



HOUSE OF REPRESENTATIVES FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Tuesday, 26 September, 2006

1. The House met at 10.00 a.m. Mr Speaker read Prayers.
2. **Votes and Proceedings:**
Mr Speaker announced that he had examined and approved the Votes and Proceedings of Thursday, 21 September, 2006.

By unanimous consent, the Votes and Proceedings was adopted.

3. **Announcements:**
(i) *Bereavement:*
Mr Speaker acquainted the House with the death of the mother of Hon. Yemi Arokodare in the following letter:



Hon. Yemi Arokodare Bsc

Ekiti Central II Federal Constituency

Chairman, House Committee on Communications

Annex Building, Rm 1,242, National Assembly Complex, Three Arms Zone. Abuja - Nigeria. Tel: 08033243535; 08023256353

21 September, 2006.

The Honourable Speaker Rt. Hon. Aminu Bello Masari House of Representatives National Assembly, Abuja.

Your Excellency,

DEATH OF MY BELOVED MOTHER MADAM LEAH OLOLUFE AROKODARE ON THE 2ND SEPT. 2006

*It is with heavy heart and gratitude to the Almighty God that I break the news to you and through your good office to my other colleagues the passing away of my Dear Mother **Madam Leah Ololufe Arokodare** on the 2nd day of September, 2006 at the age of 96.*

Your Excellency and my esteemed colleagues may wish to note that the burial has been fixed for 1st and 2nd December 2006 at Ijero Ekiti in Ekiti State.

With warm regards.

Yours sincerely

(Signed)

Hon. Yemi Arokodare

(II) Obituary:

Mr Speaker announced with regret, the death of the mother of Hon. Lynda Chuba - Ikpeazu, Member of the House of Representatives (1999 - 2003). He advised Hon. Members to contact Hon. Mercy Almona-Isei for burial arrangements.

4. Presentation of Bills:

(1 Public Officers Protection Act (Amendment) Bill, 2006 (SB. 122) — *Read the First Time.*

(ii) Equipment Leasing Bill, 2006 (SB. 76) — *Read the First Time.*

(iii) Federal College of Chemical and Leather Technology Bill, 2006 (SB. 157) — *Read the First Time.*

(iv) Institute of Democratic Legislative Studies Bill, 2006 (SB. 118) — *Read the First Time.*

5. A Bill for an Act to Repeal the Central Bank of Nigeria Act, 1991 and to Re-Enact the Central Bank of Nigeria Act, 2006 and for Matters Connected Therewith, 2006 HB. 250) — *Second Reading:*
Motion made and Question proposed, "That a Bill for an Act to Repeal the Central Bank of Nigeria Act, 1991 and to Re-Enact the Central Bank of Nigeria Act, 2006 and for Matters Connected Therewith, 2006, be now read a Second Time" (Hon. Clever Ikisikpo).

Question that the Bill be now read a Second Time, put and agreed to.

Bill read a Second Time and referred to Joint Committee on Banking and Currency and Justice.

6. A Bill for an Act to provide for the Establishment of the Federal Capital Territory Agency for Mass Education and for other Matters Connected Therewith, 2006 (HB. 260) — *Second Reading:*

Order read; deferred.

7. Consideration of Reports:

(i) Ad-Hoc Committee on Due Process:

Motion made and Question proposed, "That this House do resume consideration of the Report of the Ad-Hoc Committee on Due Process on a Bill for an Act to Provide for the Establishment of the National Council on Public Procurement; the Bureau of Public Procurement as the Regulatory Authority Responsible for the Monitoring and Oversight of Public Procurement; and to Harmonize 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 Purposes, 2004 (HB. 140) and approve the Recommendations therein" (Hon. Bala Ibn Na Allah).

Question put and agreed to.

Question that the House do resolve into the Committee of Whole to reconsider the said Report, put and agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

A BILL FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL COUNCIL ON PUBLIC PROCUREMENT; THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITY RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT; AND TO HARMONIZE 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 PURPOSES

Committee Recommendation:

Clause 37: Mobilization Fees.

- (2) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance

certificate issued in accordance with the contract agreement (Hon. *Bala Ibn Na'Allah*) ~ *Agreed to.*

Question that Clause 37 as amended, stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 38: Contract Performance Guarantee.
The provision of an advance payment guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however it shall not be less than 10% of the contract value in the case of foreign contracts and 20% in the case of local contracts (Hon. *Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 38 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 39: Interest on Delayed Payments.
(a) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.
(b) Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra Ministerial Office, government agency, parastatal or corporation shall be deemed a delayed payment.
(c) All delayed payments shall attract interest at the rate specified in the contract document.
(d) All contracts shall include terms, specifying the penalty for late payment of more than ninety days (Hon. *Bala Ibn Na'Allah*) ~ *Agreed to.*

Question that Clause 39 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 40: Record of procurement proceedings.
(1) Every procuring entity shall maintain a record of the procurement proceedings containing the following information —
(a) a brief description of the works, goods or services to be procured, or of the procurement need for which the procurement entity invited proposals or offers;
(b) the names and addresses of suppliers, contractors or service providers that submitted tenders, proposals, offers or quotations, and the names and addresses of the supplier, contractor or service providers with whom the procurement contract is entered;
(c) information relating to the qualifications, or lack of qualifications of bidders who submitted tenders, proposals, offers or quotations;
(d) the price, or the basis for determining the price and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract if these are known to the procuring entity;
(e) a summary of the evaluation and comparison of tenders, proposals, offers or quotations including the application of any margin of preference;
(f) if the tenders, proposals, offers or quotations were rejected a statement to that effect and the grounds for the rejection;
(g) if, in procurement proceedings involving methods of procurement other than open competitive bidding, those proceedings did not result in a procurement contract, a statement to that effect and the reasons;
(h) if a tender, proposal, offer or quotation was rejected pursuant to this Act, a statement of the provision in support of the rejection;

