapers, 1 relevant international publication and /or State or Procuring Entity's website for 3-6 weeks except otherwise approved by BPP. Conduct public bid opening with relevant stakeholder's in attendance Evaluation Committee evaluates submission and recommends a winner in a formal report to the appropriate Tender's Board Obtain Certificate of Compliance from the Agency Obtain approval from appropriate authority prior to award of contract Award and enter into a Contract	
D	Direct Contracting	All values	All values	All values	i. Goods or works are only available from a particular vendor ii. Vendor has exclusive right in respect of the goods or works and no reasonable alternative or substitute are available iii. During an emergency	Adequate budgetary provision Project is captured in the annual procurement plan except in an emergency Obtain approval to commence procurement Obtain approval from the Agency to use this method in all cases	Contracts in this category are subject to prior review by BPP. In emergency circumstances, annual procurement plan must be updated and cleared by BPP. Project has already been competitively awarded and contractor is willing to maintain his tendered rate/prize.

					situation iv. Extending an existing contract v. Awards of Contract those are repetitive in nature. vi. Need for compatibility for existing goods or works vii. Requirement is proprietary and obtainable only from one source	Issue invitation to Tender/Request for Quotation to a single vendor with track record of performance from the pool of registered vendors. Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to BPP. Obtain Certificate of Compliance from the Agency for procurement value in excess Twenty million naira (N20,000,000.00) Obtain approval from appropriate authority before award of contract Award and enter into a contract	
E	FORCE ACCOUNT (DIRECT LABOUR)		≤ (Less than or equal to) N5 million	≤ (Less than or equal to) N5 million	i. Procurement of minor civil works only. ii. Procuring entity has the requisite personnel, equipment and resources for the procurement. iii. The size, nature and location of the works are such that qualified contractors are likely to bid. iv. The quantities of	Adequate budgetary provision Project is captured in the annual procurement plan except in emergencies Obtain approval to commence procurement Obtain the Agency's approval for the use of this method. Availability of skilled personnel with requisite technical and	All contracts in the category are subject to pre-review by the Agency In emergency circumstances, annual procurement plan must be updated and cleared by the Agency.

					minor works cannot be defined in advance.	professional experience in the MDA.	
					v. Ongoing works are interrupted due to breach of contract or contractor's failure and need to be continued to avoid serious damage.	Availability of relevant equipment in the MDA	
					vi. Emergencies requiring immediate action	Obtain approval from appropriate authority prior to the execution of the project	

CONSULTING SERVICES

S/N	SELECTION METHOD	MONETARY THRESHOLD	APPLICABLE CIRCUMSTANCES	MANDATORY REQUIREMENTS	REMARK(S)
A	SINGLE SOURCING	All values	Services that are intellectual and advisory in nature provided by experts (firms or individuals)	Adequate budgetary provision for the procurement	All contracts in this category are subject to post/prior review .
				Procurement is captured in the annual procurement plan	
				Obtain approval to commence procurement	Where necessary, negotiate, the contract price with the vendor
			Specialized services for limited amount of time without any obligation of permanent employment.	Obtain approval from the Agency to use this method of procurement in all cases	Where there is an imminent or actual threat such that engaging in competitive bidding proceedings or other procurement methods would not be practicable. (see Emergency Procurement Guidelines)
			In exceptional circumstances where there is a clear advantage over competitive selection	Issue Request for Proposal (RFP) to a single vendor with track record of performance from the pool of registered Vendors	
			Tax that is a natural continuation of a previous work carried out by the consultant.	Evaluation Committee analyses submission for responsiveness and recommends negotiation/award in a formal report to BPP.	
			Selection of a consultant during an emergency situation.	Obtain Certificate of Compliance from the Agency for procurement value in all situations.	
			Services are only available from a particular vendor or the vendor has exclusive right in respect of the services	Obtain approval from appropriate authority before award of contract.	
				Award and enter into a contract.	

			or no reasonable alternative or substitute Need for compatibility with existing services taking into account the effectiveness of meeting the needs of the procuring entity. Requirement is proprietary and obtainable only from one source		
B	Individual Consultant	≤ (less than or equal to) N20 million	Services that are intellectual and advisory in nature provided by an expert (individual) Specialized services for limited amount of time without any obligation of permanent appointment When teams of personnel are not required. When additional professional support is not required. Experience and qualifications of the individual are major requirements.	Adequate budgetary provision for the procurement	All contracts in this category are subject to prior/post review Selection may be on the basis of references or through comparison of qualification among those expressing interest in the assignment or approached directly by the procuring entity Where necessary, negotiate the contract price with the vendor.
				Procurement is captured in the annual procurement plan	
				Obtain approval to commence procurement	
				Issue Request for Proposal (RFP) to a minimum of 6 vendors with track record of performance from the pool of registered Vendors	
				Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to BPP.	
				Obtain Certificate of Compliance from the Agency for procurement values in excess of Twenty Million Naira (N20,000,000.00)	
				Obtain approval from appropriate authority before award of contract	
				Award and enter into a contract	
C	Consultant Qualification	≤ (less than or equal to) N50 million	Services that are intellectual and advisory in nature provided by experts (firms or consultant) Specialized services for limited amount of time without any obligation of permanent employment.	Adequate budgetary provision for the procurement.	All contracts in this category are subject to post/prior review
				Procurement is captured in the annual procurement plan	
				Obtain approval to commence procurement	
				Issue Request for Proposal (RFP) to a minimum of 6 vendors with track record of performance from the pool of registered Vendors.	

			Assignments where the need for submission and evaluation of detailed competitive proposals is not justified. Consultant experience or qualification is relevant to the assignment	Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to BPP. Obtain Certificate of Compliance from the Agency for procurement values in excess of Twenty million naira (N20,000,000.00) Obtain approval from appropriate authority before award of contract. Award and enter into a contract	
D	Least Cost	≥ (greater than or equal to) N50 million (less than or equal to) N200 million	Services that are intellectual and advisory in nature provided by experts (firms) Specialized services for limited amount of time without any obligation of permanent employment. The selection of consultant for assignments of a standard or routine nature e.g. audit, engineering design of non complex works etc Where well established practices and professional standards exist	Adequate budgetary provision for the procurement. Procurement is captured in the annual procurement plan Obtain approval to commence procurement Issue Request for Expression of Interest (REoI) Issue Request for Proposal RFP) to 6 shortlisted firms Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to BPP. Obtain Certificate of Compliance from BPP. Obtain approval from appropriate authority before award of contract Award and enter into a contract.	All contracts in this category are subject to prior review. Technical proposals are opened first and evaluated. The proposals scoring less than the minimum qualifying score are rejected. The financial Proposals of the remaining firm are opened and firm with the lowest price is selected for Negotiation/contract award
E	Fixed Budget	≥ (greater than or equal to) N50 million but < (less than or equal to) N200 million	Services that are intellectual and advisory in nature provided by experts (firms) Specialized services for limited amount of time without any obligation of permanent	Adequate budgetary provision for the procurement. Procurement is captured in the annual procurement plan Obtain approval to commence procurement Issue Request for Expression of Interest(REoI)	All contracts in this category are subject to prior review The terms of Reference (ToR) must be carefully prepared to ensure that the budget is sufficient for the consultants to

