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**Thursday
15th January, 2009**

FEDERAL REPUBLIC OF NIGERIA

NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC

THIRD ASSEMBLY (SIXTH SENATE)

SECOND SESSION

THE SENATE OFFICIAL REPORT

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**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Thursday 15th January 2009

The Senate met at 10.20 a.m.

PRAYERS

(The Deputy Senate President in the Chair)

VOTES AND PROCEEDINGS

The Deputy President: The Senate is called to order. Let us now consider the Votes and Proceedings of Wednesday, 14th January, 2009. Pages: 389, 400, 401, 402, 403, 404, 405 and 406.

Senator Eme Ufot Ekaette (Akwa Ibom South): Mr. President, I rise to move that the Votes and Proceedings of Wednesday, 14th January, 2009 be approved.

Senator Abubakar Danso Sodangi (Nasarawa West): Mr. President, I rise to second the Motion moved by Senator Ekaette that we approve the Votes and Proceedings of Wednesday, 14th January, 2009.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Wednesday, 14th January, 2009 be approved.

PRESENTATION OF BILLS

**Electronic Commerce (Provision of Legal
Recognition) Bill, 2009 (SB. 233)**

Senator Teslim Kolawole Folarin (Oyo Central): Mr. President, the first business of the day is the presentation of a Bill standing in the name of Senator Ganiyu Solomon on the Electronic Commerce (Provision of Legal Recognition) Bill, 2009.

You may wish to invite the Clerk of the Senate to read the Short Title of the Bill.

The Deputy Senate President: Clerk of the Senate, read the Short Title of the Bill.

Electronic Commerce (Provision of Legal Recognition) Bill, 2009 – presented by Senator Ganiyu O. Solomon (Lagos West) - *read the First Time.*

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**National Visual Testing and Safety Scheme Bill, 2009
(SB. 230)**

Senator Teslim K. Folarin: Mr. President, the second business of the day is the presentation a Bill standing in the name of Senator Satty D. Gogwin on the National Visual Testing and Safety Scheme Bill, 2009.

You may wish to invite the Clerk of the Senate to read the Short Title of the Bill.

The Deputy Senate President: Clerk of the Senate, read the Short Title of the Bill.

National Visual Testing and Safety Scheme Bill, 2009 – presented by Senator Satty D. Gogwin (Plateau Central) - *read the First Time.*

PRESENTATION OF REPORTS

**Report of the Committee on Federal Character and
Governmental Affairs on the Screening of Nominees**

Senator Teslim K. Folarin: Mr. President, the third business of the day is the presentation of the Report of the Committee on Federal Character and Governmental Affairs on the Screening of Elder Bob Francis Ozaka (Bayelsa State) and Hon. Lawal Ibrahim Funtua (Katsina State) as Members of the Federal Character Commission.

You may wish to invite Senator Smart Adeyemi to move the Motion for the Senate to receive the Report.

Senator Smart Adeyemi (Kogi West): Mr. President, I seek the permission of the Senate to present the Committee's Report on the screening of two Federal Character Commissioners from Bayelsa and Katsina States.

Senator Aloysius Akpan Etok (Akwa Ibom North West): Mr. President, I rise to second the Motion moved by Senator Smart Adeyemi that the Senate do receive the Report of the Committee on Federal Character and Governmental Affairs on the screening of the two nominees from Bayelsa and Katsina States as Members of the Federal Character Commission.

Question put and agreed to.

(Report laid on the Table)

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Report of the Committee on Environment and Ecology on the National Climate Change Bill, 2009 (SB. 24)

Senator Teslim K. Folarin: Mr. President, the fourth business of the day is the presentation of the Report of the Committee on Environment and Ecology on the National Climate Change Bill, 2009.

In view of the fact that Senator Folashade Bent is not around, I move that this item be stood down to another legislative day.

Senator Kabiru Ibrahim Gaya (Kano South): Mr. President, I rise to second the Motion moved by the Leader that the item be stood down to the next legislative day.

Question put and agreed to.

(Report by the leave of the Senate stood down to another legislative day)

ORDERS OF THE DAY

MOTION

Confirmation of Nomination

Senator Teslim K. Folarin: Mr. President, the first Order of the day is a Motion requesting this Senate to consider the request of Mr. President, Commander-in-Chief, for the confirmation of the nomination of Alhaji Abdullahi Abarshi Muhammed (Kebbi State) and Yusuf Mohammed Anka (Zamfara State) as Members of the National Population Commission in accordance with Section 154(1) of the 1999 Constitution of the Federal Republic of Nigeria.

