



CROSS RIVER STATE OF NIGERIA

LAW NO. 9 (2020)

A Law to repeal the Cross River State Due Process and Price Intelligence Bureau for Public Procurement 2011 and re-enact the Cross River State Due Process and Price Intelligence Bureau for Public Procurement and for other related matters.

Long Title.

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Commencement

The Cross River State House of Assembly enacts as follows -

Enactment

PART I ESTABLISHMENT OF BOARD ON PUBLIC PROCUREMENT

1. There is hereby established a Board on Public Procurement (in this Law referred to as "the Board").

Establishment of the Board.

2. (1) The Board shall consist of -

Composition of the Board.

- (a) the Commissioner for Finance;
- (b) the Attorney-General and Commissioner for Justice;
- (c) the Secretary to the State Government;
- (d) the Head of Service;
- (e) Economic Adviser to the Governor;
- (f) one part time member to represent civil society;
- (g) one part time member from a professional body preferably Chartered Institute of Procurement and Supplies; and
- (h) the Director-General of the Bureau who shall be the Secretary of the Board.

(2) Notwithstanding the provisions of Section 2(1), the Board may co-opt any person to attend its meetings provided that the person so co-opted shall not have a casting vote or be counted towards quorum.

(3) Members of the Board, other than Ex-officio members shall serve for a period of four years, and may have their term renewed for another period of four years and no more.

3. The Chairman and other members of the Board shall be appointed by the Governor.

Appointment of Members

4. The Board shall -

Functions of the Board.

- (a) consider, approve and amend the monetary and prior view thresholds for the application of the provisions of this Law by procuring entities;
- (b) receive and consider for approval, the audited accounts of the Bureau of Public Procurement;
- (c) approve changes in the procurement process to adapt to improvements in modern technology; and

- (d) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law.

PART II ESTABLISHMENT OF THE BUREAU

Establishment of the Bureau.

5. (1) There is hereby established for the State the Cross River State Due Process and Price Intelligence Bureau (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 of any property, moveable or immoveable for the purpose of carrying out any of its functions under this Law.

Appointment of Director- General/Functions.

6. The Director-General shall be –

- (a) appointed by the Governor subject to confirmation by the House of Assembly;
- (b) the Chief Executive and Accounting Officer of the Bureau;
- (c) responsible for the execution of policy and the day to day administration of the affairs of the Bureau; and
- (d) a person who possesses the relevant professional qualification in Accounting, Engineering, Quantity Surveyors, Purchasing, Project Management, Economics, Law, Procurement and Supply, or relevant discipline, and shall have been so professionally qualified for a period of not less than 5 years.

Tenure of Office.

7. (1) The tenure of office of the Director-General of the Bureau shall be four years and may be renewed for another term of four years and no more.

(2) Notwithstanding the provisions of subsection (1) of this Section, the Office of Director-General shall become vacant if he –

- (a) by notice under his hand and addressed to the Governor, resigns his office;
- (b) he is convicted of any offence involving fraud or dishonesty;
- (c) is incapacitated either by reason of unsoundness of mind or infirmity of the body from discharging the functions of his office;
- (d) is adjudged bankrupt by a court of competent jurisdiction;
- (e) is guilty of gross misconduct involving abuse of his office; or
- (f) dies.

Remuneration.

8. The Director-General shall be paid such remuneration and allowances as is applicable in the State Public Service.

Appointment of Directors.

9. (1) The Bureau shall also have Directors who shall be appointed from within the Service of the State based

on seniority, experience and competence with each Director heading a Department of the Bureau; and shall be paid such remuneration as is applicable in the State Public Service

(2) The Directors shall have the relevant qualification and experience required and specified for the effective performance of the specific functions of their respective Departments.

(3) The Governor shall have power to modify the operational structure of the Bureau and may appoint more Directors as may be necessary to enhance performance of the Bureau's duties and functions under this Law;

10. (1) The Bureau may appoint such other officers and other employees as may be deemed necessary for the purposes of carry out its functions.

Other Staff of the Bureau.

(2) The Governor may appoint, either on transfer from the State Civil Service, or direct recruitment, such number of employees as may be required to assist the Bureau in the discharge of any of its functions.

(3) The terms and conditions of service of staff of the Bureau shall be as applicable in the State Civil Service.

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

(5) Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the Pensions Law of the State.

11. Notwithstanding the provisions of any other Law, the Bureau shall in the performance of its functions, be independent and not subject to the direction, control or supervision of any other authority or person, except to the extent that this Law provides.

Autonomy of the Bureau.

12. The Bureau shall exercise the following functions –

Functions of the Bureau.

- (a) subject to the prior approval of the Governor, establish State Public Procurement policies and changes in the procurement process, and where necessary, cause such policies or changes to be gazetted;
- (b) harmonize existing government policies, accountability and transparency in the procurement process;
- (c) establish pricing standards and benchmarks;
- (d) ensure that transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system is attained;
- (e) formulate the general policies guiding public sector procurement in the State;
- (f) publicize and explain the provisions of this Law, policies formulated or regulations made thereunder;
- (g) subject to set thresholds, certify state procurement prior to award of contract;
- (h) supervise the implementation of established procurement policies;
- (i) monitor the prices of tendered items and keep state data base of standard prices;
- (j) publish the details of major contracts in the tender journal and media and ensure access to procurement documents to monitors and citizens;

- (k) maintain a state database of the particulars, classification and categorization of State contractors and service providers; and make it publicly available;
- (l) publish paper and electronic editions of the tender journal and maintain an archival system for the tender journal;
- (m) collate and maintain in an archival system all State procurement plans and information;
- (n) undertake procurement research and survey;
- (o) organize training and development programmes for procurement officer;
- (p) periodically review, in collaboration with the State Planning Commission, the socio-economic effects of the policies on procurement and advise Government accordingly;
- (q) prepare, update standard bidding, contract documents, and circulate same to Ministries, Departments and Agencies;
- (r) coordinate relevant training programmes to build institutional capacity;
- (s) collaborate with the Head of Service to create a procurement cadre in the Service;
- (t) review the procurement and award of contract procedures of every entity to which this Law applies; and
- (u) perform procurement audits of all procuring entities and submit such report to the State Executive Council annually.

Powers of the Bureau.

