

WALKING THE PATH OF PROCUREMENT REFORMS IN NIGERIA.

COMPLIANCE WITH THE PUBLIC PROCUREMENT ACT, 2007



**An Evaluation of Procuring Entities, Civil Society Organisations
Bidders and the Bureau of Public Procurement**

2012

An Initiative of The Public And Private Development Centre (PPDC)



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Published in Nigeria

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Abbreviations & Acronyms

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

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Chibuzo .C. Ekwekwu
Director (PPDC)

Chapter 1: Introduction

1.1 In 2009, the Public & Private Development Centr (PPDC) commissioned an assessment of the extent of compliance with provisions of the *federal* Public Procurement Act, 2007 by parties involved in the procurement process: procuring entities, bidders and suppliers, civil society monitoring groups, and the regulating agency, the Bureau of Public Procurement (BPP). The study covered the Federal Capital territory, Abuja and five geopolitical zones of the country: northwest, northeast, north central, southeast, and the south South. Due to financial and logistics constrains, the study did not cover the southwest zone, which includes the Lagos metropolis where many key government parastatals, bidders and contractors, and civil society watch groups situate. Although the study made important findings, the PPDC has undertaken this second study as part of its goal of continually promoting transparency, accountability and public sector integrity. Also in this second study it has attempted to address some of the gaps of the first study and extended the survey to the southwest zone, thus covering the six-geo-political zones.

1.2 The current study has an expanded terms of reference, which includes to investigate

- Levels of transparency in current procurement practice
- Process, efficiency and effectiveness in MDA's
- Knowledge and understanding of the provisions of the (Public) Procurement Act 2007 and rules
- Levels of implementation of BPP's functions and mandate
- Levels of compliance with non-state actors monitoring provisions
- Other procurement practices
- Levels of access to information and compliance with citizens monitoring provisions
- Levels of accountability and value for money
- Levels of compliance with Assets disposal provisions
- Effectiveness or non-effectiveness of dispute resolution mechanism
- Issues/factors (whether or not relating to the procurement process) hindering effective implementation of the Act and positive impact
- Levels of awareness and compliance of the private sector to the PPA
- Effectiveness of procurement observation, monitoring and related activity by CSO's and professional bodies
- Improvements in procurement practice(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

1.3 In line with the Terms of Reference, the research designed and administered four different questionnaires, one for each of the major players in the procurement process. Thus, there were questionnaires for (i) procuring entities, (ii) contractors and bidders, (iii) civil society groups, and (iv) the Bureau of Public Procurement (BPP). A different trained research assistant administered the set of questionnaires in each of the six geopolitical zones and the FCT. The research complemented the findings with information from secondary sources. The major secondary sources were materials officially published by the Bureau both in hard and on its website,¹ other official, but unpublished materials from the Bureau, newspaper reviews, magazines, PPDC's Daily PP News, monthly e-Newsletter, and procurement monitoring reports collated on www.procurementmonitor.org, and other internet sources.

1.4 The study finds improvement in several areas of implementation of the Public Procurement Act, 2007. These include training and capacity building, certification of procurement officers by the Bureau, publication of a Public Procurement Journal, sensitization and awareness on the Act, and speed of granting 'no objection'. However, study confirms that these improvements in preliminary and procedural issues have not translated to sustained improvements in the more substantive areas such as bid evaluation, contract pricing, increased rate of completion of abandoned projects, etc. The

¹ www.bpp.gov.ng

study also found that systemic and structural defects create an enabling atmosphere for internal and external factors to impede the procurement process and compliance with implementation of the Act. Political interference is the most important of these impediments.

Chapter 2: Methodology

2.1 This *Chapter* explains the scope of this work and the research methodology. It discusses the approach to data collection, data analysis, and presentation of outcomes. It also describes the sample size and method of selection of the sample. Finally, the chapter highlights the principal constraints and limitations in data collection that could affect the report and validity of the findings.

Scope of Work and Research Method

2.2 *This study covered the entire spectrum of the Federal Government of Nigeria public procurement system.* It involved the different players in the procurement process: procuring entities (i.e., Federal Ministries, Departments and Agencies, MDAs covered by the Act), bidders, contractors, and suppliers, civil society observers, and the regulatory authority, i.e., the Bureau of Public Procurement (BPP). The study also teased public opinion from non-formal observers and watchers of the procurement process, especially through review and opinions pieces. Geographically, the study covered the Federal Capital Territory (FCT) and the six geopolitical zones of the country: northwest, north central, northeast, southwest, southeast, and southsouth. The inclusion of the southwest zone, particularly, the very important Lagos metropolis, was a major requirement of the terms of reference. The earlier 2009 study excluded the zone due to financial constraints.

2.3 *The study relied on both primary and secondary evidence.* Primary data came mainly from responses to structured questionnaires administered on key participants in the procurement process. There were four different questionnaires - one each for federal procuring entities, civil society observers, contractors, suppliers, and bidders, and the Bureau of Public Procurement. The reason for using different questionnaires for each group is the peculiarity of each category and of information required from it. A single instrument combining all the questions would have been too bulky and unmanageable. The design of the questionnaires was for both self and peer assessment – each group rated its performance as well as the performance of each of the other groups. The aim of this was to reduce the impact of possible overrating that an entirely self-assessment process would have entailed. The questionnaire also built in checks to balance consistency of responses within a group. The appendix to this report contains copies of the questionnaires.

2.4 Secondary evidence came from various literature sources: published and unpublished documents and internet based sources. As in the first study, the website of the Bureau of Public Procurement provided a rich source of information on what the Bureau is doing and what information it ordinarily makes available to the public. Other publications of the Bureau² contributed to the literature for the work. These include relevant official documents obtained from the Bureau on some other (unrelated) assignment. The PPDC website, Procurement Observatory especially, its e-Newsletters, was another useful source of secondary information. General web and internet research also provided further materials, especially on good practices. Other sources include unofficial publications, reports, opinions,³ studies, etc., sourced from various groups and duly referenced in the report. Finally, previous research work (although limited in number), published workshop proceedings, and news articles were useful sources of background documentary information.

Sample Size and Selection

2.5 *The nature of the population for this study necessitates use of sampling.* The population is large, segregated, and non-contiguous, but widely dispersed across the country; it will take much time and cost to survey the entire set. The population comprises all federal procuring entities (ministries, departments, and agencies, and parastatals)⁴, all their contractors, suppliers, and bidders,⁵ civil society

² In hard copies

³ Including newspaper articles

⁴ Not public enterprises such as the Nigerian Aviation Handling Company (NAHCO), Plc

⁵ Including those that have bid for but never won any contract

monitors, and the Bureau of Public Procurement. The population may be finite, but it is not possible to identify all its members. Contractors and bidders are particularly problematic to identify, given that the BPP is yet to (compile?) and publish a register of federal contractors as required by the Act. These attributes predisposed the study to sampling, but it was not easy to determine an appropriate sample size and elements of the sample.

2.6 *The study used a variety of approaches to decide on an appropriate sample size and determine the elements of the sample.* Procuring entities included in the sample comprise the headquarters of all major⁶ ministries and key parastatals located in within the FCT, including the Nigeria National Petroleum Corporation (NNPC) and the Central Bank of Nigeria (CBN). Procuring entities selected from the zones include as many (parastatals) as were willing to complete the questionnaire. The difficulty of identifying contractors necessitated inclusion of an item in the procuring entities' questionnaire for a list of five of their contractors and bidders. The combined list of contractors generated provided the population of contractors in each zone from which the study selected a sample of five.⁷ The PPDC provided the list of civil society organizations.⁸

2.7 The research distributed 142⁹ copies of the questionnaires as follows: 82 to procuring entities, 27 to bidders and contractors, and 32 to civil society monitors. The matrix in *Table 2.1* below shows the pattern of distribution of the questionnaires in the geographical zones. The response rates from one geographical zone to another and between different categories of respondents within each zone. Overall, 53 of the 141 organizations¹⁰ surveyed completed and returned the instruments. Thirty-eight (38) procuring entities, nine (9) bidders/contractors, etc., and 17 CSOs responded. No respondent in any category answered all the questions. Respectively, this represented 46 percent, 37 percent, and 56 percent of total questionnaires administered on each of procuring entities, bidders/contractors, etc., and CSOs (*Table 2.1*).

2.8 The analysis presented each group's responses in turn. Thus, successive chapters discuss response of procuring entities, civil society groups, the Bureau of Public Procurement, and bidders/contractors. However, views from all the segments did not always converge, understandably so. A synthesis chapter therefore summarizes the main findings and surveys secondary sources in search of corroborating or rebuttal evidence of the main findings.

Limitations and Constraints

2.9 It was difficult to persuade potential respondents to complete the questionnaires, notwithstanding the recent enactment of the Freedom of Information Act. MDAs still regard the information requested as official secrets, even though they rightly belong to the public domain. This explains the low rate of response among MDAs (46 percent). In some places, security guards did not admit the research assistants into the premises. In some others, gatekeepers or other personnel collected the questionnaires and either declined to complete them or refused to admit the researcher on subsequent (follow up) visits. Some officials complained of lack of superior authority to respond to the questionnaires. Refusal of most procuring entities' to volunteer sufficient information to track their bidders, suppliers, and contractors further suggests an attempt to block them from participating in the exercise.

2.10 *This 2012 survey reached more bidders, suppliers, and contractors than the 2010 study; however, most of them did not cooperate with the survey.* The earlier study surveyed about six bidders, etc. and received one response, while this study surveyed 27 and had five responses. Bidders continue to indicate a fear for possible repercussions. Assurances of anonymity did not persuade

⁶ In terms of the size of their capital votes

⁷ However, only a few parastatals provided the information, and most times not up to five.

⁸ The list of surveyed organizations is in the Appendix.

⁹ Including the BPP

¹⁰ I.e., procuring entities, bidders, and civil society groups, excluding the BPP

them. However, no such bidder presented any evidence of victimization. This fear of possible victimization may on the one hand represent a commentary on the perceived fairness or otherwise of the public procurement process, the extent of compliance with the Public Procurement Act, and conformity of procurement practices to the principles of modern procurement. The reluctance/refusal of most procuring entities to supply information on their bidders/contractors appears to lend credence to these fears. It seems that even foreign-based contractors may have similar concerns. An official of a Turkey based contractor to the Power Holding Company of Nigeria (PHCN) reached on phone provided his email address for mailing the questionnaire, but he did not complete it. The PHCN had provided only the contractors phone number, but not the email or physical address. On the other hand, it may represent lack of diligence, poor knowledge and timidity on the part of contractors.

2.11 *This time, the Bureau of Public Procurement cooperated more with the research.* Officials of the Bureau completed the questionnaire in the process of providing materials required for rating the procurement indicator of the on-going PEFA assessment of the FGN Public Financial Management System. Even then, the officials did not answer to some sections of the questionnaire.

2.12 As with the earlier study, it is difficult to establish the veracity of some of the responses received, especially from procuring entities. Some responses appear incredulous, not supported by responses to some other related questions. In addition, respondents did not answer many questions. These are some of the dangers of self and peer assessment. However, design of the questionnaires included some counter measures aimed at ameliorating these biases (see below).

2.13 *To what extent did these affect the authenticity of the conclusions of this research?* The individual reader would have to decide on this. However, the questionnaires made three efforts to reduce the impact of biased responses. First, the arrangement makes responses to different questions in the same questionnaires corroborate each other. Second, the different types of questionnaires sometimes solicit responses to the same or similar questions. This purpose was to crosscheck the objectivity of responses. Third, the questionnaires required each class of respondents (i.e., procuring entities, bidders, suppliers, etc., CSOs, and the Bureau) to rate performance of the others in certain areas. This innovation was not there in the earlier assessment.

Table 2.1: Analysis of Distribution of Questionnaires					
Zone	MDAs	Bidders	CSOs	Total	%
FCT, Abuja					
No. of Questionnaires Administered	27	4	1	32	100%
No. of Responses	16	0	1	17	53%
No. of Non-response	11	0	1	12	38%
% Responses	59%	0%	100%	53%	
Northeast Zone					
No. of Questionnaires Administered	11	5	4	20	100%
No. of Responses	5	5	4	14	70%
No. of Non-response	6	0	0	6	30%
% Responses	45%	100%	100%	70%	
North central Zone					
No. of Questionnaires Administered	11	5	7	23	100%
No. of Responses	6	3	4	13	57%
No. of Non-response	5	2	3	10	43%
% Responses	55%	60%	57%	57%	
Northwest Zone					
No. of Questionnaires Administered	8	0	0	8	100%
No. of Responses	1	0	0	1	13%
No. of Non-response	7	0	0	7	88%
% Responses	13%	#DIV/0!	#DIV/0!	13%	
Southwest Zone (Lagos)					
No. of Questionnaires Administered	7	7	8	22	100%
No. of Responses	3	2	2	7	32%
No. of Non-response	4	5	6	15	68%
% Responses	43%	29%	25%	32%	
Southeast Zone					
No. of Questionnaires Administered	12	5	9	26	100%
No. of Responses	6	0	6	12	46%
No. of Non-response	6	0	9	15	58%
% Responses	50%	0%	67%	46%	
South south Zone					
No. of Questionnaires Administered	6	1	3	10	100%
No. of Responses	1	0	1	2	20%
No. of Non-response	5	1	2	8	80%
% Responses	17%	0%	33%	20%	
Summary (all zones)					
No. of Questionnaires Administered	82	27	32	141	100%
No. of Responses	38	10	18	66	47%
No. of Non-response	44	8	21	73	52%
% Responses	46%	37%	56%	47%	

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

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

General Principles of Public Procurement

Generally, public procurement is the complete process of acquiring or obtaining, material, services, or property from outside a government, government agency, ministry, department or extra ministerial department. It is often by means authorized in pertinent directives and or law. It is the overall **process** of acquiring goods, works and services, from the identification of need to contract administration and through the end of a services' contract or the useful life of an asset¹¹. More specifically, it is the action or process of acquiring or obtaining material, property, or services at the operational level. Public procurement is therefore an administrative process. The procurement process therefore involves purchasing, contracting, and in a few cases negotiating directly with the source of supply. Some indeed view procurement as a fancy word for "purchasing". However, it would appear that procurement is more encompassing than purchasing traditionally described. Usually, the procurement department within an organization manages all the major purchases to the exclusion of staff hiring.

The Concept of 'Best Value for Money'

3.2 The critical concept of "best value for money" plies at the heart of public procurement. There is probably no better illustration of the relationship of PP and concept than that in the Northern Ireland Public Procurement Policy document 2009. According to this Policy, public procurement is the process of acquisition (usually by means of a contractual arrangement after public competition) of goods, services, works, and other supplies by the public service. The public procurement process spans the whole life cycle from initial conception and definition of the needs of the public service through to the end of the useful life of an asset (asset disposal) or contract. The process spans conventionally funded projects, more innovative types of funded projects (for example PPP/PFI¹² arrangements with the private sector), use of the private sector to deliver services previously delivered directly by the public sector (contracting out or outsourcing), and in-house consortia bidding in a public procurement process.

3.3 The concept of "best value for money" involves total cost of ownership, and use, "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements." "Whole life cost" includes both quantifiable and non-quantifiable or intangible costs and benefit. The concept enables a public body to compile a procurement specification which includes social, economic, and environmental policy objectives within the procurement process. The concept underlies relevance of a professional procurement department in the procurement process.

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

¹¹ *Procurement Manual, Bureau of Management, Office of Legal and Procurement Support, Jan 2005*

¹² Public private partnerships/private finance initiatives

process. The public procurement process therefore determines the success or failure of public investments.

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

Why Public Procurement Is Important

3.6 Public procurement is important because of its role in the development process, the amount of resources it consumes, and its susceptibility to undue influences. A 2006 study by Transparency International makes interesting findings on public procurement. It found that public procurement amounts, on average, to between 15% and 30% of GDP or and more.¹³ It also found that few activities create greater temptations or offer more avenues for corruption than public procurement. The study estimates damage from procurement-related corruption at normally between 10% and 25%, and in some cases as high as 40 to 50%, of the contract value.

3.7 A 2005 OECD study found that the purchase of goods and services by governments is an area that warrants special attention in the fight against corruption because public procurement has a very high exposure to corruption.¹⁴ It estimates procurement-related corruption at typically about 15% of GDP in OECD countries. It also adds that it is easy to tempt both public and private actors to divert goods and services or money for their personal use

3.8 The African Development Bank (AfDB) estimates, in a recent concept note,¹⁵ that public procurement accounts for as much as 70% of the budgets of Africa governments. This underscores the importance of public procurement. The concept note states further the strengthening of procurement systems is crucial to minimizing the potential effects of financial/economic crisis and restoring a level of economic growth and development sufficient to reduce poverty. It is not possible to achieve these objectives without securing the efficiency and integrity of procurement systems.

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

- Separate procurement regulatory and execution functions
- Institutionalization of public procurement regulatory authorities
- Establishment of independent review mechanisms
- Publication of hard and Internet versions of national public procurement journals
- Make public procurement related information easily available to the general public

¹³ TI Handbook on Curbing Corruption on Public Procurement (2006), www.transparency.org/content/download/12496/120034

¹⁴ Fighting Corruption and Promoting Integrity in Public Procurement, 2005, www1.fidic.org/resources/integrity/corrupt_proc_OECD-rapport-2005-aase.pdf

¹⁵ Extracts from Concept Note of the High Level Forum on Public Procurement Reforms in Africa organized by the African Development Bank (AfDB), in partnership with the Common Market for Eastern and Southern Africa (COMESA), the West African Economic and Monetary Union (WAEMU), the African Capacity Building Foundation (ACBF), the Organization for Economic Co-Operation and Development (OECD) and the World Bank (WB), organized in Tunis, Tunisia, on 16th and 17th November 2009

- Achieving greater recognition by public officials and citizens of the critical importance of public procurement in public financial management
- Scaling up the importance of public procurement in policy decision-making

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

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

Universal Values in Public Procurement

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

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

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

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

3.15 *Fairness* – a good procurement is fair. This means it is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to

compete. It directly and consciously expands the purchaser's options and opportunities so as to obtain the fairest or best possible deal.

3.16 *Competition* – effective competition implies non-hindering of participation to procurement. It means choice and advertisement of technical, professional, or financial conditions proportionate to the subject of the contract. It also means selection of appropriate procurement procedure. Competition also requires preparation and equal and simultaneous dissemination of the technical specifications enabling wider participation. Competition is at the core of public procurement. A competitive process provides the procuring entity the best opportunity to procure the goods or services with value for money. There may however, be valid exceptions to the principle of competition; this depends on the nature of the requirement, and other circumstances of the need or the market, and is the realm of exceptional or restrictive procurement methods etc. The principle of transparency requires clear and open definition of the circumstances where exception is appropriate.

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

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

3.19 *Public supervision* – public procurement achieves public supervision through diverse measures. Some of them are advertising of tender, ensuring possibility for everyone examining tender documents, giving opportunity to everyone to attend the first session of a tender (bid opening), and notification of the result of the tender, in the case of Nigeria, the law requires that procuring entities invite at least a representative of a CSO and a representative of a professional body with expertise in the area of goods ,works or service being procured to observe the process.

3.20 *Appropriate conditions* – these require that procurement proceedings hold in accordance with procurement legislation and regulations. Respect for these regulations requires that there will be no twisting of the rules. It implies that the principal procurement methods is the open competitive procedure, and that use of restricted procedure and other methods will be only under special conditions set out in the law or Guidelines. It also requires that procurement proceedings shall not commence unless there is sufficient budgetary allocation¹⁶.

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

¹⁶ Section 16 of the Public Procurement Act 2007

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

- Holds practitioners (those involved in the procurement process) responsible for enforcing and obeying the rules
- Makes them subject to challenge and sanction, if appropriate, for neglecting or bending rules
- Inspires confidence and willingness of well-qualified vendors to compete
- Directly and concretely benefits the purchasing entity and stakeholders, responsive contractors, and suppliers, financiers

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

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

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

3.25 *Other principles* – public procurement should appreciate the different types of procurement needs and the distinctiveness of their requirements. Thus, unless there is a natural and justifiable connection between them, it is not appropriate to consolidate purchase of goods, services, and works. Often, the different expertise and skills required for them differ and would not reside in the same persons. It is also improper to divide goods, services, or works for purchase into lots with the intention of avoiding threshold values¹⁷. This will also defeat the concepts of economy, fairness, value for money, and competition.

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

3.26 Following return to civil rule in 1999, the federal government moved to address the nagging issue of corruption in the public service. The first concrete action it took to address this was the submission of an Executive Bill to the National Assembly, which led to the enactment in 2000, of the Independent Corrupt Practices and Other Related Offences Commission Act. In realization of the corruption in procurement, the government also planned to enact a Public Procurement Bill to introduce international standard practices and regulations in public procurement. As a step towards realizing this, the federal government invited the World Bank to first conduct a nationwide assessment of the public corruption. The result of that assessment carried out in conjunction with a national task force, Country Procurement Assessment Report (CPAR) 2000, formed the basis of the Public

¹⁷ This will be the offence of bid splitting as in the Public Procurement Act 2007

Procurement Act, 2007. The CPAR was a detailed diagnosis of the Nigerian procurement system and included both findings and recommendations (short and medium term).¹⁸

3.27 Given the time it was taking to enact the Public Procurement Act, the Federal Government moved to implement the recommendations of CPAR, to the extent possible while awaiting eventual enactment of the Act. Consequently, the government set up the Budget Monitoring and Price Intelligence Unit (BMPIU) in June 2003 as an operationally independent body headed by a Senior Special Assistant to the President. Although thinly staffed, its personnel comprised experts with a bias for project management, construction, and procurement. The Unit was the clearing-house for all Federal Government contracts and procurements of goods and services, and functions.

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

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

The strategies of the BMPIU revolved around definition of four primary functions: regulatory, certification, Monitoring and training and advisory Functions.

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

Review of Main Provisions of the Procurement Act, 2007

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

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

Purpose and Scope of the Public Procurement Act, 2007

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

¹⁸ See the Appendix for excerpts of the findings and recommendations of the CPAR

procurement process: the National Council on Public Procurement (NCP), and the Bureau of Public Procurement (BPP).

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

3.33 The Act has wide applicability and does not grant exemption to procuring entities except as stated above. Thus, all federal government ministries, departments, and agencies are subject to it. This includes military establishments when they are not buying defence and security related equipment. The Act also covers procurement by other entities other than procuring entities under the Act, where up to 35 percent or more of the funds for the procurement, will come from the Federal Government, even if such other entities include a state government.. By this definition, most activities of autonomous government agencies such as the Nigeria National Petroleum Corporation (NNPC), the Nigerian Communications Commission (NCC), the Central Bank of Nigeria (CBN) come under the purview of the Act. Also the joint venture projects of the NNPC may be subject to this law given the percentage cash call contributions of the Federal Government of Nigeria.

Fundamental Principles of Procurement under the Act

3.34 *Prior and Post Review* - under the Act, all qualifying procurements are subject to review: prior or post. *Prior review* applies to all contracts above the threshold established by the National Council on Public Procurement (NCP). Where this is the case, *apriori* permission of Bureau and certificate of “no objection” are necessary conditions before commencement of bid process. *Post review* applies to contracts below established thresholds. Advance permission of the Bureau is not a condition in such cases; procuring entities proceed to invite bids for tenders. However, procuring entities must adhere to the provisions of the Act. In addition, they must keep records of transactions and transmit to the Bureau for post mortem appraisal.

3.35 *Open competition is default-bidding method* - all contracts shall be by open competitive bidding. The Act requires procuring entities to use the process in manner that is transparent, timely, equitable for ensuring accountability, and conforming to the provisions Act and procurement regulations. The aim must be to achieve value for money and fitness for purpose, and promote competition, economy, and efficiency. Open competition must also be in accordance with the procedures and time-line laid down in the Act and specified by the Bureau from time to time.

3.36 *‘No objection’ certificate* – all contracts shall be subject to the prior review thresholds and conditions set by the Bureau from time to time. As explained above, MDAs may proceed with procuring items below the threshold. However, they must obtain prior approval before formalizing procurement contracts in the case of items above the threshold. First, the procuring entities must ensure there are procurement plans supported by prior budgetary appropriations. Second, they must ensure that funds are available to meet the maturing obligations. Finally, where the sum is above the threshold, they must obtain a "Certificate of 'No Objection' prior to Contract Award" from the Bureau.

3.37 *What is the effect of the certificate of ‘no objection’?* For all qualifying procurements above the prior review thresholds, the Bureau prescribes by regulation what guidelines and conditions precedent apply to the award of Certificate of "No Objection" under this Act. Any such procurement purportedly awarded without a "Certificate of 'No Objection' to Contract Award" duly issued by the

Bureau shall be null and void¹⁹. Further, a certificate of "No Objection" to an award of contract duly issued by the Bureau must accompany requests for payments from the Treasury or any bank account.

3.38 *Preservation of records of procurement proceedings* - as stated above, all contracts not subject to prior review are subject to post review. Every procuring entity shall maintain both file and electronic records of all procurement proceedings and preserve such for 10 years²⁰. Further, procuring entities shall transmit copies of all procurement records to the Bureau not later than 3 months after the end of the financial year. Such records must show

- Information identifying the procuring entity and the contractors
- The date of the contract award
- The value of the contract : and
- The detailed records of the procurement proceedings.

3.39 *Right of public to inspect procurement proceedings* - all unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as the Bureau may prescribe from time to time²¹. Any person shall be entitled to access to procurement records once a winner is selected and notified or a procurement proceeding is terminated without a contract²². The apparent conflict between these two provisions is resolved by paying heed to the fundamental principles of the PPA 2007, and off course by the Freedom of Information Act 2011 which has granted a primary right of access to publicly held information to all, particularly imposing an obligation on public bodies to proactively disclose public expenditure information²³.

3.40 *Disqualification of certain persons from the bidding process* - persons engaged in preparing any part of a procurement proceeding²⁴ shall not bid for the procurement in question or any part either as main contractor or sub-contractor. Besides, that person shall not cooperate in any manner with bidders in the course of preparing their tenders.

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

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

- The bidder offered monetary or equivalent inducement to influence the procurement process
- The bidder has failed to perform or apply due care in performance of a public procurement in the last three years
- There is evidence of the bidder
 - Being in receivership, insolvency, or bankruptcy proceedings
 - Having been declared bankrupt or made compromises with creditors within last 2 years
- The bidder is in arrears of payment of due taxes, charges, pensions, or social insurance contributions
- The bidder has been validly sentenced for procurement or financial crime

¹⁹ Section 16(4) of the Public Procurement Act 2007

²⁰ Section 16(12) Ibid

²¹ S 16(14) ibid

²² S 38 Ibid

²³ S 2 (3) d, v, of the Freedom of Information Law 2011

²⁴ Perhaps as consultant or otherwise to the procuring entity

- The bidder is partly owned or managed by person convicted of procurement or financial crime
- The bidder has failed to disclose interest in another company participating in process - The procuring entity must relay the information to Bureau in writing
- The bidder failed to show evidence of payment of due taxes
- The bidder failed to include an affidavit of no relationship’’ with the Bureau

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

Procurement Regulation under the Act

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

3.45 *The National Council on Public Procurement* - the Act provides that the NCPP shall comprise 12 members, six each from the public and private sectors respectively and as detailed below:

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

3.46 *Functions of the NCPP* - the NCPP has both policy formulation and supervisory functions and administrative functions. these include

- Consider, approve, and amend the monetary and prior review thresholds for procuring entities
- Consider and approve policies on public procurement
- Approve changes in the procurement process to adapt to improvements in modern technology
- Give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act
- Approve the appointment of the directors of the Bureau
- Receive and consider, for approval, the audited accounts of the Bureau²⁵

Procuring entities must abide by policy made by the Council.

3.47 In addition, the Council shall recommend the Director General of the Bureau of Public Procurement for the President to appoint (s. 7). *Sections 8 and 9* require the Council to appoint principal officers (including directors and other officers it shall decide) of the Bureau following a

²⁵ See Sections, 1, 8 – 10, and 13

competitive selection process. The Council shall make staff regulations including those relating to conditions of service, appointment, promotion, discipline, and appeals on disciplinary measures.

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

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

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

- Formulate general policies and guidelines on public procurement for the Council to consider and approve
- Publicize and explain the provisions of the Act
- Certify qualifying federal procurement prior to the award of contract
- Supervise the implementation of established procurement policies
- Monitor prices of tendered items and keep a national database of standard prices
- Maintain a database of particulars, classification, categorization of contractors and service providers
- Collate and maintain in an archival system, all federal procurement plans and information
- Organize training and development programmes for procurement professionals
- Periodically review socio-economic effect of procurement policies and advise Council accordingly
- Prepare and update standard bidding and contract documents
- Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions
- Review the procurement and award of contract procedures of every entity to which the Act applies
- Perform procurement audits and submit such report to the National Assembly bi-annually
- Co-ordinate relevant training programs to build institutional capacity

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

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

- Enforce monetary and prior review thresholds
- Issue certificate of "No Objection" for Contract Award"
- Stipulate procedures and documentation pre- requisite for issuance of Certificate
- Cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act
- Review and determine whether any procuring entity has violated any provision of the Act

- Debar any supplier, contractor, or service provider that contravenes any provision of the Act and regulations
- Maintain and publish a list of firms and debarred persons
- Maintain a national database of contractors and service providers
- Exclusively prescribe classifications and categorizations for contractors and service providers
- Investigate complaints in accordance with the procedures set out in this Act
 - Call for such information, documents, records, and reports in respect of any aspect of any procurement proceeding on which complaint is received
 - Examine persons or parties in connection with any procurement proceeding
 - Nullify whole/part of procurement proceeding or award that contravenes the Act
 - Where the condition exists, recommend to the Council
 - Suspension of officers concerned with the procurement or disposal proceeding in issue
 - Replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be
 - Discipline of the Accounting Officer of any procuring entity
 - Temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant
 - Any other sanction that the Bureau may consider of appropriate
- Do such other things as are necessary for the efficient performance of its functions

Procurement Execution under the Act

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

Organizing the Procurement Function

3.53 *The Tenders Board* – the Act requires that each procurement entity establish a Ministerial or Parastatal Tenders Board as may be relevant. The Board shall be the approving authority for the conduct of public procurement. By this provision, the Board shall be responsible for all procurement activities, including award of contracts within the threshold set in the regulations (s. 22). Membership of the Tenders Board shall be as the Bureau, with approval of the Council, prescribes from time to time. Note that the approving authority is not the Executive Council of Ministers.

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

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

- Preparing a procurement needs assessment and evaluation – this helps ensure that procurement is according to what is necessary to meet stated goals and objectives
- Identifying the goods, works, or services required to meet the needs
- Carrying out appropriate market and statistical surveys and on that basis preparing analysis of the cost implications of the proposed procurement
- Aggregating requirements whenever possible, both within the procurement entity and between procuring entities, to obtain economy of scale and reduce procurement cost
- Integrating procurement expenditure into the yearly budget

- Prescribing any method for effecting the procurement subject to the necessary approval under the Act; and

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

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

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

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

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

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

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

- Ensuring compliance with the provisions of the Act by the procuring entity; in this regard, the accounting office is personally liable for any breach or contravention of the provisions of the

Act or any regulations deriving from it. This liability remains notwithstanding whether the accounting officer or any of his or her delegates committed the act or omission in question

- Constituting the procurement committee and its decisions
- Ensuring provision of adequate appropriation for the procurement
- Integrating procurement expenditure into yearly budget
- Ensuring no reduction of values or splitting of procurements to evade use of appropriate procurement method
- Constituting the Evaluation Committee in liaising with the Bureau to ensure the implementation of its regulations

3.59 *Prequalification of bidders* – this is relevant where, in particular procurements, a procuring entity decides to pre-qualify bidders in order to shortlist only credible persons for main bid. Above a certain threshold the existing procurement regulations require pre-qualification, below that threshold it would appear that the decision, whether or not to pre-qualify is left entirely to the procuring entity. In those situations, it shall request interested persons to apply to pre-qualify. In doing so, the procuring entity shall specify the minimum, clear, and precise qualifications required. On request, the procuring entity shall provide a set of prequalification documents to each interested persons at no more than the cost of printing and shipping. The entity shall apply only the criteria set out in the prequalification documents and no more in deciding who qualifies for the main bid.

3.60 Contents of the prequalification document – prequalification documents shall contain instructions on how to prepare and submit the prequalification application and a summary of the main terms and conditions required for the procurement contract. In addition, it shall contain documentary evidence or other information required to demonstrate qualifications. It must also specify the manner and place for submission of applications to pre-qualify and the deadline for the submission, i.e., specific date and time. The document must allow bidders reasonable time to comply. The procuring entity may also establish other requirements provided such requirements are in conformity with the PPA 2007.

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

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

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

Procurement methods

3.64 Open Competitive Bidding is default procurement method – except as otherwise prescribed under the Act, all procurement of goods and services shall be by open competitive bidding. The process requires the procuring entity to predefine or specify its needs and requirements, set the criteria for their supply, and offer every interested bidder equal and simultaneous information and opportunity to offer the goods, services, and works needed (s. 24(2)). Such invitations to bid can either be by way of National Competitive Bidding (NCB) or international competitive bidding (ICB), depending on the monetary threshold set by the Bureau. The winning bid shall be the lowest responsive evaluated bid with regard to the specifications and standard.

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

Table 3.1: Requirements for NCB and ICB		
Methods	Advert Media	Time of Advert
International Competitive Bidding (ICB)	<ul style="list-style-type: none"> • at least 2 national dailies • one relevant internationally recognized publication • Official website of procuring entity • Official website of BPP 	Not less than 6 weeks from deadline for submission of bids
National Competitive Bidding	<ul style="list-style-type: none"> • notice board of procuring entity • Official website of procuring entity • at least 2 national dailies • procurement journal 	Not less than 6 weeks from deadline for submission of bids

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

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

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

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

Table 3.2: Hierarchy of Authority and Approvals in the FGN Public Procurement				
Approving Authority/No Objection to award Certificate	Goods	Works	Non-consultant Services	Consultant Services
BPP issues 'no objection' to award/FEC approves	₦100 million and above	₦1.0 billion and above	₦100 million and above	₦100 million and above

Ministerial Tenders' Board (MTB)	₦5 million and above but less than ₦100 million	₦10 million and above but less than ₦1.0 billion	₦5 million and above but less than ₦100 million	₦5 million and above but less than ₦100 million
Parastatal Tenders' Board (PTB)	₦2.5 million and above but less than ₦50 million	₦5 million and above but less than ₦250 million	₦2.5 million and above but less than ₦50 million	₦2.5 million and above but less than ₦50 million
Accounting Officer – Permanent Secretary	Less than ₦5 million	Less than ₦10 million	Less than ₦5 million	Less than ₦5 million
Accounting Officer – Director General /CEO	Less than ₦2.5 million	Less than ₦5 million	Less than ₦2.5 million	Less than ₦2.5 million
Source: Approved Revised Thresholds for Service-Wide Application for Procurement in the Oil (and Non-Oil Sectors) ²⁶ , ISBN 978-978-49335-7-5, published by the Bureau of Public Procurement				

It must be noted that these thresholds change from time to time .

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

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

Procurement/ Selection Method and Prequalification	Goods	Works	Non-consultant Services	Consultant Services
International/National Competitive Bidding (ICB/NCB)	₦100 million and above	₦1.0 billion and above	₦100 million and above	Not applicable
National Competitive Bidding (NCB)	₦2.5 million and above but less than ₦100 million	₦2.5 million and above but less than ₦100 million	₦2.5 million and above but less than ₦100 million	
Shopping (Market Survey)	Less than ₦2.5 million	Less than ₦2.5 million	Less than ₦2.5 million	
Single Source/direct contracting (minor value procurements)	Less than .0.25 million	Less than .0.25 million	Less than .0.25 million	Less than .0.25 million
Prequalification	₦100 million and above	₦300 million and above	₦100 million and above	Not applicable
Quality and Cost Based	Not applicable			₦25 million and above
Consultant Qualification				Less than ₦25 million
Least Cost				million
Source: Approved Revised Thresholds for Service-Wide Application for Procurement in the Oil (and Non-Oil Sectors) ²⁷ , ISBN 978-978-49335-7-5, published by the Bureau of Public Procurement, page 5				

²⁶ The title of the document excludes the non-oil sector, but this is in apparent error.

