



## PUBLIC PROCUREMENT PRACTICES AND REFORMS IN NIGERIA: 1999-2015

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**ABSTRACT:** This study reviewed the public procurement practices in Nigeria and the effort of the various government teams to address some of the problems associated with it. Using descriptive narrative, the study looked at the performance of procurement functions in the Civil service prior to the country's transition to democratic dispensation and its advent subsequently. Reviewing the various reform policies introduced between 1999 and 2015, the study discovered that the challenges facing public procurement in Nigeria are many and diverse; some of which appear to be insurmountable but could only be moderated. The study concluded that reforms are necessary and vital; it therefore recommends that a law should be created which should be binding on all the tiers of government in order to build consensus among them so as to promote the smooth implementation of the procurement reforms; build a critical mass of people who understand the rules and processes along the procurement value chain; create a mechanism for sanctioning non-compliant actors and the deployment of Technology to minimize human interaction.

**Keywords:** Civil Service, Procurement, Reforms, Nigeria.

### 1. INTRODUCTION

The Nigerian state is a unique conglomeration of ethnic and tribal sub-nationalities. This diversity plays out in virtually any issue or endeavor concerning the country as a whole. It plays out positively in certain cases and negatively in others. In sports for instance, the Nigerian diversity portends a strong advantage. In other areas of economic development however, the unifying umpire roles of corruption, nepotism and ethnicity play out conclusively.

The melting pot for these conglomerates of sub-nationalities is the Nigerian Civil Service. The Nigerian civil service has always been oversized and poorly remunerated, resulting in poor service delivery. Rapid public sector recruitment under previous military administrations had resulted in an oversized and underskilled work force in which employees often did not have the appropriate technical skills needed for their assignments (Okonjo-Iweala and Osafo-Kwaako, 2007) as cited in (Lawanson and Adeoye, 2013). The study further stated that the government estimated that about 70 percent of federal civil servants had a high school diploma or lower, with less than 5 percent possessing modern computer skills. Civil servants generally received low pay and several fringe benefits such as free housing, free vehicles, and various other allowances that often led to waste and misuse of government resources. Weak management and oversight also meant that there were problems with ghost workers on the government payroll; while personnel and pension registers often were unreliable (Ekpenkhio, 2003).

Moreover, a weak incentive structure in the civil service, which did not foster good performance, resulted in a weak work ethic and poor service delivery by many government ministries and agencies, often characterized by hidden or outright corrupt behavior on the part of many civil servants. Reforms were therefore needed to re-professionalize the civil service and increase its focus on service delivery.

The reform measures carried out in the public service as a result of the above identified challenges facing civil services in Nigeria had been a holistic one involving all the Ministries, Departments and Agencies (MDAs) at the federal level and to a lesser degree, at other levels of government. At the Federal level, civil service reform began with five pilot ministries and subsequently was extended to nine MDAs

(ministries, departments and agencies). In each instance, internal consultations were performed while verification exercises were conducted to update personnel records and payroll data.

Organizational structures for the reforming ministries were reviewed and rationalized, while the appropriate professional skills needed were identified. Redundancy packages and retraining programs were offered to severed staff. A total of 35,700 officials were severed from the civil service at an estimated cost of about N26 billion (US\$203 million), while 1,000 high flying university graduates were recruited (Okonjo-Iweala and Osafo-Kwaako, 2007). In the process of restructuring, an estimated 8,000 ghost workers were expunged from the government payroll (Lawanson and Adeoye, 2013).

According to Lawanson and Adeoye (2013), many African civil services are plagued with corruption leading to misallocation of resources, ineffective service delivery, low wage compensation, and recruitment and promotion of unqualified staff. These problems have been difficult to solve, because many of the dysfunctional elements help keep authoritarian regimes in power. Bureaucratic budgets reflect the relative powers of bureaucratic elites rather than the broader public interest. Thus, discretionary import licenses and other economic benefits can be targeted to obedient supporters. Patrimonial recruitments and promotions reward loyalists with jobs, bureaucratic influence, and other benefits. Ethnic fragmentation, and the lack of rule of law, transparency, and accountability, allows different regimes to carry on with the above practices and avoid effective scrutiny and sanction from the broader public (Lawanson and Adeoye, 2013).

## **2. METHODOLOGY**

This study is a descriptive and explanatory analysis of the public procurement practices and the various reforms introduced to address certain challenges associated with it within the Nigerian civil service system. The choice of this research approach is based on the nature of the issue under review and the prevailing socio-economic cum cultural effects of intervening factors such as corruption, tribal sentiments and nepotic tendencies that may be impossible to quantify or, even, qualify.

