



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Wednesday, 9th May, 2007

1. The Senate met at 10:35 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Tuesday, 8th May, 2007 and approved same.

By unanimous consent, the Votes and Proceedings were approved.
3. **Personal Explanation:**
Rising on Rule 43, Senator Lawal Shuaibu drew the attention of the Senate to the Ad-hoc Committee set up on 28th February, 2007 to consider and report on the Miscellaneous Offences Bill 2007 and the failure of the Committee to report within the time-frame given. He urged the Senate to direct the Committee to report as soon as possible.

By leave of Senate, the Ad-hoc Committee was directed to report within one week.
4. **Presentation of Bill:**
Niger-Delta Development Commission Appropriation Bill 2007 (SB. 360) — *Read the First Time*
5. **Committee on Establishment and Public Service Matters:**
Screening of Nominee:
Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on Establishment and Public Service Matters on the screening of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC) (*Senator Felix O. Ibru*).

Question put and agreed to.

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to,

(SENATE IN THE COMMITTEE OF THE WHOLE)

Report of the Committee on Establishment and Public Service Matters on the screening of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC)

Recommendation:

"That the Senate do confirm the nomination of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC)" — *Agreed to.*

Chairman to report progress.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Establishment and Public Service Matters on the screening of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC) and approved the nomination.

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Confirmation:

"Will the Senate confirm the nomination of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC)"? — *Agreed to.*

Nomination of Mr. Adekola Oluremi Bolarinwa (South West) as a member of the National Assembly Service Commission (NASC) accordingly confirmed.

6. Committee on Establishment and Public Service Matters:

Report on the Public Procurement Bill 2007 (SB. 151):

Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on Establishment and Public Service Matters on the Public Procurement Bill 2007 (*Senator Felix O. Ibru*).

Question put and agreed to.

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

BILL FOR THE ESTABLISHMENT OF 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; AND FOR OTHER RELATED MATTERS

PART I — ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT

Clause 1: Establishment of the National Council on Public Procurement and its Membership:

(1) There is hereby established the National Council on Public Procurement (in this Act referred to as 'the Council').

(2) The Council shall consist of:

(a) The President, Commander-in-Chief, as Chairman;

(b) The Vice President;

(c) The Attorney-General of the Federation and Minister of Justice;

(d) The Secretary to the Government of the Federation;

(e) National Security Adviser

- (f) The head of Service of the Federation;
 - (g) The Minister of Finance;
 - (h) The Economic Adviser to the President C-in-C;
 - (i) Six part-time members representing Professionals, the National Chamber of Commerce, Civil Society and the Media all of whom shall be appointed by the President and;
 - (l) Director-General Bureau of Public Procurement, who shall be Secretary of Council.
- (3) Notwithstanding, the provisions of Section (2) above, the Council may co-opt any person to attend its meeting.
- (4) Subject to the provisions of Section (2) above, a member of Council;
- (a) Being the holder of an elective office under the Constitution of Nigeria, shall hold office for the period he remains so elected and no more;
 - (b) Being an appointee to the office which he holds by the nomination of the President, shall hold office for the period of his appointment; and
 - (c) Being the Director-General of the Bureau of Public Procurement shall hold office on such terms and conditions as may be specified in his letter of appointment.

Committee's Recommendation:

Leave out the provision in Clause 1 and *insert* the following instead thereof: "(1) There is hereby established the National Council on Public Procurement (in this Act referred to as 'the Council').

- (2) The Council shall consist of:
- (a) the Minister of Finance as Chairman;
 - (b) the Attorney-General and Minister of Justice of the Federation;
 - (c) the Secretary to the Government of the Federation;
 - (d) the Head of Service of the Federation;
 - (e) the Economic Adviser to the President;
 - (f) six part-time members to represent:
 - (i) Nigeria Institute of Purchasing and Supply Management,
 - (ii) Nigeria Bar Association,
 - (iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture,
 - (iv) Nigeria Society of Engineers, (v)
 - Civil Society, (vi) the Media; and

(g) **the** Director-General of the Bureau who shall be the Secretary of the Council.

(3) Notwithstanding the provisions of section (2) above, 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.

(4) Subject to subsection (2) of this section, a member of the Council being -

(b) **the** Director-General of the Bureau, shall hold office on such terms and conditions as may be specified in his letter of appointment.

(5) The Chairman and other members of the Council shall be appointed by the President" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 1 as recommended do stand part of the Bill, put and agreed to.

Clause 2:

Functions of the Council:

The functions and powers of the Council are, subject to the provisions of this Act; to:

- (a) Consider, set and/or amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities;
- (b) Consider and approve policies on public procurement;
- (c) Approve the employment of the Directors of the Bureau of Public Procurement;
- (d) Receive and consider, for approval, the audited accounts of the Bureau of Public Procurement; and
- (e) Give such other directives and or perform such other functions not being inconsistent with the provisions of this Act, as may be necessary to achieve the objectives of this Act.

Committee's Recommendation:

Leave out the provision in Clause 2 and insert the following instead thereof:

"The Council shall:

- (a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities;
- (b) consider and approve policies on public procurement;
- (c) approve the appointment of the Directors of the Bureau;
- (d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement; and
- (e) "approve changes in the procurement process to adapt to 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" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 2 as recommended do stand part of the Bill, put and agreed to.

PARTII — ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

Clause 3:

The Establishment of the Bureau of Public Procurement:

- (1) There is hereby established an agency to be known as the Bureau of Public Procurement (in this Act referred to as "the Bureau").

(2) The Bureau -

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and
- (c) may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act.

Committee's Recommendation:

Leave out the provision in Clause 3 and insert the following instead thereof: "(1) There is hereby established an agency to be known as the Bureau of Public Procurement (in this Act referred to as "the Bureau").

(2) The Bureau:

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and
- (c) may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act" (Senator Felix O. Ibru) — Agreed to.

