

**EKITI STATE PUBLIC
PROCUREMENT (RE-
ENACTMENT) LAW, 2020.**

NO. 4 OF 2020

EKITI STATE OF NIGERIA

A LAW TO REPEAL EKITI STATE PUBLIC PROCUREMENT LAW NO. 2 OF 2010 AND ITS AMENDMENTS: (AMENDMENT) LAW 2015, (FIRST AMENDMENT LAW) 2016, AND (THIRD AMENDMENT) LAW 2017 AND RE-ENACT THE EKITI STATE PUBLIC PROCUREMENT LAW: TO ESTABLISH THE EKITI STATE COUNCIL ON PUBLIC PROCUREMENT AND THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITIES RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONISING THE EXISTING GOVERNMENT (STATE AND LOCAL) POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN EKITI STATE AND FOR RELATED MATTERS.

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EKITI STATE OF NIGERIA.

Commencement [/]

ENACTED BY THE HOUSE OF ASSEMBLY OF EKITI STATE AS FOLLOWS:

PART I.

ESTABLISHMENT OF STATE COUNCIL ON PUBLIC PROCUREMENT.

Establishment of the Ekiti State Council on Public Procurement and its membership.

1. (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) a Chairman who shall be a reputable professional with at least twenty years verifiable post qualification experience in either Engineering, Quantity Surveying, Law, Procurement practice or related professions;
 - (b) the Attorney-General and Commissioner for Justice;
 - (c) the Commissioner of Finance and Economic Development;
 - (d) the Secretary to the State Government;
 - (e) the Head of Civil Service of Ekiti State;
 - (f) the Director-General of the Bureau; and
 - (g) seven members to represent:
 - (i) Chartered Institute of Purchasing and Supply Management of Nigeria (CIPSMN) in Ekiti State;

- (ii) Nigerian Bar Association in Ekiti State;
 - (iii) Ekiti State Chambers of Commerce, Industry, Mines and Agriculture;
 - (iv) Nigerian Society of Engineers, Ekiti State Chapter;
 - (v) Nigerian Institute of Quantity Surveyors, Ekiti State Chapter;
 - (vi) Nigerian Union of Journalists, Ekiti State chapter; and
 - (vii) Civil Society in Ekiti State.
- (3) The nomination and appointment of representatives of bodies listed under sub-section (2)(g) above shall be as follows:
- (a) The State Executives of the bodies listed under (iii) – (vi) shall nominate and submit the names of their nominees to the Governor, who shall in turn appoint the nominated persons to represent the organisations;
 - (b) The Governor shall appoint a qualified and active member of CIPSMN, who shall be an indigene of Ekiti State to represent CIPSMN in the Council;
 - (c) The Governor shall appoint a reputable member of the Civil Society in Ekiti State who has expertise and experience working on transparency and social accountability issues to represent civil society; and
 - (d) The Governor shall nominate a legal practitioner, who must be a member of any one of the Nigerian Bar Association branches in the State to represent the Nigerian Bar Association in the State.
- (4) The Chairman and other members of the Council listed under sub-section (2)(g) of this Section shall be appointed by the Governor subject to the confirmation by a resolution of not less than two-third of members of the House of Assembly.
- (5) The Chairman and four other members of the Council shall form a quorum at any meeting of the Council. In the event of Chairman's absence resulting from any of the circumstances listed in sub-sections (7) & (8) to this Section, a quorum shall be formed by any seven members of the Council present at a meeting, and members shall select from amongst themselves an Acting Chairman to preside over the meeting.
- (6) Notwithstanding the provisions of sub-sections (2),(4) & (5) above, the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a vote or be counted towards quorum.
- (7) The Chairman may be removed from office by the Governor if supported by a resolution of not less than two-third majority vote of members of the House of Assembly

- (8) Notwithstanding the provision of sub-section (5) above, a member of the Council shall vacate her/his seat if:
- (a) he resigns in writing with a letter addressed to the Governor or the Chairperson of the Council;
 - (b) he is convicted of any crime involving dishonesty or fraud by a court of competent jurisdiction within and/or outside Nigeria;
 - (c) he is barred from practicing his profession by any professional body he belongs to;
 - (d) he becomes bankrupt; and
 - (e) he becomes of unsound mind and incapable of carrying out his duties
- (8) The Chairman and representatives of the bodies listed under sub-section (2)(g) shall be appointed for a four year tenure which may be renewed for another four years, and thereafter no more.
- (9) Subject to sub - section (2), a member of the Council being:
- (a) an appointed political office holder or career civil servant shall remain in Council till vacation of the Office on account of which he is appointed; and
 - (b) the Director-General of the Bureau, shall hold office on such terms and conditions as are set out under this Law.
- (10) All members of the Board other than the Director-General of the Bureau shall serve on part-time basis.
- (11) The Director-General of the Bureau shall serve as the Secretary to the Council.

Functions of the Council.

2. The Council shall:

- (1) consider and approve contract award thresholds for the State Tenders Board, Parastatals Tenders Board, and Ministerial Tenders Board;
- (2) consider and approve policies on public procurement;
- (3) approve the appointment of the Directors of the Bureau;
- (4) consider and approve the annual financial estimates of the Bureau of Public Procurement prior to submission to the House of Assembly;
- (5) receive and consider for approval, the audited accounts of the Bureau of Public Procurement;
- (6) approve changes in the procurement process to adapt to improvements in modern technology and regulations for their implementation;
- (7) consider and approve for issuance public procurement regulations, standard bidding documents and codes of ethics developed by the Bureau;
- (8) ensure good ethical standards are maintained in the Bureau; and

- (9) give such other directives to the Bureau 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.

Establishment of the Bureau of Public Procurement.

3. (1) There is 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; and
 - (c) may acquire, hold or dispose off any property, movable or immovable, for the purpose of carrying out any of its functions under this Law.

Objectives of the Bureau.

4. The objectives of the Bureau are:
- (1) the harmonisation of the existing government policies and practices on public procurement to ensure transparency, accountability, efficiency, value for money and fitness for purpose in the procurement process;
 - (2) the establishment of pricing standards and benchmarks;
 - (3) ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services;
 - (4) the attainment of competitiveness, and professionalism in the public sector procurement system;
 - (5) ensuring compliance with all provisions of this Law and applicable regulations and processes as may from time to time be approved by the Council.

Functions of the Bureau.

5. The Bureau shall:
- (1) formulate and periodically update the general policies, regulations, Standard Bidding Documents and Codes of Ethics relating to public sector procurement for the approval of the Council;
 - (2) from time to time prepare and issue procurement manuals, directives, and templates that support procurement practice and ensure improved transparency, efficiency and accountability in the State procurement process;
 - (3) publicise and explain the provisions of this Law;
 - (4) periodically review and set the contract approval thresholds of the Parastatal Tenders Board (PTB), Ministerial Tenders Board (MTB) and State Tenders Boards (STB) for Council’s approval;
 - (5) supervise the implementation of established procurement policies;

- (6) monitor, enforce and periodically revise the price benchmarks of all tendered items, and maintain an updated database of standard prices linked to specifications to be applied for State-wide procurements;
- (7) notwithstanding the provisions of Section 15 of this Law, receive from all procuring entities, advertisements and the details of all contracts awarded and publish them in the procurement journal or any other approved source;
- (8) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (9) maintain a database of the particulars and classification and categorisation of State contractors and service providers for all procuring entities;
- (10) collate and maintain in an archival system, all procurement records, procurement plans and information from all procuring entities;
- (11) undertake procurement research and surveys directly or in collaboration with others;
- (12) notwithstanding provisions of any other Law superintend over the training, transfer, advancement and first line discipline of procurement officers within the State's Civil and Public Service including the Local Government Councils, and all other procuring entities;
- (13) organise training and development programmes for procurement personnel;
- (14) periodically review the socio-economic effect of the Procurement Law and policies on procurement and advise the Council accordingly;
- (15) regularly review government procurement to ensure compliance with pricing standards;
- (16) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions against any procuring entity, bidder or State and Local Government employees breaching the Law or involved in fraudulent and unfair practices;
- (17) review the procurement and award of contract procedures of every entity to which this Law applies;
- (18) perform spot checks, procurement audits, contract performance audit and based on their outcomes exercise powers given to it under this Law;
- (19) in the case of negotiated contracts/costs, approve of such negotiation(s);
- (20) introduce, develop, update and maintain related database and technology;
- (21) establish an internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times;
- (22) establish, host and manage the Ekiti State e-procurement portal for use by all procuring entities;
- (23) issue guidelines to ensure co-ordination between State funded projects and projects of all donor and development organizations funded projects implemented in the State, and receive and archive all such project procurement and implementation information ;
- (24) initiate and prosecute disciplinary proceedings against any persons who is alleged to have breached this Law, regulations and related regulatory instruments before relevant authorities.