			employment. Assignment is simple and can be precisely defined Strictly for a fixed budget assignment	Issue Request for Proposal (RFP) to 6 shortlisted firms Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to the appropriate Tender's Board Obtain Certificate of Compliance from BPP. Obtain approval from appropriate authority before award of contract Award and enter into a contract.	perform all of the expected tasks Technical proposals are evaluated and consultants who pass the minimum technical score will have their financial proposals opened. The consultants who have submitted the highest ranked technical proposal within the budget will be invited for negotiation and award of contract
F	Quality Based	≥ (greater than or equal to) N200 million	Services that are intellectual and advisory in nature provided by experts (firms) Specialized services for limited amount of time without any obligation of permanent employment. Complex or highly specialized assignments where it is difficult to define precise terms of reference expertise is required without consideration of the price Expertise is required without consideration of the price Assignments that can be carried out in very different ways and therefore proposal may not directly comparable.	Adequate budgetary provision for the procurement Procurement is captured in the annual procurement plan Obtain approval to commence procurement Issue Request for Expression of Interest(Reol) Issue Request for Proposal (RFP) to 6 shortlisted firms Evaluation Committee analyses submission for responsiveness and recommend negotiation/award in a formal report to BPP. Obtain Certificate of Compliance from BPP. Obtain approval from the appropriate authority before award of contract Award and enter into a contract	All contracts in this category are subject to prior review Assignments that have a long term impact and in which the objective is to have the best expert available. e.g. the design of a dam, design of an IPP project etc The RFP may require submission of a technical proposal only, or request submission of both technical and financial proposals at the same time, but in separate envelopes (two envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the firms, after the negotiation are successfully concluded If technical proposals only are invited, after evaluating the

					technical proposals, the Consultant with the highest ranked technical proposal will be invited to submit a detailed financial proposal.
G	Quality and Cost Based	≥ (greater than or equal to) N200 million	Services that are intellectual and advisory in nature provided by experts (firms) Specialized services for limited amount of time without any obligation of permanent employment. Complex or highly specialized assignments where it is difficult to define precise terms of reference. Best expertise is required and price factors are paramount. Projects with international dimension	Adequate budgetary provision for the procurement	All contracts in this category are subject to prior review Assignments that have a long term impact in which the objective is to have the best expert and Price is also a factor. e.g. studies of national significance, design of a master plan, etc Only the technical proposals which have passed the minimum technical score set in the request for proposal will proceed to the financial evaluation stage Payment pattern should be based on milestone. Exit clause in the contract must be based on the government.
				Procurement is captured in the annual procurement plan	
				Obtain approval to commence procurement	
				Issue Request for Expression of Interest (REOI)	
				Issue Request for Proposal (RFP) to 6 shortlisted firms	
				Evaluation Committee analyzes submission for responsive bids and recommends negotiation/award in a formal report to BPP.	
				Obtain Certificate of Compliance from BPP.	
				Obtain approval from appropriate authority before award of contract	
				Award and enter into a contract	



ANAMBRA STATE OF NIGERIA
2011 NO.

A Bill for a Law to establish the State Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for monitoring the oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Anambra State and for related matters.

Be it ENACTED by the Anambra State House of Assembly as follows:

PART I – ESTABLISHMENT OF STATE COUNCIL
ON PUBLIC PROCUREMENT
Short title and Commencement.

1. This Law may be cited as the Anambra State Public Procurement Law, 2011, and shall come into force on the **31st day of May, 2011.**

Interpretation.

2. In this Law, unless the context otherwise requires:

“accounting officer” means the person charged with line supervision of the conduct of all procurement processes;

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

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

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

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

“contract” means an agreement entered in writing;

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

“excessive price” means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.

“goods” means objects of every kind and description including raw materials, products and equipment and objects in solid , liquid or gaseous

form and electricity as well as services incidental to the supply of the goods;

“interim performance certificate” means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion;

“international competitive bidding” means the solicitation of bids from both domestic and foreign contractors and suppliers;

“lowest evaluated responsible bid” means the lowest price bid amongst the bids that meet all the technical requirements and standards as contained in the tender document;

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

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

“monetary threshold” means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract;

“national competitive bidding” means the solicitation of bids from contractors and suppliers resident anywhere in Nigeria and registered or incorporated to carry on business under Nigeria Law;

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

“open competitive bidding” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services; **“procurement”** means acquisition;

“procurement proceedings” means the initiation of the process of

effecting a procurement up to award of a procurement contract; **“procuring entity”** means any public body engaged in procurement and

includes a ministry, extra-ministerial office, government agency, parastatals and corporation;

“public procurement” means the acquisition by any means of goods works or services by the government;

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

“solicitation documents” means the bid solicitation documents or any other documents for solicitation of offers, proposals or quotations; **“state competitive bidding”** means the solicitation of bids from domestic contractors registered or incorporated to carry on business under Nigerian Law;

“substantially responsive” means the response to bid solicitations which

virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents’

“supplier” means a natural or legal person that provides supply of goods, contracting of works or consultants;

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

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

“works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building,

installation of equipments or materials, decoration and finishing as well as services incidental to construction such as drilling, mapping , satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those services does not exceed that of the construction itself

Establishment of the State Council on Public Procurement and membership.

3. (1) There is hereby established the State Council on Public Procurement (in this Law referred to as “the Council”)
- (2) The Council shall consist of:-
- (a) the Commissioner for Finance who shall be the Chairman;
 - (b) the Attorney-General and Commissioner for Justice;
 - (c) the Secretary to the State Government;
 - (d) the Head of Service;
 - (e) the Commissioner for Economic Planning and Budget;
 - (f) a representative of the Local Governments in the State;
 - (g) six part-time members to represent:-
 - (i) the Chartered Institute of Purchasing and Supply Management;
 - (ii) the branches of the Nigerian Bar Association in the State;
 - (iii) the Anambra State Chamber of Commerce, Industry, Mines and Agriculture;
 - (iv) the Nigeria Society of Engineers;
 - (v) the Civil Society;
 - (vi) the Media; and
 - (h) the General Manager of the Bureau who shall be the Secretary of the Council.
- (3) Notwithstanding the provisions of sub-section (2), the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a right to vote and shall not be counted towards the quorum.
- (4) The Chairman and other members of the Council shall be appointed by the Governor.
- (5) The term of office of a part-time member of the Council shall be specified in his letter of appointment.

Functions of the Council.