Question that Clause 3 as recommended do stand part of the **Bill**, put and agreed to.

Clause 4:**Objectives of the Bureau:**

(1) The objectives of the Bureau shall be:

- (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) to ensure the application of fair, competitive, transparent, value for money standards and practices for the procurement and disposal of public assets and services;
- (d) the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

Committee's Recommendation:

Leave out the provision in Clause 4 and **insert** the following instead thereof:

(1) 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" (Senator Felix O. Ibru) — Agreed to.

Question that Clause 4 as recommended do stand part of the **Bill**, put and agreed to.

Clause 5:

Functions of the Bureau:

- (1) The functions of the Bureau shall be to:
- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of Council;
 - (b) publicize and explain provisions of this Act;
 - (c) subject to thresholds as may be set by Council, certify all Federal-wide procurement prior to, during and after award of contract;
 - (d) supervise the implementation of established procurement policies;
 - (e) monitor the prices of tendered items and keep a national database of standard prices;
 - (f) publish the details of major contracts in the Procurement Journal;
 - (g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
 - (h) maintain a national database of the particulars and classification and categorization of federal contractors and service providers;
 - (i) collate and maintain in an archival system, all federal procurement plans and information;
 - (j) undertake procurement research and surveys;
 - (k) provide training and development of procurement professionals;
 - (l) periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;
 - (m) prepare and update standard bidding and contract documents;
 - (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
 - (o) review the procurement and award of contract procedures of every entity to which this Act applies;
 - (p) perform procurement audits;
 - (q) introduce, develop, update and maintain related database and technology; and,
 - (r) coordinate relevant training programs to build institutional capacity.

Committee's Recommendation:

Leave out the provision in Clause 5 and insert the following instead thereof:

"(1) The Bureau shall:

- (a) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
- (b) publicize and explain the provisions of this Act;
- (c) subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract;
- (d) supervise the implementation of established procurement policies;

- (e) monitor the prices of tendered items and keep a national database of standard prices;
- (f) publish the details of major contracts in the procurement journal;
- (g) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- (h) maintain a national database of the particulars and classification and categorization of federal contractors and service providers;
- (i) collate and maintain in an archival system, all federal procurement plans and information;
- (j) undertake procurement research and surveys;
- (k) organize training and development programmes for procurement professionals;
- (l) periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;
- (m) prepare and update standard bidding and contract documents;
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- (o) review the procurement and award of contract procedures of every entity to which this Act applies;
- (p) perform procurement audits and submit such report to the National Assembly;

Amendment Proposed:

Immediately after the word " Assembly" insert the word "Bi- Annually" (*Senator Adeleke O. Mamora*).

Question that the amendment be made, put and agreed to.

- (q) introduce, develop, update and maintain related database and technology; and
- (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 and displaying all public sector procurement information at all times. And,
- (s) coordinate relevant training programs to build institutional capacity.

Question that Clause 5 as amended do stand part of the Bill, put and agreed to.

Clause 6:

Powers of the Bureau:

(1) The Bureau shall have the power to:

- (a) enforce the monetary and prior review thresholds set by Council for the application of the provisions of this Act by procuring entities;
- (b) subject to the (a) above, issue "Certificates of 'No Objection' for Contract Award" and "Certificates of 'No Objection' for Payments" for all procurements within the purview of this Act;

- (c) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of 'No Objection' under this Act;
- (d) cause to be inspected and/or reviewed any procurement transaction to ensure compliance with the provisions of this Act;
- (e) investigate and determine whether any procuring entity has violated any provision of this Act;
- if) blacklist/debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act;
- (g) 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;
- (h) maintain a list of firms and persons that have been blacklisted/debarred from participating in public procurement activity and publish them in the procurement journal;
- (i) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;
- (j) recommend to the Council, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act for;
 - (i) the suspension of officers concerned with the procurement or disposal proceeding in issue;
 - (ii) the replacement of the head of the Procuring or Disposal Unit of any entity or the Chairperson of a Tenders Board as the case may be;
 - (iii) the disciplinary of the Accounting Officer of any Procuring entity; or
 - (iv) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant;
 - (v) any other sanction that the Bureau may consider appropriate.
- (k) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
- (l) act upon complaints by public procurement entities in accordance with the procedures set out in this Act;
- (m) to nullify the whole or any part of any procurement proceeding or award which it adjudges to be in contravention of this Act;
- (n) to direct the discontinuance, stoppage, suspension or seizure of any payments from the Treasury or any bank account purportedly paid or due under any procurement contract, activity or proceeding which has contravened or is likely to be in contravention of any provision of this Act;

- (o) undertake procurement and contract performance audit; and
 - (p) do such other things as are necessary for the successful performance of its functions under this Act;
- (2) The Bureau shall be the Secretariat of the Council.
- (3) The Bureau shall, subject to the approval of the Council, have power to -
- (a) acquire, hold and management movable and immovable property;
 - (b) enter into contractors or partnerships with any company, firm or person which in its opinion will facilitate the discharge of its functions;
 - (c) request for and obtain from any Ministry, Extra-ministerial Department or Agency and other information including reports, memoranda and audited accounts, and other information relevant to its functions under this Act; and
 - (d) liaise with relevant bodies or institutions locally or internally for effective performance of its functions under this Act.

