



HOUSE OF REPRESENTATIVES FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Wednesday, 20 September, 2006

1. The House met at 2:00 p.m. Mr Speaker read Prayers.
2. **Votes and Proceedings:**
Mr Speaker announced that he had examined and approved the Votes and Proceedings of Tuesday, 19 September, 2006.

By unanimous consent, the Votes and Proceedings was adopted.

3. **Announcements:**
(i) *Journeys Abroad and Within the Country:*
Mr Speaker declared as follows:

JOURNEYS ABROAD AND WITHIN THE COUNTRY

Honourable Members will recall that on Wednesday, 30 August, 2006, the House in Executive Session, deliberated on the rampant absenteeism of some Members from the House and took far reaching decisions on the issue. It decided that henceforth:

- (i) *The House shall meet at 10.00 a.m. prompt on every Legislative Day;*
 - (ii) *A Member or a Committee traveling abroad must inform the Honourable Speaker and must indicate the purpose, destination, duration and time of stay abroad; this includes Committee traveling within the country and official assignment.*
2. *The decisions were reached to enable the House keep track of the movements of Members in their individual capacity and as Members of Special and Standing Committees.*
 3. *Honourable Members are enjoined to comply with the above decisions as such movements would be officially recorded.*

AMINU BELLO MASARI
Hon. Speaker, House of Representatives

20 September, 2006.

- (ii) **Obituary:**
Mr Speaker acquainted the House with the death of Hon. Okon Essang, Member, House of Representatives (1992 - 93) as contained in the following letter:

Tel:
0803 042 1569

NATIONAL ASSEMBLY
THREE ARMS ZONE



P.M.B. 141 ABUJA -
NIGERIA

RT HON. (CHIEF) DR ESIO OQUONG UDOH JP PhD
CHAIRMAN, SOUTH-SOUTH PARLIAMENTARY CAUCUS
HOUSE OF REPRESENTATIVES

19th September, 2006

Rt. Hon. Aminu Bello Masari
Hon. Speaker,
House of Representatives
Abuja

Dear Hon. Speaker,

Death of Rtd Col. Okon Essang, Hon., Member, House of Representatives
1992 -1993

Rtd Col. Essang MP was an Honourable Member of House Representatives, Abuja from 1992 to 1993 representing the then Mbo Federal Constituency of Akwa Ibom State.

He died on 31st July, 2006. His burial is to take place on 22nd of September, 2006 in his compound in Own Local Government Area.

The family is asking for financial assistance from the House of Representatives through you as the Honourable Speaker.

Thanks.

Yours sincerely,

(Signed)

Rt. Hon. Dr Esio Udoh
Own Federal Constituency of Akwa Ibom State
Chairman South-South Parliamentary Caucus
NASS, Abuja.

- (iii) *Transmission of Bills and Ratification of Convention:*
Mr Speaker further declared that the House had transmitted the following Bills to the Senate for concurrence vide letter No NASS/CHR/019/W/V.HI/557 of Wednesday, 19 July, 2006:

Federal Inland Revenue Service (Establishment) Bill, 2006 (HB.177)

National Automotive Council Act (Amendment) Bill, 2006 (HB. 173)

Nigeria Hajj Commission Bill, 2006 (HB. 185)

Furthermore, the Senate had transmitted the following Bills to the House for concurrence and conveyed its Ratification of the Convention for the Prohibition of Development, Production, Stockpiling and use of Chemical Weapons and their Destruction (Ratification and Enforcement) 2004.

Public Officers Protection Act (Amendment) Bill, 2006 (SB. 122)

Remuneration of Former Presidents, Head of State, Head of Federal Legislative Houses and Chief Justices of the Federation (And Other Ancillary Matters) Bill, (SB. 150)

Equipment. Leasing Bill, (SB. 76)

Federal College of Chemical and Leather Technology Bill, 2006 (SB. 157)

Institute for Democratic and Legislative Studies Bill, 2006 (SB. 18)

4. Petitions:

A petition was received and referred to the Committee on Public Petitions:

Hon. Wole Oke, from Fadeyibi CO., praying the House to intervene in his suspension from duty by the Federal Civil Service Commission and to grant the reliefs sought in his petition.

5. Presentation of Reports:*(i) Joint Committee on Agriculture and Finance:*

Motion made and Question proposed, "That this House do receive the Report of the Joint Committee on Agriculture and Finance on a Bill for an Act to Provide for the Establishment of a Palm Oil Development Fund, which shall be Responsible for Developing, Co-ordinating and Encouraging the Exportation and Utilisation of Palm Oil in Nigeria and for Connected Purposes, 2003" (*Hon. Ita Enang*).