### **2.1. The Early Years**

With the coming of the democratic dispensation in 1999, the government of Chief Olusegun Obasanjo enlisted the services of the World Bank in collaboration with some Nigerian Private Sector Specialists to undertake studies of its Financial Systems and the procedure of its general procurement related activities (Okeke, 2005). The government requested the World Bank to assist it with the formation of a process of enthroning efficiency, accountability, integrity and transparency in Government Procurement and Financial Management Systems. This came on the heel of the discovery by the new government that the time tested procedures for conducting government business had degenerated to such an extent that the Public Service Rules, Financial Regulations and Ethics and Norms of the Service were jettisoned either due to sheer ignorance or for selfish reasons Ekpenkhio (2003). The World Bank Country Procurement Assessment survey conducted, subsequently, in the same year established the link between poor/weak public procurement procedures and corruption as well as its far reaching negative consequences on national development especially in the area of infrastructural development in Nigeria. The Report further revealed that about 60 kobo was being lost to underhand practices out of every N1.00 spent by Government and that an average of 10 Billion US Dollars (\$10b) was being lost annually due to fraudulent practices in the award and execution of public contracts through inflation of contract cost, lack of procurement plans, poor project prioritization, poor budgeting processes, lack of competition and value for money and other kinds of manipulations of the procurement and contract award processes. To address this malaise, the government put in motion the afore-mentioned action plan. This study recognizes the effort of the government as being domiciled within two time continuum: 1999 – 2003 and 2003 to date.

### **2.2. 1999-2003**

With a clear objective of reducing the scope of corruption in public procurement and so improve the efficiency in the management of Nigeria's public expenditures, the World bank, swung into action on the prompting of the Federal Government and at the end of the exercise, submitted two reports, to the government namely:

- i) the Country Report on the Financial Systems (CRFS) and
- ii) the Country Procurement Assessment Report (CPAR)

This comprehensive review of the country's public procurement system carried out by the World Bank covered all the:

- existing legal framework
- organizational responsibilities and capabilities within government
- present procedures and practices
- reliability of government accounting systems and
- effectiveness of budgeting systems in directing resources for intended purposes.

After an intensive comparative analysis of these areas, it was discovered that practices in Nigeria differ from established international best practice. Using resources from all tiers of government, the World Bank financed an all-encompassing task force including international and local consultants to carry out the review of the public sector procurement procedure. To this end, two Workshops were held and the outcome of which was the Country Procurement Assessment Report (CPAR) and the Country Report on the Financial Systems (CRFS). The Country Procurement Assessment Report (CPAR) identified five major weaknesses in the existing procurement systems in Nigeria namely:

- i) That Nigeria lacks a modern law on Public Procurement and permanent oversight body to provide guidance and monitor purchasing entities.
- ii) that the Finance (Control and Management) Act, 1958, together with the Financial Regulations which set basic rules for managing public expenditure have gaps, deficiencies and faulty implementation of existing regulations on procurement (e.g. lack of permanent arrangements for control and surveillance) which create opportunities for bribery and corruption;
- iii) that due to inflation and lack of regular adjustments on the thresholds of the approving limits of the Tender Boards, their authorization were constantly being eroded resulting in abuses, prominent among which is splitting of contracts;
- iv) that there was proliferation of tender boards which were perceived by the private sector as sources of delays and non-transparency. In addition, these tender boards appeared to have limited mandates with powers to decide contracts de facto resting with the Permanent Secretary and the Minister/ Commissioner;
- v) that Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption; and
- vi) that Procurement is often carried out by staff who substantially lack relevant training.

The main recommendations of the CPAR which were aimed at correcting these identified weaknesses in the procurement environment, focused on six main areas, namely:

- i) the need for a procurement law based on UNCITRAL, the United Nations Commission for International Trade Law model;
- ii) the need to establish a Public Procurement Commission (PPC) to serve as the regulatory and oversight body on Public Sector Procurements;
- iii) the revision of key areas of the Financial Regulations to make them more transparent;
- iv) the streamlining of Tender Boards and strengthening their functional authority, including powers to award contracts;
- v) a critical need to rebuild procurement and financial management capacity in the public sector; and
- vi) a comprehensive review of the businesses related to export, import and transit regulations, procedures and practices, including the ASYCUDA System.

