

2012

# THE NATIONAL ASSEMBLY AND IMPLEMENTATION OF THE PUBLIC PROCUREMENT ACT 2007

An assessment of the level of National Assembly's compliance with the provisions  
of the Public Procurement Act 2007



**PUBLIC &  
PRIVATE  
DEVELOPMENT  
CENTRE**

**UNDEF**



The United Nations  
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# TABLE OF CONTENTS

<b>TABLE OF ABBREVIATIONS</b> .....	<b>IV</b>
<b>ACKNOWLEDGEMENT</b> .....	<b>V</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>CHAPTER I: INTRODUCTION</b> .....	<b>6</b>
1.1 BACKGROUND TO STUDY.....	6
1.2 ABOUT PUBLIC AND PRIVATE DEVELOPMENT CENTRE.....	v
1.3 SCOPE AND NATURE OF THE ASSESSMENT.....	7
1.4 LIMITATIONS AND CONSTRAINTS OF THE ASSESSMENT.....	7
1.5 ORGANISATION OF REPORT.....	8
<b>CHAPTER 2: THE NATIONAL ASSEMBLY</b> .....	<b>10</b>
2.1 THE NATIONAL ASSEMBLY PROFILE.....	10
2.1.1 <i>The Senate</i> .....	10
2.1.2 <i>The House of Representatives</i> .....	11
2.1.3 <i>National Assembly Service Commission</i> .....	11
2.1.4 <i>The National Assembly Management</i> .....	13
2.2 THE NATURE AND SCOPE OF FUNDING OF THE NATIONAL ASSEMBLY.....	13
2.3 THE ROLE OF THE NATIONAL ASSEMBLY IN PUBLIC EXPENDITURE.....	14
<b>CHAPTER 3: THE PROCUREMENT SYSTEM</b> .....	<b>16</b>
3.1 INTRODUCTION.....	16
3.2 THE LEGAL FRAMEWORK AND CORE PRACTICES BEFORE THE PUBLIC PROCUREMENT ACT.....	16
3.3 THE PUBLIC PROCUREMENT ACT (PPA).....	16
3.3.1 <i>National Council on Public Procurement, the Bureau of Public Procurement, et al</i> .....	17
3.3.2 <i>The Fundamental Principles of procurement</i> .....	19
3.3.4 <i>Procurement Methods</i> .....	20
3.3.5 <i>Organization of Public Procurement</i> .....	20
3.3.6 <i>Other Core Provisions</i> .....	21
3.3.7 <i>General observations about the PPA</i> .....	22
<b>CHAPTER 4: FINDINGS OF THE ASSESSMENT</b> .....	<b>23</b>
4.1 INTRODUCTION.....	23
4.1.1 <i>Focus of Assessment</i> .....	23
4.1.2 <i>Ranking of Compliance</i> .....	24
4.2 DETAILED FINDINGS UNDER EACH INDICATOR.....	24
4.2.1 <i>Indicator 1: Level of Awareness and Understanding of the PPA</i> .....	24
4.2.2 <i>Indicator 2: Organising for procurement</i> .....	26
4.2.3 <i>Indicator 3: Procurement planning</i> .....	29
4.2.4 <i>Indicator 4: Qualification for participation in procurement</i> .....	30
4.2.5 <i>Indicator 5: Use of Procurement methods</i> .....	33
Indicator 6: <i>Advertisement of procurement opportunities</i> .....	35



<i>Indicator 7: Receiving of Bids</i> .....	36
4.2.8 <i>Indicator 8: Opening of Bids</i> .....	38
4.2.9 <i>Indicator 9: Bid Examination and Evaluation</i> .....	39
4.2.10 <i>Indicator 10: Award and signing of contract</i> .....	41
4.2.11 <i>Indicator 11: Handling of procurement complaints/disputes</i> .....	43
4.2.12 <i>Indicator 12: Record keeping and accessibility</i> .....	44
5.2.13 <i>Indicator 13: Contract administration</i> .....	46
4.2.14 <i>Indicator 14: Disposal of properties</i> .....	48
<b>CHAPTER 6: GENERAL COMMENTS AND CONCLUSION</b> .....	<b>51</b>
COMPLIANCE OF THE NASS AND ITS OVERSIGHT FUNCTIONS.....	51
SUGGESTIONS ON IMPROVING THE COMPLIANCE LEVEL OF THE NASS .....	52
IN CONCLUSION .....	53
<b>BIBLIOGRAPHY</b> .....	<b>54</b>
<b>TABLE OF LEGISLATION AND LEGAL INSTRUMENTS REFERRED TO</b> .....	<b>55</b>
<b>LIST OF DECIDED CASES REFERRED TO</b> .....	<b>56</b>
<b>APPENDIX 1: ASSESSMENT QUESTIONNAIRE FOR NASS PROCUREMENT OFFICERS</b> .....	<b>1</b>
<b>APPENDIX 2: ASSESSMENT QUESTIONNAIRE FOR BIDDERS, CONTRACTORS, AND SUPPLIERS</b> .....	<b>1</b>



## Table of Abbreviations

**ADR:** Alternative Dispute Resolution

**BPP:** Bureau of Public Procurement

**CNA:** Clerk of the National Assembly

**EFCC:** Economic and Financial Crimes Commission

**EU:** European Union

**FCT:** Federal Capital Territory

**FEC** Federal Executive Council (same as Executive Council of the Federation)

**ICB** International Competitive Bidding

**GCC:** General Condition of Contract

**MDAs:** ministries, departments and agencies

**NASS:** National Assembly (of the Federal Republic of Nigeria)

**NCPP:** National Council on Public Procurement

**OECD:** Organization for Economic Cooperation And Development

**PPA:** Public Procurement Act 2007

**PPDC:** Public & Private Development Centre Ltd /Gte

**SBDs** Standard Bidding Documents

**UNCITRAL:** United Nations Commission on International Trade Law

**UNDEF:** United Nations Democracy Fund

**UNDP:** United Nations Development Programme

**UNICEF:** United Nations Children's Fund

**USAID** United States Agency For International Development

## About Public and Private Development Centre Ltd by Guarantee

The Public and Private Development Centre Limited by Guarantee (PPDC) which commissioned this assessment is a Nigerian Citizenship sector organisation, which was established in 2001. PPDC promotes citizens participation in governance and development in a way that prevents corruption. It singularly secured inclusion of the clause requiring civil society monitoring of procurement in the Public Procurement Act 2007. It initiated the formation of the National Procurement Watch Platform (NPWP), and midwife commencement of procurement monitoring by citizens organizations in Nigeria. PPDC has continued to increase the number of citizen's organizations and professional bodies participating in procurement monitoring and advocacy for improvements in public expenditure management in Nigeria. It has become the strongest CSO voice for procurement reforms in Nigeria. PPDC has also developed and deployed several tools for procurement monitoring including an online, real time tool for collation and analyses of procurement reports based on a standard checklist. See [www.procurmentmonitor.org](http://www.procurmentmonitor.org).

Recently PPDC through its procurement monitors list-serve initiated a broad consultative process on issues surrounding the fuel subsidy removal which it continues to support. This initiative has led to the formation of the Citizens Wealth Platform by major players in the Nigerian citizens sector, this process has produced a published citizens evaluation of the 2012 National budget and broad budget heads and policies in general and specific recommendations for improving budgetary allocations, and for full and effective implementation of the Fiscal Responsibility Act 2007, Public Procurement Act 2007 and the Nigerian Extractive Industries Initiative Act 2007 see [www.procurmentmonitor.org](http://www.procurmentmonitor.org). It is increasingly being adopted as an important advocacy tool by local citizen's initiatives in Nigeria. This is in line with PPDC's strategy of activating partnerships that improve citizen's participation in governance, and support citizen's efforts to hold their leaders accountable.

PPDC, in 2009, received support from the United Nations Democracy Fund (UNDEF) to carry out an assessment of the levels of implementation of the Public procurement Act 2007 for the period 2010-2011. In a capacity building workshop session for the immediate past House Committee on Public Procurement supported by UNDEF under this program in October 2011. It was agreed that the assessment of levels of compliance with the Public Procurement Act 2007 within the legislature, should be carried out. This is the report of that assessment activity.

## Acknowledgement

This report is part of several efforts to assess levels of compliance of the National Legislature with the Public Procurement Act 2007. Access to National Assembly's officials; its listed contractors and its procurement records have been extremely difficult. Physical access to the National Assembly premises which was satisfactory previously has recently become very difficult as a result of security challenges. For this current exercise, PPDC hired the services of a consultant, Kingsley Tochi Udeh, Esq. of T.K Udeh and Associates (Legal Practitioners and Consultants), who is a public procurement law Specialist. He carried out the research assessment and prepared the draft report. Mr. Chibuzo Ekwewuo (PPDC's Chief Executive Officer) supervised this project; his role included revision and approval of research methodology/instruments, supporting efforts to gain access to staff and records at the National Assembly and revision of draft and final reports among others. Nkem Ilo, also of the PPDC, ceaselessly facilitating access to the relevant officials of the National Assembly. Mrs Chinagolum Tochi-Udeh, Esq. provided the field support that made this report possible. Kelechi Anyanwu provided research and miscellaneous assistance in the writing of this report.

For taking out time to respond to the survey instruments, our gratitude goes to the personnel of the National Assembly, Some National Assembly contractors and service providers, civil society organizations, and members/staff of the House of Representatives Committee on Public Procurement. Our thanks also go to the administration of the National Assembly without whose limited cooperation this exercise would have been impossible

Thanks to the United Nations Democracy Fund (UNDEF) for its financial support to this project.

Glory be to God from whom all good things come.



## Executive summary

This executive summary, first, briefly presents the objectives and strategies of the assessment; and, then, provides an overview of the assessment results against the fourteen indicators of the assessment. The indicators, among others, represent and capture the various procurement processes and phases as provided in the public Procurement Act 2007 (PPA). Levels of transparency, accountability and value for money run through all aspects of procurement; and are thus examined in the course of assessing the indicators. The following are the indicators:

1. Level of awareness and understanding of the Act
2. Organising for procurement
3. Procurement planning;
4. Qualification for participation in procurement;
5. Use of Procurement methods
6. Advertisement of procurement opportunities;
7. Receiving of bids;
8. Opening of bids;
9. Bid examination and evaluation;
10. Award of contract;
11. Handling of procurement complaints/disputes;
12. Record keeping and accessibility;
13. Contract administration; and
14. Disposal of properties.

The executive summary highlights the major issues and findings under each indicator, particularly the identified strengths and weaknesses, and their possible consequences.

### Objectives and Methodology of the Assessment

The Public and Private Development Centre (PPDC) with the support of the United Nations Democracy Fund (UNDEF) commissioned this work to assess the levels of compliance of the Nigerian National Assembly (NASS) with the provisions of the public Procurement Act 2007 (PPA). The methodology adopted for the assessment included using survey tools- questionnaires and structured interviews- to source relevant information/data on compliance levels of the NASS, and comparing the survey results with related reports, documents, and publications. The ranking system used in assessing the current compliance levels is as follows:

- No evidence of compliance= 0
- Anecdotal evidence of compliance = 1
- Partial compliance = 2
- Widespread, but not comprehensive, evidence of compliance = 3
- Full compliance = 4



## Summary of findings

The NASS has powers to procure goods, works and services for its administration since funds are directly allocated to it, as an arm of government. The Clerk of the National Assembly (CNA) is the accounting officer of the NASS. The CNA, working with other NASS Management staff, is statutorily charged with the overall responsibility for planning and organizing of NASS procurement, evaluating tenders and implementing the procurement.<sup>1</sup> The CNA and the other concerned bureaucrats are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of the PPA.<sup>2</sup> However, some principal officers (legislators) of both Houses of the NASS appear to be fully involved in the award or approval of award of certain contracts in the NASS. The level or standard of compliance required of the NASS as a procuring entity is stated by the PPA, thus: "Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of the Act and any regulations as may from time to time be laid down by the Bureau."<sup>3</sup> But, from the findings presented herein, the NASS has only demonstrated, on the average, a partial compliance with the provisions of the PPA. The summary of the findings are hereby presented.

### *Indicator 1: On level of awareness and understanding of the Act*

There are widespread but not comprehensive evidence of awareness and understanding of the PPA by the NASS officials involved in public procurement. This contextually high level of awareness of the PPA by the officials is attributable to the various relevant trainings and workshops on procurement. It enhances the capacity to comply with PPA.

### *Indicator 2: Organising for procurement*

The NASS has established the Tenders Board, the Procurement Planning Committee, and the Technical Evaluation Sub-Committee as prescribed by the PPA. They appear composed of the requisite members. However, there are indications of political interferences from certain political officers of the Houses of the NASS (legislators) in the decisions of these bodies, which hampers the efficient discharge of the bodies' functions.<sup>4</sup>

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<sup>1</sup>PPA, section 20(2)

<sup>2</sup>Ibid, section 16(21); see also the judgment of the High Court of the Federal Capital Territory, Abuja in the *Economic and Financial Crimes Commission (EFCC) v Dimeji Bankole's case* (unreported as at the time of writing).

<sup>3</sup> PPA, section 16(23).

<sup>4</sup>*EFCC v Dimeji Bankole's Case* in the Federal High Court relating to inflation of contract awarded in the National Assembly for purchase of items for House Members is an evidence.

### ***Indicator 3: Procurement planning***

The NASS has a Procurement Planning Committee to undertake procurement planning. But, there is only anecdotal evidence of appropriate conduct of statistical and market surveys for procurement. Also, preparing needs assessment and evaluation appears not to be an established practice in NASS. A procurement plan template (worksheet) was presented in the course of this assessment, but not the procurement plan itself. Lack of thorough procurement planning undermines efficiency in procurement implementation and ultimately reduces value for money, and fitness for purpose.

### ***Indicator 4: Qualification for participation in procurement***

To a large extent, contractors are not excluded from participating in NASS tendering processes for reasons other than lack of qualifications. However, the NASS requires that contractors would pay and register in different categories. This may be viewed as inconsistent with the spirit of the Act; and it may discourage potential competitive suppliers/contractors from participating, as some are averse to any cost other than the cost for preparing bid documents. Also, it was found that the participation of CSOs is largely limited.

### ***Indicator 5: Use of Procurement methods***

The NASS uses various methods of procurement. Open competitive bidding and request for quotation top in frequency of use. But it appears that its choice of procurement methods is not guided by the prescribed circumstances and conditions for their use. This improper use of procurement methods may be contributing in reducing competitiveness and value for money.