I, therefore, move that this Senate do consider the request of Mr. President, C-in-C for the confirmation of the nomination of Alhaji Abdullahi Abarshi Muhammed (Kebbi State) and Yusuf Mohammed Anka (Zamfara State) as Members of the National Population Commission in accordance with Section 154(1) of the 1999 Constitution of the Federal Republic of Nigeria and refer it to the relevant Committee for further legislative action.

Senator Kabiru Ibrahim Gaya: Mr. President, I rise to second the Motion moved by the Leader that the Senate do consider the request of Mr. President, C-in-C for the confirmation of the nomination of Alhaji Abdullahi Abarshi Muhammed (Kebbi State) and Yusuf Mohammed Anka (Zamfara State) as Members of the

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National Population Commission in accordance with Section 154(1) of the 1999 Constitution of the Federal Republic of Nigeria.

Question put and agreed to.

Resolved: That the Senate do consider the request of Mr. President, C-in-C for the confirmation of the nomination of Alhaji Abdullahi Abarshi Muhammed (Kebbi State) and Yusuf Mohammed Anka (Zamfara State) as Members in the National Population Commission in accordance with Section 154(1) of the 1999 Constitution of the Federal Republic of Nigeria.

The Deputy Senate President: The request is referred to the Committee on National Population and to report back in two weeks.

(Request accordingly referred to the Committee on National Population to report back in two weeks)

Confirmation of Nomination

Senator Teslim K. Folarin: Mr. President, the second Order of the day is also a Motion requesting the Senate again to consider the request of Mr. President, Commander-in-Chief for the confirmation of the nomination of Professor Ahmed Dembo Danfulani as the Director General of the National Institute for Policy and Strategic Studies in accordance with Section 5(2) of the National Institute for Policy and Strategic Studies Act, 2004.

I, therefore, move that this Senate do consider the request of Mr. President, C-in-C for the confirmation of the nomination of Professor Ahmed Dembo Danfulani as the Director General of the National Institute for Policy and Strategic Studies in accordance with Section 5(2) of the National Institute for Policy and Strategic Studies Act, 2004 and referred to the relevant Committee for further legislative action.

Senator Kabiru Ibrahim Gaya: Mr. President, I rise to second the Motion moved by the Leader that the Senate do consider the request of Mr. President, C-in-C for the confirmation of the nomination of Professor Ahmed Dembo Danfulani as Director General of the National Institute for Policy and Strategic Studies in accordance with Section 5(2) of the National Institute for Policy and Strategic Studies Act, 2004.

Question put and agreed to.

Resolved: That this Senate do consider the request of Mr. President, C-in-C for the confirmation of the

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nomination of Professor Ahmed Dembo Danfulani as Director General of the National Institute for Policy and Strategic Studies in accordance with Section 5(2) of the National Institute for Policy and Strategic Studies Act, 2004.

The Deputy Senate President: The request is referred to the Committee on Federal Character and Governmental Affairs to report back in two weeks.

(Request accordingly referred to the Committee on Federal Character and Governmental Affairs to report back in two weeks)

CONSIDERATION OF REPORTS

Report of the Committee on Establishment and Public Service on the Public Procurement Act (Amendment) Bill, 2009 (SB. 125)

Senator Teslim K. Folarin: Mr. President, the third Order of the day is the consideration of the Report of the Committee on Establishment and Public Service on the Public Procurement Act (Amendment) Bill, 2009.

You will recall that this Report was laid on the Floor of Senate only yesterday Wednesday, 14th January 2009. You may wish to invite Senate Mohammed Ahmed, Chairman of this Committee to move the Motion for the consideration of the Report.

Senator Mohammed I. Ahmed (Kwara North): Mr. President, I move that the Senate do consider the Report of the Committee on Establishment and Public Service and the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009.

Senator Abubakar Danso Sodangi (Nasarawa West): Mr. President, I rise to second the Motion moved by Senator Ahmed Mohammed Ahmed that the Senate do consider the Report of the Committee on Establishment and Public Service and the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009.

Question put and agreed to.

Resolved: That the Senate do consider the Report of the Committee on Establishment and Public Service and the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009.

Senator Mohammed I. Ahmed: Mr. President, you may recall that the Senate, at its sitting on

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Wednesday, 15th October, 2008 read the Public Procurement Act (Amendment) Bill, 2008 the Second Time and referred the matter to the Joint Committee of the Senate Committee on Establishment and Public Service and Senate Committee on Finance for further legislative action and to report back its findings. The Membership of the Committee on Establishment and Public Service and that of Committee on Finance are indicated.

