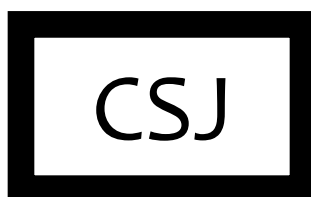


CONSTANT CHALLENGES

(A Report on the Implementation of the Public Procurement Act: January - June 2010)



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Abbreviations and Acronyms

Act or PPA	Public Procurement Act
Bureau or BPP	Bureau of Public Procurement
Council	National Council on Public Procurement
CSJ	Centre for Social Justice
CSO	Civil Society Organisation
EFCC	Economic and Financial Crimes Commission
EXCOF	Executive Council of the Federation
FAAN	Federal Airports Authority of Nigeria
ICPC	Independent Corrupt Practices Corruption
MDA	Ministry, Department or Agency of Government
MDG	Millennium Development Goals
NNPC	Nigeria National Petroleum Corporation
PSC	Production Sharing Contract
TUPNI	Total Upstream Petroleum Nigeria Limited

Executive Summary

Constant Challenges documents the developments in federal public procurements between January and June 2010. It starts with an introduction which states the general principles and the purpose of the report. The second part is the positive developments in terms of what transpired in the direction of realizing the goals of the Act. These include sensitization and capacity building undertaken by the Bureau and projections of monies saved the Treasury through the implementation of the Act.

The third part is the challenges and these include reported inflation of contracts, the fake companies used in the aviation scam, Daimler bribe scandal, the N64 billion Abuja airport runway scam, failed rural telephony contract, procurements engaging foreign companies that appear not to have undergone due process and the bloated legislative procurements in the 2010 budget. Others include the scheming out of indigenous companies by a multinational oil company, denial of access to procurement records and proceedings, procurement issues in football administration, etc.

The fourth part is the conclusion while the fifth is the recommendations. The following recommendations were reached at the end of the report for various stakeholders.

The President

- ❖ should as a matter of urgency, constitute and inaugurate the National Council on Public Procurement to strengthen the regulation of the implementation of the Act;
- ❖ stop the continued violation of the law wherein the Executive Council of the Federation acts as an illegal approving authority;
- ❖ as the leader of the executive arm of government, direct increased access to procurement information through the Bureau, the Minister of Finance and the Head of Service. In this case, there may be need for amendments of the Civil Service Rules and the Financial Regulations which hinder access to fiscal information.

The Bureau

- ❖ give instructions to MDAs to open up the procurement process to CSOs, professional groups and interested Nigerians in accordance with the spirit and letters of the Act;
- ❖ exercise greater supervisory role in the procurement affairs of MDAs in accordance with the tenor of the Act;
- ❖ exercise its powers under various provisions of the Act including but not limited to powers to sanction erring officers, procuring agencies and service providers;
- ❖ bring to the attention of the President the illegality of its continued operations without the constitution and inauguration of the Council;

The Legislature

- ❖ enhance its oversight over the management of appropriated funds used for public procurement;
- ❖ ensure that as from the 2011 budget, developmental capital takes the chunk of capital expenditure and expenditures are dedicated to the areas of greatest need of Nigerians;
- ❖ design a strategic template for the monitoring of capital budget execution;
- ❖ consider a legal action against the President for failure to constitute the Council.

The Attorney-General of the Federation, ICPC and EFCC

- ❖ ensure diligent investigation and prosecution of violators of the Act to serve as deterrent to others who may wish to manipulate the procurement process.

CSOs, Media and the Academia

- ❖ meticulous engagement and insistence through monitoring and reporting on the implementation of the provisions of the Act;
- ❖ action advocacy to ensure that violators of the Act are brought to book;
- ❖ file test cases in court to challenge illegalities perpetuated by the authorities.

1. Introduction

The Public Procurement Act was enacted in June 2007 to re-engineer the process of capital budget implementation. The Act seeks to sanitise the procurement process from one characterized by fraud, contract inflation, project abandonment, financial abuses and poor service delivery to one with the capacity to deliver value for money, effective budget implementation, prudent management of scarce resources, accountability, transparency and competitiveness in the award and execution of contracts to ensure that public resources are channeled toward satisfying the needs of Nigerians.

Three years after its passage, the Public Procurement Act is struggling to deliver on its mandate despite the efforts of stakeholders. Although efforts towards the implementation of the Act have been yielding dividends, some of which are captured here, it is the challenges facing the implementation of this Act that forms the bigger part of events during the reporting period. While it is a fact of life that the only constant thing is change, the Nigerian procurement process seems to pride itself in being enmeshed in constant challenges, a refusal to change and an insistence on doing the same wrong things with the expectation of different results.

