

# **REPORT ON CONFERENCE COMMITTEE ON THE PUBLIC PROCUREMENT ACT 2007 (AMENDMENT) BILL 2017.**

## **1.0 INTRODUCTION:**

The Senate at its sitting of Tuesday, 18<sup>th</sup> July, 2017 constituted a Conference Committee on the Public Procurement Act 2007 (Amendment) Bill 2017.

The Conference Committees of the two Chambers met on 25<sup>th</sup> July, 2017 and harmonized the two versions passed by the two Houses.

## **2.0 RECOMMENDATIONS**

During the exercise, the following Senate Versions were adopted:

- Long Title,
- Section twelve (12);
- Section Thirteen (13);
- Section Seventeen (17);
- Section Twenty (20);
- Section Twenty-One (21);
- Section Twenty –Two (22);
- Section Twenty – Four (24);
- Section Twenty –Eight (28);
- Section Thirty – Four (34); and
- Short Title

While the following House of Representatives Versions were adopted:

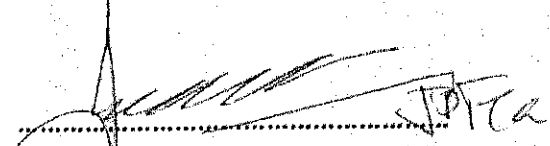
- Section one (1);
- Section Two (2);
- Section Four (4);
- Section Five (5);
- Section Six (6);
- Section Seven (7);
- Section Fifteen (15);
- Section Sixteen (16);
- Section Twenty-Five (25);
- Section Thirty – Five (35); and
- Section Sixty (60).

Mr. Senate President, Distinguished Senators we recommend that you adopt the recommendations of the Committee as per attached.

### **3.0 CONCLUSION:**

On behalf of other members of the Committee, I wish to express our sincere and profound appreciation for the opportunity given to serve in this capacity.

CONFERENCE COMMITTEE ON PUBLIC PROCUREMENT ACT (AMENDMENT)  
BILL 2017



.....  
SENATOR JOSHUA CHIBI DARIYE  
CHAIRMAN

SENATOR BEN - MURRAY BRUCE

SENATOR GBOLAHAN J. DADA

SENATOR SAM O. EGWU

SENATOR ABUBAKAR KYARI

SENATOR UMAR I. KURFI

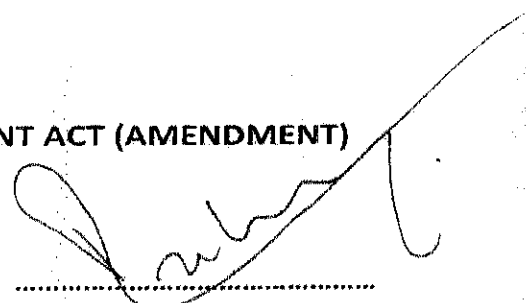
HON. SOLOMON BULUS MAREN

HON. MOHAMMED NUR SHERIFF

HON. GABRIEL ONYENWIFE

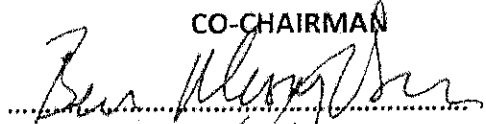
HON. DIRI DOUYE

HON. AMUDA KANNIKE ABUBAKAR

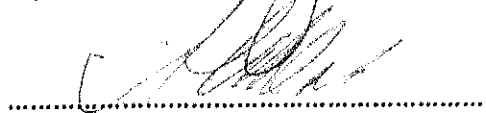


.....

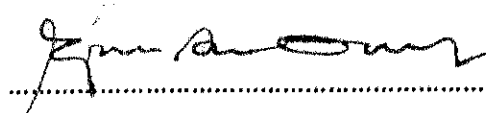
HON. OLUWALE OKE  
CO-CHAIRMAN



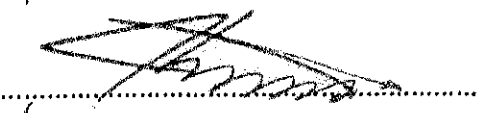
.....



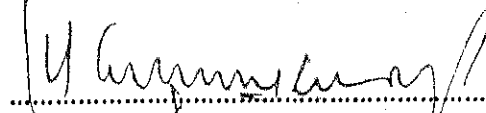
.....



.....



.....