Committee's Recommendation:

Leave out the provision in Clause 6 and *insert* the following instead thereof:

- "(1) The Bureau shall have the power to:
- (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;
 - (b) subject to the paragraph (a) of this subsection, issue certificate of "No Objection for Contract Award" within the prior review threshold for all procurements within the purview of this Act;
 - (c) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of Certificate of 'No Objection' under this Act;
 - (d) where a reason exist: ■ .
 - (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act,
 - (ii) review and determine whether any procuring entity has violated any provision of this Act;
 - (e) debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act;
 - (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;
 - (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;
 - (h) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or collusion has been alleged, reported or proved against a procuring entity or service provider;

- (i) recommend to the Council, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act for:
 - (i) the suspension of officers concerned with the procurement or disposal proceeding in issue;
 - (ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be;
 - (iii) the discipline of the Accounting Officer of any procuring entity;
 - (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
 - (v) any other sanction that the Bureau may consider appropriate;
 - (j) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (k) act upon 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 institutions national and international for effective performance of its functions under this Act" (*Senator Felix O. Ibru*) — *Agreed to*.

Question that Clause 6 as recommended do stand part of the Bill, put and agreed to.

Clause 7:

Director-General and staff of the Bureau:

- (1) There shall be for the Bureau, a Director-General who shall be appointed by the , President, Commander-in-Chief.
- (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;
 - (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 5 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 may be specified in his letter of appointment.
- (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, Commander-in-Chief on the basis of gross misconduct of financial impropriety, fraud, and manifested incompetence proven by the Council.

Committee's Recommendation:

Leave out the provision in Clause 7 and *insert* the following instead thereof: "(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 may be specified in his letter of appointment.
- (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" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 7 as recommended do stand part of the Bill, put and agreed to.

Clause 8:

Principal Officers of the Bureau:

- (1) The Council shall appoint the Principal Officers of Bureau.
- (2) The principal officers appointed under Section 9(1) above shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Departments and the Bureau as specified under this Act.
- (3) Notwithstanding the provisions of Section 9(1) above, Council shall have power to modify the operational structure of the Bureau as might be necessary to enhance the Bureau's duties and functions under this Act.

Committee's Recommendation:

Leave out the provision in Clause 8 and *insert* the following instead thereof: "(1) The Council shall appoint the principal officers for the Bureau after competitive selection process.

- (2) The principal officers appointed under section 9(1) of this section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Departments and the Bureau as specified under this Act
- (3) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureau's duties and functions under this Act" (*Senator Felix O. Ibru*) — Agreed to.

Question that Clause 8 as recommended do stand part of the Bill, put and agreed to.

Clause 9:

Other Staff of the Bureau:

- (1) Council may appoint such officers and other employees as may, from time to time, be deemed necessary for the purposes of the Bureau.
- (2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined by Council.
- (3) Without prejudice to the generality of Section 10(1) above, Council shall have power to appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, be required to assist the Bureau in the discharge of any of its functions under the Act and persons so employed shall be remunerated (including allowances) as Council may consider proper.

Committee's Recommendation:

Leave out the provision in Clause 9 and *insert* the following instead thereof:

- (1) The Council may appoint such officers and other employees as may, from time to time, deem necessary for the purposes of the Bureau.
- (2) Subject to the Pension Reform Act, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Bureau shall be as determined by the Council.
- (3) Without prejudice to the generality of subsection (1) of this section, the Council shall have power to appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, be required to assist the Bureau in the discharge of any of its functions under the Act and persons so employed shall be remunerated (including allowances) as the Council may consider appropriate" (*Senator Felix O. Ibru*) — Agreed to.

Question that Clause 9 as recommended do stand part of the Bill, put and agreed to.

Clause 10:

Staff Regulations:

- (1) Council may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for -
 - (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
 - (b) appeals by such employees against dismissal or other disciplinary measures.
- (2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the Federal shall be applicable.

Committee's Recommendation:

Leave out the provision in Clause 10 and *insert* the following instead thereof: "(1)

The Council may, subject to the provisions of this Act and within six months of the inauguration, make staff regulations relating generally to the conditions of service of the employees of the Bureau and without prejudice to the foregoing, such regulations may provide for-

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Bureau; and
- (b) appeals by such employees against dismissal or other disciplinary measures.

(2) Until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the Federation shall be applicable" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 10 as recommended do stand pan of the Bill, put and agreed to.

Clause 11:

Pension Provisions:

Employees of the Bureau shall be entitled to pensions, gratuities and other retirement benefits as prescribed under the Pension Act 2004.

Committee's Recommendation;

Leave out the provision in Clause 11 and insert the following instead thereof:

"Employees of the Bureau shall be entitled to pensions, and other retirement benefits as prescribed under the Pension Act 2004" (*Senator Felix O. Ibru*) — *Agreed to.*

Amendment Proposed:

Leave out the figure "2004" (Senator Tunde Ogbeha).

Question that the amendment be made, put and agreed to.

Question that Clause 11 as amended do stand part of the Bill, put and agreed to.

Clause 12:

Funds of the Bureau::

- (1) The Bureau shall establish and maintain a fund, to be approved by the Council from which shall be defrayed all expenditures incurred by it.
- (2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section:
 - (a) the sum appropriated by the National Assembly for the running of the Bureau;
 - (b) all subventions, fees and charges for services rendered or publications made by the Bureau; and
 - (c) all other assets which may, from time to time, accrue to the Bureau.
- (3) The fund shall be managed in accordance with rules made by the Council and without prejudice to the generality of the power to make rules under this subsection; for rules shall in particular contain provisions -
 - (a) specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
 - (b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time, apply the proceeds of the fund established in pursuance of subsection (1) above for the following purposes -
 - (a) the cost of administration of the Bureau;
 - (b) the payments of salaries, fees and other remuneration, employees of the Bureau or experts or professionals appointed by the Bureau;

- (c) the maintenance of any property acquired by or vested in the Bureau; and
- (d) any matter connected with all or any of the functions of the Bureau under this Act.