4. The Council shall:

- (a) consider, approve and amend the monetary and prior review threshold for the application of the provisions of this Law by procuring entities;
- (b) consider and approve policies on public procurement;
- (c) recommend to the Governor the appointment of a person as the General Manager of the Bureau of Public Procurement;
- (d) receive and consider for approval, the audited accounts of the Bureau of Public Procurement;
- (e) approve changes in the procurement process to adapt to improvements in modern technology;

- (f) as far as practicable, benchmark the policies on public procurement approved pursuant to this Law with international standards;
- (g) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

PART II – ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

The Establishment of the Bureau of Public Procurement.

- 5. (1) There is hereby established an Agency to be known as the Bureau of Public Procurement (in this Law referred to as “the Bureau)
- (2) The Bureau:
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name;
 - (c) may acquire, hold or dispose of any property movable or immovable, for the purpose of carrying out its functions under this Law.

Objectives of the Bureau.

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

Functions of the Bureau.

- 7. The Bureau shall:
 - (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
 - (b) publicize and explain the provisions of this Law;
 - (c) subject to thresholds as may be set by the Council, certify State procurement prior to the award of contract;
 - (d) supervise the implementation of established procurement policies;

- (e) monitor the prices of tendered items and keep a State data base of standard prices;
- (f) publish the details of major contracts in the procurement journal;
- (g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (h) maintain a State database of the particulars and classification and categorization of contractors and service providers;
- (i) collate and maintain in an archival system, all State procurement plans and information;
- (j) undertake procurement research and surveys;

- (k) organize training and development programmes of procurement professionals;
 - (l) periodically review and evaluate the socio-economic effect of the policies on procurement and advise the council accordingly;
- 5.
- (m) prepare and update standard bidding and contract documents;
 - (n) prevent unfair procurement and where necessary report the person in breach to the appropriate body for administrative sanctions;
 - (o) review the procurement and award of contract procedures of every entity to which this Law applies;
 - (p) perform procurement audits and submit such report to the House of Assembly bi-annually;
 - (q) introduce, develop, update and maintain related database and technology;
 - (r) establish a single internet portal that shall, subject to section 18 (10) of this Law, serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times; and
 - (s) initiate and co-ordinate relevant training programs to build institutional capacity.

Powers of the Bureau.

8. (1) The Bureau shall have the power to:

- (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Law by the procurement entities;
- (b) subject to paragraph (a) of this subsection, issue certificate of “No Objection for Contract Award” or refuse to issue certificate of “No Objection” with clear reasons within the prior review threshold for all procurements within the purview of this Law;
- (c) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of Certificate of NO Objection under this law;
- (d) where a reason exists:
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law;
 - (ii) review and determine whether any procuring entity has violated any provisions of this Law and regulations made pursuant to this Law;

- (e) debar any supplier, contractor or service provider that contravenes any provision of his Law and regulations made pursuant to this Law;
- (f) maintain a state database of contractors and service providers and to the exclusion of all procuring entities, prescribe classifications and categorizations for the companies on the register;
- (g) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;
- (h) call for such information , documents, records and reports in respect of any procurement proceeding where a breach,

wrong-doing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;

- (i) where there are persistent or serious breaches of this Law or regulations or guidelines made under this Law recommend to Council:-
 - (i) disciplinary action to be taken against officers concerned with the procurement or disposal proceeding in issue;
 - (ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairman of the Tenders Board as the case may be;
 - (iii) the discipline of the Accounting Officer of any procuring entity;
 - (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
 - (v) any other sanction that the Bureau may consider appropriate.
 - (j) call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceedings;
 - (k) act upon complaints in accordance with the procedures set out in this Law;
 - (l) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
 - (m) do such other things as are necessary for the efficient performance of its functions under this Law.
- (2) The Bureau shall, subject to the approval of the Council, have power to:-
 - (a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;
 - (b) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Law; and
 - (c) liaise with relevant bodies or institutions, national and international for effective performance of its functions under this Law.

General Manager and staff of the Bureau.

9. (1) There shall be for the Bureau, a General Manager who shall be appointed by the Governor on the recommendation of the Council after competitive selections.

(2) The General Manager shall be:-

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

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

(c) a person who possesses the relevant and adequate professional qualification and shall have been so qualified for a period of not less than 15 years.

- (3) The General Manager shall hold office:-
- (a) for a term of 4 years in the first instance and may be reappointed for a further term of 4 years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.
- (4) Without prejudice to the provisions of this Law the General Manager may be removed from office on the recommendation of the Council or at the instance of the Governor on the basis of gross misconduct or financial impropriety, fraud and manifest incompetence proven by the Council.

Principal Officers of the Bureau.

10. (1)The Council shall appoint the principal officers for the Bureau after of the Bureau competitive selection process.
- (2) The principal officers appointed under subsection (1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective departments and the Bureau as specified under this Law.
 - (3) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureaus duties and functions under this Law.

Other staff of Bureau.

11. (1)The Council may appoint such officers and other employees as may from time to time be deemed necessary for the purposes of the Bureau.
- (2)The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determine by the Council.
 - (3)Without prejudice to the generality of subsection (1) of this section, the Council shall have power to appoint either on transfer or on secondment from the civil service in the State, such number of employees as may be required to assist the Bureau in the discharge of any of its functions under the Law and persons so employed shall be remunerated (including allowances) as the Council may consider appropriate.

Staff regulations.

- 12.(1)The Council may, subject to the provisions of this Law and within six months of its inauguration, make staff regulations relating generally to

the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for:-

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and

- (b) appeals by such employees against dismissal or other disciplinary measures.
- (2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the State shall be applicable.

Cap 102 Revised Laws of Anambra State 1991.

- 13.** Employers of the Bureau shall be entitled to pensions and other retirement benefits prescribed under the pensions Law. as

Funds of the Bureau.

- 14.** (1) The Bureau shall establish and maintain a Fund to be approved by the Council, into which shall be paid and credited:-
- (a) the sums appropriated by the House of Assembly for the running of the Bureau;
 - (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
 - (c) all other assets which may, from time to time accrue to the Bureau.
- (2) The Bureau shall charge its fund to meet all its expenditure and all the expenditure of the Council.
- (3) The Council may make regulations of the Bureau:-
- (a) specifying the manner in which assets or the Fund of the Bureau are to be held, and regulating the making of payment into and out of the Fund; and
 - (b) requiring the keeping of proper accounts and records for the purposes of the Fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time apply the proceeds of the Fund for:-
- (a) the cost of administration of the Bureau and the Council;
 - (b) the payments of salaries, fees and other remuneration of employees of the Bureau or 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.

Financial year budgeting and annual report.

14. (1) The financial year of the Bureau shall be the same as that of the State Government.

- a. Not later than six months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.

15. The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Council may direct.

16. The Bureau shall within six months after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor-General of the State.

