

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE ON PUBLIC PROCUREMENT

ON

“A BILL FOR AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT, 2007, BY ADDING A NEW MEMBER TO THE COUNCIL, AMENDING THE PROCEDURE FOR APPOINTING THE DIRECTOR GENERAL OF THE BUREAU AND EXTENDING THE APPLICATION OF THE ACT TO DEFENCE PROCUREMENT; AND FOR OTHER MATTERS CONNECTED THEREWITH (HB.475)

LAI D ON THURSDAY 8TH DECEMBER, 2016

THE REPORT OF THE COMMITTEE ON PUBLIC PROCUREMENT ON A BILL FOR AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT, 2007, BY ADDING A NEW MEMBER TO THE COUNCIL, AMENDING THE PROCEDURE FOR APPOINTING THE DIRECTOR GENERAL OF THE BUREAU AND EXTENDING THE APPLICATION OF THE ACT TO DEFENCE PROCUREMENT; AND FOR OTHER MATTERS CONNECTED THEREWITH (HB.475)

1.0 INTRODUCTION:

The House on **Thursday, 21st April, 2016** concluded debates on general principle of the Bill for An Act to amend the Public Procurement Act **2007** and for related matters and referred same to the Committee on Public Procurement for further legislative action.

2.0 OBJECTIVE OF THE BILL:

The broad objective of the Bill is to amend the Public Procurement Act, **2007**. Specifically,

- The Bill seeks to include the President of the Federal Republic of Nigeria as a Council member and Chairman of the Council;
- The Bill also seeks to include the Nigerian Institute of Quantity Surveyors as part – time member of the Council;
- In addition, it also seeks to amend the procedure for the appointment of the Director General of the Bureau;
- Furthermore, it seeks to extend the application of the , National Security and Defence Procurements.

3.0 ANALYSIS OF CLAUSES:

The Bill consist of seven Clauses:

Clause 1:

This Clauses specifies the Public Procurement Act as the “Principal Act” to be amended.

Clause 2:

This Clause amends Section **1 (2) (f)** of the Principal Act by including the Nigerian Institute of Quantity Surveyors as part time members of the Council.

Clauses 4 & 5:

These Clauses alter Section **1 (4)** and Section **7 (1)** of the Principal Act by including the National Assembly in the appointment of the Director General of the Bureau.

Clauses 6:

This Clause amends section **15 (2)** of the Principal Act by extending the provisions of the Act to defence and National Security Procurement.

Clauses 7:

This is the citation clause, where in the Bill may be cited as "the Public Procurement (Amendment) Bill, **2016**."

4.0 HIGHLIGHT OF COMMITTEE ACTIVITIES:

On **Thursday, 19th July, 2016**, the Committee held a Public Hearing. The following Stakeholders were in attendance:

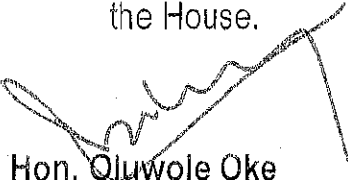
The Chartered Institute of Purchasing & Supply Management of Nigeria; Bureau of Public Procurement; Procurement Observatory & Advocacy Initiatives; F. Eke Urum – Eke; Tunde Osinubi; Committee on Streamlining of Defence Hardwork Acquisition; Nigerian Institute of Quantity Surveyors; Nigerian Society of Purchasing and Supply; The Nigerian Institute of Building; The Nigerian Society of Engineers; Manufacturers Association of Nigeria; Federal Ministry of Defence; Dr. Abdullahi Aliyu and Nigerian Institute of Architects; among others.

The Stakeholders submitted a written memoranda and made a far-reaching contributions on the amendment of the Act. Their views as well as contributions of Honourable members have been reflected in this report.

After the Public hearing, Members of the Committee held markup session on the Bill. While considering the Bill, the Committee made references to the observations and inputs by the Stakeholders and made some additional recommendations.

5.0 RECOMMENDATIONS:

Mr. Speaker, Honourable Colleagues, we want to use this medium to express our appreciation to you for choosing us to work on this Bill. We also want to thank all those who through their memoranda or oral presentations during the Public Hearing, made useful inputs on the Bill. The details of the recommendations is highlighted in the table attached to the report. We hereby present same for consideration and adoption by the House.