- (25) co-ordinate relevant training programs to build individual and institutional capacity of procuring entities;
- (26) regulate the posting and career advancement of personnel in the State procurement cadre; and
- (27) submit report of its activities to the House of Assembly annually.

Powers of the Bureau.

- 6. (1) The Bureau shall have powers to:-
 - (a) enforce the Tenders' Boards contract awards approval thresholds approved by the Council for procuring entities;
 - (b) subject to Council's approval, issue price benchmarks and enforce compliance to the benchmarks by procuring entities;
 - (c) issue regulations, templates, formats, directives and policies aimed at ensuring compliance with the Law and achieving value for money, fitness for purpose, efficiency, transparency and accountability;
 - (d) consider and in exceptional cases approve procuring entities requests for waivers to the application of the price benchmarks, which approvals shall be published in the website and procurement journal within twenty-one days of being issued ;
 - (e) issue a stop order requiring a procuring entity and to the Accountant-General of the State, to immediately stop payment regarding any contract, until specific corrective action is undertaken;
 - (f) at any time, with or without a complaint:
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Law; and
 - (ii) review and determine whether any procuring entity has violated any provision of this Law or accompanying regulatory instruments;
 - (g) debar for not more than fifteen years any supplier, contractor or service provider that contravenes any provision of this Law, regulations, standard bidding documents, formats or directives issued pursuant to this Law, provided that, the Bureau prior to its decision grants a fair hearing to affected parties in accordance with regulations issued from time to time;
 - (h) maintain to the exclusion of all procuring entities a database of State contractors and service providers and prescribe classifications, categorisations and rules for the companies on the register;
 - (i) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal indicating the period of their debarment;
 - (j) in cases of breaches of this Law or regulations or guidelines made under this Law, the Bureau may:
 - (i) suspend from duty any procurement officer(s) concerned with the procurement or disposal proceeding in issue;

- (ii) replace by posting any procurement officer(s) of the procuring entity;
 - (iii) order and implement the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third-party procuring agency or consultant; or
 - (vi) apply any other lawful sanction that the Bureau may consider appropriate in accordance with extant civil or public service rules, rules of engagement for political office holders or as provided under this Law and subsidiary rules issued pursuant to it;
- (k) call for the production of all procurement documents, contracts, books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (l) act upon complaints in accordance with the procedures set out in this Law;
 - (m) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Law;
 - (n) supervise, regulate and enforce the implementation of e-procurement by all procuring entities;
 - (o) order contractors, suppliers or service providers that have abandoned or failed to deliver projects in accordance with their contract terms to fully comply with the contract terms and deliver the procurement project;
 - (p) recover from any contractor, service provider or supplier after due valuations any excess payment made by a procuring entity for work not done, goods not supplied or service not provided;
 - (q) cause civil and/or public servants found liable to pay back any monies to government, and be surcharged the maximum amount allowed under the extant Public Service Rules, Financial Regulations or any Public Service Rules from their salary and other emoluments and where the loss is greater than the sum that can be recovered by the surcharge, resort shall be made to the Court under the Undefended Cause List for the recovery of the outstanding difference of the loss;
 - (r) do such other things as are necessary for the efficient performance of its functions under this Law; and
 - (s) upon initiation of a disciplinary complaint by the Bureau against any person before an appropriate authority, such an appropriate authority being:
 - (i) the Civil Service Commission, shall expeditiously consider such complaint(s) brought by the Bureau and where appropriate, discipline any Accounting Officer or senior personnel involved in the breaches of this Law and regulatory instruments issued therefrom; or
 - (ii) the State Governor in Council, shall expeditiously consider and discipline any political appointee proved to be involved in any

breaches of this Law or regulatory instruments issued therefrom;
or

- (iii) the Local Government Service Commission, shall expeditiously consider and discipline any Local Government Officer proved to be involved in breaches of this Law or other regulatory instruments issued therefrom; or
- (iv) the internal procuring entity or Local Government junior staff disciplinary committees, shall expeditiously consider and discipline junior officers proved to be involved in the breaches of this Law or regulatory instruments flowing from it.

(2) The Bureau shall also 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) liaise with relevant bodies or institutions, national and international, for effective performance of its functions under this Law; and
- (c) charge stipulated fees for specified services it renders.

Director-General and Staff of the Bureau.

7. (1) There shall be for the Bureau, a Director-General who shall be appointed by the Governor subject to confirmation by the State House of Assembly.

(2) The Director-General shall be:

- (a) the Chief Executive and Accounting Officer of the Bureau;
- (b) responsible for the execution of the policy, programs and day to day administration of the affairs of the Bureau; and
- (c) a person who possesses a minimum qualification of a Bachelor Degree from a recognised University or Higher Institution with a verifiable post qualification experience of not less than ten years post qualification in engineering, law, surveying, architecture, economics, procurement, finance or related professions.

(3) The Director-General shall hold office:

- (a) for a fixed term of five years in the first instance and may be re-appointed for a further term of five years and no more: and
- (b) on such other terms and conditions as may be specified in her/his letter of appointment.

(4) The Council may after giving fair and just hearing to a Director-General, recommend his removal from office, if pursuant to such a fair hearing any of the following is proved:

- (a) financial impropriety; or
- (b) fraud; or
- (c) manifest incompetence; or
- (d) repeated breaches of ethics rules; or

- (d) abdication of duty; or
- (e) any other serious and grievous infraction(s) of this Law incompatible with the status or office of the Director-General of the Bureau.

(5) Subject to sub-section (4) above, the Director-General of the Bureau shall be removed from office on the recommendation of the Council to the Governor, supported by a resolution passed with a two-third majority vote of the members of the House of Assembly, insofar as:

- (a) such resolution of the Council shall be transmitted to the State House of Assembly within fourteen days of passage; and
- (b) the resolution of the House of Assembly directing the removal of the Director-General shall be transmitted within fourteen days to the Governor to act upon.

(6) In the absence of the Director-General, the most senior Director shall assume the office in an acting capacity pending the return or appointment of a substantive Director-General.

Principal Officers of the Bureau.

8. (1) The Council shall approve the appointment of directors and senior officer(s) in the Bureau after competitive selection process.
- (2) The Directors approved by the Council shall oversee the Departments of the Bureau.
- (3) The principal officers appointed under sub-sections (1) and (2) of this Section shall each possess the requisite qualification(s) and experience(s) prior determined for the effective performance of their functions.
- (4) The Council shall have power to modify the operational structure of the Bureau as may be necessary from time to time to achieve improved performance of the Bureau's duties and functions under this Law.

Other Staff of the Bureau.

9. (1) The Bureau may appoint such other officers and other employees as may, from time to time, be deemed necessary for the performance of the functions 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 determined by the Council.
- (3) The Bureau may through the Ekiti State Civil Service Commission approve the appointment either on transfer or on secondment from any public service in the state, such number of employees as may be required to assist the Bureau in the discharge of any of its functions under this Law and persons so

employed shall be remunerated (including allowances) as the Council may consider appropriate.

Staff Regulations.

10. (1) The Council may, subject to the provisions of this Law and within one year of the inauguration, make and periodically revise 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.

Pension Provisions.

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

Funds of the Bureau.

12. (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 align its financial management practices to the new financial regulations and practices in use by the State Government which may include but are not be limited to the Treasury Single Account, State Integrated Financial Information Management System, Medium Term Expenditure Framework or such others as may come into force
- (3) The Bureau shall charge its fund to meet all its expenditure.
- (4) Notwithstanding any other Law, the Council may make regulations for the Bureau:
- (a) specifying the manner in which assets or the fund of the Bureau are to be held and regulating the making of payments into and out of the fund;
 - (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; and
 - (c) specifying portions of Bureau's revenue that may be retained to further support operational expenses in accordance with the Appropriation Law for each year.

- (5) The Bureau may, from time to time, apply the proceeds of the fund to:
 - (a) the cost of administration of the Bureau;
 - (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 or expenditure connected with all or any of the functions of the Bureau under this Law.

Financial year Budgeting and Annual Report.

13. (1) The financial year of the Bureau shall be the same as that of the State Government.
- (2) Not later than six months before the end of the financial year, the Bureau shall submit to the Council for approval an estimate of its expenditure and projected income during the succeeding year.
- (3) 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.
- (4) The budget estimates of the Bureau shall be integrated into the State's Budget proposals before submission for consideration by the State House of Assembly.
- (5) 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.
- (6) 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 preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

Legal Proceedings.

14. (1) Subject to the provisions of this Law, no suit shall be commenced against the Bureau before the expiration of thirty days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending plaintiff or his/her agent(s) and the notice shall clearly and explicitly state:
 - (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of legal practitioner of the intending plaintiff;
and
 - (d) the relief being sought.

