



The Public Procurement Reforms in Nigeria: Implementation and Compliance Challenges

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Abstract

The public procurement in Nigeria has come to stay. The problem now is not the lack of a regulatory framework but rather that of poor implementation and non-compliance with the reforms laws and regulations. This position paper made use of published data on the extent of implementation and compliance with the Nigerian reforms regulations and those of other developing and developed countries as a basis for drawing conclusion that there has been some significant improvement on the awareness of the existence of the public procurement law but for low level of implementation and compliance. The paper identified factors as media publicity; planning, organisational culture political interference amongst others contributes both positively and negatively to public procurement implementation and compliance. The need to insulate the procurement decisions from political interference and the setting up of the National Council on Public Procurement so as to allow it discharged its legitimate roles against the current trend where the Federal Executive Council and other governmental bodies performing this role are among some of the recommendations proffered by the paper if a successful implementation and compliance with the Nigerian Public Procurement reforms will be realised.

1. INTRODUCTION

Today, in many countries, public procurement has become an issue of public

attention and debate, and has been subjected to reforms, restructuring, rules and regulations. Public procurement refers to the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). Public bodies have always been big purchasers, dealing with huge budgets, public procurement represents

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18.42% of the world GDP (Roodhooft & Abbeele, 2006; Mahmood, 2010). In developing countries, public procurement is increasingly recognized as essential in service delivery and it accounts for a high proportion of total expenditure (Hunja, 2003).

Due to the colossal amount of money involved in government procurement and the fact that such money comes from the public, there is need for accountability and transparency (Hui *et al.*, 2011). Consequently, various countries both in developed and least developed countries have instituted procurement reforms involving laws and regulations. The major obstacle however, has been inadequate regulatory compliance. Non-compliance problem affects not only the third world countries but also countries in the developed economies. Hui *et al.* (2011), while analysing procurement issues in Malaysia, established that procurement officers were blamed for malpractice and non-compliance to the procurement policies and procedures. Most developing countries are facing a problem of rapid changes in procurements which are imparting pressure on how the procurement function performs its internal and external processes in order to achieve its objectives (Wambui, 2013). Its implementation is perhaps driven by development partners who have focussed on getting countries to introduce a standard law developed by the United Nations Commission on international trade law (McDonald, 2008). The public procurement reforms currently focus on getting countries to implement a standard procurement law and system. This is a challenge that countries ought to cope up with as pointed out by Thai (2001) that public practitioners may have to put up with contradictory and contrasting procurement requirements and objectives imposed by policies and trade agreements. Such challenges in procurement reforms are beyond procurement regulations and include processes, methods, procurement organizational structures and workforce. Public procurement regulations are based on agreed upon donor requirements and the procedures should be consistent with international standards (MoE, 2007). The implementation of

stipulated public procurement structures could determine implementation or non-implementation of public procurement regulations.

1.1 Basic principles of public procurement reforms

Procurement encompasses the whole process of acquiring property and/or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property and/or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life (Hui *et al.*, 2011).

Sound public procurement policies and practices are among the essential elements of good governance (Hui *et al.*, 2011). OECD, (2007) notes the irregular procurement activities in public institutions provide the biggest loophole through which public resources are misappropriated. According to Thai (2001), the basic principles of good procurement practice include accountability, where effective mechanisms must be in place in order to enable procuring entities spend the limited resources carefully, knowing clearly that they are accountable to members of the public; competitive supply, which requires the procurement be carried out by competition unless there are convincing reasons for single sourcing; and consistency, which emphasizes the equal treatment of all bidders irrespective of race, nationality or political affiliation.

The process should also uphold integrity by ensuring that there are no malpractices; informed decision-making, which requires public bodies to base decisions on accurate information and ensure that requirements are being met. More still, the Procurement practice should be responsive to aspirations, expectations and needs of the target society. Finally, there is need for transparency to enhance openness and clarity on

procurement policy and its delivery (OECD, 2007).