Hon. Oluwole Oke
Chairman

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REPORT OF THE COMMITTEE ON PUBLIC PROCUREMENT ON A BILL FOR AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT, 2007, BY ADDING A NEW MEMBER TO THE COUNCIL, AMENDING THE PROCEDURE FOR APPOINTING THE DIRECTOR-GENERAL OF THE BUREAU OF PUBLIC PROCUREMENT AND EXTENDING THE APPLICATION OF THE ACT TO DEFENCE PROCUREMENT; AND FOR MATTERS CONNECTED THEREWITH. (HB. 475)

Clause	Provisions of the Principal Act	Provisions of the Bill	Committee Recommendation	Remarks
	PART 1 – ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT	Amendment of the Public Procurement Act 2007	Retained as in the Bill	
1	<p>Establishment of the National Council on Public Procurement and its membership.</p> <p>1.—(1) There is established the National Council on Public Procurement (in this Act referred to as “the Council”).</p> <p>(2) The Council shall consist of:</p> <p>(a) the Minister of Finance as Chairman;</p> <p>(b) the Attorney-General and Minister of Justice of the Federation;</p> <p>(c) the Secretary to the Government of the Federation;</p> <p>(d) the Head of Service of the Federation;</p> <p>(e) the Economic Adviser to the President;</p>	<p>Amendment of Section 1(2)(a)</p> <p>By inserting a new Section 1(2)(a) with the following words – “<i>The President of the Federal Republic of Nigeria as Chairman</i>” and amending by deleting the words “as Chairman”</p>	<p>Retained as in the Bill</p> <p>Establishment of the National Council on Public Procurement and its membership.</p> <p>1.—(1) There is established the National Council on Public Procurement (in this Act referred to as “the Council”).</p> <p>(2) The Council shall consist of:</p> <p>(a) <u>the Chairman to be appointed by the President;</u></p> <p>(b) the Attorney-General and Minister of Justice of the Federation;</p> <p>(c) <u>The Honourable Minister responsible for Finance;</u></p> <p>(d) <u>The Honourable Minister responsible for Budget and National Planning;</u></p> <p>(e) the Secretary to the Government</p>	<p>The Hon Minister of Finance is being replaced because he/she heads a Procuring Entity. The President supervises everybody (S.5 CFRN 1999) and maybe too busy to</p>

<p>(f) six part-time members to represent;</p> <p>(i) Nigeria Institute of Purchasing and Supply Management;</p> <p>(ii) Nigeria Bar Association;</p> <p>(iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture;</p> <p>(iv) Nigeria Society of Engineers;</p> <p>(v) Civil Society;</p> <p>(vi) the Media; and</p> <p>(g) the Director-General of the Bureau who shall be the Secretary of the Council.</p> <p>(3) Notwithstanding the provisions of Section (2), the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards quorum.</p> <p>(4) The Chairman and other members of the Council shall be appointed by the President.</p> <p>(5) Subject to sub-section (2) of this Section, a member of the Council being:</p> <p>(a) the holder of an elective office</p>	<p>Amendment of Section 1(2)(f) by inserting Section 1(2)(f)(vii) with the following words "vii. The Nigerian Institute of Quantity Surveyors;"</p>	<p>of the Federation;</p> <p>(f) the Head of Service of the Federation;</p> <p>(g) Eight part-time members to represent:</p> <p>(i) the Chattered Institute of Purchasing and Supply Management of Nigeria;</p> <p>(ii) Nigeria Bar Association;</p> <p>(iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture;</p> <p>(iv) Nigeria Society of Engineers;</p> <p>(v) Nigerian Institute of Quantity Surveyors;</p> <p>(vi) Civil Society;</p> <p>(vii) the Media; and</p> <p>(h) The Director-General of the Bureau who shall be the Secretary of the Council.</p> <p>(3) Notwithstanding the provisions of Section (2), the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards quorum.</p> <p>(4) The Chairman and other members of the Council shall be appointed by the President.</p> <p>(5) Subject to sub-section (2) of this</p>	<p>serve as Chairman.</p> <p>The current name of the Institute (Purchasing) following her charter in April, 2007, CIPSMN Act, 21 of 2007.</p>
<p>Amendment of Section 1(4) by deleting "The Chairman and other members of the Council shall be appointed by the President" and inserting the following words "Other members of the Council shall be appointed by the President"</p>	<p>The inclusion of NIQS is because of the central professional role it plays in procurement activities.</p>		