- (2) The Director-General of the Bureau, its officers, employees or agents acting in good faith 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 function or power conferred by this Law upon the Bureau, its Director-General, officers, employees or agents.
- (3) A member of the Council, the Director General and or any officer or employee 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 of the Council, Director-General, officer or other employee of the Bureau.
- (4) A notice, summons or other documents required or authorised to be served upon the Bureau under the provisions of this Law or any other Law or enactment may be served by delivering it to the Bureau at its principal office or by sending it by registered post and addressed to the Director-General at the principal office of the Bureau.

PART III. SCOPE OF APPLICATION.

Scope of application.

15. (1) The provisions of this Law shall apply to all procurement of goods, works, and services carried out by all arms of the State Government, Ministries, Departments, Agencies, Extra-Ministerial Departments or institutions and Local Government Councils regarding which at least 35% of project cost is to be derived from the State's public funds or any funds of a Local Government Area respectively.
- (2) Notwithstanding the provisions of sub -section (1) above, the Bureau shall exercise its powers under this Law with respect to joint projects with the Federal Government, donor or development organizations in which the State Government has obligation to provide counterpart funds of up to 10% of project value.

PART IV. FUNDAMENTAL PRINCIPLES OF PROCUREMENT IN EKITI STATE.

Fundamental Principles for Procurement.

16. (1) Subject to any exemption allowed by this Law, all public procurements in Ekiti State shall be conducted:
 - (a) subject to the approvals for contract awards from the appropriate Tenders Boards;

- (b) based only on procurement plans supported by prior budgetary appropriations and no procurement contract shall be executed until the procuring entity has ensured that funds are available to meet the contract obligations by obtaining a Cash Backing Clearance Note from the Ministry of Finance;
 - (c) by open competitive bidding;
 - (d) in a manner which is transparent, timely, equitable, ensures accountability and is in 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 timelines laid down in this Law and as may be specified by the Bureau from time to time.
- (2) 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 are 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.
- (3) All bidders in addition to requirements contained in any solicitation documents shall:
- (a) possess the specified:
 - (i) professional and technical qualifications to carry out particular procurements;
 - (ii) financial capability;
 - (iii) equipment and other relevant infrastructure; and
 - (iv) shall have adequately qualified personnel to perform the obligations of the procurement;
 - (b) possess the legal capacity to enter into the procurement contract;
 - (c) not be in receivership, or the subject of any form of insolvency or bankruptcy proceedings or any form of winding up petition or proceedings;
 - (d) have fulfilled all its obligations if any to pay taxes, pensions and social security contributions;
 - (e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - (f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.
- (4) 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.

- (5) Whenever it is established by a procuring entity that any or a combination of the situations set out hereunder exists, a bidder may have its bid excluded from any particular procurement proceeding if:
- (a) there is verifiable evidence that a bidder has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of the procuring entity, in an attempt to influence any action, or decision regarding any procurement activity; or
 - (b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, has failed to perform according to contract or to provide due care in performance of any public procurement activity; or
 - (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 three years prior to the initiation of the procurement proceeding; or
 - (d) the bidder is in arrears regarding established obligations for taxes, pensions or social security contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or payment thereof in installments; or
 - (e) the bidder has been sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit within or outside Nigeria; or
 - (f) the bidder has in its management or any significant portion of its shares are held by any person that has been sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit within or outside Nigeria; or
 - (g) the bidder fails to submit a statement regarding its dominating or subsidiary relationships with respect to other parties to the same procurement proceedings and persons acting on behalf of the procuring entity in the same proceeding or who is in a subordinate relationship with any other participants to the proceedings; or
 - (h) the bidder fails to meet any other condition or fails to provide any other document or meet any substantial requirement stated in the solicitation document.
- (6) In such cases, the procuring entity shall inform the person referred to in subsection (5)(a)-(h) of this Section in writing that the bid or proposal in

question has been excluded and the grounds for the exclusion, and keep record of same in the file pertaining to the public procurement proceeding in question.

- (7) All communications and documents issued by procuring entities and the Bureau shall be in English language but may at times be translated into any other language popularly spoken, written and understood in the State
- (8) All communications regarding any matter deriving from this Law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau.
- (9) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of last payment.
- (10) The Bureau shall periodically issue guidelines on the list, format and contents of documents which procuring entities shall transmit to the Bureau.
- (11) Notwithstanding any other provision in this Law, the procuring entities shall transmit to the Bureau no later than thirty days after award of each contract, the comprehensive procurement records of each procurement activity including but not limited to:
 - (a) information identifying the procuring entity and the contractor or service provider;
 - (b) names, addresses and particulars of shareholders and directors, members of management, shareholding structure, and list of non-shareholder financiers if any of each company;
 - (c) information specifying where the activity is provided in the procurement plan;
 - (d) advertisements, bidding documents, Technical Evaluation Sub-Committee reports and Tenders Board approvals where applicable;
 - (e) award approval by the appropriate Tenders Board;
 - (f) letters of Cash Backing Clearance from the Ministry of Finance;
 - (g) contract documents and all annexures or related documents;
 - (h) every Certificate of Payment issued by a procuring entity together with its supporting documents shall be submitted to the Bureau within seven days of being issued; and
 - (i) submissions shall comply with directives and templates and include any additional documents required from time to time by the Bureau.
- (12) 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.

- (13) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the bidder.
- (14) Except otherwise provided in this Law, a contract for supply of goods or provision of works shall be awarded to the lowest evaluated responsive bidder from amongst the bidders substantially responsive to the bid solicitation
- (15) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law, regulations, manuals, directives and other regulatory instruments as may from time to time be made by the Bureau.
- (16) Post qualification before the issuance of a letter of award for any contract shall include verification of registration on the database of State Contractors and Service Providers maintained by the Bureau.
- (17) Persons who have been engaged in preparing 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.
- (18) 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.
- (19) All procurement contracts shall contain provisions for arbitration proceedings as the primary form of dispute resolution.
- (20) The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.
- (21) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.

PART V. ORGANISATION OF PROCUREMENTS.

Approving Authority.

17. (1) Subject to periodic reviews by the Bureau approved by the Council, the following shall be the approving authority for the award of contracts:

- (a) a State Tenders Board for approval of awards for projects with a value of Fifty Million Naira and above;
 - (b) for award of procurement of a value below Fifty Million Naira:
 - (i) if a ministry or extra-ministerial department, it is the Ministerial Tenders Board; and
 - (ii) if a government agency, parastatal, or corporation, it is the Parastatals' Tender Board.
 - (c) for each Local Government Area in the State, a Local Government Council Tenders Board shall approve all contract awards.
- (2) The Bureau shall issue thresholds, guidelines and pricing benchmarks applicable to all procurement including low-value off-the-shelf items
 - (3) Subject to the approval of the Council, the Bureau shall periodically prescribe guidelines for the membership of the State Tenders Board, Ministerial, and Parastatal Tenders' Boards and for each of the Local Government Areas, a Local Government Council Tenders Board
 - (4) The Ministerial and Parastatal Tenders' Boards shall be responsible for the award of all State procurements of goods, works and services.
 - (5) Where the value of a procurement activity exceeds the approval threshold of a Ministerial or Parastatals Tenders Board, the Tenders Board shall conclude all the procurement processes, including evaluation and recommendation of a preferred bidder, and present a brief to the State Tenders Board for approval to award.
 - (6) Whenever applicable, the Chairman of the Tenders Board shall constitute a Technical Evaluation Sub-Committee of the Tenders Board charged with the responsibility for the evaluation of pre-qualification submissions and bids, which Committee shall be made up of professional staff of the procuring entity responsible for the subject matter of the procurement and the Secretary of the Tenders Board who shall also be the Chair of the Technical Evaluation Sub-committee, and any other persons prescribed in the regulations issued from time to time by the Bureau.
 - (7) The decisions of the Ministerial or Parastatals Tenders' Board shall be communicated to the Commissioner before implementation.
 - (8) The decision of each Local Government Council Tenders Board shall be communicated to the Local Government Council Chairman before implementation.

Procurement Planning.

- 18.** 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:
- (1) integrating its procurement expenditure into its yearly budget;
 - (2) preparing the needs assessment and evaluation;
 - (3) identifying the goods, works or services required and sufficiently specifying each of their technical, distinguishing features and attributes;
 - (4) preparing an analysis of the cost implications of the proposed procurement in line with pricing benchmarks published by the Bureau;
 - (5) aggregating its requirements whenever possible both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
 - (6) prescribing any method for effecting the procurement subject to the necessary approval under this Law; and
 - (7) ensuring that the procurement entity functions stipulated in this Section shall be coordinated by the Procurement Planning Committee chaired by the Accounting Officer and implemented under the directives of the Head of the Procurement Department or any official of coordinate responsibility.