Question put and agreed to.

Report Laid.

(ii) Joint Committee on Information and Justice:

"That this House do receive the Report of the Joint Committee on Information and Justice on a Bill for an Act to Enhance the Practice of Journalism in Nigeria, 2004 (HB.82)"

Order read; presentation of Report deferred till Wednesday, 27 September, 2006.

(iii) Joint Committee on Finance and Commerce:

"That this House do receive the Report of the Joint Committee on Finance and Commerce on a Bill for an Act to Maintain, Encourage and Stimulate Competition amongst Enterprises in Nigeria, to Eliminate Anti-Competitive Practices, Mergers, Acquisitions and Abuse of Dominant Positions of Market Power among Enterprises that Limit Access to Markets or otherwise tend to impede or Distort Normal Competition and Adversely affect Commercial activity and Economic Development within Nigeria; to Establish a Federal Competition Commission to Administer this Act and the Duties, Functions and Powers Provided Herein, and to Facilitate the Implementation and Enforcement of Competition and Consumer Protection Policies and for Purposes Connected Therewith, 2005".

Order read; deferred:

(iv) Joint Committee on Public Accounts and Justice :

Motion made and Question proposed, "That this House do receive the Report of the Joint Committee on Public Account and Justice on a Bill for an Act to provide for the Establishment of the Office of the Auditor-General of the Federation and for Matters Connected Therewith, 2005" (*Hon. Adeyemi Oluwole*).

Question put and agreed to.

Report Laid.

6. A Bill to Establish the Chartered Institute of Professional printers Board (Registration, etc.) to be charged with the Duty of Regulating, Controlling and Managing the Administration of Chartered Institute of Professional Printers Law and for Related Purposes 2006 (HB. 100) — Third Reading:

Motion made and Question Proposed, "That a Bill to Establish the Chartered Institute of Professional printers Board (Registration, etc.) to be charged with the Duty of Regulating, Controlling and Managing the Administration of Chartered Institute of Professional Printers Law and for Related Purposes 2006, be now read The Third Time" (*Hon. Gilbert Nnaji*).

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

read a Third Time and Passed.

7. A Bill for an act to establish an Independent National Assembly Budget and Research Office, which will provide the National Assembly with objective, Timely and Non - Partisan Analysis needed for Economic and Budget decisions and with the Information and Estimates required for use in the Budget Process and Other Related Matters (HB. 254) — Second Reading:

Motion made and Question Proposed, "That a Bill for an act to establish an Independent National Assembly Budget and Research Office, which will provide the National Assembly with objective, Timely and Non-Partisan Analysis needed for Economic and Budget decisions and with the Information and Estimates required for use in the Budget Process and Other Related Matters be now read a Second Time" {*Hon. Alaba Lao-Ojomo*).

Debate:

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

Bill read a Second Time and committed to the Committee of Whole.

8. Consideration of Reports:

(i) *Joint Committee on Petroleum Refineries and Products Marketing and Justice:*

Motion made and Question Proposed, "That this House do resume consideration of the Report of the Joint Committee on Petroleum Refineries and Products Marketing and Justice on a Bill for an Act to Amend the Petroleum Production and Distribution (Anti Sabotage) Act, Cap. 353 LFN to Vest the Regular Court with Jurisdiction to Try Offenders Under the Act; and for Matters Connected Therewith, 2005 (HB. 141) and approve the Recommendations therein" (*Hon. Obeten O. Obeten*).

Question put and agreed to.

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

(HOUSE IN COMMITTEE)

(*Mr Deputy Speaker in the Chair*)

A BILL FOR AN ACT TO AMEND THE PETROLEUM PRODUCTION AND DISTRIBUTION
(ANTI SABOTAGE) ACT, CAP. 353 LFN TO VEST THE REGULAR COURT WITH JURISDICTION TO
TRY OFFENDERS UNDER THE ACT; AND FOR MATTERS CONNECTED THEREWITH, 2005

Committee Recommendation.

Clause 2: Penalty for the offence of sabotage.

(1) (a) Any person who commits an offence of sabotage under section 1 of this Act, shall be liable on conviction to be sentenced to imprisonment for a term not exceeding 21 years.