	<p>under the Constitution of Nigeria, shall hold office for a period he remains so elected and no more ; and</p> <p>(b) the Director-General of the Bureau, shall hold office on such terms and conditions as may be specified in his letter of appointment.</p>	<p>Section, a member of the Council being:</p> <p>(a) <u>the holder of an elective or appointive Public office under the Constitution of Nigeria, shall hold office for a period he remains so elected or appointed and no more;</u> and</p> <p>(b) the Director-General of the Bureau, shall hold office on such terms and conditions as may be specified in his letter of appointment.</p>	
2	<p>Functions of the Council.</p> <p>2. The Council shall :</p> <p>(a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities ;</p> <p>(b) consider and approve policies on public procurement ;</p> <p>(c) approve the appointment of the Directors of the Bureau ;</p> <p>(d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement ; and</p> <p>(e) "approve changes in the procurement process to adapt to</p>		

<p>improvements in modern technology” ; (f) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.</p>		<p>Replace paragraph 2(f) with the following: ‘2(f): give such other directives and perform such other functions as <u>contained in this Act</u> or may be necessary to achieve the objectives of this Act.’</p>	
<p>4 Objectives of the Bureau 4. The objectives of the Bureau are: (a) the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process ; (b) the establishment of pricing standards and benchmarks; (c) ensuring the application of fair, competitive, transparent, value-for money standards and practices for the procurement and disposal of public assets and services ; and (d) the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system</p>		<p>Objectives of the Bureau Amend section 4 by inserting a new clause (e) to read: 4. The objectives of the Bureau are: (e) <u><i>Promotion of local content and industry in the execution of any project in Nigeria.</i></u></p>	

<p>Functions of the Bureau.</p> <p>5. The Bureau shall :</p> <p>(a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council ;</p> <p>(b) publicize and explain the provisions of this Act ;</p> <p>(c) subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract ;</p> <p>(d) supervise the implementation of established procurement policies ;</p> <p>(e) monitor the prices of tendered items and keep a national database of standard prices ;</p> <p>(f) publish the details of major contracts in the procurement journal</p> <p>(g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal ;</p> <p>(h) maintain a national database of the particulars and classification and categorization of federal contractors and service providers ;</p> <p>(i) collate and maintain in an archival system, all federal procurement</p>	<p>Amendment of Section 15 (1) by inserting 15(1)(d) with the following words "Procurement with internally generated revenue, grants, loans taken or guaranteed by the Federal Government and foreign aid funds except where the applicable loan agreement, guarantee contract or foreign agreement specifically provides the procedure for the use of the funds."</p>	<p>Functions of the Bureau.</p> <p>Retained as in the Bill</p> <p>5. The Bureau shall :</p> <p>(f) <u>publish the details of all contracts in the procurement journal, any other national newspapers and in their official website</u></p> <p><u>(h) maintain a national database of the particulars, classification, and categorization of federal contractors, suppliers, consultants and service providers</u></p>	<p>This increases public access to public procurement activities.</p>
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<p>plans and information ;</p> <p>(j) undertake procurement research and surveys ;</p> <p>(k) organize training and development programmes for procurement professionals ;</p> <p>(l) periodically review the socioeconomic effect of the policies on procurement and advise the Council accordingly;</p> <p>(m) prepare and update standard bidding and contract documents ;</p> <p>(n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions ;</p> <p>(o) review the procurement and award of contract procedures of every entity to which this Act applies;</p> <p>(p) perform procurement audits and submit such report to the National Assembly bi-annually ;</p> <p>(q) introduce, develop, update and maintain related database and technology ;</p> <p>(r) establish a single internet portal that shall, subject to Section 16 (21) to this Act serve as a primary and definitive source of all information on government procurement containing</p>		<p>(p) perform procurement audits and <u>reviews and after approval of the Council, submit such report to the President and the National Assembly bi-annually.</u></p>	
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	<p>and displaying all public sector procurement information at all times; and</p> <p>(s) Co-ordinate relevant training programs to build institutional capacity.</p>		<p><u>(t) introduce a credit scoring system for federal contractors and services providers</u></p> <p><u>(u) perform procurement project monitoring and evaluation after the issuance of a Certificate of No Objection for contracts awarded by a procuring entity</u></p> <p><u>(v) The Bureau shall develop and update the special guidelines and regulations applicable to Defence Procurement</u></p>	
6	<p>Powers of the Bureau.</p> <p>6.—(1) The Bureau shall have the power to :</p> <p>(a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Act by the procuring entities;</p> <p>(b) subject to the paragraph (a) of this sub-section, issue certificate of “No Objection” for Contract Award” within the prior review threshold for all procurements within the purview of this Act ;</p> <p>(c) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for</p>		<p>Powers of the Bureau.</p> <p>6.—(1)</p> <p>(i) recommend to the Council, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act for :</p> <p>(i) the suspension <u>by the appropriate authority</u> of officers concerned with the procurement or disposal proceeding in issue;</p> <p>(ii) the replacement <u>by the appropriate authority</u> of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the</p>	