Procurement Implementation.

- 19.** Subject to regulations, as may from time to time be made by the Bureau, a procuring entity shall, in implementing its procurement plans:
- (1) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau from time to time;
 - (2) invite at least two (2) observers, being representatives of a professional body on the subject matter of the procurement and a civil society organization working in the area of transparency and accountability to observe every procurement activity;
 - (3) receive pre-qualification and expression of interest, bids and proposals where applicable and conduct a public opening of the bids and proposals immediately after the specified closing date and time;
 - (4) receive, evaluate and select winning bids and winning proposals in adherence to this Law and guidelines as may be issued by the Bureau from time to time;

- (5) carry out post evaluation exercises on preferred bidders;
- (6) debrief the bid losers on request;
- (7) obtain and confirm the validity of any performance guarantee;
- (8) obtain approval of the appropriate approving authority and a Notice of Cash Backing Clearance from the ministry of Finance before making an award;
- (9) execute all Contract Agreements;
- (10) announce and publicise the award in the format stipulated by this Law and guidelines as may be issued by the Bureau from time to time; and
- (11) submit procurement records to the Bureau as laid down under this Law and any regulations issued by the Bureau.

Accounting Officer.

- 20.** (1) The Accounting Officer of a procuring entity shall be the Chairman of a procuring entity's Tenders Board and Procurement Planning Committee, and; in the case of Ministries, the Permanent Secretary and in the case of Extra-Ministerial institutions and corporations, the Director-General or officer of co-ordinate responsibility; in the case of a Local Government Council, the Head of Local Government Administration or official of coordinate responsibility.
- (2) The Accounting Officer shall only take decisions regarding procurement process in his procuring entity when presiding as Chairman of the Tenders Board or Procurement Planning Committee, and such decisions shall be supported by majority of members in attendance.
- (3) The Accounting Officer of every procuring entity shall be responsible for:
- (a) ensuring compliance with the provisions of this Law by the Tenders Board and shall be liable in person for the breach or contravention arising from his duties;
 - (b) constituting the Procurement Planning Committee and Tenders Board subject to the guidelines issued by the Bureau;
 - (c) ensuring that adequate budgetary provisions are made for projects;
 - (d) integrating the procuring entity's procurement expenditure into its yearly budget;
 - (e) ensuring prior to award of any contract, that a Cash Backing Clearance for the contract is obtained from the ministry of Finance;
 - (f) constituting the Technical Evaluation Sub-Committee of the Tenders Board in accordance with this Law and regulations issued herefrom;

- (g) providing the requisite support to the procuring entity's Procurement Department or Procurement Management Unit for implementation of the Procurement Planning Committee's decision in accordance with this Law, regulations and guidelines; and
 - (h) performing other responsibilities as may be assigned by the Bureau in its guidelines.
- (4) There shall be established in Ekiti State public service, a public procurement service cadre to be polled under and supervised by the Bureau for the implementation of this Law in all procuring entities.
- (5) The Head of Procurement Department or official of coordinate responsibility in every procuring entity shall have the responsibility for the planning, organization, and evaluation of tenders and in particular be responsible for:
- (a) ensuring that every procurement process in his Procuring entity complies with the provisions of this Law and all regulatory instruments issued therefrom, and shall be liable in person for breach or contravention arising from his duties, and concurrent approval of the Accounting Officer, Tenders Board or Procurement Planning committee shall not absolve him of this responsibility;
 - (b) implementing the decisions of the Procurement Planning Committee;
 - (c) liaising with the Accounting Officer to ensure that adequate budgetary provisions are made for projects;
 - (d) ensuring that prior to award of a contract, a post qualification exercise is carried out on the preferred bidder;
 - (e) ensuring that his procuring entity's final procurement plan is submitted to the Bureau not later than one month after the enactment of the State's yearly budget;
 - (f) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method or to defeat applicable thresholds;
 - (g) ensuring that the procuring entity submits its procurement records to the Bureau as laid down under this Law and any regulations issued by the Bureau; and
 - (h) liaising with the Bureau to ensure the implementation of its regulations.

Procurement Planning Committee.

21. (1) For each financial year, every 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 management unit of the procuring entity who shall be the Secretary;
- (ii) the unit directly in requirement of the procurement;
- (iii) the financial unit of the procuring entity;
- (iv) the planning, research and statistics unit of the procuring entity; and
- (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement.

Establishment of Procurement Department/Unit.

22. There is hereby established for every procuring entity a Procurement Department /Unit to be staffed by staff (personnel) from the procurement cadre.

Pre-qualification demands.

23. (1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors by requesting interested persons to submit applications to pre-qualify, it shall set out precise conditions for qualification 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 the conditions set out in the prequalification documents and no more.
- (2) Procuring entities shall supply a set of prequalification documents to each supplier or contractor that request them to apply, and the price that a procuring entity may charge for the prequalification document shall reflect only the cost of printing and provision to suppliers or contractors and consultants.
- (3) The prequalification document shall include:
- (a) instructions to prepare and submit prequalification application;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications, taking into account the reasonable need of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with this Law and procurement regulations relating 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 within the stipulated timeframe in any regulations issued by the Bureau or specifically stated in the pre-qualification documents.
- (5) The response by the procuring entity shall be given within a reasonable time stated in the regulations or more specifically, in the pre-qualification documents so as to enable the supplier or contractor to make a timely submission of its application to pre-qualify.
- (6) The response to any request 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 shall be invited to participate in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.
- (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified or shortlisted to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

PART VI.
PROCUREMENT METHODS (GOODS AND WORKS).

Open Competitive Bidding.

24. (1) Except as otherwise provided by this Law, all procurement of goods, works and services 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 the lowest evaluated responsive bid, which has been responsive to the bid with regards to work specification and standard.

Invitation to Bid.

25. (1) Invitation to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either National or International Competitive Bidding.
- (2) Every invitation to an open competitive bid shall be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, at least two nationally circulating newspapers.
- (3) Every International Competitive Bid shall be advertised in at least one international publication and two national newspapers, and in the procurement journal.
- (4) Advertisements notices to be given shall:
 - (a) if National Competitive Bidding, be at least four weeks before submission deadline; and
 - (b) if International Competitive Bidding, at least six weeks before submission deadline.
- (5) Bidders may seek clarifications regarding the bidding documents within the timelines stipulated in the regulations issued by the Bureau, and specifically in the bidding documents, and the procuring entity shall respond within a reasonably stipulated time so as to enable the bidder to make a timely submission of its bids.
- (6) The response of the procuring entity to any request shall without identifying the source of the request, be communicated to other bidders provided with the bidding documents, or as stipulated in the regulations issued by the Bureau.

Bid Security.

26. (1) All procurements valued in excess of the sums prescribed by the Bureau, may require a bid security in an amount not more than two percent (2%) of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity or as may be duly recognized by the Bureau.

- (2) The Bureau shall from time to time specify in the bidding documents, the principal terms and conditions of the required bid security.
- (3) When the procuring entity requires suppliers, contractors or service providers submitting bids to provide a bid security the requirement shall apply to each such supplier, contractor or service provider.

Submission of Bids.

27. (1) All hard copy bids in response to an invitation to open competitive bidding shall be signed by an official authorized to bind the bidder to a contract, be placed in a sealed envelope and be submitted in writing in hard copy, or if required in soft copy.
- (2) All hard copy submitted bids shall be deposited in a secured tamper-proof bid box by a bidder's representative, who shall register the bid in a bid submission register provided during bid submission in the same room where the tamper proof box is located, wherein shall be entered his personal details, the bidder's details, the procurement title, code if any, lot, time and date of submission.
- (3) Upon registration of the bid in the register, the bidder's representative shall be issued a receipt showing the date and time the bid was submitted.
- (4) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor.
- (5) No communication shall take place between procuring entities and any supplier, contractor or service provider after the publication of a bid solicitation other than as provided in this Law.

Rejection of Bids.

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

Validity Period of Bids, Modification and Withdrawal of Tenders.

29. (1) The period of validity for a bid shall be the period specified in the tender documents.
- (2) A procuring entity may request bidders to extend the period of validity for an additional specified period of time.

- (3) A supplier, contractor or service provider may refuse the request for the extension of bid validity period, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period.
- (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of bids.

Bid Opening.

30. Bids shall be submitted before the deadline or date and time specified in the tender documents or any extension of the deadline for submission, and the procuring entity shall:

- (1) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (2) 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;
- (3) except otherwise herein provided, ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- (4) ensure that a register is taken of the names and addresses of all those present at the bid opening and the organisations they represent which is recorded by the Secretary of the Tenders' Board; and
- (5) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency, bid security (if required and provided) 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.