2. LITERATURE REVIEW

2.1 Empirical review

Karjalainen *et al.* (2009) contend that very little research has so far been conducted on organizational misbehaviours and non-compliance in purchasing and supply management. This is surprising given that public procurement has been employed as a vital instrument for achieving economic, social and other objectives (Arrowsmith, 1998), and is regrettably an area vulnerable to mismanagement and corruption (OECD, 2007). Besides, most of the studies on public procurement compliance have been conducted outside Nigeria and mostly in the developed world.

In Nigeria, a wave of procurement reforms that begun in 1999, culminated into the enactment of the Public Procurement Act 2007. Unfortunately, many government ministries and agencies have since then not followed prescribed practices (Agaba & Shipman, 2007). Gelderman *et al.* (2006) stipulate that compliance occurs when the target performs a requested action, but is apathetic about it, rather than enthusiastic, and puts in only a minimal or average effort. However, as an organizational outcome, compliance has traditionally been understood as conformity or obedience to regulations and legislation.

According to Roodhooft and Abbeele (2006), public bodies have always been big purchasers, dealing with huge budgets. Mahmood (2010) also reiterated that public procurement represents 18.42% of the world GDP. In developing countries, public procurement is increasingly recognized as essential in service delivery (Basheka & Bisangabasajja, 2010), and it accounts for a high proportion of total expenditure.

2.2 Conceptual framework

This section assesses the research variables derived from literature to ascertain whether there are significant relationships between the independent variables and the dependent variable. It focuses on the determinant variables identified, which would be

associated with implementation and compliance of public procurement reforms.

2.3 Media publicity

The media play a critical role in corporate compliance. Through the media, the corporate community is made aware of the regulatory outcomes (Zubicic & Sims, 2011). Hui *et al.* (2011) stated that in Malaysia, wide publication of tenders in the media such as newspapers and websites could help reduce corruption by increasing transparency and participation, thereby enhancing public procurement compliance. According to Borden (2007), media exposure reduces the incidence of wrongdoing through press coverage that highlights instances of wrongdoing. More to that, in an environment of heightened and effective press coverage of misconduct, others contemplating misconduct may be discouraged. Such claims are also supported by Obanda (2010) as cited in (Zubicic & Sims, 2011) who argues that there is a direct correlation between negative media publicity about an organisation and their subsequent approach to corporate compliance. This paper is of the opinion therefore that *Media publicity improves public procurement compliance.*

2.4 Enforcement

Enforcement could be broadly viewed as any actions taken by regulators to ensure compliance (Zubicic & Sims, 2011). There are mixed opinions regarding the effect of enforcement on compliance. Some scholars such as Sparrow (1994) doubt the direct effect of enforcement on compliance. They argue that enforcement may make violators more sophisticated in how to prevent, and conceal detection by the authorities. However many other scholars agree that enforcement improves compliance (Gunningham & Kagan, 2005; Imperato, 2005; Sutinen & Kuperan, 1999; Zubicic & Sims, 2011)? According to Zubicic and Sims (2011), enforcement action and increased penalties lead to greater levels of compliance with laws. Corruption among government procurement officials in developing countries such as Bangladesh, India, Sri Lanka, Nigeria and Venezuela has been linked to a weak enforcement of the rule of law (Nwabuzor, 2005) as cited in

Raymond (2008). A study on corporate governance in Africa revealed that countries such as Nigeria and Ghana suffer from weak law enforcement mechanisms (Okeahalam, 2004). In counties with complaint and review mechanisms, bidders are allowed to verify whether the procurement processes conform to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules (Hui *et al.*, 2011). Firms might choose to implement ineffective compliance systems if legal violations may be profitable in cases where the legal system under-enforces, either because penalties are set too low or because detection is imperfect or ineffective. Gunningham and Kagan (2005) argue that the threat of legal sanctions is essential to regulatory compliance and that enforcement action has a cumulative effect on the consciousness of regulated companies and it reminds companies and individuals that violators will be punished and to check their own compliance programs. This is also supported by Gunningham and Kagan (2005) who opined that the outcome of sustained enforcement action instilled a culture of compliance and had a direct impact on corporate compliant behaviour. Sutinen and Kuperan (1999) further argue that coercive enforcement measures remain an essential ingredient in any compliance regime. The paper therefore makes the second proposition; *Enforcement has a positive effect on public procurement compliance.*