### ***Indicator 6: Advertisement of procurement opportunities***

The proper media of advertisement are used, but not always. Only one newspaper bid advert (2011) in Bluepoint Newspaper was presented by one of the Respondent-Contractors; none was presented by the Respondent-Officials of the National Assembly. The respondent officials and contractors claim that advertising practices are compliant. The timeline for submission of bid following the advert do not always conform to the timelines prescribed by the PPA. Some respondents perceive that sometimes procurement information is divulged to some bidders before advertisement is made. This may corrode confidence to participate in the process.

### ***Indicator 7: Receiving of bids***

There is substantial compliance with the provisions on receiving of bids. However, some responses to questionnaires suggest that in exceptional cases, bids may be accepted from a supplier that has supplied in the past to NASS, even after deadline for submission of bids. This practice undermines fair competition, which is the foundation of procurement under the PPA. The absence of effective competition in any case will reduce value for money.

### ***Indicator 8: Opening of bids***

The deduction from responses is that bids are not always opened immediately after deadline for bid submission despite provisions of the PPA to this effect. This gives leeway for acceptance of bids after deadline, to the detriment of fair competition. Also opening of technical proposal and financial bids are sometimes done simultaneously, contrary to the PPA.

### ***Indicator 9: bid examination and evaluation***

Bids are examined as provided in the Act. It is claimed by Respondent-Officials that evaluation criteria disclosed in the solicitation documents are the criteria used during evaluation; and that minutes of the evaluation are kept. However, no solicitation document or minutes of evaluation committee meeting or copy of its report was presented by the NASS staff to the researcher to enable him verify this claim despite demand for same. Written notices are not given to bidders whose bids are rejected during bid examination. Also, there are suggestions that information relating to evaluation is sometimes divulged to those not officially concerned with bid evaluation, prior to award. This will corrode the confidence of potential suppliers/contractors to participate in the procurement process in the NASS, thereby reducing competition.

### ***Indicator 10: Award of contract***

Performance guarantee is usually obtained for the award of any procurement contract upon which any mobilization fee is to be paid. Approval is obtained from the NASS Tenders Board. However, it was suggested that the Tenders Board gets directives or approvals from certain principal officers of the NASS before awarding major contracts. It may politicize the process and hamper the independent judgment of procurement officers.

### ***Indicator 11: Handling of procurement complaints/disputes***

No formal written complaint of breach or omission of procurement rules has been made to the NASS/CNA. Some respondent-contractors claim that the absence of any case of formal complaint is because contractors fear that bringing such complaints may jeopardise their chances of ever winning contracts in the NASS as a result of victimization. Lack of a functional complaint mechanism reduces enforceability of rules.

### ***Indicator 12: Record keeping and accessibility***

Although procurement records are kept by the NASS, there are hardly kept in electronic format. The NASS does not usually transmit copies of all its procurement records to the Bureau of Public Procurement, in each financial year. There is no evidence that it has made its procurement documents available for public inspection and copying at anytime. It is noteworthy that Consultant was not given access to NASS procurement records, despite efforts by him and PPDC over a long period of time. Lack of access to procurement records undermines transparency of the procurement process.

***Indicator 13: Contract administration***

The mobilization fee that the NASS pays to its contractors and suppliers is 15% in some cases, and in some other cases 20% and 25% contrary to the PPA. Only anecdotal evidence exist of NASS compliance with the requirements that all contracts shall provide for arbitration as the primary forms of dispute resolution; that procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution. There are several instances of delayed payments of contract sums. This may discourage participation of competitive suppliers and contractors

***Indicator 14: Disposal of properties***

The practice of NASS on disposal of properties is largely in breach of the Act and not transparent. Where the properties to be disposed are those procured for the use of Senators, Hon. Members and their aids, the properties are first offered to the concerned political officer at give-away prices, usually without recourse to the market value or formal valuation. In the circumstance, value for money is lost.

**To conclude here**, it is apposite to state that the current level of compliance of the NASS with the PPA is undesirable, since it undermines the moral standing of the legislative Houses of the National Assembly to exercise their oversight responsibilities over public procurement activities of the Federal ministries, departments and agencies.

## Chapter I: Introduction

### 1.1 Background to Study

This work is an assessment of the level to which the National Assembly complies with the provisions of Public Procurement Act 2007 (PPA).

According to the terms of reference, this assignment entailed the following:

- Designing of survey instruments, including: questionnaires, structured interview and templates;
- Administering the instruments;
- Sourcing and analysing related reports, documents, publications, and comparing them with survey results,
- And preparing a detailed report on the level of compliance of the National Assembly with the Public Procurement Act (PPA).

In particular, the following were to be assessed:

- Levels of transparency of the current procurement practice in the National Assembly;
- Process efficiency and effectiveness in the National Assembly;
- Knowledge and understanding of the provisions of the PPA and rules in the National assembly;
- Project advertisement practices;
- Methods of procurement utilized and rationale for the choices;
- Capturing current procurement process and other related procurement and other related procurement practices in the National Assembly;
- Structures of officers involved with procurement in the National assembly;
- Criteria for selecting winning bidders if any;
- Qualification and compliance of National Assembly contractors to the PPA;
- Levels of access to information and compliance with citizens monitoring provisions within the National Assembly;
- Levels of accountability and value for money by the National Assembly;
- Levels of compliance of the National Assembly with assets disposal provisions;
- Effectiveness or non-effectiveness of dispute resolution mechanism of the National Assembly;
- Examine impact if any of state of procurement processes of the National Assembly on its ability to oversight other procuring entities;
- Improvements in procurement practice in the National Assembly(transparency, access to information, competitiveness, process, specialization, improved skills deployment, documentation etc.) and outcomes(cost savings, value for money, completion of projects, improved service delivery etc.) resulting from implementation of the Act;
- And such other issues as the Coordinator PPDC may request to be evaluated;
- And such other issues as PPDC may direct or the consultant may consider necessary.

## **1.2 Scope and Nature of the Assessment**

The scope of this assessment includes the review of relevant literatures, desktop research on laws, regulations, guidelines and related reports.

In carrying out the assessment, the use of interviews and different structured questionnaires were employed to elicit responses from relevant officials of the National Assembly (NASS), contractors, bidders, and suppliers. This was the primary source of information for the assessment.

Secondly, relevant literatures and related publications were consulted and inferences drawn from them. Also references were made to relevant decided or pending cases on public procurement, some of which emanated directly from public procurement and allied matters in the NASS. Also, the Constitution of the Federal Republic of Nigeria 1999 and the National Assembly Service Commission Act 2000, and other relevant legislation were also referred to in conducting the assessment.

Finally, for a research of this nature, the internet proved to be a very crucial source of information as several websites, such as the website of the NASS, were also consulted and useful data and information obtained from them.

All the materials and sources of information relied upon, as mentioned above, were used in assessing the compliance levels of the NASS with the provisions of the PPA. Hence, the PPA is the standard and the main reference for the assessment.

## **1.3 Limitations and Constraints of the Assessment**

Every task has its own peculiar challenges and so is this assessment. It is now a common knowledge that most Government and private institutions are very sceptical in responding to private survey instruments, such as questionnaires, as they always have the erroneous belief that they will be putting their jobs or interests on the line by their responses. Also, owing to this belief, some that respond may be circumspect when presenting facts and may actually be economical with the truth. The aforementioned background posed the greatest challenge to this assessment, as it was difficult identifying and getting access to, and corporation from the various contractors, bidders and suppliers of the NASS, and relevant NASS officials, who were requested to supply the needed information for the assessment. Indeed identifying these persons was in itself an uphill task since the NASS does not ordinarily make such information available. In addition, several relevant procurement documents requested for were not presented. Notwithstanding that all the questionnaires were administered to the respondents in November 2011 after the long time it took PPDC to secure access, it was only in January 2012 that an acceptable number of the questionnaires responses were received, enabling analyses to commence. Several other factors did not help in the timeliness of the



assessment. Some of these factors included: cancelling of appointments; the serious difficulty encountered in gaining entrance into the National Assembly complex for the purpose of the assessment owing to high security alert/protocol; and other activities at the National Assembly. In the end we have had to rely largely on list of contractors and staff obtained from the Assembly administration, with very limited independent respondents. The challenge this posed was that the respondents would be largely favourable to the National Assembly. This makes the findings of this research very significant.

#### **1.4 Organisation of Report**

This report is presented in chapters with this first chapter introducing the subject matter of the assessment and providing background information on the assessment. Here also the terms of reference of the assessment was presented. It went ahead to identify the nature and scope of the assessment. As seen above, this chapter further outlined the challenges and limitations associated with the assessment.

The second chapter introduces the object of the assessment which is the National Assembly. The constitutional provision that brought it into being is presented and further elaboration is given on the organs that constitute it. Its functions as contained in the Constitution are also presented. Other statutory provisions that relate to its activities, such as funding and appointment of its key officials, are also highlighted.

Chapter three looks at the public procurement system of Nigeria as a whole, since it is the macrocosm of the public procurement in the National Assembly. Particularly, the legislative and institutional frameworks for public procurement in Nigeria were presented.

Chapter four presents the detailed findings of the assessment. The assessment focuses on the procurement activities of the NASS, beginning from procurement planning to contract administration practices.

Finally, chapter five presents general comments on the assessment exercise and a conclusion.



## Chapter 2: The National Assembly

### 2.1 The National Assembly Profile

Nigeria operates a bicameral legislature at the federal level, termed the National Assembly (NASS). The Constitution of the Federal Republic of Nigeria 2009 (amended) provides that “There shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.”<sup>5</sup> Vested in the NASS is the power to make laws for the peace, order and good government of the Federation.

The Senate comprises of 109 members drawn from the 36 six States of the Federation and the Federal Capital Territory (FCT); with 3 Senators representing each State and one Senator representing the FCT. The House of Representatives comprises of 360 members representing States constituencies of nearly equal population as far as possible. The tenure of the NASS members is 4 years from the date of its first sitting, after a general election. The Senators and the House members may appoint their personal aides, separate from the civil servants that serve the National Assembly.

Apart from the political/legislative Houses of the National Assembly, there is the National Assembly Service Commission which appoints civil servants to the service of the NASS. There is also the National Assembly Management, which is the civil service of the NASS, headed by the Clerk of the National Assembly (CNA).

#### 2.1.1 The Senate

The Senate is the upper legislative chamber of the NASS. It has the following Principal Officers;

- President of the Senate
- Deputy President of the Senate
- Majority Leader of the Senate
- Chief Whip of the Senate
- Deputy Majority Leader of the Senate
- Deputy Chief Whip of the Senate
- Minority Leader of the Senate
- Minority Whip of the Senate
- Deputy Minority Leader of the Senate
- Deputy Minority whip of the Senate

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<sup>5</sup>The Constitution of the federal Republic of Nigeria 1999, (amended), section 47

### 2.1.2 The House of Representatives

The House of Representatives, also called the lower legislative chamber, is the second arm of the Nigerian federal legislature. The House is made up of the following Principal Officers:

- Speaker of the House
- Deputy Speaker of the House
- Leader of the House
- Majority Whip
- Deputy House Leader
- Deputy Chief Whip
- Minority Leader
- Minority whip
- Deputy Minority Leader
- Deputy Minority Whip

### 2.1.3 National Assembly Service Commission

The National Assembly Service Commission was established by the National Assembly Service Commission Act 2000. The Act provides that the “Commission” shall be a body corporate with perpetual succession and shall have power to sue and be sued.<sup>6</sup> The Act further provides that the Commission shall comprise a Chairman and 12 other members, appointed by the President from the list of persons recommended by the President of the Senate in consultation with the Speaker of the House of Representatives, subject to the confirmation of the Senate.<sup>7</sup> These Commission members must not be public servants and they must possess the same qualifications as those constitutionally required of a House of Representatives member.<sup>8</sup> They hold office for 5 years and may be re-appointed for another last 5 year term.<sup>9</sup> The Chairman shall be the chief Executive of the Commission, and at least 2 members of the Commission shall be drawn from each of the six geo-political zones of Nigeria.<sup>10</sup>

Furthermore, the Act provides that “there shall be a Secretary to the Commission who shall be appointed by the Commission and shall:<sup>11</sup>

- a) Be a senior officer not below the rank of a Director in the Federal Civil Service;
- b) Be the accounting officer of the Commission; and
- c) Hold office on such terms and conditions as to emoluments and other conditions

<sup>6</sup> National Assembly Service Commission Act, Section 2(2)

<sup>7</sup> Section 3(1) to (4)

<sup>8</sup> National Assembly Service Commission Act , Section 4(1) and (2)

<sup>9</sup> Ibid, section 3(6)

of service as approved by the National Assembly  
The Secretary shall, subject to the general direction of the Commission, be responsible for the day to day administration of the Commission; and for keeping the books and proper records of proceedings of the Commission.<sup>12</sup>

The functions of the commission include the following:

- a) To formulate and implement guidelines for its functions;
- b) Appoint persons to hold or act in the office of -
  - i. The Clerk to the National Assembly,
  - ii. The Deputy Clerk,
  - iii. The Clerk of the Senate,
  - iv. The Clerk of the House of Representative,
  - v. The Deputy Clerk of the Senate,
  - vi. The Deputy Clerk of the House of Representative, and,
  - vii. All other offices in the service of the National Assembly
- c) For the purpose of administering the National Assembly Management, the Commission may:
  - i. Make appointments based on promotions and transfers, and confirm such appointments, and
  - ii. Dismiss and exercise disciplinary control over persons holding or acting in such offices.

In exercising its powers to make appointments or exercise disciplinary control over persons, the Commission shall not be subject to the direction or control of any authority or person.<sup>13</sup>  
The Commission has power to pay its staff such remunerations as are approved by the National Assembly.<sup>14</sup>

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<sup>10</sup> Ibid, Section 3(5)

<sup>11</sup> National Assembly Service Commission Act, Section 6(1)

<sup>12</sup> Ibid, Section 6(2)

### 2.1.4 The National Assembly Management

The National Assembly Management is the civil service of the National Assembly. It is made up of civil servants employed by direct appointment, or by transfer or secondment from the Civil Service of the Federation or of a State. The conditions of service of the civil servants that make up the National Assembly Management are the same with those in the Civil Service of the Federation, with such modifications as may be necessary.<sup>15</sup> The National Assembly management is headed by the Clerk of the National Assembly (CNA), who is also the accounting officer of the National Assembly. There is also the Deputy Clerk, the Clerk of the Senate, the Clerk of the House of Representative, Deputy Clerk of the Senate, the and Deputy Clerk of the House of Representative. There are various departments in the National Assembly Management headed by Directors. There are for instance Director of Finance, Director of Procurement and Supply, Director of Legal Services, Director of Personnel Management.