This report is geared towards drawing the attention of stakeholders on the need for improvements to the system, the areas where improvements can yield great results and what can be done to secure these improvements. CSJ presents this report in the hope that it will provide the tonic for positive change instead of the current constant challenges.

2. Positive Developments

2.1 MDA Staff and Public Sensitisation

The Bureau, during the period under review kept up staff and public sensitisation and education on the provisions of the Act and the need for sound public procurement management as a basis for national development. It has also requested MDAs to engage civil society organisations working on transparency and anti corruption issues in their bid opening processes. The Bureau has also organized sector specific training for the respective MDAs to ensure that that demands of the PPA are met in their respective procurement functions. Sensitisation workshops have also been organised in the six geo-political zones of the country wherein contractors, the media, non-governmental organisations, public servants etc, were generally invited to participate. Procurement planning and review workshops also featured in the Bureau's sensitisation programmes¹.

2.2 Capacity Building for Professional and MDA's Procurement Officers

The Bureau has also within the period of this report, conducted training programmes for purchasing and supply, business management, law, accounting professionals and procurement officers in MDAs, in fulfillment of one of its statutory objectives as enshrined in Part 11, section 5 (k) of the Public Procurement Act, 2007. This exercise was targeted at enhancing the competence and skills of the professionals and public officers in playing their roles in public procurement reforms. This has certainly increased public knowledge of the role of the Bureau and the workings of public procurement reform in Nigeria.

¹ See Daily Trust Newspaper of Friday May 21 2010 at page 60 for the advertisements inviting MDA officers to a procurement planning workshop.

2.3 Outright Indictment, Naming and Shaming of Some Violators of the PPA

In its bid to mainstream procurement best practices in MDAs, the Bureau has openly indicted the Ministries of Defense and Education² for various forms of violation of the PPA in their procurement proceedings. This revelation brings to the fore the awareness that irregularities have been existing in the procurement process and also that the Bureau is beaming a search light on the conduct of the procurement process. It is also commendable that the EFCC is also in the crusade against procurement related fraud, which is evident in the recent sentence slammed on some prominent Nigerians for procurement related offences³. This posture would serve as a deterrent to those contemplating fraud and embezzlement.

2.4 Nigeria Saves About \$590m from Adherence to Due Process

The Director-General of the BPP during the period under review indicated that strict adherence to due process and best procurement practices have saved Nigeria about \$590m from July 2007 to date. This development is highly commendable and points to the benefits inherent in the strict implementation of the Public Procurement Act. However, he did not give details of how he arrived at the figure and the basis of the calculation.

3. Challenges

3.1 Inflation of Contracts - Abuja Roads

The project for the expansion of Abuja roads was inflated as follows; In Lot One of the Abuja Airport Road contract, the contractor quoted N58.6 billion but the contract was awarded for N59.2 billion. This was also applicable to Lot Two of the same Airport Road Contract where the contractor quoted N48 billion but it was awarded at N49 billion. The Abuja Outer Northern Expressway Contract was also inflated where the contractor quoted N64.9 billion and later got it for N66.8 billion.

The above development implies deliberate mischief and deliberate inflation of contract sums for personal enrichment contrary to the provisions of the PPA. It is also worrisome that contracts of this magnitude require the certification of the Bureau of Public Procurement and the approval of the Executive Council of the Federation. One begins to wonder if the Bureau was actually involved in this process or the procuring entity skipped due process by going ahead to award contracts in the range of billions of naira without the certification of the BPP and approval of EXCOF. Available information indicates that the contract passed through due process and the EXCOF.

3.2 The N5.6billion Aviation Scam: Fake Companies Used in Contract Bid

Investigation and reports on the aviation scam reveals that most of the companies involved in the scam were fictitious. But how did they skip the scrutiny of the procurement authorities? This development questions the commitment of the Bureau of Public Procurement to its mandate under section 5 (h) where the Bureau is supposed to “*maintain a national data base of the particulars and classification and categorization of federal contractors and service providers*”. Had the Bureau been consistent in upholding this

² Daily Sun newspaper, Friday, October 2, 2009 at page 49.

³ The Bode George imprisonment case.

mandate, issues of falsifying companies and getting contracts would have been minimised if not eradicated.

At the procurement corruption trial of the former Minister of Aviation, Professor Babalola Borishade and four others namely Roland Iyayi, T.A. Dairo, George Elder and Avsatel Communications Ltd at the Federal High Court Maitama Abuja before Justice Umar Sadiq on Wednesday June 9 2010, a prosecution witness testified that two companies used in the bid process notably F-Coleman and Aero enterprises were fictitious and were used in the scam involving N5.6 billion.