The Public Procurement Act was passed by the Senate on Thursday, 17th May, 2007 and signed into Law just before the end of Chief Obasanjo's administration. It is important to note that this Act has hardly been tested before the Amendment that is now being proposed. This Amendment Bill seeks to amend the following principal sections of the Procurement Act, 2007:

- (a) Section 1: As contained in the Principal Act, the Chairman of the Bureau for Public Procurement is the Minister of Finance. The Amendment seeks to have the Chairman appointed by Mr. President.
- (b) Section 7: The Bill seeks to amend the Section of the Principal Act in Subsection (1) by deleting the phrase; *after competitive selections* appearing in line 2
- (c) Section 17: The Amendment Bill seeks to substitute the existing section with a new one with the intention of: re-establishing new monetary threshold for the approving authorities and creating a new approving authority in the Federal Executive Council;
- (d) Section 35: This Section seeks to amend the mobilization fee of 15 *per cent* stated in the Act so that the Bureau can prescribe any other amount to be paid to a supplier or contractor.

Methodology

The Joint Committee adopted the following methodology in the course of its assignment:

- (i) Considered the Bill Clause-by-Clause at a Joint Committee meeting of Establishment and Public Service and Finance;
- (ii) Conducted an interactive session with relevant stakeholders;

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(iii) Collated and analysed memoranda and oral testimonies presented during the interactive session and contributions by Senators at the Second Reading of the Bill;

(iv) The Committee also consulted with legal experts on the Bill.

Findings

The Joint Committee noted a recurrent resistance of the Amendments sought as evidenced in the oral and written testimonies available to the Joint Committee.

The Committee, in the course of its investigation, observed that as at date the National Council on Public Procurement has not been constituted.

The Joint Committee also discovered that the delay in the implementation of the 2008 Budget was largely attributable to the cumbersome due process introduced by the Procurement Act.

Recommendations

The Committee, having diligently considered the merits of the Amendments sought, recommends as follows:

- (i) Clause 1 (a) and (b) - to be retained as amended.
- (ii) Clause 2 (h) - amended to read: *Chartered Institute of Purchasing and Supply Management*.
- (iii) Clause 7 - to be retained as in the Bill.
- (iv) Clause 17 - to be retained as in the Bill.
- (v) Clause 25(2)(iii) - Advert/invitation deadlines for national and international bids reduced to three weeks each.
- (vi) Clause 35 - be increased from 15 per cent to 30 per cent for construction works and 50 per cent for technical items.
- (vii) Procurement approving threshold for parastatals (giids) is increased from less than ₦100 million to ₦200 million.
- (viii) Clause 54(26) - Working days indicating corrective measures to be taken reduced to ten instead of fifteen days.

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I, on behalf of the Joint Committee on Establishment and Public Service and Finance, wish to thank you all for the opportunity given to us to serve.

Senator Teslim K. Folarin: Mr. President, I move that this Senate do resolve into Committee of the Whole to consider the Report.

Senator Kabiru I. Gaya: I second the Motion moved by the Leader that this Senate do resolve into Committee of the Whole to consider the Report.

Question put and agreed to.

Report of the Joint Committee on Establishment and Public Service and Finance on the Public Procurement Act (Amendment) Bill, 2009 –
CONSIDERED IN THE COMMITTEE OF THE WHOLE.

Clause 1 – (ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT AND MEMBERSHIP)

The Chairman: Clause (1): Is there any comment? I have Clause 1(a) and (b) and also 2 (a) to (h).

Senator Iyiola Omisore (Osun East): Mr. Chairman, I have a comment on 2(h)

The Chairman: Go ahead, Senator Omisore.

Senator Iyiola Omisore: In the Amendment column of Clause 2(h), there is no Director in the Bureau; it is supposed to be Director General of the Bureau. It is not also paginated. What I am saying is that in the original Act, the Director General is the administrative head of the Council on Public Procurement and Secretary of the Council. It appears there is an omission here.

In the proposed Amendment, Director was inserted instead of Director General who is the Head. There are many Directors in the Bureau.

The Chairman: The Secretariat should take note of the error. It should read: *Director General* instead of just *Director*.

Senator Satty D. Gogwim (Plateau Central): Mr. Chairman, the whole Amendment is not numbered page by page but I presume there is a serious spelling mistake on the first page under the Amendment sought 1(a). The word *Precumbent* should read *Procurement*; it is supposed to be Procurement Act.

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The Chairman: It is all right. Secretariat, please take note. Before we continue, can we, please, number the pages of the Bill itself, not the Report. There are eight pages in all. Senator Ahmed, can you confirm that there are eight pages?