(b) Any person who, either by himself or in the company of other persons, ruptures, breaks, leaks or attempts, conspires, aids, abets, procures or induces any other person to willfully and unlawfully rupture, break, leaks or vandalize or in any way damage any petroleum pipelines, Tank Farms, Well Heads, Flow stations, Depots or any oil and gas infrastructural facilities, or carries out any act to jeopardize the integrity of such pipeline, Tank Forms, well Head ,Flow stations, Depots and any other infrastructural facilities shall be guilty of an offence under this Act and shall be liable on conviction to 21 years imprisonment".

(c) Any person who being aware of a petroleum spillage caused either by acts of vandalism, or sabotage or accidental breakage, leakage or rupture, attempts, conspires, aids abets, procures or induces any other person to willfully and unlawfully scoop, fetch, remove or transport by any means whatsoever such petroleum product from the site of the spillage, commits an offence under this Act and shall be liable on conviction to a term not exceeding 3 years imprisonment without option of fine.

(d) Any person on notice of any petroleum spillage resulting from acts of vandalism or sabotage or accidental breakage, leakage or rupture of petroleum pipeline shall report same to the nearest Police Station of the existence of such spillage, and the Police shall take immediate steps to cordon off and secure the area of the spillage and notify the pipeline owner in writing to rectify the damage—

- (2) (a) Where written notice has been served on a pipeline owner of the existence of petroleum product spillage, resulting from acts of vandalism or sabotage or accidental rupture, break or leakage of petroleum products, the pipeline owner shall within 7 days of the receipt of such notice, take steps to rectify the damage as well as take immediate measures to protect public safety and prevent further pollution of the environment.
- (b) If any pipeline owner fails to comply with the requirements of subsection (1) of this section, in so far as such pipeline owner has been duly notified in writing of the existence of a petroleum product spillage, breakage or leakage, commits an offence under this Act; and Petroleum Production and Distribution (Anti-Sabotage) Act.
- (c) Shall be liable on conviction to a fine of N50,000.00 (fifty thousand Naira) for everyday during which the pipeline owner neglect to rectify the damage and/or refuses to undertake mop up operation to protect public safety and prevent pollution of the environment per day.
- (d) Every officer of the pipeline owner who knowingly or willfully authorizes, or permits the defaults or failure to comply with the provisions of this Act, shall be liable on conviction to N25,000.00 for every day such neglect or default occurred.
- (e) For the purpose of calculating the days of default, time shall start to run 7 days from the date upon which the pipeline owner received written notice of the spillage; a charge shall at any time thereafter be preferred against such pipeline owner.
- (3) The institution of proceedings for the imposition of a penalty or fine under this Act shall not relieve from liability to payment of compensation by:
- (a) any person for acts resulting from its act of vandalism or sabotage at any time; or
- (b) pipeline owner for negligence to maintain its pipeline and/or refusal to undertake mop-up operation of a ruptured or broken pipeline, whether or not the spillage was caused by acts of vandalism or sabotage or due negligence or accidental breakage or leakage,
- (c) all matters and offences under this Act shall be tried by the Federal High Court,
- (d) That fine should only be imposed where a pipeline owner or other oil and gas infrastructural facilities operators fail to respond promptly upon notification of spillages arising there from. The fine should be reduced to N50,000.00 (Fifty Thousand Naira) (*Hon. Obeten O. Obeten*).

Amendments Proposed:

- (i) Subclause (2) (c):
Retain provision in the Principal Bill (*Hon. Leo Ogor*).

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

- (ii) Subclause (2) (d):
In line 4, after the word "occurred", insert the words "and a term of one year imprisonment" (*Hon. ChidiDuru*).

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

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

Clause 3: Constitution of military tribunals.

- (1) The President may constitute for any Nigeria one or more military tribunals for the trial of persons charged with offences under this Act.

- (2) A military tribunals shall consist of—
 - (a) a President, who must be an officer in the Nigerian Army of or above the rank of major or an officer in the Nigeria Navy or Nigeria Air Forces of or above the corresponding rank, and
 - (b) two, three or four other members, each of whom shall be an officer in the armed forces who has held a commission for not less than three years,who shall all be appointed by the President.

Committee Recommendation:

Leave out the entire provisions in the Clause (*Hon. Obeten O. Obeteri*) — *Agreed to.*

Clause 4: Jurisdiction of military tribunals.