13. The Bureau shall have power to –

- (a) determine the monetary and thresholds for the application of the provisions of this Law by the procuring entities;
- (b) stipulate to all procuring entities, the procedures and documentation for the issuance of "Certificate of No Objection" for contract award and payment certificates;
- (c) subject to paragraph (a) of this Section, issue "Certificate of No Objection" for contract awarded within the stipulated prior review threshold for all procurements in accordance with the provision of this Law;
- (d) recommend to the State Civil Service Commission, sanctions against any public officer that contravenes any provision of this Law and its regulations, and or to the Governor sanctions against any political appointee that violates any provisions of this Law or regulations;
- (e) any supplier, contractor or service provider that contravenes any provision of this Law, and regulations made pursuant to this Law;
- (f) maintain hard copy and online database of information on State contractors and service providers, and to the exclusion of all procuring entities, prescribe classification and categorization for the companies on the register;
- (g) maintain a list of firms, Directors and individuals connected with the management of such firms that have been delisted from participating in public procurement activities and also publish them in all its data bases and the procurement journal;

- (h) call for such information, documents, records, and reports in respect of any aspect of any procurement proceeding where a breach, wrong doing, default, mismanagement or collusion has been alleged, suspected, reported or proved against a procuring entity, and contractor or service provider;
- (i) where there are persistent or serious breaches of this Law, regulations or guidelines made under this Law by any procuring entity, recommend to the State Civil Service Commission or Head of Service or Secretary to the Governor or Governor, whichever is applicable, who shall act within 30 days to ensure –
 - i. the suspension of the officer concerned with the procurement or disposal proceeding in issue;
 - ii. the replacement of the Head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Resident Due Process Team as the case may be;
 - iii. the temporary transfer of the procuring and disposal functions of a procuring and disposing entity to third party procurement Agency or Consultant;
 - iv. the removal from office of a political appointee; or
 - v. any other sanction that the Bureau may recommend as appropriate;
- (j) call for the production of books of accounts, plans, documents and examine, persons or parties in connection with any procurement proceeding;
- (k) act upon complaint in accordance with the procedures set out in this Law;
- (l) in the absence of any satisfactory explanation from the Ministry, Department or Agency, recommend the nullification, in whole or part, of any procurement process or award which is in contravention of this Law and send a report to the Governor;
- (m) liaise with relevant bodies or institutions, State, National or International for effective performance of its functions under this Law;
- (n) enter into a contract or partnership with any company or person which in its opinion will facilitate the discharge of its functions; and
- (o) do such other things as are necessary for the efficient performance of its functions under this Law.

14. (1) The Bureau shall have Departments; and each Department shall be headed by a Director, or the most senior in Service, who shall be a person with at least ten years experience in relevant fields. Departments.

(2) The Directors or Heads of Departments shall function under the supervision of the Director-General in the discharge of their duties.

(3) The Bureau may establish such number of Departments as may be necessary for the purpose of achieving its functions under this Law.

15. (1) The funds and resources of the Bureau shall consist of such sums as–

Funds and
Resources.

- (a) may be granted to it by the State Government;
- (b) the Government of the Federation;

(c) accrue to it from any other legitimate source;

- (2) The Bureau shall have 25% of its appropriated expenditure for every fiscal year released to it before the second quarter of each financial year; and

Estimates.

16. The Bureau shall, not later than the 31st day of September in each year, submit to the Governor estimates of the revenue and expenditure of the Bureau for the next financial year.

Audit and Annual Report.

17. (1) The Bureau shall keep proper account and records of its activities and shall prepare statement of account in a manner which shall conform to the extant financial rules and regulations applicable in the State.

(2) The account of the Bureau shall be audited by independent Auditors appointed by the Auditor-General of the State at the end of every financial year.

(3) The Bureau shall prepare and submit to the Governor, not later than the 31st of March in each financial year, a report in such form as the Governor may direct of its activities during the last financial year and shall include in the report a copy of its audited accounts for that year.

(4) The report and audited account stated in subsection (1) of this Section shall be submitted to the State House of Assembly not later than three months after the end of the financial year for which such reports are prepared.

Bank Account.

18. The Bureau shall keep and operate bank accounts in reputable banks within Cross River State, approved by the Accountant-General of the State and all moneys received on behalf of the Bureau shall be paid into the said accounts.

Regulations.

19. (1) The Bureau shall, subject to the approval of the Governor, make regulations generally for the purpose of giving effect to the provisions of this Law, and may in particular make regulations for –

- (a) setting out prior review and other thresholds;
- (b) the organization of procurements generally;
- (c) implementation of all provisions of this Law;
- (d) procurement of goods, works and consultancy services; and
- (e) the disposal of public property.

(2) Regulation made pursuant to subsection (1) of this Section shall be laid before the House of Assembly for consequential resolution.

Scope of Application.

20. Notwithstanding the provisions of any other law or regulations, this Law shall apply to and regulate procurement of all goods, works, services and disposal of assets by –

- (a) the State Government and all its procuring entities; and
- (b) all entities, outside the foregoing description, which derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Law from the State Consolidated Revenue Fund: Provided that where the State is under obligation under any international treaty, bilateral agreement to use a particular method of procurement stipulated under such treaty, such a method shall apply.

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**PART III
FUNDAMENTAL PRINCIPLES OF PROCUREMENT**

Mode of
Procurement

21. (1) Subject to any exemption allowed by this Law, public procurements shall be conducted -

- (a) subject to the prior review thresholds as may be set by the Bureau pursuant to this Law;
- (b) based only on prior procurement plans, supported by prior budgetary appropriation, no procurement contract shall be awarded until the procuring entity has ensured that funds are available to meet the maturing obligation and subject to the threshold in the Regulations made by the Bureau, has obtained a "Certificate of No Objection" to "Contract Award" where applicable;
- (c) by open competitive bidding, except in certain exceptional cases otherwise provided for under this Law;
- (d) in a manner which is transparent, timely, equitable for ensuring accountability and in conformity with this Law and Regulations;
- (e) with the aim or 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 laid down in this Law and as may be specified by the Bureau through regulations.

(2) Where the Bureau has set a prior review threshold, in the procurement Regulations, no funds shall be disbursed from the Treasury or Consolidated Revenue Fund Account, or any Bank account of any procuring entity falling above the set threshold, unless the cheque payment or other form of request for payments is accompanied by a certificate of "No Objection" to an award of contract duly issued by the Bureau.