- (i) in the procurement of works, goods and services by any of the **methods** prescribed by this Act, the statement required of the grounds and circumstances on which the procurement entity relied to justify the selection procedure used;
 - (j) in procurement proceedings involving direct invitation of proposals for services, a statement of the grounds and circumstances on which the procurement entity relied to justify the direct invitation;
 - (k) in procurement proceedings in which the procurement entity limits participation on the basis of nationality and/or allows any margin of preference, a statement of the grounds and circumstances relied upon by the procuring entity for the limitation or the allowance for the margin of preference;
 - (l) a summary of any requests for clarification of the pre-qualification or invitation documents, the responses received as well as a summary of any modification of the documents;
 - (m) a record of any complaints received from suppliers, contractors or consultants and the responses sent.
- (2) Subject to Section 17 (21) the portion of the record referred to in Section 40 (1) (a) and (b) above shall, on request, be made available to any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
- (3) Subject to Section 17 (21), the portion of the record referred to in subparagraphs (c) to (g) and (1) of subsection (1) (a) above shall, on request, be made available to suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
- (4) Disclosure of the portion of the record, referred to in Sections 40 (1) (a) to (e), and (1), may be ordered at an earlier stage by a competent court; except that when ordered to do so by a competent court, and subject to the conditions of the court order, the procurement entity shall not disclose: information if its disclosure would:
- (i) be contrary to law;
 - (ii) impede law enforcement;
 - (iii) prejudice legitimate commercial interests of the parties;
- or information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations, and tenders, proposal, offer or quotation prices, other than the summary referred to in Subsection (1) (e) of this section.
- (5) The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this Section.
- (6) Records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor General upon request; and where donor funds have been used for the procurement, donor officials shall also have access upon request to procurement files for the purpose of audit and review (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 40 stand part of the Bill, put and agreed to.

PART VII - SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

Committee Recommendation:**Clause 41: Special and restricted methods of procurement.**

- (1) Notwithstanding the provisions of this Act, the Bureau may issue 'Certificates of No Objection' upon conditions hereinafter prescribed.

Two Stage Tendering.

- (2) A procuring entity shall engage in procurement by two stage tendering —
- (a) where it is not feasible for the procuring entity to formulate detailed specifications for the works or goods or, in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs;
 - (b) or where the character of the works or goods are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial liability or to recover research and development costs; where the procuring entity applies this Act to procurement concerned with national security and determines that the selected method is the most appropriate method of procurement;
 - (c) or where tender proceedings have been utilized but tenders were not submitted or the tenders were rejected by the procuring entity under an Open Competitive Bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a procurement contract.

Procedure for Two Stage Tendering.

- (3) (a) The provisions of this Act as regards the process for open competitive bidding shall apply to two stage tendering proceedings except to the extent that those provisions vary from this section.
- (b) The invitation documents —
- (i) shall call upon suppliers or contractors to submit, in the first stage of two stage tendering proceedings, initial tenders which contain their proposals without a tender price;
 - (ii) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional competence and technical qualifications of the suppliers or contractors.
- (c) The procuring entity may, in the first stage, engage in negotiations with any supplier, contractor or/and service providers whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.
- (ii) In the second stage of the two tender proceedings the procuring **entity** —
- (i) shall invite suppliers, contractors or/and service providers whose tenders have not been rejected to submit final tenders with prices on a common set of specifications;
 - () may in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out **in** those documents, evaluate and compare tenders and ascertain the successful tender;

- (iii) may add new characteristics or criteria that conform with this Act;
 - (iv) shall communicate to suppliers, contractors or/and service providers in the invitation to submit final tenders, any deletion, modification or addition; and
 - (vi) may permit a supplier, contractor or/and service provider who does not wish to submit a final tender to withdraw from the tendering proceedings.
- (e) The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in an open competitive bid *{Hon. Bala Ibn Na'Allah} — Agreed to.*

Question that Clause 41 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 42: Restrictive/Selective Tendering.

- (1) Subject to the approval of the Bureau, a procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted/selective tendering —
 - (ii) if works, goods or services are available only from a limited number of suppliers or contractors; or
 - (iii) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the works, goods or services to be procured.

Procedure for Restricted/Selective Tendering.

- (2) (a) Where a procuring entity engages in restricted tendering on the basis that the works, goods and services are available only from a limited number of suppliers or contractors, it shall invite tenders from the suppliers and contractors who can provide the works, goods or services;
- (b) Where a procuring entity engages in restricted tendering on the basis that the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the works, goods or services, it shall select in a nondiscriminatory manner a number of suppliers or contractors to ensure effective competition; contractors to ensure effective competition;
- (c) Both in case (a) and (b), the procuring entity shall cause a notice of the selected tendering proceeding to be published in the procurement journal; and
- (d) All the provisions of this Act regarding the open competitive bidding procedure shall apply to the selective tendering proceedings, except to the extent that those provisions are varied by this section."(*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 42 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 43: Request for Quotations.

- (1) A procuring entity may carry out procurement by requesting for quotations from suppliers or contractors where the value of the works, goods or services to be procured does not exceed the approval limit of the Accounting Officer.
- (2) Procedure for Obtaining Quotations—
 - (a) generally—

- (i) quotations must be obtained from at least 3 unrelated contractors or suppliers,
 - (ii) each contractor, supplier or/and service provider from whom a quotation is requested shall be informed whether any factors other than the charges for the works, goods or services themselves, such as any applicable transportation and-insurance charges, customs duties and taxes are to be included in the price,
 - (iii) each contractor or supplier shall give only one quotation and shall not be allowed to change or vary the quotation,
 - (iv) the procurement shall be awarded to the qualified contractor, supplier or/and service provider that gives the lowest priced responsive quotation;
- (b) here the total value of the procurement does not exceed the approval limit of the Accounting Officer, the procuring entity need not obtain the Bureau's approval but shall include in the record of the procurement a statement giving justification for the use of this procedure;
- (c) all the provisions of this Act regarding the open competitive bidding procedure shall apply to selective tendering proceedings, except to the extent that those provisions are varied by this section (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 43 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 44: Single Source Procurement.

- (1) Subject to the approval of the Bureau a procuring entity may engage in single source procurement:
- (a) where works, goods or services are only available from a particular supplier, contractor or/service provider, or if a particular supplier or contractor has exclusive rights in respect of the works, goods or services, and no reasonable alternative or substitute exists;
 - (b) where there is an urgent need for the works, goods or services and engaging in tender proceedings or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;
 - (c) where owing to an emergency, there is an urgent need for the works, goods or services, making it impracticable to use other methods of procurement because of the time involved in using those methods;
 - (d) where a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that —
 - (i) additional supplies need to be procured from that supplier or contractor because of standardization;
 - (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;

(e) where the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or

(f) where the procuring entity in applying the provisions of this Act for procurement that concerns national security, determines that single source procurement is the most appropriate method of procurement.

Procedure for single source procurement.

(2) (a) The procuring entity may procure the works, goods or services by inviting a proposal or price quotation from a single supplier, contractor or/and service provider.

(b) The procuring entity shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 44 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 45: Emergency Procurement.