- 31.**
- (1) All bids submitted at the e-procurement portal shall be in compliance with and be processed in accordance with e-procurement rules made from time to time by the Bureau.
 - (2) 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.

- (3) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (4) 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.
- (5) Notwithstanding sub-section (3) of this Section, the procuring entity may correct purely arithmetical errors that are discovered during the examination and evaluation of bids.
- (6) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the bid.
- (7) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (8) Subject to provisions of the regulations, 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;
 - (v) offer of quality or standards below that specified.
 - (b) with respect to the status of the bidder:
 - (i) the fact that he/she is ineligible or not pre-qualified; and
 - (ii) the fact that he/she 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 or through wrong portal/e-mail address.
- (9) In cases of major deviations, bids shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (10) 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.
- (11) Subject to any provisions of the regulations, the following shall be considered minor deviations:
 - (a) the use of codes;

- (b) the use of different but equivalent standards;
- (c) different but equivalent materials;
- (d) alternative design;
- (e) alternative workmanship;
- (f) modified liquidated damages;
- (g) omission in minor items;
- (h) discovery of arithmetical errors;
- (i) sub-contracting that is unclear and questionable;
- (j) different methods of construction with equivalent results as the one specified;
- (k) difference in delivery schedule;
- (l) completion period where time is 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.

(12) 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.

(13) 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.

(14) Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.

(15) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.

(16) For the rejection of a bid, a written notice shall be given promptly to the contractor or supplier.

Evaluation of Bids.

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

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

- (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Technical Evaluation Sub-Committee shall, in particular, undertake the following processes as applicable:
- (a) checking of deviations;
 - (b) checking of omissions with quantification of same;
 - (c) application of discounts, as applicable;
 - (d) clarification with bidders of questionable minor deviations;
 - (e) quantification in monetary terms of such questionable deviations;
 - (f) conversion to common currency;
 - (g) calculation and tabulation of bid amount with domestic preference where applicable;
 - (h) determination of the lowest calculated prices in order of rank;
 - (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 purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and may include:
- (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, and compatibility of the equipment; availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
 - (b) for works, in addition to other factors that may be stipulated elsewhere in this Law if time is a critical factor, the value of early completion, environmental and social impact of construction methods; and
 - (c) the value of early completion under Section 35(2) of this Law shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract shall provide for commensurate penalties in case of late delivery.
- (6) When bid prices are expressed in two or more currencies, the prices of all goods shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for prequalification shall be confirmed at the time of award

of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or persons not officially concerned with the evaluation process until the successful bidder is notified of the award.

Acceptance of Bids.

33. (1) The successful bid shall be the lowest cost bid from amongst the bids adjudged responsive as to the bid solicitation.
- (2) Notwithstanding sub-section (1) above, the winning bid needs not be the lowest cost bid from amongst responsive bids, provided the procuring entity can show good grounds consistent with the provisions of this Law to that effect.

Domestic Preference.

34. (1) A procuring entity may grant a margin of preference in the evaluation of bids, when comparing bids from domestic bidders with those of international or foreign bidders and when comparing bids from local suppliers offering goods manufactured locally in Nigeria 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 bids under international competitive bidding and to bids where local suppliers are expected to offer goods manufactured in Nigeria and good manufactured abroad.
- (4) The Bureau shall by regulations 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.

35. (1) In accordance with regulations issued from time to time by the Bureau, a mobilisation fee may be paid for specified contracts supported by the following:
- (a) in the case of National Competitive Bidding - an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and

- (b) in the case of International Competitive Bidding - an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.
- (2) Once a mobilisation fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an Interim Certificate of Performance issued in accordance with the contract agreement by the procuring entity and a monitoring report issued by the Project Monitoring Unit of the State Planning Commission or Ministry of Budget and Economic Planning.
- (3) A Contractor who receives mobilisation fee and fails to earn any certificate thereafter in the absence of a *force majeure* shall be liable to refund the mobilisation fee paid and this shall be specified in every contract regarding which a mobilisation fee is paid.
- (4) The Bureau may determine that refund under sub-section 3 above attracts interest at prevailing rates while also charging a penalty not more than twenty percent (20%) of the mobilisation fees.

Contractor performance guarantee.

36. (1) The provision of a Performance Guarantee shall be a precondition for the contract award in any procurement contract upon which any advance payment is to be paid, provided however it shall not be less than ten percent (10%) of the contract value in any case or any amount equivalent to the mobilisation fee requested by the supplier or contractor - whichever is higher.
- (2) Notwithstanding the provisions of sub-section (1) above, Performance Guarantee may also be required for other varieties of procurement contracts above thresholds that the Bureau may from time to time specify.
- (3) Pursuant to sub-section (2) above, where it is necessary that a Performance Guarantee be provided in a contract, the solicitation documents and standard bidding documents shall specify the terms and conditions for its application.

Interest on delay payments.

37. (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently after certifications from the procuring entity and the project monitoring unit of the State Planning Commission or Ministry of Budget and Economic Planning.
- (2) Any payment due shall be paid after the contractor or supplier has raised a Certification for Payment, a confirmation of performance by the procuring entity and the State Planning Commission or Ministry of Budget and Planning.

- (3) Any payment not made for more than One Hundred and Twenty days from the date of full certification of performance and compliance shall be a delayed payment and may attract interest in accordance with the rates stipulated in the contract.

Records of Procurement Proceedings.

38. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.
- (2) The portion of the record referred to in this Section shall, on request, be made available to:
 - (a) any person after a bid or proposal winner has been selected or after procurement proceedings have been terminated without resulting in a procurement contract; and
 - (b) suppliers, contractors or service providers that applied for pre-qualification or to be shortlisted at conclusion of pre-qualification or shortlisting.
- (3) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this Section.
- (4) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General for the State at all times; and where donor funds have been used for the procurement, donor officials shall upon request have access to procurement files for the purpose of audit and review.

PART VII.

SPECIAL AND RESTRICTED METHODS OF PROCUREMENT.

Two Stage tendering.

39. (1) A procuring entity shall engage in procurement by two-stage bidding:
 - (a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or in the case of services, to identify their characteristics and where it seeks bids, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs; or
 - (b) where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to

- establish their commercial viability or to recover research and development costs, where the procuring entity applies this Law to procurement concerned with national security and determines that this method is the most appropriate method of procurement; or
- (c) where the open competitive bidding proceedings have been utilised but were not successful and the procuring entity considers that engaging in another open competitive bidding proceedings will not result in a procurement contract;
- (2) 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.
- (3) The invitation documents:
- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage bidding proceedings, initial bids which contain their technical proposals without a bid price; and
- (b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualifications of the suppliers or contractors.
- (4) The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose bid has not been rejected under an open competitive bidding procedure with respect to any aspect of its bid.
- (5) In the second stage of the two stage bidding proceedings the procuring entity:
- (a) shall invite suppliers or contractors whose bids have not been rejected to submit final bids with prices on a single set of specifications;
- (b) may in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare bids and ascertain the successful bid;
- (c) may add new characteristics or criteria that conform with this Law;
- (d) shall communicate to suppliers or contractors in the invitation to submit firm bids, any deletion, modification or addition; and
- (e) may permit a supplier or contractor who does not wish to submit a final bid to withdraw from the bidding proceedings.
- (6) The final bids shall be evaluated and compared in order to ascertain the successful bid as defined in an open competitive bid method.

Restricted tendering.

40. (1) Subject to the provisions of this Law and regulations issued by the Bureau, a procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted bidding if:

- (a) the goods and or works are available only from a limited number of suppliers or contractors; or
 - (b) the time and cost required to examine and evaluate a large number of bids is disproportionate to the value of the goods, works or services to be procured; and
 - (c) the procedure is used as an exception rather than a norm.
- (2) Where a procuring entity engages in restricted bidding on the basis that:
- (a) the goods and or works are available only from a limited number of suppliers or contractors, it shall invite bids from all the suppliers and contractors who can provide the goods or works; and
 - (b) the time and cost required to examine and evaluate a large number of bids is disproportionate to the value of the goods, works or services, it shall select in a non-discriminatory manner of the number of suppliers or contractors to ensure effective competition.
- (3) For the purposes of sub-section (2) of this Section, the procuring entity shall cause a notice of the restricted bidding proceedings to be published in the procurement journal or any other such approved information sources.
- (4) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective bidding proceedings, except to the extent that those provisions are varied by this Section.
- (5) The procuring entity shall not later than fourteen days after the conclusion of the procurement proceedings transmit records of the procurement proceedings and documents to the Bureau.

Request for quotations.