(3) For all cases where the Bureau has set a prior review threshold, it shall prescribe by regulations, guidelines and the conditions precedent for the award of "Certificate of No Objection" under this Law.

(4) Subject to the prior review threshold as may be validly set by the Bureau, any procurement purported to be awarded without a Certificate of No Objection" to contract award duly issued by the Bureau shall be null and void.

(5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two, provided that where they are all acting jointly, shall be liable for all obligations and responsibilities arising from this Law and the performance or improper performance of any contract awarded.

(6) All bidders in addition to requirements contained in any solicitation documents shall -

- (a) possess the necessary --
 - i. professional and technical qualification to provide the goods, services or works;
 - ii. financial capability;
 - iii. equipment and other relevant infrastructure; and
 - iv. qualified personnel with relevant experience to perform the obligations of the procurement contract;
- (b) possess the legal capacity to enter into the procurement contract;
- (c) not be in receivership, or a subject of any form of insolvency or bankruptcy proceedings, or the subject of any form of winding up petition or proceeding; and

(d) have fulfilled all its obligations as stipulated in the guidelines and regulations.

(7) The procuring entity may require a bidder to provide documentary evidence or other information, it considers necessary, as proof that the bidder is qualified in accordance with this Law and the solicitation document and for this purpose any such requirement shall apply equally to all bidders or service providers.

(8) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out hereunder exists, a bidder or service provider may have its bid or proposal excluded from any particular procurement proceeding where –

- (a) there is verifiable evidence that any supplier, contractor or consultant has given employment or promised a gift of money or any tangible items or has promised, offered or given employment, money or other benefit, items or a service that can be quantified in monetary terms to a current or former employer of a procuring entity or the Bureau, in an attempt to influence any action or decision making of any procurement activity;
- (b) a supplier, contractor, or consultant who during the last three years prior to the commencement of the procurement proceeding in issue failed to perform or to provide due care in performance of any public procurement;
- (c) the bidder or service provider is in receivership, is the subject of any type of insolvency proceeding or 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 have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding;
- (d) the bidder or service provider is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions if applicable, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments thereof in instalments and has disclosed this situation;
- (e) the bidder or service provider has been convicted for a crime committed in connection with a procurement proceeding or other crime committed to gain financial profit in the last 5 years;
- (f) the bidder or service provider fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceeding and persons acting on behalf of the procuring entity participants to the proceeding; and
- (g) the bidder or service provider has in its management or is in any portion owned by any person who has been convicted for a crime committed in connection with a procurement proceeding of other crime committed to gain financial profit.

(9) In cases referred to in subsection (8) (a)-(g) of this Section, the Bureau shall in writing inform the person that the bid, proposal or tender in question has been excluded and the ground for the exclusion, and keep a record of the same in the file pertaining to the public procurement proceeding in question.

(10) All communications regarding any matter deriving from this Law or proceeding of public procurement shall be in English language, and in writing or such other form as may be stipulated by the Bureau.

(11) Every procuring entity shall maintain both file and electronic records of all procurement proceeding made within each financial year, and the procurement records shall be maintained for a period of at least ten years from the date of the award or termination of procurement proceeding.

(12) Subject to Regulation made by the Bureau, copies of all procurement records shall be transmitted to the Bureau in any format determined by it not later than 3 months after the end of the financial year and shall show –

- (a) specific and detailed description of the procurement activity;
- (b) information identifying the procuring entity and the contractors;
- (c) detailed information and records on the best three bidders by ranking;
- (d) the notice of the award and the executed contract;
- (e) the value of the contract and its expected deliverables; and
- (f) the advertisement, bidding documents or requests for proposal, report of evaluation of bids, minutes of tender boards approving award, contracts awarded and any other information the bureau may require from the procurement proceedings.

(13) Procurement records shall be open to inspection by the authorized institutions at no cost, and any person may, subject to this Law, obtain copies at the cost of copying the documents plus a token administrative charge, as may be prescribed by the Bureau; provided that the administrative fee shall not be more than the cost of certifying a regular court document at the State High Court Registry.

(14) The criteria stipulated, as the basis upon which suppliers, service providers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.

(15) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractors.

(16) A contract shall be awarded to the lowest evaluated responsive bidder from the bidders who substantially respond to the bid solicitation in respect of works, goods and services.

(17) Notwithstanding subsection (16) of this Section, the Bureau may refuse to issue a Certificate of "No Objection" to Contract Award on the grounds that the price is excessive.

(18) Pursuant to subsection (17) of this Section, the Bureau may recommend that the procurement proceeding be entirely cancelled or that the procuring entity re-evaluate the bids.

(19) The Accounting Officer of a procuring entity shall ensure that the provisions of this Law and the Regulations laid down by the Bureau are fully complied with, and concurrent approval by any Resident Due Process Committee or any other body shall not absolve the Accounting Officer from liability for anything done in contravention of this Law or the Regulations laid down hereunder.

(20) Procurement and disposal decision of a procuring entity shall be taken in accordance with the provisions of this Law and any Regulations as may be made by the Bureau.

(21) Persons who have been engaged in preparing for a procurement or part of the proceeding thereof may neither bid for the procurement in question or any part thereof, either as main contractor or sub-contractor nor may they collaborate in any manner with any bidder in the course of preparing his tender.

(22) A procuring entity shall not request or stipulate that a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceeding and all procurement contracts shall be consistent with the State Laws regulating the particular industry which is subject of the procurement.

(23) The value 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 the opening of a tender or bid.

(24) All procurement contracts shall contain warranties for the durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution of contracts.

PART IV ORGANIZATION OF PROCUREMENTS

Approving
Authority.

22. (1) Subject to the monetary and prior review threshold for procurement in this Law as may be determined, and notwithstanding the provisions of any other law, the Procuring Entity's Due Process Resident Committee shall be the approving authority for the conduct of public procurement, and shall be responsible for award of such contracts.

(2) The membership of the Resident Due Process Committee shall be as stipulated in the regulation made by the Bureau.

Procurement
Planning.