2.5 Records management

In any contemporary industry, the data and reports showing compliance to regulatory needs must be robust and come from a reliable source. Many developing countries lack a systematic approach to managing records. It is argued that accurate and readily accessible records of judicial rulings reduce the potential for illicit manipulation resulting from delays, corruption, and inaccuracies. Dysfunctional records management undermines legal and judicial reform creating room for corruption or collusion between court officials and lawyers (Gelderman *et al.*, (2006). This negatively affects enforcement and reduces compliance. According to Ambrose (2008), the source of data must be safeguarded

against tampering such that no one can alter data without leaving some evidence of that change. A study conducted in Kenya found out that poor records management had adverse effect on service delivery. It forces individuals to act on ad hoc basis, makes it intricate to carry out meaningful audits and to prove fraud (Kemoni & Ngulube, 2008). This undoubtedly contributes to non-compliant behaviour. Similarly, Akech (2005) asserted that due to poor records management, a Minister in Kenya unlawfully obtained confidential information on the tender and used it to interfere with the procurement process. Other studies have shown that current lack of data collection and records by organs of state prevents the effective monitoring targeted on the transparency of the tendering process (Bolton, 2006). In support of this view, it has been suggested that in order to allow proper accountability in the procurement process, details of procurements undertaken together with all necessary documentations should be available (Jones, 2007). The procurement integrity survey on Nigeria (2006) revealed that public procurement system is marred by poor record keeping culture, which has resulted in lack of comprehensive statistics on the value of goods, services and works procured. As Ambrose (2008) suggests, systems without the ability to provide affirm audit trail would make their use unacceptable in most compliance and regulatory environments. Proper records management controls, managing who can access and modify key documents and records have been identified as an integral part of achieving compliance (Alfredo, 2009). These papers therefore propose as follows that; *Records management affects public procurement compliance.*

2.6 Organizational culture

Due to regulatory reforms and changing community expectations, the role of culture in organizational compliance has gained momentum (Lisa, 2010). Basing on the competing values model (hierarchical culture), which involves enforcement of rules, conformity and attention to technical matters, individual conformity and compliance are achieved through enforcement of formerly stated rules and

procedures (Zammuto & Krakower, 1991) as cited in Parker and Bradley (2000). Although there is no single definition of culture, one can define it as 'the structure of behaviours, ideas, attitudes, values, habits, beliefs, customs, language, rituals, ceremonies and practices of a particular group of people that provides them with a general design for living and patterns for interpreting behaviour' (Rice, 2007). According to Lisa, (2010), culture plays a central role in the compliance process and associated outcomes. Parker and Bradley (2000) further indicated that awareness of the nature of public organizational culture is vital in explaining and assessing the appropriateness and outcome of the current reform process. This applies to developing countries where waves of procurement reforms have resulted into enactment of procurement rules and regulations. This leads to the following proposition; *Organizational culture affects public procurement compliance.*

2.7 Political interference

Public procurement is considered an inherently a politically sensitive activity (Schapper *et al.*, 2006). (Bolton, 2006). Contended that in public procurement, managers take on the role of agent for elected representatives. However, Pillary (2004) argues that senior officials and political leaders use public office for private gain and this has weakened the motivation to remain honest. Raymond (2008) also opined that ministers and political parties receive clandestine payments in government procurement. This ultimately interferes with the procurement process and constrains compliance. This is also re-echoed by Lodhia and Burritt (2004), who recognizes that social and political influences have an important bearing on public sector reform. In developing countries; one of the major obstacles to the procurement system is ministerial interference with the tender process where ministers intervene and influence tender awards. The threat of being suspended or fired has in many cases intimidated public officers into obeying illegal ministerial directives leading to non-compliance (Akech, 2005). In support of this, Hui *et al.* (2011) asserted that interference from the local politicians,

businesspersons, members of parliament and very influential top management individuals has interrupted the procurement processes and deterred transparency. Lodhia and Burritt (2004) further stated that political influence in public sector management limits information, transparency and favour is extended without management being held to account. Coviello and Gagliarducci (2010) also revealed that politicians influence public procurement through non-compliance acts such as collusion. The paper therefore proposes thus; *Political interference has a negative effect on public procurement compliance.*