<p>the issuance of Certificate of 'No Objection' under this Act;</p> <p>(d) where a reason exist:</p> <p>(f) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act,</p> <p>(ii) review and determine whether any procuring entity has violated any provision of this Act;</p> <p>(e) debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act;</p> <p>(f) maintain a national database of federal contractors and service providers and to the exclusion of all procuring entities prescribe classifications and categorizations for the companies on the register ;</p> <p>(g) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal ;</p> <p>(h) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a</p>		<p>Tenders Board as the case may be ;</p> <p>(iii) the discipline <u>by the appropriate authority</u> of the Accounting Officer of any procuring entity ;</p>
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<p>breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider ;</p> <p>(j) recommend to the Council, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act for:</p> <p>(i) the suspension of officers concerned with the procurement or disposal proceeding in issue ;</p> <p>(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 Tenders Board as the case may be;</p> <p>(iii) the discipline of the Accounting Officer of any procuring entity ;</p> <p>(iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or</p> <p>(v) any other sanction that the Bureau may consider appropriate;</p> <p>(j) call for the production of books of accounts, plans, documents, and</p>			
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examine persons or parties in connection with any procurement proceeding;

(k) act upon complaints in accordance with the procedures set out in this Act;

(l) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Act;

(m) do such other things as are necessary for the efficient performance of its functions under this Act.

(2) The Bureau shall serve as the Secretariat for the Council.

(3) The Bureau shall, subject to the approval of the Council, have power to:

(a) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;

(b) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Act; and

(c) liaise with relevant bodies or

<p>institutions national and international for effective performance of its functions under this Act.</p>			
<p>7 Director-General and staff of the Bureau. 7.—(1) There shall be for the Bureau, a Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections; (2) The Director-General shall be : (a) the Chief Executive and accounting officer of the Bureau ; (b) responsible for the execution of the policy and day to day administration of the affairs of the Bureau ; and (c) a person who possesses the relevant and adequate professional qualification and shall have been so qualified for a period of not less than 15 years. (3) The Director-General shall hold office : (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more ; and (b) on such terms and conditions as</p>	<p>Amendment of Section 7(1) by deleting "There shall be for the Bureau, a Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections" <i>and insert the following</i> "There shall be for the Bureau, a Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections and confirmation by the National Assembly"</p>	<p>Director-General and staff of the Bureau. 7.—(1) "There shall be for the Bureau, a Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections and confirmation by the <u>Senate</u>. New Clause 7(5): <u>(5) The Director-General shall be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or for any other cause) or for misconduct.</u></p>	<p>The position of Director General is very central to an accountable, corrupt free procurement process. Strengthening his appoint and removal process will ensure relative independence of the office.</p>

	<p>may be specified in his letter of appointment.</p> <p>(4) Without prejudice to the provisions of this Act, the Director-General of the Bureau may be removed from office at the instance of the President on the basis of gross misconduct of financial impropriety, fraud, and manifested incompetence proven by the Council.</p>			
	<p>PART III—SCOPE OF APPLICATION</p>			
15	<p>Scope of application.</p> <p>15.—(1) The provisions of this Act shall apply to all procurement of goods, works and services carried out by:</p> <p>(a) the Federal Government of Nigeria and all procurement entities;</p> <p>(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 Act from the Federation share of</p>	<p>Amendment of Section 15(2) by deleting "the provisions of this Act shall not apply to the procurement of special goods; works and services involving national security unless the President's express approval has first been sought and obtained" and inserting a new Section 15(2) with the following words "Procurements involving National security or national defense shall be conducted in line with the provisions of this Act but its supervision shall be handled by a Special Committee</p>	<p>Scope of application</p> <p>Section 15 (1) of the Principal Act is amended by substituting for subsection (1) thereof a new subsection, that is:</p> <p>Subject to the provisions of the infrastructure Concession Regulatory Commission (ICRC) Act, the provisions of this Act shall apply to all procurement of goods, works and services carried out by:</p> <p>(a) the Federal Government of Nigeria and all procurement</p>	