3.3 Daimler Bribery Scandal

It was revealed during the review period that former top Nigerian government officials have been implicated in a multi-million dollar scandal involving a United States company, Daimler, the manufacturer of Mercedes Benz cars. The case against the automaker, includes payment of bribes to win orders to supply Mercedes Benz limousine to Aso Rock Villa and over charging for spare parts and services in collusion with the “chief buyer” at the Villa. There are indications that Daimler is settling for plea bargain with the American prosecutors instead of contesting the charges for which the company may pay fines of about \$180m to settle the case filed at a Washington DC District Court.

Besides showering foreign officials with millions of dollars and gifts of luxury cars to win business deals, Daimler is said to have made “improper payments to Nigerian government officials in order to secure business. These payments were authorized at the highest levels of management, and were either improperly recorded in the company’s books and records or were not recorded at all”. It is revealed by court papers that many of the Nigerian deals were done through a senior executive of the Anambra Motor Manufacturing Company (ANAMCO), a joint venture between Daimler and the Federal Government. The gravity of the matter as revealed by the papers is such that Daimler maintained a file labeled “grellberschreitende Bestechungen,” which translates as “cross border briberies”. According to US Court filings “that file contained a memorandum dated January 21, 1999, from the then head of finance...which stated that Daimler charged the State House approximately 21 percent over the wholesale price for the vehicles, parts and services supplied”

The Court filings also showed that specifically on October 5, 1998, the ANAMMCO Executive, on behalf of Daimler, agreed to sell 23 new Mercedes Benz Passenger vehicles to the State House for DM15, 882,302. Additionally, a used 600 Pullman limousine was armoured and sold to the Nigerian State House for \$365,000. Daimler is therefore said to have made \$1,427,242.65 pounds in improper commission payments funded from Third Party Accounts associated with ANAMMCO with understanding that these funds would be passed on, in whole or in part, to Nigerian officials to secure the State House contract.”

Also in May 1999, at the request of the ANAMMCO Executive, Daimler wired 800,000 deutsche marks from it accounts in Germany to a numbered Swiss bank account. The payment request, according to the court papers, came from the ANNAMCO executive and

the “referenced initials...matched those of a then high-level executive branch official of Nigeria... and debited from ANAMMCO TPA upon the approval⁴.

As usual, nothing is happening in Nigeria while the US authorities are raking in money for their Treasury for violations that took place in Nigeria. No one will be sanctioned in Nigeria and life continues.

3.4 N64 Billion Airport Runway Contract Scam

The Federal Airports Authority of Nigeria (FAAN) and the Ministry of Aviation were reported to have sharply manipulated the procurement process leading to the inflation of the contract for the construction of a second runway at the Nnamdi Azikiwe International Airport, Abuja following the depreciation discovered on the old runway built about twenty years ago. The House of Representatives Committee on aviation which probed the procurement noted the secrecy and undue haste that preceded the award of the contract. It appeared that FAAN had decided from the beginning to award the contract to Julius Berger Construction Company and was merely working from the answer to the question. The contract was awarded on selective tendering instead of open competitive bidding. At the end of the hearings, the House Committee on Aviation recommended the revocation of the contract and a new tendering process while the Presidential Projects Assessment Committee recommended the reduction of the contract fee by N13.5 billion. However, the Presidency has finally directed the cancellation of the contract and a new tendering process to be undertaken.

3.5 Debts on Rural Electrification Projects

The Association of Rural Electrification Contractors of Nigeria during the period under review wrote the Federal Ministry of Power and the Economic and Financial Crimes Commission over government’s indebtedness to them to the tune of N19.3 billion. The contractors noted that they have sued the Ministry of Power and the Rural Electrification Agency over the debt. The Association stated that verification has been concluded but it was yet to be paid and this is further compounded by the fact that the Rural Electrification Agency has been abolished by the Federal Government.

This turn of event runs contrary to the provisions of section 37 of the PPA which states as follows:

(1) payments for procurement of goods, works and services shall be settled promptly and diligently.

(2) any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, extra Ministerial Office, Government Agency, Parastatal or corporation shall be deemed a delayed payment.

(3), all delayed payments shall attract interest at the rate specified in the contract document.

⁴ Punch, Thursday, March 25, 2010. P.15

(4) all contracts shall include terms specifying the interest rate for late payment of more than sixty days.

3.6 Failed Rural Telephony Contract

Despite huge public expenditure running into billions on the rural telephone project meant to facilitate communications in the rural areas, there is nothing on the ground justifying such expenditure. To make matters worse, the contractors, when summoned, refused to appear before the House of Representatives Committee on Communications. The Committee was considering handing the contractors over to the EFCC.