2.8 Professionalism

According to Raymond (2008), professionalism in public procurement relates not only to the levels of education and qualifications of the workforce but also to the professional approach in the conduct of business activities. If the workforce is not adequately educated in procurement matters, serious consequences; including, breaches of codes of conduct occur. According to Pillary (2004) cited in Raymond (2008), there are approximately 500,000 professional purchasing people in the United States and only 10 per cent of these have been members of a professional body and the rest are not even aware that there are ethical and legal standards involved in procurement. Raymond (2008) also linked lack of a high degree of professionalism in public procurement to corruption, which ultimately impedes compliance. The procurement officers must be trained and aware about all regulations in relation to procurement and related procedures (Hui *et al.*, 2011). Rossi (2010) asserts that ethical code is not only a deterrent of incorrect behaviour but also an enabler for all members of the organisation to safeguard the ethical legacy of the firm. This position is further confirmed by Basheka and Mugabira (2008) who state that the level of professionalism in public procurement in Nigeria is low or non-existent. De-Boer and Telgen (1998) also attributed non-compliance in public procurement to lack of purchasing professionalism in the public sector. Thus, *purchasing professionalism increases public procurement compliance.*

2.9 Organizational incentives

Teutemann (1990) as cited in Gelderman *et al.* (2006) argued that public bureaucrats normally try to exhaust their budget fully as to avoid reductions in their future budget. Gelderman *et al.* (2006) also stated that the problematic transfer of budgets in many public agencies is likely to have a negative impact on the compliance with the EU rules. Sutinen and Kuperan (1999) argue that purchasers will take into account the risk of sanctions, imposed by the organisation in case of non-compliance. Gelderman *et al.* (2006) further asserted that more impact on procurement compliance can be expected from the internal incentives established by the organisation. Parker and Hartley (2003) highlighted that military personnel do not necessarily behave efficiently, because they neither share in any profits from efficient behaviour or experience losses from poor performance. Ntayi *et al.* (2010) also argued that in Africa, pressure on public procurement budgets coupled with delayed payments provide incentives to engage in deviant behaviours. Consequently, these deviant behaviours are linked to non-compliance in public procurement. The paper therefore proposes that; *Organizational incentives improve compliance in public procurement.*

2.10 Perceived rule legitimacy, moral obligation and social influence

Sutinen and Kuperan (1999) maintain that the willingness to comply because of moral obligation and social influence is based, among others on the perceived legitimacy of the authorities charged with implementing the regulations. Hui *et al.* (2011) stipulated that legitimacy theory provides a sufficient and superior lens for understanding government procurement system.

Lazarides (2011) adds that voluntary compliance is the result of personal or corporate ethics, motivation schemes and in most cases the result of corporate interest alignment with the legal provisions behaviour. Sutinen and Kuperan (1999) also assert that moral obligation, may be a significant motivation explaining much of the evidence on compliance behaviour. The OECD (2005) further observes that, it is difficult to combat fraud and corruption in

public procurement if a group of individuals in an organisation collude with common interests in maintaining secrecy around their corrupt acts. As moral obligation and social influence are weakened, regulatory compliance also weakens (Sutinen & Kuperan, 1999). We therefore make the following proposition that; Perceived rule legitimacy improves moral obligation; Moral obligation improves public procurement compliance and Social influence affects public procurement compliance.