17. The Bureau shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture all the activities of the Bureau during the preceeding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

Legal Proceedings

16. (1) Subject to the provisions of this Law no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending claimant or his agent; and the notice, which shall be served through the State High Court, shall clearly and explicitly state:
- (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of the legal practitioner of the intending claimant or of the claimant himself; and
 - (d) the relief being sought.
- (2) The General Manager of the Bureau , its officers, employees or agents shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Law upon the Bureau, its General Manager, officers employees or agents.
- (3) A member of the Bureau or the General Manager or any officer or employees of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, General Manager, officer or other employee of the Bureau.
- (4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Law or any other law or enactment may be served by delivering same to the General Manager or by sending it by registered post and addressed to the General manager at the principal office of the Bureau.

PART III – SCOPE OF APPLICATION

Scope of Application.

17. (1) The provisions of this Law shall apply to all procurement of goods, works and services carried out by the State and Local Governments and all procurement entities and by and other body engaged in procurement which derives at least 50% of the funds for the procurement from the Consolidated Revenue Fund of the State or the statutory allocation of a Local government.
- (2) The provisions of this Law shall not apply to the procurement of special goods, works and services involving security unless the Governor's express approval has been first sought and obtained.

PART IV – FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

Fundamental principles for procurement.

18. (1) Subject to any exemption allowed by this Law all public procurement shall be conducted:-
- (a) subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to paragraphs (a) and (b) of Section 8 (1) of this Law;
 - (b) based only on procurement plans supported by prior budgetary appropriation and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the thresholds in the regulations made by the

Bureau, has obtained a "Certificate of No Objection to Contract Award" from the Bureau;
 - (c) by open competitive bidding or through any of the procurement method approved under this Law;
 - (d) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and regulations deriving therefrom;
 - (e) with the aim of achieving value for money and fitness for purpose;
 - (f) in a manner which promotes competition, economy and efficiency; and
 - (g) in accordance with the procedures and timeline laid down in this Law and as may be specified by the Bureau from time to time.
- (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or revenue account or any bank account or any procuring entity for any procurement falling above the thresholds unless the cheque, payments or other

form or request for payments is accompanied by a "Certificate of No Objection to an award of Contract" duly issued by the Bureau.

- (3) For all cases where the Bureau shall set a prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of Certificate of "No Objection" under this Law.
- (4) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of 'No Objection to Contract Award'" duly issued shall be null and void.
- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly shall be jointly and severally liable for all obligations and or responsibility arising from this Law and the non-performance or improper performance of any contract awarded pursuant to this Law.
- (6) All bidders, in addition to requirements contained in any solicitation documents, shall:-
 - (a) possess the necessary:-
 - (i) professional and technical qualifications to carry out particular procurements;
 - (ii) financial capability;
 - (iii) equipment and other relevant infrastructure as well as have adequate personnel to perform the obligations of the procurement contracts.
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions, where applicable;
 - (e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - (f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or the Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.
- (7) The procuring entity may require a bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance with this law and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.
- (8) A bidder may have its bid or tender excluded from any particular procurement proceeding whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out below exist, that is to say, if:-
 - (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible items, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary

terms to a current or former employee of a procuring entity or Bureau , in an attempt to influence any action, or decision making of any procurement activity;

- (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;

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- (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 calendar years prior to the initiation of the procurement proceeding;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions where applicable, unless such bidder has obtained a lawful permit with respect to allowance, deference of such outstanding payment or payment thereof in installments;
 - (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding or any other crime committed to gain financial profit;
 - (f) the bidder has in its management any person who has been validly sentenced for a crime committed in connection with a procurement proceedings, or other crime committed to gain financial profit; and
 - (g) the bidder fails to submit a statement regarding its dominating or subsidiary relationships with respects to her parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remains in subordinate relationship with other participants to the proceedings.
- (9) In such cases the procuring entity shall inform the Bureau and person referred to in subsection (8) (a) – (g) of this section in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.
- (10) All communications and documents issued by procuring entities and the Bureau shall be in the English language provided that a procuring entity or the Bureau may issue a translated version in a popular local language spoken in the State.
- (11) All communications regarding any matter deriving from this Law or proceedings or public procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (12) Every procuring entity shall maintain both file and electronic records of all procurement proceeding made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.
- (13) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:-
- (a) information identifying the procuring entity and the contractors;

- (b) the date of the contract award;
 - (c) the value of the contract; and
 - (d) the detailed records of the procurement proceedings.
- (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau.
 - (15) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.
 - (16) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.
 - (17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
 - (18) Notwithstanding subsection (17) of this Section, the Bureau may refuse to issue a "Certificate of "No Objection" to Contract Award" on grounds that the price is excessive.
 - (19) Pursuant to subsection (18) of this Section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct re-tender.
 - (20) Pursuant to subsection (18) of this section, the Bureau may either direct that the procurement proceedings be entirely cancelled or that the procuring conduct re-tender.
 - (21) The accounting officer of a procuring entity and any officer to whom responsibility is delegated in a procurement process are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.
 - (22) The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the Bureau are complied with, and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of this Law
or the regulations laid down there under.

- (23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as may from time to time be laid down by the Bureau.
- (24) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.
- (25) A procuring entity shall not request or stipulate that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings save where such requirements is consistent with local content policy or regulation of the State in any particular industry or is in line with any Law applicable in the State.
- (26) All procurement contracts shall contain provisions for arbitral proceedings as the primary mode of dispute resolution.
- (27) The values in procurement documents shall be stated in Nigeria currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.
- (28) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provisions and use of genuine materials and inputs in execution.

PART V – PROCUREMENT MANAGEMENT AND ORGANISATION

Approving authority.

19. Subject to the monetary and prior review thresholds for procurements in this Law as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:

- (a) in the case of :
 - (i) procurement within the approval limit of a government agency, parastatal or corporation, a Parastatal Tenders Board;
 - (ii) procurement within the approval limit of a ministry or extra-ministerial entity, the Ministerial Tenders Board;
- (b) in any other case:
 - (i) the State Tenders Board;
 - (ii) the Governor and

- (iii) the State Executive Council where the approval limit exceeds that of the Governor.

Procurement.

- 20.** Subject to regulations as may from time to time be made by the Bureau under the direction of the Council, a procuring entity shall plan its procurement by:

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

Procurement implementations.