3.7 Review/Probe of Federal Government Contracts

In early June, the President during the opening of the one day retreat on the implementation of Vision 2020 and Public Private Partnerships stated government's intention to look into the procurement process in the country in a bid to cut costs and enhance value for money. He noted that the cost of procurements in Nigeria was one of the highest compared to other developing countries. Before this development, the President had set up the Presidential Projects Assessment Committee in March 2010. The Committee is charged with taking inventory of all ongoing capital projects, evaluate the professional competence of the contractors handling projects, examine the plan of action to determine whether it is realistic, practical and achievable, and make appropriate recommendations to government. It was also charged with reviewing the high cost of procurements in Nigeria.

In April, the Independent Corrupt Practices and Other Related Offences Commission had indicated its interest to probe the implementation of the 2009 capital budget. In following up this intention, it sent out a memo dated April 22 2010 headed "*request for details in respect of 2009 capital projects*" to all federal MDAs for returns and information on the implementation of their 2009 capital budgets.

3.8 Senate President Criticizes NNPC over \$35b Chinese Contract

The Senate President, Senator David Mark in June criticized the Nigerian National Petroleum Corporation (NNPC) over the \$35 billion contract with a Chinese company saying that the company does not possess the best of technology in refinery construction. He decried that almost \$600 billion have left the shores of Nigeria in the last 50 years and therefore rhetorically asked "when will we bring back the money either by incentives or by guaranteeing security of investments of Nigeria?"

His criticism was prompted by the award of a contract for the construction of three refineries in the country to a Chinese company instead of Nigerian Engineers which in his view would have been contributing to the realization of the vision 2020. In his words he said. "Recently, the Nigeria National Petroleum Corporation (NNPC) signed a \$35 billion contract for constructing a refinery in Nigeria. It is known that China does not have the best technology in refinery but Nigerian engineers working in Houston and other places could do the same if the infrastructure agency can raise the finance for them to do it.while we appreciate that we are in an era of globalization, the vision 20:2020 must be truly Nigerian project, with Nigerian soul and psychology"⁵.

⁵ The Nation Newspaper and Business News of Tuesday, June 15, 2010.

The questions that arise from this development are legion and they include: Did this contract for a new refinery pass through due process? If the answer is in the affirmative, what was the basis for the selection of the Chinese company? Did it give the best price, technology, etc? Was there an open competitive bidding considering that there are many companies out there that can build and manage refineries? If the answer is in the affirmative, was the Chinese offer, the most responsive to the bid solicitation?

3.9 FG Seals \$400m Contract with Chinese Firm

The Nigerian Agricultural Cooperative and Rural Development Bank Limited (NACRDB) has concluded arrangements for a \$400 million deal with China National Machinery and Equipment Import and Export Corporation (CMEC). Under the arrangement, the Chinese Agency will supply 10,000 tractors to farmers in Nigeria. The deal entails the supply of machinery and equipment and after sales product stewardship commitment by the manufacturers.

The Ministry of Agriculture and Water Resources will provide 25 percent subsidy on the cost of the machinery and equipment. The facility from China is such that will enable NACRDB give a 10 year repayment plan to farmers for them to acquire the tractors. The total credit is \$400 million including subsidies from government. One of the conditions of the agreement is the advance payment of 16 percent of the contract sum while the balance of 84 percent will be amortized over a period of 10 years at pegged interest rate of 2 percent per annum. The facility also attracts two year moratorium on both principal and interest. It is expected that the implementation of the agreement will bring down the prices of tractors from their current level of about N7.5 million to N5million and also add up to the number of tractors in the country from the current estimated number of 15, 000 functional tractors to 25,000. The agreement also provides for training and capacity building for Nigerian Engineers, tractor operators and technicians. It is expected that trained personnel would eventually take charge of repairs and maintenance of the machinery and equipment⁶.

Sweet as this deal may sound, it raises a number of posers; is this loan or transaction captured in the Medium Term Expenditure Framework, the 2010 budget or any other financial plan of government? Are the tractors to be acquired the best for the Nigerian soil available in the market? Are we not being used as a dumping ground for Chinese products in their search for overseas markets? What was the process used in arriving at this deal? With \$400million, can Nigeria not revive one of its ailing tractor companies to produce made in Nigeria tractors, creating jobs and adding value to the economy? The questions are legion.

3.10 Bloated Expenses for Procurements in the 2010 Budget of the National Assembly

As the nation continues to experience the paucity of funds to execute development capital projects that will impact on the living conditions and livelihoods of the majority of the population, it is disheartening that the National Assembly approved the following expenditures for itself in the 2010 budget.

