

IMPLEMENTING THE NIGERIAN
PROCUREMENT LAW

COMPLIANCE WITH THE PUBLIC
PROCUREMENT ACT, 2007

A Survey Of Procuring Entities, Civil Society
Observers, Bidders And Contractors, Legislators,
And The Bureau Of Public Procurement

An Initiative of
Public and Private Development Centre (PPDC)
Ltd by Guarantee

IMPLEMENTING THE NIGERIAN PROCUREMENT LAW

ISBN: 978-978-912-887-7

Published in Nigeria

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Published by:

Public and Private Development Centre Ltd By Guarantee (PPDC)
1st Floor UACN Building
Central Business District Abuja
www.procurementmonitor.org

About PPDC

1. The Public and Private Development Centre Ltd by Guarantee (PPDC) is a Nigerian Citizenship sector organization established in 2001, Its major activities are in the area of Anti-corruption, good governance, promotion of popular participation in governance and development, pursuing policy change, advocating a rights based approach to development and poverty alleviation.

2. PPDC seeks to assist and empower ordinary people capture the public space, and participate in governance and development in a way that prevents corruption. It achieves this through several programs. It currently has its Procurement Watch Programs supported by PACT Advance Program, funded by USAID, it was with support from this project that it saw to the activation of non government sector procurement observation and monitoring in Nigeria, and led the founding of the National Procurement Watch Platform NPWP, the platform developed a standard checklist for monitoring procurement and trained several civil society organizations in procurement monitoring.

3. PPDC in November 2009 received a grant from the United Nations Democracy Fund (UNDEF) to implement the Nigerian Procurement Monitoring Project. The Project seeks to:

- a. Build capacity of non state actors on procurement observation and monitoring;
- b. Strengthen the legislature on procurement oversight and monitoring;
- c. Improve access, analyses and sharing of procurement information;
- d. Strengthen advocacy for improved transparency and accountability in the procurement process.

The project has in addition to revising the standard checklist making it ICT compliant, established an online portal for collation, analyses and dissemination of procurement monitoring information based on the standard checklist , with capability to provide on line training and free legal advice to monitors and investigative journalist working on procurement issues, it has trained civil society organizations on procurement monitoring and its use and has begun real time online collation of reports from procurement monitors.

4. PPDC programs are currently grouped into two flagship program efforts . The Nigerian Procurement Monitoring Program see www.procurementmonitor.org and Home Video Integrity Awards (Homevida) see www.homevida.org. Homevida is an annual competitive film award platform that rewards Nigerian films that promote specifically identified intergrity values and holds annual short script competitions amongst young people between ages 16 and 30, winning scripts using a grant provided are produced into short films.

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Abbreviations & Acronyms

BASA - Basic Air Services Agreement	MTB Ministerial Tenders Board
BEME - Bill of Engineering Measurement and Evaluation	NCAA - Nigeria Civil Aviation Authority
BMPIU - Budget Monitoring and Price Intelligence Unit	NCB National Competitive Bidding
BPP Bureau of Public Procurement Act	NCPP National Council on Public Procurement
CPAR Country Procurement Assessment Report	NJC National Judicial Commission
CSJ Centre for Social Justice	PEP(s) Politically Exposed Persons
EFCC Economic and Financial Crimes Commission	PICOMSS - Presidential Implementation Committee on Maritime Safety and Security
EXCoF Executive Council of the Federation (same as the Federal Executive Council (FEC))	PIMC - Presidential Implementation Monitoring Committee
FAAN - Federal Airports Authority of Nigeria	PPA Public Procurement Act
FCDA - The Federal Capital Development Authority	PPDC Public & Private Development Centre Ltd.
FCT Federal Capital Territory	PTB Parastatal Tenders' Board
FEC Federal Executive Council (same as Executive Council of the Federation, EXCoF)	SGF Secretary to the government of the Federation
ICB International Competitive Bidding	TB Tenders Board
ICPC Independent Corrupt Practices and Other Related Offences Commission	UBEC Universal Basic Education Commission
LIBOR London Inter-Bank Offered Rate	UNDEF United Nations Development Fund
LNG Liquidified Natural gas	USAID United States Agency for International Development
MD Managing Director	
MDA Ministries, Departments, & Agencies	

Acknowledgements

As part of its Nigerian Procurement Monitoring Program, the Public and Private Development Centre (PPDC) with support from United Nations Democracy Fund (UNDEF) set about evaluating the levels of implementation of the Public Procurement Act 2007 for the year 2010. The exercise was intended initially to survey only MDAs in the FCT. However PACT Advance program funded by USAID provided additional resources that enabled us to expand the terms of reference to include not only the FCT but also three other geographical zones. The actual survey its self was further extended to cover five of the six geo-political zones in Nigeria. This will be the second in the series of this evaluation by the PPDC, the first which was limited to the FCT area was published as part of its Non State Actors in Procurement Watch publication in 2009. For this current exercise PPDC hired the services of a research team led by Chinedum Nwoko of Policy Associates; a public expenditure management and financial accountability review expert. Supporting research assistants and data collectors working with him were Kenneth Ehieze and Ms Chigozie Okoli (FCT), Ms Chioma Nwanwu (Northcentral zone, and Enugu and Anambra states), Onyewuchi Orji (Abia and Imo states), Sunday Osayande (Benin, Edo state), Zuhumnam Theophilus Dapel (Plateau state), and Ms. Sarah Makka (Bauchi and Gombe states). They did the spade work, without which this report would have been impossible. They were also assisted by PPDC staff Seember Nyager, Chizoma Opara and Chioma Ameh, all of who played important roles in facilitation, sourcing of documentary data and surveying of legislators. Chibuzo Ekwewuo supervised the project, his role included revision and approval of research instruments, as well as providing guidance on various aspects of procurement law and practice through the project. We are especially grateful for the patience of the lead researcher and his team given the challenges of access to information faced with not only public agencies, but surprisingly more with contractors. Gratitude is due to them all for their contributions which has made this report possible.

For taking out time to respond to the survey instruments, our gratitude goes to the personnel of respondent ministries, departments, and agencies, contractors and service providers, civil society observers, the Bureau of Public Procurement, and members of the House of Representatives Committee on Public Procurement. We also thank those agencies and companies that failed to assist the research, including those who declined to permit researchers beyond their gates. Their attitude added to the challenges that made this assignment worthwhile, and helped the researchers to appreciate better the challenges that currently bedevil the sector. The hope is that, they will in future see the need to assist such noble causes. This work would not have been possible without the financial support of the United Nations Democracy Fund, and the PACT Nigeria Advance program funded by USAID.

Finally, gratitude and adoration to God who makes us able, and whose grace remains sufficient for those who believe and seek Him.

Chapter 1: Introduction

1.1 This is an assessment of the extent of compliance with provisions of the *federal* Public Procurement Act, enacted in 2007. The terms of reference for the assignment are to “design a research instrument; precisely a structured questionnaire with indicators addressing the following

- Levels of government compliance in establishing structures and institutions for implementation of the Act
- Knowledge and understanding of the provisions of the (Public) Procurement Act 2007
- The level of conformity of the structure and organization of the procurement department with provisions of the Act and Guidelines.
- Levels of implementation of BPP's functions and mandate
- Levels of compliance with the procurement planning processes set out by the Act.
- Levels of compliance with non state actors monitoring provisions
- Procurement methods
- Other procurement practices
- Levels of Access to Information and compliance with citizens monitoring provisions.
- Levels of Accountability and value for money
- Efficiency and effectiveness in the entire process
- Issues/factors hindering effective implementation of the Act etc
- And such other issues as the Coordinator PPDC may request to be evaluated”

1.2 It was difficult to structure all the issues above into a single question as the terms of reference above clearly suggests. Therefore, the assessment prepared and used several instruments, including different survey questionnaires to solicit information from procuring entities, contractors, suppliers, and bidders, civil society observers of the procurement process, and members of the *federal* House of Representatives Committee on Public Procurement. It also used structured questions to seek information from the Bureau of Public Procurement (BPP). Finally, the methodology included a survey of relevant literature (electronic, newspaper, and others), and unstructured interview of members of the public.

1.3 The main finding of the report is that efforts to comply with provisions of the Procurement Act, 2007 have been increasing since its passage. Awareness of the provisions of the Act and of procurement rules is on the rise, mainly through the sensitization and training programs of the BPP. The number of ministries, departments, and agencies that have established procurement departments with designated procurement personnel is also rising. However, much more is necessary to ensure substantial compliance with the 'spirit' of the Act throughout the country,

especially in the geopolitical zones. There is need to set up the National Council on Public Procurement and for the Executive Council of the Federation (EXCoF) and other bodies to stop filling that role. Ministers need not play any role in the procurement process not envisaged under the Act; this will allow proper development of technical competence and reduce the level of political interference with public procurement.

1.4 There is also need to step up awareness and compliance levels in the zones, which are currently much lower than in the FCT. Training programs should include activities to imbue procurement personnel with greater technical capacity to conduct proper procurement planning, prepare bid documents, (including requests for proposal, engineering estimates, etc.) and professionally evaluate bid. They should also include value re-orientation and attitudinal change programs. Procuring entities need to grant civil society observers full access to procurement information and documentation and real (as opposed to nominal) opportunity to witness the entire procurement process, including bid evaluation, in line with provisions of the Act. Stricter enforcement of the compliance by the Bureau, including through imposing sanctions will help secure greater compliance. Finally, there needs to be greater dissemination of information, including increasing the level of public access to public procurement information.

1.5 Organization of the report - following this introduction is a fuller *Chapter 2*, a fuller description of the methodology, including the field surveys. *Chapter 3* provides background information on the general principles of procurement and the events that heralded enactment of the Public Procurement Act, 2007. It also briefly x-rays provisions of the Act to familiarize the reader with its provisions, rather than discussing the details of the Act alongside the field report. The next two chapters present the findings and analysis of field surveys and literature, beginning with compliance with operational provisions of the Act and then discussing regulatory provisions. Chapter 6 devotes to examine certain issues pertaining to procuring entities and the geopolitical zones, not sufficiently accommodated in *Chapters 4* and *5*. The final chapter synthesizes and summarizes the report, restating the major findings and suggestions options for improving compliance. The Appendix contains the survey instruments.

Chapter 2: Methodology

2.1 This *Chapter* explains the approach to data collection and field survey, and analysis and presentation of outcomes of the surveys. First, it discusses the scope of the work and research method, including the method of data collection. Next, it explains the approach adopted in analyzing and presenting the data. Finally, it highlights some constraints in data collection capable of affecting the integrity of the data and consequently, the conclusions reached.

Scope of Work and Research Method

2.2 The terms of reference (ToR) as issued by PPDC requires the evaluation of the extent of compliance of public or government agencies within the Federal Capital Territory (FCT) and at least in three geopolitical zones of the country with the Procurement Act, 2007. They also require that the survey should include opinions of civil society observers the regulatory agency, pronouncements of government and views of expert or informed sources on the issues. In the end, the survey covered the FCT and five out of the country's six geopolitical zones, namely, Northwest, Northeast, Northcentral, Southeast, and Southsouth. It also surveyed members of the House of Representatives Committee on Public Procurement, in addition to the Bureau of Public Procurement, civil society observers of the procurement process, and contractors, bidders, and service providers. However, the experience and responses were not uniform across board.

2.3 This research reflects inferences from the two different sources of data used: primary evidence from field surveys and secondary evidence from literature, publications, and Internet based sources. Secondary evidence came from various sources. The website of the Bureau of Public Procurement was a useful source of information on what resources are ordinarily available to the public. Procurement websites of other countries within Nigeria's development bracket also provided useful comparative materials. General web and internet research is a veritable source of information for any modern research, as it was for this one. It helped to provide materials on good practices, and other internet based reports. The research also sourced and analyzed relevant materials from newspapers, including news reports, features, and procurement ads by federal MDAs. Publications of the Bureau (especially its information brochures) and other relevant agencies were another useful source of secondary documentary information. Finally, previous research work (although limited in number), published workshop proceedings, and news articles were another useful source of background documentary information.

2.4 Primary data came from field surveys gathered through administration of structured questionnaires and interview questions. Prior review of background

documents provided useful information used to design the questions data. There were four different questionnaires - one each for federal procuring entities, civil society observers, contractors and bidders, and legislators and a set of structured (interview) questions for the Bureau. The rationale for using different questionnaires is the different types of information required from each category. Combining all the questions in one instrument would have made it very bulky and unmanageable. Procuring entities (MDAs) essentially did a self rating or assessment exercise. Although self assessment may not always be the most objective evaluation method, the questionnaire built-in checks to crosscheck consistency of responses. Bidders and contractors would provide a different perspective, although their views may also not be completely free of bias. Civil society observers would provide a second, independent, and moderating opinion. Legislators provided their observations informed by their oversight activities, and sector experts provided independent opinion on the outcomes, that has supported revision of the initial report.

Sample Size and Selection

2.5 It was not practical to survey all federal procuring agencies that come under the purview of the Act for several reasons. First, the agencies are not contiguously located but dispersed throughout the country. It will require great time and expense to cover them all. Second, official response to requests for research information as was the case here is often sluggish and restrained. The absence of Freedom of Information legislation makes sourcing of official information for non official purposes a very difficult task. In this circumstance, seeking to obtain information from all federal MDAs would have been an impossible task. Besides, surveying all the MDAs would make no difference to the result given that the information sought is not particular or procuring entity MDA specific. The object is to determine the reliable general level of compliance. Study of a reasonable sample should provide a good general assessment.

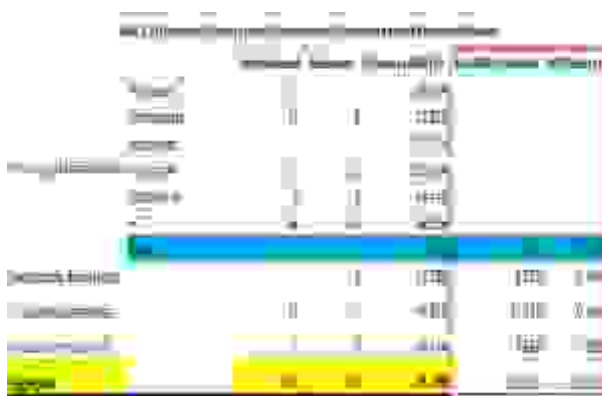
2.6 The study involved select MDAs in the Federal Capital Territory (FCT) and five of the six geopolitical zones: three northern geopolitical zones and two of the three geopolitical zones in the south. Exclusion of the Southwest zone, in particular the Lagos axis with its large concentration of key federal institutions, was due to constraints of cost and logistics. Given the very limited budget this study operated on, attempting to cover the Lagos area with its transport challenges, would have gulped the entire budget. This also affected the sample size. The zones and their cities covered are the Northwest (Kaduna and Zaria), Northcentral (Jos, Vom, and environs), Northeast (Bauchi, Azare, and Gombe), the Southeast (Enugu, Awka, Nnewi, Owerri, and Umuahia), and the Southsouth (Benin).

2.7 The study selected all MDAs that fell within certain pre-defined criteria. In the

zones, the study selected one of the prominent or, depending on permutations of costs and logistics, a combination of some of the more prominent cities with a concentration of federal establishments. Apart from the FCT and Kaduna, there was an effort to survey all federal MDAs with headquarters in the selected towns and cities. Of course, not all the surveyed MDAs were willing to respond to the questionnaire. In the FCT, there was an attempt to cover procuring entities (mainline ministries and pastatata) that usually command large capital votes. In Kaduna and Zaria, there was an effort to select as many agencies as were willing to participate. The list of surveyed procuring entities by geography is in the Appendix.

2.8 Selection of contractors and bidders to survey was also not as scientific as it could be. Pragmatic considerations of cost, time, and logistics combined to limit the choice to headquarter offices within the FCT. The preference was to obtain a list of contractors registered from the BPP and selected those resident within the FCT. However, since there was no such list, the alternative approach used a BPP list of attendees at a current sensitization event. However, the list did not have physical addresses of contractors. Therefore, it was possible to administer the questionnaire only to a handful of the more prominent ones with conspicuous and easily recognizable addresses. The list of contractors reached out to is in the Appendix.

2.9 For civil society observers, the survey used a list of civil society monitors obtained from the PPDC. The research administered and received responses to the questionnaire by email. Questionnaires for members of the House of Representatives



were administered at a PPDC organized event in Kaduna in October 2010, attended by six members.

2.10 The researchers distributed 106 questionnaires: 78 to procuring entities in the FCT and the five geopolitical zones, seven to contractors and service providers, 15 to civil society monitors, and six to legislators. With 68 questionnaires returned after several efforts, the aggregate response rate is about 65 percent.

Contractors and service providers recorded the lowest response rate of 14 percent with only one of the seven approached responding. Procuring entities recorded the highest response rate of 83 percent: 57 of the 78 surveyed returned completed questionnaires.

This probably reflects the level of training and sensitization programmes the BPP has held in the zone, which is the highest among the five geopolitical zones (see *Chapter 4*) in this study.

This may also be reflecting the level of awareness of and sensitization on the Act; the BPP appears to have held the lowest number of programmes in the zone (*Chapter 4*).

Among procuring entities, the Southeast recorded the maximum response rate with 12 of the 12 MDAs approached duly returning completed questionnaires. The Southsouth (represented by Benin) recorded the lowest response rate of 44 percent. The 77 questionnaires administered to procuring entities represent 73 percent of total distributed and their 68 responses 82 percent of total returns (*Table 2.1*). However, most respondents did not answer all the questions; many left quite a few unanswered. The Bureau also did not address most of the issues and questions raised in its questionnaire.

Method of Data Analysis and Presentation

2.11 It is not easy to determine the best presentation option. There probably is no one single best option. Each potential approach has its strong points and shortcomings. The difficulties increase with the number of different research instruments and classes/types of respondents. The approach adopted here may not therefore be free of critique. However, given the number of different questionnaires administered and the number classes of respondents and the non-convergence of opinions, this approach probably has the least shortcomings of all possible alternatives.

2.12 The approach adopted here is to discuss compliance with operational and regulatory provisions of the Act in separate chapters in that order. Following this, in another chapter, is a discussion of certain specific issues relating to procuring entities and zonal distribution of compliance not sufficiently covered in preceding analyses. The analyses present outcomes of the various group surveys, and secondary data as relevant to the item under discussion. Whenever possible (e.g., where the questions are similar and views of the various groups agree) there was combined analysis and presentation of the outcomes/responses. However, since the surveys measured opinions of respondents, views from all the segments did not, perhaps, understandably always converge. Wherever there was significant divergence, the presentation highlighted them separately in the relevant section.

Limitations and Constraints

2.13 This assignment faced several constrains. From the point of view of the researchers, the most important constraint was finance. The amount of resources provided was not nearly enough for the work. It limited the number of agencies surveyed and the cities selected. For instance, an attempt to include Lagos in the survey would have taken the entire resources available (and still required more). Yet, Lagos is the headquarters and operational base of several key federal agencies, contractors and service providers, and civil society observers. Except for the

requirement in the terms of reference that this exercise should cover the FCT and at least, three other geopolitical zones, it probably would have been better to attempt to use the limited resources to survey the FCT and Lagos axis. These two areas have the largest concentration of MDAs and other stakeholders.

2.14 Most researchers and observers of the Nigerian scene are familiar with the difficulty of persuading MDAs to respond to private request for data and official information. The public service has a well known culture of secrecy and non-disclosure of both vital and innocuous information. The country does not have a freedom of information law to authorize public access to *harmless* disclosures. In its absence, the Official Secrets Act and the oath of secrecy sworn to by all public officers often hinder release of even basic information without proper (?) authorization from the highest political level. In most cases, this authorization is difficult to obtain or comes too late for purpose. It is also disheartening that despite the provisions of the Act on access to procurement information, these attitudes have not at all improved. Thus, several procuring entities refused to particulate in this exercise for this or no reason at all. In some places, security guards turned back research assistants from the gate and refused to allow them in. Officials walked them out in some other places. More polite officials that did not want to complete the questionnaire complained of lack of superior authority to do so, gave several promises of unfulfilled return dates, or used some other tactics to frustrate the researchers. The greater surprise was the level of such antics deployed by private sector organizations approached in this survey.

2.15 The low response rate of contractors and service providers and the comments of some of them suggest the reluctance, refusal or failure of most of them to participate in the survey was out of fear of possible repercussions. Surprisingly reassurances of complete anonymity (for instance to complete the questionnaire anonymously) did not persuade them to cooperate, indicating that their attitude may have resulted from other considerations given the size and dominance of some of them in their sectors. However the fear of possible victimization may in itself be a commentary on the perceived fairness or otherwise of the public procurement process, the extent of compliance with the Public Procurement Act, and conformity of procurement practices to the principles of modern procurement. However none of these companies provided any specific evidence of previous reprisals to buttress their view.

2.16 Perhaps, surprisingly, the Bureau of Public Procurement also failed to cooperate fully with this research. Response of the Bureau was, at best, lethargic and unenthusiastic despite letters, repeated visits, telephone calls, (numerous failed) appointments, and (what turned out to be unfulfilled) promises of cooperation. Ultimately, information provided by the Bureau did not cover most of the requested

fields and was very economical. Quite uncharacteristically, the Bureau did not make available any of the requested documents for the assignment. At some point, the Bureau requested and received copies of the questionnaires circulated to all other respondents (in addition to the list of questions submitted in advance for the Bureau to attend) to enable it prepare its response. In spite of this, it still did not provide most of the information sought. It is not clear why the Bureau chose to respond in this way, especially given that this was an opportunity for it to bring out its story.

2.17 The analysis had genuine difficulties establishing the veracity of some of the responses received, especially from procuring entities. Some officials gave what patently appears to be misleading and conflicting information. For example, they would respond to a particular question in one way and to a related or corroborating question in a different and apparently contradictory way. In some instances it appeared respondents were themselves either not knowledgeable or deliberately misleading. Quite a number left many of the questions unanswered. For these reasons, the research initially would not use responses from the first set of questionnaires administered during a procurement capacity building workshop organized in June by the PPDC in Abuja. The thinking was that visiting the organizations at their bases would produce better results. However, there does not appear to be a remarkable difference in the results obtained from their offices.

2.18 *To what extent did these affect the authenticity of the conclusions of this research?* The individual reader would have to make up his or her mind on this. However, it was for the purpose of ameliorating any potential or real biases and consequent possible wrong inferences that the research involved a multiplicity of stakeholders and has used multiplicity of sources for materials used. Hopefully, this approach achieved its purpose of letting different views of these varied groups balance each other and reduce the chances of reaching misleading conclusions. Failure of the Bureau to cooperate fully doused some impact off this approach. As an alternative way of maintaining this balance, wherever strong alternative evidence or views exists, the report also includes it.

Chapter 3: Review of the General Principles of Public Procurement and the Procurement Act, 2007

3.1 This chapter provides some contextual background to the Public Procurement Act, 2007. It begins by briefly recounting the main events that herald the enactment of the Act. Then it discusses the general principles of procurement that the Act tried to legislate into existence in the federal government. Finally, it examines some of the main provisions of the Act to provide opportunity for judging the extent to which the legislation accords with international good practices.

General Principles of Public Procurement

3.2 Generally, procurement is the complete action or process of identifying, defining and acquiring or obtaining personnel, material, services, works needed by means authorized in pertinent directives. More specifically, it is the action or process of acquiring or obtaining material, property, or services at the operational level. The procurement process therefore involves planning, purchasing, contracting, and negotiating directly with the source of supply. Some indeed view procurement as a fancy word for "purchasing and supply". Modern procurement practices however appear more extensive than the old concept of purchasing and supply. Usually, the procurement department within an organization manages all the major purchases to the exclusion of staff hiring.

The Concept of 'Best Value for Money'

3.3 The critical concept of "best value for money" lies at the heart of public procurement. There is probably no better illustration of the relationship of PP and concept than that in the Northern Ireland Public Procurement Policy document 2009. According to this Policy, public procurement is the process of acquisition (usually by means of a contractual arrangement after public competition) of goods, services, works, and other supplies by the public service. The public procurement process spans the whole life cycle from initial conception and definition of the needs of the public service through to the end of the useful life of an asset (asset disposal) or contract. The process spans conventionally funded projects, more innovative types of funded projects (for example PPP/PFI arrangements with the private sector), use of the private sector to deliver services previously delivered directly by the public sector (contracting out or outsourcing), and in-house consortia bidding in a public procurement process. However in Nigeria an alternative framework exists for PPP's.

3.4 The concept of "best value for money" involves "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements." "Whole life cost" includes both quantifiable and non-quantifiable or intangible costs and benefit. The concept enables a public body to compile a procurement specification which includes social, economic, and environmental policy

objectives within the procurement process. The concept underlies relevance of a professional procurement department in the procurement process, as well as the role of key sector specific specialists where needed.

3.5 The government procurement process purchases three types of items: (civil works , e.g., bridges, buildings, highways, basic physical infrastructure etc) , goods (equipment, material, supplies, commodities, textbooks, medical supplies, etc.), and services (for example, expert advice, training, building maintenance, computer programming, etc.). These purchases are vital to the development process. The public procurement process therefore determines the success or failure of public investments.

3.6 Government public procurement policies have five key concerns or objectives. First, purchase of items should be economic and efficient. Second, use of public funds should purchase only items needed for national development. Third, purchases should secure best value by giving all qualified bidders equal opportunity to compete for contracts. Fourth, the procurement process should encourage the development of local contractors and manufacturers. Finally, public procurement should ensure the transparency off and accountability in the public procurement process.

Why Public Procurement Is Important

3.7 Public procurement is important because of its role in the development process, the amount of resources it consumes, and its susceptibility to undue influences. A 2006 study by Transparency International makes interesting findings on public procurement. It found that public procurement amounts, on average, to between 15% and 30% of GDP or and more. It also found that few activities create greater temptations or offer more avenues for corruption than public procurement. The study estimates damage from procurement-related corruption at normally between 10% and 25%, and in some cases as high as 40 to 50%, of the contract value.

3.8 A 2005 OECD study found that the purchase of goods and services by governments is an area that warrants special attention in the fight against corruption because public procurement has a very high exposure to corruption. It estimates procurement-related corruption at typically about 15% of GDP in OECD countries. It also adds that bit is easy to tempt both public and private actors to divert goods and services or money for their personal use

3.9 The African Development Bank (AfDB) estimates, in a recent concept note, that public procurement accounts for as much as 70% of the budgets of Africa governments. This underscores the importance of public procurement. The concept note states further the strengthening of procurement systems is crucial the additional

reasons of minimizing the potential effects of financial/economic crisis and restoring a level of economic growth and development sufficient to reduce poverty. It is not possible to achieve these objectives without securing the efficiency and integrity of procurement systems.

3.10 The AfDB noted that majority of African countries enacted commendable procurement laws and systems that broadly comply with international and regional requirements such as the United Nations Commission on International Law (UNCITRAL), the Common Market for Eastern and Southern Africa (COMESA), and the West African Economic and Monetary Union (WAEMU). These requirements include those of

- Separate procurement regulatory and execution functions
- Institutionalization of public procurement regulatory authorities
- Establishment of independent review mechanisms
- Publication of hard and Internet versions of national public procurement journals
- Make public procurement related information easily available to the general public
- Achieving greater recognition by public officials and citizens of the critical importance of public procurement in public financial management
- Scaling up the importance of public procurement in policy decision-making

3.11 According to the AfDB, these successes have strengthened the rights of bidders and increased the pressure on procurement agencies to comply with regulations. It however, the Bank notes that important challenges remain in several areas, including

- Ineffective implementation of procurement reforms
 - o Weak procurement capacity and institutions
 - o Low motivation, incentives, and levels of accountability by public officials
- Too much emphasis on process, i.e., legislative and administrative aspects of reform, and compliance with international best practice
- Too little focus on development of procurement policies critical for achieving sustainable development and poverty reduction
- Insufficient fight against corruption
 - o Corruption risk in procurement remains a key challenge
 - o Procurement reforms are more likely to be successful when combined with anti-corruption measures in other areas, as well as with broader-based anti-corruption and good governance measures

- Lack of consensus among IFIs for the use of national procurement systems; this stems from their lack of faith in the procurement reform process.

Universal Values in Public Procurement

3.12 Certain universal principles that govern the public procurement function across borders are discernible. These include those of economy, transparency, accountability, fairness, competition, equal treatment, reliability, public supervision, appropriate conditions, efficiency, accountability and ethical standards, separation of functions, among others. The following paragraphs briefly highlight the meanings attached to these concepts.

3.13 *Principle of Economy* as already explained above, the basic purpose of procurement is purchase best value for money. The concept of 'value' may imply more than just price. It may also include quality issues, fitness for purpose, purchase that meet specifications, specification that match need or purpose, etc. Consequently, the lowest initial price may not always equate to lowest cost over the operating life of the item procured. The ultimate purpose of sound procurement is to obtain maximum value for money over entire life of project. Value for money therefore implies 'whole life costs, right quality that meets identified need'.

3.14 *Sustainability* - This principle of economy emphasizes the need to consider *sustainability* issues wherever relevant. Sustainability must take costs and affordability in the long run into account. Where sustainability is of consequence, there is need to address it at the appropriate stage of procurement. This is normally at the business case or planning stage. In some instances, especially where environmental issues are of consequence, sustainable procurement can reduce while life costs and improve quality e.g. through re-cycling or reducing disposal costs.

3.15 *Transparency* good procurement practices visibly establish and maintain rules and procedures that make procurement information accessible, unambiguous, and fair. To achieve this, it often promulgates the needs of contracting authority and conditions related to participation by deliberate notice. It grants unfettered accessibility to tender documents and proceedings, and notifies bidders and the public of the result of tender.