Committee's Recommendation:

Leave out the provision in Clause 12 and *insert* the following instead thereof: "(1) The Bureau shall establish and maintain a Fund, to be approved by the Council into which shall be paid and credited -

- (a) the sums appropriated by the National Assembly for the running of the Bureau;
 - (b) all subventions, fees and charges for services rendered or publications made by *the* Bureau; and
 - (c) all other assets which may, from time to time, accrue to the Bureau.
- (2) The Bureau shall charge its fund to meet all its expenditure.
- (3) The Council may make regulations for the Bureau:
- (a) specifying the manner in which assets or the fund of the Bureau are to be held, and regulating the making of payment into and out of the fund; and
 - (b) requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time, apply the proceeds of the fund for:
- (a) the cost of administration of the Bureau;
 - (b) the payments of salaries, fees and other remuneration, employees of the Bureau or experts or professionals appointed by the Bureau;
 - (c) the maintenance of any property acquired by or vested in the Bureau; and
 - (d) any matter connected with all or any of the functions of the Bureau under this Act.
 - (e) the payments of salaries, fees and other remuneration, of employees of the Bureau or experts or professionals appointed by the Bureau; and
 - if) any expenditure connected with all or any of the functions of the Bureau under this Act" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 12 as recommended do stand part of the Bill, put and agreed to.

Clause 13:

Financial year, Budgeting and Annual Report:

- (1) The financial year of the Bureau shall be the same as that of the Federal Government.
- (2) No later than 30th June each year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Council may direct.

- (4) The Bureau shall within 6 months after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor-General of the Federation.
- (5) The Bureau shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture all the activities of the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year.

Committee's Recommendation:

Leave out the provision in Clause 13 and *insert* the following instead thereof: "(1) The financial year of the Bureau shall be the same as that of the Federal Government.

- (2) Not later than 6 months before the end of the financial year, the Bureau shall submit to the Council an estimate of its expenditure and projected income during the next succeeding year.
- (3) The Bureau shall keep proper accounts and records of its receipts, payments, assets and liabilities and shall in respect of each financial year prepare a statement of account in such form as the Council may direct.
- (4) The Bureau shall within 6 months after the end of the financial year to which the accounts relate cause the accounts to be audited in accordance with guidelines supplied by the Auditor-General of the Federation.
- (5) The Bureau shall at the end of each financial year, prepare and submit to the Council a report in such form as shall accurately capture all the activities of the Bureau during the preceding year and shall include in the report a copy of the audited accounts of the Bureau for that year" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 13 as recommended do stand part of the Bill, put and agreed to.

Clause 14:

Legal Proceedings:

- (1) Subject to the provisions of this Act, no suit shall be commenced against the Bureau before the expiration of 45 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending plaintiff or his agent; and the notice shall clearly and explicitly state -
 - (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and legal resident of the intending plaintiff; and
 - (d) the relief sought.
- (2) The Director-General of the Bureau, its officers, employees or agents shall not personally be subject to any action claim or demand by, or liability to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Act upon the Bureau, its Director-General, officers, employees or agents.

Indemnity against Proceedings

- (3) A member of the Bureau or the Director-General or any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Bureau.

Service of Notices and Process

- (4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Act or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post and addressed to the Director-General at the principal office of the Bureau.

Committee's Recommendation:

Leave out the provision in Clause 14 and *insert* the following instead thereof: "(1) Subject to the provisions of this Act, no suit shall be commenced against the Bureau before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon the Bureau by the intending plaintiff or his agent; and the notice shall clearly and explicitly state -

- (a) the cause of action;
 - (b) the particulars of the claim;
 - (c) the name and address of legal practitioner of the intending plaintiff; and
 - (d) the relief being sought.
- (2) The Director-General of the Bureau, its officers, employees or agents shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in exercise of any functions or power conferred by this Act upon the Bureau, its Director-General, officers, employees or agents.
- (3) A member of the Bureau or the Director-General or any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Bureau.
- (4) A notice, summons or other documents required or authorized to be served upon the Bureau under the provisions of this Act or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post and addressed to the Director-General at the principal office of the Bureau" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 14 as recommended do stand part of the Bill, put and agreed to.

PART III — SCOPE OF APPLICATION

Clause 15:

Scope of Application:

- (1J) The provisions of this Act shall apply to all procurement of goods, works, and services carried out by the Federal Government of Nigeria, all Federal Ministries, Extra-ministerial offices/departments/agencies, parastatals, corporations, the armed and paramilitary services and all entities set up by the Constitution or Act of the National Assembly and/or whose funding derives from the Federation Accounts, their own internally generated revenue, the Federal share of the Consolidated Revenue Fund and special allocations in the federal budget, whatever form this may take or being entities outside of the foregoing description, derive at least 35 % of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act and no entity or person shall be exempted from the application of this Act on the basis that it is not directly managed or controlled by the Federal Government or any of its Ministries or extra-ministerial departments/agencies.

- (2) The provisions of this Act shall not apply to the procurement of special purpose goods, works and services involving national defence or national security where the President's express approval has been first sought and obtained.
- (3) The provisions of this Act shall apply to all disposals of assets by all entities covered by Section 16(1) above.

Committee's Recommendation:

Leave out the provision in Clause 15 and insert the following instead thereof: "(1)

The provisions of this Act shall apply to all procurement of goods, works, and services carried out by -

- (a) the Federal Government of Nigeria and all procurement entities;
 - (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 Consolidated Revenue Fund.
- (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" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 15 as recommended do stand part of the Bill, put and agreed to.