Senator Mohammed Ahmed: Yes, there are eight pages.

Senator Anyimchukwu Ude (Ebonyi South): Mr. Chairman, I have just two preliminary questions. I noticed that it is the Joint Committee of Establishment and Public Service and Finance but the signatures here do not reflect that. I do not know whether or not the original copy of this Report has the signatures of the Chairman, Committee on Finance and his Clerk. That is one question.

Secondly, the Joint Committee also discovered that the delay in the implementation of the 2008 Budget was largely attributed to the cumbersome due process introduced by the Procurement Act. Do we assume that these cumbersome processes have been identified and action taken? It is, indeed, true that the budget could not be implemented due to the cumbersome nature. I hope they have identified all of them and taken care of them in their recommendations.

The Chairman: Senator Anyim Ude, I believe the answer will lie in the Amendment. At this stage what we are dealing with is the Clause-by-Clause consideration.

Senator Kabiru I. Gaya: Mr. Chairman, I would like to commend the Committee on Establishment headed by the Chairman for the work well done. The Committee did a good job but they could have dealt with the Procurement Act in detail. When you go through the Procurement Act, there are lots of problems for which we need to look at so that we can solve them once and for all.

You will find in the 2008 budget that we had less than 28 *per cent* implementation and this was due to due process. We should also look at ways and means of reducing this bureaucracy. There are areas we can look at. There is a Committee heading the Central Due Process that gives a final certificate after six months period of time for the award of the project had elapsed before it goes to tender; the preparation to procurement and then the tender process.

I will go to the Clause-by-Clause consideration of the Bill, I just wanted to give a preamble. To give a certificate takes few weeks. It was reduced from six

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months to three months and from three months to one month and finally to a few weeks. Nevertheless, the bottleneck is the Central Due Process System. This is actually the stumbling block for any contract execution. The Ministry has the power, which has now been modified. That is all right but then after three or six months had elapsed; it goes through the Central Due Process System which has a certificate of no objection. This Due Process System is even higher than the Ministry. This is because a Minister may make a proposal which goes to the Due Process Central body where it may be stopped.

I thought that they would have looked at the clauses where the no-objection certificate is so that it can be cancelled. If a Ministry approves and it is beyond the Ministerial level, it goes directly to the Executive Council. I am saying that we should de-centralise the Central Due Process System and allow every Ministry to handle it.

The Chairman: Do you have any comment in respect of Clause 1?

Senator Kabiru I. Gaya: Yes.

The Chairman: Can you do that?

Senator Kabiru Gaya: On page 2 item (g) which says: *The Nigerian Institute of Purchasing and Supply Management has six Members, one each from the following institutions - Institute of Purchasing, Nigerian Bar Association, Nigerian Chamber of Commerce, Nigerian Society of Engineers, et cetera*, which are professional bodies and the Civil Society and Media. This is a project which you cannot handle without an Architect. Architects are managers of the projects. So, there should be a Member of the Institute of Architects in this law because in any building industry, the leader of the team is from architectural profession.

In terms of bridge design and road construction we have Engineers and when it comes to building we should have Architects. Most of these contracts are in the area of building construction. So, there should be a professional Member of the Institute of Architects.

Senator Iyiola Omisore: Mr. Chairman, you will recall that at the last Senate when we passed this law initially, this issue of associations came up for discussion. There is a mistake people are making that procurement is not building. Building is less than one *per cent* of what we procure in Nigeria. That was discussed exhaustively at the last Senate before this law was passed.

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If we start going into this issue of institutes, we will be wasting our time. This law was sent to us by the Executive that it should be amended. Even the issue my distinguished Colleague raised about delay, it can come back by way of Amendment later. Let us go ahead with this because we cannot stand this Bill down on that account. Otherwise, the 2009 Budget will be messed up, too. There must be a law on ground.

I also want to draw our attention to the fact that building procurement in the Budget is less than one *per cent*. Let us just go to this Bill and pass it the way it is. If there are issues to be raised, then we can come together and start doing that again.

The Chairman: Senator Gaya, do you want me to put the Question in respect of your suggestion or are you withdrawing it?

Senator Kabiru Gaya: You may put the Question.

The Chairman: Distinguished Colleagues, the Question is that we include Architects under item (g) on page 2.

Question put and negatived.

Senator Bukar Abba Ibrahim (Yobe East): Mr. Chairman, in line with the suggestion that has now been defeated, I am still bringing in another Amendment even though I have not seen the original Bill; it is not attached here.