23. (1) Subject to Regulations made by the Bureau, a procuring entity shall plan its procurement by –

- (a) preparing its needs assessment and evaluation or reviewing one if it already exists;
- (b) identifying and describing the goods, works or services required;
- (c) carrying out appropriate market and statistical surveys and on that basis prepare an analysis or the cost implications of the proposed procurement;
- (d) integrating its procurement expenditure into its yearly budget;
- (e) prescribing any method for effecting the procurement subject to the necessary approvals, under this Law; and
- (f) ensuring that procurement planning, supports every procurement activity and informs procurement decisions.

(2) Every procuring entity shall have a procurement department or unit which shall in accordance with regulations made by the Bureau, support the procuring entity's procurement planning function.

(3) This Department shall be made up of procurement officers, and in addition to any other function assigned to it, shall serve as the secretariat of the Resident Due Process Committee for the entity and the Procurement Planning Committee.

Procurement
Implementation.

24. Subject to Regulations made by the Bureau, a procuring entity shall, in implementing its procurement plans –

- (a) advertise and solicit for bids in adherence to this Law and guidelines as may be issued by the Bureau;
- (b) receive, evaluate and make a selection of the bids received in adherence to this Law and guidelines issued by the Bureau;
- (c) obtain the approval of the approving authority where applicable, before making an award;
- (d) debrief the bid losers on request;
- (e) resolve complaints and disputes if any;
- (f) obtain and confirm the validity of any performance guarantee or bond;

- (g) obtain a "Certificate of No Objection" to contract "Award" from the Bureau, if within the prior review threshold as stipulated in Section 22(1) (b) of this Law.;
- (h) execute all Contracts Agreements; and
- (i) publicize the award in the form stipulated by this Law and guidelines issued by the Bureau from time to time.

25. (1) The Accounting Officer of a procuring entity, shall be the person charged with the supervision of the conduct of all procurement processes, in the case of Ministries, the Permanent Secretary, in the case of extra Ministerial Departments, Parastatals and Corporations, the Director of Administration and where there is no Director of Administration, the Head of Service shall appoint someone to act as the Accounting Officer.

Accounting Officer.

(2) The Accounting Officer or every procuring entity shall have overall responsibility for the planning organization of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for, subject to obtaining approval as appropriate –

- (a) ensuring compliance with the provisions of this Law by his entity, and liable for the breach or contravention of this Law, or of any Regulations made hereunder whether or not the act or omission was carried out by him personally or by any of his subordinates and it shall not be material that he had delegated any functions, duty or power to any person or group of persons;
- (b) convening the Procurement Planning Committee and Resident Due Process Committees;
- (c) ensuring that no reduction of values or splitting of procurement is carried outside to evade the use of the appropriate procurement method;
- (d) constituting the Evaluation Sub-Committee; and
- (e) liaising with the Bureau to ensure the implementation of its Regulations and issuance of Certificates of No Objection where applicable.

26. (1) Each procuring entity shall establish a Procurement Planning Committee in accordance with the Regulations.

Procurement
Planning
Committee.

(2) No member of the Board and Procurement Planning Committee who has an interest on any procurement, shall disclose such interest and such a member shall be ineligible to sit on the Board or Committee when considering the said procurement.

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

Pre-Qualification of
Bidders

(2) Where the procuring entity subject to existing thresholds, has decided to proceed to invitation to bid without pre-qualification, it shall also set out the precise criteria upon which it seeks to give consideration to the bids and in reaching a decision, shall apply only the criteria set out in the bidding documents or proposal and no more.

(3) Procuring entities shall, subject to its rules, supply a set of pre-qualification and or bidding documents, or request for proposals to each Supplier Contractor or Consultant that request them; and may charge a token for the provision to suppliers, contractors or consultants of the pre-qualification, expression of interest or bidding documents: the pre-qualification documents shall include such items as the Bureau may from time to time stipulate in the regulations.

(4) The procuring entity may, upon request communicate to suppliers, contractors or consultants who have been disqualified, the grounds for their disqualification.

(5) The procuring entity may require a supplier, contractor or consultant who has been pre-qualified to demonstrate its qualifications and competence again in accordance with the same criteria used to pre-qualify the supplier, contractor consultant.

(6) The procuring entity shall promptly notify each supplier, contractor or consultant requested to demonstrate its qualifications and competence again whether or not it has done so to the satisfaction of the procuring entity.

(7) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification and competence again, if requested to do so.

(8) The Bureau shall by its regulations, and subject to this Law stipulate the detailed procedures for bid submission, bid opening, bid validity, examination and evaluation of re-qualification documents, expression of interest, bidding documents and proposals.

Invitation to Bid.

28. (1) Invitation to bid may be either by way of Open Competitive Bidding or through any of the procurement systems specified in this Law, and the Bureau shall set the monetary threshold for which procurement shall fall under either system.

(2) Every invitation to an open competitive bid shall –

(a) in the case of goods and works under International Competitive bidding, be advertised in at least two National Newspapers, one local Newspapers, and one relevant internationally recognized publication, any official website of the procuring entity, the Bureau or the State as well as the procurement journal if any, not less than six weeks before the deadline for submission of the bids for the goods and works or proposal for service;

(b) in the case of goods, works or services under National Competitive Bidding, they shall be advertised in at least two National Newspapers, one local Newspapers, any official websites of the procuring entity, the Bureau or the State as well as procurement journal if any, not less than four weeks before the deadline for submission of the bids for the goods and works or proposal for service;

(c) such advertisement must be vetted and approved by the Bureau before publication; and

(d) such invitation to bid and award of contract shall be published in line with Open Contracting Data Standard (OCDS) format.

Bid Security.

29. (1) Subject to the monetary and prior threshold, as may be set by the Bureau, all procurement valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of bank guarantee issued by a reputable Bank acceptable to the procuring entity.

(2) The procuring entity shall specify the principal terms and conditions of the required bid security in the tender documents.

Evaluation of Bids

30. (1) Procuring entities shall first examine bids to determine validity, and the procedure for examination and evaluation of bids shall be as provided by the regulations.

(2) 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.

(3) 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.

(4) In the course of its determination of lowest evaluated responsive bid, the Technical Sub-Committee of the Resident Due Process Committee shall ensure compliance with this Law and the regulations made thereof.

31. (1) In addition to any other Regulations, as may be prescribed by the Bureau, a mobilization fee of not more than 30 percent for construction works and not more than 50% for supplies of contract sum, may be paid to a contractor or supplier supported by the following –

Mobilization Fees.