PART IV — FUNDAMENTAL PRINCIPLES FOR PROCUREMENTS

- Clause 16:
- (1) Subject to any exemption allowed by this Act, all public procurement shall be conducted -
 - (a) subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to Section 7(1) (a)-(b);
 - (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 regulations made by the Bureau, has obtained a "Certificate of 'No Objection' to Contract Award" from the Bureau;
 - (c) by open competitive bidding;
 - (d) in a manner which is transparent, timely, equitable, ensures of accountability and conformity with this Act and regulations deriving therefrom;
 - (e) with the aim of achieving value for money and fitness for purpose;
 - (f) in a manner which promotes competition, economy and efficiency; and
 - (g) in accordance with the procedures and time line laid down in this Act and as may be specified by the Bureau from time to time.
 - (2) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury/Federation Account/or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque;

Committee's Recommendation:

Leave out the provision in Clause 16(1) and 2 and insert the following instead thereof:

"(1) Subject to any exemption allowed by this Act, ail public procurement shall be conducted -

- (a) subject to the prior review thresholds as may from time to time be set by the Bureau pursuant to section 7(1) (a)-(b);
- (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 made by the Bureau, has obtained a "Certificate of 'No Objection' to Contract Award" from the Bureau;
- (c) by open competitive bidding;
- (d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom;
- (e) with the aim of achieving value for money and fitness for purpose;
- (f) in a manner which promotes competition, economy and efficiency; and
- (g) in accordance with the procedures and timeline laid down in this Act and as may be specified by the Bureau from time to time.

(2) Where the Bureau 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 falling above the set thresholds unless the cheque, payments or other form of request for payments is accompanied by a certificate of "No Objection" to an award of contract duly issued by the bureau" (*Senator Felix O. Thru*) — *Agreed to.*

Another Committee's Recommendation:

Insert a new Subclauses 16(3) - (7)

"(3) For all cases where the Bureau shall set a prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of Certificate of "No Objection" under this Act.

- (4) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of 'No Objection' to Contract Award" duly issued by the Bureau shall be null and void.
- (5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. 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.
- (6) All bidders in addition to requirements contained in any solicitation documents shall:
 - (a) possess the necessary:
 - (i) professional and technical qualifications to carry out particular procurements,
 - (ii) financial capability,
 - (Hi) equipment and other relevant infrastructure,

- (iv) shall have adequate personnel to perform the obligations of the procurement contracts;
 - (b) possess the legal capacity to enter into the procurement contract;
 - (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;
 - (d) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - (e) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - (f) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirming that all information presented in its bid are true and correct in all particulars.
- (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" (*Senator Felix O. Ibru*) — *Agreed to.*
- (9) When ever it is established by a procuring entity or the Bureau that any or a combination of the situations set out hereafter exist, a bidder may have its bid and or tender excluded from any particular procurement proceeding.
- (a) If there is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit any 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, decision making or the further course of any procurement activity;
 - (b) being a supplier, contractor or service provider 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) if 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 initiation of the procurement proceeding;
 - (d) if the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or payment thereof in installments;

- (e) if the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
 - (f) if 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;
 - (g) if 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.
- (10) In such cases the procuring entity shall inform the person referred to in subsection (9) (a)-(g) above as well as the Bureau, 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.
- (11) All communications and documents issued by procuring entities and the Bureau shall be in the English language.
- (12) 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.
- (13) Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten years from the date of the award.
- (14) 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.
- (15) 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.
- (16) Criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding.
- (17) The burden of proving fulfillment of the requirements for participation in any procurement proceeding shall lie on the supplier or contractor.
- (18) A contract shall be awarded to the lowest cost and qualified bidder from the bidders substantially responsive to the bid solicitation.
- (19) Notwithstanding subsection (18) above, the Bureau may refuse to issue a 'Certificate of "No Objection" to Contract Award' on the grounds that the price is excessive.

- (20) Pursuant to subsection (19) above, the Bureau may direct either that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender amongst the bidders substantially responsive to the initial bid solicitation based only on price.
- (21) A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of **the** tender proposal or quotations other than in the summary form stating out the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award.
- (22) The Accounting Officer of an 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.
- (23) The Accounting Officer of an entity has responsibility to ensure that the provisions of this Act and the regulations laid down by the Bureau 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.
- (24) 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 Bureau.
- (25) 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.
- (26) 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.
- (27) All procurement contracts shall contain provisions for arbitral proceedings as the primary form of dispute resolution.
- (28) 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 medium exchange rate of the Central Bank of Nigeria valid on the day of opening a tender.
- (29) All payments for procurements carried out under the provisions of this Act shall be denominated and made in Nigerian currency.

Further Committee's Recommendation:

Leave out the provision in Subclauses 16(9 to 29) and insert the following instead thereof:

"(8) Whenever it is established by a procuring entity or the Bureau that any or a combination 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 initiation of the procurement proceeding;
 - (d) the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or payment thereof in installments;
 - (e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
 - if) **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
 - (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.
- (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.
- (10) All communications and documents issued by procuring entities and the Bureau shall be in English language.
- (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 shali 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.
- (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 procurement proceeding shall lie on the supplier or contractor.
- (17) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation.
- (18) Notwithstanding subsection (16) of this section, the Bureau may refuse to issue a 'Certificate of "No Objection" to Contract Award' on the grounds that the price is excessive.
- (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.
- (20) Pursuant to subsection (18) of this section, the Bureau may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.
- (21) 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.
- (22) 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 Bureau 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.
- (23) 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 Bureau.
- (24) 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.
- (25) 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.
- (26) All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.
- (27) 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.
- (28) 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" (*Senator Felix O. Ibru*) — *Agreed to*.

Question that Clause 16 as recommended do stand part of the Bill, put and agreed to.

PART V — ORGANISATION OF PROCUREMENTS

Clause 17: Approving Authority:

Subject to the monetary and prior review thresholds for procurements as may from time to time be determined by the Council, the following shall be the Approving Authority for the conduct of public procurement:

- (a) in the case of a government agency parastatal or corporation - the Chairman
- (b) in the case of a ministry or extra-ministerial entity - the Minister.

Committee's Recommendation:

Leave out the provision in Clause 17 and **insert** the following instead thereof: "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:

- (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" *(Senator Felix O. Ibru) — Agreed to.*

Question that Clause 17 as recommended do stand part of the Bill, put and agreed to.