²⁷ The title of the document excludes the non-oil sector, but this is in apparent error.

As already indicated, these thresholds are subject to change by the Bureau with approval of the Council

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

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

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

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

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

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

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

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

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

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

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

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

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

3.82 Notice of successful bid - the successful bid shall be that submitted by the lowest cost bidder from amongst the bidders responsive to the bid solicitation²⁸. However, the selected bidder in exceptional circumstances needs not be the lowest cost bidder, provided the procuring entity can show

²⁸ S 16(17) 24 (3) and 33(1) of the Public Procurement Act 2007

good grounds to that effect²⁹. Notice of the acceptance of the bid shall immediately be given to the successful bidder. Where the procuring entity pre-qualified suppliers, it shall verify and confirm the information provided in prequalification at time of award of contract. The entity may deny award to a bidder who no longer has the capability or resources to perform the contract successfully.

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

3.84 *Two stage tendering* – a procuring entity may use a two-stage tendering process in certain situations. However, the entity shall first obtain a ‘Certificate of No Objection’ from Bureau before it can use the method. The conditions that may warrant use of a two stage tendering process, where

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

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

3.86 In the second stage, the procuring entity may invite final tenders with prices on a single set of specifications from surviving bidders. In formulating the final specifications, the procuring entity may include amendments as it deems fit. It may delete or modify technical or quality characteristics or add new characteristics or criteria. It may permit an unwilling bidder to withdraw from the tendering proceedings. The procuring entity shall evaluate and compare final tenders to ascertain the successful tender as in an open competitive bid

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

²⁹ S 33(2) Ibid

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

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

- The works, goods, or services, are available from only one particular supplier
- The supplier has exclusive rights in respect of the goods and no reasonable substitutes exist
- There is urgent need for the item(s) making tendering proceedings impractical
- The urgency arose from unforeseeable circumstances not due to dilatory conduct of the procuring entity
- Occurrence of catastrophe necessitates urgency of the procurement
- Continuation of performance under an old contract, e.g., procurement of additional spare parts from supplier
- There is need to ensure compatibility with existing technology
- The procurement is for research not involving commercialization
- The procurement has national security implications

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

Procurement of consultant services

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

3.92 *Expression of interest* – this method applies when a procuring entity wishes to procure precise and ascertainable services. The procuring entity shall then solicit for expressions of interest to pre-qualify in two national daily newspapers and the procurement journal. Where the value of the service is small as determined by the Bureau, such that only national consultants are likely to apply,³⁰ the procuring entity may invite proposals from between three and 10 service providers. The request for proposal shall be in a format stipulating the following

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

³⁰ Currently set at 5 million naira (2.5 for parastatals)

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

3.94 Other provisions – the Act also contains detailed provisions relating to other aspects of the use of consultant services and request for proposals. These include the following³¹

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

Disposal of Public Property

3.95 Every procuring entity is also a disposal entity under the Act. Open competitive bidding is the primary source of receiving offers for the purchase of any public property offered for sale.

Procurement Surveillance and Review

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

3.97 *Criminal investigation* – the Act empowers the Bureau to review any matter related to the conduct of procurement proceedings by a procuring entity. The Bureau can also review the conclusions, outcomes, or operations of a procurement contract. Following such review, the Bureau may recommend criminal investigations of the procurement process to any relevant authority. The Act grants the investigating authority full access to persons, suppliers, bidders, contractors, consultants, books, records of account, etc. The investigative authority may also search any premises and remove books, documents, records, etc., of the procuring entity or contractor, supplier, etc. or to interrogate any person related to the procurement.

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

³¹ See ss. 46- 52

3.99 The Bureau may also take other action if satisfied that there has been a contravention of the Act or any regulations in relation to procurement proceedings or contracts. Such actions include nullification of the procurement proceedings, cancellation of the procurement contract, or making a declaration consistent with any relevant provision of the Act. Alternatively, and where appropriate, the Bureau may ratify the actions.

3.100 *Administrative review* – the Bureau may also institute an administratively proceeding if a bidder complains of an act of omission or breach of a procurement or disposal proceedings. The process is that the bidder must first lodge a written complaint with the accounting officer within 15 working days from the date of becoming (or should have become) aware of the circumstances leading to the omission or breach. The accounting officer shall, within another 15 working days, review and make a written decision indicating corrective measures, if necessary. The decision of the accounting officer may include suspension of the procurement proceedings. Where the accounting officer fails to make such a decision or if unsatisfied with the decision, the bidder may lodge a written complaint to the Bureau within 10 days.

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

Procurement Offences and Penalties

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

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

3.103 Penalties for contravention of provisions of the Act - include imprisonment for up to 10 years without option of fine. Lesser offences by public officers attract for public officers attract five years imprisonment without option of fine, and summary dismissal from government service. Offences by legal practitioners will attract debarment for up to five years, and fine of 25 percent value of procurement in issue.

Chapter 4: Compliance with the PPA - Perception of Procuring Entities

4.1 *How do procuring entities perceive general compliance with the Public Procurement Act, 2007? How do they rate the performances of the key players under the Act: themselves, the Bureau of Public Procurement, bidders/contractors/suppliers, and civil society groups? To what do they attribute infractions of the Act? What are their suggestions on how to improve compliance?* This chapter answers these questions by analyzing the responses of procuring entities to the questionnaire administered on them.

4.2 *The presentation comprises two main sections: general issues and issues specific to the Public Procurement Act.* The discussion on general issues focuses on certain universal practices that predispose to effective and efficient public procurement. The Public Procurement Act, 2007 may not have legislated expressly on all of these ‘good procurement habits’, but they are important nonetheless. However, the Act did legislate on some of these preliminary practices. The second section deals with the extent to which the various players comply with express provisions of the Act.

4.3 *The analyses here present results of self and peer performance assessment by procuring entities on different roles in implementing the PPA 2007 and securing effective performance.* Self and peer assessments are often fraught with many dangers, some of which the literature document. For instance, Van LAKERVELD’s 2003 lecture carefully details pitfalls of self-assessments.³² These include focus on faultfinding and past performance rather than future opportunities for improvement. This self-consciousness creates a tendency for exaggeration. Further, peer reviews predispose to prejudices and biases, including vendetta. These downsides notwithstanding, research of this sort must rely on information provided by stakeholders. Besides, self and peer assessments reflect the practitioners’ knowledge, experience, and concerns, which are valuable in the design of reform agendas. Moreover, requiring individual members of each block of stakeholders to assess the performance of the other blocks should minimize biases and increase objectivity.

Compliance with General Good Practices in Public Procurement

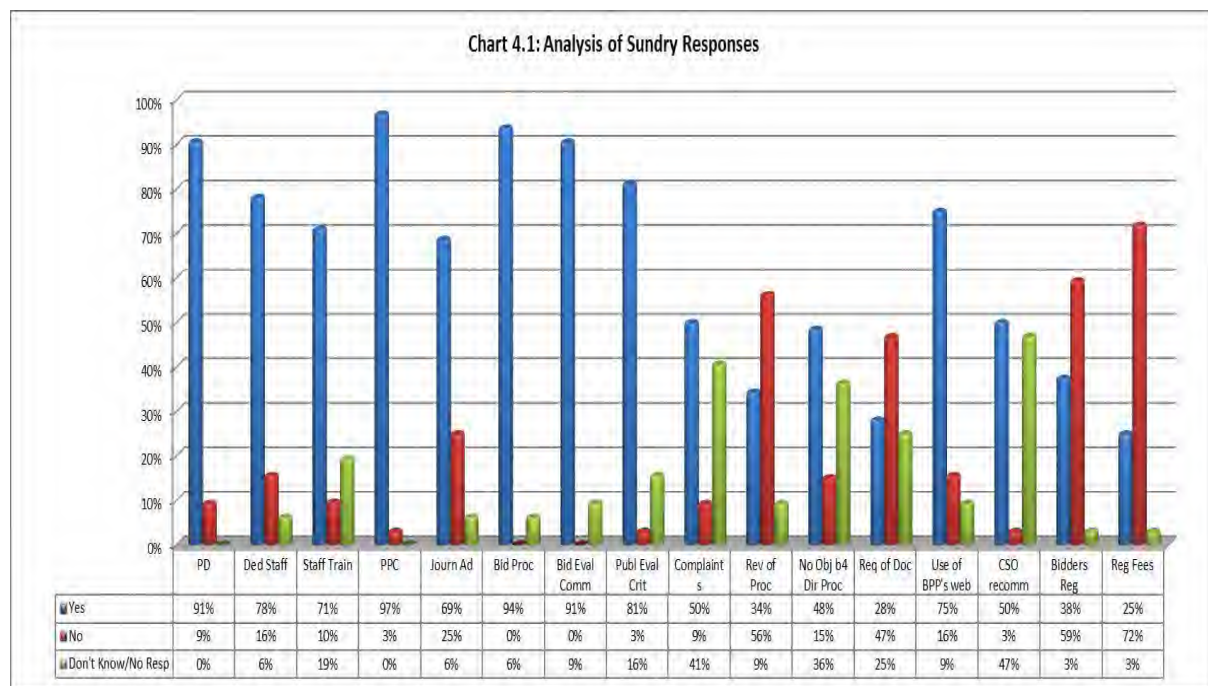
4.4 The general issues discussed here are some ancillaries to good preliminary procurement behavior and routines. They include existence of a procurement department with dedicated staff, existence of procurement planning committee (PPC), staff training, advertisement practices, bidding procedures, extent of complaints, regard paid to recommendations by observers, etc. Public procurement cannot be effective and efficient without these principles. For instance, effective public procurement and compliance with provisions of the Act require that practitioners have good knowledge of procurement principles, law, and practice, be professional, and effectively train and retrain. Effective procurement also requires dedicated staff and department, transparent procedures, and the confidence of stakeholders that treatment of complaints is fair and prompt. These are the principles behind the general issues treated here. The narrative below reflects the responses from administered questionnaires.

4.5 *The level of compliance with the requirement to establish procurement departments with dedicated staff is high, but there are zonal variations.* Most procuring entities have established procurement departments (PDs) with dedicated and trained staff, and procurement planning committees (PPCs). Ninety one (91) percent of entities surveyed nationwide have PDs, 97 percent of them use PPCs for their procurement planning, 78 percent have dedicated procurement personnel, and 71 percent have staff with some form of procurement training. However, performance is not even

³² And how to avoid them, see: Jaap van LAKERVELD, PLATO, Leiden University, The NETHERLANDS, Self-Evaluation: About Pitfalls and Pudding, BRDO conference 24 – 28 September 2003, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&sqi=2&ved=0CGoQFjAF&url=http%3A%2F%2Fwww.i-probenet.net%2Flibrary%2FBrdokeynote3.doc&ei=wvrKT9bFPMnc4QTQksnzDw&usq=AFQjCNH9dqTMDzI78q-R-TpMH0q7rG2GAA&sig2=538sj9DZ7x0cGgJ4yaAFjw>

across the zones, with the southeast (SE) zone recording the highest level of performance in these areas. All responding SE procuring entities³³ have established procurement departments, i.e., 100 percent. In contrast, 94 percent of procuring entities in the FCT and 80 percent in north central (NC) have done the same. Among the prominent procuring entities in the FCT that do not have procurement departments is the Independent National Electoral Commission (INEC). Eighty-three (83) percent, of SE entities have dedicated procurement staff; the corresponding statistics for the FCT and NC respectively are 81 percent and 80 percent. One hundred percent of staff deployed to procurement departments by SE entities has procurement training; the corresponding percentages for the FCT and the NC are 69 and 50 respectively. All procuring entities in these zones use procurement planning committees.

4.6 *The reason for continued posting of non-procurement professionals and untrained staff to the PD is unclear, but it can affect effective implementation of the PPA.* Factors responsible for use of nonprofessionals and untrained staff may include inadequate trained personnel and the civil service culture of periodic posting of pooled staff in a duty tour process.³⁴ If the tour of duty results in replacement with untrained staff,³⁵ it may adversely affect professional procurement practice. The government is addressing inadequacy of trained personnel through a certification process run by the Bureau of Public Procurement and the Office of the Head of Service (see Chapter 8).



4.7 *The responses suggest that procuring entities are giving public procurement the necessary administrative visibility because heads of procurement departments are mostly of the rank of directors and above, in the FCT as well as the zones.* A general manager heads the procurement department of Power Holding Company of Nigeria (PHCN), and the rector heads the procurement department of one polytechnic in the southeast. A few entities have non-director level heads. For example, some

³³ Six of them

³⁴ See Chapter 8 below, which presents information to show a low rate of certification of procurement personnel, and the low salary grade level of most certified procurement personnel. It should be difficult to post procurement staff out of the procurement department with the establishment of the procurement cadre of the civil service. However, the slow certification process means that only a small fraction of current procurement staff can have guaranteed status and procurement personnel. The other trained staff are subject posting to other departments.

³⁵ Or use of uncertified procurement personnel, that staff that underwent training, but failed the certification examination

institutions have as heads, the ‘chief procurement officer, ‘procurement officer’, etc. Two entities³⁶ have the ‘director of research’³⁷ and the ‘director of works’³⁸ respectively heading the procurement unit. These arrangements ensure that the procurement departments report directly to the accounting officer. This is the intention of the PPA as recently reemphasized by a circular of the Head of the Civil Service of the Federation. The circular³⁹ reiterates a point in an earlier circular on the establishment of the procurement cadre,⁴⁰ that, “*where the procurement functions of an MDA are handled by any officer below the rank of director, that division, branch, or unit should report directly to the permanent secretary for better coordination, efficiency, and qualitative delivery of government services.*”⁴¹

4.8 *However, the apparent visibility of procurement departments is not in full compliance with the spirit of the PPA.* For instance, the case of the head of the institution (rector) heading the procurement department suggests excessive control of the procurement process. It is difficult to appreciate how the head can effectively perform the functions of the office, including overseeing procurement needs assessment, procurement planning, documentation etc. The scenario exposes public procurement to political and administrative interferences (see below). Similarly, subjugating public procurement to the supervision of the Director (department) of Works or Research may create visibility for the procurement function, because a director represents procurement issues; however, detracts from professional procurement practice. Besides, it violates express provisions of the Act, which require procuring entities to create procurement department. The circular of the Head of the Civil Service cited above permits a non-director to head the department and report directly to the accounting officer.

4.9 *Staffing levels in procurement departments appears to be too high in some entities and too low in others.* There is no prescribed minimum or maximum staffing of the department; each entity appears to be responsible for this decision and the practice is not uniform. For example, the Federal Capital Development Authority (FCTA)⁴² has only 13 personnel in its procurement department, whereas the Universal Basic Education Commission has 32 with 25 trained.⁴³ The ministries of Transport and Water Resources have 22 and 21 respectively. The Power Holding Company of Nigeria (PHCN),⁴⁴ Ministry of Education, and the ICPC have seven dedicated personnel each, while the National Planning Commission (NPC) has six. In the SW zone, one procurement entity claimed to have more than 15 dedicated staff.⁴⁵ In the NC zone, procurement departments consist of between 6 and 12 personnel.⁴⁶ Southeast entities indicated they have between two and seven dedicated staff.⁴⁷ Too few staff may compromise the quality of procurement decisions, while too many staff may cause inefficiency. The quality of staffing is as important as the quantity, but this study did not go into the ‘quality’ question.

³⁶ That probably do not have specific procurement departments

³⁷ In the north central zone

³⁸ In the southeast

³⁹ No HCSF/061/S.1/V/102 dd 13 February, 2012, titled, *Reaffirming the Reporting Order with respect to the Procurement Process*

⁴⁰ Circular Ref No HCSF/PSO/158/1/3 dd 31 March 2008

⁴¹ See circular No HCSF/061/S.1/V/102 dd 13 February, 2012, titled, *Reaffirming the Reporting Order with respect to the Procurement Process*

⁴² With its high volume of procurement, especially in construction works

⁴³ Not necessarily certified; see *Chapter 8* below for the difference between trained and certified procurement personnel.

⁴⁴ Another entity with a high volume of mostly sophisticated procurement

⁴⁵ This is doubtful because the entity indicated some heads of departments as part of the dedicated staff of the procurement department.

⁴⁶ The Industrial Training Fund (ITF) indicated that it has 12 dedicated and trained staff

⁴⁷ They have 2, 4, 5, 6, 7 staff

4.10 *Procuring entities adjudge the quality of procurement training as good⁴⁸, although there does not appear to be a uniform policy and curriculum to ensure standards.* Most entities have participated in procurement trainings organized by the Bureau of Public Procurement (BPP), but some also patronize other trainers. Among other trainers FCT procuring entities use, are the Centre for Management Development (CMD), Lagos,⁴⁹ the Institute of Chartered Accountants of Nigeria (ICAN), the Nigeria Society of Engineers (NSE), the Chartered Institute of Purchasing and Supply (CIPS), Supreme Management Consultants, and the World Bank. Procuring entities in the SW said they use the BPP and a private outfit, Step B. Southeast entities indicate the BPP, ICAN, and the Education Training Fund (ETF).⁵⁰ Participation of other groups in procurement training is useful in several respects. They will complement the efforts of the BPP, add depth and additional perspectives, and help to fast track professionalism. For example, private trainers can offer specialized courses on evaluation of bids, procurement methods, etc., perspectives that complement BPP efforts. *However, it might be useful to devise a way to understand what the trainers are offering and guarantee that participation is effective, before the issue of certificate.*⁵¹ Indeed a tertiary institution based procurement training program, supported by consistent research efforts is needed.

4.11 *Responses also suggest varied practices in the setting up of procurement planning committees.* Some entities constitute these committees annually, others as *ad hoc* committees constituted to reflect the particular procurement on hand; yet others constitute them as permanent standing committees. The FCTA and the Ministry of Health constitute them annually. Among those whose responses suggest they set up as standing committees are FIRS, PHCN, (2007), (NPC, UBEC, Police Affairs, ICPC, Transport, Water Resources, INEC, FERMA (2008), and Education (2009). In the SW zone, one entity suggested it set up its PPC in 2008 and another suggested it sets up annually. Respondents in the SE indicated varying dates: 2008, 2010, and 2011.

The Procurement Process

4.12 *Majority of responding procuring entities suggest they observe usual procurement routines such as advertising in the procurement journal, open competitive bidding, use of bid evaluation committee, and of bidding criteria.* Ninety-four (94) percent said they use a bidding process; 69 percent advertise procurement in the Federal Tenders Journal (FTJ), 91 percent have bid evaluation committees, and 81 percent provide bidders with bid evaluation criteria at some stage in procurement process.

4.13 *Zonal performances are also not even.* All FCT procuring entities responding to the questionnaire said they have conducted bidding processes, have bid evaluation committees, and publish bid evaluation criteria at some stage in the procurement process. However, only 75 percent of advertise in the Federal Tenders' Journal. One hundred percent of entities in the NC say they have bid evaluation committee while 80 percent say they have conducted bidding processes as well as advise their bids in the procurement journal. However, only 40 percent publish the bid evaluation criteria at any stage. Eighty-three (83) percent of respondent entities in the SE conduct bidding processes, but only half of them have bid evaluation committees. Two-thirds advertise in the FTJ and publish their bidding criteria.

4.14 *Why do so few entities advertise their criteria for selecting the winning bid /evaluation criteria and how does that affect the procurement process?* Several factors may be contributing this, including insufficient knowledge of the process of public procurement and provisions of the PPA and the pervasive 'culture of secrecy' in the civil service, in particular. There is a relationship between the two factors. The tendency is for the average Nigerian civil servant to 'hoard' rather than disclose, information, even when the information is harmless and rightly belongs in the public domain. This

⁴⁸ Probably judging by the trainers they patronize

⁴⁹ A government owned management development centre, with renown

⁵⁰ ETF may be more of organizers/sponsors of the training than the actual trainers

⁵¹ See Chapter 8 for a suggestion on how to achieve this

bent towards protecting ‘government secrets’, mystifies operations and creates an atmosphere of lack of transparency. Lack of transparency hinders open competition and effectiveness by preventing bidders from responding realistically to bid invitations. It also erodes trust in the bid evaluation process.

4.15 *At what stage in the procurement process do entities that advertise their evaluation criteria do so?* The practice differs among entities and between zones. Five procuring entities⁵² in the FCT said they publish bid evaluation criteria in bidding and solicitation documents: terms of references, requests for proposals, technical specification documents, etc. Others acknowledge they publish at various stages, for example, during bid opening and⁵³ after bid evaluation.⁵⁴ One entity explained that it discloses *some* criteria in the advert, provides explanation at bid opening sessions, and also in response to personal enquiries and petitions. At least five entities were evasive and either avoided the question or provided vague responses such as “as stated in the Act”. It is evident that in all cases where all bidders do not have adequate and simultaneous information on such an important issue as evaluation criteria chances are high that bidding will not be effective, chances are also that where it is not provided as a matter of course, some will get it, and those who get it will have an unfair advantage over those who don’t.

4.16 **The zones** - *the three entities that responded in the southwest zone adopt different practices each in publishing their bid evaluation criteria:* one provides them in bidding documents, another during bid opening, and the third, when requested by bidder. The sole south-south respondent says it publishes prior to bidding, but did not specify when or provide evidence. The response appears to suggest that the information is not usually in the bid solicitation documents. One procuring entity in the north central zone indicates it publishes *after* choosing the successful bidder and following bitter complaints. Publication at bid opening, or after bid evaluation and selection of successful bidder runs counter to the provisions of the Act and does not promote the goals of transparency, competition, and efficiency. The Act requires that the criteria be in the solicitation document which is simultaneously made available. One entity in the SE suggests it published bidding criteria in the advertisement, another at bid opening, while some did not specify when they publish, although they claim they do.

4.17 *Thirty-eight percent of responding procuring entities admitted they still register contractors, while 25 percent said they also charge registration.* While one-eighth of FCT based procuring entities still registers contractors, none of them said charges fees for it. However, three-quarters of NC entities register contractors, with more than three-fifths charging fees. Nearly all the two-thirds of entities in the SE that register contractors charge registration fees as well. Fee charging procuring typically categorize contractors into four,⁵⁵ with different fees applying at different levels. Fees charged also vary between the zones. For example, SE entities charge fees ranging from ₦10,000 to ₦50,000.⁵⁶ One entity in the NC charges as low as ₦3,500, while another charges ₦10,000, ₦20,000, ₦50,000, and ₦100,000. The Act forbids procuring entities from registering contractors altogether. *The Act views categorization and registration of bidders, contractors, and suppliers as a procurement regulatory, rather than procurement execution, function. It consequently assigns the role to the Bureau of Public Procurement.*

4.18 *What are the main conclusions of the foregoing discussions?* First, procuring entities comply with some provisions of the PPA 2007 and some good practices, but do not comply with others. Among areas of compliance are establishment of procurement department, dedication of staff to procurement departments, training of procurement personnel, and advertisement of bids. Second, the extent of observance of good practices differs among the zones, with the FCT recording a higher level

⁵² FCTA, FIRS, Ministry of Transport, PHCN, NFCO

⁵³ Two entities

⁵⁴ One entity

⁵⁵ The National Veterinary Research Institute, Vom, Plateau State has five categories: A (₦5,000), B (₦7,000), C (₦10,000), D (₦12,500), and E (₦50,000). The National Institute for Policy and Strategic Studies (NIPSS), Kuru, Plateau State also registers contractors in five categories.

⁵⁶ One entity charges a flat rate of ₦15,000

of compliance. Three, the level of compliance also differs between procurement entities. Fourth, compliance is partial in many areas, even among the entities that are generally complying. For example, some procuring entities that have established procurement departments appoint heads of some other units to head the departments. In addition, some entities disclose bid evaluation criteria to bidders, but not in a transparent manner or on time to guide bidders in preparing their bids. This is adverse to competition.

4.19 *Why is compliance with provisions of the Public Procurement Act so incomplete? What factors adversely affect compliance with the Act and with good procurement practices? What impediments or obstacles hinder performance? The next section attempts to answer these questions by analyzing further responses of procuring entities.*

Analysis of Factors Affecting Compliance with Operational Provisions of the Act

4.20 *The research suggested nine possible adverse influences on the public procurement process and requested respondents to identify if this is so, what specific aspects of the procurement process they affect, and the magnitude of their impact. The nine factors are (i) poor knowledge of the Act and procurement proceedings, (ii) lack of expertise, (iii) resistance to change, (iv) political interference, (v) interference by bidders, contractors and suppliers, (vi) administrative interference, (vii) delays in passing budget, (ix) delays in getting 'No Objection', and (ix) Corruption. The three aspects of compliance are general (overall) compliance with the provisions of the Public Procurement Act, 2007, procurement planning, and bid evaluation. The research required respondents to tick any of six possible outcomes of each of the nine adverse factors against each of the three identified areas. The five possible outcomes are (i) no influence, (ii) slightly influential (iii) somewhat influential, (iv) influential, (v) very influential, and (vi) most influential*

4.21 *The research discounted the first three options as not important for the analysis, i.e., as meaning 'of little influence'. The research regarded selection of three options as significant; these are influential, very influential, and most influential. Table 4.1b analyzes the responses from all respondents; the analysis presents interesting results.*

Table 4.1b: Extent of Influence of Adverse Factors on Implementation of the Public Procurement Act, 2007					
	Gen Compliance	Proc Planning	Bid Evaluation	Average	Ranking
Delays in Passing Budget	90.3%	87.5%	65.6%	81.1%	1
Political Interference	71.0%	56.3%	56.3%	61.2%	2
Poor Knowledge	67.7%	59.4%	31.3%	52.8%	3
Corruption	61.3%	50.0%	46.9%	52.7%	4
Admin Interference	64.5%	40.6%	50.0%	51.7%	5
Lack of Expertise	61.3%	34.4%	40.6%	45.4%	6
Resistance to change	64.5%	37.5%	31.3%	44.4%	7
Delays in getting 'No Objection'	51.6%	43.8%	31.3%	42.2%	8
Interference by bidders	38.7%	15.6%	15.6%	23.3%	9
Relative Importance					
Capacity issues: knowledge+expertise+resistance	33.9%	30.9%	28.0%	30.9%	1
Institutional bottlenecks: delays in passing budget and receiving 'no objection'	24.9%	30.9%	26.3%	27.3%	2
Internal interferences: political+admin	23.7%	22.8%	28.8%	25.1%	3
External interferences : bidder intereference+corruption	17.5%	15.4%	16.9%	16.6%	4
Total	100%	100%	100%	100%	

4.22 *Procuring entities identify four factors as having the most significant adverse influence on implementing the PPA 2007: perennial delay in passing the budget, political interference, corruption, and poor knowledge of the Act. The percentages are late passage of the budget (81 percent), political interference (61 percent), poor knowledge and corruption (53 percent each). Every year, disagreements between the presidency and the national assembly lead to passing the budget well into the second quarter of the budget year. Dates of passage of the last three budgets are April 22, 2010 for the 2010 budget, May 24, 2011 for the 2012 budget, and April 13, 2012 for the 2012 budget (see Table 4.1c). This lateness affects everything from procurement planning to commencement of procurement, etc.*

Fiscal Year	Submission of the Budget		Passage/Accent		Time Taken
	Date	Source	Date	Source	
2012 Budget	13-Dec-11	The Vanguard Newspaper, http://www.vanguardngr.com/2011/12/jonathan-presents-2012-budget-to-nassembly/	13-Apr-12	ThisDay online, http://www.thisdaylive.com/articles/jonathan-signs-2012-budget-to-sanction-mdas-for-lobbying/113705/	4 months
2011 Budget	15-Dec-10	Sahara Reporters, http://saharareporters.com/news-page/jonathan-presents-2011-budget-national-assembly	24-May-11	Business Day, http://www.businessdayonline.com/NG/index.php/news/breaking-news/22177-jonathan-signs-2011-budget-nsia	5 months
2010 Budget	30-Aug-09	http://www.thenigeriabusiness.com/eco309.html	22-Apr-10	NBF News, http://www.nigerianbestforum.com/blog/?p=45255	8 months

4.23 *Late passage of the budget affects the procurement process in another way.* Procuring entities cannot always be sure that the National Assembly will approve their proposals as submitted; often, the National Assembly does not. The National Assembly would normally insert additional projects (constituently projects), which procuring entities did not envisage and do preliminary work on prior to the budget. Prior to submitting project proposal for legislative approval, procuring entities pass them through the medium term sector strategy (MTSS) process, a needs-identification and objective prioritization process. Procuring entities would also have completed designs and other preliminary studies in advance. Insertion of constituency projects that have not undergone that process and according them urgency and priority stretch everything from the span of control of the entities to resources. The rush to complete all processes and meet due process requirements leads to ‘cutting corners’ and short circuiting the provisions of the Act.

4.24 *Political interference is the second most important interference with implementation of the Act.* Political interference includes direct and indirect influences of political appointees with the procurement process. For example, procurement officials acknowledge the difficulty of doing genuine needs assessment, because ‘what the minister wants’ prevails in the end, even though the legislation gives the minister no role in procurement process. Other example of political interference include (i) insertion of previously un-appraised constituency projects by legislators (also political office holders themselves) and according them priority status, (ii) ministers’ usurpation of the role of accounting officers by issuing instructions and communicating directly with the BPP on procurement issues, and (iii) cabinet involvement in approving contracts appear to cause substantial impediments

⁵⁷

4.25 Poor knowledge of the Act and procurement procedures and corruption rank third and fourth respectively, while administrative interferences closely rank next. The relatively low ranking of the influence of corruption is surprising, and perhaps instructive; and even when together with bidder interference, it still ranks low among disruptive influences on the procurement process. However administrative and external interferences or influences are themselves indications of corruption.

4.26 *Table 4.1b reveals other interesting information.* Capacity related issues are the most debilitating factors in the procurement process. Capacity issues include inadequate knowledge of the provisions of the Act and of the procurement process, lack of expertise and skill, and resistance to change. Together, these contribute 30 percent of the difficulties experienced in implementing the Act. Institutional bottlenecks come second at 27 percent. Institutional bottlenecks comprise delays in approving the budget and in obtaining ‘no objection’ certificates from the Bureau of Public Procurement. Internal interferences with the procurement process contribute 25 percent. These interferences are political and administrative. Finally, external influences (corruption and bidder interference) comes a distant fourth, at 17 percent.

⁵⁷ Indeed, the House of Representatives has also declared this act of contract approval by FEC illegal; see for example, <http://blueprintng.com/2012/03/rep-declare-fecs-contracts-illegal/>; <http://www.peoplesdaily-online.com/news/national-news/31688-contracts-approval-by-fec-illegal-reps-declare>

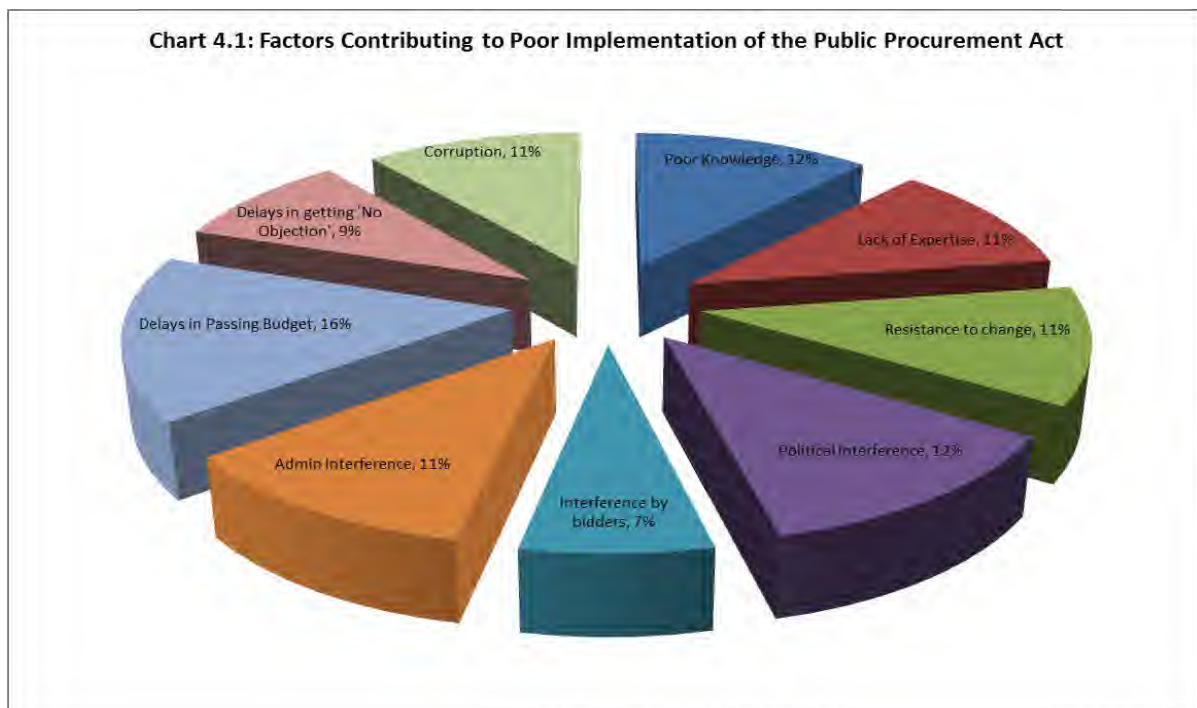
4.27 This analysis shows three things. First, difficulties with implementing the Act are mostly internal and surmountable: capacity issues, institutional factors, and inferences. Second, the three internal factors amount to a lack of political will and commitment. Third, solving the issues require high-level commitment to professionalize the procurement process, develop strong institutional processes and culture, and limit political oversight to what the Act envisages. The analysis now probes the responses deeper.

General Compliance with the PPA

4.28 This subsection analyzes response of procuring entities in the six geopolitical zones on how the nine factors discussed above affect general effectiveness of implementation of the Public Procurement Act, 2007. The nine factors are

- (i) poor knowledge of the provisions of the Act and procurement proceedings by procurement staff of procuring entities
- (ii) Lack of Expertise
- (iii) Resistance to change
- (iv) Political Interference
- (v) Interference by bidders
- (vi) Admin Interference
- (vii) Delays in Passing Budget
- (viii) Delays in getting 'No Objection'
- (ix) Corruption

4.29 As with the analysis in the foregoing section, the responses analyzed below are only those the procuring entities have classified as ‘influential’, ‘very influential’ and ‘most influential’. The discourse discounts responses of ‘not influential’, ‘somewhat influential’, and ‘slightly influential’ as inconsequential for the purpose here.⁵⁸



4.30 Procuring entities consider perennial delays in passing the budget the most important of the nine adverse factors (Chart 4.1). Respondents rank this delay 16 percent, four points higher than

⁵⁸ This treatment applies to all sections analyzing similar responses.

other second highest-ranking influence. Timely passage of the budget has been a challenge to the government since return to civil administration in 1999. The executive and legislature do not manage to agree budget details before the beginning of the budget year. The tradition has been to settle lingering issues and ready the budget for use about April or May each year. This affects procuring entities in several ways, including uncertainty about which of their proposals will be in the final budget, amount allocated to the projects, and insufficient time to apply the detailed procurement procedure. Insertion of new projects⁵⁹ into the approved budget⁶⁰ further complicates procurement due process, because procuring entities must first design and appraise the projects before commencing actual procurement.

4.31 *Procuring entities acknowledge that poor knowledge of the provisions of the Public Procurement Act and political interference affect their ability to implement the Act.* These two rank joint second highest, at 12 percent. Acknowledgment of inadequate knowledge of the Act and proceedings by procuring entities is significant given the efforts of the regulatory agency⁶¹ to train procurement staff of procuring entities. It will be useful to know whether procuring entities retain trained staff on their procurement units or whether they transfer them out at will, as they do other civil servants. Political interference refers mainly to the influence of political heads of agencies on the procurement process.⁶² The Act does not have any direct role for them. The intendment is that politicians will decide on policy and allow regular administrative staff to carry out the purely technical/administrative function of procurement. Response of procuring entities indicates that this is not working as intended.

