

A BILL

FOR

AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT 2007 AND FOR RELATED MATTERS, 2019

Sponsored by Hon. Oluwole Oke

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows-

- 1 **1.** The Public Procurement Act (in this Act referred to as lithe
2 Principal Act'? is amended as set out in this Bill. Amendment of
the Principal Act
- 3 **2.** Section 1 of the Principal Act is amended by deleting same and Amendment of
Section 1
4 inserting a new Section 1 with the following words:
- 5 (1) There is established an agency to be known as the Bureau of
6 Public Procurement in this Act referred to as lithe Bureau".
- 7 **3.** Section 2 of the Principal Act is amended by deleting same and Amendment of
Section 2
8 inserting a new Section 2 with the following words:
- 9 The Bureau:
- 10 (a) shall be a body corporate with perpetual succession and a
11 common seal;
- 12 (b) may sue and be sued in its corporate name; and
- 13 (c) may acquire, hold or dispose of any property, movable or
14 immovable for the purpose of carrying out any of its functions under this
15 Act.
- 16 **4.** Section 3 of the Principal Act is amended by deleting same and Amendment of
Section 3
17 inserting a new Section 3 with the following words:
- 18 (1) There is established for the Bureau a Board which shall have
19 overall supervision of the Bureau as specified under this Bill.
- 20 (2) The Board shall consist of-
- 21 (a) the Chairman who shall be a person with cognate experience in

- 1 Public Procurement;
- 2 (b) Six members with relevant qualifications and expertise who shall
- 3 be appointed by the President to represent each of the six geo-political zones;
- 4 (c) a representative of the Attorney-General of the Federation;
- 5 (d) a representative of the Office of the Accountant General of the
- 6 Federation not below the rank of a Director;
- 7 (e) a representative of the Office of the Auditor General for the
- 8 Federation not below the rank of a Director;
- 9 (f) a representative of Civil Society;
- 10 (3) The Board shall-
- 11 (a) provide the general policy direction for the effective functioning
- 12 of the Bureau;
- 13 (b) review and approve Regulations, Guidelines, Directions and
- 14 Circulars issued by the Bureau;
- 15 (c) review and approve the strategic plans of the Bureau;
- 16 (d) consider, approve and amend the monetary and prior review
- 17 thresholds for the application of the provisions of this Bill by procuring
- 18 entities;
- 19 (e) consider and approve policies on public procurement;
- 20 (f) approve the appointment of the Directors of the Bureau;
- 21 (g) receive and consider, for approval, the audited accounts of the
- 22 Bureau of Public Procurement;
- 23 (h) consider, approve and amend the monetary and prior review
- 24 thresholds for the application of the provisions of this Bill by procuring
- 25 entities, whereas, a Certificate of No Objection shall be issued by the
- 26 Ministerial Tenders Board or Parastatal Tenders Board or Departmental
- 27 Tenders Board based on a Regulation issued by the Bureau and approved by the
- 28 Board.
- 29 (i) approve changes in the procurement process to adapt to
- 30 improvements in modern technology"; and

1 (i) do such other things which in its opinion are necessary to ensure
2 the efficient performance of the functions of the Bureau under this Bill.

3 (4) The Chairman and Members of the Board shall be appointed by
4 the President of the Federal Republic of Nigeria.

5 (5) The Chairman and other members of the Board, other than ex-
6 officio members, shall each hold office-

7 (a) for a term of four years renewable once only; and

8 (b) on such terms and conditions as may be specified in the letter of
9 Appointment.

10 (6) Notwithstanding the provisions of this section, the Chairman
11 and any Member of the Board shall cease to hold if-

12 (a) he resigns his appointment as a member of the Board by notice,
13 under his hand, addressed to the President;

14 (b) he becomes of unsound mind;

15 (c) he becomes bankrupt or makes a compromise with his
16 creditors;

17 (d) he is convicted of a felony or any offence involving dishonesty
18 or corruption;

19 (e) he becomes incapable of carrying on the functions of his office
20 either arising from an infirmity of mind or body;

21 (f) the President is satisfied that it is not in the interest of the Bureau
22 or in the interest of the public for the person to continue in office and the
23 President removes him from office;

24 (g) he has been found guilty of contravening the Code of Conduct
25 Bureau and Tribunal Act; or gross misconduct in relation to his duties;

26 (h) in the case of a person possessing a professional qualification,
27 he is disqualified by a competent authority; or

28 (i) in the case of a person who becomes a Member by virtue of the
29 office he occupies, he ceases to hold such office.

30 5. Section 1 (5) (a) of the Principal Act is amended by deleting

1 same completely and making Section 1 (5) (b) to read 1 (5)(a).

2 **6.** Section 2 of the Principal Act is amended by inserting Section 2(h)
3 with the following words: "give such other directives and perform such other
4 functions as may be necessary to achieve the objectives of this Bill".

Amendment of
section 4

5 **7.** Section 4 of the Principal Act is amended by inserting Section 4(e)
6 with the following words: "promotion of local content and industry in the
7 execution of any project in Nigeria."