<p>Consolidated Revenue Fund.</p>	<p>(2) The provisions of this Act shall not apply to the procurement of special goods, works and services involving national defence or national security unless the President's express approval has been first sought and obtained.</p>	<p>appointed by the Council and the Council shall be entitled to grant waiver or exemption from the application of specific provisions of this Act" and inserting a new Section 15(2)(a) with the following words "The Council shall be entitled to issue special Guidelines and regulations applicable to Defence Procurement".</p>	<p><u>entities in the Executive Branch</u></p> <p>(b) all entities outside the foregoing description which derive at least thirty-five per cent of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund".</p> <p>(c) Without limiting subsections (a) and (b) above, the Act applies to:</p> <p>(i) Federal Government Ministries, Departments and Agencies in the Executive Branch;</p> <p>(ii) Federal Government Institutions;</p> <p>(iii) Federal Government owned enterprises, corporations, councils, authorities and commissions provided that they utilize public funds;</p> <p>(iv) Tertiary and non-Tertiary Educational Institutions;</p> <p>(v) Hospitals and other Health Institutions;</p> <p>(vi) The Central Bank of Nigeria</p>
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		<p>and other Federal Government owned Financial Institutions; (vii) The National Defence and National Security Agencies;</p> <p>(d) Procurement with grants, loans taken or guaranteed by the Federal Government and foreign aid funds except where the applicable loan agreement, guarantee contract or foreign agreement specifically provides the procedure for the use of the funds.</p> <p>(e) Disposal of public properties including stores, plants and equipment.</p> <p>(f) (i) The National Assembly and the Judiciary shall set up appropriate procurement systems consistent with their systems and services, and as far as practicable, in accordance with the fundamental procurement principles, procedures and processes in this Act. (ii) The procurement systems made pursuant to (ii) above shall,</p>	<p><i>This is in line with Section 81(3) of the Constitution as amended.</i></p>
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in the case of National Assembly, be laid before both Houses of the Assembly for approval; and in the case of the judiciary, be laid before the National Judicial Council for approval.

2(a) Procurements involving National security or national defense shall be conducted in line with the provisions of this Act but its supervision shall be handled by a Special Committee appointed by the Council and the Council shall be entitled to grant waiver or exemption from the application of specific provisions of this Act.

(b) The Council shall be entitled to issue special guidelines and regulations applicable to Defence Procurement by Defence & Security Agencies”

(c) The national defence and national security agencies shall include the Armed Forces, the Nigeria Police Force, Agencies under the National Security Agencies Act and any other Security agency as may be approved by the President.

Credit Scoring System

- (1) The Bureau shall establish a credit scoring system for federal contractors and services providers, which shall be administered by the Bureau or may be outsourced to a competent and authorized local credit rating agency.
- (2) The Bureau shall be entitled to impose a charge on any person, individual, association, business, organization, firm, company or corporation desirous of obtaining a credit scoring as a federal contractor or service provider.
- (3) Any proceed accruing from the charge imposed pursuant to Section 16a(2) shall be remitted to the Consolidated Revenue Account, but the Bureau shall be entitled to utilize 75% of the total revenue generated for improvement of staff capacity and other improvements

<p>PART V — ORGANISATION OF PROCUREMENTS</p>		<p>Approving Authority. 17. Subject to the monetary and prior review thresholds for procurements in this Act as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:</p> <p>(a) in the case of:</p> <p>(i) a government agency, parastatal, or corporation, a Parastatals Tenders Board; and</p> <p>(ii) a ministry or extra-ministerial entity, the Ministerial Tender Board.</p>	
<p>17</p>		<p>Approving Authority. 17. Subject to the monetary and prior review thresholds for procurements in this Act as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement:</p> <p>(a) in the case of:</p> <p>(i) a government agency, parastatal, or corporation, a Parastatals Tenders Board; and</p> <p>(ii) a ministry or extra-ministerial entity, the Ministerial Tender Board.</p> <p>(b) in the case of:</p> <p>Any other public procurement the value of which exceeds the Ministerial Tenders Board threshold or any other thresholds set by the Council,</p> <p>(i) the Federal Tenders Board which is the Federal Executive Council for the Executive Arm of Government;</p> <p>(c) The Chief Executive Officer of the procuring agency shall chair</p>	<p>The Federal Executive Council has now been formally designated to approve contracts above a particular</p>

