

**REPORT OF THE CONFERENCE COMMITTEE ON A BILL FOR AN ACT TO AMEND THE PUBLIC
PROCUREMENT ACT, 2007**

SENATE VERSION	HOUSE VERSION	COMMITTEE'S RECOMMENDATION
2. Section 1(2) of the Principal Act is amended by substituting for the existing paragraphs (f) sub-paragraphs (i), (v) and (vi) new sub-paragraph "(i),(v)and (vi)" as follows: Establishment of the National Council on Public Procurement and its membership. (f) (i) the Chartered Institute of Purchasing and Supply Management of Nigeria; (v) Nigerian Institute of Architects; (vi) Nigerian Institute of Quantity Surveyors;	2. Section 1(2) of the Principal Act is amended to read thus: The Council shall consist of: (a) the Chairman to be appointed by the President; (b) the Attorney – General and Minister of Justice of the Federation; (c) the Honourable Minister responsible for Finance; (d) the Honourable Minister responsible for Budget and National Planning (e) the Secretary to the Government of the Federation; (f) the Head of Service of the Federation; (g) eight part – time members to represent: (i) the Chartered Institute of Purchasing and Supply Management of Nigeria; (ii) Nigeria Bar Association; (iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture; (iv) Nigeria Society of Engineers; (v) Nigerian Institute of Quantity Surveyors; (vi) Civil Society (vii) the Media; and (h) the Director – General of the Bureau who shall be the Secretary of the Council.	House Version Adopted
5. Section 5 of the Principals Act is amended by substituting for the existing section of a	5. Section 5 of the Principal Act is amended by introducing new paragraphs (t) (u) and (v)	

new section as follows: Functions of the Bureau (t) subject to the approval of the Council, establish and staff the procurement unit or department in each procuring entity in the Executive, Legislative and Judicial arms of Government of the Federal Republic of Nigeria; (u) maintain a register of all procuring entities in the public service and members and secretaries of Tenders Boards; (v) develop, promote and support the training and professional development of the public personnel involved in procurement; (w) assist and support the local business community to become competitive and efficient supplier to the public sector; (x) facilitate the resolution of public procurement and disposal complaints; and (y) convene consultation meeting at least once a year with relevant local and international stakeholders in the public and private sectors who have interest in the proper and effective functioning of the public procurement system. The meetings shall be chaired by the chairman of the Council or his representative	as follows: The Bureau shall: (t) introduce a credit scoring system for federal contractors and service providers. (u) perform procurement project monitoring and evaluation after the issuance of a Certificate of No Objection for contracts awarded by a procuring entity. (v) the Bureau shall develop and update the special guidelines and regulations applicable to Defence Procurement.	House Version Adopted
10. Section 15 of the Principal Act is amended by substituting for the existing section a new section that is: Scope of Application (a) the Federal Government of Nigeria and all procurement entities (b) Federal Government Ministries,	Section 15 (1) of the Principal Act is amended by substituting for subsection (1) thereof a new subsection, that is: Scope of Application (a) the Federal Government of Nigeria and all procurement entities in the Executive Branch; (b) all entities outside the foregoing	House Version Adopted

Departments and Agencies in the Executive branch; (2) the national defence and national security agencies shall comply with the provisions of this Act subject to the following: (a) The Ministers of Defence and Interior shall seek and obtain President's approval categorizing the goods, works and services to be procured into either open or special/ restricted items; (b) the national defence and national security agencies and the Council shall agree on the special and restricted procurement methods, including request for proposals and request for quotations, set out in this Act that shall be applied for the procurement of the restricted items accordingly; and (c) the National Defence and National Security Agencies shall include the Armed forces, the Nigeria Police Force and any other agency as may be approved by the President.	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 Bill from the Federation share of consolidated Revenue Fund. (c) without limiting subsection (a) and (b) above, the Act applies to: (i) Federal Government Ministries, Departments and Agencies in the Executive Branch; (ii) Federal Government Institutions; (iii) Federal Government owned enterprises, corporations, councils, authorities and commissions provided that they utilize public funds; (iv) Tertiary and non – Tertiary Educational Institutions; (v) Hospitals and other Health Institutions; (vi) The Central Bank of Nigeria and other Federal Government owned financial Institutions; (vii) The National Defence and National Security Agencies; (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. (e) disposal of public properties including stores, plants and equipment.	
--	--	--