It is to be noted that the National Assembly Management, being the service arm of the NASS, is vested with the responsibility of undertaking procurement for the NASS. As was held by the High Court of the Federal Capital Territory, Abuja, in the case of *Economic and Financial Crimes Commission v. Dimeji Bankole* (2012),<sup>16</sup> the Clerk of the National Assembly and other top civil servants/management staff of the NASS, not the accused persons (politicians), were the accounting officer of the NASS and signatories to the House Account respectively.

## 2.2 The Nature and Scope of Funding of the National Assembly

The NASS has power to procure for goods, works and services for its administration since funds are allocated to it in the annual budgets/Appropriation Acts, as an arm of government. Also, the National Assembly Service Commission Act provides for the funding of the Commission as it states that “the National Assembly shall establish a fund for the National Assembly Service Commission and provision for the fund shall be made in the annual budget of the National Assembly.”<sup>17</sup>

Looking at the Federal Budget of 2009, the NASS received for capital expenditure ₦5, 250, 000, 000 out the total capital expenditure of ₦1, 022, 255, 794, 620. This represents 0.5% of

<sup>13</sup> Ibid, Section 7(7).

<sup>14</sup> Ibid, section 7(8)

<sup>15</sup> National Assembly Service Commission Act, Section, Section 13(1)(c)

<sup>16</sup> Unreported as at time of writing.

<sup>17</sup> Section 14

the total federal capital expenditure for that year. For recurrent expenditure, it received the sum of ₦101, 392, 333, 760, out of the total ₦1, 627, 287, 216, 097 that was recurrent expenditure for that year; which represents 6.2% of the total federal recurrent expenditure for that year. In 2010, the NASS received the sum of ₦16, 190, 000, 000 for capital expenditure out of the total amount of ₦1, 853, 906, 761, 420 allocated for capital expenditure for that year. This represents 0.8% of the total federal capital expenditure. For recurrent expenditure the sum allocated to the NASS for that year was ₦138, 015, 234, 695 and represents 6.6% of the total federal recurrent expenditure of ₦2, 077, 358, 560, 347 for that year. There was a change in trend in the allocation pattern to the NASS in the 2011 budget, as it received its fund for that year as Statutory Transfer from the Federation Account. Out of the total statutory transfer sum of ₦417, 824, 288, 743 the National Assembly received the sum of ₦150, 000, 000, 000 representing 35.9% of the total statutory transfers for that year. Unfortunately details of these sums and the activities or projects for which they are meant are not provided in the National budget, despite recent requests under the Freedom of Information law which it passed, no one outside of government is known to have obtained the breakdown of NASS budget in 2011 or even the proposed 2012 budget.

### **2.3 The Role of the National Assembly in Public Expenditure**

The role of the NASS in governance of Nigeria is provided in the Constitution of the Federal Republic of Nigeria 1999 (amended). The Constitution states that “The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives”.<sup>18</sup> In furtherance thereto, the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution.<sup>19</sup>

In addition and without prejudice to its legislative powers over matters in the Exclusive Legislative List, the NASS shall also have power to make laws with respect to the following matters:

- a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto; and

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<sup>18</sup>Section 4(1)

<sup>19</sup> Section 4(2)

- b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.<sup>20</sup>

Apart from the fact that the Public procurement Act (PPA) is an Act of the National Assembly, the next most important function of the NASS that has direct bearing on the federal public procurement system of Nigeria is its powers and control over public funds of the federation. Specifically, no moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the NASS.<sup>21</sup> Expenditures from the Consolidated Revenue Fund of the Federation is authorised by an Appropriation Act, Supplementary Appropriation Act or other Acts made by the National Assembly.<sup>22</sup>

Furthermore, the NASS has oversight powers to direct or cause to be directed investigation into the expenditures and activities of Federal ministries, departments and agencies or any other bodies that it has legislative powers over. This oversight powers conferred on the NASS are exercisable for the purpose of enabling it to:

- a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
- b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

Indeed, the above oversight powers of the NASS remains critical to the sustainability of the Nigeria public procurement system, and requires high ethical standards on the part of its members to effectively implement. A perception by MDAs that the NASS itself is corrupt or ignores and fails to comply with Due process or any or all of the public finance laws, will critically damage their ability to oversight implementation fo these procedures or laws.

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<sup>20</sup> Section 4(4) (a) (b)

<sup>21</sup> Constitution of the Federal Republic of Nigeria 1999 (amended), section 80(4)

<sup>22</sup> Ibid, section 80(2)

## Chapter 3: The Procurement System

### 3.1 Introduction

This chapter, divided into four sections, gives a general view of the procurement system of Nigeria, particularly of the Federation, from which the National Assembly's procurement derives. First, it presents the situation of the law and practice before the coming into operation of the Public Procurement Act 2007 (PPA); this is followed by a presentation of a synopsis of the PPA; part of this section looks at the setting of the Nigeria federal procurement system.

### 3.2 The Legal Framework and Core Practices before the Public Procurement Act

The public procurement of Nigeria's Federal Government is currently regulated by the Public Procurement Act 2007 (PPA).<sup>23</sup> This Act came into operation on the 4<sup>th</sup> day of June, 2007. Before the enactment of the PPA, public procurement by the Federal Government was regulated by Federal Financial Regulations and official circulars. The *New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/Parastatals*<sup>24</sup> issued by the Minister of Finance in 2001 is one of the last circulars on public procurement preceding the enactment of the PPA. This circular outlined the approval levels/monetary threshold for federal contracts as follows: Federal Executive Council- above N50million; Ministerial Tenders Board- N20 to N50million, Board of Directors- N20million; Permanent Secretaries- N1million; Chief Executives of parastatals- N700,000 and below.

### 3.3. The Public Procurement Act (PPA)

The provisions of the PPA apply to all procurement of goods, works, or services carried out by the Federal Government and all its Ministries, Departments and Agencies engaged in procurement.<sup>25</sup> The PPA has introduced far-reaching reforms which would be presented at various sections of this chapter.

The enactment of the PPA was aimed at strengthening the gains of the procurement reforms initiated in 2000, following the Nigerian Country Procurement Assessment Report (CPAR) 2000, produced by the World Bank in conjunction with a national task force set up

<sup>23</sup> Law no. 14 of 2010

<sup>24</sup> Ref No F15775 dated 27th June 2001

<sup>25</sup> PPA, section 15(1).



for that purpose.

The core provisions of the PPA are in line with international best practices as contained in instruments such as the UNCITRAL Model Law on Procurement of Goods, Construction and Services.

### **3.3.1 National Council on Public Procurement, the Bureau of Public Procurement, et al**

The body exercising regulatory oversight over the implementation of procurement policies by federal procuring entities is the Bureau of Public procurement (BPP). The BPP was established by the PPA as a body corporate with perpetual succession.<sup>26</sup> It took over or evolved from the Budget Monitoring and Price Intelligence Unit (BMPIU). A Director-General appointed by the President for a fixed 4 year term heads the BPP.<sup>27</sup> It has some level of financial autonomy, since its funds are appropriated directly to it by the National Assembly. The body has a defined set of responsibilities that include, but are not limited, to the following:<sup>28</sup>

- a) formulating the general policies and guidelines relating to federal public procurement;
- b) certifying Federal procurement within prescribed threshold prior to the award of contract;
- c) supervising the implementation of established procurement policies;
- d) monitoring the prices of tendered items and keeping a national database of standard prices;
- e) collating and maintaining in an archival system, all federal procurement plans and information;
- f) organizing training and development programmes for procurement professionals;
- g) preparing and updating standard bidding and contract documents;
- h) preventing fraudulent and unfair procurement and where necessary apply administrative sanctions;
- i) reviewing the procurement and award of contract procedures of every federal entity;
- j) performing procurement audits and submitting such report to the National Assembly bi-annually;

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<sup>26</sup>Section 3.

<sup>27</sup> PPA, Section 7. The term is renewable for another 4 year term and no more. The appointment is by competitive selection.

<sup>28</sup>PPA, section 5

It is noteworthy that BPP is not directly involved in the carrying out of procurement transactions and is not a member of any entity's Tenders Board or Tender Evaluation Committee; however, it can procure for its own administration.<sup>29</sup> This separation of powers is aimed at avoiding any conflict of interest.

Another body, the National Council on Public Procurement (NCPP), is established by the Act to be responsible for:<sup>30</sup>

- a) considering, approving and amending the monetary and prior review thresholds for the application of the provisions of the Act by procuring entities;
- b) considering and approving policies on public procurement;
- c) recommending to the President the appointment of the Director-General of the BPP<sup>31</sup>, and approving *the appointment of the Directors of the BPP*;
- d) receiving and considering, for approval, the audited accounts of, the BPP and
- e) approving changes in the procurement process to adapt to improvements in modern technology.

The Act<sup>32</sup> prescribes that the NCPP shall be composed of 12 members; out of which 6 are specified government officials (including the Minister of Finance, as Chairman, and the Director-General of BPP, as the Secretary);<sup>33</sup> and the other six are representatives of specified civil society/professional organizations.<sup>34</sup> However the NCPP has not been formally inaugurated, though members were appointed in 2008 under President Shehu Musa Yaradua.

Another body that plays a pivotal role in the public procurement system of Nigeria is the Economic and Financial Crimes Commission (EFCC) established by the Economic and Financial Crimes Commission (Establishment) Act 2004. It is a body corporate, with the Ministry of Justice as its supervisory Ministry. It has prosecuted or facilitated the prosecution of some procurement related cases; the two most famous being EFCC v Dimeji

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<sup>29</sup>PPA, section 3(2)(c).

<sup>30</sup>Section 2.

<sup>31</sup>PPA, section 7(1).

<sup>32</sup>Section 1(2).

<sup>33</sup>Others include the Attorney-General of the Federation, the Secretary to the Government of the Federation, the Head of Service of the Federation, the Economic Adviser to the President.

<sup>34</sup>These includes the Nigerian Bar Association, the Nigerian Institute of Purchasing and Supply Management, Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture, Nigeria Society of Engineers; Civil Society (viewed to refer to Non-Governmental Organisations in the narrow sense) and the media.

Bankole and Another (2012) and Federal Republic of Nigeria V Olabode George & Ors. However, the offences for which the accused persons in Olabode George's case were charged were not founded on the PPA, since the offending actions (mainly contract inflation and splitting) occurred before the Act commenced. The prosecution succeeded in having the accused persons convicted for abuse of office (in the Nigeria Ports Authority) by splitting of contracts contrary to Section 104 of the Criminal Code Act. The functions of the Anti-Corruption Commission and the Code of Conduct Bureau are also relevant to the enforcement of public procurement regulations in Nigeria, though they are not as active as the EFCC in this regard. The EFCC more than the Independent Corrupt Practices and Other related Offences Commission (ICPC) has the demonstrated potential to give teeth to the sanction provisions of the PPA.

### 3.3.2 The Fundamental Principles of procurement

Fundamental principles guiding procurement which are internationally accepted are enshrined in the PPA. Some of these principles include the following:<sup>37</sup>

- a) Procurement is to be conducted based only on procurement plans supported by prior budgetary appropriations, and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations;
- b) Open competitive bidding is the default procurement method;
- c) All procurement shall aim at achieving value for money and fitness for purpose; promoting competition, accountability, economy and efficiency; and conducted in a manner which is transparent, timely and equitable, while ensuring conformity with the law;
- d) There shall be compliance certification of procurement of certain value;
- e) Emphasis on stamping out corruption in government contract award and execution;
- f) Procurement record keeping and retention, and public access thereto;
- g) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceeding;
- h) A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation;

<sup>35</sup>SUIT NO: ID/71c/2008, High Court of Lagos State.

<sup>36</sup>The Corrupt Practices and other Related Offences Act NO. 6 2003 and the CODE OF CONDUCT BUREAU AND TRIBUNAL ACT CAP. 56 L.F.N. 1990 ACT CAP. C15 L.F.N. 2004

<sup>37</sup>PPA, section 16.

- i) Dispute resolutions mechanism (Arbitration being the primary form of dispute resolution) and an aspect of quality control to be incorporated into procurement contracts.

### 3.3.4 Procurement Methods

Apart from providing for open competitive bidding as the default procurement method, the PPA provides for the application of other special/restricted methods of procurement upon conditions clearly prescribed in the PPA. Some of these restricted methods include: two stage tendering, selective (restrictive) tendering, request for quotations, direct procurement, and emergency procurement.<sup>39</sup> In addition, Request for proposals is provided as the method for procuring consultants and certain services.<sup>40</sup>

### 3.3.5 Organization of Public Procurement

The Federal public procurement system under the PPA is a decentralized one. The procuring entities procure for themselves according to their budget allocations, subject to the ratification of the approval authorities. The procuring entities are to conduct procurements, subject to the monetary thresholds, through their Tenders Board made up of certain Officers of the procuring entities.

The PPA vests the power of determining the monetary and prior review thresholds for procurement on the National Council on Public Procurement (NCPP). However, the Council is yet to be inaugurated. But BPP has set monetary thresholds of procurement contracts that shall require a 'Certificate of No objection to Award' from the BPP, thus: goods and services N100 Million and above, works: N300 Million. Contracts of N 1 Billion and above shall be approved by the Federal Executive Council.

The usual processes that shall be followed in conducting procurement under the PPA are as follows, in that order:<sup>41</sup> planning of procurement; advertise or solicit for bids; receive, evaluate and select from the bids received according to set criteria; obtain approval of the approving authority before making an award; obtain a "Certificate of 'No Objection' to Contract Award" from the BPP within the prior review threshold; execute all Contract Agreements; announce and publicize the award.

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<sup>38</sup>PPA, section 16(1)(c).