4.32 Lack of expertise of procurement personnel, resistance to change by MDAs, and corruption also rank high and equal at 11 at percent each. Lack of expertise and resistance to change are capacity issues.⁶³ Corruption refers mostly to external influence, but includes outright bribery, inducement, and compromise resulting from conflict of interest, etc. Procuring entities rank delays in getting ‘no objection’ from the BPP fourth at 9 percent, and administrative interference fifth at 7 percent. Administrative interference includes overriding of due process and procedure due to directives from top or senior civil servants, for example, the permanent secretary. The assessment of delays in obtaining No Objection must be assessed with the background that only a few projects now go for No Objection, in view of the high No Objection thresholds of 1 billion for works, N300million for goods and N100million for services, and the no love lost relationship of the Bureau and MDAs.

Table 4.2: Analysis of Factors Affecting Implementation of the PPA - the Perspective of Procuring Entities (%)

	Total	FCT	NW*	NC	NE**	SW	SE	SS*
Poor Knowledge	12%	13%	11%	13%		14%	10%	14%
Lack of Expertise	11%	11%	11%	22%		14%	3%	14%
Resistance to change	11%	13%	11%	9%		0%	10%	0%
Political Interference	12%	13%	11%	9%		14%	10%	14%
Interference by bidders	7%	5%	11%	0%		14%	14%	14%
Admin Interference	11%	11%	11%	9%		14%	14%	14%
Delays in Passing Budget	16%	14%	11%	17%		14%	21%	14%
Delays in getting 'No Objection'	9%	9%	11%	13%		0%	7%	0%
Corruption	11%	12%	11%	9%		14%	10%	14%
Total	100%	100%	100%	100%		100%	100%	100%
Capacity issues: knowledge+expertise+resistance	34%	37%	33%	43%	0%	29%	24%	29%
Internal interferences: political+admin	24%	24%	22%	17%	0%	29%	24%	29%
External interferences: bidder interference+corruption	18%	16%	22%	9%	0%	29%	24%	29%
Institutional bottlenecks: delays in passing budget & interference by bidders	25%	23%	22%	30%	0%	14%	28%	14%
Total	100%	100%	100%	100%		100%	100%	100%

*Note: There was only respondent in the south-south and northwest geopolitical zones respectively

**Responses of procuring entities in the NE were spoilt, but there were good responses from contractors and bidders from that zone

4.33 *Inherent capacity-related factors constitute the most important impediment to implementation of the Public Procurement Act.* These factors include poor knowledge of the Act, lack of expertise in public procurement, and resistance to change. Together, they constitute 34 percent of impediments.

⁵⁹ Not proposed by the procuring entity

⁶⁰ By the National Assembly

⁶¹ Bureau of Public Procurement

⁶² For example, ministers

⁶³ Together with lack of knowledge

This compares adversely with factors external to procuring entities, i.e., bidder interference and corruption, which rank 18 percent. Political and administrative interferences are another huge influence, accounting for 24 percent (*Table 4.2*). Thus, factors within MDAs – political, administrative, and capacity-related – are the major factors impeding implementation of the public procurement Act, 2007. Procuring entities rank them 58 percent.

4.34 *How did the FCT and the zones rate these factors?* Procuring entities in the FCT acknowledge that capacity is the major reason for not complying with the public procurement Act, rating it 37 percent. The north central zone also agrees with the assessment with 43 percent. However southwest and southeast zones think external interferences – corruption and bidder – constitute the major impediments. Thus, there is a divide between the northern part of the country and the southern. However, all zones agree on the role of political and administrative interferences.

4.35 Other factors identified by procuring entities themselves as contributing to poor implementation of the Public Procurement Act, 2007⁶⁴ include the seven listed below. This analysis does not discuss these issues under a separate heading but subsumes them in discussions in other topics. The seven factors are

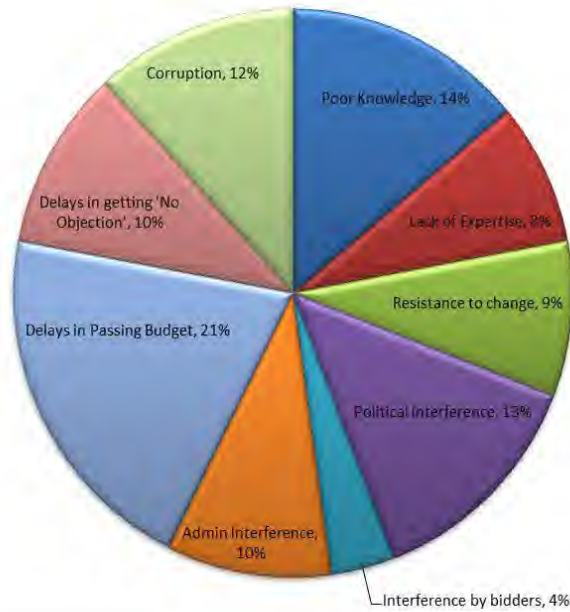
- (i) inadequate staffing of the procurement departments,
- (ii) Non-implementation of government circulars on staffing of procurement outfit
- (iii) Non-commencement of procurement plans early in the year
- (iv) Delays in release of funds
- (v) Lack of direction by government
- (vi) Conflict between new and ongoing projects
- (vii) Lack of training

Procurement Planning

4.36 *Responses suggest that many factors hamper ability of procuring entities to prepare procurement plans, but none with a predominant influence (Chart 4.2).* Late passage of the budget rated the most important impediment at 21 percent. Poor knowledge of the Act and procurement proceedings rated 14 percent, political interference, 13 percent, corruption, 12 percent, administrative interference and delays in getting ‘no objection’, 10 percent respectively, resistance to change nine percent, lack of expertise of procurement personnel, 8 percent. Interference by bidders rated the lowest at only 4 percent. *Table 4.3* disaggregates the performance across the FCT and geopolitical zones

⁶⁴ i.e., in addition to these nine factors

Chart 4.3: Factors Contributing to Poor Implementation of the Public Procurement Act



4.37 The picture of acknowledged impediments to procurement planning closely mirrors responses of FCT-based procuring entities,⁶⁵ but the zones paint slightly different pictures (Table 4.3). However, delays in passing the budget rank highest in all the zones signifying consensus. Procuring entities in the SW are particularly unhappy with late passage of the budget and indicated this with the highest percentage ranking at 27 percent. Poor knowledge of the Act and procurement procedures ranks joint highest in the north central and second in north central, southwest, and south east. This is important, showing that despite the best effort of the Bureau of Public Procurement, there is still weak capacity in MDAs to implement the Act. Nonetheless, capacity is improving in MDAs in comparison to the situation during the last assessment.

	Total	FCT	NW*	NC	NE**	SW	SE	SS*
Poor Knowledge	14%	12%	11%	21%		18%	16%	0%
Lack of Expertise	8%	7%	11%	11%		9%	11%	0%
Resistance to change	9%	11%	11%	5%		18%	0%	0%
Political Interference	13%	15%	11%	11%		9%	11%	33%
Interference by bidders	4%	3%	11%	5%		0%	5%	0%
Admin Interference	10%	11%	11%	5%		0%	11%	33%
Delays in Passing Budget	21%	20%	11%	21%		27%	21%	33%
Delays in getting 'No Objection'	10%	9%	11%	11%		18%	11%	0%
Corruption	12%	13%	11%	11%		0%	16%	0%
Total	100%	100%	100%	100%		100%	100%	100%
Capacity issues: knowledge+expertise+resistance	31%	29%	33%	37%		45%	26%	0%
Internal interferences: political+admin	23%	25%	22%	16%		9%	21%	67%
External interferences : bidder interference+corrupti	15%	16%	22%	16%		0%	21%	0%
Institutional bottlenecks: delays in passing budget &	31%	29%	22%	32%		45%	32%	33%
Total	100%	100%	100%	100%		100%	100%	100%

*Note: There was only respondent in the south-south and northwest geopolitical zones respectively

**Responses of procuring entities in the NE were spoilt, but there were good responses from contractors and bidders from that zone

4.38 Interferences with the procurement process⁶⁶ rank higher than delays in passing the budget, when taken together. Procuring entities across the FCT and the zones consider political, administrative, and bidder interference at 23 percent overall. FCT-based entities experience a higher

⁶⁵ This is understandable because of the relative number of respondents from the FCT and the zones (see Chapter 2)

⁶⁶ Political, administrative, and bidders

level of interference than entities in the zones. Interference by politicians and administrators⁶⁷ also rank highest overall and with the FCT at 23 and 25 percent respectively. This is probably because political and administrative heads of ministries reside in the FCT, which makes it easier for them to interfere with the procurement process. MDAs rank attempts by bidders to interfere with procurement relatively low, less than 4 percent overall. However, bidder interference and outright corruption together rank high: 15 percent overall, 16 percent in the FCT and the NC, and 21 percent in the SE. Curiously, SW entities deny there is either administrative or bidder interference. They only acknowledge existence of political interference. This is doubtful. It is noteworthy that interference whether administrative, political or external is an indication of pressure to subvert the process and an indication of corruption.

Analysis of Responses on Impediments to Bid Evaluation

4.39 Procuring entities identify political and administrative interference as the greatest impediment to bid evaluation overall, at 29 percent (*Table 4.4*) as against 42% in the last survey. This is significant because it implies lack of objectivity in the contractor selection process. Inadequate capacity comes in a close second at 28 percent, while institutional bottlenecks come in third at 26 percent. This is revealing because it tends to suggest that delays in passing the budget and receiving no objection notwithstanding, it is still possible to evaluate bids properly if there is no interference and the evaluators have sufficient capacity. It would appear that there has been an improvement on this account. An examination of BPPs published information on bidder's complaints indicates a spike in complaints relating to bid evaluation, out of 44 complaints published in the January-March edition of the Procurement journal, about 31 emanated from alleged abuses in evaluation of bids. Thus political and administrative interferences may be the main driver of challenges witnessed at the bid evaluation stage. Once more it is important to note that political and administrative interferences are indicators for corruption.

	Total	FCT	NW*	NC	NE**	SW	SE	SS*
Poor Knowledge	8%	9%	0%	0%		17%	9%	0%
Lack of Expertise	11%	12%	0%	9%		17%	9%	0%
Resistance to change	8%	10%	0%	9%		8%	0%	0%
Political Interference	15%	14%	25%	18%		17%	9%	33%
Interference by bidders	4%	4%	0%	0%		8%	9%	0%
Admin Interference	14%	14%	0%	18%		8%	9%	33%
Delays in Passing Budget	18%	16%	25%	27%		8%	27%	33%
Delays in getting 'No Objection'	8%	9%	25%	0%		8%	9%	0%
Corruption	13%	12%	25%	18%		8%	18%	0%
Total	100%	100%	100%	100%		100%	100%	100%
Capacity issues: knowledge+expertise+resistance	28%	31%	0%	18%	0%	42%	18%	0%
Internal interferences: political+admin	29%	29%	25%	36%	0%	25%	18%	67%
External interferences : bidder interference+corrup	17%	16%	25%	18%	0%	17%	27%	0%
Institutional bottlenecks: delays in passing budget	26%	25%	50%	27%	0%	17%	36%	33%
Total	100%	100%	100%	100%		100%	100%	100%
*Note: There was only respondent in the south-south and northwest geopolitical zones respectively								
**Responses of procuring entities in the NE were spoilt, but there were good responses from contractors and bidders from that zone								

4.40 *How do the zones rate this?* The FCT agrees with the overall assessment pattern of internal interference and capacity issues constituting the main issues in that order. The north central zone ranks institutional bottlenecks second ahead of ahead of capacity issues and external influences, which it ranks equally. The Southwest zone receptively considers capacity and internal interferences first and second, while institutional factors and external interferences rank equal at third and fourth. The southeast zone charts a different course, insisting on institutional factors constituting the greatest problem, with the external influences of corruption and bidder interference coming a high second. The zone sees capacity problems and internal interference with the process as having equal and a more distant influence on the bid evaluation process.

4.41 *In summary, what are the foregoing findings and what do they suggest?* Two key lessons prop up. First, corruption from outside the public service (here referred to as external or influence

⁶⁷ i.e., excluding bidder interference

factors) has a far less influence on implementation of the Act than matters within the service itself. This is both easy and challenging. The easy part is that the solution lies within the system through effective public sector reforms. The challenge is that the political will to reform must come from the very political class that interferes with the process and undermines both the institutional and the individual capacity required to build a good procurement process. Second, interventions aimed at solving the problem need not be uniform across the zones since they manifest different symptoms and emphasis. For instance, emphasizing training in the SE zone may not be the answer, whereas it may be priority in the NW or NC.

Common Abuses of the Procurement Process

4.42 *The questionnaire required procuring entities to rank five suggested common abuses of the procurement process in a hierarchy.* The five abuses are (i) false claims, (ii) forged documents, (iii) undue influence, (iv) bribery of procurement officials, and (v) inability to execute awarded contracts. Procuring entities suggested additional three abuses as common. These are trying to steal in-house reserve bid prices, absconding with 15 percent mobilization, attempts to win the contract at all costs. However, the analysis here does not include these three abuses because the zones did not simultaneously suggest them. Besides, the five global abuses incorporates them. The analysis here presents analyzes the outcome of response on the five factors.

4.43 *Respondents assigned one of six values to each of the five suggestions: (i) no influence, (ii) slightly influential, (iii) somewhat influential, (iv) influential, (v) very influential, or (vi) most influential.* The analysis here discounts the first three values as not sufficiently significant.⁶⁸ The discusses centres on responses classified as influential, very influential, and most influential. Table 4.5 presents the result from all the zones.

4.44 *Influence peddling (undue influence) is the most common abuse of the procurement process and is 75 percent prevalent.* False claims come a close second (72 percent), with forged documents a few points further behind at 69 percent. Undue influence results mostly from the political class and manifests directly or indirectly by making it clear to procurement officials which interests lie behind which project. As MDA procurement personnel put it, ‘each project in the budget in owned by someone or else, it will die’. As the finding in the paragraph above indicates, some of this undue influence manifest in the evaluation of bids. The link between undue influence and the next two factors is obvious. Exercise of influence to secure contracts ‘at all costs’ easily implies false claims of qualification and forgery of documents, including tax clearance certificates.

	3	4	5	sum of 3, 4, 5	Weighted Average	Ranking
	Influential	Very Influential	Most Influential	Combined Influence		
Undue influence	44%	22%	9%	75%	24%	1
False claims	13%	19%	41%	72%	23%	2
Forged documents	25%	19%	25%	69%	22%	3
Inability to execute awarded contracts	34%	13%	9%	56%	18%	4
Bribery of procurement officials	19%	9%	9%	38%	12%	5
Total					100%	

4.45 *Inability to execute awarded contracts is significant at 56 percent, even though it ranks fourth.* This abuse manifests in various ways including, “absconding with 15 percent mobilization”.⁶⁹ There is a relationship between this abuse and the others, particularly undue influence, false claims and forged documents. The research found out that inability to perform contracts happens because of poor selection process that fails to verify bidders’ claims. For example, it is easy to verify claims of incorporation,⁷⁰ tax clearance,⁷¹ registered office,⁷² bank details and accounts,⁷³ etc. Besides, the Act

⁶⁸ As is the practice throughout this report

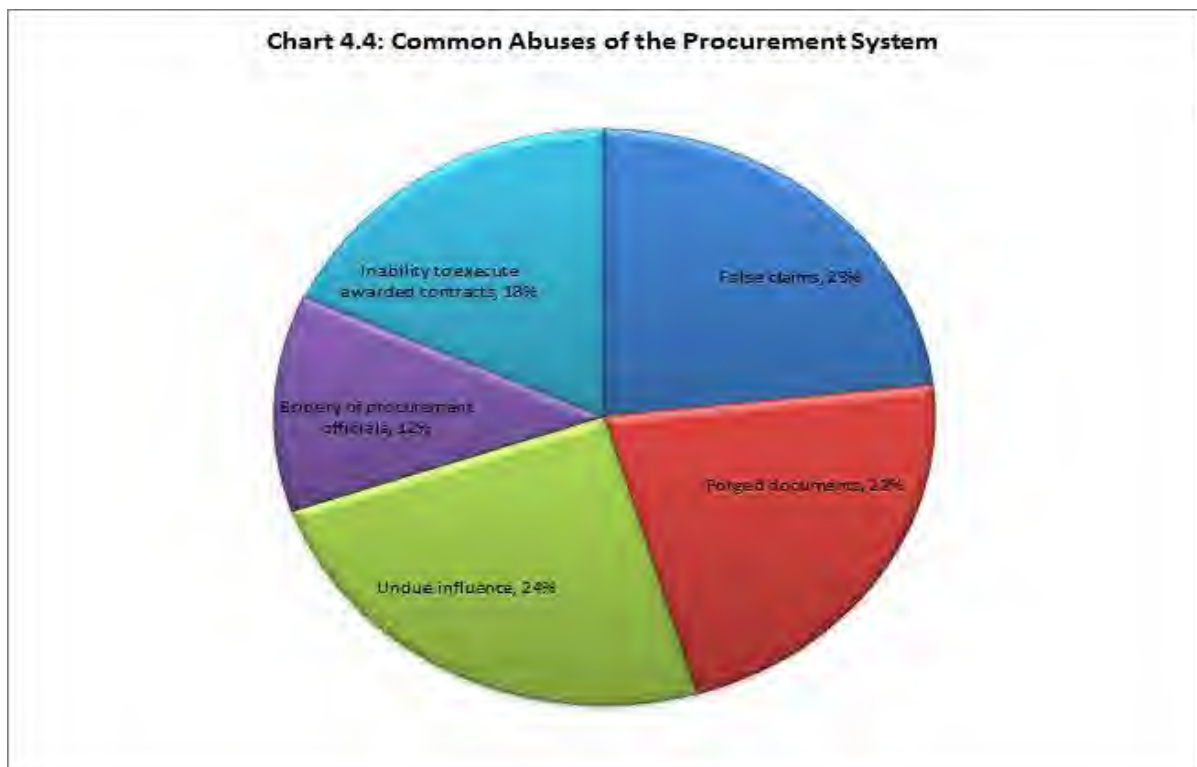
⁶⁹ As suggested by procuring entities

⁷⁰ From the Corporate Affairs Commission (CAC)

requires bidders to post bonds for the purpose of ensuring that government does not lose mobilization fees through these practices. However, 'undue influence' undermines diligent adherence to these and other procurement procedures.

4.46 Once again, procuring entities attest that direct bribery of procurement personnel ranks very low among adverse factors affecting implementation of the PPA. A possible explanation is that there is reduced need to 'bribe lowly' procurement personnel with 'influence peddling from the top' prevalent. Besides, direct attempt at bribery can be risky with the search light of anticorruption beaming wide. The most common form of bribery in the procurement process is petty bribery mostly intended to 'steal in house reserve bids' in an 'attempt to win contracts at all costs'.

4.47 Chart 4.4 is a pictorial presentation of the weighted average results of these outcomes. The chart is consistent with the foregoing analysis. The results are (i) undue influence, 24 percent, (ii) false claims, 23 percent, (iii) forged documents, (22 percent), (iv) inability to execute awarded contracts (18 percent), and (v) bribery of procurement officials (12 percent).



Factors Contributing to Reluctance of Unsatisfied Bidders to Protest

4.48 Respondent procuring entities also ranked seven suggested factors that contribute to the reluctance of unsatisfied bidders to protest the procurement proceedings as provided for in the Act. The suggested factors are

- (i) Bidders not meeting requirements
- (ii) Fear of reprisals
- (iii) Inability to secure procurement documents
- (iv) Lack of faith in appeal process
- (v) Political interference
- (vi) Official intimidation

⁷¹ From the Federal Inland Revenue Service of relevant state revenue administration

⁷² By unscheduled and discreet visit

⁷³ From the bank

(vii) Lack of independence of accounting officers

	3	4	5	sum of 3, 4, 5	Weighted Average	Ranking
	Influential	Very Influential	Most Influential	Combined Influence		
Bidders not meeting requirements	22%	16%	16%	53%	24%	1
Fear of reprisals	22%	3%	16%	41%	18%	2
Inability to secure procurement doc	19%	13%	3%	34%	15%	3
Lack of faith in appeal process	19%	13%	3%	34%	15%	4
Pol interference	6%	13%	9%	28%	13%	5
Official intimidation	13%	3%	6%	22%	10%	6
Lack of independence of accounting officers	6%	0%	3%	9%	4%	7
Total					100%	

4.49 The responses suggest that respondents do not generally accept the proposition that bidders are reluctant to appeal procurement proceedings (Chart 4.6). Ratings of 'influential and above' on the seven factors, apart from one, is below 50 percent. The only exception is 'bidders' failure to meet requirements for protest. Even then, the rating here is only 53 percent. This suggests three possible inferences. First, procuring entities barely believe that bidders are reluctant to appeal proceedings. Second, possibly, the procurement system is not responsible for any perceived reluctance to appeal proceedings. Third, the suggested factors are not the correct factors contributing to any reluctance. However, procuring entities did not suggest any alternatives. A fourth possible explanation is that procuring entities are not willing to self-indict.⁷⁴

Assessment of the Performance of the BPP by Procuring Entities: Areas of Genuine and Sustained Improvement in Implementation of the PPA

4.50 The assessment required procuring entities to assess the performance of the Bureau of Public Procurement (BPP) by indicating in which of nine functions they had witnessed genuine and sustained improvement over the years. The nine areas are

- (i) Speed of 'no objection'
- (ii) Training and learning programmes
- (iii) Certification of procurement officers
- (iv) Resolution of disputes
- (v) Support for procurement officers
- (vi) Improved sensitization on procurement reforms
- (vii) Publication of Journal and contracts' details
- (viii) Accreditation of CSO observers
- (ix) Training and sensitization of political office holders

Areas of Improvement	% of PEs Reporting Genuine & Sustained Improvement								
	Ranking	Total	FCT	NE*	NC	NW	SW	SE	SS
Training and learning programmes	1	69%	81%		40%	100%	67%	50%	100%
Publication of Journal and contracts' details	2	59%	75%		20%	0%	67%	50%	100%
Improved sensitization on procurement reforms	3	53%	56%		20%	0%	100%	50%	100%
Speed of 'no objection'	4	50%	63%		40%	100%	0%	33%	100%
Certification of procurement officers	5	50%	75%		0%	0%	67%	17%	100%
Support for procurement officers	6	47%	56%		20%	0%	67%	33%	100%
Resolution of disputes	7	41%	56%		0%	100%	33%	33%	0%
Training and sensitization of political office holders	8	19%	13%		40%	0%	33%	17%	0%
Accreditation of CSO observers	9	16%	25%		0%	0%	33%	0%	0%
Overall/Average		45%	56%		20%	33%	52%	31%	67%

* Procuring entities' responses from Northeast zone are spoilt, but responses of CSOs and contractors are good

4.51 A summary of the results show an overall improvement of 45 percent across the nine functions of the BPP (Table 4.7); however, the results varies among the nine items and between the

⁷⁴ However, it is not easy to defend this position giving the 'self-indicting' responses in other sections. Besides, the possibility of procuring entities across the zones 'conspiring' in this regard appears remote.

zones. Perception of general improvement is highest in the FCT at 56 percent. In the SW, the perception is 52, whereas it is 31 percent in the SE and only 20 percent in the north central. This suggests that improvement or rather perception of improvements is not uniform across the zone. Why does perception vary from one zone to another: is there any significance to this variability?

4.52 *Further analysis beyond the scope of this work is necessary to answer these questions, but the findings agree in one significant respect with the analysis of the BPP.* Analysis of information from the BPP shows a lower level of compliance with the Act among parastatals (20 percent) than mainline MDAs (74 percent). Procuring entities in the zones comprise solely of parastatals. Thus, underlying this mutual ‘lack of confidence’ between the BPP and parastatals is the reality of poor performance in implementing the Act among parastatals. Parastatals appear to be ‘acknowledging’ their poor performance but blaming it on the BPP. This gap may also be the result of apathy among parastatals, whose see the PPA as a burden, as the analysis in *Chapter 7* appears to suggest. It is possible that the higher ranking of FCT based entities is because they comprise of many mainline MDAs, whose proximity to the Bureau positions them to either better observe real, or have a better perception of, improvements .

4.53 *While the varying levels of perception of improvement across the zones may be no surprise, the low result of 20 percent in the north central zone is.* The relative proximity of the zone to the seat of the Bureau in Abuja places it in a better position than the other zones to perceive improvements. Why the other zones perceive a higher level of improvement is a question for deeper probe, beyond the scope of this analysis,

4.54 *The overall rating of 45 percent improvement in the performance of the BPP may constitute a pass mark, but barely so.* This performance rating is significant for two reasons. First, it represents a feedback rating of the ‘quality of services’ received by of an important client base of the Bureau. Whether or not it agrees with the Bureau’s self-assessment of its ‘services’ is not as important, because of the cliché, ‘the customer is always right’. The BPP needs to take this seriously. Second, although there is variability in the ratings, there is no resounding endorsement of the BPP’s performance as ‘exceptional’, not even among FCT based procuring entities. A return of 56 percent score overall is not ‘special’. This suggests there is room for raising the current level of service delivery. But one thing is certain, the BPP services are improving.

4.55 There is general agreement across the zones of improved training and learning programmes and publication of the quarterly Journal (*Chart 4.7*). There is also general agreement of low performance in sensitizing political office holders and accreditation of civil society groups? *To what extent are these perceptions real; to what extent do they represent need for more effective communication by the BPP on their activities? Answers to these questions are beyond the scope of this current work.*

4.56 Also the BPP has increased efforts at procurement audits, though procurement audits started in 2009, anecdotal evidence indicates that starting from 2010 BPP has submitted reports of procurement audits to the National Assembly as summary results of procurement audit presented by the BPP at the just concluded Corruption Risk Assessors training in Obudu cattle ranch indicates⁷⁵. As indicated by the BPP in its presentation of the 2010 procurement audit report few of the MDAs audited complied with the PPA 2007. The challenge however is to determine to what extent the BPP and or legislature has put to use the results of the audit. On the part of the legislature it would appear that they have neither considered nor reacted to this report. For the BPP it would appear that this report has informed a redesign of BPPs training and increased tempo of its prior review process. Also it would appear that the BPP has sought and secured directives of the Secretary to Government requiring compliance of MDAs to specific provisions of the act as in the current procurement Journal

⁷⁵ Corruption Risk Assessors Training conducted by the Independent Corrupt Practices Commission, in partnership with the Technical Unit on Governance and Anti –Corruption Reforms, Bureau for Public Procurement etc

January-March 2012. It would appear that BPP has preferred persuasion rather than to wield the big stick in most cases⁷⁶. Anecdotal evidence indicates that these audits have also occurred in 2011 and its report has been submitted to the National Assembly, though it is not clear whether they occur bi-annually as required by law. The questionnaire in this respect tested only for improvements in publication of the journal and contract details, to which the responses indicated an improvement, anecdotal evidence indicates that there may be a general improvement in access to grant of access to information by the BPP, evidence on BPP website indicate that BPP has increased its efforts to proactively place information relating to its activities in the public domain. Its response to this study questionnaire this year was certainly better than during the previous study.

⁷⁶ These infractions are often criminal in nature with penal sanctions and except for the case of Rural Electrification Agency and a few others many of these criminal infractions have not been prosecuted. There is evidence that BPP makes recommendation for prosecution to the Anti-corruption agencies in some cases, but it would appear many others are ignored.

Chapter 5: Compliance with the PPA - Perception of Bidders

5.1 This chapter presents the result of survey of participating bidders, contractors, and suppliers in the procurement process. The survey administered questionnaires on active bidders identified by procuring entities in the FCT and the geopolitical zones. The questionnaire for procuring entities required them to identify and provided contact details of five of their active bidders. Many procuring entities did not respond to this request; however, the response received was sufficient to compile a reasonable list of contractors on whom to administer the questionnaire. However, bidders did not show much enthusiasm in participating in the study. Only bidders in three geopolitical zones responded to the questionnaire.⁷⁷ Nine bidders responded; this chapter is the analysis of their responses.

5.2 The chapter first presents bidders' perceptions of the improvements in the procurement process from both the activities of procuring entities and the Bureau of Public Procurement (BPP). Next, there is an analysis of the bidders' ratings of the performance of the other players in the procurement process: procuring entities (PEs), the Bureau, and civil society organizations. The chapter also analyses perceptions on adverse influences on and impediments to the procurement process and compliance with the Act. The analysis interweaves bidders' suggestions for improvement into the discussion, wherever the specific subject warrants it.

Perceived Improvements in the Procurement Process

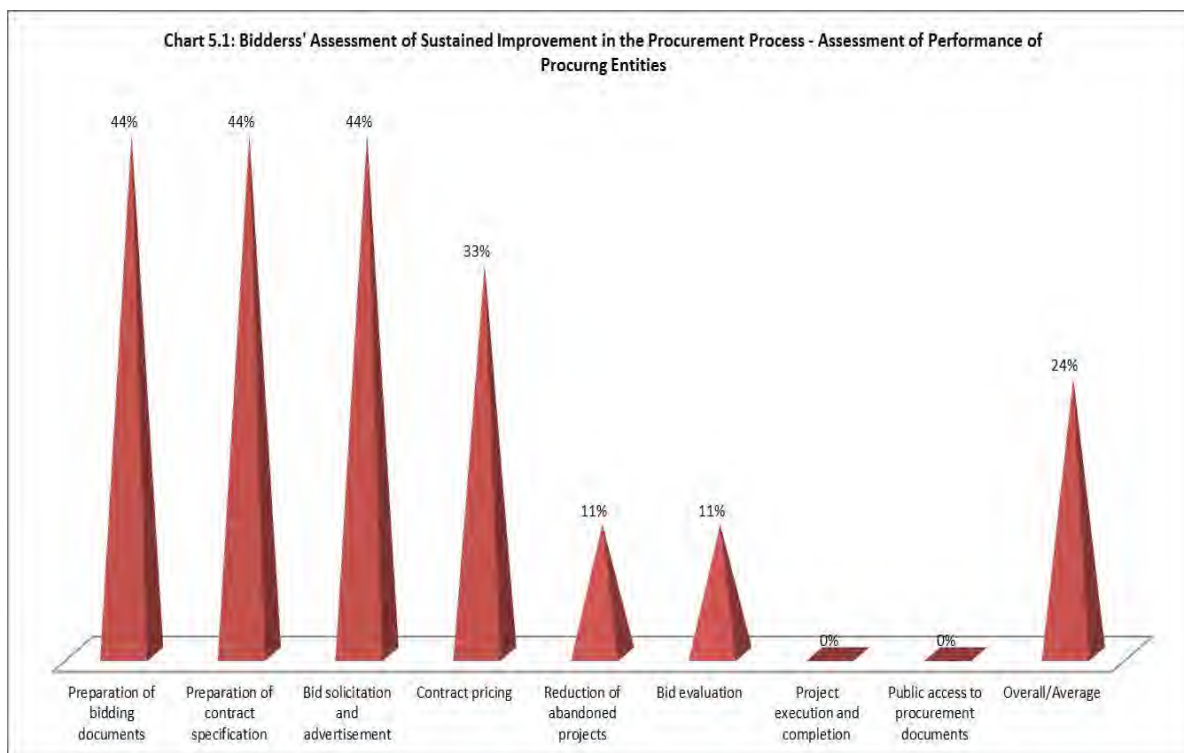
5.3 Bidders assessed whether they had witnessed 'genuine and sustained' improvement in eight key activities of procuring entities since introduction of the Public Procurement Act in 2007.⁷⁸ Respondents simply indicated 'yes/no' for each of the performance areas. The eight areas are

- (i) Preparation of contract specification
- (ii) Preparation of bidding documents
- (iii) Bid solicitation and advertisement
- (iv) Bid evaluation
- (v) Contract pricing
- (vi) Project execution and completion
- (vii) Reduction of abandoned projects
- (viii) Public access to procurement documents

5.4 *The responses indicate bidders had perceived an overall improvement in the procurement of 24 percent (Chart 5.1).* Much of the improvements relate to preparation of documentation. Thus, preparation of bidding documents, preparation of contract specification bid solicitation and advertisement have each improved by 44 percent. Bidders reported less improvement in contract pricing at 33 percent. However, the combined impact of these improvements did not translate to significant improvement in the completion rate of projects. Bidders perceived only 11 percent improvement in reduction in the number of abandoned projects. This result is consistent with the perceived low transparency level of bid evaluation and public access to key procurement documents. Bidders reported observing no improvements at all in both areas. Out of the 44 complaints received and treated by the BPP in the January –March 2012 period about 31 related to bid evaluation. Earlier complaints published by BPP and results of the 2010 procurement audit indicated problems with advertising, preparation of bid documents, poor technical specification, use of brand names, poor pre-qualification, abuse of restricted methods, poor criteria for evaluation, poor evaluation etc, as we also see in the 2011 PPDC assessment report, it would appear that the diminishing number of complaints on the early stages of the procurement indicate improvements at those stages no matter how marginal.

⁷⁷ The zones are northeast, north central, and southwest.

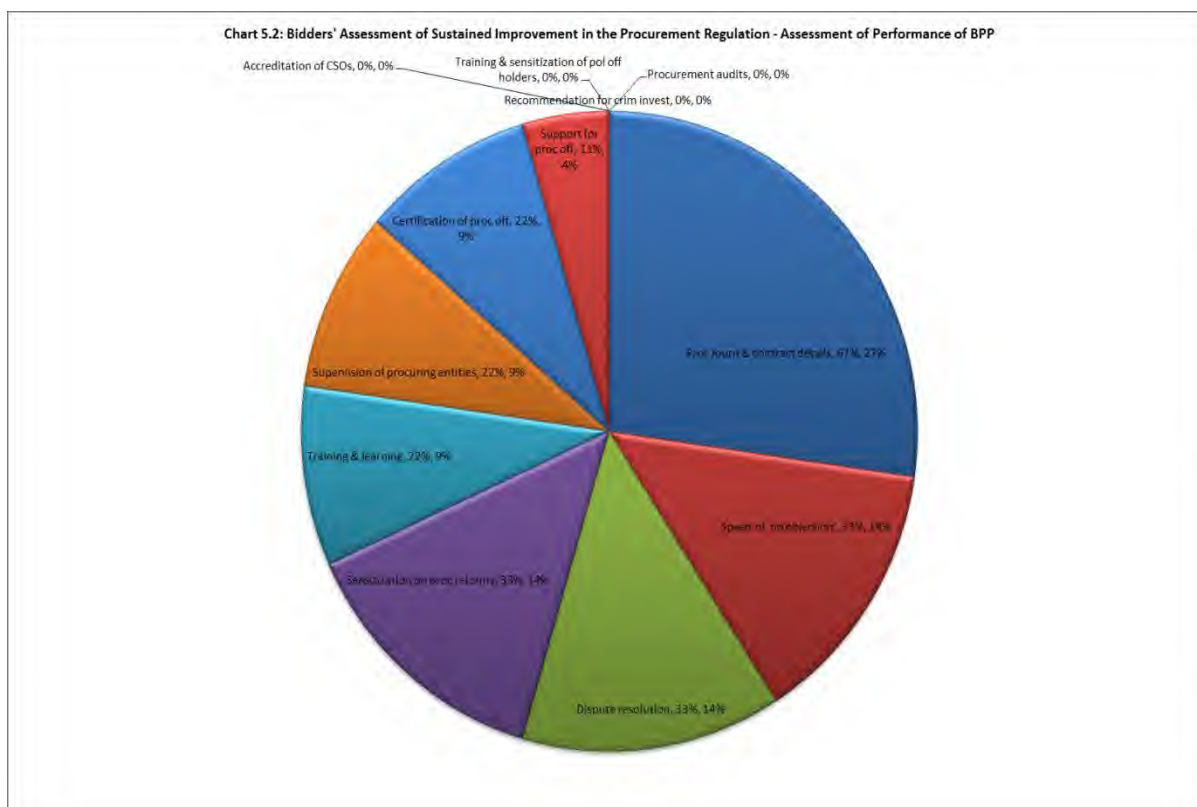
⁷⁸ Bidders had the option to include additional areas of observed genuine and sustained improvement, but they did not indicate any.