No procuring entity shall carry out any emergency procurement without notifying the Bureau

(a) for the purpose of this Act, an emergency shall be defined as a situation where:

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

(ii) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; and

(iii) a public project may be seriously delayed for want of an item of a minor value.

(b) in emergency situations a procuring entity may engage in direct contracting of goods, works and services.

(c) all procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency;

(d) immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau which shall verify same and if appropriate issue a Certificate of 'No Objection' (*Hon. Bala Ibn Na'AHah*).

Amendment Proposed:

Retain the provision in the Principal Bill (Hon. Abdullahi Shuaibu).

Question that the amendment be made, put and agreed to. Question that Clause 45 as

amended, stand part of the Bill, put and agreed to. PART VIII — PROCUREMENT

METHOD (SERVICES)

Committee Recommendation:

Clause 46: Expressions of Interest to Provide Services for Ascertained Needs.

(1) Where a procuring entity wishes to procure services for its needs which are precise and ascertainable —

- (a) generally, it shall solicit for expressions of interest or applications to pre qualify to provide the services by publishing a notice to that effect in at least 2 national newspapers and the Federal Tender Journal;
- (b) however, where the value of the services **to** be procured is less than approved by the Accounting Officer, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the procuring entity may without placing a notice under subsection (1) above, request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - {i} a statement of qualifications of the consultant to provide the service;
 - (ii) a statement **of** understanding of the procuring entity's needs; (iii) the methodology for providing the service; (iv) the time frame for providing the service; and
 - (v) the cost/fee for the service (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 46 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 47: Request for Proposals to Provide Services for Unascertained Needs.

- (1) A procuring entity wishing to procure services for its needs may do so by requesting for proposals when—
 - (i) it is not feasible to formulate detailed specifications of the services or to identify their characteristics; or
 - (ii) it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.
- (2) Procuring entities shall procure the services of consultants by soliciting for expressions of interest to submit proposals or to pre qualify to submit proposals by publishing a notice to that effect in 2 national newspapers and the Federal Tender Journal.
- (3) Procuring entity may make direct requests to a limited number of service providers, requesting proposals for the provision of a service if—
 - (i) the services are only available from no more than 3 service providers; or
 - (ii) **the** time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough service providers to ensure transparent competition; or
 - (iii) it is in the interest of national defence and security or similar reason of confidentiality (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 41 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 48: Content of the Requests for Proposals.

- (1) Request for proposals must include—
 - (i) the name and address of the procurement entity;

- (ii) a requirement that the proposals are to be prepared in the English language;
 - (iii) the manner, place and deadline for the submission of proposals;
 - (iv) a statement to the effect that the procuring entity reserves the right to reject proposals;
 - (v) a criteria and procedures for the evaluation of the qualifications of the service providers;
 - (vi) the requirements on documentary evidence or other information that shall be submitted by service provider to demonstrate their qualifications;
 - (vii) the scope, nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
 - (viii) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
 - (ix) a requirement that the proposal price is to be expressed in Nigerian currency;
 - (x) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
 - (xi) whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals ;
 - (xii) the criteria to be used to determine the successful proposal, including any margin of preference and the relative weight of the criteria;
 - (xiii) a statement on alternatives to the characteristics of the services to be provided, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;
 - (xiv) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from service providers in connection with the procurement proceedings, without the intervention of an intermediary,
 - (xv) the means by which service providers may seek clarification on the invitation for proposals and a statement whether the procurement entity-intends to convene a meeting of service providers; and
 - (xvi) the terms and conditions of the service contract and the contract form to be signed by the parties.
- (2) The procuring entity shall provide the same information to every consultant or service provider requested to submit proposals (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 48 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 49: Clarification and modification of requests for proposals.

- (1) A service provider may request clarification of the request for proposals from the procuring entity and where such a request is made, the procuring entity shall —

- (i) where the clarification is sought more than 14 days before the deadline for submissions respond to the request within 7 days and shall, without identifying the source of the invitation, simultaneously communicate the clarification to the other service providers to whom the procurement entity has provided the invitation for proposals;
- (2) where the clarification is sought less than 14 days to the deadline for the submission of proposals respond promptly and early enough to enable the service provider make a timely submission of its proposal and shall, without identifying the source of the invitation, simultaneously communicate the clarification to the other service providers to whom the procurement entity has provided the invitation for proposals.
- (2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a service provider, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.
- (3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed service providers to whom the procuring entity has provided the request for proposals and shall be binding on those service providers.
- (4) If the procuring entity convenes a meeting of service providers, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.
- (5) The minutes shall be provided promptly before the deadlines for the submission of proposals to the service providers participating in the selection proceedings to enable them take the minutes into account in preparing their proposals (*Hon. Bala Ibn Na'Allah*) — *Agreed to*.

Question that Clause 49 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 50: Submission of Proposals.

- (1) The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than 30 days between the issue of the notice or request and the deadline for submission.
- (2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.
- (3) Any proposal received after the deadline for submission of proposals shall be returned to the sender unopened.
- (4) Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid box until they are opened publicly.
- (5) The technical evaluation committee shall not have access to or insights to the financial proposals until the evaluations including any Tenders Board review are concluded (*Hon. Bala Ibn Na'Allah*) — *Agreed to*.

Question that Clause 50 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 51: Criteria for Evaluation of Proposals.

- (1) The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals. The criteria may concern only the following —

- (a) the qualifications, experience, reliability, professional and managerial competence of the service provider and the personnel to be involved in providing the services;
- (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposed price, subject to any margin of preference applied, including any ancillary or related costs;
- (d) the effect that the acceptance of the proposal will have on the balance of payments position and foreign reserves of the government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
- (e) national defence and security considerations.

- (2) A procuring entity may accord a margin of preference for domestic service providers, which shall be calculated in accordance with the guidelines as issued from time to time by the Bureau and shall be reflected in the record of the procurement proceedings (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 51 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 52: General Selection Procedure (Services).

- (1) The procuring entity shall select the successful proposal by either—
 - (i) choosing the proposal with the lowest price or;
 - (ii) choosing the proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (2) The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures in (1) above.
- (3) Nothing in this section shall prevent the procuring entity from resorting to the use of an impartial panel of experts to make the selection (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 52 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 53: Procedure for Selection of Proposal where Price is a factor.