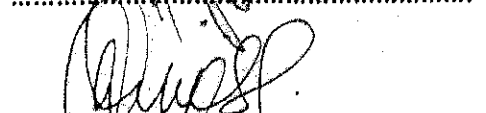
.....



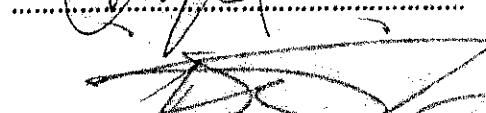
.....



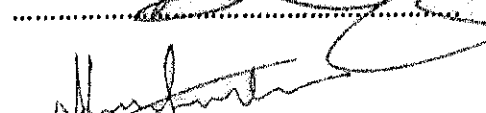
.....



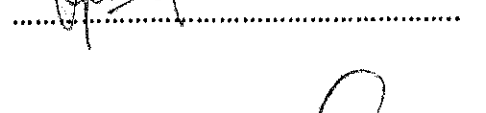
.....



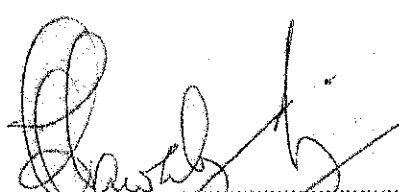
.....



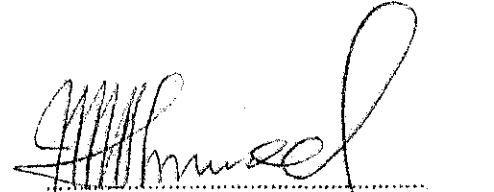
.....



.....



.....  
LAWAL BARAU BUNGUDU  
CLERK, SENATE COMMITTEE



.....  
BAR. ABDULLAHI M. GURIN  
CLERK, HOUSE COMMITTEE

**CONFERENCE COMMITTEE ON PUBLIC PROCUREMENT ACT (AMENDMENT)  
BILL 2016.(SB.232)**

S/N	CLAUSES	SENATE VERSION	HOUSE VERSION	COMMITTEE'S RECOMMENDATION
1.	<b>Long title</b>	AN ACT TO AMEND THE NATIONAL PROCUREMENT ACT TO PROVIDE FOR AND ADOPT A LOCAL CONTENT POLICY AND TIMELY COMPLETION OF PROCUREMENT PROCESSES AND OTHER RELATED MATTERS	AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT, 2007 BY 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, 2017 (HB. 475)	<b>Senate Version Adopted</b>
2.	<b>Section 1</b> Establishment of the National Council on Public Procurement and its membership	' (f) (i) the Chattered Institute of Purchasing and Supply Management of Nigeria;  (v) Nigerian Institute of Architects;  (vi) Nigerian Institute of Quantity Surveyors; "	(i) the Chattered 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	<b>House Version Adopted</b>
3.	Section 2 Functions of the Council		(f) give such other directives and perform such other functions as contained in this Bill or may be necessary to achieve the objectives of this Bill.	<b>House Version Adopted</b>

4.	Section 4 Objectives of the Bureau	(d) the attainment of transparency, competitiveness, integrity cost effectiveness and professionalism in the public sector procurement system.”	The objectives of the Bureau are:  (e) promotion of local content and industry in the execution of any project in Nigeria	<b>House Version Adopted</b>
5.	Section 5 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 meetings 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	(t). introduce a credit scoring system for federal contractors and services providers;  (u) perform procurement project monitoring and evaluation after the issuance of a Certificate of No Objection for contracts awarded by a procuring entity; and  (v) the Bureau shall develop and update the special guidelines and regulations applicable to Defence Procurement.	<b>House Version Adopted</b>

6.	Section 6  Powers of the Bureau	Section 6 of the principal Act amended in section 1 subsection (1) paragraph (b) by inserting the words "within the purview of this Act" immediately after the word "procurements" in line 2.	<p><b>Powers of the Bureau.</b></p> <p>6 (1) Recommend to the Council, where there are persistent or serious breaches of this Bill or regulations or guidelines made under this Bill for:</p> <ul style="list-style-type: none"> <li>(i) the suspension by the appropriate authority of officers concerned with the procurement or disposal proceeding in issue;</li> <li>(ii) the replacement by the appropriate authority 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;</li> <li>(iii) the discipline by the appropriate authority of the Accounting Officer of any procuring entity.</li> </ul>	<b>House Version Adopted</b>
7.	Section 7  Director-General and staff of the Bureau	<p>Section 7 of the principal Act amended:</p> <p>(a) in subsection (2) paragraph (c) by inserting the words "is competent and experienced in public procurement" immediately after the word "who" in line 1.</p> <p>(b) by inserting a new subsection (5) as follows:</p> <p>" (5) In the absence of the Director General, the Council may designate a staff member of the Bureau as acting Director General."</p>	<p><b>6. Director-General and staff of the Bureau.</b></p> <p>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 Senate.</p> <p>Insertion of subsection (5). (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</p>	<b>House Version Adopted</b>