5.5 Bidders also rated 'genuine and sustained' improvements in 12 activities of the Bureau of Public Procurement. The areas are

- (i) Publication of the Procurement Journal and details of contract awards
- (ii) Speed of issuing 'no objection' certificates
- (iii) Dispute resolution
- (iv) Sensitization of the public on procurement reforms
- (v) Training and learning of parties involved in the procurement process
- (vi) Supervision of procuring entities
- (vii) Certification of procurement officers
- (viii) Support for procurement officers of procuring entities
- (ix) Accreditation of CSOs
- (x) Training and sensitization of political office holders
- (xi) Recommendation of erring parties for criminal investigation
- (xii) Procurement audits

5.6 Bidders reported a combined improvement of 27 percent on these activities, a result consistent with the 24 percent overall improvement in activities carried out by procuring entities. The greatest observed improvement is in 'publication of procurement journal and details of contract awards', which improved by an absolute 67 percent, i.e., 27 percent relative to the overall improvements (Chart 5.2). This performance is double the reported improvement in the set of activities ranked second. This set of three activities is 'speed of issuing 'no objection' certificates, resolution of disputes, and sensitization of the public on procurement reforms. Each of these rated an absolute 33 percent improvement in performance or a relative 14 percent. Another set of three activities ranks third at 22 percent absolute or 9 percent relative improvement. These activities are training and learning of parties involved in the procurement process, supervision of procuring entities, and certification of procurement officers. Finally, 'support for procurement officers of procuring entities' witnessed only an 11 percent absolute improvement or a 4 percent relative improvement, this nearly compares with procuring entities ranking of improvements in BPPs support to procurement officers. Bidders did not report observing improvements in four areas, namely, (i) accreditation of CSOs, (ii) training and sensitization of political office holders, (iii) recommendation of erring parties for criminal investigation, and (iv) procurement audits.

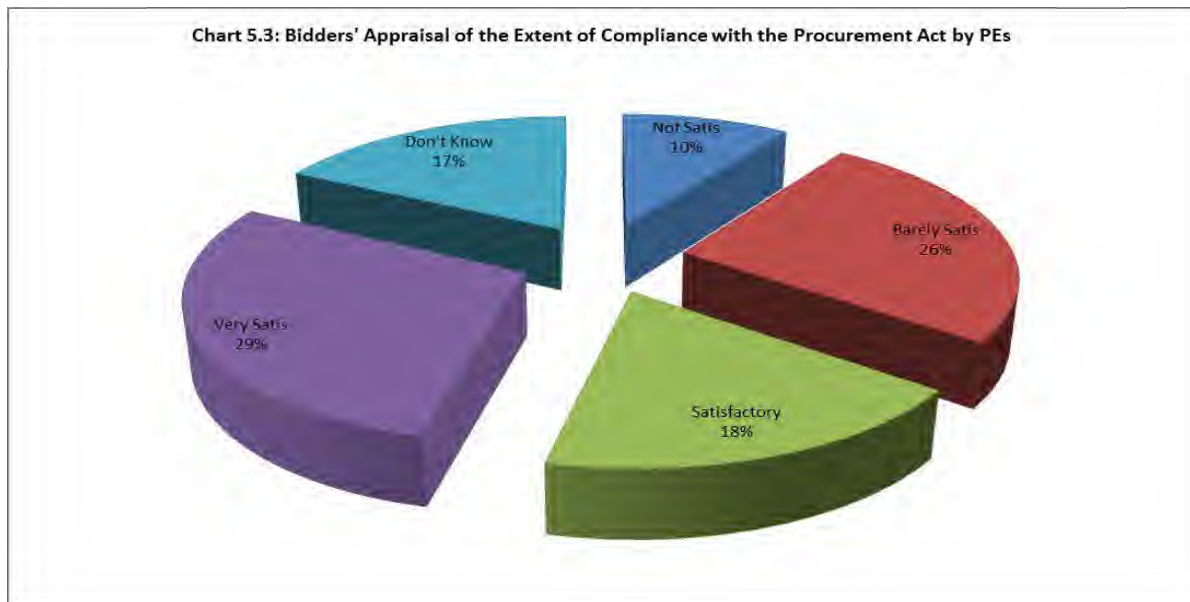


Performance of Procuring Entities

5.7 Bidders also indicated their level of satisfaction with how procuring entities carry 23 key activities. The questionnaire required respondent bidders to select one of five options for each activity. The options are (i) not satisfactory, (ii) barely satisfactory, (iii) satisfactory, (iv) very satisfactory, and (v) don't know. The 23 activities are

- (i) Prior procurement planning
- (ii) Procurement according to procurement plans
- (iii) Existence of prior appropriation/budget for the procurement
- (iv) Existence of a procurement planning committee (PC)
- (v) Use of tenders' boards
- (vi) Public access to key procurement information
- (vii) Use of sub technical committee of the tenders board
- (viii) Proper use of procurement methods
- (ix) Mode of advertisement and solicitation
- (x) Disclosure of conditions for qualification of bidders' in advertisements
- (xi) Technical description of goods, etc. in advertisements
- (xii) Criteria for selection of winners
- (xiii) Use of open competition
- (xiv) Use of selective tendering
- (xv) Use of the 'shopping' method
- (xvi) Use of the direct procurement method
- (xvii) Compliance with bid submission procedure
- (xviii) Transparency of bid opening process
- (xix) Bid examination procedure
- (xx) Transparency of bid evaluation process
- (xxi) Written notification of winners
- (xxii) Debrief contractors
- (xxiii) Compliance with complaint process

5.8 The ratings show less than 50 percent of bidders' satisfaction with how procuring entities are carrying out their functions under the Act. The ratings of 'satisfactory' and 'very satisfactory' are to 18 percent and 29 percent respectively. Thus, bidders perceive the overall performance of procuring entities to be 'at least 47 percent satisfactory'. 'Barely satisfactory' rated 26 percent, while 'not satisfactory' rated 10 percent. The 'don't know; or 'not sure' option rated a significant 17 percent. Further analysis of bidders' rating of procuring entities is on how the 23 activities contribute to this 47 percent 'at least satisfactory' rating.



5.9 No activity dominated performance, although compliance with procedures for submission of bids had the highest ranking of 8 percent among the 23 indicators. Disclosure of conditions for qualification of bidders' in advertisements ranked a close second at 7 percent, and use of open competitive bidding rank third at 6 percent (Table 5.1). The dominant performances are among a cluster of activities that ranked 5 percent and four percent. Seven activities ranked 5 percent, while six activities ranked four percent. Several activities also bunched together at the lower rankings of 3 percent and 2 percent, but these are fewer. Four activities rated 3 percent and three activities rated 2 percent.

Table 5.1: Ranking of Contributions to Satisfactory and Above Performance

	Satisfactory (+)
1 Compl w bid subm proc	8%
2 Qual of bidders	7%
3 Open comp	6%
4 Proc method	5%
5 Mode of ad	5%
6 Desc of goods	5%
7 Public access	5%
8 Bid opening	5%
9 Bid exam	5%
10 Notification	5%
11 Prior PP	4%
12 Proc with PP	4%
13 Sel of winner	4%
14 Sel tend	4%
15 Tender Boards	4%
16 Bid eval	4%
17 Tech comm of TB	3%
18 Shopping'	3%
19 Dir proc	3%
20 Debrief contractors	3%
21 Appropriation	2%
22 Proc Plan Comm	2%
23 Complaint proc	2%
Total	100%

5.10 Bidders were not very pleased with the way procuring entities use procurement methods. 'Choice of method to use for particular procurements' and 'use of open competition bidding' rank high at fifth and fourth respectively with 4 percent rating each, but the manner of applying 'shopping' and 'direct procurement' methods rank low, at 18th and 19th at 3 percent each. The questionnaire did not probe further to find out the reason behind bidders' dissatisfaction with the manner of use of shopping and direct procurement. However, it is clear that bidders would want to see more transparency and adherence to the regulations in these areas.

5.11 *'Budget appropriation prior to procurement' surprisingly rates among the least performing activities at only 2 percent.* This is in spite of ongoing federal government reforms and the insistence of the National Assembly that MDAs execute only pre-approved budgets. It is not clear how much leeway that procuring entities have to violate the gate-keeping measures in place in place to check 'gate-crashing' unapproved projects. An examination of budget execution reports does not indicate many of such projects. Perhaps, this is a genuine case of misperception. Is it possible that respondents thought this was a measure of late passage of budgets? The other activities at the lowest end are not surprising though, the rating agreeing largely with the rating of other stakeholders in the procurement process.

Performance of the Bureau of Public Procurement

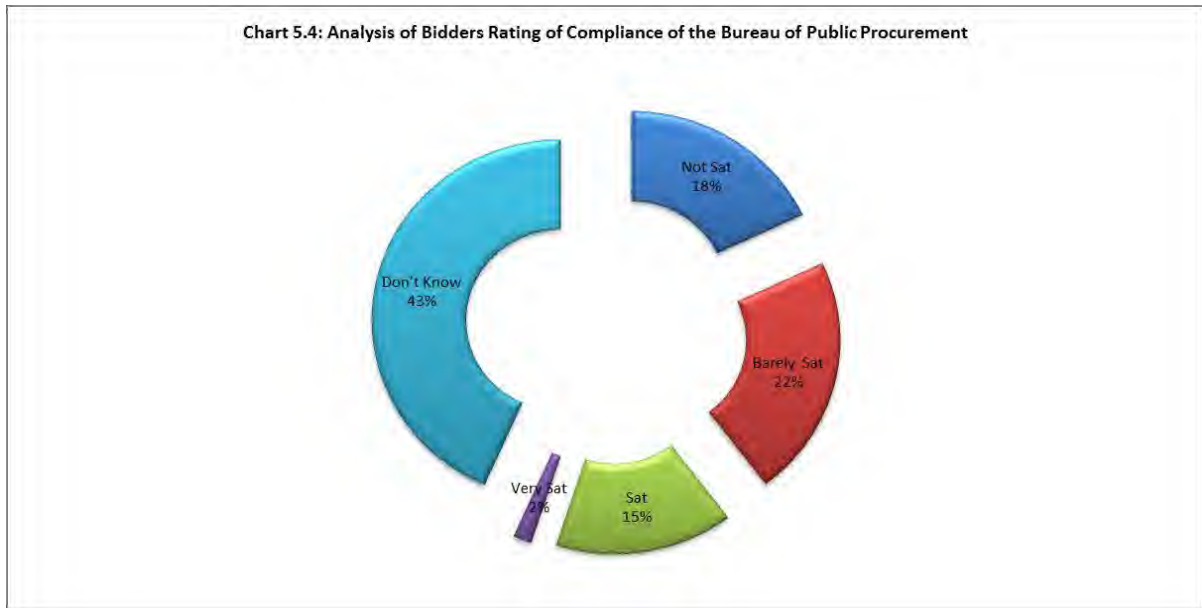
5.12 Bidders also expressed the extent of their satisfaction with BPP's performance of some of its core functions under the Act. Bidders rated the Bureau's on 21 of its functions, choosing from a range of five options namely, (i) not satisfied, barely satisfied, satisfied, very satisfied, and don't know. The 21 functions are as follows

- (i) Publication of Procurement Journal
- (ii) Establishment of single Internet portal
- (iii) Dissemination of details of contract award
- (iv) Accessible databank for standard prices
- (v) Accessible databank for all MDA procurement plans
- (vi) Formulation of implementing rules
- (vii) Establishment of thresholds for implementing procurement
- (viii) Conditions and Documentation for 'no objection'
- (ix) Supervision of MDA procurement practice
- (x) Fraud prevention and detection
- (xi) Issue of certificate of 'no objection'
- (xii) Procurement reviews
- (xiii) Procurement audits
- (xiv) Handling of complaints by bidders
- (xv) Recommending criminal investigation of contract proceedings as necessary
- (xvi) Disciplining culpable accounting officers, TB, or other personnel of erring procuring entity
- (xvii) Sanctioning indicted contractors
- (xviii) Procurement training sensitization of MDAs
- (xix) Procurement training sensitization of contractors and suppliers
- (xx) Procurement training sensitization of CSOs
- (xxi) Sensitization of public on Procurement Act

5.13 *Bidders express a low level of satisfaction with the Bureau's performance of its functions under the Act.* Ratings of 'at least satisfied' total 17 percent, i.e., 15 percent 'satisfied' and 2 percent 'very satisfied'. However, bidders do not appear to have sufficient information of knowledge to rate the Bureau on many of its activities. This explains the high rating of 'don't know' at 43 percent. However, bidders still positively indicate a dissatisfaction with Bureaus' performance, notwithstanding the lack of knowledge they expressed in several areas. Thus, bidders rated 'not satisfied' and 'barely satisfied' 18 percent and 22 percent respectively to total 40 percent 'non satisfaction' (*Chart 5.4*). Another way to look at it, is that when you deduct 43 percent I don't know responses, then out of the 57percent who claimed to know only 17 percent rated satisfied and very satisfied. To some extent the high percentage of I don't know responses may suggest lower levels of diligence amongst bidders given the level of information now available about the Bureau through its publications and its website⁷⁹, more so given bidders own rating of improvements in such publications by the Bureau.

⁷⁹ www.bbp.gov.ng

5.14 *What functions of the BPP contributed to the 17 percent 'at least satisfactory' rating and in what order?*



5.15 *The publicity functions of 'publication of the Procurement Journal' and 'dissemination of details of contract awards' rank highest with a combined contribution of 35 percent (Table 5.2). These two activities help to promote transparency, disclosure, and public access to key information. However, they are not the core activities that would help the Bureau promote compliance with the Public Procurement Act. These functions include those dealing with formulation of implementing rules, establishment of thresholds for implementing procurement, conditions and documentation for 'no objection', procurement audits, and procurement reviews. Bidders believe that the Bureau performance of these activities ranks lower than the mere performance of the 'publicity functions'. not rate the Bureau well in these areas. As regards implementing rules, establishment of thresholds for implementing procurement, conditions and documentation for no objection, it is not clear why bidders rating is lower for these than the dissemination functions, evidence exists that the Bureau performed these functions in good time, one thing is however common to the three functions mentioned, they are instruments that ought to be approved by the Council, which has not been constituted, could the absence of this approval be the reason for rating these activities lower than the dissemination functions? However rating of these functions were not entirely low, a rating of 9% out of 100% shared amongst 23 activities, is above 4.3% average for each activity.*

Table 5.2: Bidders' Rating of Compliance of the BPP - Contributions to 'At Least Satisfactory Performance'

1	Publication of Procurement Journal	19%
2	Dissemination of details of contract award	16%
3	Procurement audits	9%
4	Disciplining culpable accounting officers, TB, or other personnel of erring procuring entity	9%
5	Formulation of implementing rules	6%
6	Establishment of thresholds for implementing procurement	6%
7	Procurement training sensitization of MDAs	6%
8	Procurement training sensitization of CSOs	6%
9	Establishment of single Internet portal	3%
10	Accessible databank for standard prices	3%
11	Accessible databank for all MDA procurement plans	3%
12	Conditions and Documentation for 'no objection'	3%
13	Procurement reviews	3%
14	Recommending criminal investigation of contract proceedings as necessary	3%
15	Sensitization of public on Procurement Act	3%
16	Supervision of MDA procurement practice	0%
17	Fraud prevention and detection	0%
18	Issue of certificate of 'no objection'	0%
19	Handling of complaints by bidders	0%
20	Sanctioning indicted contractors	0%
21	Procurement training sensitization of contractors and suppliers	0%
	Total	100%

5.16 *Bidders' do not think the Bureau complies at all with the Act in performing six vital functions. These functions are (i) supervision of MDA procurement practices, (ii) fraud prevention and detection, (iii) issue of certificate of 'no objection', (iv) handling of complaints by bidders, (v) sanctioning indicted contractors, and (vi) training and sensitization of contractors and suppliers on the procurement process. This assessment agrees generally with the assessment of procuring entities and civil society, although those groups did not rate*

performance in those areas ‘zero’. Although other stakeholders rated the performance of the Bureau on training and sensitization generally, they did not rate performance of the function specifically in relation to contractors and bidders. The rating by this indicator by contractors is with specific reference to their own training. This does not seem to agree with information published in BPP procurement journals on complaints. It is not difficult for any onlooker to see that the Bureau receives and settles complaints, could the responses be referring to the quality of the proceedings? But on the contrary, given the question, they appear to be saying the BPP does not comply at all.

4.57 The reports of complaints treated by the BPP published in its quarterly procurement journals indicate that bidders are complaining to the BPP and the complaints are being resolved as shown in Table 5.4 below. This table shows the number of complaints the BPP has received in each quarter from January 2011 till March 2012, except one quarter and also how many of those complaints are pending and how many have been resolved. The information indicates that about 70% of complaints are resolved within the quarter in which they are made. It is not possible from the information published to determine the exact time taken to settle each disputes by the Bureau.

Table of Petitions Submitted to the Bureau from January 2011 – March 2012.

Table 5.4: Table of Petitions Submitted to the Bureau from January 2011 – March 2012			
Journal Volume	Total Number of Petitions	Number of Petitions Pending at the time of Journal Publication	Number of Petitions Finalized
Jan –Mar 2011	38	4	34
Apr– June 2011	145	35	110
Jul – Sep (2011)	33	9	24
Oct – Dec 2011			
Jan– Mar 2012	44	28	22

It was not indicated in the BPP journals whether these petitioners to the Bureau, did first petition the Accounting Officer as required by the law, or that they petitioned directly to the Bureau. However, it is more likely that they petitioned directly to the Bureau, since the Accounting Officer is likely to be involved with the decisions complained against..

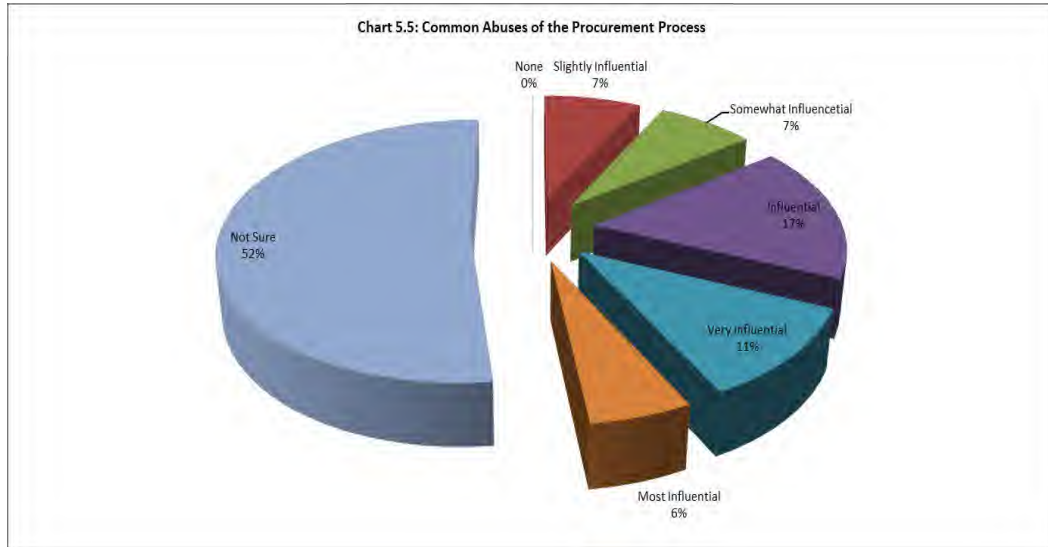
5.17

Adverse Influences on and Impediments to the Procurement Process

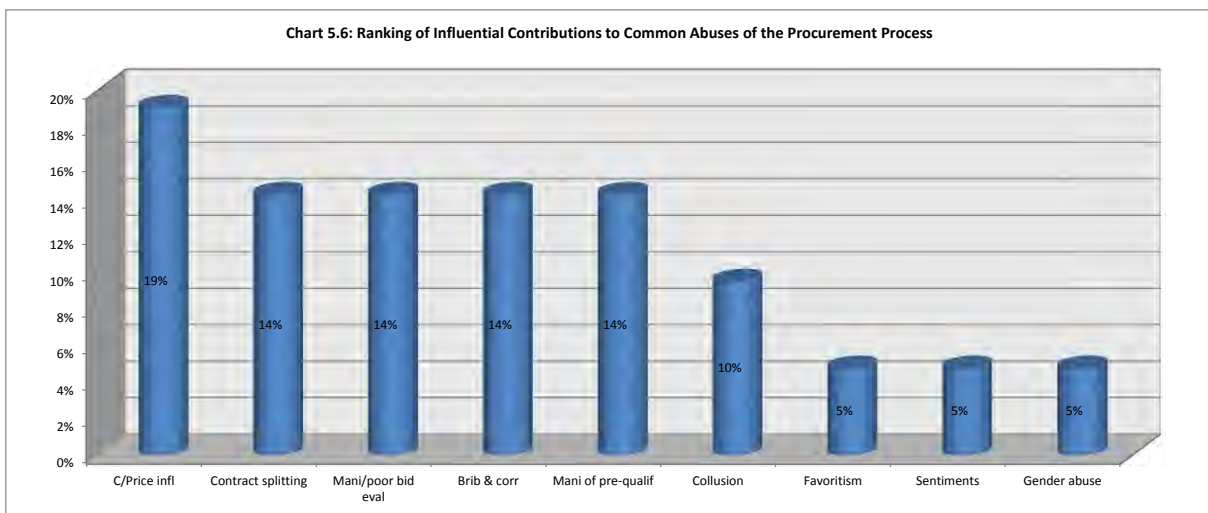
5.18 The study requested respondent bidders to also rate to what extent eight named factors contribute to failure to comply with provisions of the Act, but a respondent added a ninth one. Bidders selected one of six responses against each factor. The response options were (i) not influential, (ii) slightly influential, (iii) somewhat influential, (iv) influential, (v) very influential, and (vi) most influential. In addition, the assessment regarded failure to elect any of the options as indication of not being sure. The nine factors are as follows; the last one is that added by the respondent.

- (i) Inflation of contract prices
- (ii) Collusion between procuring entities and bidders
- (iii) Manipulation of pre-qualification process

- (iv) Manipulation/poor bid evaluation process
- (v) Contract splitting
- (vi) Bribery and corruption
- (vii) Favoritism
- (viii) Sentiments
- (ix) Gender abuse



5.19 Responding bidders were undecided on how far these factors adversely influence the procurement process, if at all. This is the rating of ‘not sure’ at 52 percent in Chart 5.5. However, bidders acknowledge that the factors are ‘at least influential’ by 34 percent, i.e., most influential (6 percent), very influential (11 percent), and influential 17 percent. They also consider that the factors have no or little influence to an extent of 14 percent.



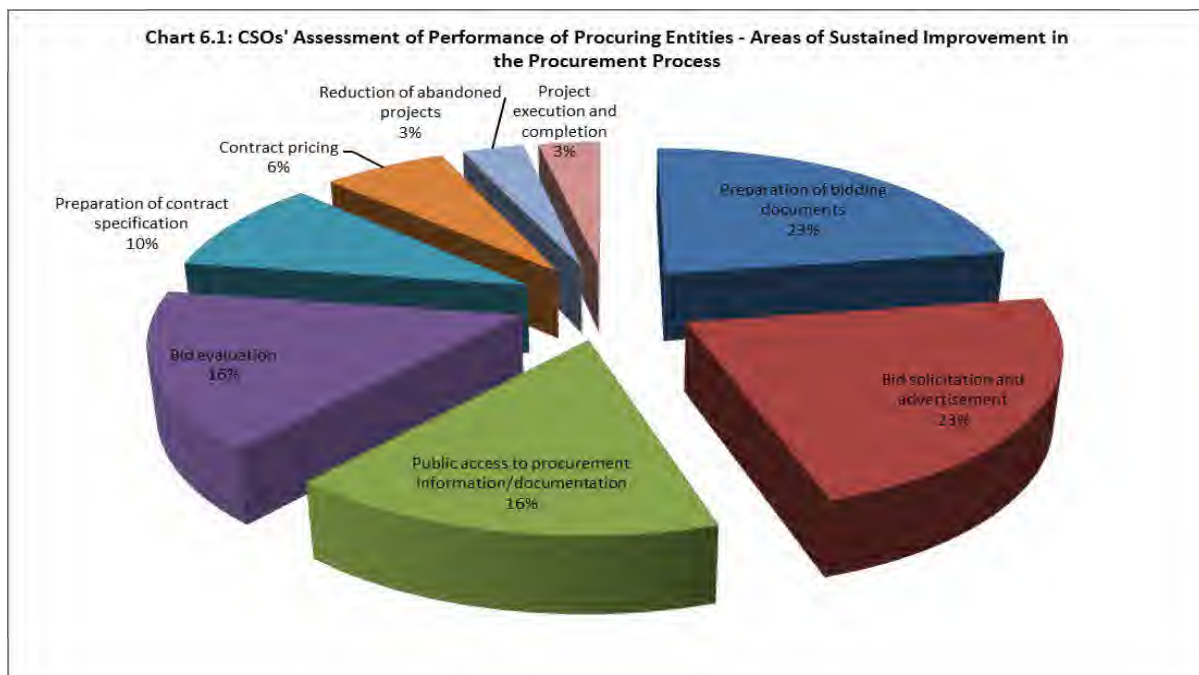
Chapter 6: Compliance with the PPA – the View of Observers

1. This chapter analyses responses of civil society organizations (CSOs) in the FCT and six geopolitical zones of the country. Eighteen CSOs completed the questionnaire. Of these, four each were from the north central and northeast zones, two from the SW, one each from the FCT and the South south, and six from the SE zone; there were no responses from the NW zone. The six SE responses did not address most of the questions, but left them blank. This analysis has therefore left out these blank responses, wherever it was likely to introduce bias into the results. The context makes it clear whenever this happens.

2. The Chapter summarizes the opinions of CSO groups in six broad sections. First, it outlines areas identified as witnessing sustained improvement in the procurement process and the factors responsible for them. Second, it discusses factors adversely affecting compliance with the PPA, 2007. Third, it discusses adverse factors adversely affecting the procurement process; these are factors inhibiting performance of the procurement process generally, and not only of implementation of the Act. Fourth, the chapter discusses civil society rating of the performance of procuring entities. Fifth, the chapter presents the assessment of the performance of the Bureau of Public Procurement (BPP). The sixth section analyzes responses to general issues raised in the questionnaire.

Areas of Sustained Improvement in Implementing the Public Procurement Act, 2007

3. *Analysis of CSOs' perception of sustained improvements in the procurement process since implementation of the PPA commenced in 2007 show a 13 percent overall improvement, but the degrees of improvement in different areas vary.* Preparation of bidding documents and bid solicitation and advertisement jointly rank highest with 23 percent improvement each. This may be a reason the number of complaints received by the Bureau on these stages of the procurement process as observed from records published in the procurement journals are diminishing. Public access to procurement information/documentation and bid evaluation follow with 16 percent each. Preparation of contract specifications comes next at 10 percent. Contract pricing witnessed 6 percent, while reduction in the number of abandoned projects and project execution and completion jointly occupy the rear at 3 percent improvement each (*Chart 6.1*).



4. One CSO group reported observing improvements in other aspects of the procurement process, but it was not possible to rank these because different groups reported different improvements.⁸⁰ For example, a CSO group in the north central zone reported improvements in the “transparency of procurement processes in MDAs”. Another group in the northeast zone reported “reduction in waste of public funds”. Finally, a southwest-based CSO observed improvements in “in the area of education and public enlightenment”.

5. Responses varied according to the zones, but not by much (Table 6.1). The northeast zone reported equal (18 percent) improvements in four areas: (i) preparation of bidding documents, (ii) bid solicitation and advertisement, (iii) public access to procurement information/documentation, and (iv) bid evaluation. The zone also reported equal but much lower improvements (9 percent) in three other areas: contract-pricing, reduction in the number of abandoned projects, and project execution and completion. The zone did not report any improvement in preparation of contract specifications. This distribution varies from those of the north central, the FCT and the southwest. Only the northeast and north central zones report improvement in contract pricing at 9 percent and 7 percent respectively. Only the northeast also reports improvement in project execution and completion and reduction in the number of abandoned projects.⁸¹

	Total	FCT	NE	NC	NW	SW	SE	SS
Preparation of bidding documents	23%	25%	18%	21%		50%		
Bid solicitation and advertisement	23%	25%	18%	21%		50%		
Public access to procurement information/documentation	16%	25%	18%	14%		0%		
Bid evaluation	16%	25%	18%	14%		0%		
Preparation of contract specification	10%	0%	0%	21%		0%		
Contract pricing	6%	0%	9%	7%		0%		
Reduction of abandoned projects	3%	0%	9%	0%		0%		
Project execution and completion	3%	0%	9%	0%		0%		
Overall/Average	13%	11%	13%	11%		13%		

*All six CSOs in the SE did not respond to this question; the sole responding CSO from the SS positively recorded "NONE" to the questions; no responses from the NW

Other areas: transparency of procurement process in MDAs - north central; reduction in waste of public funds - northeast; education and public enlightenment - southwest

6. What is the significance of the foregoing results? First CSOs have perceived improvements in the procurement process, but not as much improvements as needed. Neither the 13 percent overall improvements nor the specific 23 percent improvement in the preparation of bidding documents and bid solicitation and advertisement, is breathtaking or sensational. Nonetheless, they show progress in line with the norm, if a bit slower. The effects of many sustainable reforms are often gradual since they involve both changes in systems, institutional and human capacity, as well as human habits and attitudes/orientation. It is more important that observed positive changes are deep, sustainable, and irreversible. For instance, that the skills already learnt in preparing bidding documents and contract specification need become engrained habits, unconsciously passed on to others. CSO opinions on these matters may be more independent than bidders and procuring entities.

7. Second, the effects of procurement reforms are currently more evident in processes than in substantive service delivery. For example, reform impacts are higher in the process areas (preparation of bidding documents, bid solicitation and advertisement, public access to procurement information/documentation, preparation of contract specification) than in substantive areas (project execution and completion and reduction in the number of abandoned projects). Progress in project execution, including reduction in the number of abandoned projects, is the expected substantive service delivery outcome of the procurement process. This result is usual because, improved

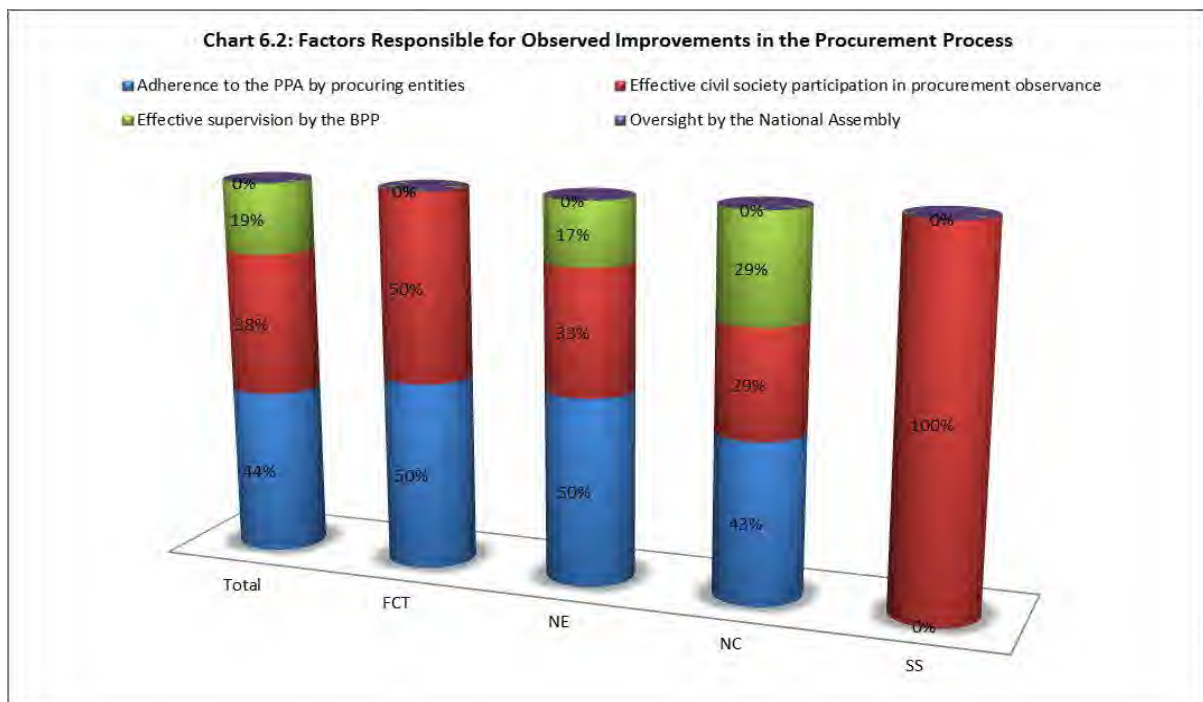
⁸⁰ CSO groups exercised the option given to indicate additional areas of improvement not in the list provided.

⁸¹ The six responding CSOs from the southeast did not answer the question; the sole respondent from the south south indicated that there has not been improvement in any area, while there were no respondents from the northwest zone.

processes must precede and lead to improved results. The different processes in the procurement must ‘percolate and donate’ their improvements to make a meaningful and noticeable impact in procurement outputs and outcomes. In other words, the weak improvements in service delivery results are because not all aspects of procurement process are ‘donating’ improvements at the appropriate levels.

8. *Civil society groups reported minimal observed improvement in the contract pricing habits of procuring entities.* Contract pricing is an important procurement process, which bears directly on service delivery outcomes. The poor performance observation of contract pricing strengthens the comment above that the inchoate improvements in procurement processes may be, at least, partially responsible for the weak improvements in service delivery. (The inability of CSOs to observe improvements in contract pricing may be because they had limited access to information and opportunities to observe the process,⁸² in which case their rating of this indicator may not reflect reality. However, the Bureau of Public Procurement also did not report improvements in this area.⁸³)

9. To what factors do civil society groups attribute observed improvements in the procurement process? The questionnaire provided four options to choose from, with the opportunity to add more. The four options are (i) adherence to the PPA by procuring entities, (ii) effective civil society participation in procurement observance, (iii), effective supervision by the BPP, and (iv) oversight by the National Assembly. One civil society group added one more option namely, “capacity building in procuring entities”.⁸⁴ Chart 6.2 summarizes CSOs’ responses.



10. Overall, CSOs perceive marginal improvements in adherence to the provisions of the Public Procurement Act by procuring entities as the highest contributory factor to the improvements at 44 percent. Increased civil society observance of the procurement process contributes to the improvements at 38 percent, while effective supervision by the Bureau of Public Enterprises (BPP) ranks a distant third at only 19 percent. CSO groups do not perceive oversight of the procurement

⁸² As would be the cases where procuring entities do not allow them observe to that extent; indeed, preclusion of CSOs from observing this aspect of the procurement process may reflect or contribute to the weaknesses in the area.

⁸³ See Chapter 7

⁸⁴ This analysis does not include this option because it simply reinforces the provided option of increased adherence to the provisions of the PPA.

process by the National Assembly as contributing at all to the improvements. This result is significant for several reasons.

11. *First, procuring entities are making efforts to adhere to the provisions of the Public Procurement Act, 2007.* These are the efforts resulting from internal censorship by procuring entities on themselves. They are different from the efforts made by procuring entities out of fear of external censorship. Such censorship pressures include the covert influence from the presence of civil society observers during procurement proceedings, the covert pressures of active supervision by Bureau of Public Procurement (BPP), and absence of the National Assembly's searchlight or scrutiny..

12. *Second, the results reinforce the finding of weaknesses in institutional capacity for public procurement made in Chapter 4.* The poor perception of the impact of the supervisory and oversight roles of the BPP and the National Assembly respectively on improvements in implementing the provisions of the Act suggests this. The perception is not that the BPP did not contribute at all to the improvements, e.g., it did indirectly through its training and capacity building programmes in MDAs and prior review approval conditions and processes.⁸⁵ Such capacity building must be helping MDAs' efforts in implementing the Act; however, this is not the issue here. The issue here relates to the BPP's exercise of the powers of *active inspection and supervision* conferred on the Bureau under s. 6 (d) i of the Public Procurement Act 2007. Civil society groups perceive that the manner of performing these functions(or not performing them) have not been contributing significantly to improvements in the procurement process. Civil society groups also perceive that the National Assembly has not been performing its oversight functions in public procurement as required by the Constitution. These failures reflect weaknesses in the public institutions charged with the overseeing the procurement process.