21. Subject to regulations as may from time to time be made by the Bureau under direction of Council, a procuring entity shall in implementing its procurement plans:-

- (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time,
- (b) invite a representative of the State Due Process Office and two credible persons as observers in every procurement process, one of whom shall represent a recognized:-
 - (i) private sector professional organization whose expertise is relevant to the particular goods or service being procured; and
 - (ii) non-governmental organization working in transparency, accountability and anticorruption area, or town union in the case of local governments and the observers shall not intervene in the procurement process but shall have a right to submit their observation report to any relevant agency or body including their own organizations or associations.
- (c) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
- (d) obtain approval of the approving authority before making an award;
- (e) debrief the bid loser on request;
- (f) resolve complaints and disputes if any;
- (g) obtain and confirm the validity of any performance guarantee;
- (h) obtain a "Certificate of "No Objection" to Contract Award" from

The Bureau within the prior review threshold as stipulated in section 4 (1) (a) of this Law;

- (i) execute all contract Agreements; and
- (j) announce and publicize the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time.

Accounting Officer

- 22.** (1)The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and parastatals, the

Managing Director, General Manager, Executive Secretary or officer of co-ordinate responsibility and in the case of local governments the Chairman or Head of the Local Government administration.

- (2) The accounting officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
- (a) ensuring compliance with the provisions of this Law by his entity and liable in person for the breach or contravention of the Law or any regulation made hereunder whether or not the act or omission was carried out by him personally or by any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
 - (b) constituting the Procurement Committee and its decisions;
 - (c) ensuring that adequate appropriation is provided specifically for the procurement in the State or Local Government budget;
 - (d) integrating his entity's procurement expenditure into its yearly budget;
 - (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
 - (f) constituting the Evaluation Committee;
 - (g) liaising with the Bureau to ensure the implementation of its regulations.

Procurement Planning Committee.

- 23** (1) For each financial year each procuring entity shall establish a Procurement Planning Committee.
- (2) The Procurement Planning Committee shall consist of:
- (a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
 - (b) a representative of:
 - (i) the procurement unit of the procuring entity who shall be the Secretary;
 - (ii) the unit directly in requirement of the procurement;
 - (iii) the financial unit of the procuring entity;

- (iv) the planning, research and statistics units of the procuring entity;
- (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
- (vi) the legal unit of the procuring entity but where the procuring entity has no legal unit, a legal officer from the Ministry of Justice.

Tenders Board.

- 24.** (1) There is hereby established by this Law in each procuring entity and at State level a tenders board (in this Law referred to as “the Tenders Board”).

- (2) Subject to the approval of the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders Board, provided that the membership of the Tenders Board at State level shall be approved by the Governor.
- (3) The Tenders Board shall be responsible for the award of contracts for the procurement of goods, works and services within the threshold set in the regulations and within approved limits.
- (4) In all cases where there is a need for prequalification, the Chairman of the tenders Board shall constitute a technical evaluation sub-committee of the Tenders Board charged with the responsibility for evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall be the Chairman of the Evaluation Sub-Committee.
- (5) The decision of the Tenders Board shall be communicated to the Chairman, Commissioner, the Governor or the State Executive Council, as the case may be for approval before implementation.

Prequalification of Bidders.

- 25.** (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.
- (2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and procuring entity may charge a price for the provision to suppliers or contractors and consultants of the prequalification documents.
 - (3) The prequalification documents shall include:-
 - (a) instructions to prepare and submit prequalification applications;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications and competence for the job;
 - (d) the manner and place for the submission of applications to qualify and the deadline for submission, expressed as a

specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications taking into account the reasonable need of the procuring entity; and

- (e) any other requirement that may be established by the procuring entity in conformity with this law and

procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

- (4) The procuring entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made in writing and received at least ten days before the deadline for the submission of applications to pre-qualify.
- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at least five working days before the deadline for submission of applications so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify.
- (6) The response to any request that might reasonably be expected to be of interest to other suppliers, contractors or consultants shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been pre-qualified.
- (8) Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified; the grounds for their disqualification.
- (10) The procuring entity may require a supplier, contractor or consultant who has been pre-qualified to demonstrate its qualifications and competence again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or consultant requested to demonstrate its qualifications and competence again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification and competence again if requested to do so.

**PART VI – PROCUREMENT METHODS
(GOODS AND WORKS)**

Open Competitive Bidding.

26. (1) Except as provided by this Law, all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding.
- (2) Any reference to open competitive bidding in this Law means the process by which a procuring entity, based on previously defined criteria, effects public procurements by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed.
- (3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard.

Invitations to Bid.

27. (1) Invitations to bid may be either by way of National Competitive Bidding, State Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under any system.
- (2) Every invitation to an open competitive bid:
- (a) in the case of goods and works under International Competitive Bidding, shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity, the Bureau or the State as well as the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works;
- (b) in the case of goods and works under National Competitive Bidding shall be advertised in at least two National Newspapers, any official websites of the procuring entity, the Bureau or the State as well as the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works.
- (c) in the case of goods and works valued under State Competitive Bidding shall be advertised on the notice board of the procuring entity, any official web site of the procuring entity, at least one State newspaper and in the procurement journal (if any) not less than four weeks before the deadline for submission of the bids for the goods and works.

Bid Security.

28. (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau shall require 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 required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

Submission of Bids.

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

Rejection of Bids.

30. A procuring entity may:-

- (a) reject all bids at anytime prior to the acceptance of a bid without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

Validity period of Bids, modification and withdrawal of Tenders.

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

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

Bid opening.

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

Examination of Bids.

- 33.** (1) All bids shall be first examined to determine if they:-
- (a) meet the minimum eligibility requirements stipulated in the bidding documents;
 - (b) have been duly signed;
 - (c) are substantially responsive to the bidding documents; and
 - (d) are generally in order.
- (2) A procuring entity may request 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 sub-section (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders and the amounts written in words shall be preferred over the amounts written in figures where there is a conflict.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations:-
- (a) with respect to clauses in an offer:-
 - (i) unacceptable sub-contracting;
 - (ii) unacceptable time schedule if time is of essence;
 - (iii) unacceptable alternative design; and
 - (iv) unacceptable price adjustment;
 - (b) with respect to the status of the bidder:-
 - (i) the fact that he is ineligible or not pre-qualified; and
 - (ii) the fact that he is uninvited;
 - (c) with respect to bid documents, an unsigned bid;
 - (d) with respect to time, date and location for submission:-
 - (i) any bid received after the date and time for submission stipulated in the solicitation document;
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, bids shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
- (a) the use of codes;
 - (b) the difference in standards;
 - (c) the difference in materials;
 - (d) alternative design;
 - (e) modified liquidated damages;
 - (f) omission in minor items;
 - (g) discovery of arithmetical errors;
 - (h) sub-contracting that is unclear and questionable;
 - (i) different methods of construction;
 - (j) difference in final delivery date;
 - (k) difference in final delivery schedule;
 - (l) completion period where these are not of essence;
 - (m) non-compliance with some technical local regulation ;
 - (n) payment terms; and
 - (o) any other condition that has little impact on the bid.
- (11) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:
- (a) where the impact on the costs is major, it shall be regarded as a major deviation; and

- (b) where the impact on the costs is minor, it shall be regarded as a minor deviation.
- (12) In cases of minor deviations, written clarification may be obtained from the supplier or contractor and where applicable, an offer made for the correction of the minor deviation.