	(f)(i) the National Assembly, the Judiciary and the autonomous arms of government shall set up appropriate public procurement systems that is consistent with the fundamental procurement principles, procedures and processes contained in this Bill. (ii) the procurement systems made pursuant to (ii) above shall, 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) Procurement involving National security or national defense shall be conducted in line with the provisions of this Bill but its supervision shall be handled by a special Committee appointed by the Council and the Council shall be entitled to grant waivers or exemption from the application of specific provisions of this Bill. (b) the Council shall be entitled to issue special guidelines and regulations applicable to Defence Procurement by Defence and Security Agencies, and which guidelines shall in consultation with relevant security agencies be issued by the Council. (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.	
12. 17 of the Principal Act is amended by substituting for the existing section a new	12. Section 17of the Principal Act is amended by substituting for the existing provisions,	

section that is: Approving Authority Section 17(1) 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: (i) the House of Representatives or Senate, the House of Representatives or Senate Tenders Board respectively; and (ii) the Federal High Court, Federal Capital Territory High Court or Industrial Court, Court of Appeal or Supreme Court, the Court of Appeal or Supreme Court Tenders Boards respectively. (ii) the National Assembly Tenders Board which is the Body of Principal Officers for the Legislative Arm of Government; and (iii) the Judiciary Tenders Board which is the Federal Judicial Council for the Judicial Arm of Government. (3) The Clerk of the House shall chair the House of Representatives Tenders Board, while the Clerk of the Senate shall chair the Senate Tenders Board and the Chief Registrars shall chair the Federal High Court Tenders Boards, the Court of Appeal Tenders Board and the Supreme Court Tenders Board	new provisions as follows: Approving Authority Section 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 for the Executive branch, the following shall be the approving authority for the conduct of public procurement: (a) In the case of: (i) a government agency, parastatal, or corporation, a Parastatals Tenders Board; and (ii) a ministry or extra – ministerial entity, the Ministerial Tender Board. (b) Procurement above the thresholds of the Parastatals Tender Board and Ministerial Tender Board shall be the Federal Executive Council; (c) in the case of Parastatals Tenders Board and Ministerial Tenders Board, the Chairmen shall be the Accounting Officers of the respective entities; (d) the respective Heads of the procurement Units/Departments of the procuring entity shall be the Secretary of the Parastatals Tenders Board, Ministerial Tenders Board.	House Version Adopted
--	--	------------------------------

respectively. (4) The Chairman of Public Procurement Council shall chair the Federal Tenders Board, while the Clerk to the National Assembly shall chair the National Assembly Tenders Board and the Chief Registrar shall chair the Judiciary Tenders Board. (5) The respective Heads of the procurement unit/department of the procuring entity shall be the secretary of the Parastatal Tenders Board, Ministerial Tenders Board, House of Representatives Tenders Board, Senate Tenders Board, Federal High Courts Tenders Boards, the Court of Appeal Tenders Board and the Supreme Court Tenders Board. (6) The Secretary to the Government of the Federation shall be the Secretary of the Federal Tenders Board, while the Clerk of the National Assembly shall be the Secretary of the National Assembly Tenders Board and the Chief Registrar of the Supreme Court shall be the Secretary of the Judiciary Tenders Board.		
13. Section 20 of the Principal Act is amended by substituting for the existing section a new section. that is: Accounting Officer "20(1) The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary; in the case of extra-ministerial departments and corporations the	Section 20 of the Principal Act is not part of the House amendment Bill	Senate Version Adopted

Director – General or officer of coordinate responsibility; (2) the accounting officer of every procuring entity shall have overall responsibility for the planning of organization of tenders, evaluation of tenders and execution of all procurements and in particular shall, primarily be responsible for: (a) ensuring compliance with the provisions of this Act by his entity and liable in person for the breach or contravention of this Act or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function duty or power to any person or group of persons; (b) constituting the procurement planning Committee and its decisions; (c) ensuring that adequate appropriation is provided specifically for the procurement in Federal budget; (d) integrating his entity's procurement expenditure into its yearly budget; (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; (f) constituting the Evaluation Committee; and (g) liaising with the Bureau to ensure the implementation of its regulations. (3) The accounting officer of each procuring entity is empowered to purchase or approve		
--	--	--

contracts without open competitive tendering provided the value of such procurement(low value procurement) does not exceed certain threshold set by the Council. For such low-value procurement, the council shall prescribe the procedure and other conditions applicable for different procuring entities and for different goods, works and services to be procured. (4) each employee of a procuring entity and each member of a board or committee of a public entity shall ensure that this Act, within the areas of assigned responsibility of the employee or member, is complied with. (5) all bidders, contractors and suppliers for the procurement of any goods, works and services for any public entity shall comply with all relevant provisions of this Act. (6) any stakeholder, be it the accounting officer, an officer of the procuring entity, a member of a committee or board of a public entity and any bidder or contractor or supplier of public goods, works and services, who fails to independently perform within the respective assigned responsibility as prescribed in this Act and or who contravenes the provisions of this Act, shall be guilty of an offence”.		
14. Section 21(3)(4) of the Principal Act is amended by substituting for the existing section a new section that is: Procurement Planning Committee (3) The procurement Planning Committee shall carry out the function of the procuring	14. Section 21(3)(4) of the Principal Act is amended by substituting for the existing section a new section that is: Procurement Planning Committee (3) The procurement Planning Committee shall carry out the function of the procuring	Delete Section 21(3) of the amendment