- (1) Subject to subsections (2) and (3) of this section, a military tribunal constituted under section 3 of this Act-
 - (a) shall, to the exclusion of all other courts of Law in Nigeria, have jurisdiction to try any person charged with an offence under this Act, but
 - (b) shall have no jurisdiction in respect of any other offence whatsoever.
- (2) Where any person is brought before a Military tribunal for an offence under this Act, the tribunal, if in its opinion the case is not one which ought to be tried by a military tribunals, may direct fresh proceedings to be commenced against the accused in a civil court.
- (2) Where proceedings are brought against a person in a civil court in pursuance of a direction given under subsection (2) of this section, that person —
 - (a) shall not be charged with an offence under this Act; but
 - (b) may be charged with any other offence in respect of the conduct by reason of which he was brought before the tribunal.

Committee Recommendation:

Leave out the entire provisions in the Clause (*Hon. Obeten O. Obeten*) — *Agreed to.*

Clause 5: Practice and procedure of military tribunals Cap. 294

- (1) Subject to this and section 6 of this Act, the practice and procedure applicable to proceedings before a court-martial under the Nigerian Army Act shall, with such necessary modifications as may be necessary, be followed in proceedings before a military tribunal.
- (2) The prosecution of any offence under this Act before a military tribunal shall be conducted either by a legal practitioner or by a police officer of or above the rank of inspector, who need not be a legal practitioner.
- (3) In any proceedings before a military tribunal, the accused person shall be entitled to defend himself in person or by a person of his own choice who is a legal practitioner.

Committee Recommendation:

Leave out the entire provisions in the Clause (*Hon. Obeten O. Obeten*) ~ *Agreed to.*

Clause 6: Confirmation of proceedings of military tribunals

- (1) Where a military tribunal finds the accused guilty of an offence under this Act, the record of the proceedings of the tribunal shall be transmitted to the confirming authority for confirmation of the sentence of the tribunal for that offence.
- (2) A sentence of a military tribunal shall not be treated as a sentence of the tribunal until confirmed:

Provided that is subsection shall not affect the keeping of the accused in custody pending confirmation.

- (3) The confirming authority shall deal with the sentence of a military tribunal either by confirming or by withholding confirmation.
- (4) In confirming the sentence of a military tribunal the confirming authority may—
 - (a) in the case of a sentence of death, substitute for that punishment, imprisonment for a term not exceeding the maximum term which could have been imposed by the tribunal for the offence in question;
 - (b) in the case of a sentence other than a sentence of death, either remit in whole or in part the punishment awarded by the tribunal or substitute for it some other punishment which could have been imposed by the tribunal, being a punishment less severe than the one awarded by the tribunal.
- (5) Where the confirming authority determines to withhold confirmation of a sentence, the determination shall be made known to the accused without delay and shall have effect as from the time when it is made known to him as an absolute discharge of the accused.
- (6) A sentence substituted by the confirming authority or any sentence having effect after the confirming authority has remitted punishment, shall be treated for all purposes as a sentence of the military tribunal duly confirmed.
- (7) Sections 100 to 107 of the Nigerian Army Act (which relate to the confirmation, revision and review of proceedings of courts-martial) shall not apply in relation to proceedings of military tribunals; and without prejudice to the foregoing provisions of this section, no appeal shall lie from a decision of a military tribunal.
- (8) For the purpose of this section, the confirming authority shall be the president.

Committee Recommendation:

Leave out the entire provisions in the Clause (Hon. Obeten O. Obeten) — Agreed to.

Clause 7: Execution of sentence of military tribunals.

- (1) A sentence of death imposed by a military tribunal shall, if confirmed, be executed by hanging the offender by the neck till he be dead or by causing him to suffer death by a firing squad.
- (2) Subject to subsection (1) of this section, sections 112 and 115 of the Nigerian Army Act (where relate to receipt into civil prisons of persons sentenced by court-martial, and the treatment there of such persons when received) and any rules relating to those matters which are, from time to time, in force under subsection (2) {a} or (b) of section 128 of that Act shall apply, with such modifications as may be necessary, in relation to persons sentenced to death or imprisonment by a military tribunal as they apply in relation to persons so sentenced by a court-martial.

Committee Recommendation:

Leave out the entire provisions in the Clause (Hon. Obeten O. Obeten) — Agreed to.

Clause 8: Exclusion of remedies for breaches of Chapter IV of the Constitution of the Federal Republic of Nigeria. Cap. 62.

The question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria has been, is being or would be contravened by anything done or proposed to be done in pursuance of any provision of this Act shall not apply in relation to any such question.

Committee Recommendation:

Leave out the provision in the Clause (Hon. Obeten O. Obeten) — Agreed to.

Committee Recommendation.

Clause 9: Interpretation.