My Amendment is that since this is an issue of procurement and we know what procurement in government means, I would have thought that the right profession that should be reflected in this Amendment is actually a Member of the Nigerian Institute of Quantity Surveyors rather than Architects. Architects are designers but Quantity Surveyors are Cost Engineers and Cost Controllers. They take care of every aspect of costing of government projects. So, the Nigerian Institute of Quantity Surveyors should be represented in this Council.

The Chairman: I will put the Question that the Nigerian Institute of Quantity Surveyors be included under Clause 1(g).

Amendment put and agreed to.

Senator Enyinnaya H. Abaribe (Abia South): Mr. Chairman, in view of what we have just passed, it means we have to amend Clause 1(g) which says that: *Six Members, one each to represent the following*

institutions - It is either we amend this to read seven or eight or nine as we may resolve or we drop either Civil Society or the Media as the case may be. However, I suggest that we do not remove Civil Society because they are the watchdog of the society and I believe we have also accepted them. That is why it was there originally in the Bill. Where the problem really lies is the Media. What has the Media got to do with procurement?

A distinguished Senator: Nothing.

Senator Enyinnaya H. Abaribe: To lay this matter to rest, I suggest that we increase the membership to seven rather than six.

Senator Manzo G. Anthony (Taraba North): Mr. Chairman, let us not lose sight of the importance of the Procurement Act. The sole purpose of this Act was to fight corruption. It is one of the mechanisms that we have put in place to ensure that the process of procurement in government is as open as it can be. We do not want to do procurement in our closets. Members of the Civil Society which include the voters have a right to know what we are doing.

I also want to say that if you include Quantity Surveyors, you may as well include Healthcare Practitioners because they have something that the Quantity Surveyors do not know and I think it is an important consideration to give.

The Chairman: I will put the Question that we include Healthcare Practitioners to form part of Clause 1(g).

Amendment put and negatived.

Senator Adefemi Kila (Ekiti Central): We should strike out Civil Society and leave the Media. If we must have the two there, then they must alternate. That is, for a particular period if you have a Member of the Civil Society you will not have somebody from the Media and when the term of the Civil Society runs out, the Media replaces them, otherwise, we take either of them.

The Chairman: Can you be specific in terms of what you want removed here?

Senator Adefemi Kila: The Civil Society is the watchdog all over the place; let us remove it and leave the Media because the Media will orchestrate whatever is going on in the Council. So, we drop the Civil Society.

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The Chairman: What you are suggesting is that we should remove Civil Society?

Senator Adefemi Kila: I suggest that we remove Civil Society and retain the Media because the Media covers both jobs.

Senator Ayogu Eze (Enugu North): I have an observation, Mr. Chairman.

The Chairman: Go ahead.

Senator Ayogu Eze: As regards what Senator Kila said, let me remind the Chairman that there was a Motion from Senator Abaribe on the same subject matter which has not been disposed of, yet we are putting another Motion on top of it.

Senator Abaribe's Motion, in my opinion, would have solved this problem because Senator Anthony Manzo pointed out that we are trying to set up an infrastructure to fight corruption, entrench transparency and due process. We must not give an impression wittingly or unwittingly that we want to protect or put anything under the closet. Nothing will be lost if we increase the number to seven. The Civil Society is a very powerful organ of governance. The Civil Society and the Media have been recognised as the Fourth Estate of the Realm which means they have a role to play in governance. What we need to do is to increase the number to seven by amending Clause 1(g). The people who crafted this provision knew why they put Civil Society and the Media.

The Chairman: We cannot determine the number at this stage until we exhaust those who should or should not be on that list. It may not even be seven. It may be eight or more or we may even choose to reduce it to six. So, we will come to the issue after we have finished dealing with the subsections.

Senator Anthony George Manzo: Point of Order, Mr. Chairman?

The Chairman: What is the Point of Order?

Senator Anthony George Manzo: It is a constitutional point of Order. I will refer this distinguished Senate to Section 14(2)(b) of the Constitution of Nigeria, 1999. With your permission, it reads:

Section 14(1) The Federal Republic of Nigeria shall be a state based on principles of democracy and social justice.

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(2) *It is hereby accordingly declared that –*

- (a) *Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its power and authority;*
- (b) *The security and welfare of the people shall be the primary purpose of government, and*
- (c) *The participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.*

It is in line with this that I object to the Amendment being proposed by distinguished Senator Adefemi Kila. To exclude the Civil Society and the Media will amount to the fact that we are trying to run a government shrouded in secrecy and that will be unconstitutional.

Senator Nimi Barigha-Amange: Mr. Chairman, I am surprised to hear from a Senator that we are excluding Nigerians. That means 109 Senators are excluding about 140 million Nigerians; it is a very insignificant number. That means we have to increase our number to at least one million to sit here to represent the people effectively. As far as I am concerned, what we have in the Bill is quite enough to represent every segment of the society in Nigeria.