			arising from infirmity of mind or body or for any other cause) or for misconduct.	
8.	Section 12  Funds of the Bureau	Section 12 of the principal Act amended:  (a) in subsection (1) by inserting a new paragraph (d) as follows:  " (d) local and international grants, loans and donations received by the Bureau for its activities."  (b) in subsection (4) paragraph (d) by inserting the words "or expenditure" after the word "matter".		<b>Senate Version Adopted</b>
9.	Section 13  Financial year, budgeting and annual report	Section 13 of the principal Act is amended in subsection (4) by inserting the words "subject to the approval of the Council," after the word "Bureau" in line 1.		<b>Senate Version Adopted</b>
10.	Section 15  Scope of application  Powers	(a) the Federal Government of Nigeria and all procurement entities (b) Federal Government Ministries, 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	(a) the Federal Government of Nigeria and all procurement entities <b>in the Executive Branch</b> (c) Federal Government Ministries, Departments and Agencies in the Executive Branch; (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 Bill.	<b>House Version Adopted</b>

		<p>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</p> <p>(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.”</p>	<p>(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.</p> <p>(2) (a) Procurements 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 waiver or exemption from the application of specific provisions of this Bill.</p> <p>(b) The Council shall be entitled to issue special guidelines and regulations applicable to Defence Procurement by Defence and Security Agencies.</p> <p>(c) The national defence and national security agencies shall include the Armed Forces, the Nigeria Police Force, <b>Agencies under the National Security Agencies Act and any other Security agency</b> as may be approved by the President.</p>	
--	--	--	--	--



<p>11.</p>	<p>Section 16</p> <p>Fundamental principle of Procurement</p>	<p>Section 16 of the Principal Act is amended by substituting for the existing section a new section that is:</p> <p>“Fundamental principles for procurement</p> <p>16. (1) Subject to any exemption allowed by this Act, all public procurement shall be conducted:</p> <p>(a) subject to the prior review thresholds as may from time to time be set by the Council;</p> <p>(b) based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations set by the Council, and has obtained a "Certificate of 'No Objection' to Contract Award;</p> <p>(c) by open competitive bidding or any other procurement method approved by the Council;</p> <p>(d) in a manner which is transparent, timely, equitable for ensuring accountability and in conformity with this Act and regulations deriving there from;</p> <p>(e) with the aim of achieving value for money and fitness for purpose;</p> <p>(f) in a manner which promotes competition, economy and efficiency;</p> <p>(g) in accordance with the procedures and time-line laid down in this Act and as may be specified by the Bureau from time to time;</p>	<p><b>8. Credit Scoring System.</b></p> <p>16. (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.</p> <p>(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.</p> <p>(3) Any proceed accruing from the charge imposed pursuant to Section 16 (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>	<p><b>House Version Adopted</b></p>
------------	---	--	---	---

	<p>and</p> <p>(h) in a corporate manner carried out by the departments and units of the procuring entity in respect of procurement initiation, processing, receipt and utilization of goods, works and services.</p> <p>(2) Where the Council has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Federation Account or any bank account of any procuring entity for any procurement, unless the cheque, payments or other form of request for payments is accompanied by a certificate of "No Objection" and an approval by a Tenders board to an award of contract. duly issued by the Bureau.</p> <p>(3) For all cases where the Council shall set a prior review threshold. The Bureau shall prescribe by regulation, guidelines and the conditions precedent to the issuance of certificate of "No Objection" under this Act.</p> <p>(4) Subject to the prior review thresholds as may be set by the Council, any procurement purported to be awarded without a "Certificate of 'No Objection' to Contract Award" and an approval of the contract award by a Tenders board shall be null and void.</p> <p>(5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibility arising from this Act and the non- performance or improper performance of any contract awarded pursuant to this Act.</p> <p>(6) All bidders in addition to requirements</p>			
--	---	--	--	--