TI Handbook on Curbing Corruption on Public Procurement (2006), www.transparency.org/content/download/12496/120034
 Fighting Fighting Corruption and Promoting Integrity in Public Procurement, 2005, www1.fidic.org/resources/integrity/corrupt_proc_OECD-rapport-2005-aase.pdf

Extracts from Concept Note of the High Level Forum on Public Procurement Reforms in Africa organized by the African Development Bank (AfDB), in partnership with the Common Market for Eastern and Southern Africa (COMESA), the West African Economic and Monetary Union (WAEMU), the African Capacity Building Foundation (ACBF), the Organization for Economic Co-Operation and Development (OECD) and the World Bank (WB), organized in Tunis, Tunisia, on 16th and 17th November 2009

3.16 Fairness a good procurement is fair. This means it is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete. It directly and consciously expands the purchaser's options and opportunities so as to obtain the fairest or best possible deal.

3.17 Competition effective competition implies non-hindering of participation to procurement. It means choice and advertisement of technical, professional, or financial conditions proportionate to the subject of the contract. It also means selection of appropriate procurement procedure. Competition also requires preparation of the technical specifications enabling wider participation of competent bidders. Competition is at the core of public procurement. A competitive process provides the procuring entity the best opportunity to procure the goods or services with value for money. There may however, be valid exceptions to the principle of competition in exceptional cases; this depends on the nature of the requirement. However even in such exceptional cases, the principle of transparency requires clear and open definition of the circumstances where exception is appropriate.

3.18 Equal treatment - public procurement practicalizes the constitutional principles of equality of treatment. Consequently, the Nigerian federal character principle does not apply in national public procurement. The principle that applies is that all individuals are equal without any discrimination before the law. Language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations have no relevance. They are therefore equal rights for men and women. Public procurement grants no privilege to any individual, family, group or class in procurement. And requires equal and simultaneous distribution of procurement information.

3.19 Reliability - The bidders should be confident of certain critical issue in the procurement process. For example, they must reasonably believe that performance of tender would comply with the tender documents and public procurement legislation. It means that tender documents will have the criteria well spelt out in a non discriminatory manner. They must also trust in the stability of rules during the tender process. Bidders must also have grounds to believe that the process will correct mistakes and infringements of rights and that there will be no deliberate attempt to deceive any party for the advantage of some other preferred party. Reliability also means that there will be absolute non-disclosure of commercial secrets of rival bidders, no-revealing of information that distorts competition among bidders, and no stealing of bidding information from one tenderer for the benefit of another. Reputable and credible bidders will shun the procurement process if it proves unreliable, and unpredictable

3.20 Public supervision public procurement achieves public supervision through diverse measures. Some of them are advertising of tender, ensuring possibility for everyone examining tender documents, giving opportunity to everyone to attend the first session of a tender (bid opening), and notification of the result of the tender, non state actors observation and monitoring of the process of procurement, requirements for public dissemination of information on the process and outcome of every public procurement etc.

3.21 Appropriate conditions these require that procurement proceedings hold in accordance with procurement legislation and regulations. Respect for these regulations requires that there will be no twisting of the rules. It implies that the principal procurement method is the open competitive procedure, and that use of restricted procedure and other methods will be only under special conditions set out in the law and Guidelines. It also requires that procurement proceedings shall not commence unless there is sufficient budgetary allocation, based on a prior procurement plan.

3.22 Efficiency implies that the public procurement process must be simple and swift, and that it produces positive results without protracted delays. Efficiency also implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel. It also implies timeliness of the process, i.e., that delivery of material when needed: not much earlier or much later.

3.23 Accountability and ethical standards - A sound procurement system combines all the elements of accountability, inducing individual and institutional probity to deter collusion and corruption, and such other acts. Achieving accountability and high ethical standards is the prerequisite for securing procurement credibility. Consequently, a good procurement system

- Holds practitioners (those involved in the procurement process) responsible for enforcing and obeying the rules
- Makes them subject to challenge and sanction, if appropriate, for neglecting or bending rules
- Inspire s confidence and willingness of well-qualified vendors to compete.
- Has an effective role sharing that ensures traceable responsibility for infractions
- Directly and concretely benefits the purchasing entity and stakeholders, responsive contractors, and suppliers, financiers

3.24 A procurement system without these attributes does not achieve the high ends of public procurement. Instead, such a system

- Stimulates hesitation to compete
- Experiences submission of
 - o Inflated tenders containing a risk premium, or
 - o Deflated tenders followed by delayed or defective performance
- Encourages collusion in bribery by frustrated or unscrupulous vendors and purchasing entities
- Represents bad value for those entities and their constituents
- Suffers betrayal and abuse of the public trust for personal gain

3.25 *Separation of functions* modern procurement requires that there be separate procurement regulatory and execution functions, institutionalization of public procurement regulation, establishment of independent review and audit mechanisms, and creation of separate, professionally staffed procurement executor department in each procuring entity. The regulatory organs stand atop and oversee procurement proceedings to ensure observance of rules. To perform this function effectively, it does not participate in routine procurement decisions, but rather allows entities to procure their needs directly.

3.26 *Other principles* public procurement should appreciate the different types of procurement needs and the distinctiveness of their requirements. Thus, unless there is a natural and justifiable connection between them, it is not appropriate to consolidate purchase of goods, services, and works. Often, the different expertise and skills required for them differ and would not reside in the same persons. It is also improper and in Nigeria criminal to divide goods, services, or works for purchase into lots with the intention of avoiding threshold values,. This will defeat the concepts of economy, fairness, value for money, and competition.

The Procurement Act, 2007: Brief Account of the Evolutionary Process

3.27 Following return to civil rule in 1999, the federal government moved to address the nagging issue of corruption in the public service. The first concrete action it took to address this was the submission of an Executive Bill to the National Assembly, which led to the enactment in 2000, of the Independent Corrupt Practices and Other Related Offences Commission Act. In realization that failures in the procurement process contribute to corruption in governance and in other to identify and as a first step to introducing acceptable international standard practices in and regulation of public procurement in Nigeria, the federal government invited the World Bank to work with it to first conduct a nationwide assessment of the public procurement law and practice. The result of that assessment carried out in conjunction with a national task

force, Country Procurement Assessment Report (CPAR) 2000, formed the basis of the Public Procurement Bill later sent to the National Assembly, revised and enacted into law in 2007 as the Public Procurement Act, 2007. The CPAR was a detailed diagnosis of the Nigerian procurement system and included both findings and recommendations (short and medium term).

3.28 Consequent upon the country procurement assessment report, and prior to preparation of a bill for procurement reforms, the federal government moved to implement the recommendations of CPAR, to the extent possible prior to legislative reforms. The government set up the Budget Monitoring and Price Intelligence Unit (BMPIU) in June 2003 as an operationally independent body headed by a Senior Special Assistant to the President. Although thinly staffed, its personnel comprised experts with a bias for project management, construction, and procurement. The Unit was the clearing-house for all federal government contracts and procurements of goods and services, and functions, until commencement of implementation of the Public Procurement Act 2007.

3.29 The BMPIU operated under clear goals, objectives, and strategies. Its goal was to put in place and ensure full compliance with laid down guidelines and procedures (produced by it) for the procurement of capital and minor capital projects as well as associated goods and services. Its objectives were to

- Harmonize existing government policies/practices and update same on public procurement
- Determine whether or not Due Process has been observed in the procurement of services and contracts
- Introduce more honesty, accountability and transparency into the procurement process
- Establish and update pricing standards and benchmarks for all supplies to Government
- Monitor the implementation of projects during execution with a view to providing information on performance, output and compliance with specifications and targets
- Ensure that only projects which have been budgeted for are admitted for execution.

The strategies of the BMPIU revolved primarily around: regulatory, certification, Monitoring, training and advisory Functions.

3.30 Following enactment of the Public Procurement Act, 2007, the Federal Government established the Bureau of Public Procurement to take over the functions of BMPIU and implement the provisions of the Act. The Bureau also inherited the staff and physical structures of the BMPIU.

Review of Main Provisions of the Procurement Act, 2007

3.31 The section will review some of the main provisions of the Public procurement Act, 2007. The review will cover the following provisions of the Act

- Purpose and scope of the Act
- Procurement Principles under the Act
- Regulatory organs under the Act
- Procurement execution functions under the Act
 - o Organizing the procurement function
 - o Procurement methods goods and services
 - o Procurement of consultant services
- Procurement offences and penalties

Purpose and Scope of the Public Procurement Act, 2007

3.32 The federal government enacted the Public Procurement Act, 2007 to achieve several key purposes. These include effective regulation of public procurement, harmonization of existing government policies and practices on procurement, setting common procurement standards, and developing the legal framework and professional capacity for public procurement in Nigeria. Consequently, the Act established two regulatory bodies to oversee and regulate the government procurement process: the National Council on Public Procurement (NCPP), and the Bureau of Public Procurement (BPP).

3.33 The Act has a wide scope (*s. 15*). It covers federal government purchases and disposal of assets. The purchase items that it covers include, civil works (i.e., construction work, e.g., bridges, buildings, highways and all basic physical infrastructure), goods (equipment, material, supplies, commodities, textbooks, medical supplies, etc.), and services (expert advice, training, building maintenance, computer programming, etc.). The asset disposal items covered by the Act (*s 16(23)*) include tangible assets (for example, sale of public physical property) and intangible assets (for example, sale of licenses, oil blocks, etc.). However, the Act is not applicable to purchase of special goods, works, and services involving national defence and security-unless the President first approves.

3.34 The Act has wide applicability and does not grant exemption to procuring entities except as stated above. Thus, all federal government ministries, departments, and agencies are subject to it. This includes military establishments when they are not buying special defence and security related equipment. However President Yaradua

See the Appendix for excerpts of the findings and recommendations of the CPAR

was said to have approved the application of the Act to all Federal government procurement, and there is no evidence of reversal of the said approval by the current government. The Act also covers procurement activities by other entities that derive up to 35 percent of the funds for the procurement from the federal government, whether or not such entities carrying out the procurement are ordinarily federal government MDAs. By this definition, most activities of autonomous government agencies such as the Nigeria National Petroleum Corporation (NNPC), the Nigerian Communications Commission (NCC), the Central Bank of Nigeria (CBN) come under the purview of the Act. Indeed procurement activities of the Joint venture partners in the oil sector are covered by the provisions of the Act, though no evidence exists to show they are applying the provisions of the Act.

Fundamental Principles of Procurement under the Act

3.35 Prior and Post Review - under the Act, all qualifying procurements are subject to review: prior or post. *Prior review* applies to all contracts above the threshold established by the NCPP. Where this is the case, *apriori* permission of Bureau and certificate of “no objection” are necessary conditions before acquiring maturing obligations by way of contract.. *Post review* applies to contracts below established threshold. Advance permission of Bureau is not a condition in such cases; procuring entities proceed to invite bids for tenders. However, procuring entities must adhere to the provisions of the Act. In addition, they must keep records of transactions and transmit to the Bureau in formats stipulated by the Bureau for post mortem appraisal. The Bureau also has powers to conduct post physical process audits of procuring entity procurement activities.

3.36 Open competition is default-bidding method - all contracts shall be by open competitive bidding. The Act defines Open Competitive Bidding to mean the process by which a procuring entity effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods or works needed. The Act also requires procuring entities to use the process in a manner that is transparent, timely, equitable for ensuring accountability, and conforming to the provisions Act and procurement regulations. The aim must be to achieve value for money and fitness for purpose, and promote competition, economy, and efficiency. Open competition must also be in accordance with the procedures and time-line laid down in the Act and specified by the Bureau from time to time in the rules.

3.37 'No objection' certificate all contracts shall be subject to the prior review thresholds and conditions set by the Bureau time to time. As explained above, MDAs may proceed with procuring items below the threshold. However, they must obtain prior approval before formalizing (contracting) procurement proceedings in the case

of items above the threshold. For all procurement activity,, the procuring entities must ensure there are procurement plans supported by prior budgetary appropriations prior to commencing procurement proceedings. Second, they must ensure that funds are available to meet the obligations before they enter into a contract. Finally and for procurement above the threshold , they must first obtain a "Certificate of ' No Objection' to Contract Award” from the Bureau.

3.38 *What is the effect of the certificate of 'no objection'?* For all qualifying procurements above the prior review thresholds, the Bureau prescribes by regulation what guidelines and conditions precedent apply to the award of Certificate of "No Objection" under this Act. Any such procurement purportedly awarded without a "Certificate of 'No Objection' to Contract Award" duly issued by the Bureau shall be null and void. Further, a certificate of "No Objection" to an award of contract duly issued by the Bureau must accompany requests for payments from the Treasury or any bank account.

3.39 *Preservation of records of procurement proceedings* - as stated above, all contracts not subject to prior review are subject to post review. Every procuring entity shall maintain both file and electronic records of all procurement proceedings and preserve such for 10 years. Further, procuring entities shall transmit copies of all procurement records to the Bureau not later than 3 months after the end of the financial year. Such records must show

- ? 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.

3.40 *Right of public to inspect procurement proceedings* - 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 the Bureau may prescribe from time to time. Also portions of procurement proceedings kept shall be made available to any person after a bid has been accepted or procurement activity has been terminated without resulting in a procurement contract. Given the laws declared objectives including transparency, and other related provisions, it would appear that however interpreted the Act provides for reasonable public access to procurement information.

3.41 *Disqualification of certain persons from the bidding process* - persons engaged in preparing any part of a procurement proceeding shall not bid for the procurement in question or any part either as main contractor or sub-contractor. Besides, that person shall not cooperate in any manner with bidders in the course of preparing their tenders.

3.42 No recommendation of collaborators the Act forbids a procuring entity from requesting or stipulating that a bidder should engage a particular subcontractor as a requirement for participating in any procurement proceedings.

3.43 Conditions for disqualification of bids to promote open competition, the Act prohibits disqualification of persons from bidding except in situations prescribed under the Act. Such situations include instances where when the procuring entity or the Bureau establishes that

- The bidder offered monetary or equivalent inducement to influence the procurement process
- The bidder has failed to perform or apply due care in performance of a public procurement in the last three years
- There is evidence of the bidder
 - o Being in receivership, insolvency, or bankruptcy proceedings
 - o Having been declared bankrupt or made compromises with creditors within last 2 years
- The bidder is in arrears of payment of due taxes, charges, pensions, or social insurance contributions
- The bidder has been validly sentenced for procurement or financial crime
- The bidder is partly owned or managed by person convicted of procurement or financial crime
- The bidder has failed to disclose interest in another company participating in process - The procuring entity must relay the information to Bureau in writing
- The bidder failed to show evidence of payment of due taxes and or pension contributions
- The bidder failed to include an affidavit of no relationship or interest of staff of the Bureau or Procuring entity"

3.44 General provisions the Act provides for all procurement contracts to contain provisions for arbitral proceedings as the primary form of dispute resolution. Contracts must also express values in procurement documents in Nigerian currency. Where for some reasons, the contract states the value in a foreign currency, it must contain provisions converting the value to Nigerian currency using Central Bank of Nigeria (CBN) exchange rate valid on day of opening a tender or bid. The Act further provides that all contracts must contain warranties for durability of goods, exercise of

S 16(14) of the Public Procurement Act 2007
 S 38 of the Public Procurement Act 2007
 Perhaps as consultant or otherwise to the procuring entity

requisite skills in service provision, and use of genuine materials and inputs in execution.

Procurement Regulation under the Act

3.45 The regulatory bodies established under the Act to oversee its implementation are the National Council on Public Procurement (NCP) and the Bureau of Public Procurement (BPP).

3.46 *The National Council on Public Procurement* - the Act provides that the NCP shall comprise 12 members, six each from the public and private sectors as follows

- The Minister of Finance as Chairman
- The Attorney-General and Minister of Justice of the Federation
- The Secretary to the Government of the Federation
- The Head of Service of the Federation
- The Economic Adviser to the President
- Six part-time members to represent
 - o Nigeria Institute of Purchasing and Supply Management
 - o Nigeria Bar Association
 - o Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture
 - o Nigeria Society of Engineers
 - o Civil Society
 - o The Media; and
- The Director-General of the Bureau, who shall also be the Secretary

3.47 *Functions of the NCP* - the NCP has both policy approval and supervisory functions and administrative functions. these include

- Consider, approve, and amend the monetary and prior review thresholds for procuring entities
 - Consider and approve policies on public procurement
 - Approve changes in the procurement process to adapt to improvements in modern technology
 - Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act
 - Approve the appointment of the directors of the Bureau
 - Receive and consider, for approval, the audited accounts of the Bureau
- Procuring entities must abide by policy made by the Council.

3.48 In addition, the Council shall recommend the Director General of the Bureau of Public Procurement for the President to appoint (s. 7). *Sections 8 and 9* require the Council to appoint principal officers (including directors and other officers it shall decide) of the Bureau following a competitive selection process. The Council shall make staff regulations including those relating to conditions of service, appointment, promotion, discipline, and appeals on disciplinary measures.

3.49 *The Bureau of Public Procurement* the Act lists six key objectives for the Bureau. These are to .

- Harmonize existing government policies and practices on public procurement
- Ensure probity, accountability, and transparency in the procurement process
- Establish pricing standards and benchmarks
- Ensure the application of fair, competitive, transparent, value-for money standards and practices for the procurement and disposal of public assets and services
- Attain transparency, competitiveness, and cost effectiveness in public procurement
- Achieve professionalism in the public sector procurement system

3.50 *Main functions* the main functions of the Bureau under the Act are as follows, to

- Formulate general policies and guidelines on public procurement for the Council to consider and approve
- Publicize and explain the provisions of the Act
- Certify qualifying federal procurement prior to the award of contract
- Supervise the implementation of established procurement policies
- Monitor prices of tendered items and keep a national database of standard prices
- Maintain a database of particulars, classification, categorization of contractors and service providers
- Collate and maintain in an archival system, all federal procurement plans and information
- Organize training and development programmes for procurement professionals
- Periodically review socio-economic effect of procurement policies and advise Council accordingly
- Prepare and update standard bidding and contract documents

See Sections, 1, 8 10, and 13

- Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions
- Review the procurement and award of contract procedures of every entity to which the Act applies
- Perform procurement audits and submit such report to the National Assembly bi-annually
- Co-ordinate relevant training programs to build institutional capacity

3.51 Some effects of these functions pre existing procurement practices are already noticeable. These include the standardization of public procurement procedures and minimization of areas of exercise of discretion by procuring entities. Such minimization of discretion is especially prominent the choice of procurement methods, methods of selection of contractors and service providers, determination of prices, and stipulation of performance quality standards. However, it is a different issue whether procuring entities are faithfully complying with the Bureau's prescription.

3.52 *Powers of the Bureau* the Act confers certain specific and unique powers on the Bureau to enable the Bureau effectively perform its functions. These include powers to

- Enforce monetary and prior review thresholds
- Issue certificate of "No Objection" for Contract Award"
- Stipulate procedures and documentation pre- requisite for issuance of Certificate
- Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act
- Review and determine whether any procuring entity has violated any provision of the Act
- Debar any supplier, contractor, or service provider that contravenes any provision of the Act and regulations
- Maintain and publish a list of firms and debarred persons
- Maintain a national database of contractors and service providers
- Exclusively prescribe classifications and categorizations for contractors and service providers
- Investigate complaints in accordance with the procedures set out in this Act
 - o Call for such information, documents, records, and reports in respect of any aspect of any procurement proceeding on which complaint is received
 - o Examine persons or parties in connection with any procurement proceeding
 - o Nullify whole/part of procurement proceeding or award that

- o contravenes the Act
- o Where the condition exists, recommend to the Council
- Suspension of officers concerned with the procurement or disposal proceeding in issue
- Replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be
- Discipline of the Accounting Officer of any procuring entity
- Temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant
- Any other sanction that the Bureau may consider of appropriate
- Do such other things as are necessary for the efficient performance of its functions

Procurement Execution under the Act

3.53 Responsibility for executing procurement under the Act lies with the agencies covered by it as defined above. The Act refers to them as procuring entities. The Act makes detailed provisions on how procuring entities may approach the assignment. This section discusses the main provisions below. In particular, it will discuss the Acts provisions in relation to organization of the procurement function, procurement of goods, procurement of consultant services, and procurement of works.

Organizing the Procurement Function

3.54 *The Tenders Board* the Act requires that each procurement entity establish a Ministerial or Parastatal Tenders Board as may be relevant. The Board shall be the approving authority for the conduct of public procurement. By this provision, the Board shall be responsible for all procurement activities, including award of contracts within the threshold set in the regulations (s. 22). Membership of the Tenders Board shall be as the Bureau, with approval of the Council, prescribes from time to time.

3.55 *The technical evaluation subcommittee* this is a subcommittee of the Tenders Board made up of the professional staff of the procuring entity and chaired by the Secretary of the Tenders Board. The Act requires the chairman of the Tenders Board to set up this subcommittee in all cases where there is need for pre-qualification. The subcommittee shall be responsible for the evaluation of bids.

3.56 *Procurement planning* - The Act requires a procuring entity to plan its procurement ahead. Procurement planning involves several activities including

- Preparing a procurement needs assessment and evaluation this helps ensure that procurement is according to what is necessary to meet stated goals and objectives

- Identifying the goods, works, or services required to meet the needs
- Carrying out appropriate market and statistical surveys and on that basis preparing analysis of the cost implications of the proposed procurement
- Aggregating requirements whenever possible, both within the procurement entity and between procuring entities, to obtain economy of scale and reduce procurement cost
- Integrating procurement expenditure into the yearly budget
- Prescribing any method for effecting the procurement subject to the necessary approval under the Act; and

3.57 *The Procurement Planning Committee* - the Act assigns responsibility for procurement planning to the Procurement Planning Committee. It would appear that the Act expects the composition of the committee to vary annually, depending on procurement needs for the year. The Act provides that “each financial year, a procuring entity shall establish a procurement planning committee.” The composition of the committee is as follows

- The accounting officer of the procuring entity or his representative who shall chair the Committee
- A representative of the procurement department, who shall be the secretary
- The unit directly in requirement of the procurement
- The financial unit of the procuring entity
- The planning, research, and statistics unit of the procuring entity,
- Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
- The legal unit of the procuring entity

3.58 *The procurement implementation process* the Act makes implementation of the procurement plan subject to regulations of the Bureau issued from time to time and directions of the Council. Implementation shall be through the following processes

- Advertising and soliciting for bids in adherence to the provisions of the Act and any guidelines issued by the Bureau from time to time
- Inviting two credible persons to observe every procurement process, one person each representing a recognized,
 - o Private sector professional organization with relevant expertise in particular goods or service being procured, and
 - o Non-governmental organisation working in transparency, accountability, and anti-corruption areas

The observers shall not intervene in the procurement process, but may submit observation report to any relevant agency or body including their own organizations or associations

- Receiving, evaluating, and making a selection of the bids received
- Obtaining approval of the approving authority before making an award
- Debriefing the bid losers on request
- Resolving complaints and disputes, if any
- Obtaining and confirming the validity of any performance guarantee
- Obtaining a "Certificate of 'No Objection' to Contract Award" from the Bureau within the prior review threshold
- Executing all contract agreements
- Announcing and publicizing the award in approved format

3.59 Role of the accounting officer in the procurement process - The accounting officer is the Permanent Secretary, in the case of ministries, or the Director-General or officer of co-ordinate responsibility, for other agencies. The accounting officer has direct responsibility for line supervision of the procurement process. The accounting officer has overall responsibility for planning, organization, and evaluation of tenders, and execution of all procurements. In addition, Act holds the accounting officer particularly responsible for

- Ensuring compliance with the provisions of the Act by the procuring entity; in this regard, the accounting officer is personally liable for any breach or contravention of the provisions of the Act or any regulations deriving from it. This liability remains notwithstanding whether the accounting officer or any of his or her delegates committed the act or omission in question
- Constituting the procurement committee and its decisions
- Ensuring provision of adequate appropriation for the procurement
- Integrating procurement expenditure into yearly budget
- Ensuring no reduction of values or splitting of procurements to evade use of appropriate procurement method
- Constituting the Evaluation Committee in liaising with the Bureau to ensure the implementation of its regulations

3.60 Prequalification of bidders this is relevant where, in particular procurements, a procuring entity decides to pre-qualify bidders in order to shortlist only credible persons for main bid. Also the procurement rules provide for thresholds above which a procuring entity must pre-qualify contractors. In those situations, it shall request interested persons to apply to pre-qualify. In doing so, the procuring entity shall specify the minimum, clear, and precise qualifications required. On request, the procuring entity shall provide a set of prequalification documents to each interested persons at no more than the cost of printing and shipping. The entity shall apply only the criteria set out in the prequalification documents and no more in deciding who qualifies to participate in the main bid.

Currently set at 5 million naira (2.5 for parastatals)
See ss. 46- 52

3.61 Contents of the prequalification document prequalification documents shall contain instructions on how to prepare and submit the prequalification application and a summary of the main terms and conditions required for the procurement contract. In addition, it shall contain documentary evidence or other information required to demonstrate qualifications. It must also specify the manner and place for submission of applications to pre-qualify and the deadline for the submission, i.e., specific date and time. The document must allow bidders reasonable time to comply. The procuring entity may also establish other requirements provided such requirements are in conformity with the PPA.

3.62 Right of contractor to seek clarifications the supplier responding to a prequalification invitation may seek clarifications on the prequalification documents. The Act obliges the procuring entity to respond if the inquirer makes the request at least 10 days before the deadline set for the submission of applications. The procuring entity's response must be within seven working days. In such situations, the procuring entity shall, without identifying the source of the request, communicate the response to others provided with the prequalification documents.

3.63 Notification of prequalification results - A procuring entity shall promptly notify applicants on whether or not the success or otherwise of their application. However, there is no obligation to communicate to unsuccessful applicants the grounds for their disqualification, unless they specifically so request. The procuring entity shall also make available to any requesting member of the public upon request, the names of prequalified suppliers, contractors or, consultants. Only pre-qualified contractors may participate further in the procurement proceeding

3.64 Right of procuring entity to seek further clarification - the procuring entity may request a pre-qualified person to again demonstrate its qualification using the same pre-qualification criteria. In that case, the procuring entity shall communicate to the person whether it has successfully done so. The procuring entity shall disqualify any person who fails to demonstrate its qualification again when requested.

Procurement methods

3.65 Open competitive bidding is default procurement method except as otherwise prescribed under the Act, all procurement of goods and services shall be by open competitive bidding. The process requires the procuring entity to predefine or specify its needs and requirements, set the criteria for their supply, and offer every interested bidder equal and simultaneous information and opportunity to offer the goods, services, and works needed (s. 24(2)). Such invitations to bid can

either be by way of national competitive bidding (NCB) or international competitive bidding (ICB), depending on the monetary threshold set by the Bureau. The winning bid shall be the lowest responsive evaluated bid with regard to the specifications and standard in respect of goods and works.

3.66 *Table 3.1* specifies the advertisement requirements of NCB and ICB as provided in the Act.

Methods	Advert Media	Time of Advert
International Competitive Bidding (ICB)	<ul style="list-style-type: none"> • at least 2 national dailies • one relevant internationally recognized publication • Official website of procuring entity • Official website of BPP 	Not less than 6 weeks from deadline for submission of bids
National Competitive Bidding	<ul style="list-style-type: none"> • notice board of procuring entity • Official website of procuring entity • at least 2 national dailies • procurement journal 	Not less than 6 weeks from deadline for submission of bids

3.67 *The Bidding Process, bid security* - all procurements in excess of sums prescribed by the Bureau require a bid security, which must be by way bank guarantee issued by a reputable bank acceptable to the procuring entity. Any requirement for bid security shall not be discriminatory but apply uniformly to all suppliers and contractors. Bid security set at a maximum of two percent of the bid price. The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

3.68 *Submission of bids* this shall be in writing, sealed, in the English language, signed by responsible official capable of binding bidder in contract, and deposited in a secured tamper-proof bid-box. The procuring entity shall issue a receipt showing the date and time of submission of bid. The procuring entity shall return late bids, received after the deadline for submission, to the supplier or contractor that submitted it, unopened. The Act forbids unauthorised communication (not envisaged by PPA) between procuring entity and supplier prohibited

3.69 *Rejection of bids and cancellation of procurement proceedings* the procuring entity may reject ALL bids submitted at any time prior to the acceptance of a bid, without incurring liability to the bidders. The procuring entity may also cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

3.70 Bid validity - a bid shall be valid for the period specified in the tender documents. However, a procuring entity may request extension of validity for an additional specified period of time. If a supplier/contractor refuses an extension request, the effectiveness of its bid will terminate at period stated in tender documents.

3.71 Modification and withdrawal of bid - a bidder may modify or withdraw bid prior to the deadline for submission. Such modification or any notice of withdrawal shall be effective if received before expiration of deadline for submission of tenders.

3.72 Bidding opening - The procuring entity shall permit attendees to examine envelopes used in submitting bids to ascertain that there was no tampering with the bids. Conduct bid opening immediately after deadline submission of bids or any extension. The entity shall publicly open all bids in presence of bidders or their representatives, and any interested person. It will register the names and addresses of all present at bid opening and the organizations they represent and call over to the, hearing of all present, the name and address of each bidder, total amount of each bid, and the bid currency. The entity shall record these details in the minutes of the bid opening.

3.73 Examination of bids this involves initial checking of bids to determine if they meet the minimum eligibility requirements stipulated in the bidding documents, were duly signed, are substantially responsive to the bidding documents, and generally in order. A procuring entity may ask a bidder for clarification of bid submission to assist in the examination, evaluation, and comparison of bids. However, the procuring entity may not seek nor the bidder offer changes in prices or substance in a bid to make an unresponsive bid responsive.

3.74 Correction of errors notwithstanding the above, the procuring entity may correct purely arithmetical errors discovered during bid examination and they shall give prompt notice of the correction to bidder.

3.75 Major deviations this shall result in a rejection of bid. Examples of major deviations are unacceptable sub-contracting; unacceptable time schedule if time is of essence to the procurement, unacceptable alternative design, and unacceptable price adjustment. They also include ineligibility or not being pre-qualified, being uninvited, failure to sign bid document an unsigned bid, receipt of bid after stipulated date and time for submission, and submission of bid at wrong location. The procuring entity shall not consider all bids with major deviations further. Where the bid is unopened, the procuring entity shall return it to the bidder. The procuring entity shall send a letter explaining reasons for rejection of the bid. The procuring entity shall not

permit the bidder to amend the faulty bid to become compliant.