### **2.3. 2003-2015**

The Federal Government accepted the Country Procurement Assessment Report (CPAR) in its entirety with the exception of the Registration of Contractors and the involvement of Political Office holders such as Ministers/ Commissioners in the award of contracts in excess of fifty million Naira (N50,000,000) which the report was against. The first step towards enthroning transparency in conducting government business therefore was the issuance of Circular No. F. 15775 of 27<sup>th</sup> June, 2000 on "New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/

Parastatals". The Circular spelt out in great details the procedures and levels of approvals for the award of contracts to meet international best practice. The Circular provides for the following:-

- i) Establishment of a Steering Committee and Procurement Reform Implementation Unit (PRIU) to prepare the ground for the establishment and proper take-off of a Public Procurement Commission (PPC) which would be the apex policy making body on all procurements and award of contract matters in the public service;
- ii) Abolition of Federal and Departmental Tenders Boards;
- iii) Permanent Secretary to approve contracts of works, services and purchases up to One million Naira (N1,000,000)
- iv) Establishment and strengthening of the Ministerial Tender Boards;
- v) Strict prohibition of Contract Splitting;
- vi) Open competitive tendering procedures;
- vii) Advertisement of tenders in at least, two national dailies, and or government gazette and at least, six weeks before deadline for submitting tenders;
- viii) Opening of tenders in public with or without press coverage;
- ix) Clearly defined bid criteria;
- x) Committee of professionals to evaluate bids;
- xi) Officials involved in the tendering process to declare conflict of interest and exclude themselves;
- xii) Publication of major contract awards above twenty million Naira (N20,000,000) in two national dailies;
- xiii) Bid security not less than 2% for contracts valued at ten million Naira (N10,000,000) and above from a reputable Bank;
- xiv) Performance Security for all contracts valued at ten million Naira (N10,000,000) and above to attract performance security in an amount of 10% of bid price. Performance Guarantee to be issued by reputable banks;
- xv) Interest on delayed payment by Government Ministries/ Extra-Ministerial Departments to suppliers/ contractors not settled on or before 60 days from submission of invoice or certificate of job completion;
- xvi) Final payment of contracts over five million Naira (N5,000,000) to be co-signed by the Auditor-General or his representative in Ministries or Agencies and the contract officer;
- xvii) All contracts valued at fifty million Naira (N50,000,000) and above to be approved by the Federal Executive Council (FEC).

With the acceptance of the CPAR, the government then established a steering committee to implement the World Bank recommendations as contained therein.

### **3. THE STEERING COMMITTEE ON IMPLEMENTATION OF PROCUREMENT REFORMS**

To achieve the objectives of its establishment, the steering committee took certain steps towards the creation of a sustainable framework for public procurement control and regulation. The activities of the committee could be summed under the following functions:

- (a) The setting up of functional sub-committee covering the four broad categorizations of the areas relating to public procurement, namely:
  - (i) Administration and Legal issues
  - (ii) Rules and procedures - work on Procurement Manual for the Public Sector.
  - (iii) Circular Review - collate and review comments and observation of extant Finance and Treasury Circular with a view to come out with an amended Circular on Guidelines on Procurements.
  - (iv) Price Intelligence and Monitoring - Gather and collate prices of items with a view to having a data bank on prices and monitor contracts.
- (b) Organizing Public Enlightenment Programmes in the form of Workshops/Seminars detailing the importance of the public sector procurement reforms. Two of such sensitization workshops were subsequently held at Abuja and Port Harcourt.
- (c) Organizing a two-week Study Tour of the United States of America under the sponsorship of the US Department of Commerce. The delegation, comprising members of the committee,

visited specialized procurement institutions and held discussions on management of procurement in a multi-sectoral and deregulated economy.