<sup>39</sup> See generally, PPA, Part VII

<sup>40</sup> See generally, PPA, Part VIII

<sup>41</sup> See generally sections 19 and 20 of the PPA

### 3.3.6 Other Core Provisions

Procurement complaints and appeals mechanism are provided for under the PPA, unlike what was obtainable when public procurement was regulated by Financial Regulations and circulars. By virtue of the right of procurement review, an aggrieved bidder may first submit a complaint to the accounting officer of the procuring entity; and failing to get desired remedy, may further complain to the BPP. Appeals from the BPP go to the Federal High Court. Remedies from the complaint mechanism include: nullifying of an unlawful act or decision of the procuring entity, revising an improper decision of the procuring entity, prohibiting the procuring entity from taking further actions.<sup>42</sup>

Any contravention of the provision of the PPA is an offence and the offender is liable on conviction to;

- A term of imprisonment not less than 5 years but not exceeding 10 years, without option of fine- if offender is a natural person;
- For corporate bodies, debarment from all public procurements for a period of not less than 5 years; and a fine equivalent to the value of the procurement in issue; and its Directors convicted shall be liable on conviction to a term of imprisonment not less than 3 years but not exceeding 5 years, without option of fine- if offender is a corporate entity;
- A term of imprisonment 5 years, without option of fine; and summary dismissal from government services- if offender is an officer of the BPP or any procuring entity.<sup>43</sup>

A code of conduct is prescribed by the PPA for all persons involved with public procurement and disposal, including citizens monitors. The conduct of all persons involved with public procurement and disposal, whether as official of the BPP, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity. Public servants involved in public procurement and disposal must avoid all manner of conflict of interest.<sup>44</sup>

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<sup>42</sup> PPA, section 54

<sup>43</sup> See generally PPA, section 58.

<sup>44</sup> See generally PPA, section 57.

### **3.3.7 General observations about the PPA**

It could be noted that the PPA does not contain clearly defined procedures for undertaking contract administration responsibilities that include inspection and acceptance procedures (for procured goods, works and services), quality control procedures, payment certification and methods to review and issue contract amendments in a timely manner. However, these contract administration issues may be addressed through Regulations or Guidelines by appropriate authority, such as the BPP. In practice currently some level of reliance is being placed on the General Conditions of Contract (GCC) part of the BPP issued standard documents, containing some those responsibilities.

## Chapter 4: Findings of the Assessment

### 4.1 Introduction

This chapter presents the result of the detailed assessment of the levels of compliance of National Assembly (NASS) with the provisions of the Public Procurement Act 2007 (PPA). The assessment focuses on the procurement activities of the NASS, beginning from procurement planning to contract administration practices.

#### 4.1.1 Focus of Assessment

Since the procurement activities of the NASS revolve round the procurement phases, this assessment and the structure of the presentation herein focuses on and follows the order of the phases as provided under the PPA. In addition, a number of key procurement issues are assessed owing to their importance to procurement compliance. Levels of transparency, accountability and value for money run through all aspects of procurement; and are thus examined in the course of assessing the identified phases/issues. On the whole, the following core phases or issues are assessed seriatim:

1. Level of awareness and understanding of the Act
2. Organising for procurement
3. Procurement planning;
4. Qualification for participation in procurement;
5. Use of Procurement methods
6. Advertisement of procurement opportunities;
7. Receiving of bids;
8. Opening of bids;
9. bid examination and evaluation;
10. Award of contract;
11. Handling of procurement complaints/disputes;
12. Record keeping and accessibility;
13. Contract administration; and
14. Disposal of properties.

For the purpose of this assessment the aforementioned procurement phases and issues are termed indicators. The indicators present a “snapshot” comparison of the actual compliance levels of the NASS against the PPA standards that the indicators represent.



To enhance appreciation of the issues and the basis of the assessment, the assessment of each indicator begins with a brief summary of PPA provisions and good practices around that indicator; also the importance of the provisions are identified, where necessary. The intention is to give an idea of what the report measures. A table then summarizes the facts relating to the rating of NASS on the indicator and arrives at the score for the indicator. Following this, the report presents the evidence that informed the rating on each indicator. Where there is evidence of ongoing or planned reform around issues covered by that indicator, the report next presents it.

#### 4.1.2 Ranking of Compliance

The following is the ranking system for assessing the current capacity (each level of capacity is represented by a number/score: 0 to 4: in ascending order):

- No evidence of compliance = 0
- Anecdotal evidence of compliance = 1
- Partial compliance = 2
- Widespread, but not comprehensive, evidence of compliance = 3
- Full compliance = 4

#### 4.2 Detailed findings under each Indicator

**This section presents the detailed findings under each Indicator: 1 to 14.**

##### 4.2.1 Indicator I: Level of Awareness and Understanding of the PPA

*The objective of this indicator is to assess the extent to which the NASS officials involved in public procurement understand the provisions of the PPA.* This is relevant in determining levels of compliance because the officials need to understand the provisions of the Act to be able to implement or apply them in the course of procurement activities.

To determine the score under this indicator, the following factors are considered and assessed:

1. Whether officials are aware of and have copies of the PPA?
2. Relevant trainings for the officials;
3. Their ratings of their own understanding of the PPA;
4. Academic qualifications;
5. Answers given to questions to test understanding of the PPA.

Under this indicator, scoring of 0-4 as appearing in the rating system is maintained; but instead of scoring compliance level it is capacity level that is scored, since what is assessed is not compliance with the PPA per se,<sup>45</sup> but the capacity to understand and apply the Act.

<sup>45</sup> There is no specific provision of the PPA specifying a level of understanding of the PPA .

The table below presents the score for indicator 1 and the score rationale:

Scenario (current capacity)	Capacity Level (Score)
<p>All respondent officials have received relevant trainings and have copies of the PPA. Their academic levels are high enough to support the understanding of the provision of the PPA.</p> <p>However, some of them could not rate their level of understanding of the PPA. But those that attempted to do so rated themselves high. Answers to test questions disclose average to high level of understanding of the PPA.</p>	3

### ***Rationale for Score***

*The level of awareness of the officials about the PPA appears to be high.* Several factors contribute to this score. The PPA has been operative since year 2007- within this length of time most of the respondent-officials have been involved in procurement and have become aware of some provisions of the PPA through use. Knowledge of the PPA has also been garnered through relevant procurement trainings. Without an exception, all the respondent-officials claimed that they have copies of the PPA; copies were mainly provided by the NASS, while some sourced theirs from the BPP, and few others from the open market. All the respondent-officials, except one, have attended procurement trainings which had bearing on understanding the PPA. These training were either organised or funded by the NASS or the Bureau of Public Procurement (BPP). Respondent-officials rated the usefulness of the training highly. Some of the trainings were in Nigeria; while some were abroad- Accra-Ghana, Dubai-United Arab Emirates, London-UK. Respondent-officials disclosed that procurement trainings were held for them in 2009, 2010 and 2011. Though none of the respondents reported attending any training in 2008, there is evidence that the BPP has since 2008 been conducting public enlightenment programmes on the provisions of the PPA.

*There are indeed widespread, but not comprehensive, evidence of awareness and understanding of the PPA by the NASS officials involved in public procurement.* Apart from the aforementioned evidence of high level of awareness of the PPA by the officials, most of the respondent-officials rated themselves between very high and high on awareness and knowledge of the PPA. However, some of them could not rate their level of understanding of the PPA. There is no evidence

to controvert the self-assessment of those that rated their own levels of awareness and understanding of the Act, since they scored above average on questions that tested their general understanding of the PPA. Although their answers did not correspond accurately with the relevant provisions of the PPA to which the questions referred to, their answers to an extent correctly captured the intent and purpose of the provisions. For instance, when asked about what they understood 'lowest evaluated responsive bidder' to mean, answers given included "lowest responsive price that meet the specification", "lowest evaluated bidder after scrutiny by the Bid Evaluation Committee", and others similar to these. In addition, the fact that all the respondent-officials possessed higher educational qualifications also contributed to the high rating given to the NASS officials on understanding of the PPA.

#### **4.2.2 Indicator 2: Organising for procurement**

*This indicator assess whether the NASS have correctly established the bodies required in the PPA to undertake certain procurement functions for the organisation.* The essence of conferring certain procurement functions, such as planning and evaluation, on a body of persons, instead of on individual persons, is to depersonalise the procurement process and enhance transparency in the system. It could also provide needed checks and balances.

The PPA provides for the establishment of the following procurement-related bodies to be composed of members appointed according to the Act:

1. Tenders Board, shall be the approving authority for the conduct of procurement within the organisation.<sup>46</sup> The Tenders Board is responsible for the award of procurement of goods, works and services within the threshold set in the regulations.<sup>47</sup>

Its membership is to be prescribed by BPP's guidelines.<sup>48</sup> According to the Procurement Procedure Manual<sup>49</sup> published by the BPP, the accounting officer shall be the Chairperson; other Heads of Department within the procuring entity; the procurement officer of the procuring entity shall be the non member Secretary to the Tenders' Board. If the procurement officer is unavailable, a senior officer from the procuring entity, not below the rank of an Assistant Director (or equivalent) may serve as the non member Secretary.

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<sup>46</sup> PPA, section 17(a)

<sup>47</sup> PPA, section 22(3)

<sup>48</sup> PPA, section 22(2)

<sup>49</sup> paragraph 12.1.3

2. Procurement Planning Committee:<sup>50</sup> prepares the needs assessment and evaluation; identifies the goods, services or works required; carries out market survey; integrates procurement expenditure in procuring entity's annual budget; and prescribes the method to be used for procurements.

The Act requires the Procurement Planning Committee to consist of:

- a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
  - b) a representative of-
    - i. the procurement unit of the procuring entity who shall be the Secretary,
    - ii. the unit directly in requirement of the procurement,
    - iii. the financial unit of the procuring entity,
    - iv. the planning, research and statistics unit of the procuring entity,
    - v. technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
    - vi. the legal unit of the procuring entity.
3. The Technical Evaluation Sub Committee of the Tenders Board for evaluation of tenders.

*The table below presents the score for indicator and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>The NASS has established the following bodies, composed of the requisite members, that carry out the functions prescribed in the PPA:</p> <ol style="list-style-type: none"> <li>i. Tenders Board;</li> <li>ii. Procurement Planning Committee;</li> <li>iii. Evaluation Committee.</li> </ol> <p>However, political interferences in the decisions of these bodies are not ruled out. This undermines the high score that would have ordinarily been earned under this indicator.</p>	2

<sup>50</sup>See generally section 21 of the PPA.

### *Rationale for Score*

Responses indicate that the NASS has fully established the three in house procurement structures composed of members as provided by the PPA and their functions are as prescribed by the Act. Its Tenders Board is headed by the Clerk of the National Assembly (CNA) who is the accounting officer of the NASS. The secretary is the Assistant-Director Procurement. Other members are the Directors heading the various departments in the National Assembly Management. The membership of the NASS Tenders Board is largely in accordance with what the BPP prescribed, in the Procurement Procedure Manual. In the NASS, the Tenders Board acts as the approving authority for all contracts. It also ought to ensure due diligence in the execution of contracts. The membership of the Procurement Planning Committee is virtually the same with that of the Tenders Board, which when considered, may not be entirely compliant with compositional requirements of the Act read jointly with the current BPP regulations. As members of the Tenders board the heads of the various departments/units are regarded as representing the prescribed units in compliance with BPP rules; it would appear however that the same persons also in the procurement planning committee may not be the intendment of the BPP rules. The Evaluation Committee is constituted and its membership varies depending on the subject-matter of procurement to be evaluated.

*Notwithstanding, it is reasonable to hold that there is only partial compliance on the organisation for procurement.* This view is held for reasons stated above and also because there are indications<sup>51</sup> of political interference in the decisions of the bodies, which certainly hampers the efficient discharge of the bodies' functions. There is evidence that the principal officers of the Nigerian Senate and House of Representatives are involved in or approves the award of major contracts in the National Assembly or influence the Tender Board decisions to approve<sup>52</sup>. Furthermore, the full scale planning as provided in the Act, such as need assessment and evaluation, market and statistical surveys are not always carried out as suggested by the Respondent-Officials. However, there was no evidence, other than the

<sup>51</sup> From some Respondent-Officials and most Respondent-Contractors.

<sup>52</sup> Information from some respondents. The Former Speaker and Deputy Speaker of the House of Representatives, Dimeji Bankole and Alhaji Usman Bayero Nafada, respectively, are presently charged by the Economic and Financial Crimes Commission (EFCC) at a Federal High Court sitting in Abuja, for inflation of prices of goods purchased for members of the House of Representatives (contrary to the Public Procurement Act) during their leadership (Source: Mr. Festus Keyamo, Counsel to EFCC, in his press statement). This is apart from the case of breach of trust, to wit obtaining loans for House Members' running cost in disregard of the limits set as allowance for House Members, for which they were charged at the High Court of the FCT, Abuja; which the Court absolved them of guilt, holding that they had no case to answer. These are indicative of the involvement of principal officers of the legislative arm of the NASS in public procurement of the NASS.

responses to questionnaires, presented to show that full scale procurement planning is carried out at all in the National Assembly. There were no market survey reports or statistical analysis of prizes presented for assessment; the only relevant document presented was an unused procurement work plan. This situation is blamed on time constraints; or conversely, on the long length of time that budgeting and procurement processes take. This is suggestive of the need for improvement in the organising for procurement, since some other MDAs within the federal government with the same constraint have better organized there procurement.

### 4.2.3 Indicator 3: Procurement planning

*This indicator assesses the extent to which the NASS plans its procurement according to the provisions of the PPA.* The PPA provides that all procurements shall be based on procurement plan.<sup>53</sup> The activities that are involved in proper procurement planning according to the Act are as follows:<sup>54</sup>

- a) Preparing the needs assessment and evaluation;
- b) Identifying the goods, works or services required;
- c) Carrying appropriate market and statistical surveys
- d) Integrating its procurement expenditure into its yearly budget;
- e) Prescribing any method for effecting the procurement.

Procurement planning, particularly market surveys, provides information on the actual cost of goods, works and services. It also provides excellent information to predict the cost of similar goods, works or services in future budget years. With proper procurement planning, particularly budgeting, major contracts are appropriately timed, which in turn potentially helps to predict cash flow needs within government. These enable timely payments and reduce the extra costs associated with delaying contract completion and not having adequate funds to finance full performance.<sup>55</sup>

*The table below presents the score for indicator 3 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
The NASS has a Procurement Planning Committee to undertake the planning activities prescribed above.	2
To an extent, procurement planning is carried out and projected	

<sup>53</sup>Section 16(1)(b)

<sup>54</sup> PPA, section 18.

<sup>55</sup>OECD-DAC/World Bank, *Methodology for Assessment of National Procurement Systems (MAPS)*, version 4, 2006, at pg 20.