- (1) Where the procuring entity elects to choose the successful proposal based on price only, it shall —
 - (i) establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals; and then
 - (ii) the procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold;

- (iii) the procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 days after the decision has been taken by the procurement entity;
- (iv) the procuring entity shall then invite the qualifying service providers for the opening of their financial proposals on a set date and time for all the service providers;
- (v) the name of the qualifying service providers, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each service provider when the financial proposals are opened;
- (vi) the procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.
- (vii) the successful proposals shall be —
 - (a) the proposals with the best combined evaluation in terms of the criteria established under Subsection (1) above from price in the case of quality and cost based selection, or
 - (b) the proposal with the lowest price in the case of least cost selection, or
 - (c) the highest ranked technical proposal within the budget;
- (viii) the service providers with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals;
- (ix) proposed unit rates for man hours/man months and reimbursable shall not be negotiated unless there are exceptional reasons (*Hon. Bala Ibn Na'Allah*) — *Agreed to*.

Question that Clause 53 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 54: Selection procedure where price is not a factor.

- (1) Where the procuring entity elects to make a quality based selection, based on service provider's qualifications or single source selection, it shall engage in negotiations with service providers in accordance with this section.
- (2) The procurement entity shall —
 - (i) establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals;
 - (ii) invite for negotiations on the price of its proposal, the service provider that has attained the best ranking in accordance with subsection (a) above;
 - (iii) inform the service providers that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the service provider with the best ranking do not result in a procurement contract;
 - (iv) inform the consultant with the best ranking, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that service provider, invited under Subsection (b), will not result in a procurement contract.

- (3) The procuring entity shall, if negotiations with the service provider with the best rating fails, invite the service provider that obtained the second best rating, and if the negotiations with that service provider do not result in a procurement contract, the procuring entity shall invite the other service providers for negotiations on the basis of their ranking until it arrives at a contract or rejects the remaining proposals.
- (4) The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing service providers (*Hon. Bala Ibn Na'Allah*) ~ Agreed to.

Question that Clause 54 stand part of the Bill, put and agreed to.

PART IX - PROCUREMENT SURVEILLANCE AND REVIEW

Committee Recommendation:

Clause 55: Investigations by the Bureau.

- (1) The Bureau may conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent or detect a contravention of this Act.
- (2) The Bureau may in the course of the investigation —
 - (a) at any time during normal office hours, enter the premises of the procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceedings under investigation;
 - (b) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts or documents;
 - (c) search premises for any books, records, accounts or documents;
 - (d) examine and make extracts from and copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
 - (e) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
 - (f) require an officer, employee or agent of the procurement entity or bidder, supplier, or contractor or consultant:
 - (i) to explain an entry in the books, records, accounts or documents;
 - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.
- (3) The powers of investigation conferred by Subsection (2) (a) - (f) of this section shall not be exercised except the Bureau has first obtained an order of the Federal High Court.
- (4) The Bureau shall, if satisfied that there has been a contravention of the provision of this Act or any guidelines in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include—
 - (a) nullification of the procurement proceedings;
 - (b) cancellation of the procurement contract;
 - (c) ratification of anything done in relation to the proceedings.

- (5) On completion of investigation, the Bureau shall send a summary of its findings and recommendations to the procuring entity and to any bidder, supplier, contractor or consultant whose conduct was the subject of the investigation.
- (6) The Bureau shall afford any procuring entity, bidder, supplier, contractor or/service provider adequate opportunity to make representations in a matter, before taking any action in terms of Subsections (4) and (5) which may adversely affect the rights or property of that person (*Hon. Bala Ibn Na'Allah*).

Amendment Proposed:

Leave out the entire provisions in the Clause (Hon. C. I. D. Maduabum).

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

Committee Recommendation:

Clause 56: Administrative Review.

- (1) Any bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Act, or any regulations or guidelines made under this Act or of the provisions of bidding documents.
- (2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Accounting Officer who shall —
 - (a) on reviewing a complaint, the accounting officer shall make a decision in writing within fifteen working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for this decision;
 - (b) where the Accounting Officer does not make a decision within the period specified in Subsection (2) (a); or
 - (c) the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Bureau within ten days from the date of communication of the decision of the Accounting Officer.
- (3) Upon receipt of a complaint —
 - (a) the Bureau shall promptly give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;
 - (b) the Bureau shall, unless it dismisses the complaint —
 - (i) prohibit a procuring or disposing entity from taking any further action, and/or
 - (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity,
 - (iii) declare the rules or principles that govern the subject matter of the complaint,
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (4) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (5) The Bureau shall make its decision within twenty one days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.

- (6) Where the bidder is not satisfied with decision of the Bureau the bidder may apply to the Federal High Court within 30 days after the receipt of the decision of the Bureau for Judicial review (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 56 stand part of the Bill, put and agreed to.

PART X - DISPOSAL OF PUBLIC PROPERTY

Committee Recommendation:

Clause 57:

Disposal of Public Property.

- (1) This section shall apply subject to the Public Enterprises (Privatisation and Commercialisation) Act, 1999.
- (2) For the purposes of this Act every procuring entity shall also be a disposing entity.
- (3) Open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale.
- (4) The Bureau shall with approval of Council —
 - (a) determine the applicable policies and practices in relation to the disposal of all public property;
 - (b) issue guidelines detailing operational principles and organisational modalities to be adopted by all procuring entities engaged in the disposal of public property;
 - (c) issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.
- (5) For the purposes of this Act, public property is defined as resources in the form of tangible and non tangible assets (ranging from serviceable to the unserviceable) —
 - (a) created through public expenditure;
 - (b) acquired as a gift or through deeds;
 - (c) acquired in respect of intellectual or proprietary rights;
 - (d) acquired on financial instruments (including shares, stocks, bonds, etc.); and
 - (e) acquired by good will and any other rights of the Federal Government.
- (6) The means of the disposal of public assets shall include but not limited to —
 - (a) sale and rental;
 - (b) lease and hire purchase;
 - (c) licences and tenancies;
 - (d) franchise aid auction;
 - (e) transfers from one government department to another with or without financial adjustments; and
 - (f) offer to the public at an authorised variation (*Hon. Bala Ibn Na'Allah*).

Amendment Proposed:

Leave out the provision in subclause (2) (Hon. Almajiri Geidam).

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

Question that Clause 57 as amended, stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 58: **Planning** of Disposals.

- (1) Before slating any public property for disposal, the Accounting Officer (whether acting in his own authority or at tile direction of any superior or other authority) in charge of any public property set for disposal shall authorise the preparation of a valuation report for such property by an independent Evaluator, or such professional with the appropriate competence to carry out the valuation.
- (2) Disposal of assets whether or not listed in the Assets register of a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.
- (3) The disposal of assets referred to in Subsection (2) of this section shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximise revenue accruing to the government,
- (4) All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board {*Hon. Bala Ibn Na 'Allah*} — *Agreed to.*

Question that Clause 58 stand part of the Bill, put and agreed to.