	<p>contained in any solicitation documents shall:</p> <ul style="list-style-type: none"><li>(a) possess the necessary:<ul style="list-style-type: none"><li>(i) professional and technical qualifications to carry out particular procurements;</li><li>(ii) financial capability;</li><li>(iii) equipment and other relevant infrastructure; and</li><li>(iv) shall have adequate personnel to perform the obligations of the procurement contracts;</li></ul></li><li>(b) possess the legal capacity to enter into the procurement contract;</li><li>(c) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;</li><li>(d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;</li><li>(e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of acts relating to any matter; and</li><li>(f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars.</li></ul>		
--	---	--	--

(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 Act and the solicitation documents and for this purpose any such requirements shall apply equally to all bidders.

(8) Whenever it is established by a procuring entity or the Bureau that any or combinations of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if:

(a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of 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 during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;

(c) the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two Calendar-years prior to the

	<p>initiation of the procurement proceeding;</p> <p>(d) the bidder is in arrears regarding payment of due taxes, charges, pensions, or social insurance contributions, unless such bidders have obtained a lawful permits with respect to allowance, difference of such outstanding payments or payment thereof in installments;</p> <p>(e) the bidder has been validly sentence for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;</p> <p>(f) the bidder has in its management or is in any portion owned by any person that has been validly sentence for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit; and</p> <p>(g) the bidder fails to submit a statement regarding its dominating or subsidiary relationships with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or whom remains in subordinate relationship with other participants to the proceedings.</p> <p>(9) In such cases the procuring entity shall inform the Bureau and person referred to in subsection (8) (a)-(g) of this Section, in writing that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining to the public procurement proceeding in question.</p> <p>(10) All communications and documents issued by procuring entities and the Bureau shall be in English language.</p>		
--	---	--	--

(11) All communications regarding any matter deriving from this Act or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Bureau.

(12) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.

(13) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:

(a) information identifying the procuring entity and the contractors;

(b) the date of the contract award;

(c) the value of the contract; and

(d) the detailed records of the procurement proceedings.

(14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau as directed by the Council.

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

(16) The burden of proving fulfillment of the requirements for participation in any

	<p>procurement proceeding shall lie on the supplier or contractor.</p> <p>(17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.</p> <p>(18) Notwithstanding subsection (16) of this Section, the Council may refuse to issue a 'Certificate of "No Objection" to Contract Award' on the grounds that the price is excessive.</p> <p>(19) Pursuant to subsection (17) of this Section, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.</p> <p>(20) The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Act.</p> <p>(21) The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Act and the regulations laid down by the Council are complied with, and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of this Act or the regulations laid down hereunder.</p> <p>(22) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Act and any regulations as may from time to time be laid down by the Council. Specifically, procurement and disposal decisions by an</p>		
--	---	--	--

		<p>entity shall be taken in a corporate manner and any internal departments/units or committees or boards concerned, shall accordingly contribute to the decision making process as provided in the Act.</p> <p>(23) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.</p> <p>(24) A procuring entity shall not request or stipulate that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings.</p> <p>(25) All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.</p> <p>(26) The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.</p> <p>(27) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution."</p>		
12.	<p>Section 17</p> <p>Approving authority</p>	<p>"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:</p>	<p><b>Approving Authority.</b> 17. Subject to the monetary and prior review thresholds for procurements in this <b>Bill</b> as may from time to time be determined by the Council, the following shall be the approving</p>	<p><b>Senate Version Adopted</b></p>



		<p>(i) the House of Representatives or Senate, the House of Representatives or Senate Tenders Board respectively; and</p> <p>(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.</p> <p>(ii) the National Assembly Tenders Board which is the Body of Principal Officers for the Legislative Arm of Government; and</p> <p>(iii) the Judiciary Tenders Board which is the Federal Judicial Council for the Judicial Arm of Government.</p> <p>(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 respectively.</p> <p>(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.</p> <p>(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, <b>House of Representatives Tenders Board, Senate Tenders Board, Federal High Courts Tenders</b></p>	<p>authority for the conduct of public procurement:</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><b>Boards, the Court of Appeal Tenders Board and the Supreme Court Tenders Board.</b></p> <p>(6) The Secretary to the Government of the Federation shall be the Secretary of the Federal Tenders Board, <b>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.</b>"</p>		
13.	<p>Section 20</p> <p>Accounting officer</p>	<p>Section 20 of the Principal Act is amended by substituting for the existing section a new section that is:</p> <p>" 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 Director-General or officer of co-ordinate responsibility;</p> <p>(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:</p> <p>(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</p>		<p><b>Senate Version Adopted</b></p>