- (a) in the case of open Competitive Bidding and contracts above a defined threshold, an unconditional bank guarantee 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 mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor in the case of works without an interim performance certificate issued in accordance with the contract agreement, or in the case of goods, supply of the goods or any satisfactory portion of it above the value of the mobilization or in the case of consultancy service, achievement of a contract milestone clearly defined, which value is more than the value of mobilization paid; provided that the contract agreement must include a clause providing for phased deduction of the mobilization fee from each interim performance certificate, ensuring that the mobilization fee is fully recovered by the 80% of value of contract is paid to the contractor.

32. The provision of a Performance Guarantee shall be a condition for the award of any procurement contract above a given threshold stipulated by the Bureau in the rules; provided however that, the guarantee shall not be for less than 10% of the contract value in any case or an amount equivalent to the mobilization fee to be paid to the supplier or contractor whichever is higher.

Payment of
Contract
Performance
Guarantee.

33. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.

Record of
Procurement
Proceedings.

(2) The records and documents maintained by procuring entities, on procurement, shall be made available for inspection by the Bureau or an investigator appointed by the Bureau and the Auditor-General upon request, and where donor funds have been used for the procurement, donor officials shall also have access upon request for procurement files for the purpose of audit and review.

34 (1). Subject to other provisions of this Law and Regulations, as may be issued by the Bureau, and in accordance with the OCDS format, it shall be lawful for any procuring entity to conduct any or all of its bid by electronic auction and or simulation either on the Cross River Website or the entity's own portal; provided that the use of the electronic system shall not compromise the principles provided for in this Law, but shall be transparent, competitive, efficient, economical, non-discriminatory and primed to achieve value for money.

Electronic
Procurement.

(2) Notwithstanding the provision of subsection (1) of this Section or any Law, it shall be mandatory for all procuring entities to adopt electronic procurement methods, particularly in public works, health and education, where the threshold is above N10 Million".

PART V PROCUREMENT METHOD (GOODS AND WORKS)

35. (1) Except as provided by this Law all procurement of goods and works by all procuring entities shall be conducted by open competitive bidding.

Procurement
Methods for Goods
and Works.

(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.

36. (1) Subject to Section 35 above and in exceptional circumstances here indicated, a procuring entity may apply the appropriate restricted method of procurement here mentioned.

(2) A procuring entity may engage in procurement by two-stage tendering –

- (a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of service, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
- (b) where the character of goods or works are subject to rapid technological advances or where the procuring entity seeks to enter into a contract or research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or recover research and development costs; or
- (c) where the tender proceedings have been utilized, but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a successful procurement contract.

(3) The provisions of this Law as regards the process for open competitive biddings shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this Section.

(4) The invitation documents in a two stage tendering process shall call upon suppliers or contractors to submit in the first stage of two-stage tendering proceedings –

- (a) initial tenders which contain their proposals without a tender price; and
- (b) solicited proposals that relate to technical quality or other characteristics of the goods, works or services as well as contractual terms and conditions of qualification of the suppliers or contractors.

(5) The procuring entity may, in the first stage, transparently engage in consultations with any supplier or contractor who has tendered with respect to clarifications to any aspect of its tender, and as a result reformulate its specifications.

Second Stage of
Two-stage Tender
Proceedings.

37. (1) In the second stage of the two-stage tender proceedings, the procuring entity –

- (a) shall invite suppliers or contractors whose bids have not been rejected to submit final tenders with price on a single set of specifications;
- (b) may, in formulating the specifications, add to, 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;
- (c) may add new characteristics or criteria that conform with this Law; and
- (d) shall communicate to suppliers or contractors in the invitation to submit firm tenders any deletion, modification or addition.

(2) The final bids shall be evaluated and compared in order to ascertain the successful bidder as defined in the open competitive bid.

Restricted
Tendering/Selective
Tendering.

38. (1) Subject to this Law, a procuring entity may, for reasons of economy and efficiency, engage in procurement by means of restricted tendering if –

- (a) the goods, works or services are available only from a limited number of suppliers or contractors;
or
- (b) the procedure is used as an exception rather than the norm.

(2) The entity shall inform the Bureau in writing within seven days of the decision, that it intends to use selective tendering specifying the nature of the goods, works or services and justification for applying selective tendering.

(3) Where a procuring entity engages in restricted tendering on the basis that –

- (a) the goods, works and services are available only from a limited number of suppliers of contractors, it shall invite tenders from such suppliers and contractors who can provide the goods, works or services; and
- (b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods works or services, it shall select in a non-discriminatory manner the number of supplies or contractors to ensure effective competition, in any case not less than five.

(4) For the purposes of subsection (2) of this Section, the procuring entity shall cause a notice of the selected tendering proceedings, except to the extent that those provisions are varied by this Section, be published in the procurement journal.

(5) The provisions of this Law regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this Section.

39. (1) Subject to such lower thresholds to be stipulated by the Bureau, and upon the prior written approval of the Governor, a procuring entity may carry out procurements by requesting for quotations from a few listed suppliers or contractors where the value of the goods or works to be procured does not exceed a sum that shall be set in the procurement regulation.

Request for
Quotations.

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

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

- (a) be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, custom duties and taxes are to be included in the price; and
- (b) give only one quotation and shall not be allowed to change or vary the quotation.

(4) Negotiation shall be made, where necessary between a procuring entity and the contractor or supplier with respect to quotation.

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

40. (1) A procuring entity may carry out direct procurement where –

Direct Procurement

- (a) goods, works or services are only available from a particular supplier who has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- (b) there is an urgent need for the goods, works or services and engaging in tender proceeding or any other method of procurement is impracticable due to unforeseeable circumstance giving rise to the urgency, which is not a result of dilatory conduct or failures on the part of the procuring entity; or

where owing to a catastrophic event or acts of God, there is an urgent need for the goods, works or services, making it impracticable to use other methods of procurement because of the time involved in using those methods; or

(c) the goods to be procured are homogenous or the prices are standardized or otherwise controlled.

(2) A procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that –

(a) additional works, services or supplies need to be procured from that supplier or contractor because of standardization or to accommodate an expanded scope for the works or services;

(b) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;

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

(d) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;

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

(f) the value of the additional goods, works or services required does not exceed a percentage of the original value of the contract stipulated in the regulations by the Bureau.