41. (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 lower sum than shall be set in the procurement regulations.
- (2) Generally, quotations shall be obtained from at least three unrelated contractors or suppliers, who shall be duly registered with the Bureau.
- (3) Each contractor or supplier from whom a quotation is requested shall:
- (a) be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes are to be included in the price; and

- (b) give only one quotation and shall not be allowed to change or vary the quotation.
- (4) No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
- (5) The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation within the Bureau's prize benchmarks.
- (6) The procuring entity shall no later than fourteen calendar days after the conclusion of the procurement proceedings transmit record of the procurement proceedings and documents to the Bureau.

Direct Procurement.

42. (1) A procuring entity may undertake direct or single source procurement where:
- (a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
 - (b) due to unforeseen circumstances, there is an urgent need for the goods, works or services and engaging in open competitive bidding proceedings or any other method of procurement is impractical;
 - (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 need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification; and
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.
 - (e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contractor includes the production of goods in quantities to establish commercial viability or recover research and development costs;

- (f) the State is either seriously threatened by or actually confronted with a disaster, catastrophe, or act of God;
 - (g) 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; and
 - (h) a public project may be seriously delayed for want of an item of a minor value.
- (2) The procuring entity:
- (a) may procure the goods, works or services by inviting a bid, proposal or price quotation from a single supplier or contractor; and
 - (b) shall include in the record of procurement proceedings to be submitted to the Bureau not later than fourteen calendar days after the conclusion of the proceedings, a statement of the grounds for its decision and the circumstances in justification of the single source or direct procurement method.

Direct labour.

43. (1) In addition to any regulations issued by the Bureau, a procuring entity may embark on direct labour where:
- (a) the procuring entity has from amongst its personnel or has assembled from another procuring entity the technical expertise required to implement the procurement; or
 - (b) the monetary value of the procurement subject matter is of minor value as may be specified by the Bureau in the regulation; or
 - (c) the materials and equipment to be deployed for its implementation are easily accessible and its prices easily ascertainable; or
 - (d) the duration for implementation of the procurement activity is not expected to last more than ninety calendar days.
- (2) Notwithstanding the provisions of sub-section (1) above, the procuring entity may hire daily labourers, who will be paid on a daily basis but supervised by its technical personnel for the implementation of the procurement activity.
- (3) Funds for direct labour procurements shall be integrated into the procuring entity's yearly budget and such project(s) must be pre-approved in the procuring entity's procurement plan for the fiscal year.
- (4) The procuring entity shall, upon implementation of a direct labour project, transmit full records justifying adoption of the method, indicating materials and equipment if any procured or services hired during implementation, showing unit and daily cost of external labour if any deployed for the implementation.

PART VIII.
PROCUREMENT OF CONSULTANCY SERVICES.

Expression of interest to provide services for ascertained needs.

44. (1) Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:
- (a) it shall solicit for expressions of interest or applications to shortlist consultants to provide the required services by publishing a notice to that effect in at least two (2) national newspapers and the procurement journal; and
 - (b) the solicitation notices shall stipulate the eligibility conditions to be met by prospective applicants in order to be shortlisted for participation and to be issued requests for proposals.
- (2) where the value of the services to be procured is less than a threshold stipulated in a regulation issued by the Bureau, or of such a low value that only local consultants in Ekiti State would be interested in bidding, the procuring entity may without placing any notice request at least three (3) and not more than ten (10) consultants or service providers to make proposals for the provision of the services in a format stipulating:
- (a) a statement of qualifications of the consultant to provide the service;
 - (b) a statement of understanding of the procuring entity's needs;
 - (c) the methodology for providing the service;
 - (d) the time frame for providing the service; and
 - (e) the cost or fee for the service.

Request for proposal to provide services for unascertained needs.

45. (1) A procuring entity wishing to procure services for its needs which are not precise and easily ascertainable may do so by requesting for proposals in a two-stage bidding process.
- (2) In a two-stage bidding process, the procuring entity shall seek technical proposals from consultants on the best possible way to meet its needs and only allow bidders whose proposals are responsive to submit financials in the second stage based on a later specification of its needs which has taken account of proposals submitted in the first stage.
- (3) A two-stage bidding process for services shall as much as is practicable comply with Section 39 of this Law except only for changes required to adjust to the nature of services.
- (4) A procuring entity may make direct requests to a limited number of consultants, requesting proposals for the provision of a service if:

- (a) the services are only available from no more than three (3) consultants; or
- (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 a considerable number of consultants with expertise in the subject matter to ensure competitiveness of the proceeding; or
- (c) for reasons of confidentiality due to the nature of the services requested; or
- (d) if there is an unforeseen urgency for the services not in the result of dilatory conduct of the procuring entity.

Content of the Request for Proposals.

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

Clarification and Modification of Request for Proposals.

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

Submission of Proposals.

48. (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 four weeks between the issue of the notice or request and the deadline for submission, except otherwise specified in the regulations.
- (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 Sub-Committee shall not have access to or insights to the financial proposals until the evaluations, including any Tenders' Board(s) review, are concluded.

Criteria for evaluation of Proposals.

49. (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of:
- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
 - (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
 - (c) the proposal price, including any ancillary or related cost;
 - (d) the extent of participation by Nigerian citizens, the economic development potential offered by the proposal including domestic investment or other business activity if any, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
 - (e) national defense and security considerations.
- (2) A procuring entity may accord a margin of preference for domestic consultants or service providers in an international competitive bid, 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).

50. (1) The procuring entity shall identify in the request for proposals which one of the following three classifications of criteria will apply to selection of the winning proposal:
- (a) the lowest priced proposal from amongst the proposals adjudged responsive in the case of least-cost selection; or
 - (b) the proposal with the best combined evaluation in terms of the technical criteria set out in the request for proposals and the price quoted in the case of quality and cost-based selection; or
 - (c) the highest ranked technical proposal within the budget.
- (2) (a) The successful proposals shall be that which best meets the specific classification of criteria selected by the procuring entity from amongst the three broad classifications provided in sub-section (1) above.
- (b) The request for proposal shall set out the detailed elements of the specific classification of criteria based on which proposals in that particular procurement shall be evaluated.
- (3) In the case of least-cost selection, the procuring entity shall establish criteria for adjudging responsiveness which shall include but may not be limited to

criteria set out in Section 49 (1)(a)-(d) above, to which it shall prescribe and attach relative weight. The technical bids shall first be evaluated based on such criteria and a decision reached as to the proposals that have been responsive to the solicitation, consequent upon which the prices shall be evaluated to select the proposal amongst the responsive proposals with the least cost as the winner.

- (4) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures in sub-section (1) of this Section.

Procedure for selection of proposal where price is a factor.

51. (1) Where the procuring entity elects to choose through quality and cost best selection, it shall establish a weight with respect to quality and technical factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals, and based on that rating select the responsive proposals whose prices shall be compared.
- (2) The procuring entity shall then compare the prices of those proposals that have attained a rating above the threshold pre-established in the request for proposals and select the one with the best combined score from technical and price factors from amongst them.
- (3) The procuring entity shall within fourteen calendar days of approval by the Tenders' Board of evaluation of technical proposals 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.
- (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 consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical and financial proposals.
- (7) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

- (8) The Bureau may issue a standard pricing mechanics for staff-months and reimbursable expenses.

Selection procedure where price is not a factor.

52. (1) Where the procuring entity elects to make a quality-based selection, based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this Section.
- (2) The procuring entity shall:
- (a) establish a weight with respect to quality and price of the proposals;
 - (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with sub-section (1) of this Section
 - (c) inform the consultants that attained ratings above the weight that may be considered for negotiations if the negotiations with the consultant with the best rating do not result in a procurement 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 sub-section (2)(a) above, 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 does not result in a procurement contract, the procuring entity shall invite the other consultants 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.
- (5) Nothing in this Law shall prevent the procuring entity from resorting to the use of an impartial panel of experts to support the Technical Evaluation Sub-Committee to make a selection decision to be approved by the Tenders' Board(s).

PART IX.

PROCUREMENT SURVEILLANCE AND REVIEW.

Bureau to recommend investigation.