			<p>the Parastatal Tenders Board, while the Permanent Secretary shall chair the Ministerial Tenders Board.</p> <p>(d) The respective Heads of the procurement unit/department of the procuring entity shall be the Secretary of the Parastatal Tenders Board, Ministerial Tenders Board.</p> <p>(e) The Secretary to the Government of the Federation shall be the Secretary of the Federal Tenders Board.</p>	<p>threshold which was not in the original Act</p>
			<p>Procurement Planning Committee 21.—(1) For each financial year each procuring entity shall establish a Procurement Planning Committee.</p> <p>(2) The Procurement Planning Committee shall consist of:</p> <p>(a) the accounting officer of the procuring entity or his representative who shall chair the Committee;</p> <p>(b) a representative of:</p> <p>(i) the procurement unit of the procuring entity who shall be the Secretary,</p> <p>(ii) the unit directly in requirement of</p>	

		<p>the procurement (the user department / unit),</p> <p>(iii) the financial unit of the procuring entity,</p> <p>(iv) the planning, research and statistics unit of the procuring entity,</p> <p>(v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and</p> <p>(vi) the legal unit of the procuring entity.</p> <p>(3) The Procurement Planning Committee shall carry out the functions of the procuring entity as spelt out in Section 18 of this Act and shall issue the Certificate of No Objection for contracts within the prior review thresholds set by the Council.</p> <p>(4) The procurement unit or department of the procuring entity shall undertake independent mandatory regular monitoring of all projects and render returns to the relevant Tenders Board and directly to the Bureau on monthly basis.</p> <p>(5) The user department/unit shall be responsible for initiating</p>	
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		<p>procurement or disposal, proposing technical specifications for the goods, works and services to be procured and work directly with consultants, contractors/suppliers to ensure that the items are delivered as signed in the contract agreement.</p>	
		<p>Tenders Board 22. (1) There is hereby established by this Act the Parastatal Tenders Board in each procuring entity, procuring entity the Ministerial Tenders Board in each Ministry and Extra-Ministerial Department, the Federal Tenders Board for the Executive arm of Government, (in this Act each referred to as "the Tenders Board"). (2) Subject to the approval of the Council, the Bureau shall: (a) from time to time prescribe guidelines for the membership of the Tenders Boards for: (i) Ministries, Departments and Agencies; (ii) Government owned</p>	