13. *Do these reflect reality; if they do not, what factors predispose to this perception?* This study did not test the extent to which the BPP and NASS perform their functions in practice. The study cannot therefore comment on the accuracy of the perception. However, public perception is at least as vital as reality in public procurement as in all public trusts. There is a perception that the BPP lacks legitimacy and moral authority, not for any fault of its own, but because of the failure of the authorities to constitute the National Council on Public Procurement (NCP). The BPP derives its legitimacy and authority from the NCP. Indeed, the House of Representatives has declared it an 'illegal body' even though it has no judicial authority so to do, given the lack of follow up since this press release, many stakeholders believe the house action was a political move intended to apply pressure on BPP to stay away from NASS procurement activities. The perception is that the NASS lacks the moral authority to extract compliance from MDAs because the National Assembly does not comply with the act nor submit its procurement to the provisions of the Act. It will be hypocritical for the Assembly to seek to compel compliance with the provisions of a law that it is openly violating. Another report by the PPDC has dealt with this subject⁸⁶. This survey report evaluated NASS compliance to the PPA 2007 based on fourteen indicators. It found based on responses of responsible officials of the NA and its contractors that the NA was partially compliant only to seven of the 14 indicators and non compliant to seven others. The national Assembly is not fully compliant with the procurement act on any of the selected indicators. Some of its finding is to the effect that the NASS Tender Boards take instructions and are influenced by principal officers and legislators, poor procurement planning, improper use of restricted procurement methods, poor advertisement of opportunities, acceptance of bids after datelines for submission, payment of mobilization beyond limits allowed by the law, poor record keeping, poor disposal of assets practices etc.

14. *This survey report is significant for three reasons a) the findings are based on views of NASS staff and contractors who had every reason to be favorable and indeed were favorable to the NASS in their responses, indicating that the situation may be worse than reported b)the NASS budget has*

⁸⁵ There is general agreement by all parties that the BPP has been increasing capacity building efforts in MDAs.

⁸⁶ The National Assembly and the implementation of Public Procurement Act 2007. A Publication of the Public and Private Development Centre 2012

grown in leaps and bounds particularly from 2011 without any other publicly known justification, except that from 2011 NASS funds became part of statutory transfers a direct charge on the consolidated revenue fund of the federation, as a result in 2011 the NA spent about 30% of recurrent expenditure and or 35.9 percent of all statutory transfers at the federal level⁸⁷. c) the perception generated by this negatively affects the moral authority of the NASS to hold the executive arm accountable and to perform its functions under Sections 4, 13, 15(5) 85(5), 88 etc of the Constitution as the apex anti-corruption organ and guardian of the resources of the people of Nigeria, and continues to erode confidence in government and its structures in Nigeria.

Rating of BPP performance

15. Civil society groups rated the performance of the Bureau of Public Procurement on 21 of its core functions, indicating their perception of the extent of satisfactory performance on each. The ratings indicators are not satisfactory, barely satisfactory, satisfactory, very satisfactory, and don't know/indeterminate. *Chart 6.3* is the global summary of responses. The 21 options rated are as follows

- (i) Publication of Procurement Journal
- (ii) Establishment of single Internet portal
- (iii) Dissemination of details of contract award
- (iv) Accessible databank for standard prices
- (v) Accessible databank for all MDAs' procurement plans
- (vi) Formulation of implementing rules
- (vii) Establishment of thresholds for implementing procurement
- (viii) Conditions and Documentation for 'no objection'
- (ix) Supervision of MDA procurement practice
- (x) Fraud prevention and detection
- (xi) Issue of certificate of 'no objection'
- (xii) Procurement reviews
- (xiii) Procurement audits
- (xiv) Handling of complaints by bidders
- (xv) Recommending criminal investigation of contract proceedings as necessary
- (xvi) Disciplining culpable accounting officers, tenders' board, or other personnel of erring procuring entity
- (xvii) Sanctioning indicted contractors
- (xviii) Procurement training and sensitization of MDAs
- (xix) Procurement training sensitization of contractors and suppliers
- (xx) Procurement training sensitization of civil society organizations (CSOs)
- (xxi) Sensitization of public on the Public Procurement Act, 2007

16. *Civil society groups did not flatter the BPP with their ratings.* The summary results show that responses of 'satisfactory' and 'very satisfactory' on all indicators average 11 percent and 20 percent respectively (*Chart 6.3*). In other words, the 'at least satisfactory' rating of BPP performance on all indicators was only 31 percent satisfactory. The 'barely satisfactory' rating was 20 percent, while the rating of 'not satisfactory' was only 3 percent. The rating of 'indeterminate/don't know' is rather high at 46 percent, suggesting lack of information on the performance of the BPP on many of the issues. This may be an indication of continued challenges in access to information when requested, also given the improved amount of information available in BPP publications and website, the extent to which lack of diligence by CSOs if any, in accessing information that BPP has already put in the public domain, contributes to this rating is not clear.

⁸⁷ Ibid

Chart 6.3: Analysis of CSO Rating of Compliance of the Bureau of Public Procurement

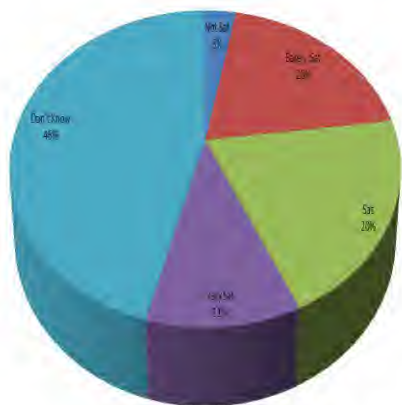


Table 6.2a: Analysis of CSO Rating of Compliance of the Bureau of Public Procurement

	Sat	Very Sat	Total
Federal Capital Territory	24%	14%	38%
North Central Zone	27%	0%	27%
Northeast	26%	26%	52%
South south	14%	0%	14%
Southwest	0%	0%	0%

*the six CSO respondents from the SE did not complete this question

17. Zonal ratings of BPP's performance vary signifying different perceptions (Table 6.2a). The northeast zone offers the highest average rating of 52 percent on BPP's performance on all 21 indicators, while the north central zone returns a score of 27 percent. However, CSOs in the north central zone do not return a rating of 'very

satisfactory' on any indicator, whereas the northeast distributes its rating equally (26 percent) between 'satisfactory' and 'very satisfactory'. This study did not investigate to what extent these differences in zonal perceptions accurately reflect the performance of the BPP in the zones, or to what extent they may have been influenced by other factors.

18. The generally low perception of the BPP by CSOs also shows in how many of the 21 indicators that rate above the 50 percent benchmark and above. Only 'establishment of thresholds for implementing procurement' met this mark, rating 55 percent (Table 6.2). Six indicators meet the lower benchmark of 40 percent. The other five⁸⁸ are (i) publication of procurement journal, (ii) establishment of single Internet portal, (iii) conditions and documentation for 'no objection', (iv) handling of complaints by bidders, and (v) procurement training and sensitization of MDAs. Approximately half of the 21 indicators (11) meet the still lower standard of 30 percent and above. These results show that civil society opinion of BPP performance is high, whatever the standard of measurement used. Once again, this analysis does not go into the details of the reasons for this low opinion of the BPP performance and whether it reflects reality. However, the assessment suggests poor appreciation of the role of the Bureau in implementing the Public Procurement Act, 2007.

Table 6.2: Analysis of CSO Rating of Compliance of the Bureau of Public Procurement

	Sat	Very Sat	Total
1 Establishment of thresholds for implementing procurement	45%	9%	55%
2 Publication of Procurement Journal	36%	9%	45%
3 Establishment of single Internet portal	36%	9%	45%
4 Conditions and Documentation for 'no objection'	36%	9%	45%
5 Handling of complaints by bidders	27%	18%	45%
6 Procurement training sensitization of MDAs	27%	18%	45%
7 Formulation of implementing rules	27%	9%	36%
8 Fraud prevention and detection	18%	18%	36%
9 Issue of certificate of 'no objection'	27%	9%	36%
10 Procurement training sensitization of contractors and suppliers	18%	18%	36%
11 Procurement training sensitization of CSOs	27%	9%	36%
12 Supervision of MDA procurement practice	18%	9%	27%
13 Procurement reviews	18%	9%	27%
14 Procurement audits	18%	9%	27%
15 Sensitization of public on Procurement Act	18%	9%	27%
16 Dissemination of details of contract award	9%	9%	18%
17 Accessible databank for standard prices	9%	9%	18%
18 Disciplining culpable accounting officers, TB, or other personnel of erring procuring entity	9%	9%	18%
19 Accessible databank for all MDA procurement plans	0%	9%	9%
20 Recommending criminal investigation of contract proceedings as necessary	0%	9%	9%
21 Sanctioning indicted contractors	0%	9%	9%
Overall Average	20%	11%	31%

*the six CSO respondents from the SE did not complete this question

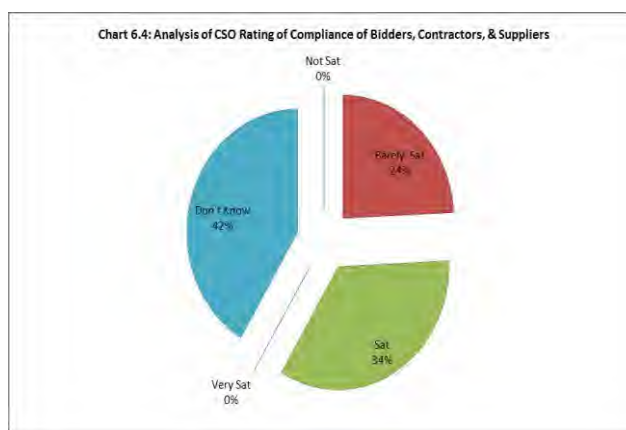
⁸⁸ i.e., in addition to the one that rated 55 percent above

Rating of Bidders

19. Civil society observers used the same five point rating scale⁸⁹ to assess the performance of bidders, contractors, and suppliers in complying the provisions of the Act in nine key areas. The areas are

- (i) Professional & technical qualification of bidders
- (ii) Appropriate qualification of bidders' personnel
- (iii) Financial capacity of bidders
- (iv) Equipment and infrastructure
- (v) Provision of bid security
- (vi) Provision of statement in respect of denominating subsidiary relationship with other bidder
- (vii) Affidavit declaring interest of personnel of Bureau and or MDA in the bidder
- (viii) Meeting tax obligations
- (ix) Evidence of pension contribution for staff

20. Summary of the overall result on all nine indicators shows CSOs rate bidders' compliance level as 34 percent 'satisfactory as against 8% in the 2010 evaluation report'. The 'barely satisfactory' rating is 24 percent. The rating of 'don't know/indeterminate' at 42 percent is very high, suggesting lack of information or transparency of the process.⁹⁰ Significantly, CSOs do not consider or rate bidders' performance on any of the nine indicators as being 'very satisfactory', even though they also do not consider any as completely 'not satisfactory' (Chart 6.4).



21. The individual indicators do not post very high performances. For instance, only two of the nine indicators returned a rating of 40 percent and above, i.e., meeting tax obligations and equipment and infrastructure (Table 6.3). Two-thirds of the indicators (six) meet 30 percent and above performance. This performance suggests low compliance by bidders, contractors, and suppliers with the provisions of the Act. Can this be the reason some bidders do not challenge non compliance by procuring entities, because if a bidder knows it has not complied in any respect, it may feel reluctant to complain on other issues, knowing that its own non compliance may also be raised in response. Can this be what they mean by fear of reprisals? Since no bidder has provided a single evidence of reprisals, this study did not test for this and cannot reach a conclusion on it. The rating also directly reflects low compliance by procuring entities, who have the primary duty to ensure bidders meet the conditions specified in the Act and solicitation documents.

	Sat	Very Sat	Total
1 Meeting tax obligations	55%	0%	55%
2 Equipment and infrastructure	45%	0%	45%
3 Professional & technical qualification of bidders	36%	0%	36%
4 Appropriate qualification of bidders' personnel	36%	0%	36%
5 Financial capacity of bidders	36%	0%	36%
6 Provision of bid security	36%	0%	36%
7 Evidence of pension contribution for staff	27%	0%	27%
8 Provision of statement in respect of denominating subsidiary relationship with other bidder	18%	0%	18%
9 Affidavit declaring interest of personnel of Bureau and or MDA in the bidder	18%	0%	18%
Average	34%	0%	34%

*the six CSO respondents from the SE did not complete this question

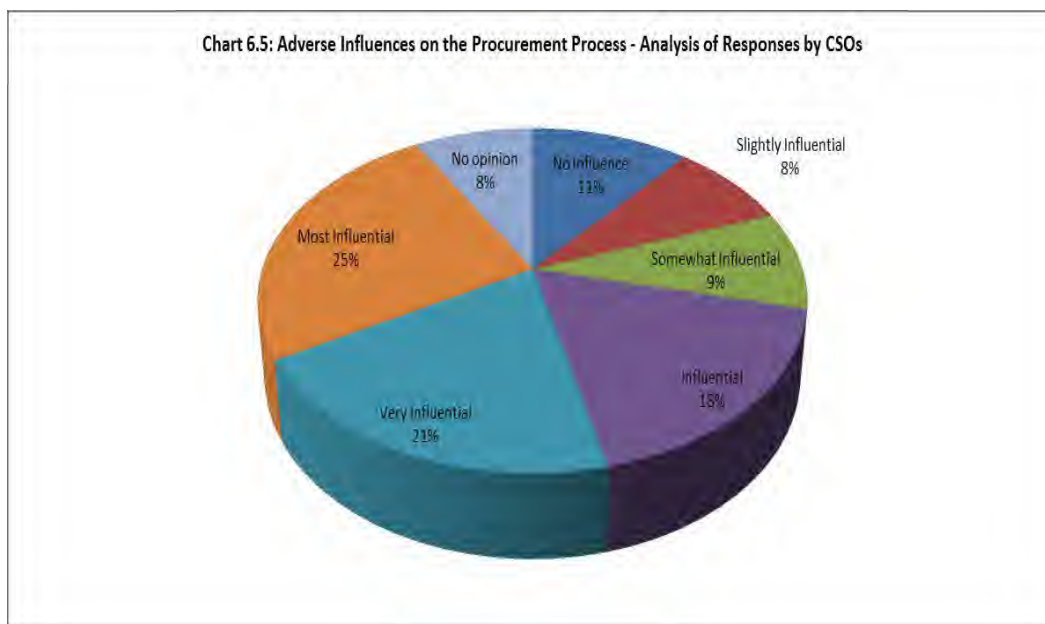
⁸⁹ Not satisfactory, barely satisfactory, satisfactory, very satisfactory, and don't know/indeterminate

⁹⁰ The inability of CSOs groups to observe and comment on important areas of the performance may also be reflecting the limited opportunity they have to observe the procurement process. CSOs tend to observe mostly what procuring entities invite and allow them to observe. It is also not clear that CSOs have sufficient independent funding and motivation to observe the process independently.

22. *What factors account for his low level of compliance by bidders? Why are they able to get by with such a low level of performance?* The next two sections address these questions by analyzing CSO accounts of ‘impediments to compliance with the PPA’ and ‘adverse influences on the procurement process.

Adverse Influences on the Procurement

23. *Respondent CSOs identified factors adversely influencing the procurement process, choosing from a list of nine potential factors, with the option to add more.* They rated the extent of influence of each of the nine factors on a six point progressive scale: (i) no influence, (ii) slightly influential, (iii) somewhat Influential, (iv) influential, (v) very Influential, and (vi) most influential. The nine factors are (i) poor knowledge of the provisions of the Act, (ii) lack of expertise on the part of procurement personnel, (iii) resistance to change, (iv) political interference, (v) interference by bidders, (vi) interference by administrators, (vii) delays in passing budget, (viii) delays in getting 'no objection', and (ix) corruption. *Chart 6.5* is the global summary of the responses.



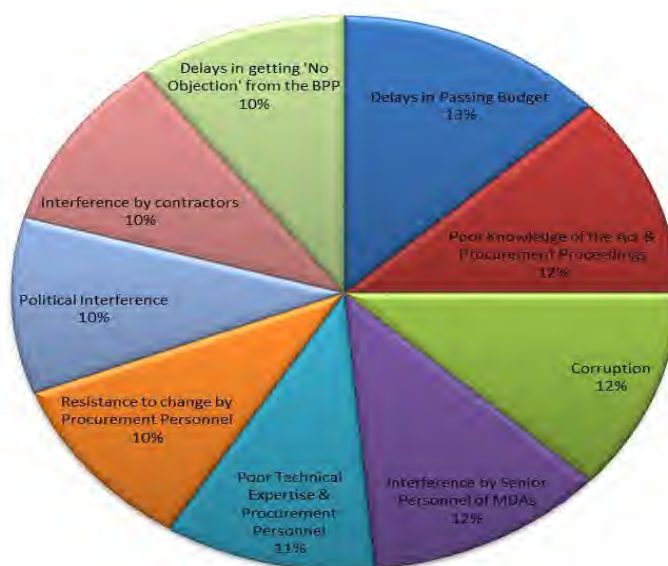
24. *The respondents suggest that these factors collectively exert significant adverse influence on the procurement process (Chart 6.5).* The aggregate of responses of influential and above⁹¹ is 64 percent, while responses of below influential add up to only 28 percent.⁹² The undecided with no opinion is 8 percent. How do CSOs rate individual contributions of the nine factors to the perceived adversity on the procurement process?

25. *The perception of civil society groups is that the nine factors exert almost equal influence on the procurement process, with only little differences between them.* There is a thin spread of only 3 percent between the highest and the lowest ranking factors (*Chart 6.5b*). Respondents attribute the highest contribution of 13 percent to delays in passing the budget. They also assign the lowest contribution of 10 percent to four factors: (i) resistance to change by procurement personnel of MDAs, (ii) political interference, (iii) influence of contractors, and (iv) delays in obtaining ‘no objection’ from the Bureau of BPP. Three factors jointly rank close to the top at 12 percent: poor knowledge of the Act and procurement proceedings), corruption, and interference by senior administration personnel of MDAs. Poor technical expertise of procurement personnel occupies both the mean and median rank of 11 percent. *Chapter 8* will synthesize the findings and attempt to decipher any correlation in the responses of the various populations for this study.

⁹¹ That is, influential, very influential, and most influential

⁹² That is, Somewhat influential, slightly influential, and no influence

Chart 6.5b: Degrees of Contribution to Adverse Influences on the Procurement Process



26. What group of issues exerts the most important adverse influences on the procurement process? The responses of CSOs suggest inadequate capacity is the most important at 32 percent. Capacity issues comprise lack of knowledge of the Procurement Act and proceedings, lack of technical expertise of procurement personnel, and resistance to change by procurement personnel. Institutional bottlenecks come next at 24 percent. These consist of delays in passing the budget and in getting ‘no objection’ from the Bureau of Public Procurement. Internal political and administrative interferences rank a close third at 22 percent, a rating jointly shared with the external interferences (bidder interference and corruption). This analysis further shows that the internal factors around the procuring entity of capacity and political and administrative pose the most risk to adhering to the procurement process at 54 percent.

Table 6.4: Adverse Influences on the Procurement Process - Analysis of Responses by CS Os

	Total	FCT	NE	NC	NW	SW	SE	SS
Delays in Passing Budget	13%	20%	11%	13%		13%		14%
Poor Knowledge	12%	20%	11%	13%		7%		14%
Corruption	12%	20%	11%	9%		13%		14%
Admin Interference	12%	0%	11%	13%		13%		14%
Lack of Expertise	10%	0%	11%	13%		7%		14%
Resistance to change	10%	0%	11%	13%		7%		14%
Political Interference	10%	0%	11%	9%		13%		14%
Interference by bidders	10%	20%	11%	9%		13%		0%
Delays in getting 'No Objection'	10%	20%	11%	9%		13%		0%
Total	100%	100%	100%	100%		100%		100%
Capacity issues: knowledge+expertise+resistance	32%	20%	33%	39%		20%		43%
Institutional bottlenecks: delays in passing budget and receiving 'no objection'	24%	40%	22%	22%		27%		14%
Internal interferences: political+admin	22%	0%	22%	22%		27%		29%
External interferences: bidder interference+corruption	22%	40%	22%	17%		27%		14%
Total	100%	100%	100%	100%		100%		100%

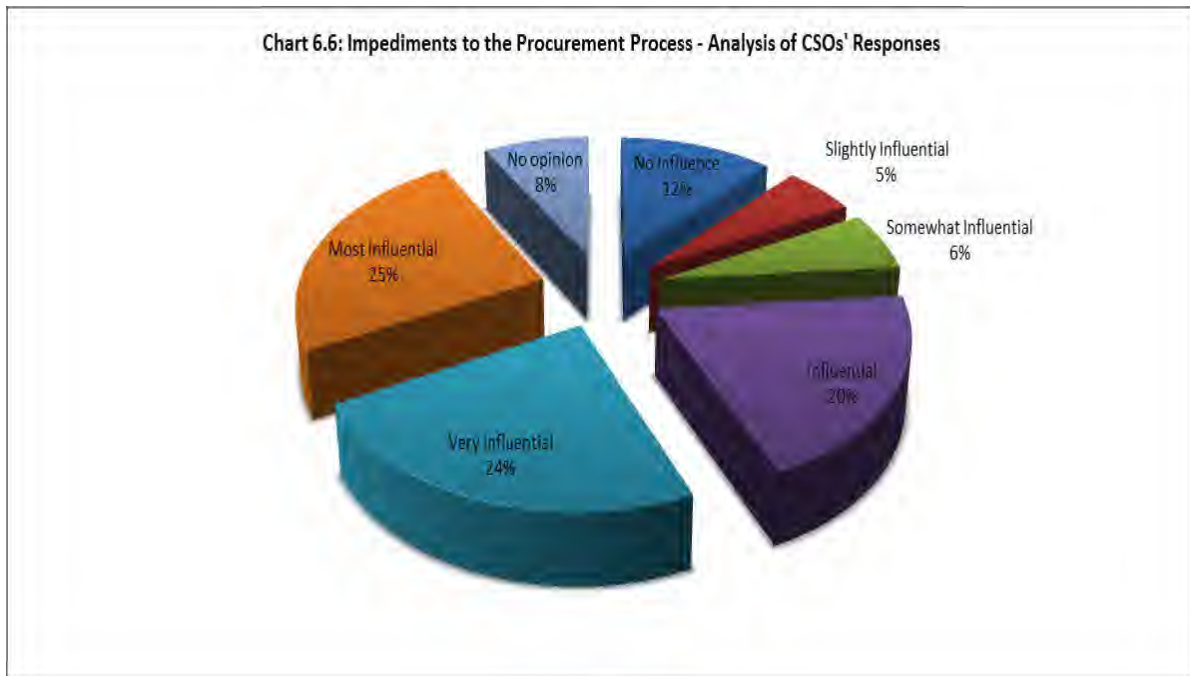
*Note: There was only respondent in the south-south and northwest geopolitical zones respectively; all six respondents from the SE did not address this question

Impediments to Compliance with the PPA

27. Respondent civil society groups also used the same criteria and principles to suggest and rate impediments to the compliance with the PPA.⁹³ They rated the nine factors according to how they

⁹³ The difference between ‘impediments to compliance with the Act’ and ‘adverse influences on the procurement process’, may sound like mere semantics. However, while the former refers to specific issues

perceive them to impede implementation of the Act. The result shows that CSOs consider these nine factors to be impeding compliance with provisions of the Act by, at least, 69 percent.⁹⁴ That is the size of the ratings of influential and above. The result rates the combined impact of these nine factors on impeding implementing the Act to be 5 percent higher than their combined adverse influence on the procurement process.



28. CSOs' ratings here show higher variability among the indicators than their ratings of the impact of the same factors on conducting public procurement generally. The difference between the highest and the lowest ranking impacts is 5⁹⁵ under impediments, whereas it is 3 under adverse influence on the procurement process (Table 6.5). The explanation is that CSOs increased the weight they attached to the impact of 'delays in passing the budget' on compliance with provisions of the Act, while reducing the weights they attach to the other factors.⁹⁶

29. Delays in passing the budget rank highest among impediments in complying with provisions of the Public Procurement Act, 2007 as it did under factors adversely influencing procurement process⁹⁷, but the order of importance of the other factors vary from what it was under adverse influences. For instance, CSOs consider administrative interference rather than lack of knowledge of the provisions of the Act, as the next most important impediment in complying with the PPA (Table 6.5). Similarly, CSOs rank corruption low⁹⁸ among impediments to compliance, rather than third as it did under adverse influences. Noteworthy also is the fact that political interference rises in the scale of comparison to fifth, instead of the seventh it ranked in the other. But we must note that administrative interference is also a corruption red flag, and though CSOs choose it as having more negative impact, than corruption, it is itself a clear indication of corrupt abuses to the process and Finally, CSOs believe that resistance to change by procuring personnel is the least important of the nine factors impeding implementation of the Act, although proportionately, it makes an important

affecting implementation of the Act as a whole, the later refers to procurement good practices generally, the Act notwithstanding. Table 6.5 below analyzes CSOs ratings of the two.

⁹⁴ This impact must rank above 50 percent to warrant further/more detailed analysis.

⁹⁵ The highest ranking influence is 14, while the lowest is 9

⁹⁶ i.e., in comparison their scoring of adverse influences on the procurement process

⁹⁷ As with in adverse influences on public procurement

⁹⁸ i.e., sixth

contribution. In summary, CSOs suggest that although the nine factors both impede compliance and adversely influence the procurement process; their respective roles under the two differ.

Impediments to PPA		Adverse Influence on Process	
1 Delays in Passing Budget	14%	Delays in Passing Budget	13%
2 Interference by Senior Personnel of MDAs	12%	Poor Knowledge of the Act & Procurement Proceedings	12%
3 Poor Knowledge of the Act & Procurement Proceedings	11%	Corruption	12%
4 Poor Technical Expertise & Procurement Personnel	11%	Interference by Senior Personnel of MDAs	12%
5 Political Interference	11%	Poor Technical Expertise & Procurement Personnel	10%
6 Corruption	11%	Resistance to change by Procurement Personnel	10%
7 Interference by contractors	11%	Political Interference	10%
8 Delays in getting 'No Objection' from the BPP	10%	Interference by contractors	10%
9 Resistance to change by Procurement Personnel	9%	Delays in getting 'No Objection' from the BPP	10%
Average	11%	Average	11%

30. However, classifying and grouping the factors yields similar analysis as with the analysis in the preceding subsection. Thus, capacity issues rank the most important impediment to the procurement process; institutional factors rank next, followed by internal interferences – political and administrative (Table 6.6). External influences of bidders and corruption rank fourth and last. However, the ranking of the last three factors is close with only one point separating between the second and third, and the third and fourth. This shows that CSOs consider the three points of being nearly of equal weight in impeding implementation of the Public Procurement Act, 2007.

	Total	FCT	NE	NC	NW	SW	SE	SS
Poor Knowledge	11%	13%	11%	14%		11%		0%
Lack of Expertise	11%	13%	11%	14%		11%		0%
Resistance to change	9%	0%	11%	9%		11%		17%
Political Interference	11%	13%	11%	9%		11%		17%
Interference by bidders	11%	13%	11%	9%		11%		17%
Admin Interference	12%	13%	11%	14%		11%		17%
Delays in Passing Budget	14%	13%	16%	14%		11%		17%
Delays in getting 'No Objection'	10%	13%	11%	9%		11%		0%
Corruption	11%	13%	11%	9%		11%		17%
Total	100%	100%	100%	100%		100%		100%
Capacity issues: knowledge+expertise+resistance	31%	25%	32%	36%		33%		17%
Institutional bottlenecks: delays in passing budget and receiving 'no objection'	24%	25%	26%	23%		22%		17%
Internal interferences: political+admin	23%	25%	21%	23%		22%		33%
External interferences: bidder interference+corruption	22%	25%	21%	18%		22%		33%
Total	100%	100%	100%	100%		100%		100%

*Note: There was only respondent in the south-south and northwest geopolitical zones respectively; all six respondents from the SE did not address this question

31. Access to information though improving marginally remains the most serious impediment to citizen's participation despite the new Freedom of information Act 2011.

32. A 42% level of I don't know in the responses of CSOs (most of whom are procurement monitors) to issues relating to evaluation of bidders with respect to bids they have monitored, 46% I don't know in their rating of BPP, 40 percent rating to manipulation of pre-qualification and refusal of access to information by the Bureau, 0 percent rating on improvements in access to procurement information by bidders, all indicate that the challenge of transparency and access to information remains serious despite marginal improvements.

33. Access to information levels as seen from reports of a limited FOI compliance testing activity.

PPDC in partnership with PACT Nigeria USAID supported Advance program in March 2012 conducted an activity titled "Testing implementation of the FOI Act in the Health and Education Sectors at selected procuring entities at the Federal and State levels. The project objective was to test the rate of compliance of selected procuring entities to the requirements of the Freedom of Information law 2011. Out of ten procuring entities selected from the state and federal levels to which requests for procurement records were made, only the National Universities Commission responded

within the seven days statutory period required by the FOI Act, and provided the records sought, including report of evaluation, eight other procuring entities failed to respond to the request even after being allowed another week with reminder visits⁹⁹. One participating NGO did not provide a report on the tenth procuring entity. This result is significant since the documents sought related to concluded procurement activities undertaken by the agencies, with statutory obligations to keep the records for at least ten years. Three months later with persistence another of the monitors secured records sought from the Federal Ministry of Health in Abuja. A ten percent compliance ratio to the request, within the time stipulated by the FOI and a twenty percent compliance over three months of persistent demand is indeed marginal and remains frustrating. The improvement is however in the fact that hitherto no MDA would have responded, and even when they respond non would have provided information on bid evaluation as the two referred to above did in this study.

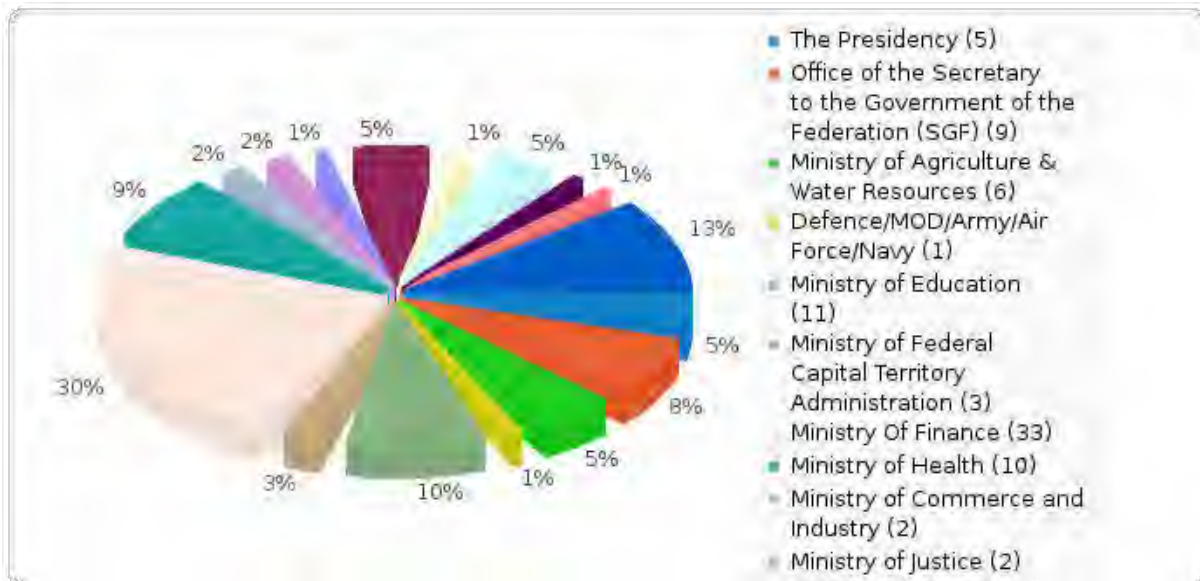
Report of Procurement Monitors on the Procurement Observatory.

34. Analysis of reports from the PPDC operated Nigerian Procurement Observatory www.procurementmonitor.org This is an ICT web portal for collation, analysis and e-reporting of citizen led procurement monitoring in Nigeria etc; the portal provides 24 hours access for virtual submission and collective analysis of procurement monitoring reports by trained and registered citizen procurement monitors, based on a standard monitoring tool, the portal also has a blog for providing free legal advice to investigative journalists and monitors, a free on line self paced training guide, a virtual public procurement library etc, winner of the Top case story award for the Global Procurement Innovation challenge¹⁰⁰. Citizen's monitors reporting on the portal use a standard monitoring tool, which guides them to record and report observed facts regarding compliance with procurement law and or procedure through the stages of procurement.

As at 3rd September 2012 a total of 117 completed reports relating to 117 procurement activities from various procuring entities, have been filed in the portal, 37 of them are in respect of procurement of goods, 59 works and 21 services. These reports have emanated from observation of procurement processes in MDAs shown in the table below.

⁹⁹ They were University of Calabar Teaching Hospital, Federal Psychiatric Hospital Calabar, Federal Government Girls College Calabar, Federal Ministry of Health Abuja, University of Ibadan, Federal Ministry of Education, University College Hospital Ibadan, University of Jos, University of Jos Teaching Hospital, Enugu State Ministry of Health, Katsina State Ministry of Education, Katsina State Ministry of Health, Plateau State Universal Basic Education, NAFDAC Ibadan

¹⁰⁰ The Procurement Innovation Challenge is an initiative of the World Bank Institute (WBI) in partnership with UN Procurement Capacity Development Centre (UNPCDC), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH with the financial support of the German Federal Ministry for Economic Cooperation and Development (B... Public Procurement Research Group of the University of Nottingham, and Making Integrity Work (Tiri)



The reports of procurement monitors submitted and analyzed on the portal provide an interesting picture of level of transparency in the procurement process.

In 83% of the cases monitored, the procuring entities had invited the monitors in writing to monitor the procurement activity as required by law. In 76.59 % of the times the monitors received copies of the advertisement requesting for pre-qualification or bids solicitation. In 24.49% of the cases they received procuring entity procurement plans. In 18 instances 18.56 percent of cases the procurement plans were provided by procuring entities to monitors, the other six were obtained from the BPP website and the Procurement Observatory for procuring entities whose procurement plans were submitted to and published by the BPP, whilst monitors confirmed demanding and being refused access to procurement plans in 40 different occasions. In 26.53% of the cases bidding documents or RFPs issued to prospective bidders were made available to monitors by procuring entities. In 4 instances or 3.36% of cases procurement plans seen contained needs analysis. In 15.13 percent of cases they identified properly the goods , works or services to be procured, in three instances 2.52% of times there was some evidence of aggregation of needs, and in 16 instances 13.45 % of the times the procurement plans showed the methods of procurement proposed to be used.

35. The monitoring reports submitted on the portal by citizens monitors indicate that all procurement activities monitored were advertised, this however must be seen within the context that no procuring entity is known to invite monitors to monitor all its procurement activity, though mandated to do so with respect to all procurement proceedings, they only invite monitors to monitor a few of their procurement activities and often it would appear they invite monitors in cases where they have chosen to use open competitive bidding and have advertised. Because procurement relating to use of other methods are rarely advertised, CSOs do not get to know when they will take place. Only in 24 percent of the activities have the advertisements been on the procuring entity website, 35.42 percent of the advertisements are placed on the notice board, 96.88 in the newspapers, 71.88 percent in the procurement journal. In 31 percent of the cases monitored the advertisements contained brand names and therefore were restrictive of competition. In 36% of the cases they did not contain brand names. In 26 and 3 percent of the cases the monitor did not indicate whether or not the advertisement contained brand names.