PART XI — CODE OF CONDUCT

Committee Recommendation:

Clause 59: **Code of Ethics.**

- (1) The Bureau shall with approval of Council stipulate a Code of Ethics for all public officers, suppliers, contractors and service providers with regards to their standards of conduct acceptable in matters involving the procurement and disposal of public assets.
- (2) The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
- (3) All officers of the Bureau, members of tender boards and other persons that may come to act regarding the conduct of public procurement shall subscribe to an oath as approved by Council.
- (4) All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilisation should be judicious.
- (5) Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.
- (6) These principles shall apply at all times, particularly when —
 - (a) making requisition for/planning of procurement;
 - (b) preparing solicitation documents;
 - (c) receiving any offers in response to any form of solicitations towards a procurement or disposal;
 - (d) evaluating and comparing offers confidentially and in complete neutrality;

- (e) protecting the interest of all parties without fear or favour, affection or ill-will; and
 - (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.
- (7) All public officers shall handle public procurement and disposal of assets by —
 - (a) ensuring adequate time for preparing offers;
 - (b) complying with this Act and all derivative guidelines; and
 - (c) maintaining strict confidentiality until completion of a contract.
- (8) All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationships with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.
- (9) Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall —
 - (a) divest himself of any interests or relationships which are actually or potentially inimical or detrimental to the best interests of government and the underlining principles of this Act; and
 - (b) not engage or participate in any commercial transaction involving the Federal Government, its Ministries, Extra Ministerial Departments and Corporations.
- (10) Any person engaged in the public procurement and disposal of assets who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.
- (11) Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that a conflict of interest is present remedial action is taken.
- (12) A conflict of interest exists where a person —
 - (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of Government;
 - (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or construed to be, or make possible personal gain due to the person's ability to influence dealings;
 - (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgements;
 - (d) places by acts and omissions the procuring entity he represents or the Government in an equivocal, embarrassing or ethically questionable position;
 - (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the Government;
 - (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the Government;

- (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and
 - (h) discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons.
- (13) A person involved in the disposal of assets, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal (*Hon. Bala Ibn Na 'Allah*) ~ Agreed to.

Question that Clause 59 stand part of the Bill, put and agreed to.

PART XII — OFFENCES

Committee Recommendation:

Clause 60: Offences relating to Public Procurement.

- (1) Any natural person not being a public officer who contravenes any provision of this Act commits an offence and is liable on conviction to a term of imprisonment not less than 3 calendar years but not exceeding 5 calendar years.
- (2) Any offence in contravention of this Act shall be tried by the Federal High Court and the State High Courts.
- (3) Prosecution of offences under this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney General of the Federation or such other officer of the Federal Ministry of Justice as he may authorise so to do, and in addition, without prejudice to the Constitution of the Federal Republic of Nigeria, 1999, he may —
 - (a) after consultation with the Attorney General of any State of the Federation, authorise the Attorney General or any other officer of the Ministry of Justice of that State; or
 - (b) if the Bureau so requests, authorise any legal practitioner in Nigeria to undertake such prosecution directly or assist therein.
- (4) The following shall also constitute offences under this Act —
 - (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case has there not been collusion between the persons concerned;
 - (b) to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions;
 - (c) directly, indirectly, or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
 - (d) splitting of tenders to enable the evasion of monetary thresholds set;
 - (e) bid rigging;
 - (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
 - (g) altering or using fake documents;
 - (h) willful refusal to allow the Bureau or its officers to have access to any procurement records.

- (5) Any person whilst carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative punishment of —
- (a) debarment from all public procurement for a period not less than 5 years;
 - (b) a fine of not less than 5% of the value of procurement in issue.
- (6) Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of —
- (a) debarment from all public procurement for a period not less than 5 calendar years.
 - (b) a fine equivalent to the value of the procurement in issue.
- (7) Where any legal person convicted pursuant to Subsection (4) above, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than 3 years but not exceeding 5 years.
- (8) An alteration pursuant to Subsection (4) *if* above shall include but is not limited to
- (a) falsification of documents;
 - (b) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening;
 - (c) request for clarification in a manner not permitted under this Act.
- (9) Collusion shall be presumed from a set of acts from which it can be inferred that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the strict and proper application of the provisions of this Act.
- (10) Bid rigging pursuant to Subsection (4) *(e)* means an agreement between persons whereby —
- (a) offers submitted have been prearranged between them; or
 - (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and/or loss of value to the national treasury.
- {11} For the purposes of the inference under Section 60 (7) above, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial; directly or indirectly.
- (12) For the purposes of Section 60 (5) above, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company/firm having an undue advantage over other bidders to the detriment of the national Treasury (*Hon. Bala Ibn Na 'Allah*).

Amendments Proposed:

- (i) In subclause (1), line 3, immediately after the figure "3" *leave out* the word "calender" and the words "not exceeding 5 calendar years" (*Hon. Ita Enang*).

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

- (ii) In subclause (2), line 2, immediately after the word "Courts" *insert* the following "and the High Court of the Federal Capital Territory" (*Hon. ita Enang*)

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

- (in) In subclause (7), line 1, immediately after the word "above", *leave out* the words "every director" and *insert* the words "the management" instead thereof (*Hon. Terngu Tsegbc*).

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

- (iv) In subclause (7), line 4, immediately after the word "years", *leave out* the words "but not exceeding 5 years" — *Consequential amendment*.

Question that Clause 60 as amended, stand part of the Bill, put and agreed to.

PART XIII - MISCELLANEOUS

Committee Recommendation:

Clause 61: Fixing of seal.

- (1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Director General or of any other person authorised generally or specially to act for that purpose by the Council.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Bureau by the Director General or any person generally or specially authorised to act for that purpose by the Council.
- (3) Any document purporting to be a document dully executed under the seat of the Bureau shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.
- (4) The validity of any proceeding of Council or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Council or committee, or by any defect in the appointment of a member of the Council or of a committee, or by reason that a person not entitle to do so took part in the proceedings of the Council or committee (*Hon. Bala Ibn Na 'Allah*) — *Agreed to*.

Question that Clause 61 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 62: Interpretation.