(3) The procuring entity –

(a) may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor; and

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

(4) Subject to the monetary and prior review threshold in this Law, or as may be determined by the Bureau, a procuring entity having specialty and technical know-how, shall engage in direct labour procurement where money involved is not more than N1 Billion or 10% of the budgetary sum of the MDA: Provided that such an MDA complies totally with Due Process mechanism prescribed under this Law.

Emergency Procurement.

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

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

(b) the condition or quality of goods, equipment, building or public owned capital goods may seriously deteriorate, not as a result of dilatory conduct of responsible personnel, unless action is urgently and necessarily taken to maintain them in their actual value or usefulness.

(2) In an emergency situation, a procuring entity may engage in direct contracting or direct labour procurement of goods, works and services.

(3) All procurements made under emergencies shall be handled with expedition, but subject to principles of accountability, honesty and with due consideration being given to the gravity of each emergency.

(4) As soon as possible, during the emergency or immediately after the cessation of the situation warranting any emergency procurement which procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a certificate of no objection.

PART VI PROCUREMENT OF CONSULTANCY SERVICES

42. (1) Where a procuring entity wishes to procure services for its needs, which are precise and ascertainable –

Expression of
Interest to provide
Services for
ascertained needs.

- (a) it shall solicit for expression of interest or application to pre-qualify to provide the services, by publishing a notice to that effect as provided in Section 28 of this Law; or
- (b) where the value of the services to be procured is less than Ten Million Naira, or with the approval of the Bureau, of such a low value that only resident local consultants would be interested, the procuring entity may without placing any notice request at least three and not more than consultants or service providers to submit proposals for the provision of the services in a format stipulating –
 - i. a statement of qualification of the consultant to provide the service;
 - ii. a statement of understanding of the procuring entity's needs;
 - iii. the methodology for providing the services;
 - iv. the time frame for providing the service; and
 - v. the cost or fee for the services.

43. (1) A procuring entity wishing to procure services for its needs which are not ascertained may apply the two stage tender process provided for in Sections 37 and 38 of this Law, it may do so by requesting for proposals when it intends to enter into contract for the purpose of research, experiment, study or development except where the contract includes the production of goods or provision of services in quantities sufficient to establish their commercial viability or to recover research and development cost.

Request for
proposals to
provide services for
unascertained
needs.

(2) The procuring entities shall procure the services of consultants by soliciting for expression of interest by publishing a notice to that effect in accordance with Section 42 of this Law and issuing requests for proposals to candidates shortlisted for meeting the criteria and qualifications set out in the call for expression of interest.

(3) A procuring entity may make direct request to a limited number of consultants, requesting proposal for the provision of a service if –

- (a) the services are only available with a limited number of consultants;
- (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed provided that it invites enough consultants to ensure transparent competition; or
- (c) there is an unquestionable need for confidentiality.

44. (1) Subject to this Law, the Bureau shall by rules stipulate the following –

- (a) the content of a request for the proposal;

Criteria for
evaluation of
proposals.

- (b) procedure for clarification and modification of procedure for request for proposals;
- (c) submission and receipt of proposals; and
- (d) more detailed guide on procedure for procuring services.

(2) The procuring entity shall in each case simultaneously provide the same information to every consultant requested to submit proposals.

Criteria for
evaluation of
proposals.

45. (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, financial capacity, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the service as already contained in the request for proposal;
- (b) the effectiveness of the proposal submitted by the consultancy service provider in meeting the needs of the procuring entity;
- (c) the proposed price, including any ancillary or related cost; and
- (d) the effect that the acceptance of the proposal will have on the balance of payment position and consolidated funds of the State, and in the case of open competitive bidding the extent of participation by local personnel, the economic development potential offered by the proposal including skill transfer, domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial skill, scientific and operational skills and the counter trade arrangements offered by consultant or service providers.

General selection
procedure for
services.

46. (1) The procuring entity shall select the successful proposal by either choosing the responsive proposal with –

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

(2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the criteria in subsection (1) of this Section.

(3) The procuring entity shall resort to the use of impartial panel of experts to make selections where there is procurement malpractice.

(4) The procuring entity must in its request for proposals indicate which of the above criteria it intends to rely upon in selection of the consultant.

Procedure for
selection of
proposal where
price is a factor.

47. (1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall –

- (a) establish a weight with respect to quality, technical and price factors of the proposal in accordance with the criteria, other than price as might have been set out in the request for proposals;

(b) 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 proposal; and

(c) keep minutes of technical bid opening.

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

(3) The procuring entity shall within the time stipulated by the rules, notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposal and terms of reference after the evaluation of quantified is completed.

(4) The name of the qualifying consultant and the quality scores for the technical component of the proposal shall be read aloud and recorded along side the price proposed by each consultant or service provider, when later 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 maintain this record.

(6) The successful proposal shall be –

(a) the responsive proposal with the best combined evaluation in terms of the criteria established under subsection (1) of this Section from price in the case of quality and cost based selection;

(b) the lowest evaluated responsive proposals with the lowest price in the case of the least cost selection; or

(c) the responsive proposal with the highest ranked technical ranking within the budget.

(7) The consultant with the winning proposal shall be invited for negotiation, which shall focus mainly on the technical proposals.

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

48. (1) Where the procuring entity elects to make a quality-based selection based on consultant's qualification, it shall establish a weight with respect to quality and technical factors, which shall be simultaneously disseminated in accordance with this Section with rules made hereof.

Selection procedure where price is not a factor.

(2) The procurement entity shall –

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

(b) evaluate the technical proposals;

(c) invite for negotiation on the price of its proposal, the consultant that has attained the best technical rating in accordance with subsection (1) of this Section;

(d) inform the consultant that attained rating above the weight that may be considered for negotiation, if negotiation with the consultants with the best rating do not result in a procurement contract; and

(e) inform the consultant with the best rating that it is terminating the negotiation, if it becomes apparent to the procuring entity that the negotiation with the consultant invited under subsection (b) of this Section will not result in a procurement contract.

(3) The procuring entity shall, if negotiation with the consultant with the best rating fails, invite the consultant that obtained the second best rating and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other consultants for negotiation on the basis of their rating, until it arrives at a contractor and then rejects the remaining proposals.

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

PART VII PROCUREMENT SURVEILLANCE REVIEW

Bureau to
recommend
investigation.