- (13) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.
- (14) At the stage of evaluation and comparison, all minor deviations shall be qualified in monetary terms.
- (15) In case of rejection of a bid, a written notice shall be given promptly to the supplier.

Evaluation of Bids

34. (1) For the evaluation and comparison of bids that have been adjudged valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.

- (2) The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from the bidders that have responded to the solicitation.

In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable:

- (a) checking of deviations;
 - (b) checking of omissions with quantification of same;
 - (c) application of discounts, as applicable;
 - (d) clarification with bidders of questionable minor deviations;
 - (e) quantification in monetary terms of such questionable deviations;
 - (g) calculation and tabulation of bid amount with domestic preference where applicable;
 - (h) determination of the lowest calculated prices in order of rank;
 - (i) post-qualification of bidders, where applicable;
 - (j) listing of rejection of bids where applicable;
 - (k) decision of rejection of all bids where justifiable;
 - (l) recommendation for award; and
 - (m) writing up of the bid evaluation report.
- (4) All relevant factors, in addition to price, that will be considered for the purpose of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
 - (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
 - (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damage;

- (b) for works, in addition to factors stipulated in Section 36 (1) and subject to section 36 (2), if time is a critical factor, the value of early completion; and
- (c) the value of early completion under Section 37 (2) shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.

- (6) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract and may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.
- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of award.

Acceptance of Bids and Contract.

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

Domestic Preference

36. (1) A procuring entity may grant a margin of preference in the evaluation of tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of preference shall apply only to tenders under international competitive bidding.
- (4) The Bureau shall by regulation from time to time set the limits and the formulae for the computation of margins of preference and determine the contents of goods manufactured locally.

Mobilization fees

37. (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 15% may be paid to a supplier or contractor supported by the following:-
- (a) in the case of State Competitive Bidding, an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and

- (b) in the case of National or International Competitive Bidding an unconditional bank guarantee issued by a Banking institution acceptable to the procuring entity.
- (2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in

accordance with the contract agreement, provided that the contract agreement must include a clause providing for phased deduction of the mobilization fee from the first interim performance certificate.

Contract Performance Guarantee.

38. The provision of a Performance Guarantee shall be a condition for the

award of any procurement contract upon which any mobilization fee is to be paid, provided however that it shall not be less than 10% of the contract value in any case of an amount equivalent to the mobilization fee to be paid to the supplier or contractor whichever is higher.

Interest on delayed payment.

- 39.** (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 the submission of the invoice, valuation certificate or confirmation or authentication by a Ministry, Extra-Ministerial Office, Government Agency, Parastatals or Corporation shall be deemed a delayed payment.
- (3) All delayed payments shall attract interest at the rate specified in the contract document which shall in no case be more than the prevailing Central Bank of Nigeria rate as at the due payment date
- (4) All contracts shall include terms specifying the interest for the late payment of more than ninety days.

Record of Procurement Proceedings.

- 40.** (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.
- (2) The record referred to in this sections shall, on request be made available to:-
- (a) any person after a tender, proposal, offer or quotation has been accepted after procurement proceedings have been terminated without resulting in a procurement contract; and
- (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposal, offer or quotation has been terminated without resulting in a procurement contract.
- (3) A disclosure or procurement proceeding records prior to award of contract may be ordered by a court, if its disclosure would:
- (a) not be contrary to law;
- (b) not impede law enforcement; or
- (c) not prejudice legitimate commercial interest of the parties.

- (4) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.
- (5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review.

**PART VII – SPECIAL AND RESTRICTED
METHOD OF PROCUREMENT**

Two Stage Tendering.

- 41.** (1) Notwithstanding the provisions of this law, the Bureau may issue “Certificate of No Objection” upon conditions hereinafter prescribed.
- (2) A procuring entity shall engage in procurement by two-stage tendering:-
- (a) Where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) Where the character of the goods or works are subject to rapid technological advances or where the procuring entity seeks to enter into a contract for research, experiment study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or recover research and development costs or where the procuring entity applies this Law to procurement concerned with national security and determines that the selected method is the most appropriate method of procurement; or
 - (c) where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in the procurement contract.
- (3) The provisions of this Law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.
- (4) The invitation documents:
- (a) shall call upon suppliers or contractors to submit in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
 - (b) may solicit proposals that relate to technical quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualification of the suppliers or contractors.
- (5) The procuring entity may, in the first stage engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.
- (6) In the second stage of the two-stage tender proceedings the procuring entity:

- (a) shall invite supplier or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
- (b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristic of the goods, works or services to be procured together with any

criterion originally set out in these documents evaluate and compare tenders and ascertain the successful tenders;
- (c) may add new characteristic or criteria that conform with this Law;
- (d) shall communicate to suppliers or contractors in the invitation to submit firm tenders, any deletion, modification or addition; and

- (e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

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- (7) The final tenders shall be evaluated and compared in order to ascertain the successful tenders as defined in an open competitive bid.

Restricted Tendering.

- 42.** (1) Subject to the approval by the Bureau, a procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted tendering if:-
- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
 - (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
 - (c) the procedure is used as an exception rather than the norm.
- (2) Where a procuring entity engages in restricted tendering on the basis that:-
- (a) the goods, works and services are available only from a limited number of supplier or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and
 - (b) the time and cost required to examine and evaluate a large number or tenders is disproportionate to the value of the goods, works or services, it shall select in a non-discriminatory manner the number of suppliers or contractors to ensure effective competition.
- (3) For the purposes of subsection (2), the procuring entity shall cause a notice of the selected tendering proceedings to be published in the procurement journal.
- (4) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section.

Request for Quotations.

- 43.** (1) A procuring entity may carry out procurements by requesting for quotations from suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.
- (2) General quotations shall be obtained from three unrelated contractors or suppliers.
- (3) Each contractor or supplier from whom a quotation is requested shall:-

- (a) be informed whether any factors other than the charges for the goods, works or services themselves such as any applicable transportation and insurance charges, custom duties and taxes are to be included in the price; and
 - (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and the contractor or supplier with respect to a quotation.

- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.
- (6) Where the total value of the procurement is not more than the sum that shall be set in the regulation, the procurement entity may not obtain the Bureau's approval.

Direct Procurement.

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

- (f) the procuring entity applies this Law for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.
- (2) The procuring entity:
 - (a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor;

- (b) shall include in the record procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

Emergency Procurement.

45. (1) A procuring entity may for the purpose of this Law, carry out in emergency procurement where:
- (a) the Country or State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God;
 - (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - (c) a public project may be seriously delayed for want of an item of a minor value.
- (2) In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
- (3) All procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.
- (4) Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of No Objection.