Again, I support Senator Kila's position. Which one is civil society? Is Media not Civil Society?

Some distinguished Senators: No.

Senator Nimi Barigha-Amange: Is Media military society? What do you call it? When you say Civil Society it is a very bogus name. Let us remove Civil Society and leave the Media to act as the watchdog of what the procurement people are doing.

Senator Abubakar Danso Sodangi: Mr. Chairman, our Colleagues should have at the back of their minds what brought about this Amendment. Each one of us here can call for Amendment of any existing Act but the exigency of this Act is very important to all of us.

Last year we saw what this Procurement Act caused and the Executive arm on its own brought out this Amendment Bill as an interim measure so that we can quickly deal with it. It is not that one of us thought of it and brought it to us and we are trying to protect our

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professional interests or Colleagues outside there. If that is the case, we will not be doing justice to this very important Bill before us. I urge all of us to allow what the Executive has brought to us to go as it is. We have made far reaching recommendations already, and we can as well, bring as many as we can at a later stage. But if we now include this and exclude that, we will never conclude this Amendment. I urge all of us to forget about outside interests and pass this Bill as it is.

The Chairman: I will put the Question in respect of the suggestion proposed by Senator Kila that we exclude the Civil Society under Clause 1(g).

Question put and negatived.

The Chairman: I will put the Question in respect of Clause 1 generally as amended.

Senator Ahmed, a look at the numbering in the subparagraph of Clause 1(g), I will suggest that you use Roman numerals so that it will not cause any conflict. Instead of saying 1(g)(a), we can say 1(g)(i). Thereafter, we say 1(g)(ii); (g)(iii) and so on so that it will make legislative sense.

Question put and agreed to.

Clause 1 – (ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT AND ITS MEMBERSHIP) – as amended, ordered to stand part of the Bill.

The Chairman: Can we now go to Clause 2 which is Section 7 on page 3? In the absence of any comment, I will put the Question.

Clause 2 - ordered to stand part of the Bill.

The Chairman: We now go to Section 35, which is Clause 3 on Page 5.

Amendment proposed.

Senator Umar Abubakar Argungu (Kebbi North): Mr. Chairman, allow me to take you back to Clause 2(h) on page 3. I want to make an additional comment there.

Senator Iyiola Omisore made an observation that the Director there should be Director-General of the Bureau. What I am trying to say here is that the leadership of virtually all professional units are headed by professionals. For instance, Finance Units in all organisations are headed by Chartered Accountants;

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Legal Units are headed by lawyers. Procurement is a professional body which has been backed by legislation in this Chamber. So we should allow members of Chartered Institute of Purchasing and Supplies to head all Public Procurement Units in order to sanitise the place.

Therefore, I propose that the Director-General of the Bureau who shall be the Secretary of the Council should be a member of the Chartered Institute of Purchasing and Supplies.

The Chairman: Senator Umar Argungu, we have gone beyond that. We have put the Question. So let us make progress, please.

Is there any comment on Section 35 which is Clause 3 on page 5?

Senator Suleiman A. Adokwe (Nasarawa South): Mr. Chairman, the suggested Amendment in Section 35 still leaves some questions unanswered. If you are saying 30 *per cent* is for construction works and 50 *per cent* for technical items, I am still not satisfied with the 50 *per cent* recommended for technical items. This is vague in the sense that you can also input technicality into construction. I would have thought that what was retained in the initial Amendment leaves room for further definition but once you pinpoint that 30 *per cent* is for construction works and 50 *per cent* for technical items for contractors to supply - *(Interruptions)*

The Chairman: Are you satisfied?

Senator Suleiman A. Adokwe: Yes, please.

The Chairman: Are you withdrawing your proposed Amendment?

Senator Suleiman A. Adokwe: Yes.

Senator Aloysius Akpan Etok: Mr. Chairman, I still need further clarification. The 50 *per cent* should not be left for technical items. Rather, it should be for supplies. This is because you need more money when you are purchasing items meant to be supplied. So, instead of saying 50 *per cent* is for technical items, we should say 50 *per cent* is for the supply of technical items.

Senator Iyiola Omisore: Mr. Chairman, there is the need for our Colleagues to understand that this is an Act; it is not letter writing or Explanatory Memorandum. When you are drafting an Act, you have to put it in the language that is in use.

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What is being referred to here as technical items are heavy equipment like turbines which we may have to pay so much for. Using 10 *per cent* to order an item of such magnitude may be too small and if we say supply, it becomes ambiguous. So, it is precise and right to say technical items.