36. In 21.88 percent of the cases monitors indicated criteria for selection of winning bids or proposals were advertised and disseminated, in 20.83 % of cases they indicated the criteria were not made available and in 57.29 the monitor did not indicate whether or not the criteria was disseminated. In 1.04—percent of cases the monitors were sure the criteria for selection of winning

bids was unclear, in 26.04 cases the criteria appeared clear and in 72.92 percent of cases the monitor was unsure whether the criteria was clear or unclear. 72.92 percent is significant and may suggest access to information and capacity challenges for monitors. 97 percent of these procurement activities monitored were national competitive bids

37. In 81 % of the cases procuring entities had a bid register. In 72 percent of these cases bids submitted were chronologically registered in the bid register, but only on the average of 40percent of the cases were bidders issued bid submission receipts as required by law. In 56 percent of these cases monitored procuring entities had duplicate receipts for bid submissions, and in 25% of these cases provided monitors with copies of those receipts upon requests. In 23.39 percent of cases procuring entities provided monitors copies of minutes of bid opening. In 78.12 percent of the cases bid opening occurred on the date stipulated in the advert. Only in 69.47 cases was a tamper proof box used as required by law for bid opening. It appears that only in one case was a bid found to have been accepted after closure of bid opening.

38. Only in 1.05 percent of cases monitored did a monitor indicate that bid prize was adjusted during evaluation . In 76.84 cases the monitors did not indicate whether or not there were adjustments to bid prizes during evaluation, whilst in 22.11 cases monitors indicated that no adjustment of prizes occurred. The lack of an answer in 76 percent of the cases corroborates evidence that procuring entities were not providing access to records relating to evaluation and award stages of the procurement process.

39. In 66.67 percent of procurement activity monitored, the activity required specific professional qualification of key personnel, In the other 33.3 percent of activities monitored, it could not be determined if the procurement activity required any specific qualification of key personnel, only in 48.96 percent of these activities requiring specific professional qualification, was the required qualification clearly prescribed. In 83.3 percent of monitored procurement activities, monitors determined that technical qualification and experience (here understood) as experience carrying out similar jobs was needed, and only in 70.83% of these cases was the evidence of experience prescribed for qualification of bidders and only in 57.89 percent of those activities were the required experience and evidence of it clearly prescribed as conditions for qualification of bidders.

40. The monitoring reports indicate that in 91.67 cases bidding documents required bidders to present evidence of financial capability, however only in 47.92% of these cases did the bid documents require bank accounts statements as evidence of financial capability. Annual audited reports of accounts were required in 45.83% of the cases as evidence of financial capability. In some cases both were required.

41. When asked if the three highest ranking bids in the procurement monitored met the eligibility requirements stipulated, monitors agreed that this was the case in 28.42 % of the cases monitored and could not give any answer in respect of 71.58 percent of cases monitored pointing again to the absence of access to information on such issues as report of pre-qualification, examination and evaluation. Regarding minutes of evaluation sub-technical committee meetings, monitors indicated that in (51 procurement activities) 54.26% of the cases they monitored they requested such minutes, only in (26 procurement activities) 48.15% of the situations it was requested for, were minutes of evaluation committee meeting provided. Also in 32.98 of those cases where they were available, minutes of meetings of the Tender Boards were provided to monitors. In 28.72 of the cases letters of award were available, but only provided to the monitors in 3.2 percent of the cases. Where these documents are not provided.

42. Also monitors reports indicate that in two procuring activities monitored being 2.25 percent of procuring activities, it was found that the procuring entities used criteria for evaluation which were not found in the bidding documents. In 31 procuring activities which were 34.83% of activities monitored the monitors were sure this was not the case. However in 56 procuring activities monitored, being 62.92 percent of the monitored activities, the monitors were not sure if this was the case. This is

very significant, and is a pointer to the fact that the monitors may not have had the required access to determine what happened in these cases.

43. What appears to be progress in levels of transparency at the stage of bid evaluation here, given the findings of the last years report is diminished by the fact that the results do not cut across all procuring entities monitored. The Accountant Generals Office accounted for 23 out of the entire 117 procurement activities monitored, it was largely in these procurement activities from the Accountant Generals Office that minutes of technical Sub-committee of the Tenders Board and the Tenders Boards were provided. The rest of over eighty reports are spread across the other procuring entities monitored. The Accountants Generals Office more than any other agency provided opportunity for monitors to oversee its procurement. Its procurement activities were to a reasonable extent more compliant than that of other agencies and provided a good portion of the positive results seen in these reports. The effect is that most agencies are still largely not transparent, nor are their procurement processes compliant with the act. Though not completely compliant to requirements of the PPA, the level of compliance noticed in the Accountant Generals Office by citizens reports is higher at most stages of procurement than in any other procuring entity and this may account for why they are more willing to provide access for improved monitoring of their procurement activities, next to the Accountant Generals Office in this regard is the Nigerian Automotive Council.

44. Analysis of these reports indicate challenges with description and specification of technical features of goods and services in many procurement activities monitored, use of brand names for description of goods, prescription and poor application of qualifying conditions for contractors including evidence of qualification required, and prescription and dissemination of criteria for determining a winning bid which constitute the building blocks for effective bidding. In order words information given to bidders in many instances were not sufficient, and did not support predictability in the process. Even at the pre-bid submission stages, the information from these reports have provided early warning signals for procurement failure, which when transmitted to the Bureau had led to regulatory action, also in certain instances identifiable errors have been pointed out to procuring agencies, who as a result have re-advertised projects with improved conditions for qualification, and in some other re-issued bidding documents that did not meet acceptable standards with appropriate corrections. The Bureau has proved to be responsive to such reports. There is no doubt that it is by means of abuses of procedure that corrupt schemes are accomplished, often with improved transparency and scrutiny such gaps can be identified early and attention brought to them in a way that reduces abuses, and off course corruption, this is the objective of this citizen monitoring program and the portal. The challenges of this process currently are three a) limited and timely access to information, c) limited capacity of monitors and b) limited number of active monitors and capacity to generate sufficient number of reports from a wider sample size of procuring entities.

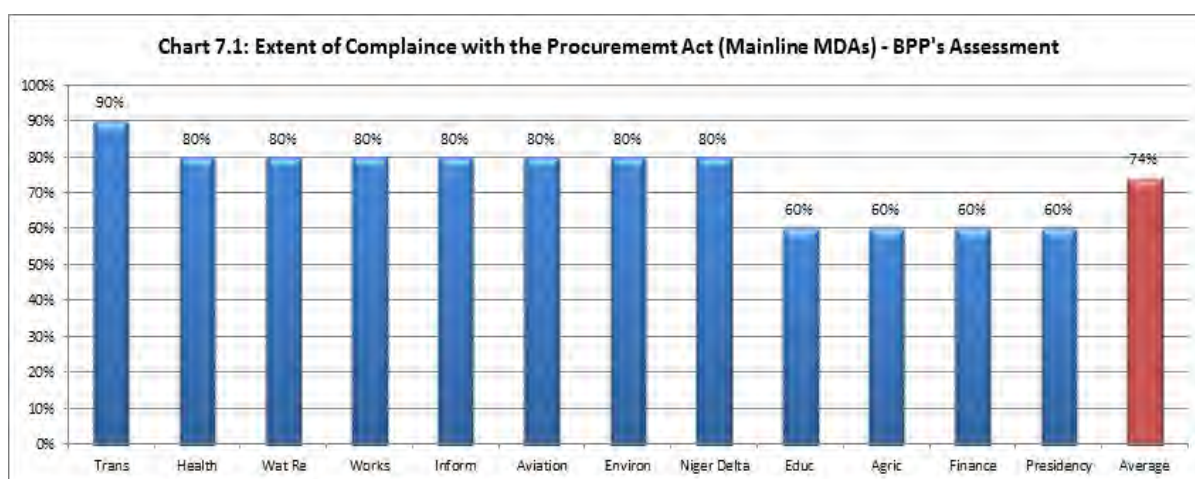
Chapter 7: Compliance with the PPA – the View of the Bureau

7.1 This chapter presents analysis of responses provided by the Bureau of Public Procurement to written questions. Wherever relevant, the analysis draws from official information from the Bureau obtained in other circumstances, including in connection with a simultaneous assessment by the same consultants involving public procurement.¹⁰¹ The analysis also freely uses material from the Bureau’s website.¹⁰²

7.2 The questionnaire asked the Bureau to provide responses, including quantitative assessments or ratings of several areas of performance. Among these are the following four critical areas, (i) general compliance with provisions of the PPA by procuring entities, (ii) identification and ratings of specific activities of the procurement process and the levels of performance, (iii) impediments to compliance with the Act, and (iv) common abuses in the procurement process. The paragraphs analyze the responses of the Bureau.

General Compliance of Procuring Entities with the PPA

7.3 *The average level of compliance with the PPA is much higher among mainline MDAs than parastatals (Charts 7.1 and 7.2); average compliance among MDAs is 74 percent, but it is only 20 percent among parastatals.*¹⁰³ Mainline MDAs’ stricter adherence to the provisions of the Act has been the norm since its enactment in 2007.¹⁰⁴ The reason for this is unclear, but there are several possibilities, including lack of effective supervision by the Bureau and a feeling of ‘not being subject to the Act’ by some parastatals. To be sure, parastatals, including the Central Bank of Nigeria (CBN) are subject to provisions of the Act, which is applicable to all procurements by a procuring entity (*s. 15(1)*). *Section 60* defines procuring entity to mean “any public body engaged in procurement and includes a Ministry, Extra-Ministerial office, government agency, parastatal and corporation”. There is no doubt that the CBN is a public body, and to the extent that it engages in procurement, it is subject to the Act.



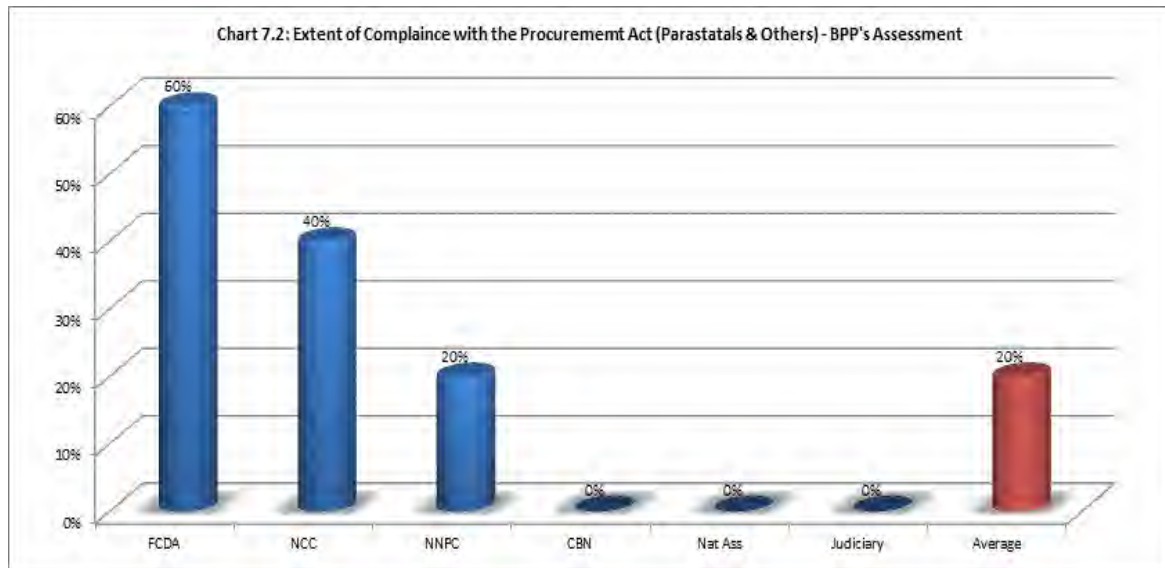
¹⁰¹ i.e., an assessment of the FGN’s public financial management system using the PEFA Framework; the World Bank and DFID commissioned the study.

¹⁰² www.bpp.gov.ng

¹⁰³ MDAs rated 18 procuring entities – 12 mainline MDAs, and 6 parastatals or agencies. The MDAs are Transport, Health, water resources, Works, Information, Aviation, Environment, Niger Delta, Education, Agriculture, Finance, and the Presidency. The parastatals/other agencies are the Federal Capital Development Authority (FCDA), the Nigerian communications Commission (NCC), the Nigerian national Petroleum Corporation (NNPC), Central Bank of Nigeria (CBN), the National Assembly, and the Judiciary

¹⁰⁴ The earlier study of 2010 made similar findings.

7.4 *Why then is the Bureau unable to extract compliance among parastatals as it is among mainline MDAs.* The ostensible reason is the weakness of the Bureau as currently constituted.. Failure of the President to constitute the NCPP raises legitimacy issues that undermine the authority of the Bureau.



7.5 *For example, the House of Representatives has declared the Bureau ‘an illegal body’, for the appointment of its senior officials not being in accordance with provisions of the Act (see Box 4.1 below).¹⁰⁵* It is not certain why the National Assembly failed to intervene two to three years back when Bureau officials were appointed and only chose to make this declaration at this point. Some suggest that this National Assembly declaration at this time may be a response to pressures to subject its largely non compliant procurement process to oversight of the BPP, pressures that it continues to resist. It is not clear whether this concern for the legality of the BPP is responsible for the ‘refusal’ of the National Assembly, the Judiciary, and the CBN ‘to submit to BPP authority or oversight as the industry regulator. It is likely however, to contribute to the ‘reluctance’ of the Bureau to ‘bare its teeth’; knowing that it’s authority is subject to challenge. The House of Representatives has also declared certain activities of the Federal Executive Council (FEC) and the non-constitution of the NCPP illegal.¹⁰⁶ There may be statutory basis for the National Assembly’s concern, but the immediate motivations may not be entirely public interest.

7.6 *Compliance among mainline MDAs may be relative high, but not uniform.* The Bureau rates the level of compliance in the Ministry of Transport very high at 90 percent, i.e., 4.5 out of a maximum of 5.0 points (Chart 7.1). The lowest ratings of 3.0 points or 60 percent were for Education Finance, Agriculture, and the Presidency. The median rating of 4.0 points or 80 percent went to seven MDAs.

Compliance with Specific Procurement Activities

7.7 *How do procuring entities fare in terms of adherence to specific requirements of the Act; which provisions do they more readily implement – what is the perception of the BPP?* The questionnaire provided the BPP 23 items for comment and rating. The questionnaire required the

¹⁰⁵ See also: <http://tribune.com.ng/index.php/news/32190-reps-want-bpp-dg-management-to-vacate-office>; <http://nationalmirroronline.net/business/business-and-finance/25967.html> ;

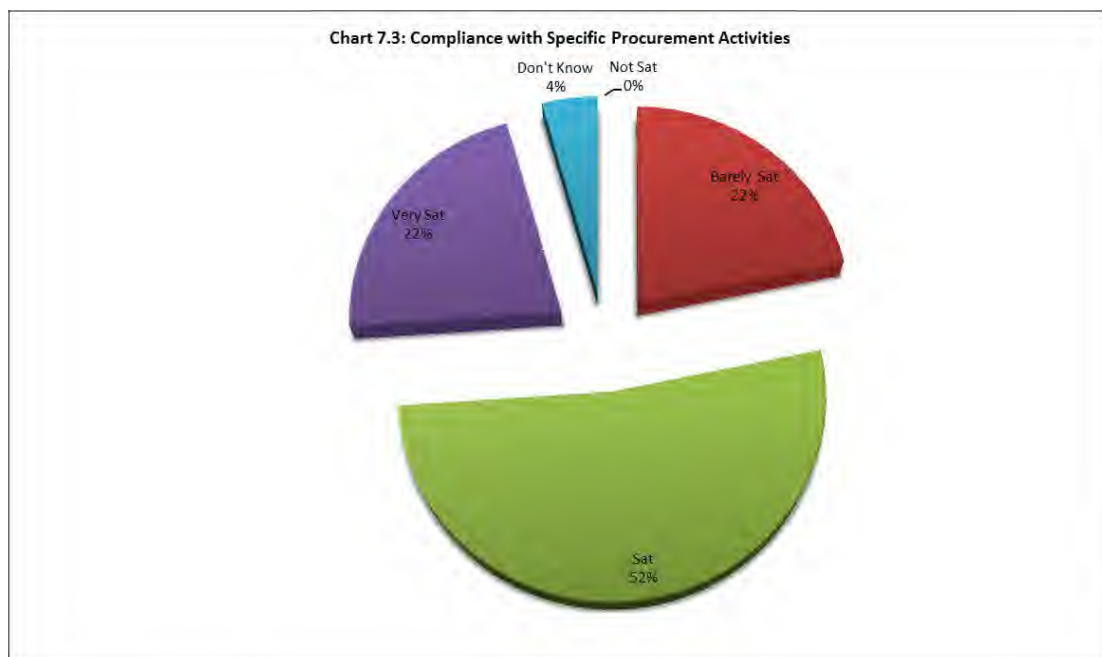
¹⁰⁶ See for example, <http://blueprintng.com/2012/03/reps-declare-fecs-contracts-illegal/>; [Http://Www.Peoplesdaily-Online.Com/News/National-News/31688-Contracts-Approval-By-Fec-Illegal-Reps-Declare](http://www.Peoplesdaily-Online.Com/News/National-News/31688-Contracts-Approval-By-Fec-Illegal-Reps-Declare)

Bureau tick one of five options for each item: not satisfactory, barely satisfactory, satisfactory, very satisfactory, don't know.

7.8 The 23 items are

- a) Existence of prior procurement plans
- b) Implementation of procurement according to procurement plan
- c) Procuring according to procurement plans
- d) Existence of prior budgetary allocations
- e) Existence and functioning of public procurement committees
- f) Existence and functioning of tenders boards
- g) Appointment of sub technical committees of the tenders board
- h) Level of public access to information
- i) Appropriateness of procurement methods used
- j) Mode of advertising and soliciting for bids
- k) Clear conditions for qualification of bidders in advertisement
- l) Technical description of goods, works, or service required rather than brands
- m) Clear criteria for selection of winning bidder in solicitation
- n) Use of competitive bidding
- o) Use of selective bidding
- p) Use of direct procurement
- q) Compliance with bid submission procedure
- r) Transparency of bid opening process
- s) Bid examination procedure
- t) Transparency of bid evaluation process
- u) Written notification of bid winners
- v) Debriefing of contractors
- w) Compliance with procurement complaints mechanism

7.9 *Analysis of the responses shows a performance of at least satisfactory on 17 of the 23 items, representing 74 percent. Five items (22 percent) record barely satisfactory performance. The Bureau returned a "don't know" response on one item: written notification of bid winners. The five items with barely satisfactory performance are (i) implementation of procurement according to procurement plan, (ii) procuring according to the procurement plan, (iii) use of selective bidding, (iv) use of direct procurement, and (v) debriefing of contractors.*



7.10 *The improper use of selective tendering deserves a comment.* Data provided by the Bureau¹⁰⁷ to assess extent of use of non-competitive methods in practice is incomplete, but it provides useful insight.¹⁰⁸ Majority of procurements in the document provided by the BPP was by non-competitive methods. Only 130 procurements of the 579 in the document was by national or international competitive bidding. The others were by a variety of methods, including direct procurement and restricted tendering (RT). The document provided, did not provide justification for the use of these techniques. *Table 7.1* presents the results.

Table 7.1: % value of contracts otherwise than by open competitive with no evidence of justification			
	Open Competitive Bidding Methods	Non competitive methods	Number
1	Naira denominated contracts (NGN N)	45%	
2	US dollar denominated contracts (US \$)	99%	
3	Pound Sterling denominated contracts (£)	99%	
4	Euro denominated contracts (€)	100%	
	% of physical contracts by non open bidding		78%

7.11 *Several notes of caution about this data* - the source document summarizes only information on requests for ‘prior review/no objection’ certification from procuring entities from May 10 2011 to March 13, 2012. Although the record shows the procurement method and amount, it does not present complete information on total contracts during the period. First, the information relates only to works contracts, i.e., excluding contracts for goods and services that ordinarily constitute the bulk of non-competitive procurement. Second, the document relates only to ‘prior review’ items, i.e., items above the threshold and for which procuring entities must obtain approval from the BPP in advance of procurement. It does not include ‘post review’ items requiring no advance approval. “Post review” or procurement whose value is below the No Objection threshold, constitute the bulk of public procurement. The current rather high threshold of ₦1.0 billion¹⁰⁹ for prior review of works projects highlights the importance of ‘post review’ procurement; the threshold consigns most procurement to ‘post review’ status. The Act requires that procuring entities report post review activities to the Bureau after the transaction. A report on only prior review therefore, does not present nearly complete information for assessment. The Bureau’s failure to supply information relating to post review contracts, may suggest that the information is not available with it, this may mean that procuring entities are not rendering reports to it, on these procurement activities as they ought to by law, the circulars from the office of the Secretary to the government in the January-March 2012 procurement journal requiring airing MDAs to begin submitting these records to the BPP seems to suggest many MDAs have not been doing so. It is doubtful why if this is the case BPP will not pursue a more effective way of providing deterrence, since the PPA makes this an infraction punishable with a prison term¹¹⁰.

7.12 *Implementation of procurement according to procurement plan and procuring according to the procurement plan are different, but both recorded barely satisfactory ratings.* The former means acquiring only items stated in the procurement plan while the later also refers to adhering to the timetable procurement in the procurement plan. Factors causing non-adherence to timetable include delays in passing the budget, capacity issues, and late/uncertainty in the timing of release of funds. Political and other interferences are responsible for failure to acquire only projects in the procurement plan.

¹⁰⁷ For the ongoing PEFA assessment referred to earlier

¹⁰⁸ The BPP provided some data in a computer printout document titled, “Certification and Works Submitted by Procurement Departments”.

¹⁰⁹ US \$6.4 million

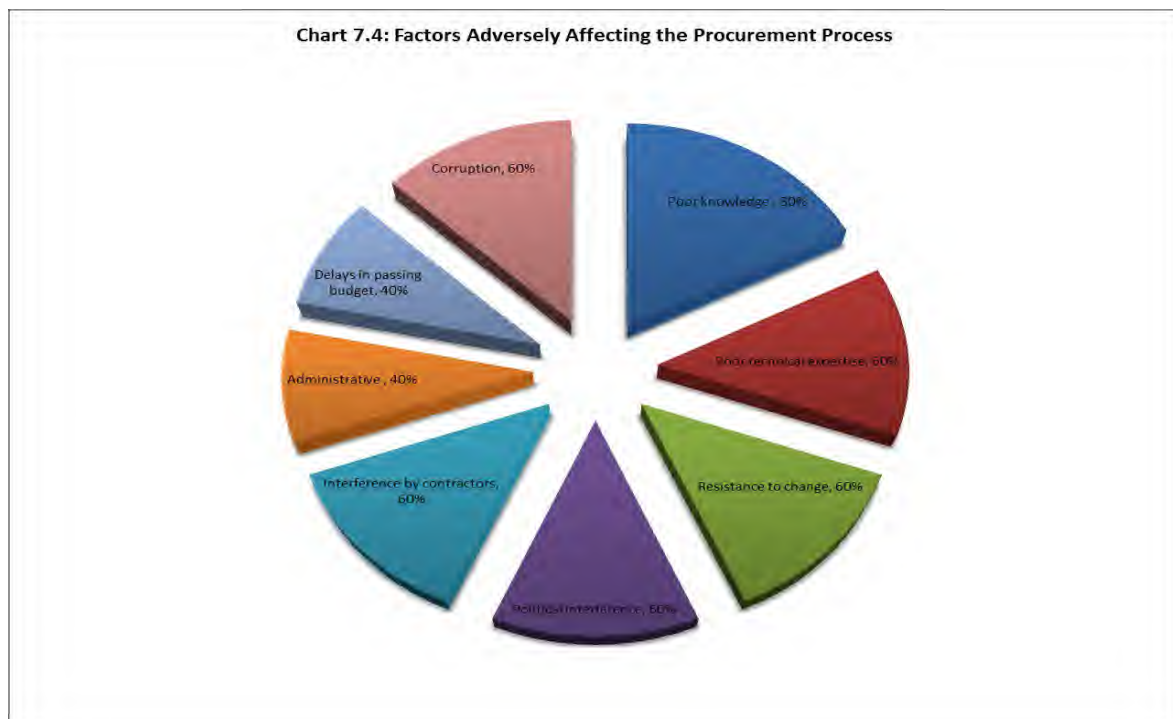
¹¹⁰ S 58(4) h & (5) of the PPA 2007

Factors Adversely Affecting Compliance

7.13 What factors impede compliance with the Act, in what order, and to what degree? The Bureau rated eight suggested impediments, with the option to add more. However, the Bureau did not add to the list. The eight impediments are

- (i) Poor knowledge
- (ii) Poor technical expertise
- (iii) Resistance to change
- (iv) Political interference
- (v) Interference by contractors
- (vi) Administrative interference
- (vii) Delays in passing budget
- (viii) Corruption

7.14 Analysis of the responses suggests that the cumulative impact of the impediments on the procurement process is approximately 60 percent.¹¹¹ The Bureau identifies poor knowledge of the Act and procurement procedure as the greatest impediment to the process, at 80 percent. Five items rank equally at 60 percent: (i) poor technical expertise, (ii) resistance to change, (iii) political interference, (iv) interference by contractors, and (v) corruption. Interference by administrators and delays in passing the budget rank lowest at only 40 percent (Chart 7.4).

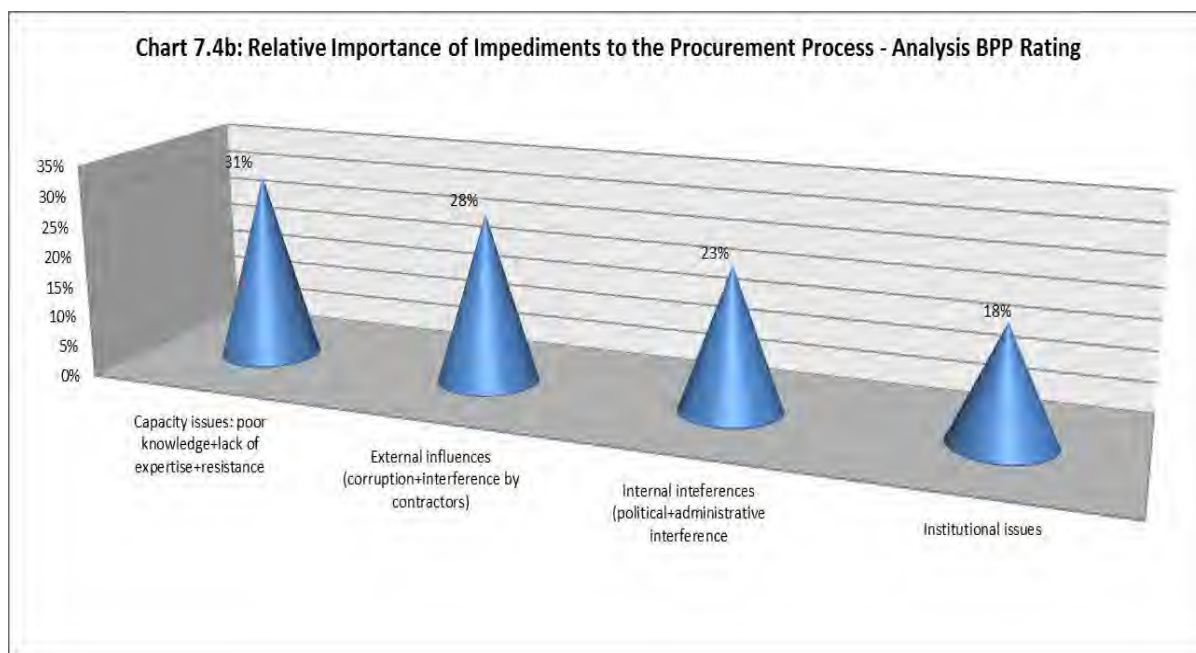


7.15 Further analysis shows that the Bureau considers capacity issues as the most important factors impeding implementation of the PPA, 2007 (Chart 7.4b). Capacity issues concern procuring entities and their ability to apply provisions of the Act. Capacity issues include poor knowledge of the Act and procurement procedures, lack of technical expertise, and resistance to change.¹¹² External influences (corruption and bidder interference) rank next above internal interferences (political and administrative). Significantly, the Bureau ranks institutional factors the least influential impediment in the procurement process.

¹¹¹ 58 percent, to be exact

¹¹² See chapter 4.

7.16 *There are important differences between the BPP ranking and that by procuring entities. Chapter 8 will attempt a synthesis and reconciliation of these two as well as with the views of contractors and civil society observers.*



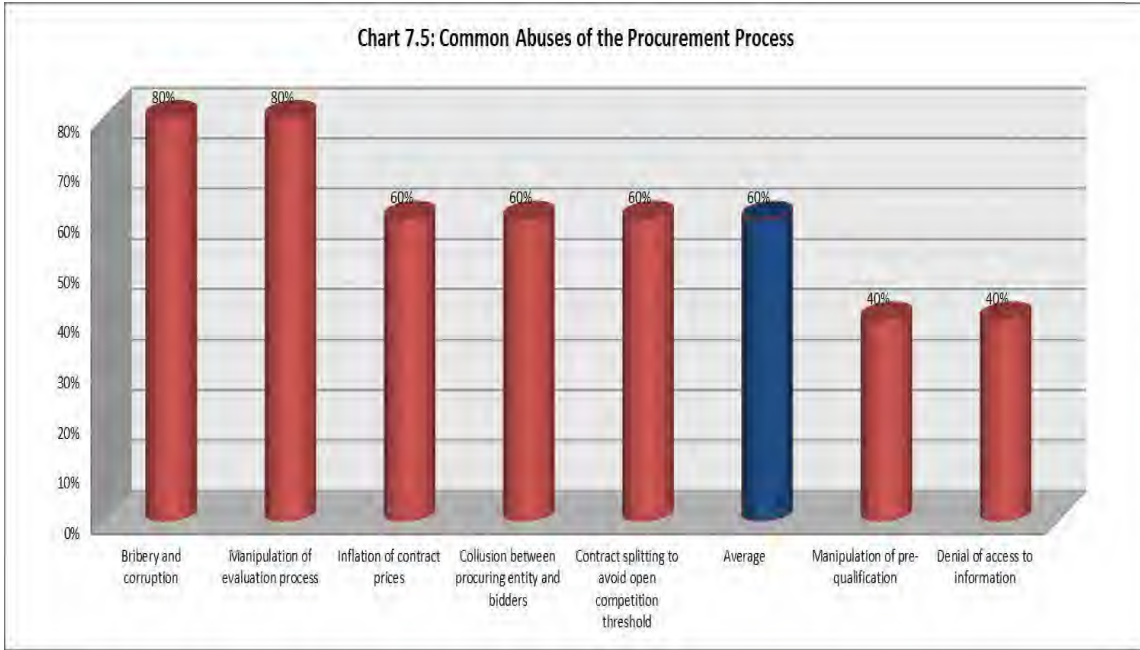
Common Abuses of the Procurement Process

7.17 The Bureau also identified and ranked seven common abuses of the procurement process. The research suggested these abuses and gave the option to add more, if necessary. The Bureau ranked each abuse on a progressive scale of 0 to 5. These abuses are

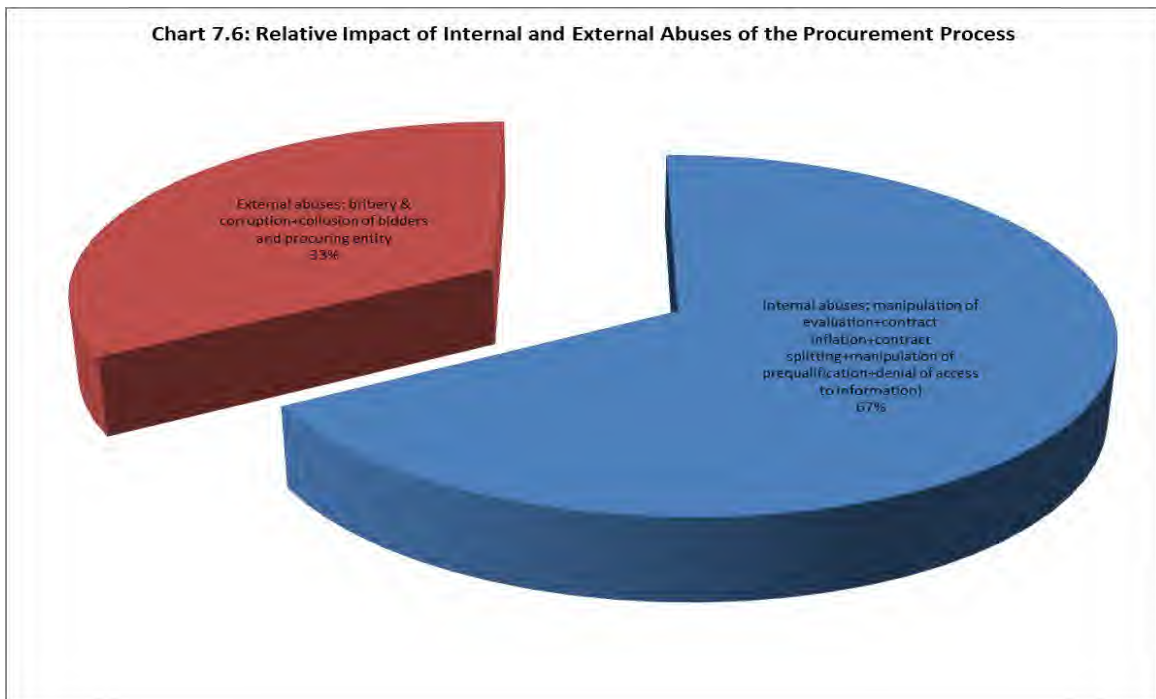
- (i) Inflation of contract prices
- (ii) Manipulation of pre-qualification
- (iii) Collusion between procuring entity and bidders
- (iv) Manipulation of evaluation process
- (v) Contract splitting to avoid open competition threshold
- (vi) Denial of access to information
- (vii) Bribery and corruption

7.18 *Bribery and corruption (of procurement officials) and manipulation of the bid evaluation process rank highest on the Bureau's list of common abuses of the procurement process, at 80 percent (Chart 7.5).¹¹³ inflation of contract prices, collusion between procuring entities and bidders, and contract splitting to avoid thresholds for open competition also rank high at 60 percent each. Manipulation of the pre-qualification process and denial of access to information bring the rear at 40 percent. What do these results portray?*

¹¹³ Procuring entities rank bribery and corruption least at 19 percent.



7.19 Deeper analysis show that internal abuses of the procurement process are far more important than external abuses. Internal abuses comprise those excesses perpetuated by procuring entity personnel: political and administrative. Usually, the internal officers are able to generate sufficient motivation for the abuse without needing any external push. Such officials may on their own seek external collaboration, where this is necessary to perfect the abuse, or they are eager to pick up and exploit any hint of external collaboration. Internal abuses of the process in the list above are five namely, (i) manipulation of bid evaluation, (ii) inflation of contract prices, (iii) contract splitting, (iii) manipulation of the pre-qualification process, and (v) denying aggrieved bidders of access to information. They constitute two-thirds of the abuses (Chart 7.6). the two externally induced abuses are collusion between bidders and procuring entity and bribery and corruption of procurement officials.



Box 7.1: Functions of BPP

- The Bureau of Public Procurement has the following functions amongst others:
- Formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
- Publicize and explain the provisions of the procurement act;
- Subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract;
- Supervise the implementation of established procurement policies;
- Monitor the prices of tendered items and keep a national database of standard prices;
- Publish the details of major contracts in the procurement journal;
- Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- Maintain a national database of the particulars and classification and categorization of federal contractors and service providers;
- Collate and maintain in an archival system, all federal procurement plans and information;
- Undertake procurement research and surveys;
- Organize training and development programmes for procurement professionals;
- Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly;
- Prepare and update standard bidding and contract documents;
- Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
- Review the procurement and award of contract procedures of every entity to which the procurement act applies;
- Perform procurement audits and submit such report to the national Assembly bi-annually;
- Introduce, develop, update and maintain related database and technology;
- Establish a single internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times; and
- Co-ordinate relevant training programs to build institutional capacity

Source: bpp website, www.bpp.gov.ng, sourced on Sunday, July 01, 2012

Chapter 8: Synthesis and Conclusion

8.1 *What is the dominant story line of the foregoing analysis? Do the various respondents agree on some common areas of improvement and abuses of/impediments to the procurement process? What are the lessons learned of this assessment? Does independent evidence support or deny the main messages? What policy recommendations would help secure more sustained improvements in complying with implementation of the Public Procurement Act, 2007?* These are some of the issues addressed in this chapter.