PART VIII – PROCUREMENT OF CONSULTANCY SERVICES

Expressions of Interest to provide services for ascertained needs.

46. Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:-
- (a) it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two State or National newspapers and the procurement journal;
 - (b) where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice, request at least three and not more than ten consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - (i) a statement of qualifications of the consultant to provide the service;
 - (ii) a statement of understanding of the procuring entity's need;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service; and

- (v) the cost or fee for the service;
- (c) Every consultant shall register with the State Ministry of Works.

Request for Proposals to provide services contract for unascertained needs.

47. (1) A procuring entity wishing to procure services for its needs may

do so by requesting for proposals when it intends to enter into a contract for the

purpose of research, experiment, study or

development, except where the contract includes the production of goods sufficient to establish their commercial viability or to recover research and development cost.

- (2) The procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in two State or national newspapers and the procurement journal.
- (3) A procuring entity may make direct requests to a limited number of consultants requesting proposals for the provisions of a service if:
 - (a) the services are only available from no more than three consultants;
 - (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition; or
 - (c) it is in the interest of state security or similar reason of confidentiality.

Content of the Requests for Proposals.

48. (1) Request for proposal shall include:-

- (a) the name and address of the procuring entity;
- (b) a requirement that the proposals are to be prepared in the English language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedure for the evaluation of the qualifications of the consultant;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;
- (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 proposal shall be based on the lowest cost or quality and or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposal; and
- (l) a shortlist to be made of only State or National Consultants for consulting assignments, contract within a set threshold in the procurement regulation provided that State or National Consultants possess such requisite skills.

Clarification and Modification of Request for Proposals.

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

- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.
- (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.
- (5) The minutes shall be provided promptly before the deadlines for submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in their proposals.

Submission of Proposals.

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

Criteria for Evaluation of Proposals.

- 51.** (1)The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:-
- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
 - (b) the effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity;
 - (c) the proposal price, including any ancillary or related cost;
 - (d) the effect that acceptance of the proposal will have on the balance of payments position and savings 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 employment, the transfer of technology, the development of

managerial, scientific and operational skills and the counter trade arrangements offered by consultants or service providers; and

(e) national/state security considerations.

(2) A procuring entity may accord a margin of preference for domestic consultants or service providers which shall be calculated in accordance with the regulations and guidelines as

issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings.

General Selection Procedure (Services)

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

Procedure for Selection of Proposal where price is a factor.

53. (1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application criteria as stipulated in the request for proposals, and then.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen working days after the decision has been taken by the procurement entity.
- (4) The name of the qualifying consultants and the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.
- (5) The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (6) The successful proposals shall be:-
- (a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) from price in the case of quality and cost-based selection.
 - (b) the proposals with the lowest price in the case of least-cost selection; or

- (c) the highest ranked technical proposal within the budget.
- (7) The Consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.
- (8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

Selection Procedure where Price is

- 54.** (1) Where the procuring entity elects to make a quality based selection procedure 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 weight with respect to quality and price of the proposals;
 - (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with subsection (1) of this Section;
 - (c) inform the consultants that attained ratings above the weight that may be considered for negotiation if the negotiations with the consultants 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.

PART IX – PROCUREMENT SURVEILLANCE AND REVIEW

Bureau to recommend investigation.

- 55.** (1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Law.
- (2) The relevant authority may in the course of investigation:-
- (a) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
 - (b) search premises for any books, records, accounts or documents;
 - (c) examine and make extracts from the copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;

- (d) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of books, records, accounts or documents removed;
- (e) require an officer, employee or agent of the procurement entity or bidder, supplier, or contractor or consultant:_
 - (i) to explain an entry in the books, records or documents,
 - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably require;
- (f) explain an entry in the books, records, accounts or documents; and
- (g) provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.

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

Administrative Review.

- 56.** (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 regulations or guidelines made under this Law or the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
 - (3) On reviewing a complaint, the accounting officer shall make a decision in writing within fifteen working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary or dismissing the complaint if he finds it baseless and giving reasons for his decision.
 - (4) If the bidder is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the Bureau within ten working days from the date of communication of the decision of the accounting officer or where no decision is made by the accounting officer, within ten days from the expiration of the period allowed the accounting officer to make a decision.
 - (5) Upon receipt of a complaint, the Bureau shall promptly:-
 - (a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;
 - (b) unless it dismisses the complaint:-
 - (i) prohibit a procuring or disposing entity from taking any further action;
 - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;

- (ii) declare the rules or principles that govern the subject matter of the complain null and void; and
- (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision or such a decision.

- (6) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (7) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the High Court within thirty days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

PART X – DISPOSAL OF PUBLIC PROPERTY

Cap. 106 Revised Laws of ANS 1991

- 57.** (1) This Section shall apply subject to the commercialization and Privatization Law.

Disposal of Public Property.

- (2) For the purposes of this Law every procuring entity shall also be a disposing entity.
- (3) The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (4) The Bureau shall, with the approval of the Council:-
 - (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property; and
 - (c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (5) For the purposes of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from the serviceable to the unserviceable):-
 - (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including shares, stocks, bonds etc); and
 - (e) acquired by goodwill and any other gifts of the State Government.
- (6) The means of the disposal of public assets shall include:-
 - (a) sales and rental;

- (b) lease and hire purchase;
- (c) licenses and tenancies;
- (d) franchise and auction;

- (e) transfer from one government department to another with or without financial adjustments; and

- (f) offer to the public at an authorized variation.

Planning disposals of Public Property.

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

PART XI – CODE OF CONDUCT

Code of Conduct for Public Procurement.

59. (1) The Bureau shall with the approval of the Council, stipulate a
- Code of Conduct for all public officers, suppliers, contractors and service providers with regards to the standards of conduct acceptable in matters involving the procurement and disposal of public assets.
- (2) The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness, adherence to due process and equity.
- (3) All officers of the Bureau, members of Tenders Board and other persons that may come to act regarding the conduct of public procurements shall first subscribe to an oath as approved by Council.
- (4) These principles shall apply at all times, particularly when:-
- (a) making requisition for or planning of procurements;
 - (b) preparing solicitation documents;
 - (c) receiving offers in response to any form of solicitation towards a procurement or disposal;
 - (d) evaluating and comparing offers confidentially and in complete neutrality;
 - (e) protecting the interest of all parties without fear or favour; and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (5) All public officers shall handle public procurement and disposal of assets by:-
- (a) ensuring adequate time for preparing offers;
 - (b) complying with this Law and all derivative regulations; and
 - (c) observing strict confidentiality until completion of a contract.

- (6) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons, real or corporate, who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.