8 **8.** Section 5(o) of the Principal Act is amended by deleting the word
9 "every" and inserting "any".

Amendment of
Section 5

10 **9.** Section 5 of the Principal Act is amended by inserting Section 5(t)
11 with the following words: "introduce a credit scoring system for federal
12 contractors and services providers", Section 5(u) with the following words:
13 "perform procurement project monitoring and evaluation after the issuance of
14 a Certificate of No Objection for contracts awarded by a procuring entity by the
15 relevant Tenders Board' and Section 5(v) with the following words:

16 "Subject to the approval of the Board, the Bureau shall develop and
17 update the special guidelines and regulations applicable to Defence
18 Procurement"

19 **10.** Section 6(1)(b) of the Principal Act is amended by deleting
20 Section 6(1)(b) of the Principal Act and inserting the following words: "subject
21 to paragraph (a) of this sub-section, issue Regulations to guide the relevant
22 Tenders Board in the issuance of certificate of " No Objection" for Contract
23 Award" within the prior review threshold for all procurements within the
24 purview of this Bill;

Amendment of
Section 6

25 **11.** Section 6(1)(c) of the Principal Act is amended by deleting
26 Section 6(1)(c) of the Principal Act and inserting the following words: "from
27 time to time stipulate in a Regulation to all procuring entities and to the relevant
28 Tenders Board, the procedures and documentation pre-requisite for the
29 issuance of Certificate of 'No Objection' under this Bill;"

30 **12.** Section 6(3) of the Principal Act is amended by inserting Section

1 6(3) (d) with the following words: "set as a regulator by setting standards for
2 public procurement practices, treat petitions, monitoring and post
3 procurement audits".

4 **13.** Section 7(1) of the Principal Act is amended by deleting Sub-
5 section (1) and inserting the following: "there shall be for the Bureau, a
6 Director-General who shall be appointed by the President, on the
7 recommendation of the Board after competitive selections, and subject to
8 confirmation by the National Assembly."

Amendment of
Section 7

9 **14.** Section 15(1) of the Principal Act is amended by substituting
10 for Sub-section (1) thereof a new Subsection, that is:

11 "Subject to the provisions of the Infrastructure Concession Regulatory
12 Commission (ICRC) Act, the provisions of this Act shall apply to all
13 procurement of goods, works and services carried out by:

14 (a) The Ministries, Departments and Agencies of the Federal
15 Government of Nigeria;

16 (b) All entities outside the foregoing description which derive at
17 least thirty- five percent of the funds appropriated or proposed to be
18 appropriated for any type of procurement described in this Act from the
19 Consolidated Revenue Fund of the Federation."

20 **15.** That Section 15(2) of the Principal Act is amended by deleting
21 it completely and inserting a new Section 15(2) with the following words:

Amendment of
Section 15

22 "Procurements involving National Security or National Defence
23 shall be conducted in line with the provisions of this Act but its supervision
24 shall be handled by a Special Committee appointed by the Board and the
25 Board shall be entitled to grant waiver or exemption certificate from the
26 application of specific provisions of this Act to ensure that the security of the
27 nation is not compromised" and inserting a new Section 15(2a) with the
28 following words: "The Board shall be entitled to issue Special Guidelines
29 and Regulations applicable to Defence Procurement."

30 **16.** Sections 16(1)(a),(b), (2), (3), (4), (18), of the Principal Act are

1 amended by substituting it with the followings:

2 Section 16(1) (a) - "Subject to the prior review thresholds as may from
3 time to time be set by the Board pursuant to Section 3(3)(d) of this Bill".

4 Section 16(1)(b) - "based only on procurement plans supported by
5 prior budgetary appropriations and no procurement proceedings shall be
6 formalized until the procuring entity has ensured that funds are available to
7 meet the obligations and subject to the threshold in the regulations issued by
8 the Bureau, has obtained a "Certificate of 'No Objection' to Contract Award"
9 from the relevant approving Authority;"

10 Section 16(2) - "Where the Board has set prior review thresholds in
11 the procurement regulations, no funds shall be disbursed from the Treasury of
12 Federation Account or any bank account of any procuring entity for any
13 procurement falling above the set thresholds unless the cheque, payments or
14 other form of request for payments is accompanied by a certificate of "No
15 Objection", to an award of contract, duly issued by the relevant Tenders
16 Board."

17 Section 16(3) - "For all cases where the Board shall set a prior review
18 threshold, the Board shall prescribe by regulation and/or guidelines the
19 conditions precedent to the issuance of Certificate of "No Objection" under this
20 Bill by the relevant Tenders Board. Where the Board is not constituted, the
21 Bureau may exercise these powers."

22 Section 16(4) - "Subject to the prior review thresholds as may be set
23 by the Board, any procurement purported to be awarded, without a "Certificate
24 of 'No Objection' to Contract Award" duly issued by the relevant Tenders
25 Board, shall be null and void."

26 Section 16(18) - "Notwithstanding subsection (16) of this Section, the
27 relevant Tenders Board may refuse to issue a "Certificate of 'No Objection' to
28 Contract Award" on the grounds that the price is excessive."