		<p>enterprises, corporations, councils, authorities and commissions;</p> <p>(iii) Tertiary and non-Tertiary Educational Institutions;</p> <p>(iv) Hospitals and other Health Institutions;</p> <p>(v) The Central Bank of Nigeria and other Financial Institutions;</p> <p>(vi) The National Defence and National Security Agencies;</p> <p>(b) Set the thresholds for the various accounting officers of all procuring entities below which they are empowered to make purchase or approve contracts (low-value procurement) without open competitive tendering;</p> <p>(c) Set the thresholds below which the Procurement Planning Committee and above which the Council shall issue the Certificates of No Objection to contracts awards;</p> <p>(d) Set the Parastatal's Tenders Boards thresholds as the approving authority limit for the Parastatal Tenders Boards;</p> <p>(e) Set the Ministerial Tenders Board thresholds as the</p>	
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			<p>approving authority limit for the Ministerial Tenders Boards;</p> <p>(f) Set special thresholds as the approving authority limits for some selected procuring entities and Tenders Boards identified in (a) above;</p> <p>(g) Set the thresholds as the approving authority limits for the Federal Tenders Board;</p> <p>(h) Set thresholds for all procuring entities, above which no bank shall make any disbursement from the account of any procuring entity unless the request for such payment is accompanied with the issued Certificate of No Objection to contract award; and</p> <p>(i) Set thresholds for and procurement methods and procedures to be used by all procuring entities.</p> <p>(3) Each Tenders Board shall be responsible for the approval of the award of procurements goods, works and services within the thresholds set in the regulations.</p> <p>(4) (a) The Procurement Planning</p>
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		<p>Committee of the procuring entity shall appoint Tenders Opening Committee of at least three members and at least one of the members shall not be directly involved in the processing or evaluation of the tenders. The Legal Officer of the procuring entity shall be the secretary of the Tenders Opening Committee. The Tenders Opening Committee shall submit tenders opening report to the Technical Evaluation Subcommittee;</p> <p>(b) In all cases where there is a need for pre-qualification and tenders evaluation, the Chairman of the each Tenders Board shall constitute a technical evaluation sub-committee of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of some members of the Board, professional staff of the procuring entity, some selected other professionals and the Secretary of the Tenders Board who shall also be the Chair of the Technical Evaluation Subcommittee.</p>	
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		<p>(c) For the Federal Tenders Board, the Minister in charge of the procuring entity shall chair the Technical Evaluation Sub-committee as representative of the Secretary of the Federal Tenders Board.</p> <p>(d) All members of the Technical Evaluation Sub-committee shall sign the Code of Ethics designed by the Council declaring that they do not have a conflict of interest in any of the procurement under consideration.</p> <p>(e) After completing the evaluation exercise, the Technical Evaluation Sub-committee shall obtain the "Certificate of No Objection" to award contract.</p> <p>(f) Each Tenders Board shall review the evaluation and recommendation made by the Technical Evaluation Sub-committee of its Tenders Board and may either:</p> <p>(i) Approve the recommendation to award the contract or part thereof; or</p> <p>(ii) Refuse to accept the recommendation or part thereof</p>	
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		<p>and refer the evaluation back to the Technical Evaluation Subcommittee with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.</p> <p>(5) The decision of the Parastatal Tenders Board shall be communicated to and confirmed by the Minister for implementation. Chairman of the Governing Board of the procuring entity as the confirmation authority, while the decision of the Ministerial Tenders Board shall be confirmed by the Minister as the confirmation authority.</p> <p>(6) In the absence of the Chairman of the Governing Board or the Minister, the Procurement Planning Committee of the procuring entity shall confirm the approvals of the Parastatal Tenders Board and the Ministerial Tenders Board respectively.</p>	
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25	<p>Invitations to bid.</p> <p>25.—(1) Invitations 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 system.</p> <p>(2) Every invitation to an open competitive bid shall :</p> <p>(i) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognised publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works,</p> <p>(ii) in the case of goods and works valued under National Competitive Bidding, the invitation for bids shall</p>	<p>PART VI—PROCUREMENT METHODS (GOODS AND SERVICES)</p>
	<p>Invitations to bid.</p> <p>25.—(1) Invitations 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 system.</p> <p>(2) Every invitation to an open competitive bid shall :</p> <p>(i) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognised publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than <u>four</u> weeks before the deadline for submission of the bids for the goods and works,</p> <p>(ii) in the case of goods and works valued under National Competitive</p>	<p>PART VI—PROCUREMENT METHODS (WORKS, GOODS AND SERVICES)</p>

	<p>be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.</p>		<p>Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, <u>at least two national newspapers, and in the procurement journal less than three weeks</u> before the deadline for submission of the bids for the goods and works.</p> <p>Insert a new Section 25(3): <u>25 (3): (i) The Bureau or Procuring Entities shall where necessary and appropriate, shorten the time provided in this Act or Regulations issued pursuant to this Act for any emergency procurement activity to ensure timely execution.</u> <u>(ii.) A Procuring Entity acting with respect to paragraph (i) of this section shall notify the Bureau within 7 days of such action.</u></p>	<p>This clause ensures that time lags in procurement processes does not hinder execution of National Budgets</p>
35	<p>Mobilization fees. 35.—(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 15% may be paid to a supplier or contractor supported by the following:</p>		<p>Amendment of Section 35. Section 35 of the principal Act is amended by substituting for subsection (1) thereof a new subsection, that is -</p>	

<p>(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</p> <p>(b) in the case of International Competitive Bidding, an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.</p> <p>(2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.</p>		<p>"(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than <u>30% to be paid</u> to a supplier or contractor supported by the following:</p> <p>(a) in the case of National Competitive Bidding - an <u>irrevocable advance payment guarantee</u> or insurance bond issued by a <u>reputable bank or insurance company</u>; and</p> <p>(b) <u>in the case of International Competitive Bidding, an irrevocable bank guarantee issued by a banking institution.</u></p> <p>(2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.</p> <p>(3) <u>Any person or authority who accesses mobilization fee and absconds or does not carry out the services or works commensurate to the fee paid shall be guilty of an offence and</u></p>	
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			punishable with 2 years imprisonment or a fine equivalent to the fee paid or both.	
48	<p>Submission of proposals.</p> <p>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 30 days between the issue of the notice of request and the deadline for submission.</p> <p>(2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.</p> <p>(3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.</p> <p>(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.</p> <p>(5) The technical evaluation committee shall not have access to</p>		Retained as in the Act.	