Senator Mahmud Kanti Bello: Mr. Chairman, with due respect to the last speaker, I am of the opinion that when you come to supplies, you limit it to supplies. We do not have to say technical because there are certain supplies that may not be technical in nature but need a lot of money. We should understand that this down payment of 50 *per cent* is always followed by performance bond, that is, guarantee bond. Therefore, we should leave it at 50 *per cent* without saying *technical*.

Senator Kabiru Gaya: Mr. Chairman, the issue on this item is going to create a problem if not defined and I agree with the Whip that you have to define supply and construction items because when you talk of construction you will give 30 *per cent*.

If you are supposed to build a power plant, there is need to construct a building where you will house the machinery. What this means is that in a contract you will give 30 *per cent* for the total contract sum and 50 *per cent* for the equipment. It means you have paid almost 80 *per cent* of the contract. I suggest that we remove technical items and give suppliers 50 *per cent*

Secondly, in the case of goods and works, they are talking of three weeks. We are talking about two issues. There are pre-qualification and tendering stages. In this report, they have not mentioned where they have merged pre-qualification and tendering. That is what we used to do in the past. A contractor applies or tenders for a job with all his pre-qualifications at the same time when the process would be considered. Is the Committee talking of pre-qualification or tendering or has it merged the two? We need clarification from the Chairman of the Committee on this.

The Chairman: Senator Mohammed Ahmed, please.

Senator Kabiru Gaya: The Chairman of the Committee, Senator Mohammed Ahmed has asked me to repeat myself.

In the tender process, what we emphasised initially was this issue of delay and the proposal was to merge the pre-qualification and the tendering stages to save some time. In that case, any contractor tendering for a

project will send in all his pre-qualification items and be considered together. If he is qualified to tender, then they can accept his tender and write all together instead of dividing the stages.

The Principal Act defined timing for pre-qualification. After you are pre-qualified, then you go for tender. In the Amendment raised by the House of Representatives, they are trying to merge the pre-qualification stage with the tendering stage. When our Committee sat, they only made a proposal which is acceptable so long as it falls within the timeframe but whether they have merged pre-qualification stage with tendering stage should have been defined in the Report and this is what I am asking the Committee Chairman to clarify.

The Chairman: Chairman, you may wish to answer the question but I would like you to address the specific issue of technical items or supplies in Section 35, which is what we are considering now. You can go ahead.

Senator Mohammed I. Ahmed: Mr. Chairman, first of all, I would like to explain the issue of technical. Why we want to have 50 *per cent* for technical is this. If, for example, the government wants to buy an aeroplane, you do not have to wait until the completion of the construction; the money might not be there for the company; you have to make a down payment. That was why we were specific that it should be technical equipment that may not be readily available unlike going to the market to buy fertilizer, fan or something. But these are for heavy equipment.

As to the issue of pre-qualification, the House of Representatives proposed the Amendment. When we come to Conference Committee, we would go into some of the things written in the Bill and perhaps put them together.

Senator Anyim Chukwu Ude: The essence of these Amendments is to reduce the cumbersome due process which causes some delays. When we come to Section 35, the introductory sentence says: *In addition to any other regulation as may be prescribed by the Bureau*, what is this additional regulation? Again, we are giving them leeway to introduce impediments that will cause the delay which we are trying to remove. Why are we allowing them to put in place additional regulations? What do they mean? Why can we not be specific?

Senator Gyang Dalyop Dantong (Plateau North): Mr. Chairman, I would like to comment on the issue of

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technical and supplies. The inclusion of the word *technical* is quite important. We would only need to define what technical items are. If we insert the word; *supplies*, it would be too ambiguous and it may not suffice in this aspect. All we need to do is go to the Interpretation Section and define what technical items are in terms of cost and speciality.

The Chairman: Senator Ahmed, do you have anything to say before I put the Question?

Senator Mohammed Ahmed: No, Sir.

The Chairman: All right. I will now put the Question in respect of Section 35 as amended.

Question put and agreed to.

Section 35 - as amended, ordered to stand part of the Bill.

Section 54(26) – as amended, ordered to stand part of the Bill.

(CITATION AND EXPLANATORY MEMORANDUM) – ordered to stand part of the Bill.

Senator Bassey Ewa-Henshaw (Cross River South): Mr. Chairman, I apologise that I was not here at the beginning of this exercise. I think the Committee has lost an important opportunity to rectify very important aspect of this law that would have helped us as a nation.