⁶ This Day, Tuesday, March 30, 2010 p. 38.

The Fat in the National Assembly Budget - Table 1

Code	Expenditure Items for National Assembly Office	Amount in Naira
021060002300601	Security vote (including operations)	345,693,750 ⁷
021060010150000	Purchase of generating sets	500,000,000
021060002300601	Security services	400,000,000 ⁸
021000002501101	Contingencies	518,500,845
021060010020000	Purchase of office equipment	500,000,000
	Expenditure Items for Senate	
021005002300605	Security vote (including operations)	1,259,000,000
021005002501099	Other Miscellaneous expenses	18,559,733,617
021005010012001	Purchase of vehicles for presiding and principal officers, departmental utility and staff buses	500,000,000
021005010012106	Purchase of books and shelves for NASS Library	300,000,000 ⁹
021005010012203	Purchase of guest houses for presiding officers	750,000,000 ¹⁰
021005010012399	Renovation and furnishing of Senate President and his deputy's residences	250,000,000 ¹¹
021005010012299	Establishment of a TV/radio station	500,000,000 ¹²
021005010012110	Purchase of office equipment	855,000,000
021005010012114	Purchase of security equipment	800,000,000 ¹³
021005002150300	Materials and supplies	3,680,200,000
021005002350700	Consulting and professional services	1,740,000,000
	Expenditure Items for House of Representatives	
021010002050110	Travels and transport	22,805,995,000
021010002150300	Materials and supplies	3,984,673,000
021010002501099	Other miscellaneous expenses	15,013,004,846
021010010012302	Members image laundering	265,000,000

It is our position that the budget of the National Assembly can be reduced by about 50% and the same reduction method could be applied to other deserving MDAs.

⁷ Who is going to manage this security vote considering that the Senate and the House of Representatives have their separate votes?

⁸ As distinct from the security vote aforementioned.

⁹ The House of Representatives and the National Assembly office also have huge votes for the purchase of library books. This also appeared in the approved budgets of both Houses last year.

¹⁰ Should guest houses for presiding officers of the Senate take precedence over people's right to a livelihood?

¹¹ They are leaving office in the next one year and their successor will also likely start the furnishing process afresh.

¹² For what purpose when Government is considering the privatization of existing government owned stations?

¹³ This is different from the security vote.

3.11 Scheming out of Nigerian Indigenous Company from a \$43 Million Production Sharing Contract (PSC)

During the period under review, the House of Representatives Committee on Public Procurement indicted Total Upstream Nigeria Limited (TUPNI) over the award of contracts worth \$43million in its Akpo Oil Field Development Project, to a foreign firm, Oceaneering International, instead of Tilone Nigeria Limited, an indigenous firm. The Akpo Field Development Project on the Oil Mining Lease No. 130 (OML130) is a Production Sharing Contract (PSC) venture between the Federal Government of Nigeria (as represented by the NNPC) and TUPNI.

It was observed that the contract bid was originally won by the local firm, but was awarded to Oceaneering in contravention of the Public Procurement Act and local content policy in the oil and gas industry in Nigeria. This scheme-out design masterminded by TUPNI runs contrary to the spirit and letters of the PPA which envisions the participation of Nigerians in the procurement of goods, works and services for national development.

The Act provides in section 34 (1) as follows:

34. (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 manufactured locally with those offering goods manufactured abroad.

(2) Where a procuring entity intends to allow domestic preferences, the bidding 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.

The investigation revealed that TUPNI organised the call for tender marked: APO/CO4/05 for provision of Remotely Operated Vehicles (ROVs) services to the Akpo Field Development Project out of which Tilone Nigeria Limited, Oceaneering International AG and SUB-SEA 7 indicated interest and were subsequently pre-qualified. SUB-SEA later opted out of the bidding process and on June 13, 2006, a competitive bid exercise was conducted between Oceaneering International and Tilone Nigeria Limited, wherein Tilone Nigeria Limited emerged the winner.

However, in the course of sorting the bids for the contract, TUPNI allegedly inflated the bid of Tilone Nigeria by about \$10.975 million to make it higher than the bid of Oceaneering Limited, the foreign firm and only competitor on the job. TUPNI therefore automatically disqualified Tilone and proceeded to award the contract to Oceaneering International, contrary to earlier directive of the NNPC Board to the effect that the contract be awarded to Tilone.