In this Act unless the context otherwise authorises —

¹¹ "Accounting Officer" means the Permanent Secretary, Director-General or Chief Executive of any other government agency or parastatals (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "Accounting Officer" shall be as defined in the interpretation to this Act, put and agreed to.

"approving authority" is the person charged with overall responsibility for the functioning of a ministry, extra ministerial department or corporation (*Hon. Bala Ibn Na Allah*).

Question that the meaning of the words "approving authority" shall be as defined in the interpretation to this Act, put and agreed to.

"assets" includes tangible and intangible things which have been or may be sold or procured for consideration (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "assets" shall be as defined in the interpretation to this Act, put and agreed to.

"bid security" means a form of security assuring that the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "bid security" shall be as defined in the interpretation to this Act, put and agreed to.

"blacklist" means the placing of a firm company or natural person on a list of persons ineligible to participate in any procurement proceedings under this Act (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "blacklist" shall be as defined in the interpretation to this Act, put and agreed to.

"Certificate of No Objection" means the document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors, suppliers or service providers from the Treasury (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "certificate of No objection" shall be as defined in the interpretation to this Act, put and agreed to.

"Contract" means an agreement entered in writing (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "contractor" shall be as defined in the interpretation to this Act, put and agreed to.

"contractor, supplier or service provider" means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "contractor, supplier or service provider" shall be as defined in the interpretation to this Act, put and agreed to.

"excessive price" means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration the actual value of the item in question plus all reasonable computation of cost and profit (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "excessive price" shall be as defined in the interpretation to this Act, put and agreed to.

"goods" means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods or as defined by the Sale of Goods Act (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "goods" shall be as defined in the interpretation to this Act, put and agreed to.

"Interim Performance Certificates" means evidence that a contractor or supplier has performed its obligations under a procurement contract up to a level stipulated in the service provider but not meaning completion (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "interim performance certificates" shall be as defined in the interpretation to this Act, put and agreed to.

"lowest cost evaluated qualified bidder" means the bidder who has offered the lowest evaluated cost to the procuring entity and has fulfilled all other requirements of effectively performing the procurement stipulated in the bid solicitation (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "lowest cost evaluated qualified bidder" shall be as defined in the interpretation to this Act, put and agreed to.

"Margin of Preference" means the extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price (*Hon. Bala Ibn Na 'Allah*).

Question that the meaning of the words "margin of preference" shall be as defined in the interpretation to this Act, put and agreed to.

"Minor Value" means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Council (*Hon. Bala Ibn Na 'Allah*).

Question that the meaning of the words "minor value" shall be as defined in the interpretation to this Act, put and agreed to.

"Monetary threshold" means the value limit in Naira set by the Council outside of which an approving authority may not award a procurement contract (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "monetary threshold" shall be as defined in the interpretation to this Act, put and agreed to.

"National Competitive Bidding" means the solicitation of bids from domestic contractors, suppliers or service provider registered or incorporated to carry on business under the Nigeria Law (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "National competitive bidding" shall be as defined in the interpretation to this Act, put and agreed to.

"negotiation" means discussions to determine the, terms and conditions of a contract or procurement (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "negotiation" shall be as defined in the interpretation to this Act, put and agreed to.

"open competitive bidding" means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services; "procurement" means acquisition (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "open competitive bidding" shall be as defined in the interpretation to this Act, put and agreed to.

"procurement proceedings" means the initiation of the process of effecting a procurement up to award of a procurement contract (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "procurement proceedings" shall be as defined in the interpretation to this Act, put and agreed to.

"procuring entity" means any public body engaged in procurement and includes a Ministry, Extra Ministerial Office, government agency, parastatal and corporation and such other agency or parastatal as may be established by the Federal Government of Nigeria (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "procuring entity" shall be as defined in the interpretation to this Act, put and agreed to.

"public procurement" means the acquisition by any means of works, goods or services by the government (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "public procurement" shall be as defined in the interpretation to this Act, put and agreed to.

"services" means the rendering by a contractor, supplier or service provider of his time and effort and includes any object of procurement other than goods, works or construction (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "services" shall be as defined in the interpretation to this Act, put and agreed to.

"service provider" means any person or group of persons including corporations who provides professional, consultancy or any other service of special nature (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "service provider" shall be as defined in the interpretation to this Act, put and agreed to.

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

Question that the meaning of the words "solicitation documents" shall be as defined in the interpretation to this Act, put and agreed to.

"special purpose goods" means any objects of armaments ammunition mechanical electrical equipment or other thing as may be determined by the President needed by the armed forces or Police Force as well as the services incidental to the supply of the objects (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "special purpose goods" shall be as defined in the interpretation to this Act, put and agreed to.

"substantially responsive" means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "substantially responsive" shall be as defined in the interpretation to this Act, put and agreed to.

"supplier" means a real or legal person that provides supply of goods, contracting of works or consultants (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the word "supplier" shall be as defined in the, interpretation to this Act, put and agreed to.

"validity period" means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid (*Hon. Bala Ibn Na'Allah*).

Question that the meaning of the words "validity period" shall be as defined in the interpretation to this Act, put and agreed to.

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

Question that the meaning of the word "works" shall be as defined in the interpretation to this Act, put and agreed to.

Question that Clause 62 stand part of the Bill, put and agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported to that the House in the Committee of Whole considered the Report of the *Ad-Hoc* Committee on Due Process on a Bill for an Act to Provide for the Establishment of the National Council on Public Procurement; the Bureau of Public Procurement as the Regulatory Authority Responsible for the Monitoring and Oversight of Public Procurement; and to Harmonize 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 Purposes, 2004. It amended Clause 37, approved Clauses 38, 39, 40, 41, 42, 43 and 44, amended Clause 45, approved Clauses 46, 47, 48, 49, 50, 51, 52, 53, 54, deleted Clause 55, approved Clause 56, amended Clause 57, approved Clauses 58, 59, amended Clause 60, approved Clauses 61, 62 and 63.

Question that the House do adopt the Report of the Committee of Whole, put and agreed to.

(ii) *Joint Committee on Finance and Justice:*

Motion made and Question proposed, "That this House do consider the Report of the Joint Committee on Finance and Justice on a Bill for an Act to Amend the Personal Income Tax Act, 2004 and for Matters Connected Therewith, 2005 (HB. 174) and approve the Recommendations therein" (Hon. Bala IbnNa'Allah).

Question put and agreed to.

Question that the House do resolve into the Committee of Whole to consider the Report, put and agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

A BILL FOR AN ACT TO AMEND THE PERSONAL INCOME TAX ACT AS AMENDED AND FOR MATTERS CONNECTED THEREWITH

Amendment of the Principal Act.