8.2 The main storyline of the foregoing analyses is that the respondent stakeholders agree on some areas of improvement in and impediments to/adverse influences on the procurement process since 2007 when implementation of the Public Procurement Act commenced. This chapter teases out, highlights, attempts to rationalize, and corroborate these common agreements with independent evidence. The added-value of this chapter is the attempt to explain the ‘facts behind the figures’, i.e., the reason for the performances. This ‘root and branch’ analysis is necessary to identify the causes and explain the effects of the improvements and adversities. This will help in the choice of policy options that may work.

Progress in the Procurement Process since 2007

8.3 *Close examination of the analysis of the foregoing chapters shows consensus among procuring entities, bidders, civil society groups, and the BPP on five areas of genuine and sustained improvement in the procurement process since, 2007.* The five areas are (i) implementation of training and learning programmes,¹¹⁴ especially for procuring entities, (ii) publication of the procurement journal, (iii) public sensitization on procurement reforms, (iv) speed of granting ‘no objection’ certification,¹¹⁵ and (v) certification of procurement officers by the Bureau.

8.4 *Respondent stakeholders also agree on areas of marginal or no improvement.* The main areas without sustained improvement include the following eight.

- (i) Preparation of contract specification
- (ii) Preparation of bidding documents
- (iii) Bid solicitation and advertisement
- (iv) Bid evaluation
- (v) Contract pricing
- (vi) Project execution and completion
- (vii) Reduction of abandoned projects
- (viii) Public access to procurement documents

8.5 Citizens procurement monitors who directly observed and reported on 117 procurement activities in different procuring entities present observed facts through their reports on the Procurement Observatory that confirm that (i)-(1v) & (viii) above are only marginally improving. Unlike the surveys which represent opinions, these observed facts backed up in some cases by documentary evidence obtained cannot be ignored. Though these groups did not monitor the implementation stages of these procurement activities and have no reports regarding them. It is clear that the observed lapses captured at the contractor selection stages by their reports contribute substantially to the negative outcomes in (v)-(vii) of paragraph 8.4 above.

8.6 *What do these results show?* First, improvements have occurred in mostly procedural and preliminary, rather than in substantive activities. For example, training of procurement personnel is a

¹¹⁴ And other bodies, some private

¹¹⁵ Respondent bidders and contractors do not agree there has been improvement in this area. However, CSOs and procuring entities agree. Response of bidders may have reflected their continued frustration with the due process certification process, which they have never liked since its introduction.

preliminary activity, while better contract pricing and reduction in the number of abandoned projects are more substantive outcomes of the procurement process.¹¹⁶ The evidence suggests sustained momentum in training, but little improvement in the quality of pricing and the rate of abandoned projects. This is probably as it ought to be, because there is a natural time lag between improvements in preparatory, preliminary, and procedural activities and their manifestation as substantive outcomes in practice. Good procedures usually precede and eventually translate to substantive results. Training helps develop individual skills and build institutional capacity for contract costing and project delivery. However, what is the appropriate time lag for training to manifest in good pricing, good bid evaluation and reduction in the rate of abandoned projects, etc.? Is the time from 2008 to date insufficient to begin to witness concrete substantive improvements in outcomes? Or is it the fact that training did not get to many relevant officers until recently? These questions require further investigation. Also it is relevant to query if the improvements in procedure will endure until results in outcome manifest, given that few of the infractions are prosecuted and punished and the failings of the anti-corruption agencies and courts in this regard, may actually provide negative incentives for lasting improvements.

8.7 *Second, training is key, but it may not be progressing sufficiently fast.* Analysis of independent evidence from the BPP suggest that training and certification of procurement personnel are ongoing, but perhaps not at a fast pace. For example, of the 2,802 procurement officers trained by the Bureau between 2008 and 2011, only 631 or 22.5 percent passed the certification examination (Table 8.1). In 2011, only 54 persons passed the examination out of 656 trained persons. This represents 8.2 percent. All these suggest a slow rate of certification of procurement professionals. The small number of core procurement professionals may not have formed the critical mass necessary to make a good impact in the procurement process. Notwithstanding the different factors contributing to this slow certification process, the result is the slow progress that characterize implementation of the Act. The ratios also suggest that BPP and the HOS appear to be carefully examining applying officers, prior to certification, the failure rate may suggest the need for changes in the training methodology, e.g there may be need for increased hands on training in addition to workshop styled training now occurring, it may help to reduce the size of the training classes to allow increased interaction with students by instructors, and perhaps to increase the training duration etc.

Table 8.1: Number and distribution of Certified Procurement Offices by the BPP					
Trained and Certified Procurement Officials, 2008 - 2011					
	Trained	Fail	Pass	% Pass	% Fail
2008	601	487	114	19.0%	81.0%
2009	1,000	812	188	18.8%	81.2%
2010	545	270	275	50.5%	49.5%
2011	656	602	54	8.2%	91.8%
Total	2,802	2,171	631	22.5%	77.5%
Distribution of Certified Procurement Personnel, 2010 - 2011					
	Certified	GL 07 - 13	GL 14 - 16	Unspecified	% GL 07 - 13
2011	54	27	20	7	50%
2010	70	53	16	1	76%
Total	124	80	36	8	65%

Source of data: Bureau of Public Procurement

8.8 *Third, most of the trained procurement personnel occupy very low positions in the public service hierarchy to make an immediate impact on the procurement process.* Sixty-five percent of certified procurement personnel in 2010 and 2011 occupy grade level positions 07 – 13 in the service. These are not the sort of officers that MDAs would normally entrust to head departments (even in an acting capacity) that directors on levels 17 should head. The service structure does not allow

such low-level officials regular direct access to the accounting officer. This may have prompted the recent reissue of a circular by the Head of the Civil Service of the Federation directing MDAs to ensure access of heads of procurement departments to the accounting officer, even where that head is a relatively junior officer.¹¹⁷ However, the practicality and effectiveness of a GL 10 officer issuing directives to a GL 17 officer or enforcing adherence by a Minister to policies and procedures is an issue, this circular notwithstanding? Thus, certified personnel may not yet be making the desired impact on the procurement process. BPP may consider ways of attracting increased number of senior officers into the certification program.

¹¹⁶ The outcomes are the main reasons for and benefits of public procurement, but good procedures help to secure good outcomes.

¹¹⁷ See circular HCSF/061/S.1/V/102 dd 13 February, 2012

8.9 *Suggested transfer of supervision of the new procurement cadre of the civil service to BPP may or may not resolve the problem of low level officers and may pose other difficulties.* A low level officer may never be able to direct a Minister or permanent secretary, even if pooled to an outside service unit. For example, internal auditors and finance officers of MDAs are staff of the Office of the Accountant General, but that has not prevented and may not have limited infractions of public finance management rules. Such infractions would not be possible without the connivance of personnel of the finance departments, especially the Director. Indeed, several fraud cases currently under prosecution include the accounting officer as high level staff of the finance department.¹¹⁸ Therefore, it is not certain that transferring promotion, discipline and supervision of procurement staff to the BPP alone, will improve the public procurement process. It may help, but the fact that many of such officers are low level officers may also not help the situation. The situation may be different if increased number of senior officers are attracted to the cadre. It may also help the situation if the anti-corruption agencies become more diligent in investigating and prosecuting culprits, no amount of training will replace the benefits of effective deterrence, improvements in both training and sanctions are needed now.

8.10 *Fourth, the quality and content of training may not be sufficiently covering some technical aspects of public procurement.* Most BPP organized training sessions last five days for the certification process¹¹⁹ and one to two days for sensitization.¹²⁰ Such sessions may cover procedural issues of public procurement and the PPA, but would likely be too brief for meaningful hands-on training on technical details of pre-qualification, bid evaluation, pricing, and project supervision given many years of poor or no such training at all. Professional training and certification on some of these aspects alone take as long as four to three weeks and cover issues such as procurement planning, market surveys, cost implications analysis, drafting specifications and terms of reference, distinction between criteria for pre-qualification and bid evaluation, rules for scoring bid evaluation, format of bid evaluation reports, etc. Thus, ‘trained procurement personnel’ may still lack sufficient skills to perform some of these activities. This may be contributing to the slow improvement observed in the outcome areas of the procurement process. The percentage of failures in the examinations appears to corroborate this conclusion. *Other issues contribute to the low performance of procurements outcomes, than the quality of training and certification of procurement personnel.* These include perennial delays in approving the budget, inadequate budgetary provisions, inadequacies in fund release, poor supervision of contracts/projects, etc. Political and administrative interferences, bribery and corruption, etc., also affect procurement outcomes, the next section deals with some of these issues.

The Role of Political Interferences in the Public Procurement Process

8.11 *All four groups of stakeholders agree on the nature of constraints and impediments to implementing the Public Procurement Act, although they do not agree on their relative contributions to the adversity.*¹²¹ Stakeholders acknowledge the contributions of capacity problems, internal interferences, external influences, and institutional bottlenecks to failure to implement the PPA.

¹¹⁸ One of the six persons charged in ongoing pensions-fraud cases is a Deputy Director (Finance and Accounts). The six suspects who were arraigned on a 16 criminal charges bordering on conspiracy and criminal breach of trust were: Esai Dangabar, Atiku Abubakar Kigo, Ahmed Inuwa Wada, John Yakubu Yusufu, Mrs. Veronica Ulonma Onyegbula and Sani Habila Zira, www.efcc.gov.ng

¹¹⁹ See for instance BPP letter ref BPP/DG/2011/768 of November 21, 2011 conveying the result of procurement training to the Head of the Civil Service of the Federation; the training was from Monday, 17 to Friday, 21 October 2011. See also letter ref BPP/S.22/VOL.I.I/2810 of October 29, 2008, and letter of August 9, 2010 conveying similar information.

¹²⁰ See information on training and sensitization activities organized by the Bureau posted on various editions of the Public Procurement Journal, for example, July – September 2011 (11th) edition, p 68, and January – March (9th) edition, p. 88

¹²¹ Failure to agree on weights should not be surprising due to a natural tendency towards ‘territorial protection’, and ‘self-preservation’ or ‘non self-indictment’. Acknowledgement of existence of the impediment is more important in this exercise than the relative weight of contribution.

Capacity problems deal with gaps in knowledge, skills, and motivation of procurement personnel (mostly) and other players¹²² that affect due diligence in applying the Law and observing good practices. Internal interferences with the procurement process come from political office holders and senior administration personnel that sway ordinary technical decisions, such interferences may be direct or indirect. External influences result from acts of bidders (mostly) seeking to induce or influence public officials to make non-rational decisions in the procurement process. Institutional bottlenecks arise from systemic defects in the structure and organization of the public service that impede due process in public procurement. Political interference is the most influential of all these factors. Indeed, the other impediments may not effectively and successfully undermine the procurement process, as currently the case without active political interference.

Box 8.1: Case Study of Acquisition of Cessna citation CJ4 Aircraft by the Nigeria customs service for Anti-smuggling Operations

Observations

- Political involvement in purely procurement decision making – the supervising Ministry of finance had to first seek presidential approval for project, even though the budget had already approved it
- Procurement proceeded with prior procurement plan or procurement needs assessment
- Brand identification rather than technical specification – Cessna aircraft identified by name
- No advertisement – direct procurement used, without seeking the prior approval of Bureau as required in ss 40 – 41 of the Public Procurement Act, 2007
- Review report suggests existence of federal government policy of patronizing *Messrs Global Aircraft Solutions Limited*, the accredited dealers of the aircraft (see p. 9 of report); this is not in line with the objectives of the Act to promote transparency, competition, and efficiency
- Misleading information by the NCS: *Messrs Global Aircraft Solutions Limited* are not the authorized representatives of the Manufacturers in Nigeria, the authorized representative is Africair Inc. of 13551 Southwest 132nd Avenue, Miami Florida
- *Messrs Global Aircraft Solutions Limited* did not demonstrate technical competence in the acquisition of the aircraft because their quotation did not indicate the model and serial numbers of the aircraft
- The demand of 60 percent down payment for delivery after 20 weeks is not in line with the provisions of s. 35 of the PPA, 2007, which provides for no more than 15 percent mobilization
- There is discrepancy between the scope of work contained in the FMF’s letter to the President of July 26, 2011 and the specifications in *Messrs Global Aircraft Solutions Limited*. The FMF indicated a minimum of two years supply of spares, while the quotation indicated “just seven (7) items as spares to be supplied” ... the type of maintenance support and its duration was not indicated in the quotation”.
- Acquisition through *Messrs Global Aircraft Solutions Limited* would constitute patronizing middlemen contrary to federal government policy of patronizing only original equipment manufacturers (OEM), a policy that the NCS suggested it seeking to promote by using *Messrs Global Aircraft Solutions Limited*
- The Bureau established collusion between the NCS and *Messrs Global Aircraft Solutions Limited* in misrepresenting the company as the “accredited technical partner” of the manufacturers, contrary to s. 58 (4) (a, b, & g) of the PPA 2007
- Reluctance in providing the Bureau with detailed information on the transaction; for instance, NCS provided only six out the 20 pages of the specification and description document

Source: BPP: *Due Process Review Report for Purchase of 1 No. Cessna Citation CJ4 Acquisition Aircraft for Anti-smuggling Operations*, Report No. BPP/DPR/MIA/REPORT/2011 dd October 2011

¹²² Including personnel of the Bureau of Public procurement and bidders

8.12 *Political interferences (including lack of political will to fully implement) are the major underlying causes of failure to implement the Act and follow due process.* For example, political direction sets the tone of public service; consequently, the actions or inactions of political authorities define public policy more than official pronouncements and official policy documents. Thus, failure of the President to constitute the National Council on Public Procurement (NCP) since 2007 sends the message of ‘selective implementation’ of provisions of the Public Procurement Act, 2007. This message ‘rubs off’ on the entire system, empowering other stakeholders to think they can also decide ‘what to implement and/or how to implement them’. Such selective implementation drains moral authority to enforce compliance, especially when powerful players glaringly violate provisions of the Act. This explains the inability to ‘force’ compliance of the National Assembly with provisions of the PPA 2007.¹²³ This rubs off negatively on the BPP more than any other organization, and frustrates its best efforts to secure popular support and exercise moral authority to secure compliance of procuring entities.

8.13 *Political interference with the Nigerian procurement process manifests different ways (subtle and non-subtle), but the effects are the same.* The primary impact of political interference on the public system is to undermine attainment the goals of competition, transparency, and efficiency. It provides impetus for administrative staff to abuse the process, when and if those who should hold them accountable approve and support abuses of the process. Also, blatant contraventions of the law by high political authority further compounds the situation and gives a wrong signal to the administrative structure. Below are other obvious manifestations of political interference in the Nigerian procurement system, which continue to give wrong signals.

- (i) Failure to inaugurate the National Council on Public Procurement (NCP)
- (ii) Approval of contracts by the Federal Executive Council (FEC)
- (iii) Approval of the conditions of service at the Bureau of Public Procurement
- (iv) Approval of policies and guidelines issued by the Bureau
- (v) Official communication between ministers and the BPP on procurement matters
- (vi) Influencing contract awards through subtle and non-subtle means

8.14 *The Federal Executive Council’s¹²⁴ approval of the conditions of service of staff the Bureau of Public Procurement is another source of political interference with the public procurement process.* This approval is contrary to the specific provisions of the Public Procurement Act. The Act vests the powers for such approval on the National Council on Public Procurement (NCP), which comprises of equal numbers of state and non-state actors. The FEC performs this function because of the non-constitution of the NCP. This act of approval coupled with others stated herein can make the Bureau beholden to the federal cabinet, a body of politicians. This contributes to public perception of the non-independence of the Bureau. It also creates the impression that Bureau’s assignment of contract approving powers to the cabinet is a *quid pro quo*. See Table 3.2,¹²⁵ which shows powers granted the FEC by the Bureau of Public Procurement to approve contracts above a certain threshold. It is not clear from where these powers derive, since the FEC is not an approval authority as defined under the Act (*see s. 60*). Even if we agree as argued by some pundits that the PPA requires that procurement process implementation be subject to rules made from time to time by the BPP under direction of the Council¹²⁶, the question arises whether the BPP can by its rules add to the number of approval authorities the PPA has set out, without approval of the Council? Or whether even with the approval of the Council it can add to that list a new approval authority not earlier contemplated¹²⁷. We doubt that the answer can be in favor of sustaining contract approval powers for the executive council.

¹²³ Attempts to secure compliance of the NASS resulted in blackmail and threats of sanction for the ‘illegal acts’ of the Bureau of Public Procurement, the body not being constituted in accordance with provisions of the Act that it seeks to enforce (see Chapter 7 above).

¹²⁴ Federal cabinet

¹²⁵ Reproduced here for ease of reference

¹²⁶ S 19 of the Public Procurement Act 2007

¹²⁷ S 17 *Ibid*

Approving Authority/No Objection to award Certificate	Goods	Works	Non-consultant Services	Consultant Services
BPP issues 'no objection' to award/FEC approves	₦100 million and above	₦1.0 billion and above	₦100 million and above	₦100 million and above
Ministerial Tenders' Board (MTB)	₦5 million and above but less than ₦100 million	₦10 million and above but less than ₦1.0 billion	₦5 million and above but less than ₦100 million	₦5 million and above but less than ₦100 million
Parastatal Tenders' Board (PTB)	₦2.5 million and above but less than ₦50 million	₦5 million and above but less than ₦250 million	₦2.5 million and above but less than ₦50 million	₦2.5 million and above but less than ₦50 million
Accounting Officer – Permanent Secretary	Less than ₦5 million	Less than ₦10 million	Less than ₦5 million	Less than ₦5 million
Accounting Officer – Director General /CEO	Less than ₦2.5 million	Less than ₦5 million	Less than ₦2.5 million	Less than ₦2.5 million
Source: Approved Revised Thresholds for Service-Wide Application for Procurement in the Oil (and Non-Oil Sectors) ¹²⁸ , ISBN 978-978-49335-7-5, published by the Bureau of Public Procurement				

8.15 *Cabinet approval of procurement policies and guidelines made by the Bureau is another instrument of political interference and control of the procurement process.* Policies and guidelines already issued by the Bureau with cabinet approval include the procurement process, manual, monetary thresholds for public procurement, standard bidding documents, etc. The Act specifically vests the power for these approvals in the NCPP rather than the cabinet. Assumption of this responsibility by the cabinet puts the cabinet in an awkward conflict of interest situation, since it benefits from the process by endorsing itself as an 'approval authority' for contracts, contrary to provisions of the Act. An illustration of this conflict is the case of the adjustment to the monetary threshold for prior review in the award of contracts for works following doubtful complaints by ministers that No Objection process was delaying procurement activities. The threshold is now N1 billion for works and procuring entities now approve and execute contracts up to one billion naira without prior certification.¹²⁹ Evidence available since the threshold was raised indicates that majority of ministries procurement, which are no longer subject to prior review are yet delayed. Many stakeholders believe that ministers pushed for this change in threshold to increase the number of contracts which they can exercise increased influence on, since it was becoming clear that requirements of the prior review process of the BPP made their control more difficult over a larger number of contracts. .

8.16 *Continued approval of contract awards the Federal Executive Council (federal cabinet) creates a window for direct political interference with the procurement process.* Membership of the Council comprises entirely of ministers, who are all politicians. The Public Procurement Act 2007 does not assign ministers the responsibility of awarding or approving contracts. Instead, the Act makes the ministry or parastatal tender Boards, the approval authority for contracts and the accounting officer (permanent secretary, director general, etc.) directly responsible for all procurement matters. Cabinet involvement in the process makes public procurement a political process and decision, rather than a technical one. It gives ministers the opportunity to 'direct' the process and 'call the shots'. Besides, it is not in accordance with legal provisions. Evidence available also indicates that contracts exists that have received No objection, that do not find their way to the Executive Council for consideration, or that having found their way to the Executive Council do not get considered for a long time, there is no doubt that this affects the level of implementation of the budget which remains low.

¹²⁸ The title of the document excludes the non-oil sector, but this is in apparent error.

¹²⁹ See Table 3.2, reproduced in this chapter

8.17 *Regular attendance of weekly cabinet meetings by the DG of the Bureau*¹³⁰ *unduly exposes purely technical procurement decisions to political interference.* Sometimes, the cabinet secretary nominates DG as spokesperson to defend the political position of cabinet. A recent example happened after the cabinet meeting of July 24, 2012, when the DG joined the Ministers of Finance and Information in a press conference to explain cabinet position on delays in implementing the 2012 budget. The DG's line news that observance of procurement 'due process' naturally takes time. This argument may be correct, but it was for politicians to make and not an apolitical body like the Bureau of Public Procurement. Membership of/regular attendance of these meetings makes it hard to deny the charge of political interference and influence with procurement regulation and execution.

8.18 *Official communication and liaison between ministers and the Bureau further illustrates political interferences in the procurement process, even if subtle.* The official line of communication should be from the accounting officer to the Bureau and vice versa. The Act makes the accounting officer (not the minister) responsible for public procurement. Involvement of ministers in the procurement communication process raises the stakes and exerts political pressure on the Bureau by design or default. Ministers' interventions often happen in high-profile projects when they seek exemptions from laid down rules and procedures or when they desire to 'fast track' the projects. A recent example is correspondence between the Minister of Aviation and the Bureau on the "*Request for approval to Adopt Selective Tendering Method for the Urgent Upgrade and Rehabilitation Works at Eleven (11) Airport Terminals in the Country*".¹³¹ The permanent secretary of the Ministry of Aviation could have handled the correspondences in line with provisions of the Act. This was also the case with the Airport runway and EAST/WEST federal road projects, which have both witnesses undue influence by political authority. Indeed in the case of the EAST WEST road the allegation is that it may have been awarded without full engineering designs as a result of political pressure.

8.19 *In addition, the other influences on the procurement process would not be possible without some form of political involvement.* For example, lack of political will to develop personnel and institutional capacity is a result of the fear of losing political influence over the procurement process, the ministry's do have primary responsibility to develop capacity of their personnel and systems to comply to law. It would appear that the best capacity development efforts come from the Bureau, even when budgets exist for such training at the MDA level. Again, the perennial delays in passing the annual budget shows lack of political will to address the underlying causes. Similarly, the external influences of bribery and corruption can hardly subvert the process without involving senior political and administration officials. In practice ministers determine policy and projects to be appropriated for their MDAs, subject of course to executive council and legislative approvals, IF also they influence who the contracts are awarded to as appears to be happening, and are the ones that approve payment, they become so immersed in the process that should anything go wrong they are no longer in a position to ask questions or self inflict. Consequently, political interference is the main adverse influence on the procurement process. It rubs the system of a layer of accountability, it creates room for political appointees and elected officials who should hold civil servants accountable for infractions, to be part of the decision to be called to account, and makes it difficult for them to turn round and query decisions in which they have participated, influenced or perhaps benefitted from..

Policy Options for Future Improvement

8.20 *What policy options are available for improving compliance with the Public Procurement Act? What benefits are there for in improving performance of the Act.* Among possible options for improving compliance are the following five: (i) strengthen political will to implement the Act and improve public procurement, (ii) remove all political interferences and impediment, (iii) strengthen procurement regulation, (iv) improve transparency, (v) adopt measures to strengthen accountability, including through greater civil society involvement in oversight of public procurement, and

¹³⁰ As a co-opted member

¹³¹ See official memos *BPP/S.1/11/SP/Vol.II/212 of October 26, 2011, BPP/S.1/CID/11/Vol.II/083 of August 29, 2011, and BPP/S.1/CID/11/Vol.II/055 of May 25, 2011*

effectiveness of the anti-corruption agencies in investigating and prosecuting infractions. The analysis concludes by briefly expounding on these.

Strengthen Political Will to Implement Public Procurement Reforms

8.21 *Two important actions that government can take to demonstrate political will to reform public procurement is to discontinue involvement of political office holders in award of contracts in accordance with the recommendations of the Country Procurement Assessment Review (CPAR), 2000, and to constitute the National Council on Public Procurement.* The government accepted most of the recommendations of the CPAR,¹³² except these two.¹³³ Ironically, these two are the core of the recommended reform, being the primary causes of corruption in the procurement process.¹³⁴ The rationale for the recommendations is that procurement is a technical and administrative process, not political. Political involvement should end with the policy decisions and choice of projects in the budget. Primary procurement activities should then involve regulation by an autonomous regulatory agency and execution by MDAs as procuring entities. The government also accepted to strengthen capacity in MDAs to perform this role, and to enact modern public procurement legislation.

8.22 The Public Procurement Act enacted in response does not assign any role in public procurement to political officials, but the government has been breaching this law through continued involvement of the Federal Executive Council in procurement policy decisions that should otherwise be taken by the Council, contract awards, and political influence of the procurement process within MDAs. This has opened the door to other breaches as shown above. The government needs to constitute the Council and be seen to effectively discourage political interference.

Remove political interferences and improve implementation of sanctions

8.23 *Demonstration of resolve to implement the Act in the manner suggested above will embolden the government to discourage or punish other vestiges of political interference in the procurement process.* For example, ministers will no longer write directly to the Bureau of Public Procurement. Besides, legislators and judicial officers will concentrate on their core functions, allow administrators in the system to carry out the function of public procurement, and grant access to the Bureau to oversight the process. It is difficult to explain inability to sanction the blatant refusal of the National Assembly to implement several provisions of the Public Procurement Act 2007, or to submit to the authority of the Bureau other than that it is blackmail occasioned by executive breaches of the Act. This blackmail is fear of retaliation by the National Assembly in some way because of executive breaches captured in the recent PPDC report already referred to¹³⁵. Also government needs to ensure that anti-corruption agencies become more effective in investigation and prosecution of infractions.

¹³² Conducted at the instance of the government by a team of World Bank and Nigerian governments' officials (federal and states)

¹³³ See *Keynote Address Delivered by Chief Olusegun Obasanjo, GCFR, former President of the Federal Republic of Nigeria*, to mark the 10th anniversary of the public procurement reforms in Nigeria, **the Public Procurement Journal**, July September, 2011 (11th) edition, Bureau of Public Procurement, Abuja; see also Circular No. F. 15775 of 27 June 2000 on "New Policy Guidelines for Public Procurement and Award of Contracts in Government Ministries/Parastatals", and **Ekpenkhio S. A. (2003): Public Sector Procurement Reforms - The Nigerian Experience, A paper presented by the permanent secretary, Political Affairs, The Presidency, Office of the Secretary to the Government of the Federation at the Regional Workshop on Procurement Reforms and Transparency in Government Procurement for Anglophone African Countries held in Tanzania on 16 January 2003**

¹³⁴ See Chapter 3 above

¹³⁵ The National Assembly and Implementation of Public Procurement Act 2007 2012 a publication of the PPDC.

8.24 The former President of the Federal Republic of Nigeria that commissioned the CPAR and oversaw procurement reforms from 2000 to 2007 recently expressed concern about these breaches in these words.

“I am also concerned about breaches of the law. Like other laws, the Public Procurement Act, 2007 is a law, which should be taken seriously. Like other laws, breaches would have to be sanctioned as a way of letting people know we mean business. It is also a way of saying that we are in a new atmosphere of procurement. When sanctions are implemented through imprisonments, or in accordance with other legal prescription, it would serve as deterrence to others. Besides, the Act cannot be said to be working when breaches are not sanctioned. The law has to be implemented to the letter (bold emphasis added).¹³⁶

The summary of the quotation above is that the Act is not working as well as it should because of breaches and failure to sanction culprits. However we know that the government cannot effectively demonstrate political will to implement the Act and sanction breaches unless it begins with itself, i.e., respecting the Act by removing political involvement from award of contracts.

Strengthen Procurement Regulation

8.25 *Governments strengthening of the regulatory function will be another measure demonstrating political resolve to implement the Act.* The most important action in this regard is to inaugurate the National Council on Public procurement (NCP) and empower it to perform its functions under the Act. Thus, the executive council would discontinue approval of the conditions of service of staff of the Bureau and procurement policies and regulations made by the Bureau. The NCP would also ensure appointment of the next director general and other directors of the Bureau by a competitive selection process as the Act provides. The Executive should also publicly take a position on the failure of the National Assembly and the judiciary to comply with the Public Procurement Act in many respects. The Bureau would then be able to make authoritative pronouncements on public procurement and issue circulars and directives in its name and authority. This will discontinue the current practice of subjugating the Bureau to the Office of the Secretary to the Government of the Federation, which also issues procurement notices.

8.26 *Strengthening the Bureau in this way will equip it better perform its functions under the Act.* For example, the Bureau will be able to sanction erring procuring entities and contractors as required under the Act. It will also be able to insist on and secure adherence to its policies and guidelines from powerful organizations such as the Central Bank of Nigeria (CBN), the Nigeria National Petroleum Corporation (NNPC), the Nigerian Communication Commission (NCC), in addition to the National Assembly and the Judiciary. Besides, the Bureau will have the guts to sanction the ‘very powerful’ accounting officers of these agencies that do not currently submit to its authority and recommend criminal breaches of the Act for prosecution.

Improve Transparency of Operations

8.27 *Measures that strengthen the Bureau will also encourage greater transparency through public disclosure of all information of public interest.* A powerful Bureau would use available mechanisms for public disclosure of information more effectively. It will be in a position to discontinue its current reluctance to compel procuring entities to disclose official information on even innocuous subjects, and will more effectively enforce compliance by procuring entities. Timeliness is an important attribute of public disclosure; therefore, the Bureau must ensure disclosure of

¹³⁶ See Keynote Address Delivered by Chief Olusegun Obasanjo, cited above

information held by it or all procuring entities as soon as they become available. This is the obligation of all MDA under the Freedom of Information Act¹³⁷. For example, publication of MDAs procurement plans one year after or more than 6-7 months into the year is of little practical use, except for probably academic research. The primary purpose of public disclosure of procurement plans is to enable bidders and procurement monitors to identify procurements of interest to them, begin early preparations to bid or monitor the process. Good procurement plans would usually indicate the nature, size, cost, timing, method, and proposed mode of advertisement of particular procurements. These help early preparations by bidders and monitors. Also the Bureau must begin to ensure that procuring entities that fail to submit required reports are sanctioned; the procurement Act makes it an offence for a procuring entity to willfully fail to allow Bureau access to any procurement records¹³⁸.

Adopt Measures to Strengthen Public Accountability

8.28 *All the measures above will strengthen public accountability and embolden civil society groups to ask relevant questions.* Greater openness through voluntary disclosure of information demonstrates political resolve, as shown above, and serves as invitation to citizens to ask for necessary clarifications. Opening all areas of the public procurement process to observation by civil society and professional groups.

8.29 *Opening all areas of the public procurement process to observation by civil society and professional groups is another measure that will strengthen accountability.* This will increase sources of information and early warning signals for the Bureau. The current practice of restricting observation to mostly bid opening session is the intention of the Act and does not promote accountability. Also the continued refusal of many procuring entities to grant access to procurement documents to monitors is the greatest impediment to effective citizens participation in the monitoring of public procurement.

Measures to Improve the Quality of Training and Capacity Building

8.30 *There is need to improve the speed and depth of training and certification of procurement officers.* One way of doing this is to accredit renowned private organizations to handle specific aspects of the procurement training. The certification process will involve developing course curriculums on the various aspects of public procurement and selecting reputable training institutions to run the course under the supervision of the Bureau of Public Procurement and the Head of Service. The organizations administering the course may charge commercial fees for their services in accordance with standards pre-agreed with the Bureau. Procuring entities must send their staff to train and certify in these institutions. The World Bank has such a policy of accrediting reputable private organizations to train government procurement staff working on projects it finances. This will help sanitize the current system where procuring entities patronize any organization they want, and where the organizations train without assurance of minimum standards.¹³⁹ Also the Bureau will need to attract more senior personnel into the procurement cadre in addition to the planned transfer of supervision and discipline of procurement officers to the Bureau.

8.31 *Improved systems for collation, storage and retrieval of procurement information will support effectiveness of the procurement process and regulation. Procurement is information driven, just as procurement regulation can be weakened by poor record management systems. The Bureau might consider the establishment of a unit within each procurement department focused on collating, archiving and securing all procurement information in an easily retrievable manner. This will help MDAs fulfill statutory obligations for submission of records to the BPP and grant of access to procurement records to the public. Improved transparency will help drive down abuses.*

¹³⁷ S 2 (3) d, v of the Freedom of Information Act 2011 and S 38 of the Public Procurement Act 2007

¹³⁸ S 58(4) g makes this conduct an offence punishable by not less than 5 years imprisonment

¹³⁹ See Chapter 4

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Appendixes

- Environment.

List of Agencies Administered Questionnaires

Procuring Entities

Federal Capital Territory (FCT)

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

Northwest Zone

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

Northcentral Zone

1. Federal College of Forestry
2. Federal College of Land Resources and Technology

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

Northeast Zone

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

Southeast

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

South south

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

Civil Society Organizations

- 1.

Contractors and Bidders

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

Research Instruments

Survey Questionnaire for Procuring Entities

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire for Procuring Entities

As part of its Nigerian Procurement Monitoring Program, the Private and Public Development Company (PPDC) with support from PACT Nigeria, UNDEF and Nigerian Contract Watch Program, is for the second year running conducting an Assessment of the levels of Implementation of the Public Procurement Act 2007. Thus, we are conducting an assessment of level of compliance of federal procuring entities, including MDAs and parastatals, with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues affecting implementation of the Act and to suggest ways of improving compliance. PPDC is not a government agency and will not use the information generated for any other purpose.

We will be most grateful if you would then kindly complete this questionnaire as honestly and as exhaustively as you can. We will collate the responses and draw general conclusions from them. We will not make reference to individual responses in a way that will lead to identification of the entities involved.

Thank you in advance.

Keys: Where there is need for rating, rate 0, 1, 2, 3, 4, 5; 5 = highest, 1 = lowest. Please do not fractionalize.

BPP = Bureau of Public Procurement

NCPP = National Council on Public Procurement

1. What sector of the economy does your MDA belong (e.g., education, health, infrastructure, water, agriculture, etc.)

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

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

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

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

4. When did your organization start using the Procurement Act in its procurement process

- a. Since 2007
- b. Since 2008
- c. Since 2009
- d. Since 2010
- e. Not yet

5. On a sliding scale of 1 to 5 (5 being the highest) please rate your understanding of the provisions of the Act

6. On a scale of 0 to 5, (5 being the highest), rank the extent to which the following adversely affect the procurement process

- a. Poor knowledge of the Act and procurement proceedings

- b. Poor technical expertise of procurement personnel _____
- c. Resistance to change by procurement personnel

- d. Interference by elected or appointed political office holders
_____ (Who are not AO)
- e. Interference by contractors and bidders _____
- f. Interference by senior personnel from within the MDA

- g. Delays in passing the budget _____
- h. Delays in securing 'No objection' from the BPP _____
- i. Corruption _____
- j. Others (please, specify and rate) _____
- k. _____
- l. _____

7. What aspects of the requirements of the PPA 2007 do you find most difficult to understand (list as many as apply)

- a. Preparing terms of reference
- b. Technical Speciation
- c. Preparing Bidding documents
- d. Preparing RFP's
- e. Procurement planning
- f. Procurement needs assessment
- g. Bid evaluation techniques
- h. Project costing
- i. Selection of successful bidder
- j. Notification of bidders on outcome of the procurement process
- k. Others, _____ please _____ specify
- _____
- _____
- _____
- _____

8. To what extent has your organization been applying the Procurement Act provisions of the Act

- a. Most provisions of the Act
- b. Major provisions of the Act
- c. Some provisions of the Act
- d. We do not yet apply the provisions of the Act

9. What provisions of the Act does your organization find difficult to apply currently

- Please _____ list _____ fully
- _____
- _____
-
- _____
-

10. If your organization does not apply all sections of the Act, what is the reason for that

- a. The provisions are cumbersome and difficult
- b. Lack of personnel and capacity
- c. Lack of time (it takes too much time)
- d. Difficulties with receiving support from the BPP
- e. Other reasons (please specify)

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

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

12. Does your organization have a procurement planning department/unit

Yes Who heads the department/unit

No

13. **Does** your organization have fully dedicated staff in the procurement planning unit/department?