29 **17.** The Principal Act is amended by inserting Section 16A, with the
30 following words:

1 (1) The Bureau shall establish a credit scoring system for federal
2 contractors and services providers, which shall be administered by the
3 Bureau or may be outsourced to a competent and authorized local credit
4 rating agency.

5 (2) The Bureau shall be entitled to impose a charge on any person,
6 individual, association, business, organization, firm, company or
7 corporation desirous of obtaining a credit scoring as a federal contractor or
8 service provider.

9 (3) Any proceed accruing from the charge imposed pursuant to
10 Section 16A(2) shall be remitted to the Consolidated Revenue Account, but
11 the Bureau shall be entitled to utilize 75% of the total revenue generated for
12 improvement of staff capacity and other improvements."

13 **18.** Section 19(h) of the Principal Act is amended by deleting and
14 substituting paragraph (h) with a new Section 19(h), with the following
15 words:

Amendment of
Section 19

16 "obtain a "Certificate of 'No Objection' to Contract Award" from
17 the relevant Tenders Board within the prior review threshold as stipulated in
18 Section 3 (a) of this Bill;"

19 **19.** Section 22 of the Principal Act is amended by inserting Section
20 22(6) with the following words: "the Tenders Board shall be solely
21 responsible for the issuance of Certificates of No Objection for contracts
22 awarded by the procuring entity within the prior review threshold for all
23 procurements within the purview of this Act following the criteria set by the
24 Board".

Amendment of
Section 22

25 **20.** Section 24(3) of the Principal Act is amended by deleting and
26 substituting subsection (3) with a new subsection (3), with the following
27 words:

Amendment of
Section 24

28 "The winning bid shall be that which is the lowest evaluated
29 responsive bid which has been responsive to the bid with regards to work
30 specification and standard and can demonstrate preference and commitment

1 to development of local content"

2 **21.** Sections 34(1) & (2) of the Principal Act is amended by
3 substituting for subsections (1) & (2) thereof new subsections, that is-

4 34.(1) A procuring entity shall grant a margin of preference in the
5 evaluation of tenders, when comparing tenders from domestic bidders with
6 those from foreign bidders or when comparing tenders from domestic
7 suppliers offering goods manufactured locally with those offering goods
8 manufactured abroad.

9 (2) Where a procuring entity has allowed domestic preferences, the
10 bidding documents shall clearly indicate any preference to be granted to
11 domestic suppliers and contractors and the information required to establish
12 the eligibility of a bid for such preference.

13 (3) Margins of preference shall apply only to tenders under
14 international competitive bidding.

15 (4) The Bureau shall, by regulations, from time to time set the limits
16 and the formulae for the computation of margins of preference and determine
17 the contents of goods manufactured locally.

Amendment of
Section 35

18 **22.** Section 35 of the Principal Act is amended by substituting for
19 subsection (1) thereof a new subsection, that is-

20 "(1) In addition to any other regulations as may be prescribed by the
21 Bureau, a mobilization fee of not more than 35% may be paid to a supplier or
22 contractor supported by the following.

Amendment of
Section 38

23 **23.** Section 38(3) of the Principal Act is amended by deleting It,
24 provided that when ordered to do so by a court, the procurement entity shall not
25 disclose such information, if its disclosure would: (a) be contrary to law; (b)
26 impede law enforcement; or (c) prejudice legitimate commercial interests of
27 the parties."

Amendment of
Section 39

28 **24.** Section 39(1) of the Principal Act is amended by deleting and
29 substituting subsection (1) with a new subsection (1), with the following
30 words; "Notwithstanding the provisions of this Act, the relevant Tenders Board

1 may issue Certificate of 'No Objection' upon conditions hereinafter
2 prescribed in a Regulation issued by the Bureau".

3 **25.** Section 43(4) of the Principal Act is amended by deleting and
4 substituting subsection (4) with a new subsection (4), with the following
5 words;

Amendment of
Section 43

6 "Immediately after the cessation of the situation warranting any
7 emergency procurement, the procuring entity shall file a detailed report
8 thereof with the Bureau which shall verify same and if appropriate request
9 the relevant Tenders Board to review same and upon satisfaction issue a
10 Certificate of 'No Objection'".

11 **26.** Section 60 of the Principal Act is amended by inserting the
12 following words after the meaning of "Contractor or Supplier": "Defence
13 Procurement" means the procurement of Special Purpose Goods, Works and
14 Services involving National Defence or National Security, excluding civil
15 works and non-security related goods" and after the meaning of "Debar":
16 "Relevant authority" includes Economic and Financial Crimes Commission
17 and Independent Corrupt Practices Commission, Ministerial Tenders
18 Board, Parastatal Tender's Board, Departmental Tender's Board";

Amendment of
Section 60

19 **27.** All reference to Council in the Principal Act is hereby amended
20 by deleting Council and replacing it with Board.

21 **28.** This Bill may be cited as the Public Procurement
22 (Amendment) Bill, 2019.

Citation

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Public Procurement Act 2007.