For the purpose of this Act —

"Petroleum products" includes Petroleum and gas infrastructural facilities, such as crude oil motor spirits, gas oil diesel oil, Tank Farms, oil Wells, Well Heads, Flow stations, Depots (*Hon. Obeten O. Obeten*).

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

"petroleum owner" means a holder or an assignee of an oil pipeline license granted pursuant to the oil Pipeline Act and shall include but not limited to the Pipeline and products Marketing Company Limited (PPMC) and the Nigeria National Petroleum Corporation (NNPC) (*Hon. Obeten O. Obeten*).

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

"person" includes an individual, company and any incorporated body of persons or community (*Hon. Obeten O. Obeten*).

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

"public highway" means any road to which members of the public have access (*Hon. Obeten O. Obeten*).

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

"vehicle" means anything constructed or adapted for the use in the transportation of petroleum products by land, sea or air (*Hon. Obeten O. Obeten*).

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

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

Committee Recommendation.

Clause 10: Short Title.

This Act may be cited as the Petroleum and Gas Infrastructural Facilities (Anti-Sabotage) Bill, 2006 (*Hon. Obeten O. Obeten*) — *Agreed to.*

Question that Clause 10 stand part of the Bill, put and agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in the Committee of Whole, resumed the consideration of the Report of the Joint Committee on Petroleum Refineries and Products Marketing and Justice on a Bill for an Act to Amend the Petroleum Production and Distribution (Anti Sabotage) Act, Cap. 353 LFN to vest the Regular Court with Jurisdiction to try Offenders Under the Act; and for Matters Connected Therewith, 2005 and approved Clause 2 as amended and the deletion of Sections 3, 4, 5, 6, 7 and 8 of the Principal Act and approved Clauses 9 and 10.

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

(ii) *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 Regulator)' 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. Independence Ogunewe.

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 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, 2004

Committee Recommendation:

Clause 17: Fundamental Principles of Procurement.

- (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 approved by the Council 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 budgeted 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 accountability and in conformity with this Act and regulations;
 - (e) with the aim of achieving value for money and fitness for purpose;
 - if) in a manner which promotes competition, efficiency and effectiveness; and
 - (g) in accordance with the procedures and timelines laid down in this Act and as may be specified by the Bureau from time to time.
- (2) Where the Council has set prior review thresholds in the procurement regulations * and approved by the Federal Executive Council, 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, warrant or other form of request for payment is accompanied by a "Certificate of 'No Objection' to Payment" duly issued by the Bureau.
- (3) For all cases where the Council shall set a prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of any Certificates of 'No Objection' under this Act.

- (4) Subject to the prior review thresholds as may be approved by the Federal Executive Council, 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) Every procurement contract within the purview of this Act shall contain, and if otherwise this Act shall be deemed, a clause stipulating that the non issue by the Bureau of a "Certificate of 'No Objection' to Contract Award" shall render the contract null and void.
- (6) 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 responsibilities arising from this Act and/or the nonperformance or improper performance of any contract awarded pursuant to this Act.
- (7) 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 procurement,
 - (ii) financial strength,
 - (iii) equipment and other relevant infrastructure,
 - (iv) personnel to perform the obligations of the procurement contract;
 - (b) possess the legal capacity to enter 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 directors who have been convicted within 10 years proceeding the solicitation of the procurement contract in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
- (8) 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 requirement shall apply equally to all bidders.
- (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 proceeding 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;
 - (d) if the bidder is in arrears regarding payment of taxes due, 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 within the last 10 years;
 - if) if the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit within the last 10 years;
 - (g) if the bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain 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 evaluated 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 or unreasonably below the predetermined price.
- (20) Pursuant to Subsection (19) above, the Bureau may direct either that the procurement proceedings be entirely canceled 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 shall 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 subcontractor 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 arbitration 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 prevailing exchange rate of the Central Bank of Nigeria valid on the day of opening a tender for the purpose of bid evaluation.
- (29) All payments for procurement carried out under the provisions of this Act shall be denominated and made in Nigerian currency and foreign currency components where applicable (*Hon. Bala Ibn Na 'Allah*).

Amendment Proposed:

In subclause (2), line 2, *leave out* the words "Federal Executive Council" and wherever they occur (*Hon. Almajiri Geidam*).

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

17 as amended, stand part of the Bill, put and agreed to.

PART V—ORGANISATION OF PROCUREMENT

Committee Recommendation:

Clause 18: Approving Authority.