It is interesting to report that consequent upon its the findings on the allegations, the House of Representative Committee on Procurement demanded immediate demobilisation of Oceaneering International from the project and directed Total Upstream Nigeria to comply immediately with the directive of the Board of the NNPC, by awarding the contract to Tilone Nigeria Limited at the current commercial rates and pay compensation to it for undue financial exposure during the period it was denied the contract.

This directive of the House of Representative Committee on Procurement is a positive action towards the implementation of the PPA. It is further expected that Oceaneering International and TUPNI be visited with appropriate sanctions in line with section 58 of PPA.

3.12 Denial of Access to Records of Procurement Proceedings

One of the very important principles of the PPA is that *all public procurement shall be conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the Act and regulations deriving therefrom.*¹⁴ These principles of transparency and accountability also extend to the keeping of procurement records and allowing public access to them upon request. Specifically, Sections 16(12) and (14) of the PPA provide as follows:

16 (12): Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.

16 (14) All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau.

Further, section 38 of the Act guarantees access to procurement records after the conclusion of proceedings.

Notwithstanding these clear transparency and accountability provisions of the Act, procuring entities (MDAs) still rely on their oaths of secrecy and refuse CSOs request for access to records of procurement proceedings. The Federal Government Public Service Rules (“Rules”) 2008 in Rule 020209 provides that it is the duty of every accounting officer to ensure that officers in his ministry or extra ministerial department sign an oath of secrecy on Security Form 1 and that the oaths so signed are carefully preserved. Again in Rule 030415, this duty is reaffirmed by the Rules. In accordance with the Official Secrets Act and Rule 030416, every officer is subject to the Official Secrets Act and is prohibited at the pain of punishment from disclosing to any person, except in accordance with official routine or with the special permission of government, any article, note, documents or information entrusted to him or her in confidence by any person holding office under any government in the Federal Republic of Nigeria or which he has obtained in the course of his official duties and shall exercise due care and diligence to prevent the knowledge of any person against the interest of the government. Further, by Rule 030417, every officer is prohibited from abstracting or copying official minutes, records or other documents except in accordance

¹⁴ Section 16 (1) (d), PPA.

with official routine or with the special permission of his accounting officer. Civil servants are more at home with the Rules and tend to follow it.

The implication of the foregoing is that every request for information or records of procurement proceedings (whether classified or unclassified including published gazettes, books, journals, reports, etc) by a non civil servant from any staff in an MDA is usually to be put in writing and the request addressed to the accounting officer who is the sole authority to approve or reject the application. This is a laborious process and most at times, there are no replies to such requests. Admitted that there may be need to classify some official information, but this should not pertain to the routine records of procurement proceedings.

The response of MDAs to harmless requests for comprehensive records of procurement proceedings calls to question the basis of the enactment of the PPA especially the provisions touching on transparency, accountability and probity. CSJ and other CSOs sent various letters and followed up with visits to several MDAs to get access to basic comprehensive records of procurement proceedings to no avail. Specific instances of such request include:

A. CSJ's request for Access to Comprehensive Records of Procurement Proceedings dated November 21, 2009. The letter was addressed to the Director –General, National Primary Health Care Development Agency, Plot 681/682 Port Harcourt Crescent, off Gimbiya Street, Area 11, Abuja, requesting for the records of procurement proceedings in respect of:

- ❖ Lot/2009/6/1 for computer accessories and consumables; Lot 2009/6/2 for printing of non security documents; Lot 2009/6/3 for general store items; Lot 2009/6/4 for fire prevention equipment; Lot 2009/6/5 for automobile batteries and tyres; Lot/2009/6/6 for Hajj vaccines/CSM (ACWY 135).
- ❖ Lot/2009/1/1MSS for TBA Kits and Mama KITS; Lot/2009/1/2MSS for medical and laboratory equipment; Lot/2009/1/3/MSS for registers, record/log books, family health record books.

All these invitation for tender were advertised in the Nation Newspapers of Wednesday, July 1, 2009 at page 10.

Reminder was also sent via a letter dated 18/01/2010. In response, the National Primary Health Care Development Agency, through its procurement officer called for a meeting with CSJ wherein the Agency clearly stated that it will not make the requested records available and further directed CSJ to make its request to the Bureau. Present at the meeting were Eze Onyekpere and Henry Unongo from the CSJ side while Bernard Oyahire, the procurement officer, Tajudeen Oyaowei the procurement facilitator and Seyi Taiwo represented the National Primary Health Care Development Agency.