53. (1) The Bureau may review and recommend for investigation by any relevant authority(ies)/person(s) 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(ies)/person(s) may in the course of investigation:
- (a) require an officer(s), employee(s), agent(s) or privy(ies) of the procuring entity, other departments of the government or bidder(s), supplier(s), contractor(s), or consultant(s) to produce any book(s), record(s), account(s), computer(s), electronic device(s) and/or document(s), which may include electronic matter(s);
 - (b) search premises for any book(s), record(s), account(s), computer(s), electronic device(s) and/or document(s);
 - (c) examine and make extracts from and copies of book(s), record(s), account(s), computer(s), computer program(s), electronic device(s) or document(s) of any procuring entity, bidder(s), supplier(s), contractor(s) or consultant(s);
 - (d) remove book(s), record(s), account(s), computer(s), electronic device(s) or document(s) of the procuring entity, bidder(s), supplier(s), contractor(s) or consultant(s) for as long as may be necessary to examine them or make extracts from or copies of them but the investigator(s) shall give a detailed receipt for the book(s), record(s), account(s), computer(s), electronic device(s) or document(s) removed;
 - (e) require an officer(s), employee(s), agent(s) and/or privy(ies) of the procuring entity or bidder(s), supplier(s), or contractor(s) or consultant(s):
 - (i) to explain an entry in the books, records, accounts or documents; and
 - (ii) to provide the investigator(s) with information concerning the management or activities of the procuring entity or bidder(s) as may be reasonably required;
 - (f) explain an entry in the book(s), record(s), account(s), computer(s), electronic device (s) or document(s); and
 - (g) provide the investigator(s) with information concerning the management or activities of the procuring entity or bidder(s) as may be reasonably required.
- (3) The Bureau may, pursuant to the advice of the procuring entity's results of its review of a procurement or report of investigation by a relevant government agency(ies):
- (a) issue a variation order requiring a contractor at his own expense to repair, replace, or undertake any activity required in the contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract;
or
 - (b) require a contractor at procuring entity's, further costs to complete any additional minor works or activity required to achieve best value for government that its original contract may not have provided for; or

- (c) invoke any or a combination of its powers as provided under Section 6(1) of this Law
- (4) The Bureau shall, if satisfied that there has been a contravention of this Law or any regulations in relation to procurement proceedings or procurement contract take action to rectify the contravention which action shall include:
 - (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contract or a/any part thereof;
 - (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(s), the relevant authority(ies)/person(s) shall, if an offence is disclosed, take all necessary step(s) to commence prosecution and inform the Bureau and the procuring 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.

- 54.** (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/pursuant to this Law.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Bureau.
- (3) Upon receipt of a complaint, the Bureau shall promptly:
 - (a) give notice of the complaint to the respective procuring or disposing entity and may if it deems it necessary suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;
 - (b) unless it dismisses the complaint(s):
 - (i) prohibit a procuring or disposing entity from taking any further action;
 - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
 - (iii) declare the rules or principles that govern the subject matter of the complaint; and
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (4) 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.
- (5) 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.

- (6) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with decision of the Bureau, the bidder may appeal to the State 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 ASSET AND/OR PROPERTY.

Disposal of Public Asset and/or property.

55. (1) For the purposes of this Law, every procuring entity shall also be a disposing entity.
- (2) Except as otherwise provided, open competitive bidding shall be the primary method of receiving offers for the purchase of any public property offered for sale. .
- (3) The Bureau shall, with the approval of the Council:
 - (a) determine the applicable policies and practices in relation to the disposal of all public asset(s) and/or property(ies);
 - (b) issue guidelines detailing operational principles and processes to be adopted by all procuring entities when 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 asset(s) and/or property(ies).
- (4) For the purpose of this Law, public asset(s) and/or property(ies) is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable):
 - (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including shares, stocks, bonds, etc.); and
 - (e) acquired by goodwill and any other gifts of the State Government.
- (5) The means of the disposal of public asset(s) and/or property(ies) shall include:
 - (a) sale and rental;
 - (b) lease and hire purchase;
 - (c) licenses and tenancies;
 - (d) franchise and auction;

- (e) transfers from one government department to another with or without financial adjustments; and
- (f) offer to the public at an authorised variation.

Planning of disposals.

56. (1) Before slating any public property of an acquisition value above a threshold set by the Bureau for disposal, the Head of Procurement Department or official of coordinate responsibility shall cause a valuation to be undertaken of such property by a valuer.
- (2) A procuring entity shall in requesting a Disposal Completion Certification from the Bureau submit the following:
- (a) valuation report of the property sought to be sold;
 - (b) receipt or other proof of date and cost of purchase or acquisition of the property(ies) or asset(s), if available;
 - (c) authorisation for disposal by the relevant authority;
 - (d) proof of openness and competitiveness of the process of disposal; and
 - (e) any other document that may be prescribed by the Bureau from time to time.
- (3) The disposal of assets whether or not listed in the assets register of a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (4) The disposal of assets referred to in sub-section (2) of this Section shall be timed to take place when the most advantageous returns or value for money can be obtained for the asset(s) and/or property(ies) in order to maximize revenue accruing to the government.
- (5) No sale of a public asset(s) or property(ies) above a purchase value stipulated by the Bureau shall be completed by any procuring entity or Local Government Area without obtaining a prior Disposal Completion Certification from the Bureau;
- (6) The Bureau shall periodically issue and review guidelines for the allocation of responsibilities and procedures for the disposal of public asset(s) between the Procurement Department/Unit and the Tenders Board of procuring entities

PART XI. CODE OF CONDUCT.

Code of Conduct for Public Procurement.

57. (1) The Bureau shall, with the approval of the Council, issue Code(s) of Conduct for 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 and or disposal of asset(s) and/or property(ies) whether as officials of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
- (3) All officers of the Bureau, members of Tenders' Boards and other persons that may come to act regarding the conduct of public procurements and or disposal of assets shall subscribe to an oath as approved by Council.
- (4) All persons in whose hands public funds may be entrusted for whatever purpose, should ensure that its utilisation is judicious and in the overall public interest.
- (5) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationships with persons, real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by maintaining only a professional, transparent and honest relationships with such persons.
- (6) Every public officer involved directly or indirectly in matters of public procurement and disposal of asset(s) and/or property(ies) shall:
 - (a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest(s) of government and the underlining principles of this Law; and
 - (b) not engage or participate in any commercial transaction involving the State Government, procuring entities where his capacity as public officer is likely to confer any unfair advantage, pecuniary or otherwise on him, his friends or any person(s) directly related to him.
- (7) Any person engaged in the public procurement and disposal of asset(s) and or property(ies) who has assumed, or is about to assume, a financial or other business(es) outside official relationship that might involve a conflict of interest, must immediately declare in writing to the authorities any actual or potential interest(s).
- (8) Such a declaration shall be given such consideration at the relevant level as it is necessary so that, where a conflict of interest is present and or likely to occur, remedial action(s) should be taken.
- (9) 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 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/persons' ability to influence dealings;
- (c) entertains relationships which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
 - (d) places by act(s) of omission(s) and or commission(s) 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;
 - (h) discloses confidential information being either the property of his procuring entity, the Government to a supplier contractor or service provider or unauthorised persons; and
 - (i) any other act(s), which may from time to time be defined in the regulations duly issued by the Bureau.
- (10) An employee in the state service or a political office holder in the State shall not either by a third party or by himself be interested in any manner in buying directly or indirectly disposable asset(s) or in securing directly or through a third party a procurement contract and shall not have or obtain any type of advantage(s) or revenue(s) from the disposal of any asset or a procurement contract by any procuring entity.

PART XII. OFFENCES.

Offences relating to Public Procurement.

- 58.** (1) It shall be an offence punishable with two years imprisonment and or an option of fine of no less than Two Million Naira (₦2, 000, 000.00) for any person(s) to award a contract falling within an approval threshold without a prior written approval of the Tenders' Board vested with the approving authority.
- (2) It shall be an offence for any person(s) to certify in writing partial or full completion of any aspect of a contract when the contractor's performance has not met the specification and agreed standard and milestone in the contract.
- (3) It shall be an offence for any person(s) to approve or issue payment certification for any part of a contract activity or activities knowing or having

reasonable suspicion that the contract or any part of it being approved for payment has not been creditably performed.