Clause 18: Procurement Planning:

Subject to regulations as may from time to time be issued by the Bureau under direction of Council, a procuring entity shall plan its procurement as follows:

- (a) by preparing a needs assessment and evaluation;
- (b) identifying based on (a) above, the goods, works or services required;
- (c) preparing an analysis of the cost implications of the proposed procurement;
- (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- (f) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (g) ensuring that adequate appropriation is provided specifically for **the** procurement in the Federal budget.

Committee's Recommendation:

Leave out the provision in Clause 18 and **insert** the following instead thereof: "Subject to regulations as may from time to time be made by the Bureau under the direction of the Council, a procuring entity shall plan its procurement by:

- (a) preparing the needs assessment and evaluation;
- (b) identifying the goods, works or services required;
- (c) carrying appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;

- (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- if) prescribing any method for effecting the procurement subject to the necessary approval under this Act; and
- (g) ensuring that the procurement entity functions stipulated in this section shall be carried out by the Procurement Planning Committee" (*Senator Felix O. Ibru*)
— *Agreed to.*

Question that Clause 18 as recommended do stand part of the Bill, put and agreed to.

Clause 19:

Procurement implementation:

Subject to regulations as may from time to time be issued by the Bureau under direction of Council, a procuring entity shall implement its procurement plans as follows:

- (a) advertise/solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau from time to time;
- (b) receive, evaluate and make a selection of the bids received in adherence to this Act and guidelines as may be issued by the Bureau from time to time;
- (c) obtain approval of the approving authority before making an award;
- (d) debrief the bid losers;
- (e) resolve complaints/disputes if any;
- if) obtain and confirm the validity of any performance guarantee;
- (g) obtain a "Certificate of 'No Objection' to Contract Award" from the Bureau;
- (h) Execute the Contract Agreement;
- (i) Announce the publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time.

Committee's Recommendation:

Leave out the provision in Clause 19 and *insert* the following instead thereof: "Subject to regulations as may from time to time be made by the Bureau under direction of Council, a procuring entity shall, in implementing its procurement plans:

- (a) advertise and solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau from time to time;
- (b) to invite two credible persons as observers in every procurement process, one person each representing a recognized -
 - (i) private sector professional organisation whose expertise is relevant to the particular goods or service being procured and
 - (ii) non - governmental organisation working in transparency, accountability and anti - corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organisations or associations.
- ic) receive, evaluate and make a selection of the bids received in adherence to this Act and guidelines as may be issued by the Bureau from time to time;

- (d) obtain approval of the approving authority before making an award;
- (e) debrief the bid losers on request;
- (f) resolve complaints and disputes if any;
- (g) obtain and confirm the validity of any performance guarantee;
- (h) obtain a "Certificate of 'No Objection' to Contract Award" from the Bureau within the prior review threshold as stipulated in section 3(a) of this Act;
- (i) execute all Contract Agreements; and
- (j) Announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 19 as recommended do stand part of the Bill, put and agreed to.

Clause 20:

Accounting Officer:

- (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 and in the case of extra-ministerial departments and corporations the 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 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 Committee and its decisions;
 - (c) ensuring that adequate appropriation is provided specifically for the procurement in the 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;
 - (g) liaison with the Bureau and ensure the implementation of its regulations.

Committee's Recommendation:

Leave out the provision in Clause 20 and insert the following instead thereof: "(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 and in the case of extra-ministerial departments and corporations the 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 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 Committee and its decisions;
 - (c) ensuring that adequate appropriation is provided specifically for the procurement in the 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;
 - (g) liaising with the Bureau to ensure the implementation of its regulations" (Senator Felix O. Ibru) — Agreed to.

Question that Clause 20 as recommended do stand part of the Bill, put and agreed to.

Clause 21:

Procurement Planning Committee:

- (1) For each financial year each procuring entity shall establish a Procurement Planning Committee;
- (2) The Procurement Planning Committee shall comprise of the following members:
 - (a) the Accounting Officer of the procuring entity or his representative who shall Chair the Committee;
 - (b) a representative of the procurement function of the procuring entity who shall be the Secretary;
 - (c) a representative of the unit directly in requirement of the procurement;
 - (d) a representative of the financial function of the procuring entity;
 - (e) a representative of the planning, research and statistics function of the procuring entity;
 - (f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement;
 - (g) a representative of the legal function of the procuring entity.

Committee's Recommendation:

Leave out the provision in Clause 21 and insert the following instead thereof: "(1) For each financial year each procuring entity shall establish a Procurement Planning Committee;

- (2) The Procurement Planning Committee shall consist of:
 - (a) the accounting officer of the procuring entity or his representative who shall chair the Committee;

- (b) a representative of:
- (i) the procurement unit of the procuring entity who shall be the Secretary,
 - (it) the unit directly in requirement of the procurement,
 - (iii) the financial unit of the procuring entity,
 - (iv) the planning, research and statistics unit of the procuring entity,
 - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
 - (vi) the legal unit of the procuring entity" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 21 as recommended do stand part of the Bill, put and agreed to.

Clause 22: Functions of **the Procurement Planning** Committee:
The functions of the Procurement Committee shall be to prepare the procurement plan in conformity with this Act by:

- (a) by preparing needs assessment and evaluation;
- (b) identify based on (a) above, the goods, works or services required;
- (c) carry out appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;
- (d) aggregate its requirement whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) prescribe any method for effecting the procurement subject to the necessary approval under this Act;
- (f) develop the tender;
- (g) advertise/solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau from time to time;
- (h) receive and prepare for evaluation any bids received in response to solicitations.

Committee's Recommendation:

Leave out the provision in Clause 22 (Senator Felix O. Ibru) — Agreed to.

Question that Clause 22 be deleted as recommended, put and agreed to.