2.11 Purchaser's familiarity with the rules

According to Rossi (2010), compliance with the formal elements gives an indication of knowledge of the rules. Gelderman *et al.* (2006) maintained that public purchasers will comply with the rules if they perceive them as clear. They added that the simple fact that the management of a public agency is familiar with the essence of the EU rules could function as an organizational incentive to comply. It is further argued that Lack of clarity is believed to increase the possibilities for (UN) deliberate non-compliance. Educating and training public purchasers will be an effective tool for increasing the compliance with the directives (Gelderman *et al.*, 2006). Eyaa and Oluka (2011) stated that lack of familiarity with procurement rules results into poor compliance levels. They also found out that in the Nigerian context, familiarity with procurement regulations significantly predicted compliance with procurement regulations. Lazarides (2011) also adds that compulsory compliance is the result of among other factors clarity or lack of vagueness of provisions. Thus increasing knowledge of the law can improve compliance. The following proposition is therefore advanced that; *Familiarity with the procurement rules increases public procurement compliance.*

2.12 Top management support

Hui *et al.* (2011) stipulates that efficient management is one of the most effective preventive mechanisms for it promotes transparency and accountability, facilitates oversight and provides a good basis to prevent corruption. Rossi (2010) opines that formal controls must first be defined,

agreed, and applied top-down internally within an organization if they are to be effective. An organization with a genuine commitment to legal compliance is evidenced by top management's dedication to ethical corporate behaviour (Krawiec, 2003). As cited in Heneghan and O'Donnell (2007), a compliance culture in an organization must start in the boardroom and should be reflected and evidenced in directors' own behaviours and attitudes. In a related argument, Obanda (2010) stipulated that strong institutional support at top levels of government is needed by procurement personnel in order to promote integrity, monitor the public procurement process and apply procurement law appropriately. This leads to the following proposition that; Top management support improves public procurement compliance.

2.13 Corruption

According to Transparency International (2006), corruption is the misuse of entrusted power for private gain. Raymond (2008) stated that procurement related corruption tends to be a serious problem in developing countries rather than in developed countries. Developing countries such as Bangladesh, India, Sri Lanka, Nigeria, Kenya and Venezuela were identified as having high levels of corruption. As stated by Hui *et al.* (2011), public procurement corruption could threaten legitimacy and as such, the policies and procedures should be created to curb any possible corruption activities and enhance transparency, accountability and integrity. Citing The New Vision (2005), It was further stressed that corruption is because the law has many loopholes and the prescribed practices are laxly or impractical to enforce. Obanda (2010) also found out that compliance is deemed to substantially curb corruption in public procurement. OECD (2007) also added that the establishment of clear rules and regulations complemented by substantial and effectively enforced penalties, applied by public administrations and courts, are considered the most effective deterrents to bribery and corruption in public procurement. We therefore propose that; Compliance in public procurement reduces corruption.

2.14 Corporate governance

Corporate ownership and governance structures depend on corporate conventions and rules of behaviour (Lazarides, 2011). According to Collier (2002), corporate compliance equates to corporate governance and refers to the mechanisms by which corporations are directed and controlled, and by which those who direct and control corporations are monitored and supervised and made accountable for their actions. Collier (2002) further maintains that enforcement has a greater regulatory impact beyond the violators and reminds directors and others involved in corporate management of their responsibilities and the risks attached to a failure to fulfil those responsibilities. Imperato (2005) also argues that enforcement action aiming at ensuring compliance plays an important role in corporate governance. To ensure that effective corporate governance standards are employed and corporate scandals are best prevented frequent monitoring and enforcement should be ensured (Proimos, 2005). It was also asserted that the external drivers of good corporate governance are laws, rules and institutions that provide a competitive playing field and discipline the behaviour of managers and shareholders (Okeahalam, 2004). Thus, this paper propose as follows that; Public procurement compliance improves corporate governance.