In due process pre-qualification, what we found, I know it is not secondary. I think it is important that I make the point please. The due process pre-qualification can be noted if it is possible at their Joint Conference after which they can carefully deal with it.

What we found is that contractors are made to pre-qualify for every contract. I will give you an example. You may pre-qualify for ₦1 billion contract today. Next week there is a tender for a ₦250 million contract. You have to go through the same process for the same kind of contract and that causes delay. If you have been able to pre-qualify for a type of contract for ₦1 billion then it should be automatic that for a less sum, you should be able to just tender for it and avoid delay.

There are other issues about contracting which they should have taken into account. Only yesterday our Committee on FCT noticed that Nigeria is, perhaps, one of the very few countries that continues to denominate contract in both the domestic and foreign currencies. It undermines our sovereignty. Most contracts we give

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out are usually in Naira, Euro or Dollar. This would have been an opportunity to take time and examine it whether or not it is still right for us to continue to do so.

Thirdly, I believe that this agency is the proper agency that would have been given the power to ensure that any MDA that is procuring a contract should have the fund to meet its obligation under that contract. What is happening today is that you give out a contract, one year later; they tell you that there is no money with which to execute the contract. Then the contractor charges interest or abandons the contract or the contract is inflated three or four times; these are practical things on ground.

Finally, we also found out that generally it is the contractors that draft contract agreements. Most of our MDAs do not have a standard form of contract. They take anything from the contractor, look through it and the contractor decides how he wants to run the contract and our people sign it.

The Committee needs to take time to review all these aspects and make this law better, more efficient in order to do what it is intended to do such as saving of funds and time for Nigeria.

The Chairman: Thank you. Let us not reopen the debate but I think it is well noted. I agree with you that there is absolute need for us to have a holistic look at the Procurement Act to make it more efficient but at this stage let us conclude what we have.

Senator Ahmed, I suppose that the following pages contain the Schedule to the Bill, that is, from pages 7 to 8?

Senator Mohammed I Ahmed: Yes, Mr. Chairman.

The Chairman: So, I will put the Question on the Schedule.

Question put and agreed to.

Schedule – agreed to.

Long Title - (A BILL FOR AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT AND OTHER RELATED MATTERS, 2009) – ordered to stand part of the Bill.

Senator Teslim K. Folarin: Mr. Chairman, I respectfully move that you do report progress.

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Senator Kabiru I. Gaya: Mr. Chairman, I second the Motion moved by the Leader that you do report progress.

Question put and agreed to.

(The Deputy Senate President resumed the Chair)

The Deputy Senate President: The Senate in the Committee of the Whole considered the Report of the Joint Committee on Establishment and Public Service and Finance on the Public Procurement Act (Amendment) Bill and Other Related Matters and approved as follows:

Clause 1 - *as amended.*

Clause 2 - *as recommended.*

Clause 3 - *as recommended.*

Clause 4 - *as recommended.*

Clause 5 - *as recommended.*

Clause 6 - *as recommended.*

Clause 7 - *as recommended.*

Schedule - *as recommended.*

Long Title - *as recommended.*

Is this a true reflection of what transpired in the Committee of the Whole?

Several distinguished Senators: Yes.

Senator Teslim K. Folarin: Mr. President, I move that the Public Procurement Act (Amendment) Bill, 2009 be now read the Third Time.

Senator Kabiru I. Gaya: I second the Motion moved by the Leader that the Bill be now read the Third Time.

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Question put and agreed to.

Bill read the Third Time and passed.

Report of the Committees on FCT and Housing on the Public Hearing in Respect of the Administration of FCT Between 1999 and 2007

Senator Teslim K. Folarin: Mr. President, to allow Members of JCCR including your very good self enough time to plan for their visit to Minna later this afternoon, I move that the last item on the Order Paper be stood down to another legislative day.

Senator Kabiru I. Gaya: Mr. President, I second the Motion moved by the Leader that the last item on the Order Paper be stood down to another legislative day.

Question put and agreed to.

Report by leave of the Senate stood down to another legislative day.

ADJOURNMENT

Senator Teslim K. Folarin: Mr. President, I move that this Senate do now adjourn till Tuesday, 20th January, 2009 at 10.00 a.m. prompt.

Senator Kabiru I. Gaya: Mr. President, having exhausted all other items on the Order Paper, I second the Motion moved by the Leader that the Senate do now adjourn till Tuesday, 20th January, 2009 at 10.00. a.m. prompt.

Question put and agreed to.

Resolved: That the Senate do stand adjourned till Tuesday, 20th January 2009 at 10 00 a.m. prompt.

The Senate adjourned accordingly at 12.00 noon.