Committee Recommendation:

The Personal Income Tax Act (in this Act referred to as "the Principal Act") is amended as set out in this Act (Hon. Abdullahi Umar) — *Agreed to.*

Amendment of Section 2:

Committee Recommendation:

Section 2 of the principal Act is amended in subsection (8) thereof by inserting immediately after the word "allowances" the words "including benefits in kind" (Hon. Abdullahi Umar) ~ *Agreed to.*

Section 2 as amended, ordered to stand part of the Act.

Amendment of Section 3;

Committee Recommendation:

Section 3 of the principal Act is amended —

(a) in paragraph (b) of subsection (1) by substituting therefor the following new paragraph, that is —

(b) any **salary**, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to an employee other than so much of any sums as may be admitted by the relevant tax authority to represent reimbursement to the employee or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain".

(b) by substituting therefor the following new paragraph, that is —

"(e) any charge or **annuity**;" (Hon. Abdullahi Umar) — *Agreed to.*

Section 3 as amended, ordered to stand part of the Act.

Amendment of Section 33:

Committee Recommendation:

Section 33 of the Principal Act is amended by substituting therefor the following new section, that is —

(1) There shall be allowed a consolidated relief of N200,000.00 plus 20 percent of the gross emolument and the balance shall be taxable in accordance with the income table in the Sixth Schedule to this Act provided that statutory deduction for National Housing Fund and National Health Insurance scheme as may be provided for by the employer shall be tax deductible

- (2) For the purposes of this section, "gross emoluments" means wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 33 as amended, ordered to stand part of the Act.

Amendment of Section 47:

Committee Recommendation:

Section 47 of the principal Act is amended —

- (a) in subsection (1) thereof by deleting —
- (i) the words " including a person charged with the administration of the FSB International Plc" occurring in the proviso to the subsection, and
 - (ii) the punctuation marks occurring immediately before and immediately after the words specified in subparagraph (i) of this paragraph; and
- (b) in subsection (3) thereof by substituting for the amounts "N5,000" and "N500" respectively, the amounts "N500,000" and "N50,000" respectively (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 47 as amended, ordered to stand part of the Act.

Amendment of Section 49:

Committee Recommendation:

Section 49 of the principal Act is amended —

- (a) in subsection '1) thereof by deleting —
- (0 the words" including a person charged with the administration of the FSB International Plc", and
 - (ii) the punctuation marks occurring immediately before and immediately after the words specified in subparagraph (i) of this paragraph;
- (b) in subsection (2) thereof by deleting —
- (i) the words "and a person charged with the administration of the FSB International Bank Plc" occurring in the second and third lines of the subsection,
 - (ii) the punctuation marks occurring immediately before and immediately after the words specified in subparagraph (i) of this paragraph,
 - (iii) the words "including any person charged with the administration of the FSB International Bank Plc occurring in the first and second lines of the proviso to the subsection (2) thereof, and
 - (iv) the punctuation marks occurring immediately before and immediately after the words specified in subparagraph (iii) of this paragraph; and
- (c) in subsection (3) thereof by substituting for the amounts "N5,000" and "N500, respectively, the amounts "N500,000" and "N50,000" respectively (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 49 as amended, ordered to stand part of the Act.

Amendment of Section 52

Committee Recommendation:

Section 52 of the principal Act is amended in subsection (1) thereof by substituting therefor the following new subsection, that is —

- (1) If a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purpose of the tax —
- (a) such a taxable person other than those in salary employment shall be liable to a penalty of N50,000; and

- (b) the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts, in such form and in such language as may be specified in the notice and, subject to the provisions of subsection (2) of this section, the person shall keep the records, books and accounts as so directed" (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 52 as amended, ordered to stand part of the Act.

Amendment of Section 70:

Committee Recommendation:

Section 70 of the principal Act is amended in subsection (5) thereof by deleting the words "or charged with the administration of the FSB International Plc" (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 70 as amended, ordered to stand part of the Act.

Amendment of Section 73:

Committee Recommendation:

Section 73 of the principal Act is amended in subsection (4) thereof by substituting for the words "but only to the extent that the total of those deductions does not exceed the amount of assessment" the words "except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within 90 days, except if it is a final tax, after the assessment has been duly filed, with the option of setting off against future tax by the Tax Payer" (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 73 as amended, ordered to stand part of the Act.

Amendment of Section 74:

Committee Recommendation:

Section 74 of the Principal Act is amended by substituting therefor the following new section, that is —

Any person or body corporate who, being obliged to deduct tax under sections 69, 70, 71 or 72 of this Act, fails to deduct, or having deducted, fails to remit such deductions to the relevant tax authority within 30 days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of the amount of the tax not deducted or remitted in addition to the amount of tax not deducted or remitted plus interest at the prevailing minimum re-discount rate of the Central Bank of Nigeria" (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 74 as amended, ordered to stand part of the Act.

Amendment of Section 81:

Committee Recommendation:

Section 81 of the principal Act is amended —

- (a) by inserting immediately after the existing subsection (1) the following new subsections (2) and (3), that is —
- "(2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to his or its employees, not later than 31st January, of every year in respect of all employees in his or its employment in the preceding year.
- (3) Any employer who contravenes the provisions of this section shall be liable to a penalty of N500,000:00 in the case of a body corporate and N50,000:00 in the case of an individual".
- (b) by renumbering the existing subsections (2), (3), (4), (5) and (6) as subsections (4), (5), (6), (7) and (8) respectively (*Hon. Abdullahi Umar*) — *Agreed to*.

Section 81 as amended, ordered to stand part of the Act.

Amendment of Section 85:

Committee Recommendation:

Section 85 of the principal Act is amended —

- (a) in subsection (4) thereof by inserting immediately after the existing paragraph(s) the following new paragraphs (t) and (u), that is —
- (t) for change of ownership of vehicle by the vendor; (u)
- application for plot of land; and

- (b) in subsection (7) thereof by substituting for the amount of N500 the amount of N50,000 (*Hon. Abdullahi Umar*) — Agreed to.

Section 85 as amended, ordered to stand part of the Act.

Insertion of New Section 86:

Committee Recommendation:

Section 86 of the principal Act is amended in subsection (3) by substituting the words "Federal Civil Service Commission" with the words "Joint Tax Board" (*Hon. Abdullahi Umar*) — Agreed to.

New Section 86, ordered to stand part of the Act.