Subject to the monetary and prior review thresholds for procurement 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 of the Board;
- (b) in the case of a Ministry or Extra Ministerial entity—the Minister (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

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

Committee Recommendation:

Clause 19: 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 procurement 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 and other sources (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

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

Committee Recommendation:

Clause 20: 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 appropriate approving authority before making an award;
- (d) debrief the bid losers;
- (e) resolve complaints/disputes if any;
- (f) 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.
- (!) 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 (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

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

*Committee Recommendation:***Clause 21: 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, Organisation of tenders, evaluation of tenders and execution of all procurement 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 and other sources;
 - (d) integrating his entity's procurement expenditure into its yearly budget;
 - (e) ensuring that no reduction of values or splitting of procurement is carried out in such a manner as to evade the use of the appropriate procurement method;
 - (f) constituting the Evaluations Committee;
 - (g) liaison with the Bureau and ensure the implementation of its regulations (*Hon. Bala Ibn Na 'Allah*) ~ *Agreed to.*

Question that Clause 21 stand pan of the Bill, put and agreed to.

*Committee Recommendation:***Clause 22: 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) representative(s) of the procurement function of the procuring entity who shall be the secretary
 - (c) representative(s) of the unit involved in the procurement;
 - (d) representative(s) of the financial unit of the procuring entity;
 - (e) representative(s) of the planning, research and statistics units of the procuring entity;
 - (f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement;
 - (g) representative(s) of the legal unit of the procuring entity (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 22 stand pan of the Bill, put and agreed to.

Committee Recommendation:

Clause 23: Functions of the Procurement Planning Committee.

The functions of the Procurement Planning Committee shall be to prepare the procurement plan in conformity with this Act by —

- (a) by preparing evaluation and needs assessment;
- (b) identify based on (a) above, the works, goods 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 requirements 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 approvals under this Act (*Hon. Bala Ibn Na'Allah*) ~ *Agreed to*.

Question that Clause 23 stand pan of the Bill, put and agreed to.

Committee Recommendation:

Clause 24: Tenders Boards.

- (a) There shall be established in each Federal Ministry, Extra ministerial Office/department/agency, parastatal, corporation, the armed and paramilitary service a Tenders Board (in this Act referred to as "the Tenders Board").
- (b) Each procuring entity shall from time to time prescribe its Tenders Board.
- (c) The Tenders Board shall recommend for award the procurement of works, goods and services which value is within the monetary threshold as may be set from time to time by the Council.
- (e) Develop the tender.
- (f) Advertise/solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau from time to time.
- (g) Receive and prepare for evaluation any bids received in response to solicitations.
- (h) The decision of the Tenders Board shall be approved by the Minister of the Ministry or Chairman of the Board of the Parastatal (*Hon. Bala Ibn Na 'Allah*) — *Agreed to*.

Question that Clause 24 stand pan of the Bill, put and agreed to.

Committee Recommendation:

Clause 25: 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 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 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.
- (3) The pre-qualification documents shall include—
 - (a) instructions to prepare and submit pre-qualification applications;

- (b) a summary of the main scope of work, 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 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) notwithstanding the provisions of subsection (3) (d) above, no deadline for the submission of pre-qualification shall be less than 21 days from the date of advertisement;
 - (f) 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 pre-qualification proceedings.
- (4) The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the pre-qualification 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 five working days to the deadline 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 may, 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 (*Hon. Bala Ibn Na'Allah*) — *Agreed to*.

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

PART VI—PROCUREMENT METHODS (GOODS AND WORKS)

Committee Recommendation:

- Clause 26: Open Competitive Bidding.
- (a) Save as herein provided by this Act, the procurement of works, goods and services by all procuring entities shall be conducted by Open Competitive Bidding.
 - (p) Any reference to Open Competitive Bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the works, goods and services 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 evaluated bid from the bidders responsive to the bid solicitation (Hon. Bala Ibn Na'Allah) — *Agreed to.*

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

Committee Recommendation:

Clause 27:

Invitations to Bid.