Yes How many _____

No

14. Have staff of the procurement planning department attended formal procurement training

how many staff How many _____ Who organized the major ones

No

Don't know

15. **Does** your organization have a procurement planning committee (PPC)?

Yes No Don't know

16. When was your organization's procurement planning committee (PPC) set up? (Please specify) _____

17. Please specify the following for the PPC

- a. The designated head (office) _____

b. The designated secretary
(office) _____

c. Other members (offices)

18. What are the main impediments to proper procurement planning (please, rate 0 – 5, 5 being the highest)

a. Poor knowledge of the Act and procurement proceedings

b. Poor technical expertise of procurement personnel _____

c. Resistance to change by procurement personnel

d. Political interference _____

e. Interference by contractors and bidders _____

f. Interference by senior personnel from within the MDA

g. Delays in passing the budget _____

h. Delays in securing 'No objection' from the BPP _____

i. Corruption _____

j. Others (please, specify and rate) _____

k. _____

l. _____

19. Does your organization register contractors? Yes No
Don't know

20. Do you charge fees for such registration Yes No Don't know

21. Please specify categories of contractors and fees charged for registration

a. _____

–

b. _____

–

c. _____

–

d. _____

-

e. _____

-

22. Does your organization advertise contracts in the BPP's procurement journal?

Yes

No Why? (Please specify)

Don't know

23. In what procurement methods do you use and what media do you advertise your contracts?

(Please complete the table below specifying value, procurement method, and media)

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

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

Yes

No Why?

Don't know

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

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

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

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

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

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

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

29. Who **chairs** the technical bid evaluation committee?

30. How does your organization select the other members of the bid evaluation committee?

Please explain _____

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

Yes When _____ No

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

33. **Briefly** recall what the complaint was about

34. How did you handle it?

35. Kindly indicate and rate (on a scale of 0 to 5, 5 being the highest) usual impediments to proper bid evaluation

a. Poor knowledge of the Act and procurement proceedings

b. Poor technical expertise of procurement personnel _____

c. Resistance to change by procurement personnel

d. Political interference _____

e. Interference by contractors and bidders _____

f. Interference by senior personnel from within the MDA

g. Delays in passing the budget _____

h. Delays in securing 'No objection' from the BPP _____

i. Corruption _____

j. Others (please, specify and rate) _____

k. _____

l. _____

36. What are the most common abuses of the procurement process by contractors and bidders (please, rank on a scale of 0 – 5, 5 being the highest)

a. False claims _____

b. Forged documents _____

- c. Attempt to unduly influence the procurement process _____
- d. Bribery of procurement officials _____
- e. Inability to execute awarded contracts _____
- f. Others (please specify and rank) _____
- g. _____
- h. _____

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

38. If the answer to the question above is yes, how many times has that happened
 Only once Twice Thrice More than three times
 Can't recall

39. Has your organization ever used any of direct or emergency procurement methods?
 Yes No Don't know

40. Did your organization obtain prior "no objection" from the BPP before using either emergency or direct procurement method?
 Yes No Don't Know

41. Has your organization ever received request from individuals – bidder or civil society person - for documents relating to a particular procurement process
 Yes No Don't Know

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

- Provided all required information at no cost
- Provided all required information at cost of reproducing the documents
- Provided some of the required information at no cost
- Provided some of the required information at cost of reproducing the documents
- Did not provide information required
- Don't know

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

- Expressed satisfaction and took no further action
- Expressed satisfaction with information provided but appealed procurement process
- Expressed dissatisfaction and appealed process

Expressed dissatisfaction but took no further action

Don't know

44. On a scale of 0 to 5, (5 being the highest), rate to what extent the following contribute to dissatisfied bidders being unwilling to appeal procurement process

- a. Inability to secure procurement related documents _____
- b. Fear of reprisals _____
- c. Official intimidation _____
- d. Lack of trust/faith in appeals process _____
- e. Failure of bidders meet requirements for appeal _____
- f. Political interference _____
- g. Lack of independence of accounting officers as arbiters _____

45. Kindly provide the names and contacts (physical office address, email address, and contact telephone numbers) of five of bidders/contractors to your procurement

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

46. Do you use the BPP's website?

Yes No Why

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

To access/source information

To get the latest procurement news

To check whether our advertisements are correctly posted

Other reasons (please specify)

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

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

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

f. Training

g. Prompt attention to/guidance on specific procurement issues

h. Prompt issuance of "No objection certificates"

i. Others (please specify) _____

j. No support

50. **In what aspects have you witnessed genuine and sustained improvement in the work of the Bureau since 2007**

a. Speed of grant or refusal of No Objection

b. Increased Training and learning programs

c. Certification of Procurement Officers

d. Resolution of Disputes

e. Providing support for Procurement Officers

f. Improved Sensitization on Procurement Reforms

g. Publication of the journal and details of contracts _____

h. Accreditation of CSO observers

i. Training and sensitization of Political Office holders _____

j. Others (please, specify)

51. How often does your organization involve civil society groups in the procurement process?

- a. Always
- b. Sometimes
- c. Never at all
- d. Don't know

52. At what stage of the procurement process does your organization allow civil society observation? Tick as many as apply

- a. Bid opening stage
- b. Technical bid evaluation stage
- c. Pre-qualification of bidders stage
- d. None of the above
- e. Don't know

53. How often do civil society observers provide your organization with written comments on their impressions of the procurement process

- a. Always
- b. Sometimes
- c. Never at all
- d. Don't know

54. Do comments by civil society observers of the procurement process contain recommendations for improving future procurement process? Yes No

Don't know

55. How often does your organization act on the recommendations of civil society observers for improving the procurement process?

- a. Always
- b. Sometimes
- c. Never at all
- d. Don't know

56. How would you generally rate the performance of civil society observers of the procurement process

- a. Excellent
- b. Satisfactory
- c. Not satisfactory
- d. Don't know

57. Who sponsors civil society participation in observing the procurement process?

- a. Your organization
- b. The civil society groups themselves
- c. Don't know

58. Kindly suggest measures to improve and strengthen civil society observation of the procurement process

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

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

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

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

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

North East

North South

North Central

South South

South East

South West

THANK YOU FOR YOUR TIME!!

Survey Questionnaire for Civil Society Observers

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire for Civil Society Observers

As part of its Nigerian Procurement Monitoring Program, the Private and Public Development Company (PPDC) with support from PACT Nigeria, UNDEF and Nigerian Contract Watch Program, is for the second year running conducting an Assessment of the levels of Implementation of the Public Procurement Act 2007. Thus, we are conducting an assessment of level of compliance of federal procuring entities, including MDAs and parastatals, with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues affecting implementation of the Act and to suggest ways of improving compliance. PPDC is not a government agency and will not use the information generated for any other purpose.

We will be most grateful if you would then kindly complete this questionnaire as honestly and as exhaustively as you can. We will collate the responses and draw general conclusions from them. We will not make reference to individual responses in a way that will lead to identification of the entities involved.

Thank you in advance.

Keys: Where there is need for rating, rate 0, 1, 2, 3, 4, 5; 5 = highest, 1 = lowest. Please do not fractionalize.

BPP = Bureau of Public Procurement

NCPP = National Council on Public Procurement

1. What is the name of your organization?

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

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

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

a. Northwest Northcentral Northeast

b. Southwest Southeast South south

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

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

Number of mainline MDAs Number of parastatals

7. Do you have the standard checklist or User Guide to the Public Observation Checklist? YES
NO

8. What stages of the procurement exercise are you invited to observe?

- a. Bid opening only
- b. Bid evaluation only
- c. Bid opening and evaluation
- d. Procurement planning
- e. Bid submission
- f. Publication of contract details
- g. Others (please specify)

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

10. Kindly complete the table below by ticking what stages of the procurement process you observed whether invited to do so or you did so on your own?

	2007	2008	2009	2010	2011
Advertisement					
Pre-qualification					
Bid documentation					
Bid opening only					
Bid evaluation only					
Bid opening and evaluation					
Procurement planning					
Bid submission					
Publication of contract details					
Others (please specify)					

11. Kindly complete the table below showing what procurement documents were you able to gain access to from procuring entities in the process of monitoring?

	2007	2008	2009	2010	2011
Advertisement					

Bidding documents					
Receipts of Bid Submission					
Bid evaluation only					
Bid opening and evaluation					
Bid Submission register					
Bid submission					
Bid opening minutes and register					
Bid return sheet					
Bid evaluation report					
Notice to winning bidder					
Contract document					
Others (please specify)					

12. Have you been invited to observe procurement proceedings conducted by the National Assembly?

Yes No

13. Have you observed any procurement process conducted by the National Assembly? Yes
 No

14. What stage of the procurement process did you observe at the National Assembly

- a. Bid opening only
- b. Bid evaluation only
- c. Bid opening and evaluation
- d. Procurement planning
- e. Bid submission
- f. Publication of contract details

Others (please specify)

15. If you have not observed any procurement process at the National Assembly, kindly explain why not?

- a. We have not been invited to observe
- b. We have been invited, but we could not attend

- c. We attempted to observe without invitation but were not allowed in
- d. We are interested in observing even without invitation, but have no information
- e. We are not interested in observing at the National Assembly

16. Have you observed any procurement process conducted by the Judiciary? Yes No

17. What stage of the procurement process did you observe at the Judiciary?

- a. Bid opening only
- b. Bid evaluation only
- c. Bid opening and evaluation
- d. Procurement planning
- e. Bid submission
- f. Publication of contract details

Others (please specify)

18. If you have not observed any procurement process at the Judiciary, kindly explain why not?

- a. We have not been invited to observe
- b. We have been invited, but we could not attend
- c. We attempted to observe without invitation but were not allowed in
- d. We are interested in observing even without invitation, but have no information
- e. We are not interested in observing at the National Assembly

19. If have submitted any reports, Are you willing to share copies of your reports with us? No
 Yes, find attached

20. Do you have a completed report submitted on www.procurementmonitor.org YES
 NO

21. **In what aspects have you witnessed genuine and sustained improvement in the work of the Bureau since 2007**

- a. **Speed of grant or refusal of No Objection**

- b. **Increased Training and learning programs**

- c. **Certification of Procurement Officers**

- d. Increased supervision of Procuring Entities

- e. Resolution of Disputes

- f. Providing support for Procurement Officers

- g. Improved Sensitization on Procurement Reforms

- h. Publication of the journal and details of contracts

- i. Accreditation of CSO observers
- j. Training and sensitization of Political Office holders

- k. Others (please, specify)

22. In what aspects of the procurement process of MDAs have you witnessed genuine and sustained improvement in the status quo since 2007

- a. Preparation of contract specifications

- b. Preparation of bidding documents

- c. Bid solicitation and advertisement

- d. Bid evaluation

- e. Contract pricing

- f. Project execution and completion

- g. Reduction of abandoned projects

- h. Access to procurement information/documentation by the public

- i. Others (please, specify)

23. To what would you attribute the improvements listed above
- a. Adherence to the PPA by procuring entities _____
 - b. Effective supervision by the Bureau of Public Procurement _____
 - c. Oversight by the National Assembly _____
 - d. Effective civil society participation in procurement observance _____
 - e. Others (please, specify)

24. Kindly rate the extent of general compliance of procuring entities with following provisions of the Procurement Act in respect of the proceedings you have monitored?

Extent of Compliance with the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Existence of prior procurement plans.						
Implementation of procurement in accordance with procurement plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement planning committees						
Existence and functioning of Tender Boards						
Level of public access to information						
Appointment of sub technical committee of the Tenders board						
Appropriateness						

of procurement methods used						
Mode of advertising and soliciting for bids						
Advertisements contain clear conditions for qualification of bidders in accordance with the act						
Advertisements contain technical description of goods, works or service required and not brand names						
Solicitations contain clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
Use of 'shopping'/request for quotation						
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						

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

Extent of BPP's Performance of its Functions under the Procurement Act 2007						
	Not	Barely	Satisfactor	Very	Indeterminat	Commen

	satisfactor y	satisfactor y	y	satisfactor y	e / Don't Know	t
Publication of Procurement Journal						
Establishment of a single internet portal which is a primary and definitive source of procurement information						
Dissemination of details of contract awards						
An accessible data bank of standard prizes						
An accessible data bank of all MDA procurement plans						
Formulation of implementing rules						
Establishment of Thresholds for implementing procurement						
Establishment of conditions and documentation for no objection						
Supervision of MDA procurement practice						
Efforts in fraud and corruption prevention and detection						
Issue of Certificate of No Objection to Contract Award						
Procurement Reviews						
Procurement Audits						
Handling of						

complainants by bidders						
Recommending criminal investigation of contract proceedings, as necessary						
Disciplining culpable accounting officers, the tenders' board or other personnel of an erring procuring entity						
Sanctioning indicted contractors and suppliers and requiring reparation, restitution, or correction						
Procurement training and sensitization of MDAs						
Procurement training and sensitization of contractors and suppliers						
Procurement training and sensitization of civil society groups						
Sensitization of the public on the Act						

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

Extent of Compliance of Contractors and Service Providers with the Requirements of the Procurement Act, 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Publication of Procurement Journal						
Professional and Technical						

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

relationship with other bidders						
Affidavit declaring interest if any of personnel of Bureau and or MDA in the bidder or his bid						
Meeting Tax obligations						
Evidence of pension contribution for staff						

27. On a scale of 0 to 5, (5 being the highest), rank the extent to which the following adversely affect the procurement process

- a. Poor knowledge of the Act and procurement proceedings

- b. Poor technical expertise of procurement personnel _____
- c. Resistance to change by procurement personnel

- d. Interference by elected or appointed political office holders

- e. Interference by contractors and bidders _____
- f. Interference by senior personnel from within the MDA

- g. Delays in passing the budget _____
- h. Delays in securing 'No objection' from the BPP _____
- i. Corruption _____
- j. Others (please, specify and rate) _____
- k. _____
- l. _____

28. Kindly indicate and rate (on a scale of 0 to 5, 5 being the highest) impediments to implementation of the PPA 2007

- a. Poor knowledge of the Act and procurement proceedings

- b. Poor technical expertise of procurement personnel _____
- c. Resistance to change by procurement personnel

- d. Interference by elected or appointed political office holders _____
- e. Interference by contractors and bidders _____
- f. Interference by senior personnel from within the MDA _____ (AOs)
- g. Delays in passing the budget _____
- h. Delays in securing 'No objection' from the BPP _____
- i. Corruption _____
- j. Others (please, specify and rate) _____
- k. _____
- l. _____

29. In what aspects of the procurement process have you witnessed genuine and sustained improvement in the status quo since 2007

- a. Preparation of contract specifications _____
- b. Preparation of bidding documents _____
- c. Bid solicitation and advertisement _____
- d. Bid evaluation _____
- e. Contract pricing _____
- f. Project execution and completion _____
- g. Reduction of abandoned projects _____
- h. Others (please, specify)

30. Do you think the FEC interfering with or exerting undue influence on procuring entities in the procurement process?

No Yes, (please explain)

31. Do you think the FEC is interfering with or exerting undue influence on the Bureau?

No Yes, (please explain)

32. Do you think the National Assembly interfering with or exerting undue influence on the Bureau?

No Yes, (please explain)

33. In your view, is the Public Procurement Act being correctly implemented by all parties (kindly explain)?

34. What changes would you like to see in the Act to make it more effective (kindly list and explain)?

- a.

- b.

- c.

- d.

- e.

Questionnaire for Contractors, Suppliers, and Bidders

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questionnaire for Bidders, Contractors, and Suppliers

As part of its Nigerian Procurement Monitoring Program, the Private & Public Development company (PPDC) with support from PACT Nigeria, UNDEF and Nigerian Contract Watch Program, is for the second year running conducting an Assessment of the levels of Implementation of the Public Procurement Act 2007. Thus, we are conducting an assessment of level of compliance of federal procuring entities, including MDAs and parastatals, with provisions of the PPA 2007. Our purpose is to generate information that will help to identify the main issues affecting implementation of the Act and to suggest ways of improving compliance. PPDC is not a government agency and will not use the information generated for any other purpose.

We will be most grateful if you would then kindly complete this questionnaire as honestly and as exhaustively as you can. We will collate the responses and draw general conclusions from them. We will not make reference to individual responses in a way that will lead to identification of the entities involved.

Thank you in advance.

Keys: Where there is need for rating, rate 0, 1, 2, 3, 4, 5; 5 = highest, 1 = lowest. Please do not fractionalize.

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35. Are you conversant with the provisions of the Public Procurement Act, 2007? Yes
No

36. Have you participated in a procurement proceeding as a bidder, supplier, or contractor under the Public Procurement Act (PPA), 2007? If so, how many times?

Never participated Participated time(s)

37. By completing the following *Table*, kindly indicate the type of contracts you participated in and the procurement method used.

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

		Others		
Consultancy		Open competition		
		Selective/restricted tendering		
		Request for quotation		
		Direct procurement		
		Others		

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

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

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

40. How did you learn of the procurement opportunity(s) in which you participated

- a) **Newspaper adverts**
- b) **The Federal Procurement/Tender Journal**
- c) **Website of the Bureau**
- d) **Website of the Procuring entity**
- e) **Word of Mouth**

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

Never Yes

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

Never

Yes, only to the accounting officer How many times?

Yes, up to the BPP How many times?

Yes, to the EFCC/ICPC How many times?

Yes, to the National Assembly How many times?

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

44. On a scale of 0 to 5, (5 being the highest), rate to what extent the following contribute to dissatisfied bidders being unwilling to appeal procurement process
- a. Inability to secure procurement related documents _____
 - b. Fear of reprisals _____
 - c. Official intimidation _____
 - d. Lack of trust/faith in appeals process _____
 - e. Failure of bidders to meet requirements for appeal _____
 - f. Lack of compliance of bidders to some aspects of the Legal requirements _____
 - g. Political interference _____
 - h. Lack of independence of accounting officers as arbiters _____

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

Extent of Satisfaction with handling of Petition on Procurement Proceedings/Outcome						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Accounting officer of procuring entity						
Bureau of Public Procurement						
The Economic and Financial Crimes Commission (EFCC)						
The Independent Corrupt						

Practices and Other Offences Commission (ICPC)						
The Senate						
The House of Representative						
The Federal Executive Council						

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

Extent of Compliance with the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Existence of prior procurement plans.						
Implementation of procurement in accordance with procurement plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement planning committees						
Existence and functioning of Tender Boards						
Level of public access to information						
Appointment of sub technical committee of the Tenders board						
Appropriateness of procurement methods used						
Mode of advertising and soliciting for bids						
Advertisements contain clear conditions for						

qualification of bidders in accordance with the act						
Advertisements contain technical description of goods, works or service required and not brand names						
Solicitations contain clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
Use of 'shopping'/request for quotation						
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						

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

No Yes

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

a. Inflation of contract prices _____

b. Collusion between procuring entity and bidders/suppliers/contractors _____

c. **Manipulation** or **Poor** **Pre-Qualification**

d. **Manipulation/poor** **evaluation** of **bids**

e. Contract splitting to circumvent threshold requirements for open competition

f. Bribery and corruption _____

g. Others (kindly list and rate)

49. On a scale of 0 to 5, (5 being the highest), rank the extent to which each of the following adversely affect the procurement process

i. Poor knowledge of the Act and procurement proceedings

j. Poor technical expertise of procurement personnel _____

k. Resistance to change by procurement personnel

l. Political interference _____

m. Interference by contractors and bidders _____

n. Interference by senior personnel from within the MDA

o. Delays in passing the budget _____

p. Delays in securing 'No objection' from the BPP _____

q. Corruption _____

r. Others (please, specify and rate) _____

s. _____

50. Have you seen any advertisement for procurement from the National Assembly? Yes

No

51. If your answer to question above is 'yes', kindly answer the following

- a. In what medium did you see the advert

- b. What was the date of the advert?

- c. What was the advertisement about?

- d. Did you participate in the procurement process

- e. If you did not participate what were your reason?

- f. If you participate did you win the bid?

52. Have you seen any advertisement for procurement from the Judiciary? Yes No

53. If your answer to question above is 'yes', kindly answer the following

- a. In what medium did you see the advert

- b. What was the date of the advert?

- c. What was the advertisement about?

- d. Did you participate in the procurement process

- e. If you did not participate what were your reason?

- f. If you participate did you win the bid?

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

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

No Yes

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

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

- f. _____

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

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

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

- f. _____

- g. _____

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

Extent of BPP's Performance of its Functions under the Procurement Act 2007						
	Not satisfactor y	Barely satisfactor y	Satisfactor y	Very satisfactor y	Indeterminat e / Don't Know	Commen t
Publication of Procurement Journal						
Establishment of a single internet portal which is a primary and						

definitive source of procurement information						
Dissemination of details of contract awards						
An accessible data bank of standard prizes						
An accessible data bank of all MDA procurement plans						
Formulation of implementing rules						
Establishment of Thresholds for implementing procurement						
Establishment of conditions and documentation for no objection						
Supervision of MDA procurement practice						
Efforts in fraud and corruption prevention and detection						
Issue of Certificate of No Objection to Contract Award						
Procurement Reviews						
Procurement Audits						
Handling of complainants by bidders						
Recommending criminal investigation of contract proceedings, as necessary						
Disciplining culpable						

accounting officers, the tenders' board or other personnel of an erring procuring entity						
Sanctioning indicted contractors and suppliers and requiring reparation, restitution, or correction						
Procurement training and sensitization of MDAs						
Procurement training and sensitization of contractors and suppliers						
Procurement training and sensitization of civil society groups						
Sensitization of the public on the Act						

60. On a scale of 0 to 5, 5 being the highest, rank each of the following abuse of the procurement process according to their rates of prevalence

- a. Collusion between staff of procuring entities and bidders

- b. Inflation of contract price _____
- c. **Manipulation or Poor Pre-Qualification Bid manipulation**

- d. **Manipulation or Poor Evaluation of Bids** _____
- e. Collusion between legislators (committees) and MDAs

- f. Abandonment of project _____
- g. Bribery and corruption _____
- h. Others (please specify) and rank _____

- i. _____

- j. _____

61. On a scale of 0 to 5, (5 being the highest), rank the extent to which each of the following adversely affect the procurement process

- a. Poor knowledge of the Act and procurement proceedings

- b. Poor technical expertise of procurement personnel

- c. Resistance to change by procuring entity personnel

- d. Interference by elected or appointed political Office Holders
_____ (Who are not accounting officers)
- e. Interference by contractors and bidders _____
- f. Interference by senior personnel from within the MDA
_____ (AOs)
- g. Delays in passing the budget _____
- h. Corruption _____
- i. Others (please, specify and rate) _____

62. Have there been any genuine and sustained improvement in the work of the Bureau since 2007? please indicate

- a. Speed of grant or refusal of No Objection

- b. Increased Training and learning programs

- c. Certification of Procurement Officers

- d. Increased supervision of Procuring Entities

- e. Resolution of Disputes

- f. Providing support for Procurement Officers

- g. Improved Sensitization on Procurement Reforms**

- h. Publication of the journal and details of contracts**

- i. Accreditation of CSO observers**

- j. Training and sensitization of Political Office holders**

- k. Recommendations for Criminal investigation**

- l. Procurement Audits**

- m. Others (please, specify)**

63. In what aspects of the procurement process of MDAs have you witnessed genuine and sustained improvement in the status quo since 2007

- a. Preparation of contract specifications**

- b. Preparation of bidding documents**

- c. Bid solicitation and advertisement**

- d. Bid evaluation** _____
- e. Contract pricing**

- f. Project execution and completion**

- g. Reduction of abandoned projects**
- h. Access to procurement documentation by the public**
- i. Others (please, specify)**

64. To what would you attribute the improvements listed above

- a. Adherence to the PPA by procuring entities _____
- b. Effective supervision by the Bureau of Public Procurement _____
- c. Oversight by the National Assembly _____
- d. Effective civil society participation in procurement observance _____
- e. Others (please, specify)

65. On the average what is the rate of response of civil society organizations to invitations to monitor procurement

- 1. 25% of the times
- 2. 50% of the times
- 3. 75% of the times
- 4. 100% of the times

66. How would you generally rate the performance of civil society observers of the procurement process

- a. Very Effective
- b. Effective
- c. Not effective
- d. Don't know

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

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

- f. _____

g. _____

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

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

g. _____

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

Structured Questionnaire for Bureau of Public Procurement

Assessment of the Implementation of the Public Procurement Act, 2007

Assessment Questions for the Bureau of Public Procurement (BPP)

As part of its Nigerian Procurement Monitoring Program, the Private and Public Development Company (PPDC) with support from PACT Nigeria, UNDEF and Nigerian Contract Watch Program, is for the second year running conducting an Assessment of the levels of Implementation of the Public Procurement Act 2007. Thus, we are conducting an assessment of level of compliance of federal procuring entities, including MDAs and parastatals, with **provisions** of the PPA 2007. Our purpose is to generate information that will help to identify the main issues affecting implementation of the Act and to suggest ways of improving compliance. PPDC is not a government agency and will not use the information generated for any other purpose.

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Thank you in advance.

Keys: Where there is need for rating, rate 0, 1, 2, 3, 4, 5; 5 = highest, 1 = lowest. Please do not fractionalize.

BPP = Bureau of Public Procurement

NCPP = National Council on Public Procurement

1. Kindly indicate how many agencies are covered by the PP 2007
 - a. Number of mainline ministries (MDAs) affected by the Act

 - b. Number of parastatals affected by the Act

2. How many procurement personnel have been trained since inception of the PPA in 2007, provide a breakdown according to years
 - a. 2007 _____
 - b. 2008 _____
 - c. 2009 _____
 - d. 2010 _____
 - e. 2011 _____

3. How any persons are now in the procurement cadre of the Federal Civil Service (2011)?

4. Briefly describe the certification process for the procurement cadre/personnel

5. Kindly state the minimum qualification for joining the procurement cadre

6. **How much savings did the Bureau make for the Country from its certification process in the years here listed?**

a. **2007** _____

b. **2008** _____

c. **2009** _____

d. **2010** _____

e. **2011** _____

7. **From which MDA's have the most savings made by the Bureau come from?**

a)

b)

c)

d)

e)

8. **From which MDAs have the least savings made by the Bureau come from?**

a)

b)

c)

d)

e)

9. What is the total value of projects above No objection threshold certified in the following years ?

- a. 2007 _____
- b. 2008 _____
- c. 2009 _____
- d. 2010 _____
- e. 2011 _____

10. How many Executive Council Approvals for projects certified by the Bureau for the following years are still outstanding ?

- a. 2007 _____
- b. 2008 _____
- c. 2009 _____
- d. 2010 _____
- e. 2011 _____

11. How many projects has the legislature submitted for No objection for the following years?

- a. 2007 _____
- b. 2008 _____
- c. 2009 _____
- d. 2010 _____
- e. 2011 _____

12. How many projects did the Judiciary submit for No Objection in the following years?

- a. 2007 _____
- b. 2008 _____
- c. 2009 _____
- d. 2010 _____

e. 2011 _____

13. In which periods have you published procurement journals?

a. 2007 _____

b. 2008 _____

c. 2009 _____

d. 2010 _____

e. 2011 _____

14. In what aspects of the procurement process have you witnessed genuine and sustained improvement in the status quo since 2007

a. Preparation of contract specifications

b. Preparation of bidding documents

c. Bid solicitation and advertisement

d. Bid evaluation _____

e. Contract pricing

f. Project execution and completion

g. Reduction of abandoned projects

h. Others (please, specify)

15. To what would you attribute the improvements listed above

i. Adherence to the PPA by procuring entities _____

j. Effective supervision by the Bureau of Public Procurement

k. Oversight by the National Assembly

l. Effective civil society participation in procurement observance

m. Others (please, specify)

16. On a scale of 1 to 5, one being the lowest, what is your rating of the general compliance with provisions of the Act?

17. On a scale of 0 to 5, 1 being the lowest, what is your rating of the compliance of core Ministries with provisions of the Act on projects ?

a. Ministry of Education _____

b. Ministry of Health _____

c. Ministry of Agriculture

d. Ministry of Water Resources

e. Ministry of Works

f. Ministry of Information

g. Ministry of Aviation

h. Ministry of Transport

i. Ministry of Finance

j. Ministry of Environment

k. Ministry of the Niger Delta

l. The Presidency

18. On a scale of 0 to 5, 1 being the lowest, what is your rating of the compliance of core parastatals and other arms of government with provisions of the Act?

- a. The Federal Capital Territory Administration

- b. NNPC

- c. Nigeria Communications Commission

- d. Central Bank of Nigeria

- e. The National Assembly

- f. The Judiciary

19. How would you rate the compliance of MDAs with headquarters in the geopolitical zones with the Act?

20. (a) Have procuring entities generally been transmitting electronic and hard copies of records of procurement proceedings as required under the Act (s. 16(13))? Yes No
 (b) Are these available for public inspection? Yes No

21. Kindly indicate the rate of compliance with the provision cited in the preceding questions

- a. No complying _____
- b. Number not in compliance _____

22. How often does the Bureau update the price database posted on its website?

23. How often does the Bureau monitor the extent to which procuring entities use the price database in procurement awards?

- a. Very frequently _____
- b. Frequently _____
- c. Seldom _____
- d. Never _____
- e. Don't know _____

24. Kindly indicate the average profit margin in public contracts in Nigeria (in %)

- a. Before enactment of the Public Procurement Act 2007 _____
- b. After enactment of the Public Procurement Act 2007 _____

25. Do procuring entities file copies of their procurement plans with the Bureau? Yes No

26. Which five to ten MDA's are the most proficient in producing and submitting their Procurement plans?

- a)
- b)
- c)
- d)
- e)
- f)

27. Which five to ten MDA's have failed to submit or have been very late in submitting their procurement plan in the last one year?

- a)
- b)
- c)
- d)
- e)
- f)

28. How early do you make available procurement plans filled by MDA's to the public?

- a. At the beginning of the fiscal year to enable interested persons track procurements of their respective interest _____
- b. Not necessarily at the beginning, but before the end of the fiscal year _____
- c. At the end of the year _____
- d. Made available by with no particular timing considerations _____
- e. Never made available to the public _____
- f. Don't know _____

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

Extent of Compliance with the Procurement Act 2007						
	Not satisfactory	Barely satisfactory	Satisfactory	Very satisfactory	Indeterminate / Don't Know	Comment
Existence of prior procurement plans.						
Implementation of procurement in accordance with procurement						

plans						
Existence of prior budgetary appropriations						
Existence and functioning of Procurement planning committees						
Existence and functioning of Tender Boards						
Level of public access to information						
Appointment of sub technical committee of the Tenders board						
Appropriateness of procurement methods used						
Mode of advertising and soliciting for bids						
Advertisements contain clear conditions for qualification of bidders in accordance with the act						
Advertisements contain technical description of goods, works or service required and not brand names						
Solicitations contain clear criteria for selection of winning bidder						
Use of open competitive bidding						
Use of selective tendering						
Use of 'shopping'/request for quotation						
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						

30. Kindly complete *Table 1* enable its completion and please, provide supporting documents for verification

Table 1: Requests for' No Objection to Contract Award'						
	2007	2008	2009	2010	2011	Comments
No. of Requests Received						
No. of Requests Granted						
No. of Requests Rejected						
Average Time Taken to Respond						
Major Reasons for Turning down Request						

31. Kindly also complete *Table 2* and please, provide supporting documents for verification

Table 2: Petitions for Administrative Review of Procurement Proceedings, section 54						
	2007	2008	2009	2010	2011	Comments
No. of Petitions Received						
No. of Petitions Granted						
No. of Petitions Rejected						
How many procurement decisions reversed based on petitions						
Average Time Taken to Dispose of Petition						

32. Kindly also complete *Table 3* and please, provide supporting documents for verification

Table 3: criminal Investigations under Section 53 and Subsequent Action Taken	
	No. of Procurement Proceedings referred for Criminal Investigation under s. 53
2007	
2008	
2009	
2010	
2011	

33. How many times has a Procuring entity sought Bureau action against a contractor for falling to fully and completely perform a contract? =====Non At all, A few times =====Times =====Times

34. How many times has the Bureau recommended or sanctioned a contractor or supplier, required completion of a contract based on use of substandard material or lesser skills of labour than contracted? Please, provide supporting documents for verification

- a. 2007 _____
- b. 2008 _____
- c. 2009 _____
- d. 2010 _____
- e. 2011 _____

35. Kindly also complete *Table 4* and please, provide supporting documents for verification

Table 4: Requests for 'No Objections' Received				
	Total	Executive (MDAs & Parastatals)	National Assembly	Judiciary
2007				
2008				
2009				
2010				
2011				

36. Kindly complete *Table 5* or provide information for its completion

Table 5: Requests for Information and Legislative and Investigative Summons						
	2007	2008	2009	2010	2011	Comments
No. of Requests for Information Received						
No. of Requests Granted						
No. of Summons Received from Senate						
No. of Summons Received from House of Assembly						
No. of Summons Received from the EFCC						
No. of Summons Received from the ICPC						

37. Kindly complete *Table 6* in relation to training and publicity programmes of the Bureau

Table 4: BPP Training and Sensitization Programmes						
	2007	2008	2009	2010	2011	Comments
Total number of programmes held by Bureau						
Number held in Abuja						
Number held in NE						
Number held in NW						
Number held in NC						
Number held in SW						
Number held in SS						
Number held in SE						
No of mainline ministries involved in programme						
No. of parastatals involved in programme						
Number of consultants involved						
Number of contractors and suppliers involved						

38. Kindly provide copies of any procurement research and survey undertaken, initiated, or completed by the Bureau since inception, if any.

39. Kindly provide copies of any procurement audit undertaken, initiated, or completed by the Bureau or on its behalf since inception, if any.

40. Kindly provide copies of national database of the particulars and classification of categorization of federal contractors and service providers maintained by the Bureau, if any, or evidence of progress on its establishment.
41. Kindly provide particulars and if possible copies of any recommendations made by the Bureau under s. 6(i) of the Act on account of persistent breach of the provisions of the Act, if any, or
42. Kindly explain constraints posed to the work of the Bureau through actions or lack of it by the following

a. The National Assembly

b. The Federal Executive Council?

c. The EFCC and the ICPC

d. Others (please, specify)

43. What constraints hinder your performance in implementing the Act?

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

n. Inflation of contract prices _____

o. Manipulation of Pre-qualification _____

- p. Collusion between procuring entity and bidders/suppliers/contractors _____
- q. Manipulation of evaluation process _____
- r. Contract splitting to circumvent threshold requirements for open competition _____
- s. Denial of access to information _____
- t. Bribery and corruption _____
- u. Others (kindly list and rate) _____

45. On a scale of 0 to 5, (5 being the highest), rank the extent to which each of the following adversely affect the procurement process

- t. Poor knowledge of the Act and procurement proceedings _____
- u. Poor technical expertise of procurement personnel _____
- v. Resistance to change by procurement personnel _____
- w. Interference by elected or appointed political Office Holders _____ (Who are not accounting officers)
- x. Interference by contractors and bidders _____
- y. Interference by senior personnel from within the MDA _____ (AO)
- z. Delays in passing the budget _____
- aa. Corruption _____
- bb. Others (please, specify and rate) _____
- cc. _____

46. How would you generally rate the performance of civil society observers of the procurement process

- v. Very Effective

- w. Effective
- x. Not effective
- y. Don't know

47. Kindly elaborate on your answer in the preceding question.

48. What changes would the Bureau like to see in the Procurement Act, 2007 to make it more effective?

49. What changes would the Bureau like to make in the manner of implementation of the Act to make it more effective?

50. Kindly comment freely on the extent of implementation of the PPA

Thank you very much for your time.