<p>expenditure is integrated in budget; this is done before budgetary appropriation. But preparing needs assessment and evaluation appear not be an established practice.</p>	
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### ***Rationale for Score***

*It appears the NASS has been making efforts to institute procurement planning practices as provided by the PPA; this is evidenced by the setting up of a Procurement Planning Committee.* There is evidence that the NASS through its Procurement Planning Committee identifies the goods, works and services to procure; integrates the projected expenditure in its annual budget; and prescribes the method to use for the procurement. However, some respondent-officials identified procurement planning as one of the aspects of the requirements of the Act that the NASS finds difficult to currently implement. This is mainly blamed on the lack of time within which to thoroughly carry out the planning activities, which, they claim, takes too much time to undertake as the Act prescribes. In addition, it was identified that another batch of procurement planning in the NASS actually takes place after budgeting, since there is usually substantial alteration in the draft budget submitted for passage as appropriation bill. Hence, when the final budget/Appropriation Act is passed, planning would be made to correspond with the Appropriation Act /final budget estimate.

*It could be stated that the NASS has partially complied with the planning of procurement according to the Act.* There is actually only anecdotal evidence of appropriate conduct of statistical and market surveys for procurement. Also, even though there may be a sort of assessment of the procurement needs of the NASS by its Procurement Planning Committee, it appears that preparing needs assessment and evaluation, according to the Act, is not an established practice in the NASS. Indeed, no procurement plan of the NASS for any particular year was presented by NASS officials for this assessment, notwithstanding that it was demanded. Some of the contractors view some of NASS procurement contracts as unnecessary, this points to absence of appropriate procurement planning. Furthermore, it could be deduced that it is not in all cases of procurement that planning is carried out by NASS, notwithstanding that value for money is undermined by neglecting any aspect of proper procurement planning.

#### **4.2.4 Indicator 4: Qualification for participation in procurement**

*This indicator assesses the practices of NASS on participation and selection of contractors for procurement, to determine to what extent the practices comply with the PPA.* As a general principle, firms should not be excluded from participating in a tendering process for reasons other than lack of qualifications. Some of the specific rules on qualification of contractors to participate in



procurement include:<sup>56</sup>

- a) legal capacity to enter into contract;
- b) shall not be insolvent, bankrupt, or being wound up;
- c) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
- d) possess the necessary:
  - i. professional and technical qualifications to carry out, particular procurements,
  - ii. financial capability,
  - iii. equipment and other relevant infrastructure,
  - iv. shall have adequate personnel to perform the obligations of the procurement contracts.

*In addition, this indicator assesses the opportunity and access given to civil society organizations to participate in procurement as observers.*

This indicator is important because exclusions from tendering that are not based on the qualifications of the firm may arbitrarily limit competition and may result in inefficient procurement and higher prices.<sup>57</sup>

*The table below presents the score for indicator 4 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>Contractors that meet the stipulated qualifications are not excluded from participating in NASS procurement. NASS requires the submission of documentary evidence of qualification for contractors seeking to participate in NASS procurement.</p> <p>However, the practice of requiring that contractors would have to pay and register in different categories, though not expressly prohibited by the PPA, may be viewed as inconsistent with the spirit of the Act.</p>	3

### ***Rationale for Score***

*To a large extent, contractors are not excluded from participating in NASS tendering processes for reasons other than lack of qualifications. Until recently, not paying and registering as a contractor with the NASS will disqualify one from bidding for NASS contracts. But it is claimed that the practice*

<sup>56</sup>See generally PPA, section 16(5) to (7).

<sup>57</sup> MAPS, pg. 11.

has currently stopped. To determine that contractors participating in the procurement process qualify, the NASS requires that certain documents be submitted by the contractors during registration, prequalification or as part of their bid, in line with the Act.<sup>58</sup> Some of these documents are: incorporation or registration certificate, current tax clearance certificate, certificate of and contribution to pension scheme (where necessary), bank statement or statement of turnover, evidence of previous relevant contracts performed, etc. These documents are requested and presented as evidence of requisite qualifications.

*Notwithstanding, the compliance of the NASS to the rules on participation is widespread but not complete.* The reason for adjudging it so is that the NASS had required that contractors seeking to participate in its tendering process shall register or renew registration with the payment of various sums of money depending on the category of contract prescribed by the NASS that the contractor seeks to do. But it was claimed that this registration practice has currently stopped. Indeed, though registration of contractors is not expressly prohibited by the PPA, it may be viewed as inconsistent with the intention of the Act, especially considering that sums of money are paid. The Act enjoins that the only money to be paid to procuring entities by contractors seeking to tender shall be money for cost of producing tendering documents.<sup>59</sup> In fact, the Act vests on the BPP, to the exclusion of all procuring entities, the duty of classifying and categorizing of companies on the register or database of federal contractors kept by the BPP.<sup>60</sup> Requiring contractors to register with money may act as a disincentive to participation and competition in the procurement.

Although procuring entities are directed by the PPA to invite two members of credible relevant civil society organisations (professional bodies and Non-Governmental Organisations) to observe the procurement activities, the NASS, is yet to fully practice inviting the relevant CSOs as observers in all its procurement activities. Notwithstanding that all the respondent-officials stated that the NASS invites CSOs to observe procurement proceedings, they could not provide particulars of the CSOs that have been so invited; only one name (CISLAC), with address: Asokoro, was mentioned. The contact phone number of CISLAC provided was used to contact CISLAC. Two of its members of staff, who are involved in procurement monitoring, were interviewed. They claimed that CISLAC receives written invitations to attend and observe NASS *bid opening exercises*. That it would be

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<sup>58</sup>Section 16(7).

<sup>59</sup>Section 23(2)

<sup>60</sup>Section 6(1)(f).

impossible to enter NASS premises without such written invitation. But they stated that the invitations are intermittent. Although, this Consultant did not see the written invitations since the interview was through the phone, CISLAC's claims could be regarded as believable since its credibility was confirmed by certain authoritative quarters, one of which was a BPP high cadre staff. Any interested CSO that is present to observe procurement proceedings, particularly bid opening, is allowed to do so. It has been noted that when procuring entities invite the CSOs at all it only limits the CSOs observation to bid opening. The NASS appears not to be an exception. The CSOs should be involved in observing all procurement process carried out to implement procurement plans. The only exception to this CSOs access is that certain information particularly related to submitted contractor bids are not given after bid opening, until an award is made or all bids are rejected.<sup>61</sup> Indeed, limiting the participation and access of CSO to observe and provide social audit to procurement processes denies the process of the transparency and accountability that the observation would have afforded. There is no evidence that the NASS has invited CISLAC for many of its procurement or that it has invited any other citizens group or even one professional body as required by law.

#### 4.2.5 Indicator 5: Use of Procurement methods

This indicator assesses whether the NASS:

- a) Uses open competitive bidding as the default procurement method?
- b) Only uses the other alternative/restricted methods under the circumstances prescribed for their use?
- c) Fulfills the conditions for the use of the alternative/restricted methods?

The PPA makes open competitive tendering the default method of Procurement to enhance competition and value for money.<sup>62</sup> The Act defines the situations in which other less competitive methods can be used; and also specifies acceptable justification and approval levels.<sup>63</sup> Fractioning of contracts to avoid open competition are prohibited.<sup>64</sup>

*The table below presents the score for indicator 5 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
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<sup>61</sup>PPA, section 19(b).

<sup>62</sup>Sections 16(1)9c) and 23(1).

<sup>63</sup>See generally part VII.

<sup>64</sup>PPA, section 58(4)(b).

<p>The NASS uses various methods of procurement; open competitive bidding and request for quotation top in frequency of use.</p> <p>But it appears its choice of procurement methods is not guided by the prescribed circumstances and conditions for their use.</p>	<p>2</p>
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***Rationale for Score***

*The NASS uses various methods of procurement; the most frequently used being open competitive bidding and request for proposal. Request for quotation is the most frequently used method for procurement of goods; while open competition is used more for works. The inference may be is that open competitive bidding is used for major contracts. The monetary thresholds to determine which of the methods to use according to respondents are: below ₦5 Million- restricted methods, above ₦5 Million- open competitive bidding. It is not clear whether it is BPP or NASS itself that prescribed these thresholds. It is the National Council on Public Procurement (NCPP)'s exclusive power to approve such monetary thresholds, but the NCPP is yet to be constituted, more than four years after the Act had provided for its establishment.*

*It is barely a partial compliance to the provisions on use of procurement methods that may be ascribed to the NASS. One of the factors that undermine the compliance rating of NASS is that there are no checks and balances to ensure that contracts are not split to circumvent the application of prescribed monetary threshold. The said checks and balances mechanism is considered absent, since there is no evidence of oversight activities of the BPP over the NASS procurement . Furthermore, there is evidence that the use of the alternative/restricted methods by NASS is not guided by the prescribed circumstances for their use. For instance, direct procurement and restricted tendering are used by NASS for procuring security equipment/items; but this does not fall within the circumstances for the use of those two methods. Indeed, NASS purchase of security items does not actually fall within the meaning of 'national defence and security', which the PPA exempts from the application of its provisions.<sup>65</sup>The above circumstance and practice would presumably undermine value for money in the affected procurement. It appears, also, that the BPP's approval is not sought before restricted tendering is used, contrary to the PPA that prescribes that as a condition for use of restricted tendering. <sup>66</sup>*

<sup>65</sup>Section 15(2).

<sup>66</sup>PPA, section 40(1).

Furthermore, time constraint was given as a reason for using restricted methods. It is perceived that some of the procurement officers do not have a working knowledge of which circumstances and conditions apply for the various methods. And they may be oblivious of the fact that dilatory conduct by a procuring entity cannot help to qualify a procurement activity for application of restrictive methods of procurement.

**Indicator 6: Advertisement of procurement opportunities**

*This indicator assesses to what extent the NASS advertises and solicits for bids in compliance with the PPA.* According to the PPA, an advertisement of procurement opportunities shall conform to the following features:

- a) the invitation for bids shall be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, at least two national newspapers (and one relevant internationally recognized publication, for international competitive bidding), and in the procurement journal;
- b) not less than six weeks shall be allowed before the deadline for submission of the bids for the goods and works;
- c) and for consultancy services, where request for proposal is advertised, procuring entity shall give not less than 30 days between the issue of the notice or request and the deadline for submission..

The above requirements apply when open competitive tendering is used. However, the requirement could also apply to some of the other special methods, such as request for proposal and two-stage tendering; as the Act provides that the process applicable in open competitive tendering shall apply to these other methods except to the extent that the provisions about them vary.<sup>67</sup>

The importance of advertising procurement opportunities are to: create awareness on the procurement opportunity; attract competition; enhance transparency and accountability to the public, who can assess the advert and the contract in question as part of social audit.

*The table below presents the score for indicator 6 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)

<sup>67</sup>Sections 39(3) and 44(a).

<p>The proper media of advertisement are used.</p> <p>But the timeline for submission of bid following the advert do not always conform to the timelines prescribed by the PPA.</p>	<p>2</p>
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***Rationale for Score***

The NASS advertises procurement opportunities (particularly, where open competitive bidding is involved) on 2 national dailies, its notice boards and website. The procurement journal produced by the BPP does not appear to receive procurement adverts as intended by the Act; hence the NASS not advertising therein is not to its discredit. But there is a tender journal produced by the Ministry of finance with support of the BPP which serves this purpose, but there is no evidence that NASS uses it. Respondents-officials mentioned various durations between advertising the procurement and deadline for submission of bid/proposal, which include- 15 days, 21 days and 30 days.

*The compliance rating of the NASS on advertisement is adjudged to be partial compliance.* This is because though the proper advert media appear to be used, the timelines for the adverts appear not to always follow the one prescribed by the PPA. It is noteworthy that some of the respondent-contractors perceived that sometimes advertisement of procurement is only a mere formality, since some preferred contractors already have all the information they require to win the contract. This also indicates that some bidders have more information than others, leading to un-equal opportunity to compete for the contracts.

**Indicator 7: Receiving of Bids**

This indicator assesses whether:

- a) there are secured tamper-proof bid-boxes provided for the submission of bids;<sup>68</sup>
- b) bid receipts are issued to those that submitted bids showing the date and time the bid was delivered;<sup>69</sup>
- c) bids received after the deadline for the submission of bids are not opened, but rather returned to the supplier or contractor which submitted it;<sup>70</sup>
- d) There are no communication between procuring entities and any supplier or contractor after publication of bid solicitation except as provided by Act.<sup>71</sup>

Proper receiving of bids is critical to the security of the bids submitted. If the security of bids is tampered with it may undermine the integrity and competitiveness of the tendering

<sup>68</sup> PPA, section 27(2).

<sup>69</sup> Ibid, section 27(4).

process. If the contents of the bids are known before formal bid opening, the information may give undue advantage in the tendering to bidders that it was divulged to.

*The table below presents the score for indicator 7 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>There is substantial compliance with the provisions on receiving of bids as stated in a), b) and d) above, under this indicator.</p> <p>However, there is an isolated case(s) of non-compliance with provision c) above</p>	3

### *Rationale for Score*

The NASS provides tamper-proof bid-boxes for its tendering processes, especially where the bidding is by way of open competitive tendering. The boxes are kept at designated places in the premises of the NASS. Bidders present their tenders to the officer in charge for the submission to be registered and acknowledged. The bidders may then go and deposit the bids in the designated bid-boxes. Though the bidders are not issued bid receipts as evidence of submission of bids; a register is opened for bid submission, wherein bidders submitting endorse time and date. The respondent officials claim that the NASS does not communicate with suppliers or contractors after publication of bid solicitation, except to formerly respond to requests for clarification of bidding documents, no evidence was found to the contrary.

*However, some case(s) of non-compliance on receiving of bids gives the NASS a score of widespread, but not comprehensive, compliance.* There is evidence that suggests that in some cases, bids may be accepted from a supplier that has supplied in the past to NASS, even after deadline for submission of bids. This is not in keeping with the Act, notwithstanding the strong reasons that might be given to justify the practice. It undermined the full compliance score that would have been awarded to NASS on this indicator.

<sup>70</sup> Ibid, section 27(5).

<sup>71</sup> Ibid, section 27(6).



#### 4.2.8 Indicator 8: Opening of Bids

The standards that are assessed under opening of bids are as follows:<sup>72</sup>

- a) attendees are permitted to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- b) all the bids are opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- c) the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- d) a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the Tenders Board; and
- e) the name and address of each bidder, the total amount of each bid, the bid currency are called-over to the hearing of all present, and these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.
- f) For request for proposals, technical proposals are opened first, immediately after deadline for submission, followed by financial bids.