- (1) Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Council shall from time to time set the monetary thresholds for which procurement 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 Federal Government Tenders Journal not less than six weeks before the deadline for submission of the bids for the works and goods;
 - (a) in the case of works and goods 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 works, goods and services;
- (3) Every advert of an invitation to an Open Competitive Bid shall include—
 - (i) the name and address of the procuring entity;
 - (ii) the scope, nature, quantity, category and place of delivery of goods to be procured or the scope, nature, category, and location of the works to be procured;
 - (iii) a statement that submissions must be made only in the English language;
 - (iv) the deadline for delivering or 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 in accordance with guidelines set by the Bureau, be provided with a set thereof.
- (5) If the procuring entity had previously conducted pre qualification for the procurement in question, the tender documents shall be issued only to those suppliers, contractors or/and service providers 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.
- (8) 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, contractor or/and service providers 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, contractors or/and service providers 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 reason. The addendum shall be sent in writing to all prospective suppliers, contractors or/and service providers who had obtained the tender documents not less than 1 week.
- (11) A procuring entity if it finds it expedient so to do may convene a pre tender conference for the suppliers, contractors or/and service providers in order to clarify all matters pertaining to the tender documents. All requests for clarifications 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, contractors and/or service providers.
- (12) In all such cases where addendum 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, contractors and/or service providers to consider the clarifications and or addendum to the tender documents and make the appropriate inputs to their bids. Notice of the extension shall be promptly dispatched to every supplier, contractor and/or service provider who had obtained the bid documents
(Hon. Bala Ibn Na'Allah) ~ Agreed to.

Question that Clause 27 stand pan of the Bill, put and agreed to.

Committee Recommendation:

Clause 28: Bid Security.

- (1) Subject to the monetary and prior review thresholds as may from time to time be approved by the Council all procurements must require a bid security in an amount not less than 3 % 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, contractors and/or service providers submitting tenders to provide a bid security—
 - (a) the requirement shall apply to each supplier, contractors and/or service providers;
 - (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, contractors and/or service providers 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 conformer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or conformer has become insolvent.
- (4) Any requirement on bid security that refers directly or indirectly to conduct by the supplier, contractor and/or service provider 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 ensure the return of the bid security document after whichever of the following occurs first—
 - (a) the expiry 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
(*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

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

Committee Recommendation:

Clause 29: 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 envelope.
- (b) All submitted bids shall be deposited in a secured tamper proof bid box.
- (c) All bids must be submitted in English language.
- (d) The procuring entity shall issue a receipt showing the date and time the bid was received.
- (e) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier, contractor or/and service provider 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, contractor or/and service provider after the publication of a bid solicitation other than as provided in this Act (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

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

Committee Recommendation:

Clause 30: Rejection of Bids.

A procuring entity may—

- (1) Reject any bid at any time prior 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 (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 30 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 31: Validity period for 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 supplier, contractors or/and service provider to extend the period of validity for an additional specified period of time.
- (c) A supplier, contractors or/and service provider 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, contractors or/and service provider 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 offenders (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 31 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 32: Bid Opening.

All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall—

- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- (d) ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the tenders board; and
- (e) call over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the Tenders board or his delegate in the minutes of the bid opening (*Hon. Bala Ibn Na'Allah*) — *Agreed to.*

Question that Clause 32 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 33: Examination of Bids.

- (a) All bids shall be first examined to determine if they—

- (0 meet the minimum eligibility requirements stipulated in the bidding documents;

- (ii) have been duly signed;
 - (iii)** are substantially responsive to the bidding documents; and
 - (iv) are generally, in order;
- (b) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
- (c) The following shall not be sought, offered or permitted—
 - (i) changes in prices;
 - (ii) changes of substance in a bid; and
 - (iii) changes to make an unresponsive bid responsive.
- (d) Notwithstanding Subsection (c), the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- (e) The procuring entity, shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (f) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (g) The following shall be considered as major deviations—
 - (i) with respect to clauses in an offer—
 - (a) unacceptable subcontracting,
 - (b) unacceptable time schedule if time is of essence,
 - (c) unacceptable alternative design, and
 - (d) unacceptable price adjustment;
 - (ii) with respect to the status of the bidder—
 - (a) the fact that he is ineligible or not pre qualified, and
 - (b) the fact that he is uninvited;
 - (iii) with respect to bid documents—
 - (a) an unsigned bid; (iv) with respect to time, date and location for submission—
 - (a) any bid received after the date and time for submission stipulated in the solicitation document, and
 - (b) any bid submitted at the wrong location.
- (h) In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
- (i) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
- (j) Subject to any provision to the contrary, the following shall be considered as minor deviations—