3.76 A minor deviation shall be subject to clarification for minor deviations, the procuring entity may obtain clarifications from the supplier or contractor; where applicable, the procuring entity shall make an offer to the bidder to correct them. Where a bidder does not accept the correction of a minor deviation, the procuring entity shall reject the bid altogether. In that case as in all cases of rejection of a bid, the procuring entity shall promptly give a written notice to the supplier. The Act regards the following as minor deviations warranting request for correction from the bidder

- The use of codes
- The difference in standards
- The difference in materials
- Alternative design
- Alternative workmanship
- Modified liquidated damages
- Omission in minor items
- Discovery of arithmetical errors
- Sub-contracting that is unclear and questionable
- Different methods of construction
- Difference in final delivery date
- Difference in delivery schedule
- Completion period where these are not of essence
- Non-compliance with some technical local regulation
- Payment terms
- Any other condition that has little impact on the bid

3.77 In cases of doubt as to whether a deviation is major or minor, the procuring entity shall consider the impact of the deviation on cost in resolving the matter. Where the impact on the costs is major, the entity will treat it as a major deviation. Conversely, where the impact is minor, it is a minor deviation. The procuring entity shall quantify all minor deviations at the stage of evaluation and comparison to determine whether they are minor or major deviations.

3.78 Bid evaluation the Tenders Board shall evaluate and compare all valid bids. The objective is to determine and select the lowest evaluated responsive bid. The evaluation shall use only methods and criteria stipulated in the solicitation documents. The bid document shall therefore include advance information on the evaluation criteria, i.e., price considerations and other relevant factors that the TB will consider during bid evaluation, and the manner of applying them.

3.79 In the case of procurement of works, goods, and services, such factors shall include the following

- Costs of transportation and insurance
- Payment schedule
- Delivery time
- Operating costs
- Efficiency,
- Compatibility of the equipment,
- Availability of services and spare parts
- Related training
- Safety
- Environmental benefits or losses by damages etc

3.80 In addition to the foregoing above, evaluation criteria for works shall include, if time is a critical factor, the value of early completion. In this case however, the bidding document shall provide for commensurate penalties in case of late delivery.

3.81 Matters to undertake particularly in bid evaluation - in particular, the TB shall undertake the following processes as applicable during bid evaluation

- Checking of deviations
- Checking of omissions with quantification of same
- Application of discounts, as applicable
- Clarification with bidders of questionable minor deviations
- Quantification in monetary terms of such questionable deviations
- Conversion to common currency
- Calculation and tabulation of bid amount with domestic preference where applicable
- Determination of the lowest calculated prices in order of rank
- Post-qualification of bidders, where applicable
- Listing of rejection of bids, where applicable
- Decision of rejection of all bids where justifiable
- Recommendation for award
- Writing up of the bid evaluation report

3.82 No first disclosure to other persons - after opening of bids, the procuring entity shall not disclose information relating to the examination, clarification, evaluation of bids, and recommendations concerning award to bidders or to persons not officially concerned with the evaluation process until it first notifies the successful bidder of the award.

3.83 Notice of successful bid - the successful bid shall be that submitted by the lowest cost bidder from the bidders responsive to the bid solicitation. However, the selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds to that effect. Notice of the acceptance of the bid shall immediately be given to the successful bidder. Where the procuring entity pre-qualified suppliers, it shall verify and confirm the information provided in prequalification at time of award of contract. The entity may deny award to a bidder who no longer has the capability or resources to perform the contract successfully.

3.84 *Other provisions* - there are also detailed provisions on domestic preferences, mobilization fees, contract performance guarantee, interest on delayed payment, recorded procurement proceedings, special and restricted procurement methods, etc.

3.85 *Two stage tendering* a procuring entity may use a two-stage tendering process in certain situations. However, the conditions that may warrant use of a two stage tendering process are, where

- It is not feasible to formulate detailed specifications for the goods or works, or in the case of services, identify the characteristics of services required
- Procuring entity seeks proposals on various means of meeting its needs
- The character of the goods or works is subject to rapid technological advances
- The procuring entity seeks to enter into a contract for research, experiment, study or development, but not where to produce the goods in commercial quantity or to recover research and development costs
- The procurement has national security implications and the selected method is the most appropriate method of procurement
- Use of the tendering process was not successful
- There has been a rejection of tenders under an open competitive bid procedure and new tendering proceedings will not yield better results

3.86 Procedure - open competitive bidding applies to two-stage tendering proceedings. The first stage is the invitation document when the procuring entity requests for proposals relating to technical, quality, or other characteristics of the procurement, but not price. The invitation shall also stipulate the professional competence and technical qualifications of bidders. The procuring entity may negotiate with any bidder whose tender it did not reject under an open competitive bidding procedure with respect to any aspect of its tender.

3.87 In the second stage, the procuring entity may invite final tenders with prices on a single set of specifications from surviving bidders. In formulating the final

specifications, the procuring entity may include amendments as it deems fit. It may delete or modify technical or quality characteristics or add new characteristics or criteria. It may permit an unwilling bidder to withdraw from the tendering proceedings. The procuring entity shall evaluate and compare final tenders to ascertain the successful tender as in an open competitive bid

3.88 *Restricted or selective tendering* the Act clearly provides that use of this procedure must be an exception rather than the norm. Prior approval of the Bureau is necessary for the use of restricted or selective bidding. The Bureau will grant permission for its use only for reasons of economy and efficiency and under only two circumstances. The first is when the goods, works, or services are available only from a limited number of suppliers and contractors. In that situation, the procuring entity shall invite tenders from all the suppliers and contractors who can provide the goods, works, or services. The second is when the time and cost required to examine a large number of bids is disproportionate to value of contract. In this case, the procuring entity shall select bidders in a non-discriminatory manner to ensure competition. Whatever the circumstance of its use, the procuring entity shall publish a notice of the selected tendering proceedings in the procurement journal. Except for the manner of inviting and selecting bids, all other processes of open competitive bidding shall apply to restricted or selective bidding

3.89 *Request for quotation* this technique, also called 'shopping' applies to purchases whose values are within the threshold set by the Bureau. Use of the method does not require prior permission of the Bureau because the Bureau has already permitted its use on small purchases within values it set. The procuring entity shall obtain quotations from at least three unrelated sources. The request shall make clear what charges, taxes, costs (e.g., for transportation) to include in the quotation. Each bidder shall submit only one invariable quotation. There shall be no negotiation on quotation between procuring entity and supplier. The procuring entity shall award the procurement to the qualified bidder with lowest priced responsive quotation.

3.90 *Direct procurement* the technique involves price quotation from single supplier. The procuring entity must maintain records of the procurement and must show grounds and justification for its decision to use direct procurement. This method may apply in very restricted circumstances including the following, i.e., when

- The works, goods, or services, are available from only one particular supplier
- The supplier has exclusive rights in respect of the goods and no reasonable substitutes exist
- There is urgent need for the item(s) making tendering proceedings impractical
- The urgency arose from unforeseeable circumstances not due to dilatory

- conduct of the procuring entity
- Occurrence of catastrophe necessitates urgency of the procurement
- Continuation of performance under an old contract, e.g., procurement of additional spare parts from supplier
- There is need to ensure compatibility with existing technology
- The procurement is for research not involving commercialization
- The procurement has national security implications and direct procurement determined appropriate.

3.91 *Emergency or forced procurement* this technique also uses direct contracting. However, the circumstances for its use and the reporting requirements are different. Justification for the method include that the country is seriously threatened or actually confronted with disaster, the condition or quality of existing equipment or building may seriously deteriorate otherwise, or there will be delay in a public project for want of an item of relatively minor value. The reporting requirements include that immediately on cessation of conditions warranting the emergency, the procuring entity shall file a detailed report with the Bureau and obtain a certificate of “no objection.”

Procurement of consultant services

3.92 Procurement of consultant services under the Act may be by expression of interest and request for proposal.

3.93 *Expression of interest* this method is similar to pre-qualification in the sense that it enables the procuring entity to request, review, evaluate and short list competent service providers based on set out criteria provided in the call for expression of interest. It often applies when the services a procuring entity wishes to procure are precise and ascertainable, as well as in other cases when the procuring entity wishes to procure the services of consultants. The call for expression of interest must be published in at least two national daily newspapers and the procurement journal. Where the value of the service is small as determined by the Bureau, such that only national consultants are likely to apply, the procuring entity may directly invite proposals from between three and 10 service providers. The request for proposal shall be in a format stipulating the following

- A statement of qualifications of the consultant to provide the service
- A statement of understanding of the procuring entity's needs
- The methodology for providing the service
- The time frame for providing the service, and
- The cost or fee for the service
-

3.94 *Request for proposal* This is the second stage following expression of interest in the procurement of consulting services, this approach is also relevant where the procuring entity is unable to ascertain the precise needs of the procuring entity, or when the procurement involves research, experiment, or study of uncertain outcome. It also used in other circumstances for procuring consulting services. The procuring entity shall procure the services of consultants by soliciting for request for expression of interest published in two national newspapers and the procurement journal. However, the procuring entity may make a direct request to a limited number of consultants, if the services are only available from no more than 3 consultants or the time and cost required to examine and evaluate a large number of proposals is disproportionate to value of services (in which case it shall invite enough consultants to ensure transparent competition), or in the interest of national defence and security or similar reason of confidentiality.

3.95 *Other provisions* the Act also contains detailed provisions relating to other aspects of the use of consultant services and request for proposals. These include the following

- Content of requests for proposal
- Clarification and modification of requests for proposal
- Submission of proposals
- Criteria for evaluation of proposals
- General selection procedure for services
- Procedure for selection where price is a factor
- Selection procedure where price is not a factor

Disposal of Public Property

3.96 Every procuring entity is also a disposal entity under the Act. Open competitive bidding is the primary source of receiving offers for the purchase of any public property offered for sale. However the Act provides for exceptions, additionally it requires that an independent valuation of assets be carried out and such value integrated in the agency's budget proposals prior to disposal of assets.

Procurement Surveillance and Review

3.97 The Act confers wide powers on the Bureau to carry out various acts of surveillance and review of all aspects of procurement. The powers of the Bureau include recommending criminal investigations to relevant authorities, carrying out administrative review, and based on its reviews, ordering necessary reparations or restitutions.

3.98 *Criminal investigation* the Act empowers the Bureau to review any matter related to the conduct of procurement proceedings by a procuring entity. The Bureau can also review the conclusions, outcomes, or operations of a procurement contract. Following such review, the Bureau may recommend criminal investigations of the procurement process to any relevant authority. Relevant authority is defined by the Act to include the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). The Act grants the investigating authority full access to persons, suppliers, bidders, contractors, consultants, books, records of account, etc. The investigative authority may also search any premises and remove books, documents, records, etc., of the procuring entity or contractor, supplier, etc. or to interrogate any person related to the procurement.

3.99 The investigation may lead to the institution of criminal proceedings as necessary. The Bureau may also, following the report of the investigation, the advice of the procuring entity, or its review of a procurement process, issue a variation order requiring reparation or restitution by a contractor or supplier. Such variation order may include requirements of the contractor or supplier to complete anything left undone or done with less skill and expertise than required under the contract, and replace defective or inferior materials, etc.

3.100 The Bureau may also following a complaint take other action if satisfied that there has been a contravention of the Act or any regulations in relation to procurement proceedings or contracts. Such actions include nullification of the procurement proceedings, cancellation of the procurement contract, or making a declaration consistent with any relevant provision of the Act. Alternatively, the Bureau may choose to cure the contravention by ratifying the offending action.

3.101 *Administrative review* the Act provides a complaint and redress mechanism. The process is that the bidder must first lodge a written complaint with the accounting officer within 15 working days from the date of becoming (or when he should have become) aware of the circumstances leading to the omission or breach. The accounting officer shall, within another 15 working days, review and make a written decision indicating corrective measures, if necessary. The decision of the accounting officer may include suspension of the procurement proceedings. Where the accounting officer fails to make such a decision or if unsatisfied with the decision, the bidder may lodge a written complaint to the Bureau within 10 days of expiration of the fifteen days.

3.102 Upon receiving the complaint, the Bureau shall promptly give notice to the procuring entity. The Bureau shall also suspend any further action on the procurement or disposal until the Bureau settles the matter. The Bureau shall notify all

interested bidders on the complaint and take the representations from them and the procuring entity into account in arriving at a decision. The Bureau shall make its decision within 21 days of receiving the complaint, stating its reasons and remedies granted, if any. The decision of the Bureau may include be to i) dismiss the complaint, ii) prohibit the procuring or disposing entity from taking any further action, iii) nullify declare the rules or principles that govern the subject matter, iv) revise an improper decision by a procuring or disposing entity, or v) substitute its own decision for the decision of the procuring entity. A complainant unsatisfied with the decision of the Bureau, or if the Bureau fails to make a decision, may petition the Federal High court within 30 days.

Procurement Offences and Penalties

3.103 *Procurement offences* - Contravention of any provision of the Public Procurement Act (PPA) is an offence. Particular offences under the Act include collusion with supplier to quote a higher price and fraudulent and corrupt acts such as unlawful influence, undue interest, favour, agreement, bribery, and corruption. Other procurement offences include

- Direct or indirect attempt to influence the procurement process to obtain an unfair advantage in the award of a procurement contract;
- Splitting of tenders to enable the evasion of monetary thresholds
- Bid-rigging
- Altering any procurement document with intent to influence the outcome of a tender proceeding
- Uttering or using fake documents or encouraging their use
- Wilful refusal to allow the Bureau or its officers to have access to any procurement records etc

3.104 Penalties for contravention of provisions of the Act - include imprisonment for up to 10 years without option of fine. Lesser offences by public officers attract for public officers attract five years imprisonment without option of fine, and summary dismissal from government service. Offences by legal persons will attract debarment for up to five years, and fine of 25 percent value of procurement in issue. Also directors registered at the Corporate affairs Commission of companies convicted of offences under the Act are liable to imprisonment terms ranging from three to five years.

Chapter 4: Compliance with Operational and Procedural Provisions of the Act

4.1 This chapter is one of three chapters that present field evidence of compliance with the Public Procurement Act, 2007. It assesses compliance with operational and procedural provisions of the Act, 2007, while *Chapter 5* is on compliance with policy formulation and regulatory provisions. This chapter covers three key areas: compliance of procuring entities, compliance of the Bureau of Public Procurement, and compliance of contracts, suppliers and service providers. It uses evidence mainly of responses of civil society observers (CSOs) of the procurement process, contractors, bidders, and suppliers, and House of Representatives Committee on Public Procurement to separate structured questionnaires administered on them. Wherever appropriate, it also includes evidence of responses of procuring entities and the Bureau. Finally, it includes independent evidence a secondary nature, from other informed sources, including books, articles, reviews, manuals, Internet materials, informal discussions with some informed members of the public, etc.

4.2 *The general picture of the outcome of this chapter is that of improving, but still low level compliance with operational provisions of the Act.* Among the better performing areas are public enlightenment and awareness of the Act, sensitization and training activities by the Bureau, establishment of procurement departments by procuring entities, prior existence of budgetary provisions for procurement, advertisement of contracts, and bid opening. However, the perception is of 'tokenism' or 'mere formalism' for most of the other (and even some of the above) areas. The evidence suggests there are still cases of inadequate procurement planning, manipulation or misuse of pre-qualification and bid evaluation procedures, wrongful award of contract, price manipulation, misuse of variation clauses, etc.

Compliance of Procuring Entities

4.3 *The general perception is that of disappointment with the level of overall compliance by procuring entities with the operational provisions of the Act.* Respondent CSOs, contractors and service providers, and legislators suggest substantial non-compliance with implementation of the Public Procurement Act, 2007. Their rating is as follows: 'satisfactory' or 'very satisfactory', 35 percent; 'not satisfactory' or 'barely satisfactory', 55 percent; and 'indeterminate/don't know,' 10 percent (Chart 4.1). The respondents rate compliance with only four of the 23 areas of the procurement process surveyed for this purpose as satisfactory or above



(substantial compliance). This represents only 17 percent of the operational process. The areas considered as working at least satisfactorily are (i) existence of prior budgetary appropriations (55 percent satisfactory), (ii) advertisements contain technical description of goods, works, or services required rather than brand names (55 percent satisfactory), (iii) use of selective tendering (27 percent satisfactory, 45 percent very satisfactory), and (iv) transparency of the bid opening process (64 percent satisfactory, 10 percent very satisfactory). Respondents agree that procuring entities are gradually becoming aware of the need to “connect future procurement with availability of budgetary provision”.

4.4 *Indeed, the worst examples of impunity in public procurement appear to be on the wane since emergence of the Public Procurement Act, 2007.* For example, no longer is it easy to proceed with procurement of significant value without advertisement as was possible prior to enacting the Act. It is also now the case that an employee could openly report procurement offences as appears to be the case in the 2005 UBEC procurement case currently under prosecution. In that case, the Economic and Financial Crimes Commission (EFCC) is prosecuting a former secretary of the Commission (UBEC), Professor Bridget Omotunde Sokan and some others based, it appears, on a formal report lodged by her successor in office. The facts of the case disclose failure to advertize the procurement process, forgery of two newspaper advertisements, award of contract to fictitious and unregistered companies with fake addresses, inflation of contract price, payment of 100 percent mobilization fee, and payment of other amounts in excess of contract price for services already covered in the contract. The facts further suggest that the contract was for supply of plastic chairs to primary schools nationwide, cost 787 million naira, and involved two foreign companies, which used forged local address in Port Harcourt, Rivers State.

It also appears the Act is somehow managing to encourage exposure of more cases of real or attempted abuse of the public procurement process than was previously the case, preventing them from 'just going away', and empowering civil society to vigorous protest them. The next chapter reports several examples of alleged or attempted executive and legislative abuses that didn't or won't go away due to the tenacity of public opinion. These include the car purchase and renovation cases in the House of Representatives that claimed the speakership of Patricia Ette, the current alleged N9 billion capital budget controversy also in the House of Representatives being championed by (so-called) 'progressives' in the House that has recently threatened the speakership of Dimeji

In this report, substantial compliance means a rating of 'satisfactory' and/or 'very satisfactory'

Table 4.1

Whether out of fear of possible future prosecution or patriotism is not clear, but does not matter for the purpose of assessing compliance with provisions of the Act

Universal Basic Education Commission

Previously, even if an employee was inclined to report such offences, he/she would probably do so anonymously

From reports of court proceedings evidence

Bankole, and the Nnamdi Azikiwe International Airport Second Runway project controversy. Other examples include cases that happened prior to coming into force of the Act, but which are receiving renewed attention following reports and discussions on infringements under the Act. The UBEC case cited above, and the 2006 N5.6 billion naira Aviation Fund cases are examples. Another is the Halliburton-LNG procurement bribery scandals that started in the late 1990s and extended to 2007. In that case, a consortium of American, Japanese, and European firms and individuals is alleged to have bribed Nigerian officials including some PEPs to obtain lucrative LNG contracts. The latest news report is that following attempts to prosecute Halliburton officials, including a former Vice President of the US, Dick Cheney, who was Chairman of Halliburton at some of the material time, Halliburton and some of its associates have paid Nigeria more than US \$ 170 million in out of-court settlement. Foreign companies refusing to cooperate and six Nigerian officials are undergoing prosecution in the case²⁷. In another such example the Senate aviation committee declared that the controversial Safe Tower contract awarded for N6.5 billion prior to the Act, might have been inflated to the tune of N5 billion. The Senate panel observed that the contract was awarded to the highest bidder without advertisement or competitive tender. It also noted some abnormalities in the award and execution of the project. For instance, Avsatel's quotations had no bill of quantities or price specifications for the various components of the contract. Besides, independent consultants were not involved at any stage of the contract process. Viasala and Frequencies quotation was backed by a bill of quantities and price specifications for every component of the contract. It was also discovered that Avsatel obtained the contract by deceit, claiming to be in consortium with Viasala and Frequencies. The claim turned out to be false. In the execution of the contract, the former was discovered to have procured the equipment from the latter. Insisting that due process was not observed in the award of the contract, the panel members faulted the speed with which the Due Process Office of the Presidency passed the contract and issued a certificate for its award²⁸.

4.5 *Despite these positive developments participants in the survey believe the level of compliance with 19 of the 23 surveyed areas (83 percent) was either 'not satisfactory' or was 'barely satisfactory'. Among the areas particularly ascribed with low compliance ratings are (see Table 4.1)*

- Existence of prior procurement plans
- Implementation of procurement in accordance with procurement plans

²³See EFCC website for details, www.efccnigeria.org

²⁴See Chapter 5 for details of this case

²⁵Liquidified Natural Gas

²⁶Politically Exposed Persons

²⁷As reported by several local and international news media including the CNN and online media at on various dates in December 2010; see for example, <http://www.newkerala.com/news/world/fullnews-106234.html> for reports from December 3 to 16

²⁸Taken from the EFCC website: www.efccnigeria.org on December 19, 2010 (posted on July 1, 2008 by Augustine Ehikioya, culled from the nation newspaper)

- Level of public access to information
- Appropriateness of procurement methods used
- Mode of advertising and soliciting for bids
- Solicitations contain clear criteria for selection of winning bidder
- Use of 'shopping' / request for quotation
- Bid examination procedure
- Debriefing of contractors
- Compliance with the complaint mechanism
- Appointment of sub technical committee of the Tenders board
- Existence and functioning of Tenders' Boards
- Use of open competitive bidding
- Transparency of bid evaluation process
- Written notification of bid winners

4.6 *Among factors identified as responsible or contributing to the low level of compliance are the following*

- Procuring entities do not base appointments of procurement officers and to procurement planning committees on competence, but often on ranking in the service or based on other considerations bordering on nepotism .
- Inadequate knowledge of the law, rules and procedure and procurement skills within the service and amongst contracting parties.
- Conflict of interest and corruption
- Political interference
- Failure to create a register of qualified bidders and suppliers (especially for specialized goods, works, and services), which create opportunity for inviting “everyone ... including traders and freight forwarders” to participate in the process; according to responses, this leaves the impression that public procurement “is (merely) a money making exercise” .
- Failure of procuring entities to observe advertised technical details “during examination and evaluation; things break down at this point and become mere politics ... the 'Nigerian Factor' sets in” .
- Failure of MDAs to debrief contractors out of “fear” (probably because of unfairness in the selection process); the suggestion is that procuring entities debrief contractors that they want to award the contract to, but not necessarily others.

It is doubtful that absence of a register of qualified bidders and suppliers suggested by respondents or even register of categorization of contractors required by the law is a valid reason for non compliance, since the law sets out a framework that enables clear definition of qualification of contractors and criteria for selection of winning bidders uniquely tailored to each procurement, again, open competitive bidding requires

open invitation to bid, based off course on pre-determined and advertised criteria and conditions. It is important also to note that debriefing of contractors under the law is upon written request for debriefing. No doubt access to information for both contractors and civil society remains low, even in cases where requests have been made.

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4.7 Suggestions of 'tokenism' and paradoxes in compliance - inherent paradoxes in the assessment suggest a promotion of form over substance in by MDA's in complying with provisions of the Act, 2007. For instance, the rating of compliance with the 'bid opening process' is 'satisfactory' or above, but the rating of the 'bid examination process' and 'transparency of the bid evaluation procedure' are 'not satisfactory' or are 'barely satisfactory'. Similarly, while the rating of 'advertisements contain technical description of goods, works, or services required rather than brand names' is satisfactory, the rating of 'use of open competitive bidding', is not. As explained below, civil society actors also complain that while they are invited to witness the bid opening process, they are not invited to observe bid examination and evaluation, strong views exist on the government side as to whether or not civil society should be involved with bid examination and evaluation, but more important here is that, they are not currently allowed access to procurement process documents on request as required by law. Consequently, they are not in a position to verify the integrity of the selection procedure. This also affects their assessment of the notification of bid winners. Further, the only respondent contractor/bidder/service provider, while agreeing on the quality of technical content of advertisements, commented that 'things break down at the bid evaluation stage', which renders the process neither open nor competitive. These suggest promotion of form over substance, in this report labeled, 'tokenism' and emphasizes the need to allow more external search light on the examination and evaluation process.

4.8 *'Tokenism' or 'formalism', and the inherent paradoxes it entails, affects other areas of the procurement process as well, including appropriateness of procurement methods used, mode of advertising and soliciting for bids, use of 'shopping'/request for quotation, and the level of public access to information.* Tokenism constitutes a real problem; it inhibits inculcation of correct procurement habits, thereby threatening success and sustenance of the ongoing procurement reforms. In a way, it is the same culture of impunity, cleverly masked to make it difficult to detect. Fostering the habit requires connivance or collusion of several actors in the procurement process: politicians, procuring entities, and contractors and service providers. However, tokenism is not the only problem threatening successful implementation of the Act.

4.9 Capacity shortages among procuring entities play an important role in the low level of compliance. For example, it contributes to the low rating of compliance for 'Existence of prior procurement plans' and 'implementation of procurement in accordance with procurement plans' (Table 4.1). Informed sources indicate that in some MDA's there is dearth of required skills. This is confirmed by the pronouncements of the Hon Minister of Finance Mr Olusegun Aganga, when he blamed the problem of low budget implementation on the limited capacities of MDA's and the Unique political situation at the start of last year²⁹. However BPP has in

November 2010 published procurement plans for many MDA's for 2010, it would appear that its many procurement planning workshops are beginning to produce results all be it late in the year³⁰. The next section, which examines compliance with operational provisions relating to the Bureau of Public Procurement, discusses the role of capacity shortages and training to address the problem in greater detail.

4.10 Lack of integrity resulting in abuses in the use of procurement methods - *there is general agreement among respondents (other than procuring entities) that the level of compliance with use of appropriate procurement methods is low.* The assessment is 73 percent for 'not satisfactory' and 'barely satisfactory' and only 27 percent 'satisfactory' and 'very satisfactory'. Onyekpere (2010) reports the Director General (DG) of the BPP as agreeing that procuring entities abuse the use of procurement methods by deliberately using inappropriate methods, a problem he blames on lack of integrity. According to Onyekpere, the DG “attributed it to lack of integrity and transparency in awarding contracts ... MDAs would not normally award contracts to contractors who are not in their good books, even if the contractor met the necessary qualifications. Demands for gratification are rampant”³¹ Onyekpere further reports the DG as claiming that “most of the challenges are caused by contractors who go round and submit fake papers, bribe officials, and politicians to get them pre-qualified. It is a circulated fact that they pay money to get pre-qualification”.³² This statement appears to have been made in 2009.

4.11 Pre-qualification is a major source of abuse - *it would appear that even politicians agree that misuse of pre-qualification procedure is a source of abuse of the procurement process.* Onyekpere's 'Diagnostics' further cites a former minister of state (female) for Works and Housing³³ as asserting “that government contracts are concentrated in the hands of a few cronies of those with responsibility to pre-qualify contractors for contracts and it has been observed that these contractors lack the capacity to handle jobs of such magnitude. A contractor with limited equipment may be handling contracts in different parts of the country. There are also cases where genuine contractors who have been pre-qualified are not informed.” Further, the Centre for Social Justice (CSJ) reports the Minister of Justice and Attorney General of the Federation as claiming that 80 percent of corruption in Nigeria arises from public procurement³⁴. Clearly, the DG, a Minister of Works and Housing, and the Attorney General, are in positions to know how the public procurement system worked at the time of making the quoted statements.

²⁹ Speech at the One Day Procurement Planning Workshop for Procurement Officers in MDA's organized by the BPP.

³⁰ Procurement Plans For Ministries ,Departments and Agencies (MDA's) for Financial Year 2010.

³¹ Onyekpere, Eze (2010): Diagnostics on the Implementation of the Public Procurement Act, page 30, citing newspaper reports

³² Onyekpere (2010), page 31

³³ Not named

³⁴ Centre for Social Justice: Half Hearted Implementation of the Public Procurement Act: an assessment for the period, January June, 2009

4.12 Other areas of procurement abuse *the Bureau*³⁵ *lists other areas where instances of abuse of the public procurement process exist as including*

- Prequalification agencies still doing prequalification for projects below the established threshold, lack of integrity in exercise (proper due diligence not done), selection of contractors with unequal capacity or inadequate capacity for the job to bid
- Lowest bidder/evaluation direct consequence of poor prequalification exercise is non conformity with criteria for responsiveness, also is the failure to reconfirm unrealistic rates before award, improper application of lowest bidder concept lowest evaluated responsive bid
- Delayed payment processing of approvals, lack of templates to fast track payments; failure to pay interest on delayed payments (.i.e., after 60 days); submission of interim certificates for payment, virement of funds meant to 'so-called priority projects'
- Post qualification award delay or refusal to hand over project; non execution of contract agreement, delayed award after obtaining certificate of 'No Objection'; improper disengagement of contractors; extension of time; variation/review of contract rate

Table 4.1a: Areas of Abuses in the Procurement Process

	Area of Abuse	Culpable Agency
1	Lowest Bidder/Bid Evaluation	Education Health Petroleum Resources Works, Housing, & Urban Development Agriculture & Water Resources FCDA Head of Civil Service Tourism
2	Post Qualification Award	Education Health Agriculture & Water Resources Transport Aviation Federal Inland Revenue Service Petroleum Resources Finance Defence Nigeria Customs Service Interior
3	Prequalification	Power Agriculture & Water Resources Niger Delta Affairs National Sports Commission
4	Delayed Payment	Science & Tech

Source: Public Procurement Journal, 4/e, October - December, 2009, 39 - 40

Onyekpere, Eze (2010): **Diagnostics on the Implementation of the Public Procurement Act**, page 30, citing newspaper reports

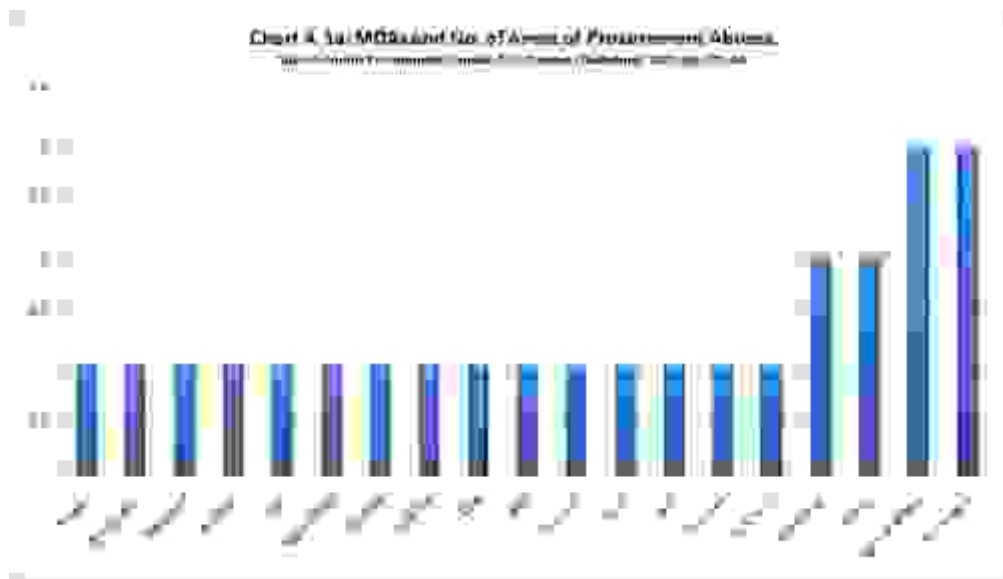
Onyekpere (2010), page 31

Not named

Centre for Social Justice: **Half Hearted Implementation of the Public Procurement Act: an assessment for the period, January June, 2009**

Citing petitions from contractors and consultants to the Bureau, see Public Procurement Journal, 4/e, October - December, 2009

Onyekpere quotes the DG of the Bureau (at the time of speaking), MDAs presented less than 300 of the 566 contracts certified by the Bureau for award (by issuing certificates of 'No Objection') in 2009 to the EXCoF for award. This represents slightly more than half (53 percent) see Onyekpere, page 31.