Standards a) to e) above are more relevant where open competitive bidding are used, although they also apply to restricted procurement methods, except direct procurement.

*The table below presents the score for indicator 8 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
There is substantial compliance with the provisions on receiving of bid: a), b) d) and e) above, under this indicator.  However, the compliance with provisions c) and f) above is not consistent	3

<sup>72</sup>As provided under PPA, Section 30(a)-(e).

### *Rationale for Score*

There is no evidence that suggests that the NASS does not permit attendees to examine the bid envelopes to ascertain that the bids have not been tampered with. Usually the bid advert or solicitation documents disclose the time for bid opening and bidders are at liberty to be present at the bid opening; and the bids are opened in their presence, as evidence suggests. A register is opened where those in attendance may write their names, addresses and names of organizations represented. Normally, the person in charge of bid opening calls out the required details to the hearing of those in attendance and they are recorded. However recent strict restrictions to entrance into the NASS, as a result of security concerns, make it difficult for members of the public to attend bid openings.

*There is widespread, but not comprehensive, compliance on bid opening, for the reasons that follow. As it relates to the time for opening of bids, some of the respondents stated that bid opening takes place immediately following the deadline stipulated for the submission of bids; while others stated that it takes place some hours or a day after the deadline. What could be deduced from the above conflicting positions is that bids are opened immediately after deadline, but not in all cases. This scenario also plays out as it relates to opening of technical proposal and financial bids, as conflicting answers were provided. Not doing bid opening immediately after deadline for bid submission creates an opportunity for receiving of bids that arrive after deadlines.*

#### **4.2.9 Indicator 9: Bid Examination and Evaluation**

*Bid examination and evaluation are the most critical stages of a procurement exercise since it is where the winning bid is determined. This indicator assesses the extent to which the NASS complies with the provisions of the PPA in respect of bid examination and evaluation.<sup>73</sup> The following are specifically assessed:*

- a) Whether the bids are first examined to ascertain that they meet all the general bidding requirements; and clarification of bids are sought where necessary?<sup>74</sup>
- b) Whether written notice is given promptly to the suppliers whose bids were rejected?<sup>75</sup>
- c) Whether the criteria used in evaluating the bids are made known to the bidders from the outset of the bidding exercise?<sup>76</sup>
- d) Whether the lowest evaluated responsive bid from bidders that have responded to the bid solicitation is the one selected for award?<sup>77</sup>

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<sup>73</sup> Section 32(2)

<sup>74</sup> PPA, section 31

<sup>75</sup> Ibid, section 31(15).

<sup>76</sup> Ibid, section 32(1).

- e) Whether the Evaluation Committee keeps minutes and writes report of the bid evaluation?<sup>78</sup>
- f) Whether after opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award are not disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award?<sup>79</sup>

*The table below presents the score for indicator 9 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>Bids are examined as provided in the Act. Evaluation criteria disclosed in the solicitation documents are claimed to be the criteria used during evaluation. Minutes of the evaluation is kept</p> <p>However, written notice is not given to bidders whose bids are rejected during bid examination. And there appear to be instances where information relating to the examination, clarification and evaluation of bids and recommendations concerning award are disclosed to bidders or to persons not officially concerned with the evaluation process before the successful bidder is notified of the award.</p>	3

### *Rationale for Score*

Bids submitted to the NASS are examined to ascertain that they comply with the general bid requirements such as signing of bids, submission of tax clearance certificate, etc. At this stage, the NASS, in cases where there are grey areas, request clarification from bidders. The Respondents-officials claimed that criteria used for evaluation are communicated to bidders in the bid advert, the bid solicitation and tender documents. These documents were however not presented by NASS for this assessment. The evaluation committee respondents claim, keep minutes of its meeting and write evaluation reports. It is claimed that awards are only made to the bidder that submitted the lowest evaluated responsive bid. However, no evaluation report was presented by NASS officials to the Consultant for this assessment

<sup>77</sup>Ibid, sections 32(2) and 33.

<sup>78</sup>Ibid, section 32(3)(m).

<sup>79</sup>Ibid, section 32(8).

even though requested. Hence, there was no opportunity to see and compare any evaluation report with the solicitation document to determine if published criteria is the basis for selection of a winner.

*There is widespread, but not comprehensive, compliance on examination and evaluation of bids, for the reasons that follow.* It was largely admitted that bidders whose bids were rejected are not informed about the rejection. This may appear innocuous even though provided by the Act, until one considers that a bidder whose bid is rejected has the right to request for a review of the rejection based on the provisions of the Act. If a bidder is not informed of the rejection he cannot take steps to exercise the right of review. On whether: “after opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award are not disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award”: almost all respondent-officials answered in the affirmative or shrunk from answering. But other respondents indicated that in some instances information relating to the bidding is divulged to persons not officially concerned with the evaluation process. From the foregoing, it could be concluded that the NASS does not officially divulge such information, but there are instances where such information are divulged unofficially.

#### **4.2.10 Indicator 10: Award and signing of contract**

Under this indicator, the following are to be complied with, in accordance with the PPA.

- a) Obtain approval of the approving authority before making an award, that is, from the Tenders Board;<sup>80</sup>
- b) Obtain a “Certificate of 'No Objection' to Contract Award” from the BPP within the prior review threshold as stipulated in the Act;<sup>81</sup>
- c) Notice of the acceptance of the bid shall immediately be given to the successful bidder<sup>82</sup>
- d) The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid.<sup>83</sup>

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<sup>80</sup>PPA, section 19(d).

<sup>81</sup> Ibid, section 19(h)

<sup>82</sup> Ibid, section 33(3).

<sup>83</sup> Ibid, section 36.

The table below presents the score for indicator 10 and the score rationale:

Scenario (summary of current compliance)	Compliance Level (Score)
<p>Performance guarantee is usually obtained for the award of any procurement contract upon which any mobilization fee is to be paid.</p> <p>Approval is obtained from the NASS Tenders Board; however, there is suggestion that the Tenders Board gets directives or approvals from certain principal officers of the NASS before awarding major contracts.</p> <p>It is claimed that there is no contract by the NASS that falls within the threshold that requires Certificate of No Objection from BPP; This is doubted.</p>	2

### *Rationale for Score*

After the evaluation process has been concluded, the evaluation report is presented to the NASS Tenders Board (the approving authority) to obtain its approval, before the award is made. Notice of acceptance of bid and consequent award is given to the successful bidder after award. However, it was disclosed that in certain major contracts, approval of certain principal officers of the Senate and House of Representatives are sought for and obtained before the award is made.

It follows that such principal officer may interfere with the process and the result. It may be reasonably argued that this is not within the intendment of the Act. This is because the NASS Tenders Board (composition is discussed under Indicator 2) is the procurement approving authority for NASS; and it is the accounting officer of the NASS, that is, the Clerk of the National Assembly, who is vested with the power of supervision and overall responsibility over public procurement of the NASS.<sup>84</sup>

<sup>84</sup>PPA, section 20; see also *EFCC v Dimeji Bankole's case*, High Court FCT, Abuja, (supra)

It was claimed by NASS respondent-officials that the NASS had not awarded contracts within the threshold that requires the obtaining of Certificate of No Objection from BPP. It is stated that the recent circular from BPP specifies that only contracts above ₦100 Million (one hundred million Naira) services, and ₦300 Million (three hundred million Naira) for goods, and N1billion for works that shall require the issuance of Certificate of No Objection before award. However, it does appear that there are works undertaken for the NASS, such as the construction of the new Senate and House of Rep buildings (a part is still ongoing), which is valued above the threshold. Also, there was the contract for purchase of vehicles by the House of Representatives from Peugeot Automobile of Nigeria; a contract that resulted in a national scandal for the former Speaker of the House of Representative. Was a Certificate of No Objection obtained for this contract whose value is above the threshold or not? Answers to these questions were not provided, and lead us to conclude that even where contracts fall within no objection thresholds, it is unlikely that the NASS seeks No Objection of the BPP.

Providing that a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid is increasingly practiced in the federal MDAs; the NASS is not an exception.

*On the whole under this indicator, there is a partial, compliance.*

#### **4.2.11 Indicator 11: Handling of procurement complaints/disputes**

The UNCITRAL Model Law on Procurement of Goods, Construction and Services, captures the essence of right of bidders to apply for procurement review and enforceable remedies, thus “an effective means to review acts and decisions of the procuring entity and procurement procedures followed by the procuring entities is essential to ensure the proper functioning of the procurement system and to promote confidence in that system”. The PPA does set out a clear procedure to achieve this.

Under this indicator, the following are to be complied with, in accordance with the PPA.

- a) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer;
- b) On reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.

The table below presents the score for indicator 11 and the score rationale:

Scenario (summary of current compliance)	Compliance Level (Score)
No formal written complaint of breach or omission of procurement rules to the NASS/CNA has been reported.	Cannot score.

### ***Rationale for Score***

All the respondents stated that there has never been any case of formal written complaint from the bidders to the NASS/CNA concerning a breach or omission of procurement rules. A respondent-contractor claimed that the reason for the absence of formal procurement complaint is that contractors are satisfied with the whole process. The veracity of this claim is suspect considering the other responses from the same respondent, which were tested and found not reliable. Indeed, a larger number of respondent-contractors claim the absence of any case of formal complaint is because contractors fear that bringing such complaints may jeopardise their chances of ever winning contracts in the NASS as a result of victimization.

However, some bidders have been reported to have informally complained to certain NASS procurement officers, who in turn gave informal responses to the complaints. This practice obviously is not within the provision of the Act; and therefore cannot be scored under this Indicator.

### **4.2.12 Indicator 12: Record keeping and accessibility**

*The availability of information and records that track each procurement action is critical to assessing implementation performance.* It is also important to the functioning of control systems, both internal and external, as it provides the basis for review.<sup>85</sup>

This indicator assesses whether the NASS complies with the following requirements of the PPA concerning record keeping and accessibility.

- a) Maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.<sup>86</sup>
- b) Copies of all procurement records shall be transmitted to the BPP not later than 3 months after the end of the financial year and shall show:<sup>87</sup>

<sup>85</sup>MAPS, pg. 30.



- i. information identifying the procuring entity and the contractors;
  - ii. the date of the contract award;
  - iii. the value of the contract; and
  - iv. the detailed records of the procurement proceedings.
- C) Procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge, after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.<sup>88</sup>

*The table below presents the score for indicator 12 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>Though procurement records are kept by the NASS, there are hardly ever kept in electronic format, if at all.</p> <p>NASS does not have a practice of transmitting copies of all its procurement records to the BPP, in each financial year.</p> <p>It hardly ever makes its procurement documents available for public inspection and copying.</p>	1

### *Rationale for Score*

It appears that the NASS keeps file records of all procurement proceedings made within each financial year; but seldom, if at all, keep electronic records of the procurement proceedings. It is easy for the NASS to keep procurement records since it is in the culture of the civil service to keep records. However, it is noteworthy that there have been cases of leaked, missing or misplaced files and records, which leads one to conclude that there is minimal security protocol to protect records. Also, although the records may be kept, it is perceived in some quarters that the contents of some of the records are manipulated to cover up improprieties and breach of the Act. As for length of record keeping, which is 10years from the date of award, though the NASS may be willing to keep the records for that

<sup>86</sup>PPA, sections 16(12) and 38.

<sup>87</sup>Ibid, section 16(13).

<sup>88</sup> This is reinforced by the Freedom of Information Act

length, however it is not apparent that the NASS presently has a facility to keep the huge volumes of all procurement records handled within the prescribed time.

The NASS do not transmit copies of all procurement records to the BPP, in each financial year. Transmitting copies of all procurement records in each financial year to the BPP may be unwieldy and virtually unrealistic, especially considering the minimal or near absence of electronic record keeping in the NASS. However, to keep with the essence of that requirement of the Act, at least records containing, (a) information identifying the NASS and the contractors; (b) the date of the contract award; (c) the value of the contract; and the detailed report of the procurement proceedings ought to be transmitted to the BPP, to demonstrate developing compliance.

The evidence that the NASS does not make available to the public all unclassified procurement records far outweighs the contrary claims by some of the respondent-officials. Most requested records could not be provided for this assessment, despite the fact that respondents were nominated by the NASS administration. Observations show that when one requests for procurement records even for research, the responses are almost always negative. The request is usually frustrated by evading tactics or outright refusal.

*On the whole, there is only anecdotal evidence of compliance by the NASS on the indicator.*

### **5.2.13 Indicator 13: Contract administration**

*Contract administration provisions in the PPA are intended to help ensure quality performance of the procurement contract.* Those contained in the Act are barely a minimum. This indicator assess to what extent the NASS has complied with these minimum contract administration requirement in the PPA, which include the following.

- a) Mobilization fee of not more than 15% may be given, and supported by an unconditional bank guarantee, or where appropriate insurance bond, issued by an institution acceptable to NASS;<sup>89</sup>
- b) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement;<sup>90</sup>
- c) All procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution.<sup>91</sup>

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<sup>89</sup>Section 35(1).

<sup>90</sup>Section 35(2).

- d) All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution.<sup>92</sup>
- e) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.<sup>93</sup>

*The table below presents the score for indicator 13 and the score rationale:*

Scenario (summary of current compliance)	Compliance Level (Score)
<p>There are instances where mobilization fee of over 15% is paid to contractors.</p> <p>Only anecdotal evidence of compliance with the requirement b), c) and d) above exist.</p> <p>There are several instances of delayed payments of contract sums.</p>	1

### *Rationale for Score*

The mobilization fee that the NASS pays to its contractors and suppliers is 15% in some cases, and in some other cases 20% and 25%. No reason was identified for this variance of practice. The inference therefore is that certain contractors and suppliers could negotiate with the concerned officers to increase the mobilization beyond the statutory limit of 15%. It has been argued that 15% is low for a works contract. However, that argument goes to no issue until the Act is amended in this respect. It is incumbent on the NASS to comply with the 15% limit for mobilization fee.

About 90% of respondent-officials stated that the NASS does not issue interim performance certificate to its contractors or suppliers. Relying on this, it is reasonable to conclude that it is either that payment is made to the suppliers or contractors only on full performance or completion of the contract; or that the NASS makes further payment after

<sup>91</sup>Section 16(26).

<sup>92</sup>Section 16(28).