- (7) Every public officer involved directly or indirectly in matters of public procurement and disposal shall:-
- (a) divest himself of any interest or relationship which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law; and
 - (b) not engage or participate in any commercial transaction involving the State Government, its ministries, extra-ministerial departments, or corporations where his capacity as public officer is likely to confer any unfair advantage, pecuniary or otherwise, on him or any person directly related to him.
- (8) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (9) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.
- (10) A conflict of interest exists where a person:-
- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government;
 - (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or construed to

be, or make possible personal gain due to the person's ability to influence dealings;
 - (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - (d) places by acts or omissions the procuring entity he represents or the government in an equivocal, embarrassing or ethically questionable position;
 - (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the government;
 - (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the government;
 - (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and
 - (h) discloses confidential information being either the property of his procuring entity, the government or a supplier, contractor or service provider to unauthorized persons.
- (11) A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

PART XII – OFFENCES

Offences Relating to Public Procurement.

60. (1) Any natural person not being a public officer who contravenes

any provision of this Law commit offence and is liable on conviction to a term of imprisonment of not less than 5 years but not exceeding 10 years with an option of N500,000.00 fine.

(2) Any offence in contravention of this Law shall be tried by the High Court.

(3) The following shall also constitute offences under this Law:-

- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
 - (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (c) directly or indirectly influencing or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award or a procurement contract;
 - (d) splitting of tenders to enable the evasion of monetary thresholds set;
 - (e) bid rigging;
 - (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
 - (g) uttering or using fake documents or encouraging their use;
 - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records.
- (4) Any person who whilst carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative punishment of:-
- (a) a term of imprisonment of 55 years with an option of N250,000.00 fine; and
 - (b) summary dismissal from government service.
- (5) Any legal person that contravenes any provision of this Law commits an offence and is liable on conviction to a cumulative penalty of:-
- (a) debarment from all public procurement for a period not less than 5 years.
 - (b) a fine equivalent to 25% of the value of the procurement in issue.
- (6) Where any legal person shall be convicted pursuant to subsection (5) of this section, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment of not less than 3 years but not exceeding 5 years with an option of fine equivalent to 10% of the value of the procurement in issue.
- (7) An alteration pursuant to subsection 3 (f) shall include but not limited to:-
- (a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
 - (b) request for clarification in a manner not permitted under this Law.
- (8) Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law.
- (9) Bid rigging pursuant to subsection (3) (e) means agreement between persons whereby:-
- (a) offers submitted have been pre-arranged between them; or

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

PART XIII – MISCELLANEOUS

Miscellaneous.

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

A.40
A.S.N
Law No. of 2011 _____ **State Public Procurement Law**
2011,

FIRST SCHEDULE

(Section 3)

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

PIUS O. UDOH

Ag. Clerk of the Legislature

SECOND SCHEDULE

(Section 4 (1))

I assent/Do not assent

MR. PETER OBI

Governor

Dated the ----- day of -----, 2011.

THIRD SCHEDULE

(Section 8 (2))

Assented to on the ----- day of -----, 2011.

8.0. Annexes

Annex 1 – Purchase Requisition Form

Annex 2 –Statement: Conflict of Interest

Annex 3 - Confidentiality Declaration

Annex 4 –Statement of Exclusion

Annex 5 – Procurement decision template

Annex 6 –Evaluation Report

Annex 2

Statement

<Each member of the Evaluation Committee (and Accounting Officer) must submit a signed declaration using this format. Statement is to be signed for all procurement procedures, and is a part of tender dossier>

Anambra State Government has a zero tolerance on fraud and other proscribed practices and is committed to preventing, identifying and addressing all such acts and practices against the State, as well as third parties involved in Procurement activities with the Anambra State Government. The State Government expects its suppliers and service providers to adhere to the rules of **Ethical Conduct**.

Herby I declare that I am not in any of the following situations potentially falling into the conflict of interest in a given procurement procedure, namely:

There are no family, emotional, political or nation-wise affinities towards the potential bidders in the procurement procedure;

I have no economic or other shared interest in respect of the outcome of the procurement procedure;

I have not shared any information that may grant an advantage to bidder or influence the outcome of the procurement procedure in any way

I have not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity.

Conflict of interest shall occur especially in the cases of:

-ownership, control or management relations between RAI staff members and bidders (share and stock owners, managing functions, board members etc.);

- economic, family or personal involvement with politically exposed persons;

-family relations between RAI staff members and bidders such as their first of kin; marital partners, and their first of kin; household members.

.....

Annex 3

CONFIDENTIALITY DECLARATION

<Each member of the Evaluation Committee (and Head of Secretariat) must submit a signed declaration using this format. Declaration is to be signed for all procurement procedures, and is a part of tender dossier>

I, _____, the _____
Name and Surname position in P.E

for the _____ (procurement/tender number or description)

I declare that I shall maintain the strictest confidentiality in respect of all information acquired as a result of my involvement in the evaluation process. I undertake neither to disclose such information to any unauthorized person who does not already have right of access to such information, nor to discuss it with any person in any public place or where others could overhear it.

I furthermore undertake to use this information only in the context, and for the purposes of, the evaluation of this specific evaluation process. I understand that any unauthorized disclosure by me will result in the termination of my role as a member of this Evaluation Committee and may also render me liable to legal action.

I undertake to maintain this duty of confidentiality after the conclusion of my term as a member of this Evaluation Committee.

.....
Name/Surname
Position in RAI

Annex 4

Statement

<As part of their tender, each legal entity must submit a signed declaration using this format. >

We have examined and accept in full the content of the dossier for invitation to tender No <.....> . We hereby accept its provisions in their entirety, without reservation or restriction.

This tender is valid for a period of <....> days from the final date for submission of tenders.

We are not in any of the situations excluding us from participating in procurement procedure, namely;

we are not bankrupt or being wound up, or having our affairs administered by the courts, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

we have not been convicted of an offence concerning our professional conduct by a judgment of a competent authority;

we have fulfilled obligations relating to the payment of social security contributions and the payment of taxes

we have not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity

If required, we can provide the proof usual under the law of the country in which we are established that we do not fall into these exclusion situations.

.....

Annex 5

/RAI Logo/

Date:
Ref. No.

Based on the RAI Secretariat Procurement Manual requirements, the approved budget and respective finance management internal documents, on behalf of the Secretariat, hereby I initiate the

PROCUREMENT DECISION

For procurement of _____(goods/services/works) namely, the procurement of _____using the _____(type of procedure). Total available funds for this action, VAT excluded is_____.

(only for open calls): Public invitation will be posted on the web site of the Secretariat, allowing potential bidders to submit their offers until_____.

Offers within this procurement are to be submitted by potential bidders not later than _____, by e-mail (e-mail address) or to the address below:

Selection criteria to be used:

- a) lowest price,
- b) the best-value-for-money.

Selection criteria and other terms and conditions of contract are further elaborated within tender dossier available upon request.

HEAD OF SECRETARIAT

/Name Surname/