Amendment of Section 88:

Committee Recommendation:

Section 88 of the principal Act is amended in paragraph (6) of subsection (1) thereof by

- (a) substituting for the semicolon {;} at the end of paragraph (b) a colon (:); and
- (b) inserting the following proviso at the end of the said paragraph, that is -

"Provided that an amount of not less than 3 per cent of revenue collected as may be approved by a State House Assembly shall be retained by the State Board of Internal Revenue to defray cost of collection and administration" (*Hon. Abdullahi Umar*).

Amendment proposed:

Leave out the proviso in the Section (Hon. Tsegba Terngu).

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

Section 88 as amended, ordered to stand part of the Act.

Amendment of Section 95:

Committee Recommendation:

Section 95 of the principal Act is amended in subsection (1) thereof by substituting for the words "a fine of 10 per cent" the words "a fine of N20,000" (*Hon. Abdullahi Umar*) — Agreed to.

Section 95 as amended, ordered to stand part of the Act.

Amendment of Section 96:

Committee Recommendation:

Section 96 of the principal Act is amended in subsection (1) by substituting —

- (a) for the words "a penalty of N5,000 or imprisonment for five years" the words "a penalty of N50,000 or to imprisonment for not more than 6 months"; and
- (b) for the amount "N1,000" occurring in the proviso to subsection (1) the amount "N10,000" (*Hon. Abdullahi Umar*) — Agreed to.

Section 96 as amended, ordered to stand part of the Act.

Amendment of the Third Schedule:

Committee Recommendation:

The Third Schedule to the principal Act is amended —

- (a) by deleting paragraphs 2 and 3 thereof;
- (b) in paragraph 14 thereof by —
- (c) inserting immediately before the existing paragraph, the following new subparagraph (a), that is —
- "pensions granted to any person pursuant to any enactment or law for the time being in force; and
- (ii) by renumbering the existing paragraph 14 as subparagraph (b) thereof.

New Provision:

The Third Schedule to the principal Act is amended—

by deleting paragraph 7 (b)

Replace the words "Pension Act" with the words "Pension Reform Act 2004" in paragraph 15 (*Hon. Abdullahi Umar*) — *Agreed to.*

Third Schedule as amended, ordered to stand part of the Act.

Amendment of Section 104:**Committee Recommendation:**

Section 104 of the principal Act is amended by substituting thereof the following new section, that is —

- (1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this Part of this Act, or has been served on the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may in **the** prescribed form, for the purpose of enforcing payment of the tax due—
 - (a) distrain the tax payer by his goods, other chattels, bond or other securities;
 - (b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form prescribed by the relevant tax authority,
- (3) For the purpose of levying any distress under this section, an officer duly authorised by the relevant tax authority shall apply to a Judge of a High Court sitting in Chambers under oath for the issue of a warrant under this section.
- (4) The Judge of the High Court may on application made *ex-parte* authorise such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.
- (5) The distress taken pursuant to this section may, at the cost of the owner thereof, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to the distress are not paid, the same may be sold.
- (6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distress, and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained upon demand being made within one year of the sale or shall thereafter be forfeited.
- (7) In exercise of the powers of distress conferred by this section, the person to whom the authority is granted under subsection (4) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.
- (8) Nothing in this section shall be construed as authorising the sale of any immovable property without an order of a court of competent jurisdiction." (*Hon. Abdullahi Umar*) — *Agreed to.*

Section 104 as amended, ordered to stand part of the Act.

Insertion of New Section 106A:**Committee Recommendation:**

The principal Act is amended by inserting immediately after the existing section 106 the following new section 106A, that is —

- (1) The Minister may, on the recommendation of the Service, make regulations generally for giving full effect to the provisions of this Act.

- (2) The National Assembly may upon a proposal by the President impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in section 40 and Second Schedule of this Act in accordance with section 59 (2) of the 1999 constitution (*Hon. Abdullahi umar*) — *Agreed to.*

New Section 106A ordered to stand part of the Act.

Amendment of the Sixth Schedule:

Committee Recommendation:

The Sixth Schedule to the principal Act is amended by substituting therefor the following new Schedule, that is —

SIXTH SCHEDULE

INCOME TAX TABLE

1. A consolidated relief allowance shall be granted on income at a flat rate of N200,000.00 plus 20 per cent of gross emolument.
2. After the relief allowance has been granted in accordance with paragraph 1 of this Schedule, the balance of income shall be taxed as specified in the following tax table provided that statutory deduction for National Housing Fund and National Health Insurance Scheme as may be provided for by the employer at the termination or expiration of employment shall be tax deductible.

Income to be taxed Per cent Rates of Tax First

N200,000@5% Next N600,000 @ 10% **Next N**

1,200,000@ 15 %

Above N2,000,000 @ 20% (*Hon. Abdullahi umar*) - *Agreed to. Sixth*

Schedule as amended, ordered to stand part of the Act,

Short Title:

Committee Recommendation:

This Act may be cited as the Personal Income Tax (Amendment) Bill, 2006 (*Hon. Abdullahi umar*) — *Agreed to.*

Short Title as amended, ordered to stand part of the Act.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in the Committee of Whole, considered the report of the Joint Committee on Finance and Justice on a Bill for an Act to Amend the Personal Income Tax Act, 2004 and for Matters Connected Therewith, 2005. It approved the amendment of Sections 1, 2, 3, 33, 47, 49, 52, 70, 73, 74, 81, 85, 86, amended Section 88, approved Section 95, 96, the Third Schedule, Section 104, 106A and the Sixth Schedule.

Question that the House do adopt the Report of the Committee of Whole, put and agreed to.

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8. Adjournment:

That this House do now adjourn till Wednesday, 27 September, 2006 at 2.00 p.m. (Hon. Gilbert Nnaji).

Adjourned accordingly at 12.43 p.m.

Aminu Bello Masari
Speaker

JOURNEYS ABROAD AND WITHIN THE COUNTRY

Pursuant to Standing Order VI, Rule 2 and House Decision of Wednesday, 30 August, 2006:

(i) Committee on Drugs, Narcotics and Financial Crimes:

Purpose — Oversight of Ministry/Parastatals

Destination — Abuja, Nigeria

Duration — 27-30 September, 2006

(ii) Committee on National Lottery:

Hon. Ike Chinwo — *Chairman*

Hon. Musa Mahmood Hon. Igo

Aguma Hon. Mike Ohia Hon.

Garba Lawal Hon. Gbenga

Makanjuola

Purpose — Oversight function.

Destination — Lagos, Nigeria

Duration — 20 September, 2006.