4.13 The BPP report suggests that 'post qualification award' and 'bid evaluation and selection of lowest bidder' are the most common areas of procurement abuse, with 11 (or 58 percent) and eight (or 42 percent) of the 19 MDAs in the report involved (Table 4.1a). In effect, avoiding double counting, 15 of the 19 MDAs in the BPP report (representing 79 percent) abuse both the 'bid evaluation and selection of lowest bidder' and 'post qualification award' stages of the public procurement process. This agrees with the observation of survey respondents that 'things breakdown at the bid evaluation stage'³⁷. It is noteworthy that the nature of the abuses that occur at these stages involve issues of integrity of the persons carrying out the activities and transparency of the process, and reinforce the need to improve transparency of examination and evaluation stages of procurement. Speaking at the quarterly sectoral consultative forum organized by the House of Representatives Committee on Public Procurement and C4C on 13th October 2009, the Director general BPP said "MDA's were undermining the procurement law (due process) in award of contracts, adding that they don,t use criteria for contract evaluation, thereby encouraging corruption."³⁸

4.14 The BPP report suggests that the ministries of Petroleum Resources and Agriculture and Water Resources are the most abusive MDAs, being involved in three (or 75 percent) of the four areas of common abuse (Chart 4.1a). The ministries of Education and Health follow closely with two areas (50 percent). Other ministries abused one area of the other. The four ministries involved in the greater number of areas of procurement violation (Petroleum Resources, Agriculture and Water

³⁵ Citing petitions from contractors and consultants to the Bureau, see Public Procurement Journal, 4/e, October-December, 2009

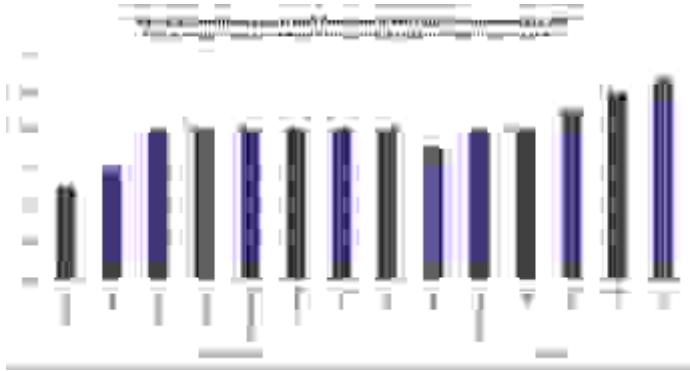
³⁶ Onyekpere quotes the DG of the Bureau (at the time of speaking), MDAs presented less than 300 of the 566 contracts certified by the Bureau for award (by issuing certificates of 'No Objection') in 2009 to the EXCoF for award. This represents slightly more than half (53 percent) see Onyekpere, page 31.

³⁷ See above

³⁸ LEADERSHIP NIGERIA written by Phillip Nyam and Adesuwa Tsan Abuja Wednesday 14th October 2009

Resources, Education, and Health) usually command huge capital budgets and award large contracts. This may be coincidental, but the impression created is that the size of their budgets and consequently, procurements, may be adding to the 'attractiveness' to abuse the process³⁹. Also the Ministry of Petroleum represents the single most important source of national incomes, Nigeria being a largely mono product economy dominated by petroleum, whilst education, and health are fundamental to attainment of the millennium development goals, agriculture is ordinarily expected to impact most on employment rates in Nigeria, continued failures in these ministries may continue to impact negatively on economic growth and standards of living within the country.

4.15 General and specific rating of compliance by procuring entities - when asked to,



the Bureau of Public Procurement declined to provide a global rating of the performance of MDAs in complying with provisions of the Act. However, the Bureau ascribed 70 percent compliance to parastatals, and 50 percent to MDAs with headquarters located outside Abuja, i.e., in the geopolitical zones. In a way, this rating reflects the level of training and sensitization on the

Procurement Act provided non-FCT based MDAs vis-a-vis FCT-based ones (see below). Informed sources insist abuses are higher in parastatals located outside of the FCT.

4.16 *Respondent members of the Procurement Committee of the House of Representatives rated compliance level of various procuring entities (mainline ministries and parastatals) with the Act as shown depicted in Chart 4.1b. On average, the general rating is just less than 2 (out of a maximum score of 5). At an average of 2.19, the compliance of parastatals is higher than that of mainline ministries (an average of 1.84) contrary to indications from informed sources. One wonders whether this higher compliance rating of parastatals, if true may be the result of the relatively greater level of training provided them by the Bureau⁴⁰.*

³⁹ The BPP report does not state whether it refers only to headquarter abuses of the MDAs or whether it includes their parastatals. However, it seems safe to assume the later; otherwise, the report would be so incomplete.

⁴⁰ See next section (to the extent that information provided by the respondents is accurate)

4.17 *Procurement officers of some procuring entities agree that there is low level of compliance with provisions of the Act.* Participants in a recent post-training survey did “not think that there is reasonable compliance” with the Act. They suggested however that the level of lack of compliance is higher in parastatals, some of which they accuse of not even consulting “with their parent MDAs on due process⁴¹”. Ironically the law grants independence to parastatals as procuring entities to carry out their procurement based on prior appropriation and procurement plans, informed sources indicate that in practice mainline ministries continue to dictate to parastatals on procurement issues, and in some cases the ministerial tenders boards literally take over the functions of the parastatal tenders boards. Among the challenges to compliance identified include 'lack of opportunity for procurement officers to work in MDAs' and 'interference by approving officers who impose their will on procurement officers'. To increase the level of compliance, they suggest that procurement officers should not be staff of their respective organizations, but those of, and accountable, to the Bureau of Public Procurement, just as accountants are staff of the Office of the Accountant General of the Federation. This suggestion sounds reasonable; it has the potential to fast track professionalization of the procurement cadre established in 2008⁴². If implemented, It will allow trained procurement officers to exercise the new skills they are acquiring with less undue influence, it may help to ensure that many more MDA procurement decisions are based on informed judgment. It is important to note that under the current circumstance in the service, it is difficult for a procurement officer to decline to accede to the request, instruction or directive of superior Officers, to whom he reports and who perhaps is responsible for his appraisal, no matter how wrong the request may be. However this suggestion if implemented, may not be sufficient on its own to secure full compliance with provisions of the Act, without other recommended measures. .

4.18 *This low level compliance is not consistent with the relatively high rating for level of awareness and knowledge of provisions of the Act among procuring entities.* Thirty-eight or two-thirds of the 57 respondent MDAs across the FCT and the five zones claimed at least average level awareness of the Public Procurement Act., while 50 or 88 percent said they had at least average level understanding of its provisions (*Table 4.1b*). (These responses create difficulties of credibility and reconciliation. It is not easy to appreciate how more people can understand provisions of a law that they are not aware of. The curiosity increases because the anomaly exists in the FCT and across the zones⁴³.) This relatively high level rating for understanding of the provision of the Act suggests that failure to comply with provisions of the Act may lie somewhere else. The most common reason blamed by respondents for this is political interference.

⁴¹ The public Procurement Journal, 5th Edition, January - March 2010.

⁴² See Establishment of the Procurement Officer Cadre in the Federal Civil Service, Circular ref. HCSF/PSO.155/1/3, dd March 31, 2008 The

⁴³ Raising the question of whether the respondents actually understood the questions.

4.19 *The Northcentral geopolitical zone indicated the lowest levels of both awareness and understanding of the provisions of the Act, with 33 percent in each (Table 4.1b). This is somewhat consistent with the level of training events, which respondents from the zone claimed to have attended, which is the second lowest among the zones. It is also consistent with the number BPP-organized sensitization events in the zone, which is also the second lowest (see Table 4.2a below). The Northwest zone, which both the zone and the BPP respectively agree have the lowest number of persons attending training activities and the lowest number of training events organized (Table 4.2a below), indicated the second lowest level of awareness and knowledge of the provisions of the Act (Table 4.1b).*

4.20 *At about 90 percent (51 of 57), a high number of respondent procuring entities across the FCT and the geopolitical zones possess the Public Procurement Act, 2007 and procurement guidelines issued by the BPP (Table 4.1c). However, only 32 or 57 percent claimed to have received the Act from the Bureau. Twenty one or 37 percent said they got it from other sources, including purchase from the open market. Some procuring entities did not indicate where they got theirs from. Forty-six (or 81 percent) respondent procuring entities said they had standard bidding documents, while only 14 or 25 percent agreed they had other publicity documents issued by the Bureau.*

4.21 *Once again, the Northcentral, zone indicated the lowest rate of possession of the Act and procurement guidelines. (Indeed, a respondent requested assistance in obtaining a copy of the Act, which is available on-line for free download from the Bureau's website⁴⁴.) Not surprisingly, FCT based procuring entities had the best access to all the documents except others (i.e., publicity pamphlets and documents) of the Bureau. At a 100 percent, the Southsouth zone had the highest access to the later, with the FCT coming second at 50 percent. Northcentral, Northwest, and Southeast zones claimed they had no access to these other documents (Table 4.1c) most of which are downloadable free on the BPP website. Generally, these performances confirm that the low level compliance with the Act by procuring entities is for reasons other than lack of information.*

⁴⁴ Several MDAs in the zones indicated inability to access the BPP website (where the Act is available on-line) for a number of reasons, including inadequate computer literacy, lack of Internet facilities, and difficulties with electricity.

Compliance with Operational Provisions Relating to the Bureau

4.22 Rather surprisingly, respondents believe (rightly or wrongly) that generally, the Bureau of Public Procurement does not substantially comply with provisions of the Public Procurement Act, 2007 in the performance of its functions. They attribute the Bureau with only 27 percent 'satisfactory' and 'very satisfactory' compliance with provisions of the Act (Chart 4.2). Specifically, they ascribe the Bureau with substantial compliance in only two areas (i.e., 11 percent) of the 19 surveyed in this category. These are formulation of implementing rules for the Act (55 percent) and procurement training and sensitization of contractors and suppliers (55 percent). Respondents suggest the main causes of the low compliance level are political interference and associated high level corruption, which do not allow the Bureau to pursue its tasks objectively. It was not indicated from the comments that respondents were accusing the Bureau of involvement in corruption. The context suggests otherwise (Table 4.2).

4.23 Respondents rate compliance of the Bureau with provisions of the Act as 66 percent 'not satisfactory' and 'barely satisfactory' (Chart 4.2). Specifically, they rate the Bureau's compliance below satisfactory in 17 of the 19 (or 89 percent of) areas surveyed (Table 4.1). Among the major areas recording below satisfactory performance levels are

- Establishment of thresholds for implementing procurement
- Establishment of conditions and documentation for no objection
- An accessible data bank of all MDA procurement plans
- Efforts at fraud and corruption prevention and detection
- Supervision of MDA procurement practice
- Issue of certificate of 'No Objection' to contract award
- Procurement audits
- Handling of complainants by bidders
- Recommending criminal investigation of contract proceedings, as necessary
- Disciplining culpable accounting officers, the tenders' board or other personnel of an erring procuring entity

- Sanctioning indicted contractors and suppliers and requiring reparation, restitution, or correction
- Procurement training and sensitization of MDAs
- Procurement training and sensitization of civil society groups
- Sensitization of the public on the Act
- Dissemination of details of contract awards

4.24 Evidence exists that these responses may not be entirely correct in some instances e.g., establishment of thresholds for implementing procurement, establishment of conditions and documentation for No objection. It is however possible that some cynicism and 'ignorance' about what the Bureau is doing affected the way respondents rated it. However, cynicism and ignorance, if they apply, underscore both the challenge facing the Bureau in engaging with the public and providing information on its activities and on the Act. It is also possible, in defense, to suggest that the nature of the Bureau's activities does not warrant or require it to engage in extensive publicity. That argument would appear misplaced because the Act charges the Bureau to “publicize and explain the provisions of this Act” (s. 5b), disseminate details of contract awards etc .

These ratings whether correct or out of ignorance, place the onus on the Bureau to 'do more'. Regular radio and television programmes, jingles, publicity bills and other advertisements, and deployment of a more user friendly website to disclose information and other public education strategies involving the media, should serve the Bureau well. To what extent absence of the Council (NCP) hinders the efficiency of the Bureau in this regard may be an issue. For example, without a Council, the Bureau may need to present memos to the Executive Council of the Federation (as the President's memo) for approval to do many things. The ease of access to the President, which the Bureau commands, some argue is an enabler, whilst others see it as an avenue for undue influence on the Bureau. Also it may take longer time for the executive council to consider bureau recommendations on policy issues, than it will take a council as contemplated under the Act.

CHAPTER 4: COMPLIANCE WITH THE PUBLIC PROCUREMENT ACT, 2007



4.25 Training and sensitization programmes - *The assessment of civil society observers and contractors and service providers on training agrees substantially with assessment of procuring entities, but not necessarily that of the Bureau.* Of the 56 procuring entities that responded to the survey in the FCT and five geopolitical zones, less than three-fifths has attended any form of procurement training at all, whether organized by the Bureau or otherwise (Table 4.2a). While the aggregate number of training events attended by all the respondents is 62 (counting those that had attended more than one), 15 of these events lasted only one day or less. One-day training exercises can hardly be more than a sensitization programme; it definitely cannot be a training event intended to produce procurement experts. Nearly half of the training events (28 out of 62 or 45 percent) were not BPP-organized. Almost 30 percent of these training events were below average in usefulness to the participants going by their responses (Table 4.2a).

4.26 *The Bureau's assessment of its training activities is different.* It suggests it organized 65 training activities in 2009 and 2010, and involved a total of 23 mainline ministries and 300 parastatals. The Bureau did not provide the list of the parastatals involved. When we consider that the Federal Government has a total of 810 budget receiving MDA's as coded by the PPDC in its procurement monitoring portal, one can see that the problem partly may in addition to concentration of Bureau's training programs around the FCT, include the fact that the size, number of the Bureau's training and training budgets may be far less than is required to cover the existing agencies, in the three years the Bureau has been in existence.

4.27 *Procuring entities and the Bureau agree that the Bureau concentrates a significant proportion of its training events in the FCT, although they do not agree on numbers (Table 4.2a).* The discordance may be due to the failure of several approached procuring entities to respond, and of the Bureau to provide information for 2007 and 2008. Notwithstanding, both sets of numbers also agree that the highest level of BPP organized training programmes outside the FCT took place in the Southeast and Northeast zones, while the lowest numbers took place in the Northwest and Southsouth. The bias towards the FCT may be understandable; headquarters of all mainline ministries and several parastatals locate there. However, many important parastatals locate in the zones and states. These include educational institutions (tertiary and secondary; i.e., Federal Government Colleges), federal teaching hospitals and medical centres, research institutes, etc. These parastatals in the zones, command huge budgets, a significant proportion of which they dispense through one form of procurement process or another.

⁴⁵ Excluding Southwest

⁴⁶ Up to September when the data was supplied

The image shows a screenshot of a software application interface. At the top, there is a title bar and a menu bar. Below that is a main table with several columns, including 'Network', 'Infrastructure', 'Technical', 'Logistical', 'Security', 'IT', and 'Other'. The table contains multiple rows of data, some of which are highlighted in yellow. Below the main table, there is a section titled 'Analysis of Overall Results of Public Procurement' which contains a smaller table with columns for 'Total', 'Pass', 'Fail', and 'Total'. This summary table shows numerical values for each category.

4.28 The Bureau's data shows that it has trained a large number of contractors, bidders, and consultants (Table 4.2a). In 2009 and 2010, the Bureau trained 530 consultants and 1,150 contractors, suppliers, and bidders. This agrees with the 'satisfactory' compliance assessment given to the Bureau by respondent CSOs and contractors on this score. Other information available from informed sources indicate that these were largely one day events, and more likely to be sensitization programs rather than detailed training, meaning that knowledge and skill levels may still be low within private sector and civil society. As can be observed despite evidence of infractions, the number of complaints filled by bidders remains low. Given the responses one may also alternatively conclude that, factors other than lack of knowledge of the provisions of the Act, contribute and account for the low level of compliance by contractors, bidders, and suppliers with provisions of the Procurement Act, 2007⁴⁷. Integrity questions, as raised in the preceding section, may be largely contributory, also a non compliant contractor in one form or the other is less likely to complain, if based on another issue of compliance it is denied an opportunity, failures to comply substantially to tax,

⁴⁷ See next section

pension and similar requirements for example continue to hinder contractors, even when they possess technical qualifications

4.29 *Independent evidence suggests that the Bureau increased both the tempo and the content of its training programmes.* For instance, the Bureau has recently been holding trainings of longer durations and with greater depth. In 2010 alone, the Bureau has conducted a number of two to five day technical training events. The two day events are usually procurement planning or bid evaluation workshops for MDAs. The five-day events are integrated technical training that feature understanding of the Act, procurement planning, pre-qualification of suppliers/service providers, examination and evaluation of bids, bid submission and opening and project management, project monitoring and evaluation etc. The purpose and aims of the two-day procurement planning workshops are as set out in *Boxes 4.1* and *4.2*. However, most of these events held in the FCT rather than the zones. The expectation is that MDAs would involve personnel at their zonal offices in the training; it would appear that not so much of that was done. Also the Bureau and Office of the Head of Service has held a session for federal permanent secretaries.

Box 4.1: Purposes of Procurement Planning Workshops

Source: Report of the BPP 2010 (Procurement Planning Workshop with Ministries, Departments, and Agencies (MDAs) published by the Bureau Procurement

- To ensure activities are properly classified into works, goods, or services
- To set realistic timelines for the critical steps and approval cycles in the procurement process
- To identify accountable officers for execution
- To identify opportunities to aggregate requirements or leverage on volumes and achieve economies of scale
- To ensure procurement plans are ready ahead of budget approval by NASS

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- To ensure procurement plans are ready ahead of budget approval by NASS

4.30 *The Bureau's current technical training programmes are necessary but not sufficient for building procurement capacity in procuring entities.* Their technical contents are improving, but needs further enhancement. The five-day events have too much crammed into them that they can hardly be sufficiently hands-on. As currently designed, it is difficult to devote enough time to practical cases and exercises on the different issues. The classes are also too large. Separate five day events on project management (monitoring and evaluation), procurement planning, pre-qualification, bid examination and evaluation etc. which allow for more practical exercises should deliver greater value. There is also need to deepen the contents of the two-day procurement planning events. The focus should include more of 'real' background planning, including practical steps to carrying out procurement needs assessment, project identification and costing, pricing and negotiation, etc, in addition to discussing constraints to procurement planning, it should suggest approaches to solution and examine many case studies. For example, who should conduct needs

assessment, the methodology, templates for needs assessment, stakeholder participation in needs assessment, training needs of the various persons involved, the role of legislators, CSO's etc.

4.31 *Besides, the Bureau may wish to consider the need to widen the focus and audience of its events beyond procurement personnel and professionals.* For example, procurement officers cannot alone prepare procurement plans. Under the Act, responsibility for this belongs to a (procurement) planning committee appointed by and answerable to the chief executive. The membership of this important committee includes non procurement officers, this is also the case with membership of the Tenders Board which is the approving authority for award of contracts. To be meaningful, the Bureau should consider including the chief executive officer and all members of the procurement planning committee and Tenders Board in its procurement courses on procurement planning. The same goes for training on bid examination and evaluation, etc. The Bureau can require all members of the procurement planning committees, technical personnel in the MDA that may be appointed to technical evaluation committees and tender boards members to attend particular events as relevant to their functions. Legislators should also attend some specialized events as much as possible and particularly when it relates to evaluating and over sighting the procurement process. This will help them appreciate how projects they inject into the budget (including the so-called constituency projects) after procuring MDAs prepare their procurement plans dislodge the plans, and truncate budget implementation.

4.32 *The Bureau's plan to commence certification of procurement personnel of MDAs is good but may not be enough.* Informed independent sources indicate that going forward from now, procurement personnel of MDAs must pass the Bureau's examinations before they can join the recently established procurement cadre in the Service. This is to make procurement officers take acquisition (and application) of procurement knowledge and skills more seriously. However, whether successful certification can secure integrity of the procurement process in which the certified personnel will not have the final decision is an important question. This is even more important when we realize that the number one procurement officer the Accounting Officer needs no mandatory training and certification to occupy his office, perform his or her overriding procurement functions and exercise the corresponding powers. The Bureau may wish therefore to consider what form of compulsory education or other measures should complement this current certification process. For example, should procurement personnel become staff of the Bureau; should they make written professional judgments and recommendations to their chief executives on procurement decisions; should they copy the Bureau? The Bureau and the Office of the Head of Service may also need to prescribe compulsory procurement study program to qualify senior personnel to be elevated to perform the function of

Accounting Officers, this is absolutely important. Also should the Bureau begin a programme of training and sensitizing judges on the Act and its import? The Bureau's 'national procurement forums'⁴⁸, although attended by the 'who is who' in public life is not the sought of activity advocated for here. It does not provide an atmosphere for real learning, it however appears to be a better forum for local and international experts with sufficient local knowledge to review performance and propose new pathways for enhancing procurement practice in Nigeria.

The image shows a screenshot of a data table, likely from a procurement system. The table has several columns, including what appears to be item descriptions, quantities, and monetary values. Some rows are highlighted in yellow, and others in green, possibly indicating different categories or statuses. The text is somewhat blurry but appears to be a detailed list of procurement items or contracts.

4.33 Accessible databank of procurement plans the Bureau did not assess well on this indicator also. Until recently, the public has no access to procurement plans of MDAs. For a while, only the FCT had its plan posted on the Bureau's website.

⁴⁸ See Public Procurement Journal, 4/e, page 45f

Absence of procurement plans prior to the Act, the poor response of MDAs in preparing and submitting their plans to the Bureau for publication may have been due to (at least in part) inadequate capacity (lack of requisite knowledge and skill). It appears intensified efforts by training and sensitization efforts by the Bureau and political pressure by the Head of Service and Office of the Secretary to the Government of the Federation have started producing results. The situation is gradually changing. More MDAs now have their current (2010) plans hosted on the Bureau's website. The Bureau has also published and released a bound volume copy of procurement MDA procurement plans for the Financial Year 2010⁴⁹. This is an important improvement, although the publication is not comprehensive, its circulation is not yet widespread⁵⁰. but going forward it will be important to see governments response to MDA's who procure without prior procurement plans.

4.34 Issuing of 'No Objection' certificates - *The Bureau did not assess well on the issue of "No Objection" certificates.* The assessment is 63 percent 'not satisfactory' and 'barely satisfactory'. It is possible lack of information on the Bureau affected this assessment by respondents. Additionally the Bureau also did not respond to request for information on the number of certificates issued vis-à-vis number of requests and the average length of time it takes to issue such certificates. However, the Bureau publishes particulars of contracts approved by the Executive Council of the Federation in its website and in the Procurement Journal; but the journal is not widely available due more to circulation challenges than a deliberate policy of restriction. Even then, being at the end of the process chain, information on approved contracts is not all the information required to assess the efficiency of the Bureau's performance. Going by a recent newspaper advertisement, it does not appear as though the Bureau is responsible to process the Executive Council's approval; the MDAs have responsibility to approach (and 'lobby') the council directly for that purpose, regrettably through political office holders⁵¹.

4.35 Recently, the Bureau published the list of "No Objection" certificates it issued from January to November 2010⁵². Available information shows that the Bureau issued 187⁵³ certificates in the 11 months. The power sector accounted for one-quarter of these with 47 certificates (*Table 4.2b*). Following distantly, in order, are the Federal Capital Territory (FCT) (20), Secretary to the Government of the Federation (SGF), (19), Police Affairs (16) and Finance (14). The ranking of the first seven MDAs in terms of

⁴⁹ See Bureau for Public Procurement: Procurement Plans for Ministries, Departments, and Agencies (MDAs) for Financial Year 2010

⁵⁰ The Bureau published the very bulky document (1,000 pages) with expensive glossy bond paper and materials, and a variety of colours, as it does all of its publications. The Bureau can publish and distribute more copies if it can be manage to publish more economically and conservatively.

⁵¹ See The Punch newspaper, Wednesday, December 22, 2010, page 46, where the Bureau published a list of 'No Objection' certificates it issued in 2010 and called on "all stakeholders, civil society organizations (CSOs), anti-corruption and transparency groups and all interested citizens to follow up for final approval of the contracts by the Federal Executive Council (FEC)".

⁵² See The Punch newspaper, Wednesday, December 22, 2010, page 46- 59; the Bureau publishes such information on its website.

⁵³ That is, including the one request from the Presidential Implementation Committee on Maritime Safety and Security (PICOMSS) that does not have naira component

naira value of approved certificates is Power, Niger Delta Affairs, Agriculture, FCT, Education, SGF, and Police Affairs, in that order. Published approvals include both the MDAs and their parastatals.

4.36 The latest edition of the Public Procurement Journal ⁵⁴ is more informative. It includes particulars of 'No Objection' certificates for FY 2009 projects executed from January 1, 2009 to March 31, 2010 analyzed against requests, among other useful

⁵⁴ 6/e, April - June 2010, released in December 2010

information. The Bureau approved 683 of the 753 requests, representing 91 percent. To the credit of the Bureau the exercise also 'saved' more than 30 billion naira, 1.65 million United States dollars, and 740,000 euros (*Table 4.2c*). Note this publication and the one referred to in paragraph 4.36 above were already in circulation before the end of 2010. In another publication released late in 2009⁵⁵, The Bureau provides list of 602 requests for No objection from 26 MDA's, out of which 92% being 556 projects received certification, thirty six projects or 6% of project request were awaiting responses from ministries and parastatals at the time of publication and a total of ten projects or 2% of requests were refused certification. The Bureau saved N31,483,113,334.61, USD \$71,117,476.72 and EURO 1,569,800.29. However, these publications do not contain information for determining the important issue of timeliness of Bureau's No objection or of Executive Council approvals. Additionally it had no information to confirm allegations that MDA's requests sometimes arrive the BPP so late in the year as December for projects that ought to have been executed earlier. No doubt such information when available will need to be compared with the records of timeliness of budget approvals and reviews given the now notorious delays in the process. In the final analysis these records present a slightly better picture even on this benchmark than the assessment the Bureau received from MDA's.

4.37 *The public may be confusing time taken by the executive council to approve contracts and time taken by the Bureau to issue "No Objection".* Possibly, the public does not distinguish between the two activities and may be attributing time taken for both to the Bureau. The Bureau had not been helping its own case in the past by failing to announce the granting of certificates or periodically publish a summary of the information on its website. This may be another reason for the Bureau beginning recently to publish 'No Objection' certificates issued, and when they were issued.

4.38 Interested parties may also actually be 'blackmailing' the Bureau⁵⁶. Rather than delays, the suggested real motivation for such attacks is the outcome of the Bureau's due diligence, which may not always be favourable to MDAs and, in particular, contractors. Often, the Bureau rejects or modifies contract terms, including price. For instance, data published by the Bureau shows that in the first 11 months of 2010, it 'saved' 52.01 billion naira and USD 70 million in public funds, i.e., the difference between the amounts MDAs would have awarded the contracts for the amount approved by the Bureau after professional due diligence (*Table 4.2b*). The 'saving' or reduction involved almost all sectors; indeed, they varied almost proportionately with the size of MDAs' requests. Thus for instance, the largest 'savings' occurred in the power and Niger Delta sectors. Aggrieved parties can therefore, easily blackmail the Bureau by blaming it for all ills in the process.