49. (1) The Bureau may review and recommend for investigation by any relevant authority, any matter related to the conduct of procurement proceeding by a procurement entity, if it considers that criminal investigation is necessary or desirable to prevent or detect a contravention of this Law.

(2) The Bureau may, pursuant to the advice of the relevant Department charged with the responsibility for programmes and project monitoring and evaluation, or from the result of its review of a procurement or report of investigation by a relevant authority, issue a variation order requiring a contractor at his own expense to repair, replace or do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract of award.

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

- (a) nullification of procurement proceedings or any part thereof;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with any relevant provisions of this Law.

(4) On completion of the investigation, the relevant authority shall, if an offence is disclosed, inform the Bureau and the procuring entity accordingly in writing within reasonable time before taking necessary steps to commence prosecution, but where no offence is disclosed, the file shall be closed.

Administrative
review.

50. (1) A bidder may seek administrative review for any omission or breach by a procuring, disposing entity or another bidder under the provision of this Law, any Regulations or Guideline made under this Law or the provisions of bidding documents.

(2) A complaint by a bidder against another bidder procuring or disposing entity shall –

- i. first be submitted in writing to the accounting officer within fifteen working days from the date the evaluation result is published.
- ii. on receiving a complaint, the accounting officer shall make a decision and communicate to the complainant in writing within fifteen working days from the date of receipt of the complaint, indicating the corrective measures to be taken if any, including the suspension or cancellation of the proceedings where he deems it necessary and giving reasons for his decision.

(3) Where the Accounting Officer does not make or communicate a decision in writing to the complaining bidder within the period specified in subsection (2) (ii) of this Section or the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Bureau within ten working days from the date of communication of the decision of the Accounting Officer or within ten days from the

expiration of the period allowed the Accounting Officer to make and communicate his decision.

(4) Upon receipt of a complaint, the Bureau shall promptly give notice of the complaint to the respective procuring or disposing entity and, unless it dismisses the complaint –

- i. decide the appropriate remedial measures in whole or in part, of any unlawful act or decision made by the procuring or disposing entity; or
- ii. declare that the rules or principles that govern the subject matter of the complaint were in accordance with the provisions of this Law or the regulations made hereunder.

(5) Before taking decisions on a complaint, the Bureau shall notify all interested parties of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.

(6) The Bureau shall take its decisions within twenty one working days after receiving the complaint, stating the reasons for its decision.

(7) Where the Bureau fails to render its decision within the stipulated time or the bidder is not satisfied with the decision, the bidder may appeal to the State High Court within thirty days after the receipt of the Bureau's decision, or the stipulated period for the Bureau to deliver its decision.

PART VIII DISPOSAL OF PUBLIC PROPERTY

51 (1) Disposal of public property under this Law shall be by the Board of Survey constituted by the Commissioner charged with responsibility for works in the State; every entity that intends to dispose of public property shall accordingly select such properties and send relevant information to the Board of Survey for disposal.

Disposal of public property.

(2) The open competitive bidding shall be the primary source of receiving offer for the purchase of any public property offered for sale.

(3) The Bureau shall with the Governor's approval –

- (a) determine the applicable policies, rules and practices for preparation and the disposal of all public property;
- (b) issue guidelines detailing operational principles procedure and organizational modalities to be adopted in the disposal of public property; and
- (c) issue standardized documents, monitor implementation, enforce compliance and set reporting standards that shall be used in the disposal of public property.

(4) For the purposes of this Law, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable) –

- (a) created through public expenditure;
- (b) acquired as a gift 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 good will and any other gifts of the State Government;

(5) The means of the disposal of public assets shall include –

- (a) sale or rental;
- (b) lease or hire purchase;
- (c) licenses or tenancies;
- (d) franchise or auction;
- (e) transfers from one governmental department to another with or without financial adjustments; and
- (f) offer to the public at an authorized variation.

Planning of
disposals.

52. (1) Before slating any public property for disposal, the Accounting Officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal or any other person or body authorized by regulation shall authorize the preparation of a valuation report for such property by an independent evaluator, or such professional with the appropriate competence to carry out the valuation.

(2) The disposal of assets whether or not listed in the Assets Register for a public entity shall be planned and integrated into the income and expenditure budget projection of the entity.

(3) The rules issued by the Bureau shall distribute responsibilities for the disposal of public property within public entities and stipulate stages and procedure for securing expert advice and support for such activities, indicating specific officers responsible and accountable.

PART IX OFFENCES

Offences relating to
public
procurement.

53. (1) Any natural person not being a civil servant, who contravenes any provision of this Law, the Regulations or Guidelines made pursuant to this Law commits an offence and is liable on conviction to a term of imprisonment not less than 2 years, but not exceeding 5 years with an option of fine of a value not less than ten percent of the value of the procurement in respect of which the complaint has arisen.

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

(3) Prosecution of offences under this Law shall be instituted in the name of the Cross River State Government by the Attorney-General of the State or such other officer of the Ministry of Justice as he may authorize so do and in addition without prejudice to the Constitution of the Federal Republic of Nigeria, he may if the relevant authority so requests, authorize any legal practitioner in Nigeria to undertake such prosecution directly or assist therein.

(4) On receipt of the report and duplicated file, the Attorney-General shall take a decision to prosecute within 30 days and shall publicly announce its decision in the media and where he decides not to prosecute, he shall provide a detailed written justification to be forwarded to the State House of Assembly and the relevant authority that sent in the file not later than the date it announces its decision.

(5) 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, consultant service provider or proposed partner where the price quoted or revenue profiles in their respective tenders, proposals, quotations or partnership agreements

are or would be higher or lower than would have been the case had there not been collusion between the persons concerned;

- (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption;
- (a) directly or indirectly, attempting to influence in any manner the stipulated process to obtain an unfair advantage in the award of a procurement contract;
- (b) splitting of tenders to enable the evasion of monetary thresholds set;
- (c) bid-rigging;
- (d) altering any documents with intent to influence the outcome of a procurement proceeding;
- (e) uttering or using fake documents or encouraging their use;
- (f) willful refusal to allow the Bureau or its officers to have access to records; and
- (g) insertion of documents bid security of tax clearance certificate which were not submitted at bid opening.