		<p>group of persons;</p> <p>(b) constituting the Procurement Planning Committee and its decisions;</p> <p>(c) ensuring that adequate appropriation is provided specifically for the procurement in the Federal budget;</p> <p>(d) integrating his entity's procurement expenditure into its yearly budget;</p> <p>(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; and</p> <p>(f) liaising with the Bureau to ensure the implementation of its regulations.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>		
--	--	--	--	--

		(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 Procurement Planning Committee	(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.  (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.	(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.	<b>Senate Version Adopted</b>
15.	Section 22 Tenders Board	The Principal Act is amended in the title by inserting the word “WORKS” before the word “GOODS” in the bracket that is:  “PART VI—PROCUREMENT METHODS (WORKS, GOODS AND SERVICES)”		<b>Senate Version Adopted</b>
16.	Section 24 Open competitive bidding	Section 24 of the Principal Act is amended in subsection (2) by inserting the words “and services” after the word “works” in the last line.		<b>Senate Version Adopted</b>

17.	<p>Section 25</p> <p>Invitation to bid</p>	<p>Section 25 of the Principal Act is amended in subsection (2) paragraph (ii) by substituting for the existing paragraph a new paragraph that is:</p> <p>" (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."</p>	<p><b>Invitations to bid.</b></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 recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than four 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 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 three weeks before the deadline for submission of the bids for the goods and works except for emergency situation or</p>	<p><b>House Version Adopted</b></p>
-----	--	--	--	---

			<p>urgent needs.</p> <p>(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.</p> <p>(ii) A Procuring Entity acting with respect to paragraph (i) of this section shall notify the Bureau within 7 days of such action.</p>	
17.	Section 28	<p>Section 28 of the Principal Act is amended by substituting for the existing section a new section that is:</p> <p>"28. A procuring entity or the Technical Evaluation Sub-Committee may :</p> <p>(a) reject all bids at any time prior or after the acceptance of a bid, without incurring thereby any liability to the bidders ; and</p> <p>(b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.</p>		<p><b>Senate Version Adopted</b></p>
17	Section 34  Domestic preferences	<p>Sections 34 (1) and (2) of the Principal Act is amended by substituting the existing subsections (1) and (2) with new subsections (1) and (2) as follows:</p> <p>"Domestic preferences.</p> <p>(1) A procuring entity shall grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when</p>		<p><b>Senate Version Adopted</b></p>

		<p>comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.</p> <p>(2) Where a procuring entity has allowed domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference."</p>														
18.	<p>Section 35</p> <p>Mobilization fees</p>	<p>Section 35 of the principal Act is amended by substituting for subsection (1) thereof a new subsection, that is -</p> <p>"(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:</p> <p style="text-align: center;">STANDARD PROCUREMENT PROCESSING TIME FOR QCBS</p> <table border="1" data-bbox="622 874 1227 1410"> <thead> <tr> <th>Activity</th> <th>Processing Time in Days</th> <th>Previously</th> </tr> </thead> <tbody> <tr> <td>Preparation of terms of Reference</td> <td>1 - 7</td> <td>7 - 14</td> </tr> <tr> <td>Inviting for expression of interest up to submission of the same by consultants</td> <td>14</td> <td>14</td> </tr> <tr> <td>Evaluation of Expression of</td> <td>7-15</td> <td>21</td> </tr> </tbody> </table>	Activity	Processing Time in Days	Previously	Preparation of terms of Reference	1 - 7	7 - 14	Inviting for expression of interest up to submission of the same by consultants	14	14	Evaluation of Expression of	7-15	21	<p>Section 35 of the Principal Act is amended by substituting for subsection (1) thereof a new subsection, that is —</p> <p><b>Mobilization Fees.</b></p> <p>(1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% to be paid to a supplier or contractor supported by the following:</p> <p>(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</p> <p>(b) in the case of International Competitive Bidding, an irrevocable bank guarantee issued by a banking institution.</p> <p>Provided that in the case of national competitive bidding involving substantial foreign component, a mobilization fee of not more than 50%</p>	<p><b>House Version Adopted</b></p>
Activity	Processing Time in Days	Previously														
Preparation of terms of Reference	1 - 7	7 - 14														
Inviting for expression of interest up to submission of the same by consultants	14	14														
Evaluation of Expression of	7-15	21														