⁵⁵ Bureau of Public Procurement Certificate of "No Objection to contract award 2009

⁵⁶ Indeed, from the time that it was known as the Budget Monitoring and Price Intelligence Unit (BMPIU) (prior to the enactment of the Act the Bureau continues to claim that MDA's are resisting the reform and blackmailing it)

4.39 *Failure of the National Assembly and the Judiciary to comply with the Act - Curiously, the lists of "No Objection" certificates published by the Bureau do not show approvals for the National Assembly and the Judiciary (Table 4.2b; Table 4.2c). Possible explanations are either that the two arms of government did not award any contract within the threshold for executive council approval in the two years or that they had other means of approving them. Informed observers claim that the Judiciary does subject its procurement to the Act to some degree, and also confirm that the National Assembly has never subjected its procurement to the provisions of the Public Procurement Act, 2007, which it passed. This is notwithstanding the fact that it has awarded contracts above the threshold, several of which have resulted in controversies and allegations of corruption. Examples include the car purchases and houses' renovation case, and the ongoing capital budget controversies, both involving the House of Representatives⁵⁷. Procurement plans of the two arms of government are also missing from both the Bureau's website and the list recently compiled and published in book form by the Bureau⁵⁸. This suggests that the MDAs do not produce or submit their plans to the Bureau as required by the Act.*

4.40 *The Public Procurement Act, 2007 has an almost universal applicability that does not exclude the National Assembly and or the Judiciary. Section 15(1) provides that the "provisions of this Act shall apply to all procurement of goods and services carried out by (a) the Federal Government of Nigeria and all procurement entities ...". The only exception is in s. 15(2): "The provisions of this Act shall not apply to the procurement of special goods, works, and involving national defense or national security unless the President's express approval has been first sought and obtained". Of course, the National Assembly is part of the Federal Government covered in s. 15(1)(a). Why then do legislators and administration of the National Assembly or the Judiciary to any degree exclude themselves from the application of the Act? This creates a moral dilemma for their constitutional roles of law making, oversight and judicial adjudication. One may also ask, what is civil society doing in the light of the emerging failure of the executive, legislature and judiciary to fully comply with the Act?"*

4.41 *Refusal of the National Assembly to subject its procurements to provisions of the Public Procurement Act, 2007 suggests impunity, contempt, hypocrisy, and disrespect for the rule of law. The key amendments to the Act sought by the National Assembly involved granting both the National Assembly and the Judiciary independent powers to determine and approve their procurement thresholds, and the Executive council of the Federation authority to approve contracts. As far as is evident, the Amendment Bill did not become law⁵⁹. The National Assembly therefore appears to be in clear*

⁵⁷ Both discussed elsewhere in the report

⁵⁸ See Bureau for Public Procurement: Procurement Plans for Ministries, Departments, and Agencies (MDAs) for Financial Year 2010

⁵⁹ See Chapter 5 for details of the (Harmonized) Public Procurement Act, 2007 (Amendment) Bill, 2009

breach of the Act. Notwithstanding this continuing breach of and contempt for the Act, both the Senate and the House have been receiving, investigating, and issuing directives and recommendations on public procurement petitions⁶⁰. This raises serious moral contradictions and dilemmas for the National Assembly.

4.42 Procurement audits - *the Bureau did not assess well on compliance with the requirement to conduct bi-annual procurement audits.* The Act requires the Bureau to conduct procurement audits bi-annually and submit the reports to the National Assembly (s. 5(q)). Respondents assess compliance here as, 'barely satisfactory' (55 percent); satisfactory (27 percent); and indeterminate/don't know (18 percent) (Table 4.2). This assessment may appear harsh because the Bureau asserts (and independent evidence confirms) that it has completed procurement audit for 2009, and 2010 audits were on the way at the time of this study. The assessment may be the result of lack of information on the Bureau's activity in this area. Copies of the audit report do not appear to be publicly available, and Bureau has not posted it on its website. It is also not clear whether the Bureau submitted the report to the National Assembly as required under s. 5(p) of the Act.

4.43 Contractors database - *database of qualified contractors, suppliers, and bidders is a different story; the Bureau's response is that the database is currently "under construction".*

The screen shot in Box 4.3 is the Bureau's advertisement for expression of interest for

Box 4.3: Advert on Construction and Maintenance of Database of Contractors (Source: BPP website, www.bpp.gov.ng, December 13, 2010)

Welcome to the Official Website of The Bureau of Public Procurement.

Updated - Advert on: Request for Expression of Interest

REQUEST FOR EXPRESSION OF INTEREST (EOI) FROM COMPETENT CONSULTANCY FIRMS TO DEVELOP, MAINTAIN AND IMPLEMENT A NATIONAL DATABASE OF THE PARTICULARS, CLASSIFICATION AND CATEGORIZATION OF FEDERAL CONTRACTORS AND SERVICE PROVIDERS.

Consultants can submit their EoI online on the bpp website, [Click here](#) to read or download the EoI. You would also be provided with a link to create a BPP profile and submit your documents.

the construction of a database of the particulars, classification, and categorization of federal contractors and service providers. Some survey respondents suggest that absence of reliable database is the source of much abuse of the procurement process, according to them. It allows procuring entities to invite 'traders and freight forwarders' to bid for even specialized and complex construction works for the sole purpose of making money⁶¹. This is not necessarily true as it relates to bidders, since the system has in

built mechanisms for selecting competent contractors, whilst allowing public bidding, but may be true relating to absence of price data bank and other databases required by the system. Responses of several procuring entities, as do newspaper ads, show that procuring entities still maintain a register of qualified contractors and suppliers, charging various fees for the registration of different categories of contractors and

⁶⁰ See the next chapter

⁶¹ See the next section for details

service providers, contrary to the Act. It can be said that on the issue of data bases for contractors and standard prizes, some time was required to generate and accumulate credible and comparable data and information, however starting from the fourth year of application of the Act, it may appear inexcusable not to have an accessible data base of standard prizes and particulars and categorization of contractors, based on at least records from the three previous years of implementation.

4.44 Two-thirds of respondent procuring entities admit to registering contractors and service providers. Forty-six percent also admit to charging fees for it (Table 4.2d). Fees charged typically range from 5,000 naira to up to 50,000 naira (and above), depending on the category of the contractor. The fees are non-refundable. Registration of contractors

by procuring entities is contrary to s. 5(h) of the Act, which charges the Bureau to “maintain and make available for use a national database of the particulars and classification and categorization of federal contractors and service providers “to the exclusion of MDA's”. The practice of MDAs registering contractors predates enactment of the Public Procurement Act in 2007 and is one of the ills the Act seeks to cure⁶². The practice is currently more prevalent in the geopolitical zones than the FCT. Although one third of FCT based respondents admit to still be involved in it. In addition to all the potential mischief associated with the practice, it does not add value to the procurement process. The fees charged also represent an unfair extortion, since they do not represent any service rendered by MDAs to contractors.

4.45 Prevention of fraud, etc. - *the Bureau did not assess well on compliance with the requirement to “prevent fraudulent and unfair procurement” (s. 5(n)).* According to respondents, compliance with “efforts at fraud and corruption prevention and detection” was only 9.0 percent 'satisfactory' and 81 percent 'unsatisfactory' or 'barely satisfactory'. 'Recommending criminal investigation of contract proceedings' (s. 53), similarly did not rate well. However, the Bureau indicated that it has recommended

⁶² See the Appendix for an extract of the CPAR 2000 that discusses this.

two cases to relevant authorities for criminal investigations. The Bureau also indicated that it has taken necessary follow up action based on the outcome of such investigations (s. 53(3)). Details of these cases and the follow up actions are not publicly available; the Bureau also did not provide them for this study. Lack of public awareness of such efforts obviously affects public perception of the compliance of the Bureau with provisions of the Public Procurement Act, 2007. In any case two recommendations only, over a three years period, in the face of the many public controversies and allegations of corruption on procurement requiring investigation, and many ongoing criminal prosecution relating to procurement, this does not indicate the Bureau has been proactive in this respect. Previous pronouncements by the Bureau contradict its aforementioned response that it has only recommended two cases for prosecution. At an engagement with professionals from works and building industry in 2009, the Bureau announced that it had recommended 18 people for prosecution⁶³, including the Bode George case.

4.46 Procurement research - *the Bureau did not respond to questions on whether it has undertaken, initiated, or completed any procurement research or survey since inception in line with s. 5(j) of the Act*⁶⁴. There is no independent evidence that the Bureau has yet carried out any procurement research.

Compliance of Contractors, Bidders, Suppliers, and Service Providers

4.47 *Civil society observers rate the level of compliance of contractors and service providers with provisions of the Public Procurement Act, 2007 as very low. Respondents rate their level of 'satisfactory' or 'very satisfactory' compliance as only eight percent (Chart 4.3). Significantly, respondents did not consider them to be in 'substantial compliance' on area. Thus, in none of the 17 items surveyed under this category did contractors and service providers receive a rating of 'satisfactory' or 'very satisfactory', i.e., they did not receive any rating above 50 percent. The nearest rating to this is a 43 percent rating for "affidavit declaring interest of staff of the Bureau of Public Procurement and or MDA in the bidder" (Table 4.3). Even this informed sources consider doubtful.*

4.48 *The 'not satisfactory' or 'barely satisfactory' rating is 61 percent (Chart 4.3). Specifically, they consider compliance in 15 of the 17 items (88 percent) as 'barely satisfactory' or 'not satisfactory' (Table 4.3). Among these are the following areas*

- Professional and Technical qualification of Bidders
- Appropriate qualification of personnel of bidders

⁶³ VANGUARD National News Oct 27th 2009 by Oscarline Onwueanyi

⁶⁴ The full question requested for information on how many of such surveys it has completed and where to find copies of the final reports

- Financial capability of bidders
- Equipment and infrastructure
- Provision of Statement in respect of dominating or subsidiary relationship with other bidders
- Meeting Tax obligations
- Evidence of pension contribution for staff
- Professional and Technical qualification of Bidders
- Appropriate qualification of personnel of bidders
- Financial capability of bidders
- Equipment and infrastructure
- Provision of bid Security
- Provision of Statement in respect of dominating or subsidiary relationship with other bidders
- Affidavit declaring interest if any of personnel of Bureau and or MDA in the bidder or his bid
- Evidence of pension contribution for staff

Chart 4.4: Extent of Compliance of Contractors and Service Providers with the Requirements of the Procurement Act, 2007



4.49 *At 31 percent, the rating of 'indeterminate/don't know' is very significant.* The major factor adduced by respondents for their inability to decide the compliance level on several issues is that procuring entities refuse them access to records of the procurement process, whilst also excluding them (non-state actors) from observing the bid examination and evaluation (and related) procedures, which is very crucial in the procurement process. Consequently, they are unable to determine the extent of compliance of bidders with the provisions of the Act and the extent to which procuring entities are careful to secure their compliance.

4.50 *The emerging picture is the suggestion that contractors and bidders are a (if not the) major part of the problem of non-compliance with the public procurement process.* As stated above, Onyekpere (2010) cites the DG of the Bureau as suggesting that contractors pay to get shortlisted in contract pre-qualification exercises⁶⁵. The question of who to blame for the rot in the procurement process is a chicken and egg' situation: the contractors who are said to offer and give the bribe or procuring entities personnel that are alleged to sometimes demand and receive it. In the end, the result is that compliance with provisions of the Act is low. No doubt non compliance by contractors provides a huge dilemma for them to use the compliant system provided in the Act. This puts to doubt the claim in their response to the survey, that some may be shying away from the complaint procedure for fear of reprisals.

⁶⁵ While assessing overall compliance with operational provisions of the Act

Chapter 5: Compliance with Policy Formulation and Regulation Provisions of the Act

5.1 This chapter continues from where the last chapter stopped by reviewing the extent of compliance with provisions dealing with policy formulation and regulation under the Public Procurement Act, 2007. Like *Chapter 4*, which dwelt on compliance with operational provisions of the Act, this chapter analyzes results from different sources and stakeholders: returns of various survey instruments administered on procuring entities, civil society observers of the procurement process, contractors and service providers, and House of Representatives Committee on Public Procurement; responses to interview questions by the Bureau of Public Procurement; and opinions of experts and other knowledgeable and informed members of the public. It also uses secondary information sourced from books, newspapers reports, articles, and the Internet.

5.2 Organization of the discussion in this chapter is around three main themes: the National Council on Public Procurement (NCP) and the Bureau of Public Procurement (BPP), the influence and role of the President, Ministers, and the Executive Council of the Federation (EXCoF), and the role of the National Assembly and other law enforcement agencies. The NCP and the BPP theme is vital because the Act assigns primary procurement policy formulation and regulation to them. On the other hand, the Act envisaged only restricted and indirect roles for the President and the EXCoF. Similarly, role of the National Assembly and law enforcement agencies are even more indirect. This chapter examines how the various roles have evolved and are evolving.

5.3 *The story of this chapter is a perception of limited desire and will to comply with key provisions of the Act on policy formulation and regulation.* At issue are failure to inaugurate the National Council on Public Procurement (NCP), performance of its statutory functions by various other bodies and persons unknown to the Act⁶⁶, consequent politicization of routine technical and administrative procurement decisions, and the unlawfulness and potential illegality and reversibility of those actions (following possible judicial review)⁶⁷. The indication to an onlooker is that the Bureau of Public Procurement may be reporting to other bodies of the Federation, contrary to the provisions of the Act that subject the Bureau to the approving authority only of an independent Council in specified instances. At issue also is the failure or refusal of the National Assembly to submit regulation of its procurements to the Bureau and the Bureau's apparent inability to apply its powers under the Act to secure compliance of the legislature⁶⁸. Emerging also is that disgruntled participants in the procurement process could be using law enforcement agencies to harass and disrupt the work of Bureau.

⁶⁶ Who exactly performs which function of the Council is not always certain

⁶⁷ Serious cataclysmic confusion and problems will ensue should a court of law pronounce regulatory decisions taken in contravention of the provisions of the Act *ultra vires* and illegal, and proceed to reverse them.

⁶⁸ For instance, the Bureau can stop the National Assembly from procuring any item in violation of policies, guidelines, and regulations issued by it. A possible defence could be that there are no guidelines since there is no Council to approve them as provided for under the Act. There is also the question of irregularity in the manner of appointing the DG and principals staff of the Bureau. However, the NASS is estopped from these defences since their relevant committees have, at various times, summoned the Bureau and made findings demanding reversal of procurements by other entities not done in compliance with provisions of the Act.

The National Council on Public Procurement and the Bureau of Public Procurement

5.4 *The Bureau has been established, but not the National Council on Public Procurement (NCPP).* This is a *notorious* fact and all respondents agree on it. However, opinions differ on the reasons for failure to establish the Council and who currently performs its functions. Among the reasons suggested for the failure are (i) lack of political will to part with roles in procurement by the executive branch, (ii) possibility of the Council becoming corrupt when set up, (iii) corruption associated with benefits and powers accruing from controlling public procurement, (iv) use of contract awards for political patronage, and (v) lack of desire for rigorous due process in procurement.

5.5 *Opinions suggest lack of clarity on who currently performs the functions of the Council.* Respondents suggest there are multiple players, rather than one single body or office, performing this role. Among the names and offices suggested are the President, the Executive Council of the Federation, the National Assembly, the Ministry of Finance, and the Bureau of Public Procurement and Office of the Secretary to Government. Respondent members of the House of Representatives' Committee on Public Procurement also suggested multiple players and did not identify only one person or body. Given the proximity of the Committee members to the facts, it appears safe to assume that there is a truncation of the role of the Council, with various organs performing bits of it. However, there is no clarity on who is carrying out exactly which role.

5.6 *Failure to inaugurate the Council could have far-reaching implications.* Some commentators suggest that performance of the functions of the Council by other body(ies) could be *ultra vires* (beyond their legal powers) and potentially unlawful. Should the courts hold this view, it may lead to a reversal of those decisions, thereby setting off a chain of confusing reactions and events. The appointment of the principal officers of the Bureau, appointed without a Council recommendation following a competitive process as required in the law could have lasting negative implications for the actions of these officers. Whilst in office⁶⁹.

5.7 *Besides, there is the argument that failure to inaugurate the Council in violation of express provisions of the Act (and performance of its functions by other bodies) launches "a chain reaction for open and consistent violation of the letters and spirit" of the Act⁷⁰.* Among the "chain" of violations usually cited include the hiring of all principal officers of the Bureau through a non competitive process as required under s. 7,8 and 9 of the Act; and denial of the fundamental principle of transparency and popular participation underlying the Act, which equal composition of the Council by government and citizen sector stakeholder members sought to secure. Non constitution of the Council means that government alone is regulating public procurement contrary to the

⁶⁹ Perhaps, the courts would take the alternative jurisprudential view of the 'doctrine of necessity' and preserve the *status quo* and substantive decisions taken while compelling future compliance.

⁷⁰ See for instance, Onyekpere Eze, *Diagnostics on the Implementation of the Public Procurement Act (2010)*: Abuja, LASEC Consulting Ltd., pp 5-6.

intendment of the Act. It also questions the 'genuineness' of the procurement reforms (Onyekpere, 2010) and the political will of the presidency to implement the Act. Some argue for other reasons that the position of the DG, like similar positions as the Governor of the CBN should be left to the president to appoint given its sensitive nature, and that in the presence of strong members of the executive arm a few non government representatives may be unable to make any difference.

5.8 *Legislative respondents agree with these sentiments, but do not appear to be doing much to ensure constitution of the Council.* They suggest that non constitution of the Council is “legally faulty”, “will lead to failure to follow due process in the award of contracts”, “award of contracts regardless of whether or not the bidders meet stipulated conditions”, and leaves too much power in the hands of a single entity⁷¹ and creates room for manipulation”. However, they failed to indicate any concrete steps taken or planned by the National Assembly to ensure compliance with this section of the Act, except for confirming the legislature had previously written to the President on this issue.

5.9 *Knowledgeable watchers of the Nigerian procurement environment suggest that inaction by the National Assembly to consistently demand full implementation of the Act by the executive is a result of its own compromised position.* This work observed in Chapter 4 that legislators and the administration of the National Assembly do not submit procurements in the National Assembly to the regulatory procedures of the Bureau, contrary to express provisions of the Act in s. 5 and may be flouting the Act in many other respects some bordering on criminality. Therefore, being in such fundamental breach of the Act itself, any attempt by the National Assembly to enforce compliance by political actors of another powerful arm of government will not only be hypocritical, but may expose it to blackmail. It could also possibly lead to prosecution, conviction, and imprisonment of liable officers of the Assembly for procurement offences. Section 58 of the Act provides between 5 and 10 years imprisonment for persons who contravene “any provision of this Act”. He that comes to equity must come with clean hands.

Is the Secretary to the Government of the Federation the Supervisor of the Bureau?

5.10 *It appears to an onlooker that the Secretary to the Government of the Federation (SGF) has administrative responsibility for the Bureau of Public Procurement.* The main indication to this is that the Secretary to the Government issues procurement notices on behalf of the Bureau. The reference numbers of nine of the 10 Federal Government procurement notices published by the Bureau in the fourth edition of the Public Procurement Journal are those of the Secretary to the Government. The only exception is the circular creating establishing the procurement cadre in the federal civil service, which

⁷¹ Ostensibly day to day management of the Bureau

understandably, carries the reference number of the Office of the Head of the Civil Service of the Federation (HCSF)⁷². Procurement notices issued by the OSGF include Circular NO. SGF/OP/I/S.3/VII/177 dated December 21, 2009, requiring accounting officers “to prepare and submit their respective procurement plans and other relevant information for the financial year (FY) 2010 for the consideration of the Bureau⁷³. To some this suggests that the Bureau may lack the confidence to issue these directives to MDAs. However an alternative view is that these circulars contain government policy decisions, traditionally communicated in Nigeria by the Office of the Secretary to the Government, particularly since such policy approval functions are now carried out by the EXCoF how be it contrary to law, others argue that given acknowledged resistance to change in the service, these circulars at this reform inception time, will carry more weight being issued under the administrative authority of the Secretary to Government, this argument suggests that this only an entry behaviour and a good one at that. The challenge and the question this research could not answer is whether or not the EXCoF and the president however does approve and cause to be issued all policy decisions required by the Bureau, when the Bureau requires them.

5.11 *On the surface, subjecting the Bureau to political control of the SGF may seem natural, but it is not.* The general arrangement is that all federal government parastatals that are not arms of specific mainline ministries report to the Office of the Secretary to the Government of the Federation, which is the clearing house for government policies. This arrangement however, does not usually apply to independent regulatory institutions whose functions require political and administrative independence. Additionally where an agency's functions and mandate cut across many MDA's the practice is to have the agency report to the presidency. Often when the law intends it to be an independent agency, the Act establishing such institutions usually distinctly define their management and control structure. An example is the Central Bank of Nigeria, which has an independent governing board appointed in accordance with the Central Bank Act, 2004. The Bureau of Public Procurement belongs to this category; the Public Procurement Act, 2007 clearly creates the National Council on Public Procurement to regulate the Bureau, and does not anticipate control of its day to day activities by any other authority other than council. The Central Bank of Nigeria issues directives and circulars directly to commercial banks and the general public without going through the SFG. The Bureau currently does so only in a few other cases, like code of conduct of public procurement officers, code of conduct of civil society organizations etc.

⁷² See Public Procurement Journal, 4/e, October to November 2009, page 41

⁷³ See Bureau of Public Procurement: Procurement Plans for Ministries, Departments, and Agencies (MDAs) for Financial Year 2010

Table 5.1a: OSGF Parastatals	
1.	Nigeria National Merit Award Commission (NNMAC)
2.	National Commission on Refugees (NRC)
3.	National Hospital, Abuja
4.	National :Poverty Eradication Programme (NAPEP)
5.	Federal Road Safety Commission (FRSC)
6.	<small>New Partnership for Africa's Development (NEPAD)</small>
7.	Africa Peer Review Mechanism (APRM)
8.	Code of Conduct Tribunal
9.	Nigeria National Volunteer Service (NIVS)
10.	Galaxy backbone Plc.
11.	National Lottery Regulatory Commission (NLRC)
12.	National Lottery Regulatory Trust Fund (NLTF)
13.	National Identity Card Management Commission (NIMC)
14.	National Inter-Religious Agency Council (NIREC)
15.	National Agency for Control of HIV/AIDS
16.	Petroleum Pricing Regulatory Agency (PPPRA)
17.	Presidential Advisory Committee
18.	National Economic Intelligence Committee (NEIC)
19.	Utilities Charges Commission
<i>Sourced on December 31 from www.osgf.gov.ng</i>	

5.12 It is informative that the BPP is not one of the 19 parastatals listed in the website of the Office of the Secretary to the Government of the Federation as being under its control (*Table 5.1a*)⁷⁴. This indicates perhaps that the Bureau is not supervised by the Secretary to the Government (SGF) Office, particularly since the SGF's office is an MDA whose procurement is regulated by the Bureau, informed sources indicate that the Bureau is supervised directly by the president. This scenario reflects the general lack of clarity in the public domain of who is performing which of the functions of the Council. However it would appear that currently procurement policies are formulated by the Bureau, approved by the president and or EXCoF, it is not clear when the president approves or when the EXCoF has to approve. What emerges clearly and without dispute is even a greater appearance of political control and interference in procurement policy formulation and regulation, which they reform had intended to avoid.

⁷⁴ See www.osgf.gov.ng; the site lists 21 parastatals, but two are repeated

Influence of the President, Executive Council of the Federation (EXCoF), and Ministers/Political Appointees

5.13 *In Practice the Executive Council of the Federation (EXCoF, FEC) is the approving authority for contracts above the monetary threshold set by the Bureau of Public Procurement⁷⁵. The thresholds currently in use require that the ExCoF must approve procurements from 100 million naira for goods and services and 1.0 billion naira for works (from 2.7 billion naira or USD 20 million in the case of procurement of special works by the NNPC)⁷⁶. Ministers bring memos to weekly EXCoF meetings for approval of procurements above the threshold. This has created a new role for ministers not anticipated by the Act. Recently, the Bureau published the list of contracts approved by the EXCoF between January and October 2010 in several national newspapers⁷⁷. The Bureau's website⁷⁸ also contains information on contracts approved by the EXCoF and the list of contracts already cleared by the Bureau, but awaiting approval of EXCoF⁷⁹. The delay between Bureau No objection and EXCoF approval does not justify this new Bureaucratic approval.*

5.14 *The Act assigns the function of approving contracts to the Ministerial or Parastatals Tenders Boards (MTB, PTB) as applicable, subject to set monetary review thresholds (s. 17). The Tenders Boards consists of the Permanent Secretary or Chief Executive Officer (in the case of parastatals) as chairman, head of the Procurement Department as secretary, and heads of departments as members. Ministers and political appointees are not members. This is line with s. 20 (1) of the Act, which provides that the “accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and corporations the Director General or officer of co-ordinate responsibility”. By this, the Act sought to depoliticize and professionalize public procurement by entrusting it to technical and administrative personnel. An executive Bill seeking to amend the Procurement Act, 2007 did not eventually become law. This Bill sought to define a role for ministers and the executive council in public procurement, including by formally assigning the Executive Council power to approve contracts above a certain threshold.*

5.15 *The argument is possible that the wording of s. 17 affords the NCPP ‘permissive powers’ to set higher thresholds than the limits it allows MTBs and PTBs. Since approval powers of MTBs and PTBs are subject to monetary thresholds set by the Bureau, some other body may have powers to approve procurements above those threshold limits set for MTBs and PTBs. The arguments progresses further that the NCPP (or the BPP) has assigned this role to the EXCoF. The counter argument is that the Act appears to have intended*

⁷⁵ Acting in place of the National Council on Public Procurement (NCPP), whose function it is to issue thresholds (ss 2 and 17)

⁷⁶ See Document titles, Approved Revised Thresholds for Service-wide Application and Special Thresholds for Procurement in the Oil Sector, issues by the BPP (undated), ISBN 978-978-49335-7-5

⁷⁷ See *The Guardian, ThisDay*, and *Daily Trust* Newspapers of November 15, 2010 and *FRESH FACTS* Newspaper of 22-28, 2010

⁷⁸ www.bpp.gov.ng

⁷⁹ However, navigating through to the information to obtain a summary is cumbersome

⁸⁰ In this case, the BPP, which has been performing this function

to 'cover the field' and be exhaustive in its provisions. Consequently, if it had wanted to ascribe any procurement role to the EXCoF or any other body it would have done so expressly. In addition, "approving authority means the person charged with overall responsibility for the functioning of the ministry, extra-ministerial department, or corporation" (s. 60). The Executive Council is not any such person. It therefore may not be easy to fit it into this definition to be able to treat it as a legitimate approving authority. Additionally no NCPP currently exists to approve vesting of approval authority on the EXCoF. Further, involvement of the EXCoF would appear to re-enact a major failing of the procurement process before the enactment of the Act, i.e., political control of public procurement and denial of the pure administrative and technical nature of the task, use of procurement for settlement of political favours and the its consequent promotion of corruption. Besides, although specifically asked, none of the respondents surveyed for this report (including legislators) recall that the Act intended any role for the Executive Council of the Federation in the procurement process,.

5.16 *Had the (presumably) now abandoned Public Procurement Act 2007 (Amendment) Bill 2009 become law, it would have made extensive changes to the original Act, including formalizing greater political control of public procurement.* First, it would have granted the EXCoF formal powers as approving authority for procurement⁸¹. The narrative to the Bill reads, "This Act is intended to amend the Public Procurement Act, 2007 by introducing additional tier of approving body (the Federal Executive Council) in respect of thresholds that would be handled by each procuring entity"⁸². Second, the Bill sought to give the President greater control of the procurement process by allowing him appoint a separate Chairman for the NCPP so that the Minister of Finance becomes an ordinary member. Third, it sought to whittle down the powers of the Bureau and NCPP by granting separate powers to the Executive, Legislature, and Judiciary to "determine their respective thresholds" and regulate their own procurement. Fourth, the Bill sought to whittle down personal liability in public procurement, such that it would not be possible to prosecute anybody for a procurement offence. Fifth, it sought to increase mobilization fee (initial payment) from 15 to 25 percent. This bill would have completely defeated the procurement reform objective of eliminating political influence, which ensures that few infractions are unraveled and few culprits are punished. It would have returned the country formally to the situation where the political office holders are wholly engaged with procurement as primary approving authority, and reduce their moral authority to ensure that people are held accountable for infractions if and when they occur, as they would also have approved such procurement, this practice explains why though infractions and procurement

⁸¹ This would have been so even though it did not seek to resolve the conflict of definition of 'approving authority' created in s. 60

⁸² The Public Procurement Act 2007 (Amendment) Bill 2009 (Harmonized): A Bill for An Act to Amend the Public Procurement Act, 2007 adopted by the Senate on Wednesday, 4th November 2009

scandals were common before the Act, there were few or no prosecutions and sanctions, and as many argue, EXCoF involvement may currently be having a similar effect despite the fact that the Act has given impetus to many people to boldly complain, where they would otherwise keep silent.

5.17 *The National Assembly passed a harmonized version of the Bill, ready for the assent of the President, but it is unclear why the President did not eventually assent to it.* Some anecdotal versions suggest that the President did not like the clauses granting the National Assembly and the Judiciary unusual roles in the procurement decision-making process, and removing personal liability in public procurement. Some alternative versions suggest that the National Assembly never presented the Harmonized Bill to the President for assent, others suggest that our late president indicated to the legislature that he will not sign the bill, and this was why it was not presented. This research is unable to confirm any of these alternative views as true. This bill no doubt would have negated one of the very important objectives of the procurement reform, which was to establish the Bureau as the primary and independent regulatory authority for all public procurement in the federal government.

5.18 *Notwithstanding failure of efforts to amend the Act, ministers still involve themselves in public procurement in a way that has implications for process.* Among the implications suggested by surveyed respondents are significant politicization of public the procurement, award of contract remaining in part a tool for political settlement, and erosion of interest in due process. EXCoF involvement also occasions delays in contract awards because it imposes another layer of bureaucracy. For example, grant of 'No Objection' certificate by the Bureau does not empower procuring entities to award the contracts above the No Objection Threshold. They must still await final approval by the EXCoF. The Bureau's website contains the list of such contracts already approved by the Bureau, but which are awaiting final approval by the Executive Council. Recently, the Bureau published a list of 187 'No Objection' certificates issued by the Bureau between January and November 2010, some of these are yet to receive EXCoF approval till the date of this report⁸³.

5.19 *Involvement of ministers transfers responsibility to them, but not criminal liability.* Section 20 (2) of the Act holds the accounting officer personally responsible for

“the breach or contravention of this Act or any regulation ... made hereunder whether or not the Act or omission was carried out by him personally or any of his subordinates and it shall not be material that he delegated any function or power to any person or group of persons”.

⁸³ See the Punch Newspapers, Wednesday, December 22, 2010, pp 46-59.