(6) Any person who while carrying out his duties as an officer of the Bureau or any procuring entity who contravenes any provision of this Law commits an offence and is liable to disciplinary measures established in the Civil Service of the State.

(7) Any corporate 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 procurements for a period not less than 3 calendar years; and
- (b) a fine not less than an equivalent of 25% of the value of the procurement in issue, if it had received payment for the project of not less than equivalent of 15% of value of the procurement, if it is yet to receive payment under the project.

(8) Bid-rigging pursuant to subsection 5(e) means an agreement between persons whereby –

- (a) offer 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 an escalation or increase in costs or loss of value to the State Treasury.

(9) For the purposes of the presumption under Section 49(9) of this Law, consideration shall be given to a suspect ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial.

(10) For the purposes of Section 49 (8) and (9) of this Law, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the State Treasury.

(11) In sentencing for offences under this Law, the court shall consider the fact, that and accused person reported the incident to relevant authorities or as early as possible during investigation or in the court proceedings, disclosed full and correct information and documents relating to the facts constituting the offence.

**PART X
MISCELLANEOUS**

Seal of the
Bureau.

54. (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Director-General or of any other person authorized generally or specially to act for that purpose by the Director-General.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Bureau by the Director-General or any person generally or specially authorized to act for that purpose by the Director-General.

(3) The validity of any proceeding of the Bureau shall not be adversely affected by any vacancy in the membership of the Bureau, or by any defect in the appointment of a member of the Bureau or by reason that a person not entitled to do so took part in the proceeding of the Bureau.

Meetings of the
Board of
Bureau.

55. (1) The members of the Board may meet at such date, time and place as the Chairman may decide to hold any meeting for the transaction of its business.

Provided that the Board shall meet at least once every three months.

(2) The Chairman shall preside at such meetings and shall have both an original and casting vote.

(3) The Director-General shall be in attendance at the meetings of the Bureau.

Application of
procurement
processes of
Local
Government
Council.

56. Local Government Councils in the State shall adopt procurement processes contained in this Law.

Repeal of Law
No. 15 of 2011.

57. The Cross River State Public Procurement Law No. 15 of 2011 is hereby repealed.

Interpretation.

58. In this Law, unless the context otherwise requires -

"Accounting Officer" in the case of Ministries, the Permanent Secretary, in the case of Extra-Ministerial Departments, Parastatals and Corporations, the Director of Administration and where there is no Director of Administration, the Head of Service shall appoint someone to act as the Accounting Officer;

"Approving Authority" means the Resident Due Process Committee;

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

"Bid" shall mean a tender and a tender shall mean a bid;

"Bid Security" means a form of monetary security assuring the procuring entity that the bidder shall not withdraw its bid within the period specified in the bid;

"Certificate of No Objection" means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payment to contractors or the suppliers from treasury in respect of contracts above a stipulated threshold;

"contract" means an agreement entered in writing;

"Contractor or Supplier" means any party or potential party to a procurement contract with the procuring entity and includes any Corporation, Partnership, Individual, Sole Proprietor, Joint Stock Company, Joint Venture or

any other legal entity through which business is conducted;

"Debar" means the placing of a firm, company or natural person on a list of person ineligible to participate in any procurement procedure under this Law;

"Domestic Bidder" means a Nigerian citizen and or a company registered in Nigeria in which Nigerian citizens own at least 50% of the shareholding of the company;

"Excessive Price" means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit;

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

"Interim Performance Certificate" means evidence that a contractor or supplier has performed its obligations under the procurement contract up to a specific level stipulated but not completion;

"Margin of preference" means the extra mark up on price allowed any Domestic Contractors or being otherwise disadvantageous to the bid in terms of price;

"Monetary Thresholds" means the value limit in Naira set by the Bureau outside which an approving authority may not award procurement contract;

"National Competitive Bidding" means the solicitation of bids from both State and National Contractors and Suppliers;

"Lowest valued responsive bid" is the lowest price bid amongst the bids that has all the technical requirement and standard as contained in the tender document;

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

"OCDS" means Open Contracting Data Standard;

"Opening Competitive Bidding" means the process by which a procuring entity based on previously defined and publicized criteria effects public procurement by offering to every interested bidder equal simultaneous information and opportunity to offer the goods and works needed;

"Procurement" means the Process of acquisition of Goods, Works and Services by procuring entities;

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

"Procuring "Entity" means any public body or department engaged in procurement and includes a Ministry, Extra-Ministerial, Department, Bureau, Government Agency, Parastatals and Corporation of the State Government,

"Public Funds" means whose funding derives from the State Treasury, their own internally generated revenue, the State share of the Consolidated Revenue Funds, Special Allocation from the Federal Treasury;

"Public Procurement" means the process of acquisition of goods works or services by a procuring entity;

"Relevant Authority" includes House of Assembly of the State, Office of Auditor-General of the State, the Nigerian Police and all other criminal investigation agencies in the country;

"Scope of Application" means it applies to Cross River State Government and its Ministries, Extra-Ministerial Departments, Agencies, Parastatals, Corporations, including the Judiciary, House of Assembly here in this Law referred to as procuring entities;

"Service" means the rendering by a Contractor or Supplier of his time and effort and includes any object of procurement other than goods, works of construction;

"Solicitation Document" means any documents for invitation of offers, proposals or quotations;

"State Competitive Bidding" means the solicitation of bids from the State Contractors and Suppliers registered or incorporated to carry on business under the Companies and Allied Matters Act;

"Substantially Responsive" means the response which virtually answered to all the needs of a procuring entity as stipulated in the solicitation and bidding documents;

"Supplier" means a person that provides goods or services pursuant to procurement contract;

"Thresholds" means a monetary value or limit within which a particular entity or authority may conduct a procurement;

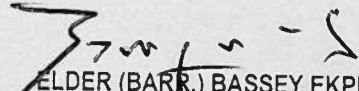
"Validity Period" means the period during which a bidder agrees not to increase the cost of its bid or to remove any component of the bid;

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

Short Title/
Commencement

59. This Law may be cited as the Cross River State Public Procurement Law, 2020 and shall come into force on theday of2020.

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


ELDER (BARR.) BASSEY EKPENYONG
CLERK OF THE HOUSE

I assent


SENATOR (PROF.) BEN AYADE
GOVERNOR
CROSS RIVER STATE

MADE AT Calabar this 30th day of July 2020