<sup>93</sup>Section 37(1).

mobilization fee has been paid without issuing an interim performance certificate, contrary to the Act. In fact there is evidence to support both sides of the conclusion above. On the other hand, owing to a minority claim that the NASS issues an interim performance certificate at certain stages of the works/supply contract, the least that would be assumed is that the certificate is only issued in certain (may be, isolated) cases of contract and not in all.

There is nothing, whether altruistic or mundane (except lack of knowledge of the provision), that would restrain the NASS from including arbitral proceedings as the primary forms of dispute resolution in the contract agreement, since it introduces a win-win situation for everyone concerned. No contract agreement was presented for the assessment. But most of the respondents stated that the provisions are always contained in the contract agreement; also that warranties for durability of goods, exercise of requisite skills in service provision and use of genuine materials and inputs in execution are always included. However, some of the respondent-officials took the position that the above provisions in issue do not always form part of the contract agreement. Inference is that the provisions in question are usually, but not always, contained in the contract agreement. This suggests that the NASS may not be using the BPP standard agreement template which contains these clauses in some cases.

The NASS does not always promptly and diligently pay contractors and suppliers for procurement of goods, works, and services. There are several cases of delayed payment for several months. The delay may be traced to incurring of extra-budgetary expenditures by the NASS, since the procurement in each financial year is captured in the budget. Another reason given for the delay in payment of contractors is the delay in release of budgetary allocations from the appropriate quarters. It was not explained whether it was owing to non-availability of funds or inefficiency in the public financial management system. This delayed payment leads contractors and suppliers to scramble for the funds released per time, leading to all manner of lobbying for payment- to say the least.

*On the whole, there is only anecdotal evidence of compliance by the NASS on this indicator.*

#### **4.2.14 Indicator 14: Disposal of properties**

This indicator assesses the practices of the NASS relating to the disposal of public properties. The PPA provides certain requirements in this regard; they are as follows.

- a) Open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale. <sup>94</sup>

- b) Before slating any public property for disposal, the accounting officer shall authorize the preparation of a valuation report for such property by an independent Evaluator, or such professional with the appropriate competence to carry out the valuation.<sup>95</sup>
- c) The disposal of assets whether or not listed in the Assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.<sup>96</sup>
- d) The disposal of assets shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government.<sup>97</sup>

The table below presents the score for indicator 14 and the score rationale:

Scenario (summary of current compliance)	Compliance Level (Score)
The practice of NASS on disposal of properties is largely in breach of the Act.	0

### *Rationale for Score*

The practice in the NASS, according to findings, is that where the properties to be disposed are those procured for the use of Senators, Hon. Members and their aids, these political officers in questions are given the option of 'first refusal'. What this means is that the properties are first offered to the concerned political officer at give-away prices, usually without recourse to the market value or formal valuation. It is only where the political officer concerned refuses to buy the property that the property will be offered for bidding. The trend is that the political officers concerned almost always buy such properties marked for disposal.

<sup>94</sup> Sections 55

<sup>95</sup> Section 56(1)

<sup>96</sup> Section 56(2)

<sup>97</sup> Section 56(3)

In instances where the concerned political officers refuse to purchase the properties, or the properties are not those used by political officers, the properties are then disposed by 'bidding'. This bidding is predominantly not public or publicized, neither is it competitive in the real sense, since it is the NASS members of staff that usually bid for the properties. The same people that fix the value of the properties bid for and purchase the properties. In fact, if a property is one used by a NASS official (civil servant) in the high cadre, the officer in question may enjoy the option of 'first refusal' as in the case of political officers.

As for timing of disposal, it is hardly ever timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the government. Instead, for the properties used by Senators, Hon. Members and their aids, their disposal is timed to coincide with the end of tenure of the political officers. The intention, as reported, is that the political officers will go with the public properties purchased for their use. Other political officers coming in or the same political officers returning will have new ones purchased for them. For those properties not used by political officers, their timing is unclear; in fact it appears there is really no deliberate rule on timing. The disposal of assets in the NASS does not indicate that it is planned and integrated into the income and expenditure budget projection of the NASS. On the whole the practice surrounding disposal of properties in the NASS is not transparent and not directed towards getting value for properties to be disposed.

*There is actually no evidence of compliance by NASS on this indicator.*

## Chapter 6: General Comments and Conclusion

### Compliance of the NASS and its oversight functions

From the findings presented above, the National Assembly (NASS) has only demonstrated, on the average, a partial compliance with the provisions of the Public Procurement Act. However, the standard of compliance required by the Act is stated thus: “Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of the Act and any regulations as may from time to time be laid down by the Bureau.”<sup>98</sup>

Therefore, in the light of the standard provided by the Public Procurement Act (PPA), and the requirements of high moral ground for effective performance of its oversight functions, the level of compliance by the NASS with the provisions of the PPA is undesirable low.

Its oversight power, which entails investigating the affairs of other MDAs, is meant to expose corruption, inefficiency or waste in the execution or administration of laws (such as the PPA) within its legislative competence and in the disbursement or administration of funds appropriated by it.<sup>99</sup> Certainly, the exercise of this power requires high moral standing. As the maxim goes “He who comes to equity must come with clean hands”.

If the NASS does not comply with the PPA, will it have the moral strength or even political will to call the MDAs and all concerned in public procurement to order through exercising its oversight powers? Indeed, it has been argued that breaching of procurement and budgetary process by NASS erodes its moral standing to police or check the other arms of government on the same matter.<sup>100</sup>

Though it may be argued that it is the National Assembly Management that carries out procurement activities of the NASS and so the legislative Houses of the National Assembly vested with oversight powers are not blameworthy or lacking in moral standing to exercise oversight on public procurement. On the contrary, would it not be validly argued that their oversight function over public procurement cannot but start in NASS itself? Particularly since it has also been found that principal officers (legislators) of the National Assembly themselves may be involved in procurement decision making contrary to the PPA.

<sup>98</sup> PPA, section 16(23).

<sup>99</sup> Constitution of the Federal Republic of Nigeria 1999 (amended), section 88(2)(b).

<sup>100</sup> Barr. Eze Onyekpere (Lead Director, Centre for Social Justice) on ‘Focus Nigeria’, AIT, 6<sup>th</sup> February, 2012.



## Suggestions on improving the compliance level of the NASS

Perhaps, the foremost suggestion for improving the compliance level of the NASS is for all the political heads of the NASS to demonstrate to its Management that they are keen on the proper functioning of procurement process in the NASS. This they could do by offering the least interference in the public procurement process conducted by the NASS Management; to only participate by way of exercising its oversight functions over the process. It may not be realistic to insist that the political heads of the NASS should stay off totally from the procurements done in their domain. However, their involvement should be limited to identification of needs, oversight to ensure adherence to the rules, and application of sanctions where the rules are breached.

It would be helpful for the accounting officer of the NASS, that is, the Clerk of the National Assembly (CNA), to be alert to the fact that the responsibility for ensuring compliance with the provisions of the PPA by the NASS falls on him. Furthermore, that he is liable in person for the contravention of the Act whether or not the act or omission was carried out by him personally or any of his subordinates.<sup>101</sup> This liability remains even if he delegates any function, duty or power to any person or group of persons.<sup>102</sup> This position is reinforced by the decision of the High Court of the FCT in *EFCC v Dimeji Bankole* (supra) that absolved the ex-Speaker and Deputy-Speaker of the House of Representatives of any guilt in procurement of loan through the House Account for the running cost of the House of Representatives; insisting that it is the CNA and other bureaucrats of the NASS, who are accounting officer and signatories to the House Account respectively, that should be held responsible. This should make especially the CNA to act circumspectly and be serious about complying with the PPA for public procurement in the NASS.

Some of the instances of breach of the PPA by the NASS were blamed on time constraints or conversely on the long length of time that budgeting and procurement processes take. It is suggested that efforts be made to improve the planning of procurement in the NASS. Planning and organising for procurement could start early in the preceding financial year to allow ample time for procurement implementation in the concerned procurement/financial year. For instance, there could be periodic (bi-monthly or quarterly) gathering and assessing of the needs of the various units/departments; necessary market surveys conducted; and the bid documents drafted in readiness for the procurement process before the commencement of the financial year for the procurement planned for.

<sup>101</sup> PPA, sections 20(2)(a), 16(21) and (22), 20

<sup>102</sup> Ibid

To resolve the inconsistency in the provisions of contract agreements, especially as it relates to providing for arbitral proceedings, fitness for purpose and other conditions stipulated as part of contract administration in the PPA or its Regulations, the NASS could incorporate by reference a suitable General Conditions of Contract (GCC) into all contract agreements. The National Assembly should deploy standard documents already issued by the BPP, which contain relevant clauses to meet these needs. This will obviate the need to always draft the said conditions into the contract agreement, thereby curtailing the chances of forgetting to include the required conditions.

### **In conclusion**

This assessment has identified that there is an urgent need to improve the compliance level of the National Assembly (NASS) with the provisions of the Public Procurement Act (PPA). It was discovered that the NASS Management, to a large extent, does not lack the competent personnel or the facilities to fully comply with the PPA. What it may lack is the will and re-orientation to follow the rules as prescribed by the Act. Even more important is that it needs the political leadership of the National Assembly to create the right atmosphere to allow the bureaucrats to function properly and in accordance to law. The poor levels of compliance identified by this study, is an indication that public procurement procedure in the NASS has a high vulnerability for corruption. The presence of criminal sanctions for breach of the procurement rules provided in the Act does not appear to offer sufficient motivation to the staff and members of the NASS involved in public procurement decisions, nor the fact that some of the offences appear to be in the nature of strict liability offences, since there is still widespread apathy towards the enforcement of laws in Nigeria. It is hoped that the bureaucrats and the political officers in the NASS would realize the need for a concerted effort to improve compliance with the Public Procurement Act, since the oversight functions of the National Assembly over other procuring entities is also at stake.

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10. UNDP capacity Assessment Methodology User's Guide (May, 2007).
11. **World Bank, *Nigeria's Country Procurement Assessment Report (CPAR) , (June, 2000) Vol. I.***
12. World Bank, **Revised Instruction for Carrying out Assessment of Agency's Capacity Assessment to Implement Procurement; Setting of Prior-Review Thresholds and Procurement Supervision Plan.**

## **Table of Legislation and Legal Instruments Referred To**

1. Appropriation Act No. 3 2007
2. **Appropriation Act No. 2 2008**
3. **Appropriation Act 2009**
4. **Appropriation Act 2010**
5. **Appropriation Act 2011**
6. Code of Conduct Bureau and Tribunal Act Cap. 56 L.F.N. 1990 ACT CAP. C15 L.F.N. 2004
7. Constitution of the Federal Republic of Nigeria 1999 (Amended)
8. Corrupt Practices and other Related Offences Act NO. 6 2003
9. Criminal Code Act
10. *Economic and Financial Crimes Commission (Establishment) Act 2004*
11. Freedom of Information Act 2011
12. National Assembly Service Commission Act 2000
13. New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/Parastatals Ref No F15775 dated 27th June 2001
14. Public Procurement Act 2007

### **List of Decided Cases Referred To**

1. *Economic and Financial Crimes Commission v Hon. Dimeji Bankole & Hon. Nafada* (2012) High Court of the Federal Capital Territory (unreported as time of writing)
2. *A.C Egbe Nig Limited v. Director General Bureau of Public Procurement & 4 Ors* Suit No. FHC/B/CS/116/2010
3. *Federal Republic of Nigeria V Olabode George & Ors.* SUIT NO: ID/71c/2008, High Court of Lagos State.

## Appendix 1: Assessment Questionnaire for NASS Procurement Officers

Public and private Development Centre (PPDC) has received a grant from United Nations Democracy fund (UNDEF) to implement its Nigerian procurement monitoring project. Part of this project is an activity to assess the level of performance of selected federal MDAs and the National Assembly Management in the implementation of Public Procurement Act 2007 (PPA). This questionnaire is a tool for conducting an assessment. 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.

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**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**

**PPA= Public procurement Act 2007**

- 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)

- Do you have the following documents (please complete the table)

	Documents	Source of documents: Enter 1 for BPP, 2 for BPP'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.	Public Procurement Act, 2007	
b.	Procurement Guidelines issued by BPP	
c.	Procurement Manual	
d.	Standard bidding documents	
e.	Others (please specify)	
f.		
g.		

3. How would you rate your understanding of Public Procurement Act, 2007?  
Rate 1 to 5; 1 = highest; 5 = lowest \_\_\_\_\_
4. To what extent has your organization been applying the Public Procurement Act (PPA)?
- 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
5. Have you attended any training on the Public Procurement Act, 2007 (PPA)? Please complete table below

Dates of training	Title of training	Location of training	Organizer	Duration	How useful; was the training (rate 1 to 5)

6. What do you understand the term “lowest evaluated responsive bidder” to mean?  
(Please \_\_\_\_\_ specify)
7. Tick any of these that informed your understanding of the term: use by your organisation
- the PPA  training
- Others (please specify) \_\_\_\_\_



8. What provisions of the Act does your organization find difficult to apply currently? (Please list fully)

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9. If your organization does not apply all sections of the Act, what are the reasons 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) \_\_\_\_\_

10. How does your organization handle procurement relating to the provisions of the Act that it does not yet apply?

- a. We use the old methods in the meantime.
- b. We avoid procurement involving those provisions
- c. Use other methods (please specify) \_\_\_\_\_

11. Does your organisation use the standard bidding documents (SBDs) issued by BPP in its procurements?

- a. Yes  Please lists the SBDs that your organisation uses \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. No

12. Does your organisation maintain a record of its comprehensive procurement proceedings?

- a. Yes  **Please make available to us copies of records of you organisation's major contracts in the last two year**
- b. No

12. Does your organisation do planning on how to carry out procurement?

- a. Yes  Is the planning done before or after budgetary appropriation? Before
- b. No  After

13. Does your organisation ensure that funds are available to pay for contracts before contracts are formally awarded?

- a. Yes  How does it ensure that? \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- b. No
14. Does your organisation obtain a "Certificate of `No Objection" to Contract Award" from BPP?
- a. Yes  **Please attach photocopies of such certificates and/or related correspondences.**
- b. No
15. For what value of contracts does your organisation apply to obtain a "Certificate of `No Objection" to Contract Award" from BPP, if it applies? (Please state the minimum value)
- \_\_\_\_\_
16. Has the BPP ever refused to issue your organisation a „Certificate of "No Objection" to Contract Award"?
- a. Yes  Why? \_\_\_\_\_
- b. No
17. Has the BPP ever directed that a procurement proceeding conducted by your organisation be cancelled or re-done?
- a. Yes  Why? \_\_\_\_\_
- b. No
18. Does your organisation comply with BPP"s directives, such as the one mentioned above?
- a. Yes
- b. No Why? \_\_\_\_\_
19. What procurement methods does your organisation use and what media is used in advertising for the contracts? (Please complete the table below specifying value, procurement method, and media. **(please provide copies of your organization's procurement adverts that are available)**)

	Value of contract (figures)	Procurement methods	Advert media used (list more than 1 in each box where appropriate)
<b>a.</b>			
<b>b.</b>			

c.			
d.			
e.			