Clause 23: Tenders Board:

1. There are hereby established by this Act in each Federal Ministry, Extra-ministerial Office/department/agency, parastatals, corporation, the armed and paramilitary service a Tenders Board (in this Act referred to as "the Tenders Board").
2. Subject to approval of Council, the Bureau shall from time to time prescribe the membership of the Tenders Board.
3. The Tenders Board shall have power to award and responsibility for procurements of goods, works and services which value exceeds One Million

4. In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation subcommittee of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chair of the Evaluation subcommittee.
5. The decision of the Tenders Board shall be confirmed by the Minister or Chief Executive of the Ministry.

Committee's Recommendation:

Leave out the provision in Clause 23 and *insert the* following instead thereof: "(1) There is hereby established by this Act in each procuring entity a tenders board (in this Act referred to as "the Tenders Board").

- (2) Subject to the approval of the Council, the Bureau shall, from time to time, prescribe guidelines for the membership of the Tenders Board.
- (3) The Tenders Board shall be responsible for the award of procurements of goods, works and services within the threshold set in the regulations.
- (4) In all cases where there is a need for pre-qualification, the Chairman of the Tenders Board shall constitute a technical evaluation subcommittee of the Tenders Board charged **with** the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall also be the Chair of the Evaluation Sub-committee.
- (5) The decision of the Tenders Board shall be communicated to the Minister for implementation" (*Senator Felix O. Ibru*) — *Agreed to.*

*Question that Clause 23 as recommended do stand part of the **Bill**, put and agreed to.*

Clause 24:

Pre-qualification of Bidders:

- (1) Where a procuring entity has made a decision **with** respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decisions as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more.
- (2) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or service provider that requests them; and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and provision to suppliers or contractors and service providers.
- (3) The pre-qualification document shall include:
 - (a) instructions to prepare and submit prequalification application;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information mat must be submitted by suppliers, contractors or service providers to demonstrate their qualifications;

- (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or service providers to prepare and submit their applications, taking into account the reasonable needs of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with this Act and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
- (4) The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.
- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or service provider to make a timely submission of its application to pre-qualify.
- (6) The response to any request that might reasonably be expected to be of interest to other supplier, contractor or service provider shall, without identifying the source of the request, be communicated to other suppliers or contractors or service providers provided with the pre-qualification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or service provider which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or service providers who have been pre-qualified,
- (8) Suppliers, contractors or service providers who have been pre-qualified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or service providers who have not been pre-qualified, the grounds for disqualification but the procuring entity is not required to specify the evidence or give the reasons for its findings.
- (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or service provider.
- (11) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or service provider has been so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so.

Committee's Recommendation:

Leave out the provision in Clause 24 and *insert* the following instead thereof: "(1) Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the pre-qualification documents and no more.

- (2) Procuring entities shall supply a set of pre-qualification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.
- (3) The pre-qualification document shall include:
 - (a) instructions to prepare and submit pre-qualification application;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or consultants to prepare and submit their applications, taking into account the reasonable need of the procuring entity; and
 - (e) any other requirement that may be established by the procuring entity in conformity with mis Act and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.
- (4) The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.
- (5) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or consultant to make a timely submission of its application to pre-qualify.
- (6) The response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity.
- (7) A procuring entity shall promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or consultants who have been pre-qualified.
- (S) Suppliers, contractors or consultants who have been pre-qualified may participate further in the procurement proceedings.
- (9) The procuring entity shall upon request communicate to suppliers, contractors or consultants who have not been pre-qualified, the grounds for disqualification.

- (10) The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant.
- (11) The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or consultant has done so to the satisfaction of the procuring entity.
- (12) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so" (*Senator Felix O. Ibru*) — *Agreed to*.

Question that Clause 24 as recommended do stand part of the Bill, put and agreed to.

PART VI — PROCUREMENT METHODS (GOODS AND WORKS)

Clause 25: Open Competitive Bidding:

- (a) Save as herein provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by Open Competitive Bidding.
- (b) Any reference to Open Competitive Bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.
- (c) Unless otherwise directed by Council, no negotiations shall be conducted with suppliers, contractors or service providers and the winning bid shall be that which is the lowest cost bidder from the bidders responsive to the bid solicitation.

Committee's Recommendation:

Leave out the provision in Clause 25 and *insert* the following instead thereof: "(1) Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.

- (2) Any reference to open competitive bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public' procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.
- (3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard" (*Senator Felix O. Ibru*) — *Agreed to*.

Question that Clause 25 as recommended do stand part of the Bill, put and agreed to.

Clause 26: Invitations to Bid:

- (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 bids shall be advertised in at least 2 national newspapers, 1 relevant internationally recognised newspapers, 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;

- (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 in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works;
- (3) Every advert of an invitation to an Open Competitive Bid shall include:
- (i) the name and address of the procuring entity;
 - (ii) the nature, quantity, category and place of delivery of goods to be procured or the nature, category, and location of the works to be procured;
 - (iii) a statement that submissions must be made only in English language;
 - (iv) the deadline for delivery nor performing the procurement;
 - (v) information about the requirements to be met by suppliers and contractors;
 - (vi) a statement of the application of domestic preferences if any;
 - (vii) the instructions for obtaining the documents containing the specifications of the essential provisions of the procurement and the price, if any, for these documents;
 - (viii) the place and deadline for the submission of the bids;
 - (ix) the place, date and time for the opening of the bids.
- (4) Every person who responds to the invitation to bid shall upon payment of any price stipulated for the bid documents, be provided with a set thereof.
- (5) If the procuring entity had previously conducted pre-qualifiers for the procurement in question, the tender documents shall be issued only to those suppliers and contractors who had pre-qualified and paid the necessary fee for the tender documents.
- (6) The price to be stipulated for any tender documents must not exceed the reasonable cost of printing, compilation and delivery of the documents plus a commensurate administrative fee.
- (7) Any person may after collecting the tender documents, request for clarifications of matters contained in the tender documents. All such requests for clarifications shall be in writing addressed to the procuring entity no later than 2 weeks before the deadline for the submission of the bids.
- (S) The response by the procuring entity shall provide a written response within a reasonable time and in any event not later than one week before the deadline for submission of bids so as to enable the supplier or contractor to make a timely submission of its bid.
- (9) The response to any requests for clarifications shall, without identifying the source of the request, be copied to all other prospective suppliers and contractors who had paid for and collected the tender documents.
- (10) At anytime before the deadline for submission of bids, the procuring entity may modify the tender documents by issuing an addendum either in response to a request for clarification or for any other reasons. The addendum shall be set in writing to all prospective suppliers and contractors who had obtained the tender documents.