However, since it did not envisage any role for ministers or the executive council, the Act makes no provision on their culpability. It is not exactly clear whom the Law will hold responsible for their acts or omissions. The Act holds the accounting officer liable for acts done by him/her or his/her subordinates: what happens to acts done by his/her superior, such as the minister?

5.20 *Further evidence that ministers' involvement politicizes public procurement exists in the now cancelled Nnamdi Azikiwe International Airport Second Runway Contract and the 19.5 billion naira Aviation Intervention Fund cases*⁸⁴. Documentation that emerged during legislative hearings on the matter revealed correspondences between the Minister of Aviation and the Bureau, high-level meetings held at the Presidential Villa, and presidential directives on the matter. In one such correspondence, the Minister wrote to the DG of the Bureau drawing his attention “to the need for the immediate development of the proposed second runway ... and consequently request for the issuance of “No Objection” for the use of Restricted Tendering Method for procurement of same”⁸⁵. There are several other such correspondences between the Minister and the DG and between the Managing Director of the Federal Airports Authority of Nigeria (FAAN), the parastatal concerned with the project, and the DG. Had the Authority adhered to provisions of the Act, the Minister would not have needed to interfere in the process, let alone correspond with the Bureau.

5.21 *Involvement of the Presidency may have wilted the Bureau's initial objections to this particular procurement process.* For example, letters from the MD of FAAN referred to “our meeting with Mr. President and his subsequent directives on Tuesday 20th October 2009 to engage the services of a consultant”⁸⁶. While nothing in the correspondences ascribes any wrong doing to the President. Careful reading of the detailed correspondences creates the impression that the initial robust insistence of the Bureau on due process in the particular procurement process gradually weakened as the name and office of the President increasingly featured in the correspondences by and with ministers and other officers. The Bureau's initial concerns, among others, included

- Preference of the Minister for restricted bidding rather than international competitive bidding (ICB)⁸⁷,
- Concerns with revision of the contract price to N72.6 billion from the N8.0 billion naira originally suggested by the Minister⁸⁸,

⁸⁴ Although the Aviation Intervention Fund case happened prior to commencement of the Public Procurement Act, 2007, it illustrates how corruptive politicization of the procurement process through the involvement of ministers can be.

⁸⁵ Ref. FMA/PRSD/7405/1/22, dated 28th April 2009, signed by the (then) Honourable Minister of Aviation

⁸⁶ Ref. FAAN/HQ/MD/18E/V.25/08 dated 22nd October 2009 signed by the Managing Director/Chief Executive of FAAN

⁸⁷ See Minister's letter Ref. FMA/PRSD/7405/1/22, dated 28th April 2009, signed by the (then) Honourable Minister of Aviation

⁸⁸ See Minister's letter Ref. FMA/PRSD/7405/1/22, dated 28th April 2009, signed by the Honourable Minister of Aviation, and Ref. FAAN/HQ/MD/18E/V.25/08 dated 22nd October 2009 signed by the Managing Director/Chief Executive of FAAN

- Concerns with inadequacy of budgetary provision contrary to s. 20(2)(c) of the Act that requires the accounting officer to ensure “adequate appropriation is provided specifically for the procurement in the Federal budget”⁸⁹,
- Inconsistencies with provisions of the Act including
 - o Denomination of contract value in foreign currency rather than naira
 - o Counting of penalty interest on delayed payment from 15 days rather than 60 days
 - o Interest payment at 1.0 percent above LIBOR⁹⁰, rather than as provided for under the Act
 - o Initial (mobilization) payment of 25 percent instead of the 15 percent provided for in the Act, etc.
- Failure to provide sample format of Bill of Engineering Measurement and Evaluation (BEME)
- Lack of detailed explanation of proposed criteria, adjudication, and evaluation processes, etc
- Lack of standard annex on the construction aspects of the project, etc⁹¹.

5.22 *It appears that over time⁹² as Executive Involvement increased the Bureau's position became softer on enforcing full compliance with the provisions of the Act.* Further, the 'discovery' by the PIMC of a subsisting contract between the FCDA⁹³ and Julius Berger⁹⁴ provided a way to “short circuit the tortuous (procurement due) process and save precious time”⁹⁵ (emphasis and parenthesis added). The lesson emerging from eventual cancellation of this contract is that “short circuiting the tortuous procurement/due process” no longer works as well as it did before the Act, it is an indication that consistent improvements in procurement reforms could raise standards to a point where, such negative approaches would cease to work completely in Nigeria, another lesson is the role of private sector competitors in challenging procedural abuses as was the case here, a role that it appears many private companies may be shying away from currently, as a result of perceived fear of reprisals, evidence of which no one has provided during this research despite assurances of anonymity. The Nnamdi Azikiwe Airport project is not entirely a sad story after all. It holds positive lessons for all stakeholders that this system works currently to some extent and will work better, if we all play our roles well.

⁸⁹ The correspondences indicated a budgetary provision of 4 billion naira in fiscal 2009 budget, which as indicated in the Minister's letter, “is approximately half of the total amount required for the project and therefore adequate for its takeoff”. It is difficult to understand the jump in valuation to 72.6 billion and reconcile it with the legal requirement to first secure adequate *budgetary* allocation.

⁹⁰ London Inter-bank Offered Rate

⁹¹ See Letter Ref. Ref BPP/S.19/Vol. VII/10, dd May 18, 2009 from DG, Bureau of Public Procurement to the Honorable Minister of Aviation, copying MD of FAAN

⁹² And possibly under pressure

⁹³ The Federal Capital Development Authority

⁹⁴ The company also offered the runway contract

⁹⁵ See BPP's letter ref. BPP/S.19/Vol. VII/490 dd November 23, 2009

Role of the National Assembly and Law Enforcement Agencies

5.23 Perception of possible interference of legislative and law enforcement procedures in the Bureau's work *the perception,⁹⁶ is that the roles of the National Assembly and law enforcement agencies could be affecting the Bureau's performance of its work.* In performing its oversight function the National Assembly receives and investigates complaints from persons aggrieved with particular procurement proceedings. However, it is not clear to what extent it requires the petitioners to first exhaust administrative and judicial review procedures in the Act before its intervention. Two of the four NASS respondents to the questionnaire indicated that they (House Committee on procurement) 'sometimes' required petitioners to do so; one indicated they 'always' did; while the fourth did not answer the question. The Act has provisions for an aggrieved person to progressively appeal to the accounting officer of the procuring entity, the Bureau, and the High Court (s. 54). The Act does not have provisions for legislative adjudication or investigation of particular procurement proceedings and it is debatable that the NASS can lawfully perform that function, but using powers granted under the 1999 Constitution, the House can investigate or summon any person or organization. There is good reason to expect the NASS to do so, only after it ensures the dispute settlement mechanism in the Act has been exhausted by a petitioner.

5.24 *Surveyed members of the House Committee on Public Procurement offered different figures on how many summons the House has issued to the Bureau thus far and how many petitions it has received from aggrieved bidders and contractors.* Responses ranged from one to "more than eight times" for summons issued to the BPP, and "one" and "several" for petitions received. It also appears that the respondents were referring to summons by the House Committee on Procurement, many newspaper reports indicate similar summons by other house committees. It is difficult to reconcile these differing responses, but the response of 'more than eight' summons compares to the curious response of nine summons thus far (i.e., up to the time of the survey in August 2010) provided by the Bureau. Newspaper and news reports appear to indicate much more

5.25 *However Response by the Bureau to the specific question suggests a progressively increasing level of summons from the Legislature and other investigations by law enforcement agencies.* The number of summons received from the House of Representatives, the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices and (Other) Related Offences Commission (ICPC) increased from 2 to 6, 15, and 32 in 2007, 2008, 2009 and the first eight months of 2010 (Table 5.1). Thus, the number of summons and investigations reported in the first eight months of 2010 (32) was nearly one and half times the totals number for the preceding three years⁹⁷.

⁹⁶ Denied by the Bureau of Public Procurement in what may be diplomatic double-speak; as reported here the DG of the Bureau has publicly complained of being the most investigated public officer in the country. The perception is the he needed not complain if he was comfortable with it.

⁹⁷ A recent television news report quoted the DG of the Bureau, Engr. Emeka Eze as saying at (an October 2010) public procurement held event at the Transcorp Hilton Hotel, that he is the most investigated public official Nigeria

Eighteen percent of them were legislative summons, while the remaining 82 percent were criminal investigations. There is no evidence that any of these summons has yet resulted in administrative or criminal indictment or prosecution of any official of Bureau. The impression is that persons aggrieved with particular procurement transactions are relying more on legislative and criminal complaints for redress rather than the administrative and judicial remedies in s. 54 of the Act.

Number of Summons Received from	2007	2008	2009	Up to Aug. 2010	Total	%
The Senate						
The House of Representatives			1	9	10	18%
The Economic and Financial Crimes Commission (EFCC)		5	5	11	21	38%
Independent Corrupt Practices and other Related Offences Commission (ICPC)	2	1	9	12	24	44%
Total	2	6	15	32	55	100%
% Total	4%	11%	27%	58%	100%	

Source of Data: Bureau of Public Procurement

5.26 *Excessive resort to legislative inquiry and criminal investigations can disrupt the work of the Bureau and affect compliance with the Procurement Act in several ways.* It can intimidate staff, erode their morale and self confidence, and create adverse atmosphere for work. It can also deplete public trust and create a public perception of 'something terribly wrong going on'. Further, staff spend valuable time to prepare responses, write statements and attend hearings. Legislative hearings and investigations, in particular, can last for several sessions, drag for days, weeks, or even months and require staff to leave their desks repeatedly. Criminal investigations require search of offices and equipment, including sometimes, involve carting away work computers, books, and other materials and equipment. They also involve long and unsettling hours and days of interrogating staff. Although summons and investigations take precedence over routine work, they do not reduce the workload. Inevitable delays and disruption of normal work routine including attending to requests from procuring entities may ensue. Besides, at the end of the process (even if not indicted and prosecuted), it may take some time for affected staff to attain their normal work levels.

5.27 *Surely, the National Assembly has wide and unfettered powers of investigation under s. 88 of the 1999 Constitution to carry out investigations to expose and stop corruption.* The Assembly recently used that power to effect in the airport runway procurement case reported above. A recent news item⁹⁸ reported a decision to cancel the runway contract and re-advertise it internationally (as it should have been originally). While it is important that the National Assembly continues to play this role, especially in situations such as the airport runway case, it is also useful to avoid frivolity and use of the NASS to short-circuit administrative appeals and reviews. It is important not to

⁹⁸ Channels TV Newstrack, Friday, December 10, 2010, citing the Managing Director of the Nigeria Civil Aviation Authority (NCAA), Dr. Demuren

allow aggrieved persons to use legislative investigations to intimidate staff of the Bureau or even MDA's. Perhaps, it will help to require dissatisfied participants in the procurement process to seek redress under the provisions of s. 54 and to reserve legislative and administrative summons for serious allegations of corruption supported by credible prima facie evidence in situations where the administrative process has been exhausted.

5.28 The National Assembly could also play a very constructive role in the procurement process by insisting on receiving bi-annual procurement audit reports prepared by the Bureau as provided for in s. 5(a) of the Act, and making them public. Following thorough examination and review of the audit report, the NASS could take appropriate measures including investigations of MDA's. It is also vital that Assembly submits its procurement processes to regulation of Bureau of Public Procurement, as provided in the Act.

Scope of Civil Society Observation and Monitoring of Public Procurement

Improving but handicapped by limited access to information. The PPA requires that every procuring entity invite at least a representative of one civil society organization and at least a representative of a professional body with expertise in the area of the goods, works or service being procured to observe the procurement process. Civil society groups began procurement monitoring in 2008. In November 2009, a survey report prepared by the the Public & Private Development Centre as a project base line study found that civil society and professional body monitoring of procurement was limited around attending bid opening events only as at November 2009⁹⁹. The indication from this current study is that despite continuing challenges with access to information CSO's have broadened their scope of monitoring and observation to include procurement planning, advertisement, bidding documents issued, bid submission and bid opening, but in all cases neither have CSO's been invited to monitor bid examination and evaluation nor are they allowed access to documentation resulting from those and later stages of the procurement process. There exists a standard CSO checklist, with clear benchmarks for determining compliance to law and rules for every procurement process, there are now a number of CSO's monitoring procurement, and an ICT reporting tool ¹⁰⁰, but lack of access to information by MDA's is the biggest obstacle to procurement monitoring in Nigeria .. Despite repeated requests MDA's are not granting access to procurement information and documentation to CSO's in accordance with the Act and the regulatory authority has failed as of yet to intervene.

⁹⁹ Mapping of Civil Society Engagement with Public bodies in the Public Procurement Process in Nigeria, a baseline study by Public and Private Development Centre for its UNDEF supported Nigerian Procurement Monitoring Program December 2009 available from www.procurementmonitor.org

¹⁰⁰ www.procurementmonitor.org

Chapter 6: Synthesis, Summary, and Conclusion

6.1 This chapter presents the emerging picture of the entire analysis. It seeks to draw general, but valid inferences on the level of state of compliance with the Public Procurement Act, 2007. It synthesizes discussions of preceding chapters, distils common and emergent themes and strands, sums up the main story lines, identifies areas of less convergence of views, and draws lessons that could help achieve better implementation of the Act. The chapter comprises three sections: story line, findings, and options for strengthening implementation of the Act.

Story Line

6.2 The story of this report is that of a perception of a low, but rising compliance by some key players with the provisions of the Public Procurement Act, 2007, and lack of enthusiasm in some others. Factors contributing to this are both political, technical and administrative¹⁰¹. However, while the Bureau may not be complying fully with the Act in the performance of its functions, it appears to be doing more than what the public perceives and gives it credit for. The shortcomings of the Bureau result from both internal factors and the circumstances of its emergence and current existence. The Bureau appears not to be doing enough to disseminate its activities, achievements, and problems. Consequently, the public does not appreciate actions and the factors that constrain it from further action. Top functionaries of the Bureau owe their offices to the President and the Executive Council of the Federation, rather than the autonomous Council envisaged by the Act. In this sense the Bureau appears to be politically exposed. For example, the Director General of the Bureau is the only person of such status (Head of independent agencies) that regularly attends cabinet meetings. This may be subjecting him to political influence. It also creates the perception of lack of independence and much political interference with the daily routines of the Bureau. On the contrary it has been argued that this may in fact be an enabler, a view that is difficult for any onlooker to appreciate.

Findings

6.3 *Progress in complying with the provisions of the Public Procurement Act, 2007 has been measured since 2008, but increasing, especially in 2009 and 2010.* Awareness of the Act is on the rise; so is compliance. More MDAs, (especially in the FCT) are establishing procurement planning committees and adopting more open and competitive procurement techniques. More ministries, departments, and agencies are acquiring the capacity (technical knowledge and skills) to prepare and use procurement plans, adapt and use standard procurement documents. Adequate budgetary provisions and approvals are almost now a *sine qua non* for procurement. Many MDA's are producing and submitting procurement plans to the Bureau, rarely does any procurement requiring advertisement occur now without advertisement, selective bidding and sole source contracting have become exceptions rather than the norm,

¹⁰¹ See discussion below

many MDA's are using BPP issued standard documents, some are not, tender boards are more operational, bid submissions are better regulated and bid openings are more transparent etc. Driving these improvements are efforts of the Bureau of Public Procurement at preparing and reviewing rules, information manuals, standard bidding documents, increased public enlightenment and sensitization on the Act, and training of all stakeholders: MDAs, contractors and bidders, consultants, and civil society observers, and also the increasing efforts of the Non Government sector to monitor compliance, it is to this category that this current work belongs. Efforts of the Bureau continue to save public funds that would have been lost through payment of higher prices for procurement. In the 2009 and 2010, the Bureau reduced contract costs by more than 30 billion and 50 billion naira respectively in addition to various other savings in foreign currency¹⁰².

6.4 *Challenges, however, remain.* Among the major challenges are (i) Limited transparency of procurement processes of MDA's (ii) shortage of technical competence and skills within MDAs (iii) refusal of the National Assembly to submit to the provisions of the Act and regulation by the Bureau, (iv) Poor ethical standards in the service, (v) continued supervision of procurement officers in some instances by persons with less procurement knowledge and skill and no sure will for change (vii) Low morals in the service, and (viii) (lack of political will to proceed against some violators of the Act (ix) Integrity of personnel and failure of MDA's to grant access to information to requesters of information. Also important are human attitudinal challenges. The following paragraphs elaborate on some of the more important of these.

6.5 *Continuing political control of the procurement process is the major constraining factor.* Evidence of political interference with the process include

- Failure to constitute the National Council on Public Procurement (NCPP) (s. 2), and the performance of several of its policy formulation and approval functions by the President, the cabinet and others
- Control of the Bureau through
 - o Non competitive selection and appointment of principal and other senior officers of the Bureau, contrary to s. 8(1); s. 9(1) of the Act
 - o Regular attendance of cabinet meetings by the DG, exposing him to political pressures (subtle, covert, and may be sometimes overt) through constant interaction with minister whose involvement in public procurement decisions the Bureau should regulate
 - o Issuing of staff regulations, including conditions of service for the Bureau by a body other than Council as provided for in the Act, (ss. 10, 11(3))

¹⁰² See Chapter 4

- o Limited independence of the Bureau
- Involvement of political appointees e.g. ministers in routine procurement decisions and processes as evidenced by the Nnamdi Azikiwe Airport Runway case
- Emergence of the Executive Council of the Federation as an approval authority notwithstanding that the Act does not provide for such¹⁰³
- Refusal of the National Assembly and to some degree the Judiciary to submit its procurement to regulation by the Bureau or abide by the provisions of the Act

6.6 *Procuring entities are showing reluctance to part with old, bad, internalized procurement habits, either due to inertia or other reasons.* The processes of registering contractors and services providers and pre-qualifying them for particular contracts provide good examples. Some procuring entities are still categorizing and registering contractors and service providers, contrary to provisions of the Act that assign that function to the Bureau. Procuring entities generate some revenues from this and in some cases high fees for bidding documents; these also provides opportunity for some unwholesome practices. These explain the reluctance to part with the habit, also, the foregoing analyses show that at least in some instances procuring entities deliberately manipulate the process of pre-qualifying bidders to exclude qualified contractors for less qualified ones who are allegedly ready to “play ball” 6.1 and or in other instances deliberately choosing wrong methods of procurement to achieve less than noble objectives.

6.7 *The Bureau is doing relatively well in procurement training, sensitization, awareness creation, and public enlightenment, although much of these activities, understandably, hold in the FCT area.* Recently, the Bureau conducted a series of one-day sensitization events in the six geopolitical zones. However, there is need for more real procurement training activities focused in the zones, which are generally lagging behind the FCT in this area. From the result of the analysis presented in *Chapter 4*, the Northcentral, Northeast, and Northwest zones would appear to need a lot of both sensitization and actual training. There is need also to ensure that they have greater access to procurement documents, including the Act, guidelines, and other documents published by the Bureau.

6.8 *The Bureau has difficulties enforcing compliance with Act.* Though there are many procurement related controversies, the Bureaus response reported that it has referred only two cases for criminal investigation, contrary to earlier announcement that eighteen people have been referred to criminal investigation, it is not clear whether the case against these eighteen people arise from only two cases its response refers to or

¹⁰³The earlier attempt to amend the Act was principally to grant the Executive powers as approving authority. It appears the attempt failed because the National Assembly used the opportunity to also confer procurement decision powers on the Legislature and the Judiciary. This would have truncated the powers of the Bureau and made nonsense of the entire procurement reform process. It appears this is the reason behind the President's refusal to assent to the Amendment Bill.

otherwise. The Bureau has not yet been able to secure compliance across MDAs. For example, the National Assembly refuses to submit to the Bureau's authority and procures in disregard of the provisions of the Act and the Bureau cannot do anything about it. Without improved political will at the highest level, it will be difficult, if not impossible for the Bureau to overcome this challenge.

6.9 *Capacity shortages affect the level of compliance.* Procurement capacity problems manifest in various forms. Some arise from ignorance and gaps in technical knowledge and skills. For instance, some MDAs, especially in geopolitical zones outside Abuja, appear to have heard or known relatively little about the paradigm shift in public procurement¹⁰⁴. Examples include some Federal Government Colleges in the Northeast and some research institutes in Northcentral zones. Some capacity gaps also arise from genuine lack of technical capacity, etc. to carry out certain functions. For example, there is a genuine lack of technical competence for procurement planning, and evaluation across MDAs in the geopolitical zones and the FCT. Some procurement capacity gaps also appear to be self-inflicted. Some heads of agencies in the FCT, Northwest, and Northeast displayed reluctance in setting up procurement committees, units or departments. Finally, shortage of qualified staff also induced some capacity shortages as was the case in several colleges and institutions with small administration, finance, and accounts departments.

6.10 *Probity and integrity issues dog procurement processes and decisions.* Abuses of pre-qualification and bid evaluation procedures stem from corrupt tendencies of various forms, by different stakeholders, occasioned by inadequate transparency of processes, a passing culture of abuse of office and impunity. Informed allegations of bribery and cronyism reportedly made by the DG of the Bureau and a former Minister of State for Works¹⁰⁵ are instructive.

6.11 *Role of regulatory agencies such as the National Assembly passage of the Public Procurement Act, 2007 (Amendment) Bill, 2009 further illustrates lack of political will to implement the Act.* It suggests the sort of influence the Assembly seeks to exert on public procurement. The Assembly used the opportunity of the Executive seeking to retain powers to approve contracts to seek to appropriate for itself powers to regulate its own procurement. Although the Amendment Bill did not eventually become law, the perception is that federal legislators deeply involve themselves in procurement decisions. Several allegations of procurement abuses already dog the National Assembly, including the cases of car purchases for members of the House of Representatives, renovation of the official residences of the Speaker and Deputy Speaker, and an ongoing allegation of the misuse of nine billion naira capital budget vote in the Lower House. The EFCC has investigated some of these allegations and

¹⁰⁴ Or other reforms of the federal government

¹⁰⁵ See Chapter 4 above, citing Onyekpere (2010)

declared certain principal officers of the House culpable. The House Committee on Ethics has also investigated at least one, which led to the removal of the House Speaker and her Deputy. Not satisfied with the outcome the House investigations, civil society watch groups issued a statement in protest, excerpts of which are in *Box 6.1*. Regrettedly prosecutions have not ensured as required under the Act for these infractions within the legislature. Additionally delays in the budget process continue to have adverse implications for procurement implementation and to re-enact the December rush syndrome, where many MDA's are rushing late in the year to implement their budgets, In 2010 the budget was still being revised as late as September.

6.12 Civil society observance of the procurement process is though broadening in scope remains weak and ineffective, for several reasons. These include reluctance of procuring entities to 'open up' the procurement process, or grant access to relevant documentation to civil society, resulting frustration on the part of CSO poor finances of Ngo's, apathy, and limited knowledge and skills and lack of proper organization of many civil society groups contribute to weak observation and monitoring of procurement processes, also there are not near enough numbers of CSO and professional body personnel available to cover the about 810 procuring entities spread over 36 States of the Federation and the FCT. At the last count the BPP had accredited less than ninety civil society organizations, evidence exists that only a few personnel of some professional bodies like the Nigerian Society of Engineers, Nigerian Medical Association, Pharmaceutical Society of Nigeria etc are monitoring procurement along with CSO's. The available numbers are grossly inadequate for the estimated minimum 8100 personnel that may be required to cover the various MDA's as estimated by PPDC. The professional body monitors have shown little interest in collation and analysis of results of monitoring and appear satisfied with just being in the room at bid opening sessions. They have also been reluctant to join their NGO counter parts to strengthen advocacy for improvements in the system. However, the failure to constitute the National Council on Public Procurement that has equal representations of state and non state actors, may be another reason. An independent Council, given its proposed membership, would better ensure enforcement of the Act including provisions relating civil society involvement.

Options for Improving Compliance with the Act

6.13 The most important way to improve compliance with the Public Procurement Act, 2007 is to insulate routine procurement decisions from political interference or at least, reduce it to a minimum. This requires that political leaders muster the necessary political will (currently lacking) to implement the Act in full. The will to demand implementation

is also lacking in the National Assembly, which itself continues to conduct its procurement in breach of the Act. Also civil society has failed to generate enough demand for implementation. How Federal Government can begin to demonstrate political will to implement the Act is by the inaugurating the National Council on Public Procurement (NCPP) and allowing it exercise its full powers as provided in the Act. The Assembly will also be demonstrating political will by submitting to the provisions of the Act. This will further demonstrate practical application of the 'rule of law' that this administration seeks to promote. The President and the EXCoF must hands of procurement approval functions, whilst ministers must leave such functions within the ministries to the civil servants.

6.14 *Once set up, the NCPP must set out to perform its functions as provided for in the Act.* First, it must develop conditions of service and staff regulations for the Bureau. It must develop internal rules for operation of the Bureau. It must review, revise, or simply adopt and approve procurement policies, guidelines, monetary thresholds, and other such documents already issued by the Bureau. In revising such documents it must introduce provisions that enable compliance to the access to information provisions of the Act. These actions will serve to confer real ownership of the documents on the Council, even if it does not initially make too many changes to them.

6.15 *The Bureau should develop a clear timetable and programs for tackling problems of shortage of technical capacity for public procurement.* Procurement planning, development of good requests for proposals, and bid evaluation, among others, are very technical, practical, and hands-on issues in the procurement process. Routine procurement training and sensitization, though a good way to start, do not suffice to develop such capacity. Neither are the current Procurement Planning Review workshops, which the Bureau organizes annually to review procurement plans of ministries in preparation for implementation of the capital budget. *For instance, the review workshops do not answer the question: what is needs assessment for procurement planning; what does it involve; how do MDAs distinguish need from want or desires; how do MDAs conduct needs assessment?* In addition to general education training, the Bureau must dedicate some of its programmes to hands-on training on acquisition of technical skills. To fund such training, it may be necessary to encourage MDAs to budget for their cost. The Bureau may wish to consider a tertiary institution based or affiliated/certificated training program, supported by its experience and expertise. This may be the way to share more broadly the competences and experience that the Bureau currently has. To enforce compliance, it might be necessary to set out a training program and deadline for procuring entities to have completed such training. Following that deadline, there ought to be sanctions on procuring entities that manifest deficiencies in the use of these skills. The Bureau can also develop paid training programs for the private sector, improved knowledge and skills in the private sector will support improvements in the

system. This can be an income yielding exercise for the Bureau.

6.16 *There ought to be a programme for tacking human factors in public procurement.* For any reform to succeed there should also be a programme of value re-orientation. Public financial management, including public procurements, reforms involves two aspects: systems (including procedures, processes, methods, hardware and software) reforms and human behavioural reforms. A common error is to focus too much or exclusively on systems reforms and too little (if at all) on value re-orientation, this appears to be the case here. A possible reason for this is the complex nature of human motivation for action or inaction and the difficulties involved in such reforms. Yet, experience all over the world and current Nigerian experience shows that systems reforms alone rarely succeeds. Human beings inevitably develop and implement systems. Activities of sufficiently ill-motivated persons can affect the efficacy of any system and process, no matter how new, this is the case here. There is need to find a way to systematically build value re-orientation into its systems training programmes. BPP may wish to start by amending the Code of Conduct For Public Officers involved with Procurement to reflect current realities. Government must address the issue of ensuring adequate pay for staff, and installing a performance management system which ensures that recruitment and promotion are based on merit and aptitude.

6.17 *Enhance autonomy of the Bureau by guaranteeing its funding to help minimize the effect of possible political vendetta that may arise as the Bureau acquires teeth following its divorce from political control.* One possible approach is to amend the Act to protect its budget just like the National Judicial Council's (NJC). The Act could also permit the Bureau to raise part of its funding by charging fees for its programmes (especially training of consultants, bidders, suppliers, and service providers), but fully account for it in its financial statements. Over time, the Bureau could extend its services by offering consultancy and training services to the private sector and offshore. The Public Procurement Journal could also become a source of income, it is an effective and major advertisement medium for all national competitive bidding (NCB) and the local component of international competitive bidding (ICB) contracts. The Bureau could commercially print the Journal and accept paid subscriptions from interested parties, especially registered contractors and service providers interested in doing business with the federal government. To ensure regularity, timelines, and effective circulation, the Bureau could outsource production of the Journal to publishing houses.

6.18 *Finally, more authentic information on public procurement must be publicly available.* The Bureau should post more information on its website and publish them in the Public Procurement Journal. Procurement information includes details of outcomes of investigated offences and actions taken. It should also include a 'naming and shaming' process by publishing names of violators and their violations. The Bureau

must improve public access to information by granting researchers and enquirers such information as ought to be in the public domain or are of a public interest and/or non-confidential nature. The Bureau's website needs to be more user friendly than it currently is; navigation should be easier. The Bureau must as a matter of urgency expand and popularize its prize data bank and establish a data base of contractors as required by law. The savings it has and continues to make in costs for government, is an indication that there is need for standard prize benchmark for goods, works and services in Nigeria. The Bureau also needs to ensure through its guideline that MDA's are more transparent and improve their access to procurement information practices. Whilst it should make effort to market its website as a source of procurement information

Box 6.1: Excerpts from Civil Society Position on the 2008 Contract Scandal in the House of Representative

SUBSTANTIVE ISSUES ARISING FROM THE COMMITTEE REPORT (i.e., the House of Representatives' Committee that investigated the scandal)

1. The Tender Was Not Advertised: The first finding of the Committee is that the tender was not advertised. S. 16 (1) (d) and (e) provides that subject to any exemption allowed by this Act, all public procurement shall be conducted by open and competitive bidding and in a manner which is transparent and equitable for ensuring accountability, value for money. A further elaboration of this provision is found in S 25 (2) (ii) of the Act where;

In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two national newspapers, and in the procurement journal, not less than six weeks before the deadline for the submission of the bids for the goods and works.

Apart from the claim of advertisement on the notice board of the National Assembly which the Committee found not to be true, all the other methods of advertisement were ignored by the Speaker and her colleagues.