B. CSJ also requested to have access to comprehensive record of procurement proceedings from the Ministry of Works, Housing and Urban Development in respect of procurement contract for the rehabilitation and expansion of the Aba Owerri road, and the Abuja Airport Express Way Lots 1 and 2 awarded Messrs Niger Construction Company Ltd and Julius Berger (Nigeria) Plc respectively which were approved by the Federal Executive

Council on 29/04/09. The first letter and the reminder were dated November 21, 2009 and January 18, 2010 respectively and addressed to the Permanent Secretary of the Ministry. CSJ waited in vain up till the date of writing this report.

C. Another request was made to the Universal Basic Education Commission on November 21, 2009 through the Executive Secretary for the comprehensive records of procurement proceedings generated on the Self-Help Community Initiative project which was advertised in This Day Newspaper of July 30, 2009. The Commission merely replied on December, 11, 2009 stating that the projects were still on-going and had since then, not made the documents available to CSJ as requested.

D. CSJ also made a request dated February 2, 2010 and addressed to the Project Coordinator, Malaria Booster Project, National Malaria Control Programme, Federal Ministry of Health, 1st Floor, Kalu House, 1st Avenue, off Shehu Shagari Way, Central Area, Abuja requesting for access to comprehensive records of procurement proceedings in respect of 1,800,000 units of mosquito nets hangers kits: IFB N0: ICB/NMCCBP/HANGERS KITS/001/08 which bid was conducted through International Competitive Bidding(ICB) in 2008. No response was received by CSJ till the date of this report.

On February 16, 2010 CSJ addressed a letter to the office of Director-General BPP, calling for the intervention of the Bureau in such a way that the records would be made available to CSJ as requested. The Bureau, via, a reply dated February 24, 2010, eventually referred CSJ to its website for the information on the records requested. However contrary to the Bureau's letter, the requested records were not available on the BPP website.

The Bureau has the powers to call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding.¹⁵ Also, every procuring entity is duty bound to transmit to the Bureau copies of all procurement records not later than 3 months after the end of the financial year showing as noted earlier:

- ❖ information identifying the procuring entity and the contractors;
- ❖ the date of the contract award;
- ❖ the value of the contract; and
- ❖ the detailed records of the procurement proceedings.¹⁶

The Financial Year Act¹⁷ prescribes Nigeria's financial year as the period between 1st January to the 31st of December and the records of procurement proceedings requested for by CSJ were generated in 2008 and 2009. It is therefore presumed that the Bureau is either in possession of those records but does not want to make them available to the public on request to enhance transparency in public procurement or that the Bureau is not exercising its powers in that area thereby allowing procuring entities to frustrate the transparency provisions of the Act.

¹⁵ Section 6(1) (j) of PPA.

¹⁶ Section 16(12), PPA.

¹⁷ Cap F.27, LFN, 2004; See also Section 13, PPA which provides that the financial year of the Bureau shall be the same as that of the Federal Government.

3.13 Procurement Issues in Football Administration

During the reporting period, the Nigerian football authorities sacked the national coach Amodu Shuaibu and replaced him with Lars Lagerback who is of Swedish nationality. He was sacked for poor performance after qualifying Nigeria for the World Cup. The authorities claimed they wanted to hire a world class coach. However, the surprising thing was that Lars Lagerback failed to qualify Sweden for the same world cup. Yet, he was hired to replace a man who had qualified his country. While Amodu was on a salary of N2million a month, Lagerback was offered a monthly salary of \$300,000 which translates to N45 million a month at the rate of N150 to 1USD. He was given a mandate to take Nigeria to the semi finals of the World cup and he failed woefully and miserably. Nigeria was unable to win one match- two defeats and a draw and Nigeria crashed out at the first round of the FIFA World Cup in South Africa.

Upon any assessment of value for money, expecting a man who earned N2m monthly to do the same job at the same level of performance as a man who earns N45m was extremely cruel and unrealistic. Amodu was supposed to have delivered, by value for money assessment, less than 5% of Lagerback's output but he performed much better. Hiring Lars Lagerback was an incredible waste of public funds by the Presidential Task Force and the football authorities.

More worrisome is the revelation that an equally qualified candidate, Glen Hoddle was not given the job because he refused to raise his asking price from \$900,000 to \$1.5million. The balance of \$600,000 was supposed to be a kick-back to the interviewers. Surprisingly after Glen Hoddle and John Shittu made this public allegation, the EFCC failed to follow up on the lead and nothing was heard of the matter thereafter¹⁸.

3.14 Shortening the Advertisement Time

The Public Procurement Act in section 25 (2) Every invitation to an open competitive bid shall (2) (1) *"in the case of goods and works, valued under National Competitive bidding, the invitation for bids shall be advertised on the official notice board of the procuring entity, any official website of the procuring entity, at least two newspapers and in the procurement journal not less than six weeks before the deadline for submission of the bids for goods and works"*

This aspect of the PPA has been undermined by MDAs in their procurement process. Some agencies claimed that the BPP had by a circular shortened the advertisement time to facilitate capital budget implementation. Assuming this is true, it is still a violation of the Act as the Bureau lacks the power to amend the Act without recourse to the Legislature.