- (4) It shall be an offence for any person(s) to disburse payment for a contract knowing that the entire contract or any part thereof being paid for has not been creditably performed.
- (5) It shall be an offence for any contractor to knowingly seek and obtain payment for the whole or any part of a contract knowing that his/her performance has not met the specifications and agreed standard and milestone in the contract.
- (6) Any government employee(s) convicted of an offence under sub-sections (2)-(5) above shall upon conviction be sentenced to a prison term of not less than two years with no option of a fine and be dismissed from the Government Service, without recourse to any other rule/regulation.
- (7) Any private person convicted of an offence under sub-section (2)-(5) above shall be sentenced to a prison term of not less than two years with an option of a fine not less than Five Million Naira (₦5,000,000.00).
- (8) Any person who, under the guise of direct labour secures public funds for a project only to sub-contract the activity to an external person(s), known or unknown to the Bureau, commits an offence and if convicted shall be liable to imprisonment for term not less one year and or a fine of not less than Two Million Naira (₦2, 000, 000.00).
- (9) 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 bids, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned and shall upon conviction be punishable with a prison term of not less than one year and or a fine not less than Five Million Naira (₦5,000,000.00);
 - (b) directly, indirectly, influencing or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract for any person shall be an offence punishable on conviction with a prison term of not less than two years and or a fine of not less than Five Million Naira (₦5,000,000.00);
 - (c) splitting of tenders to enable the evasion of monetary thresholds set shall be an offence punishable with six months imprisonment and or a fine of not less than One Million Naira (₦1,000,000.00);
 - (d) bid-rigging shall be an offence punishable with two years imprisonment and or a fine of not less than Five Million Naira (₦5,000,000.00);

- (e) altering any procurement document with intent to influence the outcome of a bid proceeding shall be an offence punishable with two years imprisonment and or a fine not less than Five Million Naira only (₦5,000,000.00);
 - (f) altering or using fake documents to seek qualification or support a procurement bid shall be an offence punishable with a one year prison term and or a fine of not less than One Million Naira (₦1,000,000.00);
 - (g) willful refusal to allow the Bureau or its officer(s)/agent(s)/privy(ies) access to any procurement records shall be an offence punishable with two years imprisonment and or an option of a fine not less than One Million Naira (₦1,000,000.00); and
 - (h) where a company is convicted, the person responsible for the management of the company shall be personally liable and each Director found to have knowingly participated in the commission of the offence shall be liable to a fine not less than Five Million Naira (₦5,000,000.00) each and the company shall be debarred from public procurement for not less than five years.
- (11) A Judge trying an offence under this Section shall where he finds that the actions of a convicted person(s) has led to a loss to the State, order adequate restitution in favour of the State in addition to fines if any he may decide to impose.
- (12) Any offence in contravention of this Law shall be tried by the State High Court.
- (13) A 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 five years; and
 - (b) a fine of not less than five percent (5%) of the value of procurement in issue.
- (14) Where any legal person(s) shall be convicted for any offence under this Law, the Managing Director and any other Director proved to have participated in or approved the activity shall also be guilty of the offence and liable on conviction to one year imprisonment and or a fine not less than Two Million Naira (₦2,000,000.00).
- (15) An alteration pursuant to sub-section (9)(f) shall include but not limited to:
- (a) falsification of document;
 - (b) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid submission or opening; and
 - (c) request for clarification in a manner not permitted under this Law.

- (16) 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 provision(s) of this Law.
- (17) Bid-rigging pursuant to sub-section (9)(d) means an agreement between persons whereby:
 - (a) offers submitted have been pre-arranged between them; or
 - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to, and escalation or increase in costs or loss of value to the government treasury.
- (18) For the purposes of the presumption under sub-section (16) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial.
- (19) For the purposes of sub-section (13) of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action(s) would result in his company or firm having an undue advantage over other bidders to the detriment of the government treasury.

**PART XIII.
MISCELLANEOUS.**

Miscellaneous.

- 59. (1) The affixing or fixing of the seal of the Bureau shall be authenticated by the signature of the Director-General or any other person authorized generally or specially to act for that purpose by the Council.
- (2) Any contract or instrument which if made or executed by a person(s) not being a body corporate and which would not be required to be under seal, may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorised 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 of a Committee thereof shall not be adversely affected by any vacancy in the membership of the Council or Committee or by any defect in the appointment of a member of the

Council or of a Committee or by reason that a person not entitled to do so took part in the proceedings of the Council or Committee.

Repeal of Ekiti State Public Procurement Law, No. 2 of 2010 and its Amendments.

60. The Ekiti State Public Procurement Law No. 2 of 2010, the Ekiti State Public Procurement (First Amendment) Law, No. 15 of 2015, the Ekiti State Public Procurement (Second Amendment) Law, No. 5 of 2016 and the Ekiti State Public Procurement (Third Amendment) Law, No. 8 of 2017 are all hereby repealed.

Interpretation.

61. In this Law:

“**Accounting officer**” means the Permanent Secretary or person acting in that office; in the case of an Agency or Parastatal, a Director-General or a person of corresponding authority and in the case of a Local Government Council, the Head of Local Government Administration or a person acting in that office;

“**Approving authority**” means the body charged with responsibility for approving contract awards;

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

“**Attorney-General**” means Attorney-General of Ekiti State;

“**Bidder**” means contractor or supplier or service provider, who may be a body corporate, and a potential party to a procurement contract with the procuring entity and include any corporation or partnership, natural person(s), sole proprietor, joint stock company(ies), joint venture or any other legal entity through which business is conducted;

“**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;

“**Bidding document**” means the bid solicitation documents or any other documents for solicitation of offers proposals or quotations;

“**Certificate of Payment**” means authentication that work for which payment is required has been done according to contract specification, agreed standard and milestone in compliance with this Law and therefore allowing responsible officers to effect payments to a contractor or supplier from the Treasury;

“Commissioner” means a Commissioner in the Cabinet or Executive Council of Ekiti State;

“Contract” means an agreement entered in writing by at least two parties;

“Contractor or supplier or service provider” means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, natural person(s), sole proprietor, Joint Stock Company, joint venture or any other legal entity through which business is conducted;

“Disposal Entity” means any public body or institutions engaged in disposal of government assets and includes all arms of the Government of Ekiti State, Ministry, Department, Agency, Extra-Ministerial institution or Local Government Council.

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

“Governor” means the Governor of Ekiti State of Nigeria.

“Government” means Ekiti State of Nigeria and/or any public institutions duly established as an arm/tier/organ of Ekiti State of Nigeria

“House of Assembly” means the Ekiti State House of Assembly.

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

“Lowest evaluated responsive bid” is the lowest priced bid amongst the bids that meets all the technical requirements and standards as contained in the bid document.

“Margin of Preference” means the extra mark upon 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 duly set for any approving authority by the Bureau.

“Monetary threshold” means the value limit in Naira duly 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 domestic contractors and suppliers registered or incorporated to carry on business under Nigeria/Ekiti Laws.

“Negotiations” means discussions to determine the terms and conditions of a contract(s) or procurement as may be duly conducted or approved by the Bureau as applicable under this law.

“Person” means as contained in the Interpretation Law

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

“Procurement” means acquisition (of assets) or service or works

“Procuring Entity” means any public body engaged in procurement and includes an arm/tier/organ of the State Government of Ekiti State, Ministry, Department, Agency, Extra-Ministerial institution or Local Government Council.

“Procurement Officer” means any/all officer(s) being duly trained and assigned officers representing the Bureau for the purposes of overseeing all procurement activities and coordinating procurement practice in the Procuring Entity.

“Public Procurement” means the acquisition of goods, works or services by any government institution or by using public fund(s) or fund(s) available to a Procuring Entity.

“Public Funds” means all monies, funds, revenues due to or received by any arm of Ekiti State Government, Local Governments, extra-ministerial departments, agencies, corporations, institutions or any other body affiliated to Ekiti State Government.

“Relevant Authority” includes the Economic and Financial Crimes Commission (EFCC) and/or Independent Corrupt Practices and other related offences Commission (ICPC) and/or the Nigeria Police Force and/or any other agency(ies)/person(s) so duly appointed by the Bureau.

“Restitution” means the refund to government of sums sufficient to put government back to position it would have been but for the wrongful action of a party.

“Services” means the rendering by a consultant of his time and effort and includes any object of procurement other than goods, works or construction.

“State” means Ekiti State of Nigeria.

“Substantially Responsive” means the response to bid solicitations which virtually answers to all the needs of a Procuring Entity as stipulated in the bid solicitation documents.

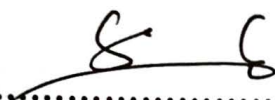
“Validity Period” means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid.

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

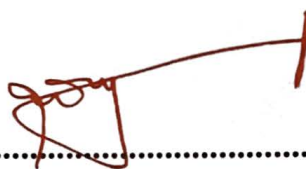
Citation.

- 62.** This Law may be cited as Ekiti State Public Procurement (Re-Enactment) Law, No. 4 of 2020.

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

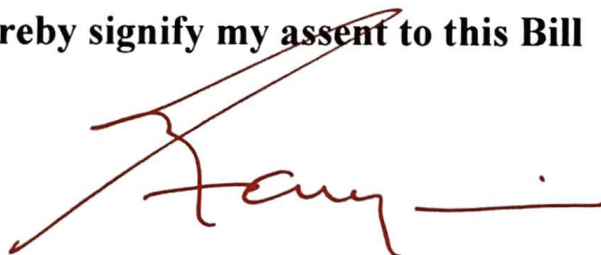


.....
MR. TOLA ESAN
Clerk of the House of Assembly



.....
RT. HON. FUNMINIYI AFUYE
Speaker of the House

Governor's Assent
I hereby signify my assent to this Bill



DR. JOHN KAYODE FAYEMI
Executive Governor of Ekiti State

MADE AT ADO EKITI THIS 20th DAY OF APRIL 2020