2.15 Service delivery

Regulated procurement frameworks are procedurally costly, slow to adapt to changes and they erode the skill requirements of procurement officials, thereby undermining professionalism (Schapper *et al.*, 2006). As government departments operate within a framework of public accountability and cost effectiveness, considerable emphasis is placed on the fair treatment of suppliers, compliance, competitive tendering and procedures for ensuring propriety and regularity, hindering the development of collaborative procurement arrangements (Raymond, 2004) as cited in Roodhooft and Abbeele (2006). This retards service delivery because according to Muhwezi (2009) collaborative purchasing is vital for service delivery. The requirement for compliance reduces the authority and discretion a government

official has over matters (Zimmerman, 2001). Since public organisations due to their bureaucratic culture emphasize rules, procedures and stability, they lack orientation towards productivity and efficiency (Parker and Bradley, 2000). The requirement for compliance in public procurement limits employee discretion. As suggested by Raymond (2004) discretion is essential to organizational effectiveness and if too severely limited, it can make the official's task needlessly complex and service inefficient and more costly. According to Trepte (2005), stricter regulation hinders the efficiency of the procurement. As cited by Obanda (2010), Kovacic (1992) observes that, it is conceivable that public procurement increasingly will become the province of firms whose distinguishing trait is not superior capability in production or service but skill in comprehending and responding to the governments' regulatory command. In Nigeria, compliance requirements according to the PPA Act (2007) call for lengthy procedures especially in open bidding methods that delay service delivery. Thus, this paper proposes that; Public procurement compliance reduces service delivery.

3. RESEARCH GAP

Like any other study, this study has some limitations. For example, the current proposed model did not incorporate all the variables that influence public procurement compliance.

Future research should increase the scope and go beyond the proposed framework by incorporating other variables such as implementation, organizational reforms, job rotation and Information and Communication Technology (ICT). Secondly, this study was theoretical and did not empirically test the nature and strength of the relationships between the antecedents and public procurement compliance and its consequences. Future research should conduct an empirical investigation to test the nature and strength of these relationships. Future empirical studies should also adopt quantitative analysis such as regression analysis in order to ascertain the variation in public procurement compliance that is

explained by its proposed antecedents in the conceptual framework.

3.1 An assessment of the Nigerian public procurement reforms act implementation and compliance

When compliance is mentioned, focus is on the unethical behaviour of the procurement officers and other aspects of public procurement. However, not much focus has been placed on explaining non-compliance with public procurement regulations in Nigeria despite the fact that each year compliance reports produced by the Bureau for Public Procurement (BPP) report that there is non-compliance. In a study carried out by The Public and Private Development Centre Ltd (PPDC, 2011) came up with the following assessment on Compliance with the Public Procurement Act, 2007. The main finding of the report is that efforts to comply with provisions of the Procurement Act, 2007 have been increasing since its passage. Awareness of the provisions of the Act and of procurement rules is on the rise, mainly through the sensitization and training programs of the BPP. The number of ministries, departments and agencies that have established procurement department's with designated procurement personnel is also rising. However, much more is necessary to ensure substantial compliance with the 'spirit' of the Act throughout the country, especially in the geopolitical zones.

The story of this report is that of a perception of a low, but rising compliance by some key players with the provisions of the Public Procurement Act, 2007, and lack of enthusiasm in some others. Factors contributing to this are political, technical and administrative. However, while the Bureau may not be complying fully with the Act in the performance of its functions, it appears to be doing more than what the public perceives and gives it credit for. The shortcomings of the Bureau result from both internal factors and the circumstances of its emergence and current existence.

The Bureau appears not to be doing enough to disseminate its activities, achievements, and problems. Consequently, the public does not appreciate actions and the factors that constrain it from further action.