- (11) A procuring entity if it finds it expedient so to do may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the tender documents. All request for clarification and the responses provided during the conference shall be recorded in the minutes of the meeting without identifying the source of the requests and the minutes shall be distributed to all suppliers and contractors.
- (12) In all such cases where addendums have been issued the procuring entity shall be obliged to extend the deadline by such a length of time as would be reasonable to allow the suppliers and contractors to consider the clarifications and or addendums to the tender documents and make the appropriate inputs to their bids. Notice of the extension shall be promptly dispatched to every supplier or contractor who had obtained the bid documents.

Committee's Recommendation:

Leave out the provision in Clause 26 and insert the following instead thereof: "(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 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,
 - (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, 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" (*Senator Felix O. Ibru*)
— *Agreed to.*

Question that Clause 26 as recommended do stand part of the Bill, put and agreed to.

Clause 27:

Bid Security:

- (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau must require a bid security in an amount not less than 5 % of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.
- (2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security:
 - (a) the requirement shall apply to each supplier or contractor;
 - (b) the tender documents shall stipulate that the issuer and confirmer of the tender security are acceptable to the procurement entity;
 - (c) notwithstanding paragraph (b), a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements in the invitation documents;

- (d) a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the procuring entity shall respond promptly to the request;
 - (e) confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.
- (4) Any requirement on bid security that refers directly or indirectly to conduct by the supplier or contractor submitting the bid may only relate to:
 - (a) withdrawal or modification of the bid after the deadline for submission of bids, or before the deadline if stipulated in the tender documents;
 - (b) failure to sign the procurement contract if required by the procuring entity to do so;
 - (c) failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.
- (5) The procuring entity shall not make a claim to the amount of the bid security and shall promptly return or procure the return of the bid security document after whichever of the following occurs first:
 - (a) the expire of the tender security;
 - (b) the entry into force of a procurement contract and the provision of security for the performance of the contract, if the security is required by the tender documents;
 - (c) the termination of the procurement proceedings without the entry into force of a procurement contract; or
 - (d) the withdrawal of the bid prior to the deadline for the submission of bids.

Committee's Recommendation:

Leave out the provision in Clause 27 and *insert* the following instead thereof: "(1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2 % of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

- (2) The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
- (3) When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 27 as recommended do stand part of the Bill, put and agreed to.

Clause 28:

Submission of Bids:

- (a) All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a SEALED envelop.

- (b) all submitted bids shall be deposited in a secured tamper-proof bid-box.
- (c) all bids must be submitted must be in English language.
- (d) the procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (e) any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.
- (f) all bids submitted shall be securely kept in a tamper-proof bid-box.
- (g) no communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Act.

Committee's Recommendation:

Leave out the provision in Clause 28 and **insert** the following instead thereof: "(1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelop.

- (2) All submitted bids shall be deposited in a secured tamper-proof bid-box.
- (3) All bids submitted shall be in English language.
- (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
- (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.
- (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Act" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 28 as recommended do stand part of the Bill, put and agreed to.

Clause 29:

Rejection of Bids:

A procuring entity may -

- (1) Reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;
- (2) Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

Committee's Recommendation:

Leave out the provision in Clause 29 and **insert** the following instead thereof:

"A procuring entity may:

- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders" (*Senator Felix O. Ibru*) — *Agreed to.*

Question that Clause 29 as recommended do stand part of the Bill, put and agreed to.

Clause 30:

Validity period of bids, modification and withdrawal of tenders:

- (a) the period of validity for a bid shall be the period specified in the tender documents.

- (b) a procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (c) a supplier or contractor may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.
- (d) a supplier or contractor may modify or withdraw **its** bid prior to the deadline for the submission of bids.
- (e) the modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

Committee's Recommendation:

Leave out the provision in Clause 30 and **insert** the following instead thereof: "(1) The period of validity for a bid shall be the period specified in the tender documents.

- (2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
- (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders" (*Senator Felix O. Ibru*) — *Agreed to*.

*Question that Clause 30 as recommended do stand part of the **Bill**, put and agreed to.*

Chairman to report **Bill**.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of Whole considered of the Report of the Committee on Establishment and Public Service Matters on the Public Procurement Bill 2007 and approved as follows:

Clauses 1 - 4	—	As Recommended
Clause 5	—	As Amended
Clauses 6 - 10	—	As Recommended
Clause 11	—	As Amended
Clauses 12-20	—	As Recommended
Clauses 21-30	—	As Recommended

Further consideration of Report deferred.

8. Closed Session:

Motion made and Question Proposed: That the Senate do resolve into a Closed Session to discuss matters relevant to the workings of the Senate (*Senate Majority Leader*) .

Question put and agreed to.

Closed Session	—	1.20 p.m.
Open Session	—	2.40 p.m.

The Senate President reported that the Senate in Closed Session discussed extensively on how to tackle the Bills and accorded priorities to Bills that require urgent attention.

9. Adjournment:

And it being 2.45 p.m. the Senate President adjourned the Senate till Thursday, 10th May, 2007 at 10.00 a.m. (*Senate Majority Leader*).

Adjourned accordingly at 2.45p.m.

Ken Nnamani, GCON
President of the Senate