		interest and preparing shortlist and ops approval by the Tenders Board				may be paid to the supplier or contractor.
		Preparation and issuance of the request for proposal	7-15	21		(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.
		Preparation and submission of proposals by consultants	10-21	30		(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.
		Evaluation of technical proposals and approval of evaluation Report	10-21	30		
		Notification of technically qualified firms of date of financial proposal public opening	1-7	7 - 14		
		Opening of Financial proposals, approval of combined evaluation report and notification of negotiation	5-10	21		



		to the firm with the highest combined score				
		Negotiations and approval of negotiated documents	1-7	7		
		Signature of contract	1-3	7		
19.	Section 60 Interpretation	<p>The principal Act is amended in section 60 by substituting for the existing section a new section, that is -</p> <p>“60. Accounting officer” means the person appointed by government to administer the day to day affairs of the Government Organ and holds a vote and account for all the monies expended from the vote and is also charged with line supervision of the conduct of all procurement processes ;</p> <p>“Approving authority” means an Accounting Officer of a Ministry or Extra-ministerial Department or Chief Executive of a procuring entity or Tenders Board;</p> <p>“Assets” includes tangible and intangible things which have been or may be sold or procured for consideration ;</p> <p>“Bid security” means a form of security assuring the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid ;</p> <p>“Debar” means the placing of a firm company</p>			<p><b>14. Interpretation.</b></p> <p>60. In this Bill:</p> <p>“Procuring entity” 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>“Defence Procurement” means the procurement of Special Purpose Goods, Works and Services involving National Defence or National Security;</p> <p>“Emergency” means an unexpected and sudden event that must be dealt with urgently;</p> <p>“Security” means people or an organization entrusted with the job of protecting somebody or something, especially a building or institution, against crime.</p>	House Version Adopted

or natural person on a list of person ineligible to participate in any procurement proceedings under this Act ;

“Certificate of No Objection” 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 contract or effect payments to contractors or suppliers from the Treasury;

“Contract” means an agreement entered in writing between a procuring entity and a contractor or a supplier of a consultant;

“Confirmation Authority” means the Chairman of a Governing Board of a procuring entity or the Minister;

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

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

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

	<p>“Interim Performance Certificates” means evidence that a contractor or supplier as performed its obligations under a procurement contract up to a level stipulated in the contract agreement but not meaning completion ;</p> <p>“International Competitive Bidding” means the solicitation of bids from both domestic and foreign contractors and suppliers ;</p> <p>“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 ;</p> <p>“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> <p>“Minor Value” means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau ;</p> <p>“Monetary Threshold” means the value limit in Naira set by the Bureau outside of which an approving authority may not approve a procurement contract;</p> <p>“National Competitive Bidding” means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigeria Law;</p> <p>“Negotiation” means discussions to determine the terms and conditions of a contract or procurement ;</p> <p>“Open Competitive Bidding” means the offer</p>		
--	--	--	--

of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services ;

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

“Procuring entity” means any public body or Government organ engaged in procurement and includes a Ministry, Extra-Ministerial office, government agency, parastatal, corporation, Commission, House of Representatives, Senate, High Court and Court of Appeal;

“Public Procurement” means the acquisition by any means of goods, works or services by the government ;

“Relevant authority” includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission ;

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

“Solicitation Documents” means the bid solicitation documents or any other documents for solicitation of offers proposals or quotations;

“Special Purpose Goods” 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

		<p>services incidental to the supply of the objects;</p> <p>“Substantially Responsive” means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents ;</p> <p>“Supplier” means a real or legal person that provides supply of goods, contracting of works or consultants;</p> <p>“Threshold” means limit and refers only to the approving and not the actual process of award;</p> <p>“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 ;</p> <p>“Works” means all activities associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or activities, 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.”</p>		
	Short Title	This Act may be cited as the Public Procurement Act (Amendment) Bill, 2016.	15. This Bill may be cited as the Public Procurement Act (Amendment) Bill, 2017.	<b>Senate Version Adopted</b>