- (d) Preparing a draft Public Sector Procurement Manual for use in the Nigerian Public Service. The Manual introduced procedures consistent with extant Finance and Treasury Circulars. It also introduces new procurement procedures based on the United Nations Commission on International Trade Law (UNCITRAL) model on procurement of goods, works, services and construction. The Manual also provides guidance and uniformity in procurement procedures for all Government Procurement Agencies with main objective of maximizing economy and efficiency. The use of the manual would foster and encourage participation in public sector procurement proceedings, promote competition and provide fair and equitable treatment amongst suppliers and contractors. It would also promote integrity in the procurement process and instill public confidence in public sector procurement. The use of the Manual would enhance accountability, probity and transparency in the financial and procurement systems in the public sector. The Manual would be up-dated periodically to accommodate emerging changes, which would enhance the operation of the proposed procurement law.
- (e) Producing a draft composite bill for the establishment of a Public Procurement Commission, PPC, which later metamorphosed into the Bureau of Public Procurement (BPP). The bill contained the legal framework on procurement, based on the UNCITRAL Model and the harmonization of existing government practices and policies on procurement in the country. The United Nations Commission on International Trade Law (UNCITRAL) established by the UN General Assembly Resolution 2205 (XXI) of 17th December, 1966 stipulated that it aims is to: "Further the progressive harmonization and unification of the law of international trade and procurement in the interest of all peoples, in particular those of developing countries". The bill became law in 2007 and empowers the BPP to regulate all the procurement of goods, services, works and construction in the public sector, thereby enhancing probity, accountability and transparency in public sector procurement practices. It further provided adequate legal institutional framework and financial mechanism to achieve the laudable goals of government in its efforts to enthrone transparency, accountability and equal access to public sector procurement.

It may be noteworthy at this point to understand that the UNCITRAL Model Law on Public Procurement seeks to ensure that transparency is achieved by:

- i) The public disclosure of the rules that apply in the procurement process
- ii) The publication of procurement opportunities
- iii) The prior determination and publication of what is to be procured and how offers are to be considered
- iv) The visible conduct of procurement according to the prescribed rules and procedures
- v) The existence of a system to monitor that these rules are being followed (and to compel officials to follow them if necessary)

The last item on the list above probably informed the establishment of the Bureau for Public Procurement (BPP). The Public Procurement Bill was passed into law on May 31<sup>st</sup> 2007 and on June 4th 2007; the Bill was ratified by the Late President Umaru Musa Yar'Adua as law under the constitution of the Federal Republic of Nigeria.

#### **4. THE ROLE OF THE BUREAU FOR PUBLIC PROCUREMENT (BPP)**

The outcome of the work of the Steering Committee on Implementation of Procurement Reforms was the recommendation that a Public Procurement Commission be set up. The terms of reference for the proposed commission include:

- i) Acting as a permanent oversight body which will guide and monitor purchasing entities and is totally independent of the Tender Boards; this is to ensure the efficiency and effectiveness of procurement functions across the public sector.
- ii) Developing Government Procurement procedures at the Macro level;
- iii) Monitoring of the procurement environment;
- iv) Acting as an instrument of administrative review;

- v) Serving as a regulating agency;
- vi) Provide coordination services; and
- vii) Monitor and review periodically the Procurement Law based on the United Nations Commission for International Trade Law (UNCITRAL) model.

These projected functions became the codified objectives and functions of the subsequent Bureau for Public Procurement (BPP). Establishment of the Bureau for Public Procurement, as the Regulatory Authority responsible for monitoring and oversight of Public Procurement and Practices by regulating, setting the standards and developing the legal framework and professional capacity for procurement in Nigeria and for other related matters was coupled with the additional mandate to achieve the following four Core Objectives which are according to the Public Procurement Act of 2007:

- Economy & Efficiency - Harmonizing existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;
- Fair Competition –: Ensure the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets; by providing a level playing ground for all bidders
- Value for Money –: Establishing pricing standards and benchmarks;
- Transparency –: Attaining transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

With the establishment of the Bureau through the Public Procurement Act of 2007, its functions were expanded to cover:

- i) Formulation of the general policies and guidelines relating to public sector procurement for the approval of the Federal Executive Council;
- ii) Publicizing and explaining the provisions of the procurement act;
- iii) Certifying Federal procurement prior to the award of contract, subject to thresholds as may be set by the Federal Executive Council;
- iv) Supervising the implementation of established procurement policies;
- v) Monitoring the prices of tendered items and keeping a national database of standard prices;
- vi) Publishing the details of major contracts in the procurement journal;
- vii) Publishing paper and electronic editions of the procurement journal and maintaining an archival system for the procurement journal;
- viii) Maintaining a national database of the particulars and classification and categorization of federal contractors and service providers;
- ix) Collating and maintaining in an archival system, all federal procurement plans and information;
- x) Undertaking procurement research and surveys;
- xi) Organizing training and development programmes for procurement professionals;
- xii) Periodically reviewing the socio-economic effect of the policies on procurement and advise the Federal Executive Council accordingly;
- xiii) Preparing and updating standard bidding and contract documents;
- xiv) Preventing fraudulent and unfair procurement and where necessary applying administrative sanctions;
- xv) Reviewing the procurement and award of contract procedures of every entity to which the procurement act applies;
- xvi) Performing procurement audits and submit such report to the national Assembly bi-annually;
- xvii) Introducing, developing, updating and maintaining related database and technology;
- xviii) Establishing a single internet portal that will 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
- xix) Coordinating relevant training programs to build institutional capacity.