3.15 National Council on Public Procurement yet to be Constituted and Inaugurated

The Public Procurement Act in section 1 provides for the establishment of the National Council on Public Procurement. The Council is supposed to regulate and approve the procurement policies and oversee the activities of the Bureau of Public Procurement in achieving procurement best practices. Section 2 of the Act reads thus; Council shall;

¹⁸ Punch Newspaper Editorial, Thursday March 25 2010.

- (a) consider, approve and amend the monetary and prior review thresholds for the application of this Act by procuring entities.*
- (b) consider and approve policies on public procurement.*
- (c) approve the appointment of the Directors of the Bureau*
- (d) receive and consider, for approval the audited accounts of the Bureau of Public Procurement.*
- (e) approve changes in the procurement process to adopt to improvements in modern technology and*
- (f) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.*

However, three years after its implementation, the Council is yet to be constituted..

3.16 Illegality of Contract Awards/Approval by Executive Council of the Federation

The weekly ritual of contract approval by the Executive Council of the Federation continued during the period under review contrary to section 17 of the Act which lists the approving authorities as a ministerial tenders Board and a Parastatal Tenders Board. For the President and his Executive Council to be violating the law with impunity on a weekly basis is a cause for grave concern. It demands citizens' action to call the authorities to order.

4. Conclusions

It is evident that some progress has been made in the implementation of the Act and the Bureau has taken steps to build capacity of different stakeholders and sensitise the public on the Act. The Public Procurement Committee of the House of Representatives have also done some good work in promoting procurement transparency. However, a lot of challenges still face the implementation of the Act. The challenges appear to be constant because after indentifying them in previous reports, the government seems to have turned a deaf ear and refused to take action to resolve the challenges. The challenges are legion and this report merely scratched the surface of the violations. The thrust of our recommendations is for government to reinvigorate its mechanisms towards the full implementation of the provisions of the Act. So far, the implementation has been peripheral. This Act has been severally violated without commensurate punitive measures against violators by both regulators and anti-corruption agencies.

The failure(s) of the implementation of the capital component of the budget can rightly be blamed on the non-implementation of the PPA, leaving Nigerians in the same state of lack, posing a threat to the realization of the MDGs and the basic right to a livelihood, liveable environment and to continuous improvements in the standard of living. Procurement reforms are linked to the developmental process and it is an aphorism that the level of economic growth and development is directly proportional to the maturity of our procurement policy and how it responds to the developmental challenges.

5. Recommendations

The President

- ❖ should as a matter of urgency, constitute and inaugurate the National Council on Public Procurement to strengthen the regulation of the implementation of the Act;
- ❖ stop the continued violation of the law wherein the Executive Council of the Federation acts as an illegal approving authority;
- ❖ as the leader of the executive arm of government, direct increased access to procurement information through the Bureau, the Minister of Finance and the Head of Service. In this case, there may be need for amendments of the Civil Service Rules and the Financial Regulations which hinder access to fiscal information.

The Bureau

- ❖ give instructions to MDAs to open up the procurement process to CSOs, professional groups and interested Nigerians in accordance with the spirit and letters of the Act;
- ❖ exercise greater supervisory role in the procurement affairs of MDAs in accordance with the tenor of the Act;
- ❖ exercise its powers under various provisions of the Act including but not limited to powers to sanction erring officer, procuring agencies and service providers;
- ❖ bring to the attention of the President the illegality if its continued operations without the constitution and inauguration of the Council;

The Legislature

- ❖ enhance its oversight over the management of appropriated funds used for public procurement;
- ❖ ensure that as from the 2011 budget, developmental capital takes the chunk of capital expenditure and expenditures are dedicated to the areas of greatest need of Nigerians;
- ❖ design a strategic template for the monitoring of capital budget execution;
- ❖ consider a legal action against the President for failure to constitute the Council.

The Attorney-General of the Federation, ICPC and EFCC

- ❖ ensure diligent investigation and prosecution of violators of the Act to serve as deterrent to others who may wish to manipulate the procurement process.

CSOs, Media and the Academia

- ❖ meticulous engagement and insistence through monitoring and reporting on the implementation of the provisions of the Act;

- ❖ action advocacy to ensure that violators of the Act are brought to book;
- ❖ file test cases in court to challenge illegalities perpetuated by the authorities.