- (i) **the** use of codes;
 - (i) the difference in standards;
 - (iii) the difference in materials;
 - (iv) acceptable alternative design;
 - (v) alternative workmanship;
 - (vi) modified liquidated damages;
 - (vii) omission in minor items;
 - (viii) discovery of arithmetical errors;
 - (ix) subcontracting that is unclear and questionable;
 - (x) different methods of construction;
 - (xi) difference in final delivery date;
 - (xii) difference in delivery schedule;
 - (xiii) completion period where these are not of essence;
 - (xiv) noncompliance with some technical local regulation;
 - (xv) payment terms; and
 - (xvi) any other condition that has little impact on the bid.
- (k) In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply—
- (0) where the impact on the costs is major, it shall be regarded as a major deviation; and
 - (ii) where the impact on the costs is minor, it shall be regarded as a minor deviation.
- (l) In cases of minor deviations, written clarification may be obtained from the supplier, contractor and/or service provider, where applicable, an offer made for the correction of the minor deviation.
- (m) Where a supplier, contractor and/or service provider does not accept the correction of a minor deviation, his bid shall be rejected.
- (n) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
- (o) For the rejection of a bid, a written notice shall be promptly given to the supplier (*Hon. Bala Jbn Na'Allah*) — *Agreed to*.

Question that Clause 33 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 34: Evaluation of Bids.

- (a) For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (b) The objective of bid evaluation shall be to determine and select the lowest evaluated bidder from the bidders responsive to the bid solicitation.

- (c) **In** the course of its determination of the lowest cost evaluated bidder, the Tenders Board shall, in particular, undertake the following processes as applicable—
- (0) checking of deviations;
 - (i) checking of omissions with quantification of same;
 - (ii) application of discounts, as applicable;
 - (iv) clarification with bidders of questionable minor deviations;
 - (v) quantification in monetary terms of such questionable deviations;
 - (viii) conversion to common currency;
 - (vii) calculation and tabulation of bid amount with domestic preference where applicable;
 - (viii) determination of the lowest calculated prices in order of rank;
 - (ix) post qualification of bidders, where applicable;
 - (x) listing of rejection of bids, where applicable;
 - (xi) decision of rejection of all bids where justifiable;
 - (xii) recommendation for award; and
 - (xiii) writing of the bid evaluation report.
- (d) All relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (e) Such factors shall be calculated in monetary terms as stipulated in the , solicitation documents and shall include—
- (i) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
 - (ii) for works, in addition to factors stipulated in Section 34 (e) (i) above, and subject to Section 34 (c), if time is a critical factor, the value of early completion; and
 - (iii) the value of early completion under Section 34 (e) (ii) shall not be taken into account unless, in conformity with criteria preset in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.
- (f) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (g) If suppliers, contractors and/or service providers were pre qualified, verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

- (h) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 34 stand pan of the Bill, put and agreed to.

Committee Recommendation:

Clause 35: Acceptance of Bids.

- (a) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation.
- (b) Notwithstanding the provision of subsection (a) above and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the procuring entity can show good grounds derived from the provisions of this Act to that effect.
- (c) Notice of the acceptance of the bid shall immediately be given to the successful bidder.
- (d) Notwithstanding the provision of subsection (c) above, where the procurement proceeding is with regard to a value for which approval should be sought from either the Minister or Federal Executive Council, notice given to a successful bidder shall serve only for notification purposes only and shall not howsoever be construed as a procurement award.
- (e) Where the procurement proceeding is with regard to a value of which the Accounting Officer is the approving authority, then subject to the fulfillment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 35 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 36: Domestic Preferences.

- (1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufacture locally with those offering goods manufacture abroad.
- (2) Where a procuring entity intends to allow domestic preferences, the bid documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
- (3) Margins of Preference shall apply only to tenders under International Competitive bidding.
- (4) The Bureau shall by regulation from time to time set the limits and the formulae for the computation of margins of preference (*Hon. Bala Ibn Na 'Allah*) — *Agreed to.*

Question that Clause 36 stand part of the Bill, put and agreed to.

Committee Recommendation:

Clause 37: Mobilization Fees.

- (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of no more than 15% for local suppliers and contractors and 20% for foreign suppliers and contractors may be paid to a supplier or contractor supported by the following—
 - (i) in the case of National Competitive Bidding an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity;

(H) in the case of International Competitive Bidding an unconditional bank guarantee issued by a reputable banking institution acceptable to the procuring entity.

(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*).

Amendment Proposed:

Retain the provision of Subclause (1) of the Principal Bill (Hon. Terngu Tsegba).

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

Chairman to report progress.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in the Committee of Whole, resumed consideration of the Report of the House 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 and approved Clause 17 as amended, approved Clauses IS, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 and deferred further consideration. *He asked leave to sit again.*

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

9. **Adjournment**

That this House do now adjourn till Thursday, 21 September, 2006 at 10.00 a.m. (*Hon Gilbert Nnaji*).

Adjourned accordingly at 4.00 p.m.

Aminu Bello Masari
Speaker