	or insights to the financial proposals until the evaluations including any Tender Boards review are concluded.		
	PART XIII — MISCELLANEOUS		
60	<p>Interpretation.</p> <p>60. In this Act :</p> <p>“<i>Accounting officer</i>” means the person charged with line supervision of the conduct of all procurement processes ;</p> <p>“<i>Approving authority</i>” means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department or corporation ;</p> <p>“<i>Assets</i>” includes tangible and intangible things which have been or may be sold or procured for consideration ;</p> <p>“<i>Bid security</i>” 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 ;</p> <p>“<i>Debar</i>” means the placing of a firm company or natural person on a list of person ineligible to participate in any procurement proceedings under</p>		<p>Interpretation.</p> <p>60. In this Act :</p> <p>“<i>Procuring entity</i>” means any public body or Government organ engaged in procurement and includes a Ministry, Extra-Ministerial office, government agency, parastatal, corporation, Commission, Institution.</p> <p>“<i>Defence Procurement</i>” means the procurement of Special Purpose Goods, Works and Services involving National Defence or National Security.</p> <p>“<i>Emergency</i>” means an unexpected and sudden event that must be dealt with urgently</p> <p>“<i>Security</i>” means people or an organization entrusted with the job of protecting somebody or something, especially a building or institution, against crime</p>

<p> <i>“Certificate of No Objection”</i> means the document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contractor effect payments to contractors or suppliers from the Treasury ; <i>“Contract”</i> means an agreement entered in writing; <i>“Contractor or supplier”</i> means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted; <i>“Excessive price”</i> 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 </p>			

profit ;

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

"Interim Performance Certificates" means evidence that a contractor or supplier as performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion ;

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

"Lowest evaluated responsive bid" is the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document ;

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

<p>“<i>Minor Value</i>” means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau ;</p> <p>“<i>Monetary Threshold</i>” means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract ;</p> <p>“<i>National Competitive Bidding</i>” means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigeria Law ;</p> <p>“<i>Negotiation</i>” means discussions to determine the terms and conditions of a contract or procurement ;</p> <p>“<i>Open Competitive Bidding</i>” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services ;</p> <p>“<i>Procurement proceedings</i>” means the initiation of the process of effecting a procurement up to award of a procurement contract ;</p> <p>“<i>Procuring entity</i>” means any public body engaged in procurement and includes a Ministry, Extra-Ministerial</p>			
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<p>office, government agency, parastatal and corporation ; <i>"Public Procurement"</i> means the acquisition by any means of goods, works or services by the government ; <i>"Relevant authority"</i> includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission ; <i>"Services"</i> means the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction ; <i>"Solicitation Documents"</i> means the bid solicitation documents or any other documents for solicitation of offers proposals or quotations ; <i>"Special Purpose Goods"</i> means any objects of armaments ammunition mechanical electrical equipment or other thing as may be determined by the President needed by the Armed Forces or Police Force as well as the services incidental to the supply of the objects ; <i>"Substantially Responsive"</i> means the response to bid solicitations</p>			
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which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents ;

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

“Threshold” refers only to the approving and not the actual process of ward ;

“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, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those

	services does not exceed that of the construction itself.			
60	Short title. 61. This Act may be cited as the Public Procurement Act, 2007.	Citation. This Act may be cited as the Public Procurement (Amendment) Bill, 2016.	Retained as in the Bill	
	EXPLANATORY MEMORANDUM This Act establishes the National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for Public Procurement in Nigeria.	EXPLANATORY MEMORANDUM This Bill seeks to Amend the Public Procurement Act, 2007, by adding a new member to the Council, amending the procedure for appointing the Director-General of the Bureau and fully extending the application of the Act to Defence Procurement.	EXPLANATORY MEMORANDUM This Bill seeks to amend the Public Procurement Act, Cap. P, LFN, 2004 to make provisions for timely completion of procurement process in Nigeria to aid budget implementation, extending the application of the Act to Defence procurement, and strengthening the composition of the Council and independence of the Office of Director-General.	


 Hon. Oluwole Oke
 Chairman