It is pertinent to examine whether the contract award procedure could be justifiable under restricted tendering which would obviate the need for some of these advertisements. S. 40 of the Act authorises a procuring entity to use restricted tendering for reasons of economy, efficiency if the goods, works or services are available only from a limited number of suppliers or contractors; the time and cost required to examine a large number of tenders is disproportionate to the value of goods, works or services to be procured. Considering that the services and works are available from a limitless number of contractors and the value of the procurement which is over N628, 000,000, restricted tendering cannot be justified. Also, there is no emergency to justify direct procurement.

In respect of the above finding, we state that the Act had been vigorously violated.

2. No In-House Bill of Quantities and Drawings: S. 18 of the Act calls for procurement planning and the procuring entity is under obligation to prepare a needs assessment and evaluation, identify the goods, works or services required, carry out appropriate market and statistical surveys and on the basis of that prepare an analysis of the cost implications of the proposed procurement. The entity is also obliged to prescribe any method for effecting the procurement subject to necessary approvals. The implication of the foregoing is that in-house bills of quantities and drawing including architectural, electrical, mechanical would have been prepared before a call for bids. As this was not done, we find a meticulous violation of the Act

3. Absence of Budgetary Provisions: The third and fourth findings dwelt on the absence of specific budgetary provisions for the renovation and furnishing of the official residences of the Speaker and Deputy Speaker respectively. Also, there were no specific budgetary provisions for the purchase of the official vehicles. S. 16 (1) (b) of the Act states that public procurement shall be conducted based on procurement plans supported by prior budgetary appropriation. This is a violent violation of the Act.

4. Raising of Memoranda for Contract Award before Quotations for Jobs Were Processed: According to the report of the Committee (in 5.2.14):

The memorandum of the meeting was dated 9th of July 2007. All the quotations of the companies were detailed in the memorandum and a recommendation made for the award of the contract for the renovation of the Deputy Speaker's residence to Messrs Lee Development Nig. Ltd for the sum of N90,296,225.25, even though none of the companies bids were in process until the 11th of July. All the three bids were minuted on the 11th of July 2007 by Madam Speaker with instructions to the CNA to process.

For the vehicles, the memorandum for the meeting was prepared on the 3rd of July while the quotation from Kymco Motors was dated July 9 2007; Ausu Motors Nig. Ltd was dated 11th July 2007 and NIA Nig. Ltd dated 12th July 2007. The Committee asked:

So how was the bid figures reflected on Annex VII in respect of the purchase of 10 No. Toyota Land Cruisers obtained by the 3rd of July 2007. Evidently, there was prior knowledge of the figures of the bid document before the submission.

The Act in S.58 (4) (a) and (c) are relevant here. Entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned is a crime. And by ss.9, collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Act. Definitely, in accordance with the Act, the quotations should have come in and be processed before the raising of memo for contract award.

We find collusion, a deliberate refusal to follow due procurement process manifesting in an invidious violation of the Act by the foregoing facts - raising memo for award of contract before receiving quotations.

5. Non Registration of Companies Bidding for Contracts: This is in violation of S.16 (6) (b) of the Act, which requires all bidders to possess the legal capacity to enter into a procurement contract. A fundamental violation has occurred.

6. The Cost of the Contract Awards: By any known measure of prudence, value for money embracing economy, efficiency and effectiveness, allocating the following sums of money for renovation and furnishing of the Speaker and Deputy Speakers residences is a sheer waste of sums of money that would have improved maternal and child health, reduced accidents on our roads, made our airspace more safe, reduced water borne diseases, etc.

- Renovation of Speakers Residence: N238, 852,279.00; Question: how much does it cost to build a new house?
- Furnishing Speakers Residence: N71, 895,000.00; Question: are we laying the residence with fine gold?
- Renovation of Deputy Speakers Residence: N90, 296,225.25
- Furnishing Deputy Speakers Residence N55, 200, 0000.00

The same set of questions applies to the money approved for the Deputy Speaker.

SIGNED BY:

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|--|--|--------------------------------|
| 1. TRANSPARENCY IN NIGERIA | 2. ZERO CORRUPTION COALITION | 3. BUDGET TRANSPARENCY NETWORK |
| 4. CIVIL SOCIETY LEGISLATIVE ADVOCACY CENTRE | 5. CENTRE FOR DEMOCRACY AND DEVELOPMENT | |
| 6. NIGER DELTA BUDGET MONITORING GROUP | 7. Centre for the Development of Civil Society | |
| 8 COMMUNITY ACTION FOR POPULAR PARTICIPATION | 9. CITIZENS' FORUM FOR CONSTITUTIONAL REFORM | |
| 10. NIGERIA LABOUR CONGRESS | 11. WOMEN IN NIGERIA | |

Source: <http://www.nigeriacalabash.com/index.php/headlines/186-our-position-on-the-house-of-representatives-scandal-civil-society.html>.

Bibliography

1. Bureau of Public Procurement (2008) : **Civil Society Observers**
2. Bureau of Public Procurement (2010): **Procurement Plans for Ministries, Departments, and Agencies (MDAs) for Financial Year 2010**
3. Bureau of Public Procurement (2010): **Public Procurement Journal, 6/e, April June, 2010**
4. Bureau of Public Procurement (2010): **Public Procurement Journal, 5/e, January March 2010**
5. Bureau of Public Procurement (2010): **Public Procurement Journal, 4/e, October December, 2010**
6. Bureau of Public Procurement (2010): **Report of BPP 2010 Procurement Planning Workshop with Ministries, Departments, and Agencies**
7. Bureau of Public Procurement: **Approved Revised Thresholds for Service-Eide Application & Special Thresholds for Procurement I (the) Oil Sector**
8. Bureau of Public Procurement: **Code of Conduct for Public Officers Involved with Procurement**
9. Bureau of Public Procurement: **Code of conduct for Public Procurement Observers**
10. Bureau of Public Procurement: **Complaints Procedure under the Public Procurement Act, 2007**
11. Bureau of Public Procurement: **Procedures and Documentation Pre-Requisites for the Issuance of "no Objection" to MDAs**
12. Bureau of Public Procurement: **Procurement Procedures Manual**
13. Bureau of Public Procurement: **Procurement Reform Project, Sample Document for National Shopping**
14. Bureau of Public Procurement: **Public Procurement Act, 2007 As It Affects Contractors and Consultants**
15. Bureau of Public Procurement: **Public Procurement Regulations for Goods and Works**
16. Bureau of Public Procurement: **Public Procurement Regulations for Consultancy Services**
17. Bureau of Public Procurement: **Standard Bidding Document for Procurement of Goods**
18. Bureau of Public Procurement: **Standard Bidding Document for Procurement of Small Works**
19. Bureau of Public Procurement: **Standard Bidding Document for Procurement of Works**
20. Bureau of Public Procurement: **Standard Request for Proposals for Selection of Consulting Firms (Complex Lump-Sum)**
21. Bureau of Public Procurement: **Standard Request for Proposals for Selection of Consulting Firms (Complex Time Based)**
22. Bureau of Public Procurement: **Standard Request for Proposals for Selection of Consulting Firms (Small Assignments Time Based)**
23. Bureau of Public Procurement: **Standard Request for Proposals for Selection of Consulting Firms (Small Assignments Lump sum)**
24. Bureau of Public Procurement: **Standard Request for Proposals for Selection of Individual Consultants**
25. Centre for Social Justice: **Half Hearted Implementation of the Public Procurement Act: an assessment for the period, January June, 2009**
26. **Federal Government of Nigeria**, Public Procurement Act, 2007, Federal Republic of Nigeria Official Gazette, No. 65, Vol. 94, Lagos, Federal Government Printer (FGP 107/72007/1,000 (OL 73)
27. Global Legal Group (2009): **The International Competitive Legal Guide to: Public Procurement 2009, Nigeria**, pp. 174 178, www.iclg.co.uk
28. Office of Government Commerce, *Procurement Principles*, www.ogc.gov.uk/introduction_to_procurement
29. Onyekpere, Eze (2010): **Diagnostics on the Implementation of the Public Procurement Act**, Abuja, LASEC Consulting Ltd. ISBN: 978-798-909-504-9
30. The Senate, Federal Republic of Nigeria, *Public Procurement Act, 2007 (Amendment) Bill, 2009 (Harmonized)* unpublished Bill

Appendixes

Excerpts from Executive Summary of Nigeria Country Procurement Assessment Report (CPAR) - June, 2000 (Volume I)

A. SUMMARY OF FINDINGS: STRENGTHS AND WEAKNESSES OF PRESENT PROCUREMENT SYSTEM

LEGAL AND REGULATORY FRAMEWORK EXISTING LEGAL AND REGULATORY FRAMEWORK

The Constitution of the Federal Republic of Nigeria (1998) describes the division of powers between the Federal Government and the States of the Federation. Each state has the authority to issue its own laws and regulations. There is no specific law or other act of parliament regarding public expenditure or procurement in Nigeria. The Ministry of Finance, with the authority vested to it by the Constitution, issues "Financial Regulations" (FR) which regulate and delegate the responsibilities of public procurement and financial management at federal level. The FR is essentially an internal set of rules for financial/economic control of the Federal administration containing regulations concerning composition of Tender Boards (TB) and the limits of their jurisdiction, and regulations concerning the actual procurement process. At present the procurement regulations in the states consist mainly of local Financial Regulations based on the Federal FR, supplemented with circulars and guidelines from within each branch of administration in the state governments. The current legal system has the following weaknesses:

- The FR is not a law or an act of similar authority, but an administrative document, which could be amended by the Minister of Finance without regard to fundamental rights of the suppliers/contractors. Therefore, the rights of the suppliers/contractors with regard to the protective measures of for example open advertisement, public award criteria and so forth are only protected by the good will of the Government in power at any given time. In addition, the FR are superficial in their statutory regulation of the actual procurement process.
- The present regulations on public procurement have no permanent measures for surveillance and control. Instead ad hoc investigative groups can be set up within the public body that takes this initiative.
- As this system relies almost solely on a high degree of self-control within the ministries and other public entities this could easily be perceived by suppliers/contractors as lacking in transparency.

- There is no permanent body outside the purchasing entities monitoring and controlling the procurement process.
- There is no central policy making entity in the area of public procurement as this is left to ad hoc circulars issued by the Ministry of Finance and in some cases the Presidency.
- Neither the FR nor any of the circulars issued under its authority contains any provisions for the filing of complaints concerning public procurement.
- There is no permanent body independent of the procuring entity where contractors/suppliers can file complaints regarding the procurement process. A supplier/contractor being maltreated by a purchasing public entity only has the option of lodging a complaint with the same entity that is accused of wrongdoing. The complaining contractors/suppliers are not guaranteed a formalised treatment containing legal assurances of transparency and equality of their complaints

PROCEDURES AND PRACTICES - FINDINGS AND RECOMMENDATIONS

EXISTING PROCEDURES AND PRACTICES - STRENGTHS AND WEAKNESSES

Eligibility and Process

In order to be considered as a bidder in federal, state and parastatal tenders, it is a precondition for the bidder to be registered. The registration system is decentralized, every state has its own registration list and form and there are no binding country-wide guidelines describing the set-up and functioning of the registration system. A bidder can be disqualified i.e. taken off the registration list for a number of reasons. Once registration is cancelled there are no clear rules for how the bidder can get back on the list again.

Methods and Process

The scope of the FR on tendering methods is very limited and there are no detailed rules on the application of the methods included. It is left to the discretion of individuals to choose the tendering method. The following outlines the major weaknesses in the system.

- Negotiation of contractual conditions is the standard procedure. - The rules for determining how and when advertisement should be used are not clearly spelt out in the FR. In some States and Ministries Advertisement is seldom used. The Official Government Gazette is not published on a regular basis. There is no requirement in the FR for using standard bidding documents and different models of standard contracts are currently in use. Conditions for payment, advance payment and guarantee for advance payment, bid security, and penalty for late payments are not regulated in these contracts. The FR do not require nor do they give guidance on bid opening in terms of timing, location and participation. In practice bid opening is often performed in closed sessions. There is no requirement in the FR to include evaluation criteria in the bidding documents. Non-transparent criteria such as "reference price" and "profit margins" are often part of the evaluation. There are no specific instructions on how bid evaluation should be organized and carried out. Evaluation can be done by the Secretary to the Tender Board, a Sub-Committee to the Tender Board, technical experts or the implementing ministry or department.
- There are also no provisions to guard against conflict of interest of the evaluation committee. Thus, a member of the evaluation committee could have very close connections with a bidder, for example a family member, but that member would participate in the evaluation just like any other member.
- The principle of award of contract for goods and works is a combination of price and quality and for services quality is the only criterion.

Monitoring and Contract Management

The monitoring practice depends on the type of contract and locally developed routines. It does not follow what can be assessed as best practice. There are strong indications from representatives from the private sector and from persons from within the civil service that the monitoring system is weak and in fact ridden with corruption, as elaborated below. Many capital projects are implemented by using lower quality of materials than contracted. Allegedly, illegal actions take place during the monitoring process in the form of approval of low quality work in return for bribes. Most private contractors claim that it is not possible to implement contracts without taking part in the corruption. Contractors are not effectively held responsible for implementing and delivering according to the contract.

- The FR do not give guidelines for contract extensions. It also has no guidelines on when and how price variation should be determined. The lack of such guidelines often leads to unnecessary contract extensions and expenditure. In previous years budgeting was seen as a mere academic exercise, not something

by which the Management could use to assess and control recurrent and capital costs. Thus, project estimated costs have not generally been based on thorough calculated cost estimates or feasibility studies. This subsequently leads to actual project costs which are completely unrelated to the budget estimates and usually much higher.

- Payments depend on cash flow, if funds are not available the contractor will often stop working and delays or total breakdown of projects is a common result. Lack of payments or delayed payments from the Government is more the rule than the exception. To compensate, suppliers adjust prices upwards to cover for the cost in relation to delays. The Federal Government owes significant amounts to contractors who have finished projects partly or fully.
- In reality no contractor ever complains about the procurement process due to fear for informal sanctions in terms of no future contract awards.
- There is a lack of filing cabinets, which means that files at times have to be stabled in big piles, which make access to files and record keeping generally difficult.

From the above, it is evident that the FR are insufficient to guide and support persons involved in procurement practice. Overall there is no benchmark from which procuring units can derive standards. Practice develops in different directions and becomes non transparent as it depends on the knowledge, will and interpretation of the procurement units and not on a uniform system regulated by law and regulations generally known. Such system is easy to manipulate, difficult to control and not transparent to bidders and the public. As a result, the Government does not get good value for money and is at the moment not perceived by the private sector as a reliable business partner.

RECOMMENDATIONS ON PROCEDURES AND PRACTICES

Short Term Recommendations

The following recommendations can be implemented immediately through appropriate amendment of the FR while awaiting implementation of the proposed Procurement Law. The practice of using registration lists as eligibility criterion for open competitive tendering should be discontinued immediately. Bidding should be open to all qualified eligible bidders irrespective of their registration status. These lists should be used for selective tendering only. If need be, pre-qualification should be carried out to ensure that only qualified bidders are allowed to submit bids. This is

one of the two areas where the Task Force and the Bank have differing views - the other relates to the approval of contract awards by Ministers - paragraph 16. The Task Force is of the view that registration lists should be used for all national competitive bidding.

- All tenders valued more than Naira 5 million must be advertised in the Government Gazette and at least two papers of wide circulation in Nigeria. The advertisement will be issued at least six weeks before the deadline for submitting bids for goods and works, and at least one month for consultancy services. All other tenders must be posted at the Notice Boards of the Procuring Agencies. All bids advertised will be opened in public at a designated place, date and time. Opening should immediately follow the closing of the bidding period to minimize the risks of bid tampering. Bidders or their representative should be invited to attend, and members of civil society or the press should not be excluded, if they wish to attend.

- * The FR should be revised to incorporate details of the various procurement methods and their application for goods, works and services. Bid evaluation criteria should be clearly defined in the bidding documents. Negotiations of contracts in open competitive tenders should be discontinued immediately. Awards should be purely based on criteria defined in the bidding documents.
- * Evaluation committees should be used as the basic framework for evaluating all tenders. Members of Evaluation Committees, tender boards and approval authorities should be obliged to declare any conflict of interest and exclude themselves from bid evaluation and approval process.
- * The current practice of accepting bid bonds and advance payment security bonds from local insurance companies should be discontinued and only instruments issued by reputable Banks should be accepted.
- * Provision for interest payments to contractors for delayed payments should be introduced in contracts. All major contract awards should be published including description of the contract, name of the contractor and the contract price.
- Contract variations should be done only under very exceptional circumstances. When this is absolutely necessary, approval must be obtained from the appropriate tender board. The method for determining price variation during contract execution must be incorporated in the contract. The formula method is recommended rather than the method of documentary evidence. Develop and use procurement plans to determine the requirement of funds for various Government Agencies at different quarters during the fiscal year. Procurement Plans would spell out the timing for different procurement

actions and hence the funding requirements at different stages. Release of funds should be on the basis of realistic approved and up-dated procurement plans.

- The services of international procurement agents of the highest repute should be obtained to assist in medium and large scale contracting. While rules and regulations can be quickly changed and tender boards restructured, it will take many years to build a strong professional capacity in Federal and State governments. Although procurement agents charge significant fees, experience shows that their costs are rapidly covered by savings.

MEDIUM TERM RECOMMENDATIONS

Tendering and Approvals

- Develop uniform process for registration of contractors/suppliers which includes qualification criteria. The list should be open to the public.
- Prepare and introduce standard bidding documents. Develop detailed procedures for monitoring contract execution that will involve all stake holders especially the beneficiary communities. For larger contracts, include as a condition for final payment, the requirement for an external expert together with the employer's representative to co-sign the certificate releasing final payment.
- Review the effectiveness of the current procurement filing system in all public entities to ensure transparency and accountability according to international best practice and develop a new filing system covering all procurement activities. Include record management as part of basic procurement training program.

ORGANISATION AND RESOURCES

TENDER BOARDS (TBs) - STRENGTHS AND WEAKNESSES

Tender Boards are an important part of the organizational set-up of the public procurement system at both federal, state, local government and parastatals. According to the FR, TBs are the units empowered to deal with contracts for goods, works and services. There are a number of issues related to the TBs, as presented below.

- There is a proliferation of these tender boards which are seen by the private sector as a source of delays and non-transparency. In addition, these tender boards appear to have a limited mandate with power to decide contracts *de facto* resting with the Permanent Secretary and the Minister/Commissioner.
- Due to inflation and lack of adjustment of the thresholds the authorisation of the TBs is constantly being eroded.

TENDER BOARDS - RECOMMENDATIONS

Once a law on public procurement has been enacted and regulations, manuals and standard bidding documents issued, carrying out public procurement including contract awards will clearly be an administrative function the mechanics of which should be disengaged from the executive. Currently, high level politicians such as Governors, Ministers and Commissioners are operationally involved in the procurement process. However, under the reformed procurement system, high level politicians should maintain their overall managerial oversight responsibilities while leaving administrative and operational matters (including procurement) to the civil servants. The benefits inherent in this arrangement are that (i) it clearly delineates responsibility for administrative decisions and actions and puts these in the hands of the professional civil service and (ii) it makes the professional civil servants accountable for their actions under the general responsibilities and oversight of politicians. What is most critical is to conduct regular audits to ensure that the resources have been utilized properly, procedures have been followed, and the Government is getting good value for money. This is one of the two areas - the other relates to the use of registration lists as eligibility criterion for national competitive bidding - paragraph 14, the Task Force and the Bank team had differing views. The Task Force is of the opinion that Ministers should continue approving contract awards even after these reforms have been implemented.

In addition to the above, to make the tender boards more effective, they need to be streamlined and have the power to approve formally delegated to them. The streamlining could be done along the following lines:

- Departmental tender boards to be abolished and thresholds for approval by the Permanent Secretary/Departmental Heads revised. The rationale for this is to take advantage of reduction in unit prices for bulk purchases at ministerial rather than departmental level. Currently, each department purchases its own requirements separately. If the requirements of the whole ministry are bulked and purchased together, the unit costs are likely to be lower.

- The Ministerial Tender Board should be chaired by the Permanent Secretary who is the accounting officer, and be composed of senior procurement, financial management and other technical specialists (such as engineers). The Tender Board should be given the powers to make final approval of all tenders for that ministry.
- The Federal Tender Board should be abolished and its functions assumed by the Ministerial Tender Board. There should therefore be only one tender board, the Ministerial Tender Board.
- The Executive Council should not be involved in the procurement process. Contracts issued by parastatals which are fully autonomous should be approved by their Board of Directors upon recommendation of tender boards, utilizing best practice procedures based on the model law.

HUMAN RESOURCES - STRENGTHS AND WEAKNESSES

The procurement function is not generally performed by professionally qualified staff. Although there is a shortage of such staff in the public service, even the few available are not properly utilized. There is a tendency to believe that the procurement function can be performed by anybody and hence the procurement profession is held in low esteem. Training in public procurement procedures for civil servants is generally insufficient due to low regard for the profession and due to lack of funding. In addition, procurement training is offered by few institutions in Nigeria - The Institute of Purchase Management and Supply (IPMS) is the only organisation which has, for many years, provided training in public procurement and promoting professional standing of procurement staff, and their skills. It has recently introduced a system for certifying procurement specialists. However, IPMS is not recognised/chartered by the Nigerian Government as a professional body.

- Salaries and benefits for procurement staff, like most of the civil service, are not adequate to support a single family, let alone the usual extended one, with basic needs and are in general lower than the private sector. The promotion system is based on multiple criteria which include merit, seniority, vacancy etc. However, the system appears non-transparent to many civil servants. Efficiency in the civil service appears generally low.

HUMAN RESOURCES - RECOMMENDATIONS

There is a need to restore and strengthen the professional procurement cadre and allow them to practice their profession. The procurement function should be carried

out by these professionals. A number of actions need to be taken by the Government to restore this professional cadre who have been seriously relegated by successive military governments. These actions would include:

- Carrying out a needs assessment for procurement professionals for the public sector
- Increasing training resources for public procurement staff and introducing a certification system. As a consequence, a suitable position in the grade levels for civil servants who obtain the new procurement certificate should be defined.
- Establishing a specific code of conduct/ethics for procurement staff.
- Supporting IPSM and other organizations that are engaged in training and promoting the procurement profession.
- Supporting IPSM's efforts to be established and recognized as a professional body.
- In the framework of the civil service reform, introducing pay scales and structures that will promote honesty and efficiency in the civil service
- Developing a comprehensive procurement manual based on the new law and regulations
- Establishing a helpdesk function for example via e-mail or phone and a homepage on the Internet, which contains all documents and guidelines from the procurement manual. Developing a communication strategy supporting the procurement reform programme. As part of the communication strategy, offer a course to Nigerian journalists in international procurement principles and their rationale to the Nigeria Environment.

List of Agencies Administered Questionnaires

Procuring Entities

Federal Capital Territory (FCT)

1. Central Bank of Nigeria
2. Debt Management Office (DMO)
3. Economic and Financial Crimes Commission (EFCC)
4. Federal Capital Territory Administration (FCTA)

5. Federal Emergency Road Maintenance Agency (FERMA)
6. Federal Inland Revenue Service (FIRS)
7. Independent Corrupt Practices & Other Related Offences Commission (ICPC)
8. Independent Electoral Communication (INEC)
9. Ministry of Agriculture
10. Ministry of Aviation
11. Ministry of Education
12. Ministry of Finance
13. Ministry of Foreign Affairs
14. Ministry of Health
15. Ministry of Information & Communications
16. Ministry of Police Affairs
17. Ministry of Transport
18. Ministry of Water Resources
19. Ministry of Works
20. National Agency of Food and Drug Administration and Control (NAFDAC)
21. National Planning Commission (NPC)
22. National Sports Commission (NSC)
23. National Youth Service Corps (NYSC)
24. Nigeria National Petroleum Cooperation (NNPC)
25. Nigeria Television Authority (NTA)
26. Nigerian Communications Commission
27. Office of Secretary to the Government of the Federation (OSGF)
28. Power Holding Company of Nigeria (PHCN)
29. Universal Basic Education Commission (UBEC)

Northwest Zone

1. Ahmadu-Bello University Teaching Hospital, Shika Zaria
2. Ahmadu-Bello University, Samaru Zaria
3. Defense Industry Corporation of Nigeria (DICON), Kaduna
4. National Board for Technical Education (NBTE), Kaduna
5. Nigerian Agricultural Co-operative and Rural Development Bank (NACRDB), Kaduna
6. Nigerian College of Aviation Technology, (NCAT), Zaria
7. Nigerian College of Forestry Mechanization, Afaka Kaduna
8. Nigerian Defense Academy (NDA), Mando Kaduna
9. Nigerian Veterinary Institute, Akaka Kaduna.

Northcentral Zone

1. Federal College of Forestry
2. Federal College of Land Resources and Technology
3. Federal Government College
4. Industrial Training Fund (ITF)
5. Institute for Archaeology and Museum Studies (IAMS)
6. National Film Institute (NFI)
7. National Metallurgical Development Centre (NMDC)
8. National Veterinary Research Institute (NVRI)
9. Nigerian Institute of Mining and Geosciences (NIMG)
10. The National Institute for Policy and Strategic Studies (NIPSS)
11. University of Jos, Jos

Northeast Zone

1. Abubakar Tafewa Balewa University, Bauchi
2. Federal College of Education, Gombe
3. Federal College of Horticulture, Dadinkowa, Gombe State
4. Federal Government College, Azare, Bauchi
5. Federal Government College, Billiri, Gombe State
6. Federal Government Girls College, Bagoja, Gomber State
7. Federal Government Girls College, Bauchi
8. Federal Medical Centre, Azare, Bauchi
9. Federal Medical Centre, Gombe
10. Federal Polytechnic, Bauchi
11. Federal School of Armour, Bauchi

Southeast

1. Federal College of Education, Owerri, Imo State
2. Federal Medical Centre (formerly, Queen Elizabeth Hospital), Umuahia, Abia State
3. Federal Medical Centre, Orlu Road, Owerri, Imo State
4. Federal Polytechnic Oko, Anambra State
5. Federal Polytechnic, Nekede, Owerri, Imo State
6. Federal University of Technology, Owerr, Imo State
7. Michael Okpara University of Agriulture, Umudike, Umuahia, Abia State
8. National Root Crops Research Institute, Umudike, Umuahia, Abia State
9. Nnamdi Azikiwe University Teaching Hospital, Nnewi, Anambra State
10. Nnamdi Azikiwe University, Awka, Anambra State

11. University of Nigeria Teaching Hospital, Ituku-Ozalla, Enugu, Enugu State
12. University of Nigeria, Nsukka, Enugu State

Southsouth

1. Benin-Owena River Basin Development Authority (BORBDA) Obayantor
2. Federal Psychiatric Hospital, Uselu, Benin City
3. Independent Data Services Ltd. (IDSL) a subsidiary of NNPC, Airport Road, Benin City
4. National Business, Technical, and Education Board (NABTEB), Benin City
5. National Institute for Oil Palm Research, (NIFOR) Benin
6. Nigerian Petroleum Development Company (NPDC), Sapele Road, Benin
7. Rubber Research Institute of Nigeria (RRIN), Iyanomo, Benin
8. University of Benin Teaching Hospital, Benin City
9. University of Benin, Benin City

Civil Society Organizations

- 1.

Contractors and Bidders

1. Arab Contractors Nigeria Ltd
2. CCECC Ltd
3. Messrs Dantata & Sawoe Construction Nigeria Limited
4. Messrs Julius Berger Nigeria Plc.
5. Messrs P. W. Nigeria Limited
6. Messrs RCC Nigeria Limited
7. Anonymous (the only one contractor to respond)

Research Instruments

Survey Questionnaire for MDAs

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire

Public and Private Development Centre has received a grant from United Nations Democracy Fund (UNDEF) to implement its Nigerian Procurement Monitoring Project. Part of this program is an activity to evaluate performance of selected MDAs within Abuja in the implementation of PA2007. The PACT/USAID advance project has provided limited support to expand the scope of this evaluation to include selected MDAs outside of Abuja and to cover MDA respondents from at least three geo political zones. Thus, we are conducting an assessment of level of compliance of Federal MDAs with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues surrounding implementation of the Act and to find out ways in which interested parties can render assistance to improve effectiveness. We are not a government agency and we will not use the information generated for any other purpose.

We would be most grateful if you would then kindly ANONYMOUSLY complete this questionnaire as honestly and as exhaustively as you can. *We do not desire your name or the name of your organization, and please do not provide them.* We will collate the responses and draw general conclusions from them. We make you this promise solemnly and honestly.

Thank you in advance.

Thank you in advance.

Keys: Where there is need for rating, rate 1, 2, 3, 4, 5; 1 = highest, 5 = lowest. Please do not fractionalize.

BPP = Bureau of Public Procurement

NCPP = National Council on Public Procurement

1. How would you rate your awareness and knowledge of the Procurement Act, 2007
Rate 1, to 5; 1 for highest rating; 5 for lowest rating
2. Do you have the following documents (please complete the table)

	Document	Source of Document Enter 1 for BPP, 2 for Bureau's website, 3 for open market; 4 for from my organization, and 5 from Don't know or can't remember, and 6 for Don't have it
a.	Procurement Act, 2007	
b.	Procurement Guidelines issued by BPP	
c.	Standard bidding documents	
d.	Others, (please, specify)	
e.		
f.		
g.		
h.		