The BPP was so empowered because the original recommendation for the PPC, include in its oversight activities, proper monitoring of disbursement of funds for implementation of capital projects as contained in the Country Financial Assessment Report (CFAR) submitted by the World Bank team.

## 5. BENEFITS OF PROCUREMENT REFORMS

The reform of the public sector procurement procedure comes with certain altruistic benefits for the civil service system; among which are:

- i) Transparency: The procurement system becomes more transparent and creates equal access for bidders of public sector contracts.
- ii) Reduction in Wastage of Resources: Through efficient and effective management of Nigeria's economic resources, all avenues of wastages and leakages in the economy as a result of inefficiency in the award of Government contracts and procurements is minimized thereby increasing Government revenue base.
- iii) Fair Competition: It enables contractors to have a fair hearing as there is a statutory contract Appeal Board where aggrieved Contractors and Suppliers file their protests; and
- iv) Development of body of codified regulations: it assists in the codification of all the relevant laws concerned with the issue of procurement and contract awards

## 6. CONCLUSION AND RECOMMENDATIONS

Public enlightenment on the functions of the BPP cannot be over emphasized. As a result of increased awareness campaign by the Bureau, there's a growing consciousness in the public domain and amongst contractors who do business with government and this has led to increased number of petitions (Emeka, 2013).

According to the Director-General of the Bureau, Chief Emeka M. Ezeh, in 2012 alone, a total of 167 such petitions were received out of which 74 were concluded before the end of the year and 93 are still ongoing. He also stated that 18 (Eighteen) cases of infractions on the Public Procurement Act are being investigated by Anti-Corruption Agencies. These cases of corrupt practices and the proactive stance of the government on their prosecution had positive financial results; in that as at the end FY2012 a total Value Improvement Savings (VIS) of N420 billion has been recorded through the Bureau's intervention (prior review) efforts (Emeka, 2013).

Sustaining procurement reforms and achieving effective and sustainable outcomes require continuous engagement of all stakeholders especially the political class and civil society groups who understand the rules to mount pressure on the operators of the system to comply with the Law (Emeka, 2013). For the nation to continue to reap the full benefits of the public procurement reforms, therefore, there is need to:

- (i) develop a new cadre of professional procurement officers and contracting officers in the public service for the implementation of procurement reforms;
- (ii) work out an appropriate scheme of service to be adopted by all the tiers of government for procurement and contracting officers;
- (iii) organize capacity building and training (at home and abroad) workshops, Seminars, and Courses, for the new cadre of Procurement and Contracting Officers and all those involved in procurement awards;
- (iv) restructure Ministries to create cadres of procurement officers and contracting officers in the public service so as to make for uniform implementation and easy monitoring of the procurement reforms
- (v) Create a law which will be binding on all the tiers of government in order to build consensus among them so as to promote the smooth implementation of the procurement reforms.
- (vi) Building of a critical mass of people who understand the rules and processes along the procurement value chain.
- (vii) Creating a mechanism for sanctioning non-compliant actors
- (viii) Deployment of Technology (e-tranzact, e-form M etc) to minimize human interaction

## REFERENCES

- Ekpenkhio, S. (2003). Public Sector Procurement Reforms: The Nigerian Experience. Report Presented at The Regional Workshop on Procurement Reforms and Transparency in Government Procurement for Anglophone African Countries, Tanzania On 16th January, 2003.
- Emeka, M. E. (2013). *Public Procurement Reform Strategies: Achieving Effective And Sustainable Outcomes*. Cips Pan Africa Conference. Accra: CIPS Pan Africa Conference. Retrieved May 20, 2014.

- Lawanson, O. I. and Adeoye, B. W. (2013). Public sector reforms: Implications for human resource management in Nigeria. *British Journal of Arts and Social Sciences*, 13(11), , 13(11): 188-201.
- Okeke, M. (2005). Economic reforms: Tool for sustainable service delivery. *Zenith Economic Quaterly*, 1(3): 7-11.
- Okonjo-Iweala, N. and Osafo-Kwaako, P. (2007). *Nigeria's Economic Reforms Progress and Challenges*. Washington D.C.: *The Brookings Institution*.