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 (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	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 (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	Adopt the Senate Version of Section 21(4) of the Amendment
17(a). Section 25 of the Principal Act is amended in subsection (2) paragraph (ii) by substituting for the existing paragraph a new paragraph that is: Invitation to Bid " (ii) in the case of goods and works valued under National Competitive Bidding, the invitation for bids shall 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 seven weeks before the deadline for submission of the bids for the goods and six weeks of works".	17. Section 25 of the Principal Act is amended in subsection (2) paragraph (ii) by substituting for the existing paragraph a new paragraph that is: Invitation to Bid 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. (2) every invitation to an open competitive bid shall: (i) In the case of goods and works under International Competitive Bidding, the invitation for bid shall be advertised in at least two national newspapers; and either one relevant internationally recognized publication, or any official websites of the procuring entity and the Bureau or the Federal Tenders Journal not less than five weeks before the deadline for submission of the bids	House Version Adopted

	for the goods and works; (ii) In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity and at least two national newspapers; and where practicable in the Federal Tenders Journal not less than three weeks before the deadline for submission of the bids for the goods and works except for emergency situation or urgent needs. (3)(i) The Bureau or procuring entities shall where necessary and appropriate, shorten the time provided in this Bill or Regulations issued pursuant to this Bill for any emergency procurement activity to ensure timely execution. (ii) A procuring entity acting with respect to paragraph (i) of this section shall notify the Bureau within 7 days of such action.	
17(b) Section 28 of the Principal Act is amended by substituting for the existing section a new section: "28. A procuring entity may: (a) reject all bids at any time prior or after the acceptance of a bid, without incurring thereby any liability to the bidders; and (b) cancel the procurement proceedings in the public interest, without		Senate Version Adopted

incurring any liability to the bidders.		
18. Section 35 of the Principal Act is amended by substituting for subsection (1) thereof a new subsection. That is Mobilization Fees. “(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 25% may be paid to a supplier or contractor supported by the following:	18. Section 35 of the Principal Act is amended by substituting for subsection (1) thereof a new subsection. That is Mobilization Fees. (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% may be paid to a supplier or contractor supported by the following: (a) In the case of National Competitive Bidding – an irrevocable advance payment guarantee or insurance bond issued by a reputable bank or insurance company; and (b) In the case of International Competitive Bidding, an irrevocable bank guarantee issued by a banking institution. Provided that in the case of national competitive bidding involving substantial foreign component, a mobilization fee of not more than 50% may be paid to the supplier or contractor. (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	House Version Adopted

	agreement. (3) 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 punishable with 2 years imprisonment or a fine equivalent to the fee paid or both.	
--	--	--

RESCISSION OF THE REPORT OF THE CONFERENCE COMMITTEE ON THE PUBLIC PROCUREMENT ACT (AMENDMENT) BILL, PURSUANT TO ORDER NINE, RULE 1(6) OF THE STANDING ORDERS OF THE HOUSE OF REPRESENTATIVES.

The House:

Note that the Report of the Conference Committee on a Bill for an Act to amend the Public Procurement Act was considered and adopted on Thursday, 27th July, 2017;

Aware that the Conference adopted clause 1(2) of the House of Representatives Bill as passed;

Again aware that the Clause 5 of the Report did not reflect in whole, the House version as adopted;

Also aware that Clauses 10 and 12 of the Report did not reflect what was adopted in the Conference;

Desirous of taking necessary steps to reflect the correct and intended amendment of the Public Procurement Act by rescinding the House decision in Clause 1(2) which amended Section 1(2) of the Public Procurement Act, Clause 5 which amended Section 5 of the Public Procurement Act, Clause 10 which amended Section 15 of the Public Procurement Act, Clause 13 which amended section 20 of the Act, Clause 14 which amended Section 21 of the Act, Clause 17(A and B) which amended Sections 25 and 28 of the Act and Clause 18 which amended Section 35 of the Act;

Resolves to:

- i. Rescind its decision on Clauses 2, 5, 10, 12, 13, 14, 17 (A and B) and 18 of Report of the Conference Committee on the Public Procurement Act (Amendment) Bill;
- ii. Commit Clauses 2, 5, 10, 12, 13, 14, 17 (A and B) and 18 of the Report to Committee of the Whole for reconsideration.