20. Which of the procurement methods listed above does your organisation use more often?

\_\_\_\_\_

21. Give reasons why your organisation use this method more than others? (Please specify)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

22. Does your organisation require bidders to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified?

a. Yes  Please list such documents required (you may use commas in listing various documents on the same line provided here)

b. No

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

23. Does your organisation require that bidders accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of your organisation or the BPP is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars?

a. Yes  **Please attach photocopies of documents through which this requirement is communicated.**

b. No

24. Does your organisation for any reason exclude the bids of some bidders in any procurement Proceedings?

a. Yes  Please list such reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. No

25. Does your organisation maintain both file and electronic records of **all** procurement Proceedings made within each financial year?

a. Yes  Please list the records: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. No

25. Are copies of all procurement records transmitted to the BPP by your organisation?

a. Yes  when are the records transmitted?  
\_\_\_\_\_

b. No

26. Are the members of the public permitted to inspect and copy any unclassified procurement records kept by your organisation?

a. Yes  What does it cost? \_\_\_\_\_ What time does it take? \_\_\_\_\_

b. No

27. Do all procurement contracts prepared by your organisation contain provisions for arbitral proceedings as the primary forms of dispute resolution?

a. Yes  No

**Please attach photocopies of contract agreement prepared by your organisation.**

28. Do all procurement contracts prepared by your organisation contain warranties for durability Of goods, exercise of requisite skills in service provision and use of genuine materials and inputs In execution?
- a. Yes  No
- Please attach photocopies of contract agreement prepared by your organisation.**
29. Does your organization have a Tenders Board?
- a. Yes  when was it set up (please specify) \_\_\_\_\_
- b. No
30. If answer is "yes" above, please state the officers that constitute the Tenders Board:
- a. \_\_\_\_\_ (state the officer that is the Chairman, if any)
- b. \_\_\_\_\_ (state the officer that is the Secretary, if any)
- c. \_\_\_\_\_ d. \_\_\_\_\_
- e. \_\_\_\_\_ f. \_\_\_\_\_
- g. \_\_\_\_\_ h. \_\_\_\_\_
- i. \_\_\_\_\_
31. What are the functions of your organization"s Tenders Board?
- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_
- f. \_\_\_\_\_
32. Does your organization have a procurement planning committee?
- c. Yes  when was it set up (please specify) \_\_\_\_\_
- d. No
32. If your organisation has a procurement planning committee, list the member of the committee
- a. \_\_\_\_\_ (state the officer that is the Chairman, if any)
- b. \_\_\_\_\_ (state the officer that is the Secretary, if any)
- c. \_\_\_\_\_ d. \_\_\_\_\_
- e. \_\_\_\_\_ f. \_\_\_\_\_
- g. \_\_\_\_\_ h. \_\_\_\_\_
33. Does your organization have an evaluation committee?
- a. Yes  which officers are the chairman and secretary?  
\_\_\_\_\_ & \_\_\_\_\_
- b. No
34. Who awards major contracts in your organisation? \_\_\_\_\_
35. Does the person or the body that awards contracts in your organisation get approval or directives from any higher office/officer in your organisation before awarding the contracts?
- a. Yes  which office(s)/officer(s)? a. \_\_\_\_\_ b. \_\_\_\_\_  
c. \_\_\_\_\_
- b. No

36. Does your organisation advertise its procurement opportunities?  
 a. Yes  **Please attach copies of such procurement adverts made in the last 4 years.**  
 b. No
37. Are civil society organisations (CSOs) invited by your organisation to witness its procurement proceedings?  
 a. Yes   
 b. No   
 c. Don't know

38. If answer above is "yes", please mention the CSOs (name, address and phone) invited by Your organisation in the last four years

	Name	Address	Phone
a.			
b.			
c.			
d.			
e.			
f.			

39. Does your organisation conduct prequalification of bidders?  
 a. Yes   
 b. No   
 c. Don't know
40. If answer above is "yes", please list the prequalification criteria usually set out by your organisation?

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_
- f. \_\_\_\_\_
- g. \_\_\_\_\_
- h. \_\_\_\_\_

41. Please list the prequalification documents that your organisation issues to bidders and their Cost? **(Please attach copies of these documents if available)**

	Pre-qualification documents	Cost
a.		
b.		
c.		
d.		
e.		
f.		
		Total cost:

42. Does your organisation receive requests from bidders for clarification of bid/pre-qualification Documents?

- a. Yes
- b. No
- c. Don't know

43. If answer above is "yes", please state how your organisation responds (letter/phone) \_\_\_\_\_ and how long does it take your organisation to respond? \_\_\_\_\_ days.

44. Does your organisation promptly notify each supplier, contractor or consultant which submitted an application to pre-qualify of whether or not it has been pre-qualified?

- a. Yes  **(Please attach copies of such notification by your organisation)**
- b. No
- c. Don't know



45. How does your organisation determine who is the winner of bid/tender (please specify)?

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46. Does your organisation require a bid security from bidders by way of a bank guarantee?

- a. Yes  please list the percentage(s) required \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_
- b. No
- c. Don't know

47. Does your organisation issue to bidders on submission of bids a receipt showing the date and time the bid was delivered?

- a. Yes  (**Please attach copies of such receipts issued by your organisation**)
- b. No
- c. Don't know

48. Does your organisation in any peculiar circumstances accept bids after the deadline for the submission of bids?

- a. Yes  please list such circumstances \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. No
- c. Don't know

49. When does your organisation conduct bid opening?

- a. Immediately following the deadline for the submission of bids
- b. Some hours after deadline for submission of bids
- c. A day after deadline for submission of bids
- d. Longer than a day
- e. No specific pattern

50. Does your organisation ask bidders for clarification of their bids during bid examination?

- a. Yes   
In which circumstances? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. No
- c. Don't know

52. Does your organisation inform the bidders of the criteria for bid evaluation?

a. Yes  When? \_\_\_\_\_  
How? \_\_\_\_\_

**(Please attach a document showing such information by your organisation)**

b. No   
c. Don't know

53. Has your organisation in any circumstance rejected submitted bids?

a. Yes  Why? \_\_\_\_\_  
\_\_\_\_\_

b. No   
c. Don't know

54. Was such bid rejection communicated to the concerned bidders?

a. Yes  **(Please provide relevant correspondences to that effect)**

b. No  Why? \_\_\_\_\_  
\_\_\_\_\_

c. Don't know

55. Does your organisation keep minutes of bid evaluation?

a. Yes  **(Kindly provide the minutes for sighting)**

b. No  Why? \_\_\_\_\_  
\_\_\_\_\_

c. Don't know

56. After opening of bids, does your organisation, in any circumstance, disclose information relating to the examination, clarification and evaluation of bids and recommendations concerning award to bidders or to persons not officially concerned with the evaluation process, before the successful bidder is notified of the award?

a. Yes  Why? \_\_\_\_\_  
\_\_\_\_\_

b. No   
c. Don't know

57. Does your organisation award contracts to bidders that did not submit the lowest evaluated bids?

a. Yes  Why? \_\_\_\_\_  
\_\_\_\_\_

b. No   
c. Don't know

58. How much does your organisation pay as mobilization fee: (tick more than one where applicable)?

- a. 5%  b. 10%  c. 15%  d. 20%  e. 25%  e. Above 25%

59. Does your organisation issue **interim performance certificate** to contractor/suppliers?

a. Yes  When? \_\_\_\_\_

b. No  Why? \_\_\_\_\_

c. Don't know

60. Under which conditions/circumstances does your organisation use these following procurement methods? (Please fill table below)

Procurement methods	Circumstances/conditions under which they are used
Two-stage tendering	a) b) c) d) e)
Restricted tendering	a) b) c) d) e)
Request for quotations	a) b) c) d)

	e)
Single sourcing	a) b) c) d) e)

61. What time does your organisation allow for the preparation and submission of requested proposals (tick more than one where appropriate)?

- a. 15 days     b. 21 day     c. 30 days     d. 6 weeks     e. others \_\_\_\_\_

62. Does your organisation open financial and technical bids the same time?

- a. Yes     b. No     c. Don't know

63. If opened at different times, which of financial and technical proposal comes first?

- a. Yes     b. No     c. Don't know

64. Are either financial or technical bids evaluated before opening of the other?

- b. Yes     b. No     c. Don't know

65. Have your organisation ever had a situation where a dissatisfied contractor or bidder complained to your organisation about any aspect of a particular procurement proceeding?

- c. Yes     b. No     c. Don't know

66. Briefly recall what the complaint was about:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How did your organisation handle it?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

67. Has the BPP ever reversed any aspect of your contracting or procurement process following a complaints or review process? a. Yes     b. No

- c. Don't know

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

- a. Only once     b. Twice     c. Thrice     d. More than thrice
-

e. Can't recall

69. Has your organization ever received request from individuals (bidders or civil society person) for documents relating to a particular procurement process?

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

- d. Provided all requested information at no cost
- e. Provided all requested information at cost of reproducing the documents
- f. Provided some of the requested information at no cost
- g. Provided some of the requested information at cost of reproducing the documents
- h. Did not provide information requested
- i. Don't know

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

- j. Expressed satisfaction and took no further action
- k. Expressed satisfaction with information provided but appealed procurement process
- l. Expressed dissatisfaction and appealed process
- m. Expressed dissatisfaction took no further action
- n. Don't know

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

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

***Thank you for your time.***

## Appendix 2: Assessment Questionnaire For Bidders, Contractors, and Suppliers

Public and private Development Centre (PPDC) has received a grant from United Nations Democracy fund (UNDEF) to implement its Nigerian procurement monitoring project. Part of this project is an activity to assess the level of performance of selected federal MDAs and the National Assembly Management in the implementation of Public Procurement Act 2007 (PPA). This questionnaire is a tool for conducting an assessment. 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.

1. Are you conversant with the provisions of the Public Procurement Act, 2007  
Yes  No
2. Have you participated in a procurement proceeding conducted by the National Assembly as a bidder, supplier or contract or since the coming into effect of the Public Procurement Act (PPA) 2007?  
Yes  No  If yes, how many times \_\_\_\_\_
3. By completing the following table, kindly indicate the type of contracts you participated in and the procurement method used.

Nature of contract proceeding participated in and procurement method used				
Type of procurement	No. of times bided	Procurement method and frequency of use		Comments
		Procurement method and method (tick appropriately)	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. Did you get information from NASS about what the evaluation criteria for bids shall be before the evaluation of bids?  
 Yes  How was the information communicated to you?  
 \_\_\_\_\_  
 No
5. How many times has your bid been successful? \_\_\_\_\_ time(s) Never been successful
6. If your bid in the NASS were at any time unsuccessful, were you formally informed?  
 Yes  How was the information communicated to you?  
 \_\_\_\_\_  
 No
7. Kindly state how many of your successful bids were by?  
 a. Open competition \_\_\_\_\_  
 b. Selective restricted tendering \_\_\_\_\_  
 c. Request for quotation \_\_\_\_\_  
 d. Direct procurement \_\_\_\_\_  
 e. Others (please state type and number) \_\_\_\_\_
8. What percentage was given to you as mobilization fee?  
 a. 5%  b. 10%  c. 15%  d. 20%  e. 25%  e Above 25%
9. Have you ever been dissatisfied with the conduct of a procurement proceeding in which you participated in the NASS? Never  Yes



10. Please list some of what caused your dissatisfaction with the conduct of the procurement proceedings?

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

11. Have you ever made a written complaint against the process or outcome of a procurement proceeding?

- a. Never
- b. Yes, only to the accounting officer (CNA).  How many times? \_\_\_\_\_
- c. Yes, up to the BPP  How many times? \_\_\_\_\_
- d. Yes, to the Court.  How many times? \_\_\_\_\_

12. If you made a complaint to the accounting officer, how long did it take to make a decision?

- a. Within 15 days in some cases
- b. Within 15 days in all cases
- c. More than 15 days in all cases
- d. No decision was made

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

- a. Not satisfactory
- b. Barely satisfactory
- c. Satisfactory
- d. Very satisfactory
- e. Others (Please specify) \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Kindly rate the extent of general compliance of the NASS with the following provisions of the Public Procurement Act?

<b>Extent of compliance with the Public Procurement Act 2007</b>						
	<b>Not satisfactory</b>	<b>Barely satisfactory</b>	<b>Satisfactory</b>	<b>Very satisfactory</b>	<b>Indeterminate</b>	<b>Comment</b>
Existence of prior procurement plans						
Implementation of procurement in accordance with procurement plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement Planning Committee						
Existence and functioning of Tender Board						
Appropriateness of procurement methods used						
Mode of advertising and soliciting for bids						

Advertisements contains clear conditions for qualifications of bidders in accordance with the Act						
Advertisement contain technical description of goods, works or service required and not brand names						
Solicitation contains clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
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						

16. Do you think that procurements by the NASS generally comply with the Public Procurement Act 2007? Yes  No

17. In your opinion what are the more common abuses of the procurement process in the NASS? (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 requirement for open competition
- e. Bribery and corruption
- f. Others (kindly list and rate

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

19. Kindly list sources of political influence or interference on the procurement process that you are aware of:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

20. What changes would you like to see in the way the NASS currently implement the Act?

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

e. \_\_\_\_\_

21. Please comment freely on the extent of the implementation of the Public Procurement act or any other issue relating to the Act (please write also outside the line below, if necessary)

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***Thank you for your time.***

**Poverty persists in Nigeria because of mismanagement of resources and corruption, found particularly but not exclusively in the public sector. Besides the pilfering of public funds, the amassing of fortunes by illegal and corrupt means does not seem to necessarily disturb the average Nigerian as to make him lose sleep over it. DFID Country Strategy paper 2000.**

**Over 80% of this corruption it is said occurs through Public Procurement.**

**Decide for yourself. Do you need to keep Watch?  
(PPDC)**