3. Have you attended any training on the Procurement Act, 2007?

Please complete table below

Dates of Training	Title of Training	Location of Training	Organizer	Duration	How useful was the Training (Rate 1 to 5)

1. When did your organization start using the Procurement Act in its procurement process
 - a. Since 2007
 - b. Since 2008
 - c. Since 2009
 - d. Since 2010
 - e. Not yet

2. How would you rate your understanding of the Procurement Act, 2007
 Rate 1 to 5; 1 = highest; 5 = lowest _____

3. To what extent has your organization been applying the Procurement Act
 - a. All provisions of the Act
 - b. Most provisions of the Act
 - c. Major provisions of the Act
 - d. Some provisions of the Act
 - e. We do not yet apply the provisions of the Act

4. What provisions of the Act does your organization find difficult to apply currently
 Please list fully _____

5. If your organization does not apply all sections of the Act, what is the reason for that
 - a. The provisions are cumbersome and difficult
 - b. Lack of personnel and capacity
 - c. Lack of time (it takes too much time)
 - d. Difficulties with receiving support from the BPP
 - e. Other reasons (please specify) _____

1. How does your organization handle procurement relating to the provisions of the Act that it does not yet apply?
 - a. We are using the old methods in the meantime
 - b. We avoid procurement involving those provisions
 - c. Use other methods (please specify) _____
2. Does your organization have a procurement planning department/unit
 - a. Yes Who heads the department/unit _____
 - b. No
3. Does your organization have fully dedicated staff in the procurement planning unit/department?
 - a. Yes How many _____
 - b. No
4. Have staff of the procurement planning department attended formal procurement training
 - a. how many staffs How many _____ Who organized the major ones _____
 - b. No
 - c. Don't know
5. Does your organization have a procurement planning committee (PPC)?

Yes No Don't know
6. When was your organization's procurement planning committee (PPC) set up? (Please specify) _____
7. Please specify the following for the PPC
 - a. The designated head (office) _____
 - b. The designated secretary (office) _____
 - c. Other members (offices) _____
 - _____
 - _____
 - _____
8. Does your organization register contractors? Yes No Don't know
9. Do you charge fees for such registration Yes No Don't know
10. Please specify categories of contractors and fees charged for registration
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
11. Does your organization advertize contracts in the BPP's procurement journal?

Yes

No Why? (Please specify) _____

Don't know

20. What procurement methods do you use and what media do you advertize your contracts in? (Please complete the table below specifying value, procurement method, and media

	Value of Contract	Procurement Method	Advert Media Used
a)			
b)			
c)			
d)			

21. Have you conducted (a) bidding process(es) and bid evaluations since commencement of the Act?

Yes

No Why? _____

Don't know

22. Which of the following do you include in your advertisement (Please, tick as many as apply)

- a. Where to submit bids
- b. Bid opening date
- c. Time of bid opening
- d. Invitation to bidders to attend bid opening
- e. Qualification of bidders
- f. Others (Please specify)

23. Kindly specify the usual qualification of bidders your organization specifies in your advertisement

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____
- h. _____

24. Who else do you invite to observe bid opening and/or bid evaluation process (please list)

- a. _____
- b. _____
- c. _____
- d. _____

25. Does your organization have a technical bid evaluation committee? Yes No

26. Who chairs the technical bid evaluation committee? _____

27. How does your organization select the other members of the bid evaluation committee? Please explain _____

28. Do you inform the bidders/bidders of the criteria for bid evaluation?

Yes When _____ No

29. Have you ever had a situation where a dissatisfied contractor, bidder, or tenderer complained to you about any aspect of a particular procurement transaction? Yes No Don't know

30. Briefly recall what the complaint was about _____

31. How did you handle it? _____

32. Has the BPP ever reversed any aspect of your contracting or procurement process following a complaints or review process? Yes No Don't know

33. If the answer to the question above is yes, how many times has that happened

Only once Twice Thrice More than three times Can't recall

34. Has your organization ever used any of direct or emergency procurement methods?

Yes No Don't know

35. Did your organization obtain prior "no objection" from the BPP before using either emergency or direct procurement method?

Yes No Don't Know

36. Has your organization ever received request from individuals— bidder or civil society person - for documents relating to a particular procurement process

Yes No Don't Know

37. How did your organization handle such request for release of information

Provided all required information at no cost

Provided all required information at cost of reproducing the documents

Provided some of the required information at no cost

Provided some of the required information at cost of reproducing the documents

Did not provide information required

Don't know

38. How did the person making request for information react to your response?

Expressed satisfaction and took no further action

Expressed satisfaction with information provided but appealed procurement process

Expressed dissatisfaction and appealed process

Expressed dissatisfaction but took no further action

Don't know

39. Do you use the BPP's website?

Yes No Why _____

40. What do you visit the BPP's website for? (Please tick as many as apply)

To access/source information

To get the latest procurement news

To check whether our advertisements are correctly posted

Other reasons (please specify) _____

41 To what extent do you think your organization currently complies with the provisions of the Procurement Act, 2007 in its procurement process? (Please provide your most honest assessment)

100% 80% 60% 40% Less than 40% Not at all

42. What kind of support, if any, have you been receiving from the Bureau of Public Procurement? (Please tick as many as apply)

a. Training

b. Prompt attention to/guidance on specific procurement issues

c. Prompt issuance of "Noobjection certificates"

d. Others (please specify) _____

e. No support

43. Where would you like to see changes in the Public Procurement Act, 2007? (Please complete table)

	Item	Why	What change would you like to see?
a.	Procurement Methods		
b.	Advertisement media		
c.	Procurement planning		
d.	Bid evaluation		

e.	Bidding documents		
f.	Procurement of goods		
g.	Procurement of services		
h.	Procurement of Works		
i	Others (please specify)		

44. Please comment freely on any aspect of the Procurement Act and its applications (Write on the back or separate sheet, if necessary)

45. Please indicate which zone of the country your MDA is located

North East

North South

North Central

South South

South East

South West

THANK YOU FOR YOUR TIME!!

Survey Questionnaire for Procuring Entities

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire

Public and Private Development Centre has received a grant from United Nations Democracy Fund (UNDEF) to implement its Nigerian Procurement Monitoring Project. Part of this program is an activity to evaluate performance of selected MDAs within Abuja in the implementation of PA2007. The PACT/USAID advance project has provided limited support to expand the scope of this evaluation to include selected MDAs outside of Abuja and to cover MDA respondents from at least three geo political zones. Thus, we are conducting an assessment of level of compliance of Federal MDAs with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues surrounding implementation of the Act and to find out ways in which interested parties can render assistance to improve effectiveness. We are not a government agency and we will not use the information generated for any other purpose.

We would be most grateful if you would then kindly ANONYMOUSLY complete this questionnaire as honestly and as exhaustively as you can. *We do not desire your name or the name of your organization, and please do not provide them.* We will collate the responses and draw general conclusions from them. We make you this promise solemnly and honestly.

Thank you in advance.

Thank you in advance.

Keys: Where there is need for rating, rate 1, 2, 3, 4, 5; 1 = highest, 5 = lowest. Please do not fractionalize.

BPP = Bureau of Public Procurement

NCPP = National Council on Public Procurement

46.. How would you rate your awareness and knowledge of the Procurement Act, 2007 Rate 1, to 5; 1 for highest rating; 5 for lowest rating

47. Do you have the following documents (please complete the table)

	Document	Source of Document Enter 1 for BPP, 2 for Bureau's website, 3 for open market; 4 for from my organization, and 5 from Don't know or can't remember, and 6 for Don't have it
a.	Procurement Act, 2007	
b.	Procurement Guidelines issued by BPP	
c.	Standard bidding documents	
d.	Others, (please, specify)	
e.		
f.		
g.		
h.		

1. Have you attended any training on the Procurement Act, 2007? Please complete table below

Dates of Training	Title of Training	Location of Training	Organizer	Duration	How useful was the Training (Rate 1 to 5)

49. When did your organization start using the Procurement Act in its procurement process
- a. Since 2007
 - b. Since 2008
 - c. Since 2009
 - d. Since 2010
 - e. Not yet

50. How would you rate your understanding of the Procurement Act, 2007
 Rate 1 to 5; 1 = highest; 5 = lowest _____

51. To what extent has your organization been applying the Procurement Act
- a. All provisions of the Act
 - b. Most provisions of the Act
 - c. Major provisions of the Act
 - d. Some provisions of the Act
 - e. We do not yet apply the provisions of the Act

52. What provisions of the Act does your organization find difficult to apply currently
 Please list fully _____

53. If your organization does not apply all sections of the Act, what is the reason for that
- a. The provisions are cumbersome and difficult
 - b. Lack of personnel and capacity
 - c. Lack of time (it takes too much time)
 - d. Difficulties with receiving support from the BPP
 - e. Other reasons (please specify) _____

54. How does your organization handle procurement relating to the provisions of the Act that it does not yet apply?
- a. We are using the old methods in the meantime

- a. We avoid procurement involving those provisions
- b. Use other methods (please specify) _____
55. Does your organization have a procurement planning department/unit
- a. Yes Who heads the department/unit _____
- b. No
56. Does your organization have fully dedicated staff in the procurement planning unit/department?
- a. Yes How many _____
- b. No
57. Have staff of the procurement planning department attended formal procurement training
- a. how many staffs How many _____ Who organized the major ones _____
- b. No
- c. Don't know
58. Does your organization have a procurement planning committee (PPC)?
- Yes No Don't know
59. When was your organization's procurement planning committee (PPC) set up? (Please specify) _____
60. Please specify the following for the PPC
- a. The designated head (office) _____
- b. The designated secretary (office) _____
- c. Other members (offices) _____
- _____
- _____
- _____
61. Does your organization register contractors? Yes No Don't know
62. Do you charge fees for such registration Yes No Don't know
63. Please specify categories of contractors and fees charged for registration
- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
64. Does your organization advertise contracts in the BPP's procurement journal?
- Yes
- No Why? (Please specify) _____
- Don't know
65. What procurement methods do you use and what media do you advertise your contracts in? (Please complete the table below specifying value, procurement method, and media

	Value of Contract	Procurement Method	Advert Media Used
a)			
b)			
c)			
d)			

66. Have you conducted (a) bidding process(es) and bid evaluations since commencement of the Act?

Yes

No

Don't know

Why? _____

67. Which of the following do you include in your advertisement (Please, tick as many as apply)

- a. Where to submit bids
- b. Bid opening date
- c. Time of bid opening
- d. Invitation to bidders to attend bid opening
- e. Qualification of bidders
- f. Others (Please specify)

68 Kindly specify the usual qualification of bidders your organization specifies in your advertisement

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____
- h. _____

69 Who else do you invite to observe bid opening and/or bid evaluation process (please list)

- a. _____
- b. _____
- c. _____
- d. _____

70 Does your organization have a technical bid evaluation committee? Yes No

71 Who chairs the technical bid evaluation committee? _____

72 How does your organization select the other members of the bid evaluation committee? Please explain _____

73. Do you inform the bidders of the criteria for bid evaluation?

Yes When _____ No

74. Have you ever had a situation where a dissatisfied contractor, bidder, or tenderer complained to you about any aspect of a particular procurement transaction? Yes No Don't know

75. Briefly recall what the complaint was about _____

76. How did you handle it? _____

77. Has the BPP ever reversed any aspect of your contracting or procurement process following a complaints or review process? Yes No Don't know

78. If the answer to the question above is yes, how many times has that happened

Only once Twice Thrice More than three times Can't recall

79. Has your organization ever used any of direct or emergency procurement methods?

Yes No Don't know

80. Did your organization obtain prior "no objection" from the BPP before using either emergency or direct procurement method?

Yes No Don't Know

81. Has your organization ever received request from individuals – bidder or civil society person - for documents relating to a particular procurement process

Yes No Don't Know

82. How did your organization handle such request for release of information

Provided all required information at no cost

Provided all required information at cost of reproducing the documents

Provided some of the required information at no cost

Provided some of the required information at cost of reproducing the documents

Did not provide information required

Don't know

83. How did the person making request for information react to your response?

Expressed satisfaction and took no further action

Expressed satisfaction with information provided but appealed procurement process

Expressed dissatisfaction and appealed process

Expressed dissatisfaction but took no further action

Don't know

84. Do you use the BPP's website?

Yes No Why _____

85. What do you visit the BPP's website for? (Please tick as many as apply)

To access/source information

To get the latest procurement news

To check whether our advertisements are correctly posted

Other reasons (please specify) _____

87. To what extent do you think your organization currently complies with the provisions of the Procurement Act, 2007 in its procurement process? (Please provide your most honest assessment)

100% 80% 60% 40% Less than 40% Not at all

88. What kind of support, if any, have you been receiving from the Bureau of Public Procurement? (Please tick as many as apply)

a. Training

b. Prompt attention to/guidance on specific procurement issues

c. Prompt issuance of "No objection certificates"

d. Others (please specify) _____

e. No support

89. Where would you like to see changes in the Public Procurement Act, 2007? (Please complete table)

Questionnaire for Contractors, Suppliers, and Bidders

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire for Bidders, Contractors, and Suppliers

Public and Private Development Centre has received a grant from United Nations Democracy Fund (UNDEF) to implement its Nigerian Procurement Monitoring Project. Part of this program is an activity to evaluate performance of selected MDAs within Abuja in the implementation of PA2007. The PACT/USAID advance project has provided limited support to expand the scope of this evaluation to include selected MDAs outside of Abuja and to cover MDA respondents from at least three geo political zones. Thus, we are conducting an assessment of level of compliance of Federal MDAs with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues surrounding implementation of the Act and to find out ways in which interested parties can render assistance to improve effectiveness. We are not a government agency and we will not use the information generated for any other purpose.

We would be most grateful if you would then kindly ANONYMOUSLY complete this questionnaire as honestly and as exhaustively as you can. *We do not desire your name or the name of your organization, and please do not provide them.* We will collate the responses and draw general conclusions from them. We make you this promise solemnly and honestly.

Thank you in advance.

- Are you conversant with the provisions of the Public Procurement Act, 2007?
Yes No
- Have you participated in a procurement proceeding as a bidder, supplier, or contractor under the Public Procurement Act (PPA), 2007? If so, how many times?
Never participated Participated time(s)
- By completing the following *Table*, kindly indicate the type of contracts you participated in and the procurement method used.

Nature of Contract Proceedings Participated in and Procurement Method Used				
Type of Procurement	No of Times Bidded	Procurement Method and Frequency of Use		Comments
		Method	No of Times Used	
Works		Open competition		
		Selective/restricted tendering		
		Request for quotation		
		Direct procurement		
		Others		
Goods		Open competition		
		Selective/restricted tendering		
		Request for quotation		
		Direct procurement		
		Others		
Consultancy		Open competition		
		Selective/restricted tendering		
		Request for quotation		
		Direct procurement		
		Others		

4. How many times has your bid been successful? Never Been successful _____ times.

5. Kindly state how many of your successful bids were by?

- a. Open competition _____
- b. Selective tendering _____
- c. Request for quotation _____
- d. Direct procurement _____
- e. Others (please state type and number) _____

6. Have you even been dissatisfied with the conduct of process of a procurement proceeding in which you participated?

Never Yes

7. Have you ever filed a complaint against the process or outcome of a procurement proceeding?

Never

Yes, only to the accounting officer How many times? _____
 Yes, up to the BPP How many times? _____
 Yes, to the EFCC/ICPC How many times? _____
 Yes, to the National Assembly How many times? _____

8. Do you know of any constraint or reason that may restrain bidders from complaining against a procurement process if and when aggrieved (kindly explain)? _____

9. If applicable, kindly rate the way in which the various bodies handled your petition

Extent of Satisfaction with handling of Petition on Procurement Proceedings/Outcome						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / <small>Don't Know</small>	Comment
Accounting officer of procuring entity						
Bureau of Public Procurement						
The Economic and Financial Crimes Commission (EFCC)						
The Independent Corrupt Practices and Other Offences Commission (ICPC)						
The Senate						
The House of Representative						
The Federal Executive Council						

10. Kindly rate the extent of general compliance of procuring entities with following provisions of the Procurement Act?

Extent of Compliance with the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / <small>Don't Know</small>	Comment
Existence of prior procurement plans.						
Implementation of procurement in accordance with procurement plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement planning committees						
Existence and functioning of Tender Boards						
Level of public access to information						
Appointment of sub technical committee of the Tenders board						
Appropriateness of procurement methods used						
Mode of advertising and soliciting for bids						
Advertisements contain clear conditions for qualification of bidders in accordance with the act						
Advertisements contain technical description of goods, works or service required and not brand names						
Solicitations contain clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
<small>Use of shopping system for goods</small>						
Use of direct procurement						
Compliance of Bid Submission procedure						
Transparency of bid opening procedure						
Bid examination procedure						
Transparency of bid evaluation process						
Written Notification of Bid Winners						
Debriefing of Contractors						
Compliance to the complaint mechanism						

1. Do you think public procurement generally complies with the Public Procurement Act, 2007?

No Yes

2. In your opinion, what are the more common abuses of the procurement process in the general government? Kindly rank on a scale of 1 to 5, "1" meaning least subject to abuse

- a. Inflation of contract prices _____
- b. Collusion between procuring entity and bidders/suppliers/contractors _____
- c. Manipulation of the bidding process _____
- d. Contract splitting to circumvent threshold requirements for open competition _____
- e. Bribery and corruption _____
- f. Others (kindly list and rate) _____

3. Do you think failure to inaugurate the National Council of Public Procurement (NCPP) is affecting effective implementation of the Act? If yes, how (please explain)?

No Yes, in the following ways

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____

14. In the absence of the NCPP, in your opinion, who is currently performing its functions _____

15. Does Act envisage the role to the Executive Council of the Federation (Federal Executive Council, FEC) is currently playing in awarding contracts? No Yes

16. Do you think there is undue political interference in the procurement process? No Yes

17. Does the role of the FEC plays in awarding contracts amount to political interference?

No Yes

18. Kindly list sources of political influence or interference on the procurement process

- a. _____
- b. _____
- c. _____
- d. _____

e. _____
 f. _____

19. Do you think the BPP is effectively performing its functions under the Act? No Yes

20. In what roles of the Bureau does it require to improve, and what way? Kindly list and briefly explain.

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

21. Kindly rate the performance of the Bureau of Public Procurement in these areas

Extent of BPP's Performance of its Functions under the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Publication of Procurement Journal						
Establishment of a single internet portal which is a primary and definitive source of procurement information						
Dissemination of details of contract awards						
An accessible data bank of standard prizes						
An accessible data bank of all MDA procurement plans						
Formulation of implementing rules						
Establishment of Thresholds for implementing procurement						
Establishment of conditions and documentation for no objection						
Supervision of MDA procurement practice						
Efforts in fraud and corruption prevention and detection						
Issue of Certificate of No Objection to Contract Award						
Procurement Reviews						
Procurement Audits						
Handling of complainants by bidders						
Recommending criminal investigation of contract proceedings, as necessary						
Disciplining culpable accounting officers, the tenders' board or other personnel of an erring procuring entity						
Sanctioning indicted contractors and suppliers and requiring reparation, restitution, or correction						
Procurement training and sensitization of MDAs						
Procurement training and sensitization of contractors and suppliers						
Procurement training and sensitization of civil society groups						
Sensitization of the public on the Act						

22. What improvements do you want to see in the Act to make it more effective?

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

23. What changes would you like to see in the way procuring entities currently implement the Act?

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

24. Please comment freely on the extent of the implementation of the Act or any other issue relating to the Procurement Act (write also on the reverse of this page or use another sheet, if necessary)

Interview Questionnaire for Civil Society Observers

Assessment of the Implementation of the Public Procurement Act, 2007 Assessment Questionnaire for Civil Society Observers

Public and Private Development Centre has received a grant from United Nations Democracy Fund (UNDEF) to implement its Nigerian Procurement Monitoring Project. Part of this program is an activity to evaluate performance of selected MDAs within Abuja in the implementation of PA2007. The PACT/USAID advance project has provided limited support to expand the scope of this evaluation to include selected MDAs outside of Abuja and to cover MDA respondents from at least three geo political zones. Thus, we are conducting an assessment of level of compliance of Federal MDAs with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues surrounding implementation of the Act and to find out ways in which interested parties can render assistance to improve effectiveness. We are not a government agency and we will not use the information generated for any other purpose.

We would be most grateful if you would then kindly ANONYMOUSLY complete this questionnaire as honestly and as exhaustively as you can. *We do not desire your name or the name of your organization, and please do not provide them.* We will collate the responses and draw general conclusions from them. We make you this promise solemnly and honestly.

Thank you in advance.

25. What is the name of your organization? _____

26. What area of activity is your organization active (e.g., governance, environment?) _____

27. For how long have you been observing implementation of the Public Procurement Act, 2007?

28. In what geopolitical zones have you been observing implementation of the Act (tick as many as apply)?

A. Northwest Northcentral Northeast
B. Southwest Southeast Southsouth

29.. Has your organization even been invited by a procuring entity to observe its procurement proceeding? If so how many times? Never Have been invited
No. of times invited

30. Kindly breakdown the organizations that invite you into two as below, and state their respective numbers.

Number of mainline MDAs Number of parastatals

31. What stage of the procurement exercise are invited to observe

Bid opening only Bid evaluation only Bid opening and evaluation

32. Do you observe proceedings without invitation? Never Yes, Number of such observations

33. When uninvited, what stage of the procurement process do you observe on your own?

Bid opening only

Bid evaluation only

Bid opening and evaluation

Procurement planning

Bid submission

Publication of contract details

Others (please specify)

34. Are you willing to share your reports with us? No Yes, find attached

35. Kindly rate the extent of general compliance of procuring entities with following provisions of the Procurement Act?

Extent of Compliance with the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate /	Comment
Existence of prior procurement plans.						
Implementation of procurement in accordance with procurement plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement planning committees						
Existence and functioning of Tender Boards						
Level of public access to information						
Appointment of sub technical committee of the Tenders board						
Appropriateness of procurement methods used						
Mode of advertising and soliciting for bids						
Advertisements contain clear conditions for qualification of bidders in accordance with the act						
Advertisements contain technical description of goods, works or service required and not brand names						
Solicitations contain clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
<small>Use of shopping/tripnet</small>						
<small>Use of e-procurement</small>						
Use of direct procurement						
Compliance of Bid Submission procedure						
Transparency of bid opening procedure						
Bid examination procedure						
Transparency of bid evaluation process						
Written Notification of Bid Winners						
Debriefing of Contractors						
Compliance to the complaint mechanism						

Extent of BPP's Performance of its Functions under the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Publication of Procurement Journal						
Establishment of a single internet portal which is a primary and definitive source of procurement information						
Dissemination of details of contract awards						
An accessible data bank of standard prizes						
An accessible data bank of all MDA procurement plans						
Formulation of implementing rules						
Establishment of Thresholds for implementing procurement						
Establishment of conditions and documentation for no objection						
Supervision of MDA procurement practice						
Efforts in fraud and corruption prevention and detection						
Issue of Certificate of No Objection to Contract Award						
Procurement Reviews						
Procurement Audits						
Handling of complainants by bidders						
Recommending criminal investigation of contract proceedings, as necessary						
Disciplining culpable accounting officers, the tenders' board or other personnel of an erring procuring entity						
Sanctioning indicted contractors and suppliers and requiring reparation, restitution, or correction						
Procurement training and sensitization of MDAs						
Procurement training and sensitization of contractors and suppliers						
Procurement training and sensitization of civil society groups						
Sensitization of the public on the Act						

37. Kindly rate the level of compliance of contractors and service providers on the following requirements of the Act

Extent of Compliance of Contractors and Service Providers with the Requirements of the Procurement Act, 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Publication of Procurement Journal						
Professional and Technical qualification of Bidders						
Appropriate qualification of personnel of bidders						
Financial capability of bidders						
Equipment and infrastructure						
Provision of bid Security						
Provision of Statement in respect of dominating or subsidiary relationship with other bidders						
Affidavit declaring interest of personnel of Bureau and or MDA in the bidder						
Meeting Tax obligations						
Evidence of pension contribution for staff						
Professional and Technical qualification of Bidders						
Appropriate qualification of personnel of bidders						
Financial capability of bidders						
Equipment and infrastructure						
Provision of bid Security						
Provision of Statement in respect of dominating or subsidiary relationship with other bidders						
Affidavit declaring interest if any of personnel of Bureau and or MDA in the bidder or his bid						
Meeting Tax obligations						
Evidence of pension contribution for staff						

38. Do you think the absence of the National Council for Public Procurement (NCPP) is affecting proper implementation of the Act?
39. In your view, who is currently performing the functions of the NCPP under the Act?
- _____
40. What role does the Act assign to the Executive Council of the Federation or the Federal Executive Council (FEC) under the Act?
- _____
- _____
- _____
41. What role does the FEC perform in reality in the procurement and contracting process?
- _____
- _____
- _____
42. Is the FEC is interfering with or exerting undue influence on procuring entities in the procurement process?
- No Yes, (please explain)
- _____
43. Is the FEC is interfering with or exerting undue influence on the Bureau?
- No Yes, (please explain)
- _____
44. Is the National Assembly interfering with or exerting undue influence on the Bureau?
- No Yes, (please explain)
- _____
45. In your view, is the Public Procurement Act being correctly implemented by all parties (kindly explain)?
- _____
- _____
- _____
46. What changes would you like to see in the Act to make it more effective (kindly list and explain)?
- a. _____
- b. _____
- c. _____
- d. _____
- E. _____

Structured Interview Questions for Bureau of Public Procurement

Assessment of the Implementation of the Public Procurement Act, 2007 Assessment Questions for the Bureau of Public Procurement (BPP)

Public and Private Development Centre has received a grant from United Nations Democracy Fund (UNDEF) to implement its Nigerian Procurement Monitoring Project. Part of this program is an activity to evaluate performance of selected MDAs within Abuja in the implementation of PA2007. The PACT/USAID advance project has provided limited support to expand the scope of this evaluation to include selected MDAs outside of Abuja and to cover MDA respondents from at least three geo political zones. Thus, we are conducting an assessment of level of compliance of Federal MDAs with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues surrounding implementation of the Act and to find out ways in which interested parties can render assistance to improve effectiveness. We are not a government agency and we will not use the information generated for any other purpose.

We would be most grateful if you would then kindly ANONYMOUSLY complete this questionnaire as honestly and as exhaustively as you can. *We do not desire your name or the name of your organization, and please do not provide them.* We will collate the responses and draw general conclusions from them. We make you this promise solemnly and honestly.

1. after the Public Procurement Act, 2007 came into effect affect implementation of the Act, especially the work of the Bureau?
2. Who currently performs the policy approval and supervisory functions of the NCPP?
3. What role does the PPA 2007 or the BPP implementing rules envisage for the Executive Council of the Federation or the Federal Executive Council (FEC) vis-à-vis the role it currently plays, especially in approving contract awards?
4. On a scale of 1 to 5, one being the lowest, what is your rating of the general compliance with provisions of the Act?
5. On a scale of 1 to 5, one being the lowest, wha is your rating of the compliance of core government ministries and departments with provisions of the Act?
6. How would you rate the compliance of parastatals?
7. How would you rate the compliance of MDAs with headquarters in the geopolitical zones with the Act?

8. Have procuring entities been transmitting electronic and hard copies of records of procurement proceedings as required under the Act (s. 16(13))? Are these available for inspection?
9. How many MDA's have failed to comply with this provision
10. How often does the Bureau update the price database posted on its website?
11. Does the Bureau monitor the extent to which procuring entities use the price database in procurement awards?
12. What was the profit margin in contracts in Nigeria before the Public Procurement Act 2007
13. Do procuring entities file copies of their procurement plans with the Bureau?
14. Do you make available the procurement plans filled by MDA's to the public?
15. Kindly complete *Table 1* or provide information to enable its completion

Table 1: Requests for 'No Objection to Contract Award'					
	2007	2008	2009	2010	Comments
No. of Requests Received					
No. of Requests Granted					
No. of Requests Rejected					
Average Time Taken to Respond					
Major Reasons for Turning down Request					

16. Kindly also complete *Table 2* or provide information for its completion

Table 2: Petitions for Administration Review of Procurement Proceedings, section 54					
	2007	2008	2009	2010	Comments
No. of Petitions Received					
No. of Petitions Granted					
No. of Petitions Rejected					
How many procurement decisions reversed based on petitions					
Average Time Taken to Dispose of Petition					

17. Has the Bureau referred any procurement proceedings to the relevant authorities for criminal investigation under s. 53? How many? Has the Bureau taken any action based on the outcome of such investigations

18. Has the Bureau ever sanctioned any contractor or supplier, required completion of a contract based on use of substandard material or lesser skills of labour than contracted? How many times?
19. To what extent is the impression that politicians are interfering with the procurement process contrary to the intention of the Act correct?
20. Is it correct that the Bureau is distracted from its work owing to many probes and summons from the National Assembly and the EFCC and ICPC?
21. Kindly complete *Table 3* or provide information for its completion

Table 3: Requests for Information and Legislative and Investigative Summons					
	2007	2008	2009	2010	Comments
No. of Requests for Information Received					
No. of Requests Granted					
No. of Summons Received from Senate					
No. of Summons Received from House of Assembly					
No. of Summons Received from the EFCC					
No. of Summons Received from the ICPC					

22. Kindly complete *Table 4* in relation to training and publicity programmes of the Bureau

Table 4: BPP Training and Sensitization Programmes					
	2007	2008	2009	2010	Comments
Total number of programmes held by Bureau					
Number held in Abuja					
Number held in NE					
Number held in NW					
Number held in NC					
Number held in SW					
Number held in SS					
Number held in SE					
No of mainline ministries involved in programme					
No. of parastatals involved in programme					
Number of consultants involved					
Number of contractors and suppliers involved					

23. Has the Bureau undertaken, initiated, or completed any procurement research and survey since inception? How many? Which ones? Where can one obtain copies of the report?
24. Has the Bureau initiated, performed, or completed any procurement audit since inception? Is the report available?
25. Does the Bureau maintain a national database of the particulars and classification of categorization of federal contractors and service providers?
26. Has the Bureau made any recommendations under s. 6(i) of the Act on account of persistent breach of the provisions of the Act? How many times?
27. To what extent is the perception correct that there is interference with the work of the Bureau from
 - a. The National Assembly
 - b. The Federal Executive Council?
28. What are the facts of the Nnamdi Azikiwe runway extension saga? To what extent did that procurement violate the provisions of the PPA, 2007? To what extent is that experience typical of the extent of compliance with the PPA?
29. What constraints hinder your performance in implementing the Act?

30. What changes would the Bureau like to see in the Procurement Act, 2007 to make it more effective?
31. What changes would the Bureau like to make in the manner of implementation of the Act to make it more effective?
32. Kindly comment freely on the extent of implementation of the PPA.

Thank you very much for your time.