3.2 The findings of the assessment among others reveal the followings

Progress in complying with the provisions of the Public Procurement Act, 2007 has been measured since 2008, but increasing, especially in 2009 and 2010. Awareness of the Act is on the rise; so is compliance. More MDAs, (especially in the FCT) are establishing procurement planning committees and adopting more open and competitive procurement techniques. More ministries, departments, and agencies are acquiring the capacity (technical knowledge and skills) to prepare and use procurement plans, adapt and use standard procurement documents. Adequate budgetary provisions and approvals are almost now a sine qua non for procurement. Many MDA's are producing and submitting procurement plans to the Bureau, rarely does any procurement requiring advertisement occur now without advertisement, selective bidding and sole source contracting have become exceptions rather than the norm, many MDA's are using BPP issued standard documents, some are not, tender boards are more operational, bid submissions are better regulated and bid openings are more transparent etc. Driving these improvements are efforts of the Bureau of Public Procurement at preparing and reviewing rules, information manuals, standard bidding documents, increased public enlightenment and sensitization on the Act and training of all stakeholders: MDAs, contractors and bidders, consultants, and civil society observers, and also the increasing efforts of the Non-Government sector to monitor compliance, it is to this category that this current work belongs. Efforts of the Bureau continue to save public funds that would have been lost through payment of higher prices for procurement. In the 2009 and 2010, the Bureau reduced contract costs by more than 30 billion and 50 billion naira respectively in addition to various other savings in foreign currency.

3.3 Challenges to the effective implementation and compliance of the Nigerian public procurement reforms

Challenges, however, remain. Among the major challenges are.

- (i) Limited transparency of procurement processes of MDA's
- (ii) Shortage of

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

1. *Continuing political control of the procurement process is the major constraining factor.*

Evidence of political interference with the process includes;

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

2. *Procuring entities are showing reluctance to part with old, bad, internalized procurement habits, either due to inertia or other reasons.*

The processes of registering contractors and services providers and pre-qualifying them for particular contracts provide good examples. Some procuring entities are still categorizing and registering contractors and service providers, contrary to provisions of the Act that assign that function to the Bureau. Procuring entities generate some revenues from this and in some cases high fees for bidding documents; these also provide opportunity for some unwholesome practices. These explain the reluctance to part with the habit, also, the foregoing analyses show that at least in some instances procuring entities deliberately manipulate the process of pre-qualifying bidders to exclude qualified contractors for less qualified ones who are allegedly ready to "play ball".

3. *The Bureau is doing relatively well in procurement training, sensitization, awareness creation, and public enlightenment, although much of these activities, understandably, hold in the FCT area.*

Recently, the Bureau conducted a series of one-day sensitization events in the six geopolitical zones. However, there is need for more real procurement training activities focused in the zones, which are generally lagging behind the FCT in this area. There is need also to ensure that they have greater access to procurement documents, including the Act, guidelines, and other documents published by the Bureau.

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

5. *Capacity shortages affect the level of compliance.* Procurement capacity problems manifest in various forms. Some arise from ignorance and gaps in technical knowledge and skills. For instance, some

MDAs, especially in geopolitical zones outside Abuja, appear to have heard or known relatively little about the paradigm shift in public procurement.

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

7. *Role of regulatory agencies such as the National Assembly passage of the Public Procurement Act, 2007 (Amendment) Bill, 2009 further illustrates lack of political will to implement the Act.* It suggests the sort of influence the Assembly seeks to exert on public procurement. The Assembly used the opportunity of the Executive seeking to retain powers to approve contracts to seek to appropriate for itself powers to regulate its own procurement.

8. *Civil society observance of the procurement process is though broadening in scope remains weak and ineffective, for several reasons.* These include reluctance of procuring entities to 'open up' the procurement process, or grant access to relevant documentation to civil society, resulting frustration on the part of CSO poor finances of Ngo's, apathy, and limited knowledge and skills and lack of proper organization of many civil society groups contribute to weak observation and monitoring of procurement processes.

4. CONCLUSION

Many public procurement activities suffer from neglect, lack of direction, poor coordination, lack of open competition and transparency, differing levels of corruption and most importantly not having a cadre of trained and qualified procurement specialists, who are competent to conduct and manage such procurements, in a professional, timely and cost effective

manner. Inflexible and bureaucratic systems of procurement contribute to unacceptable contract delays, increased costs, the potential for manipulation of contract awards and lack of fair competition, all of which create the perception in the population at large, that public expenditure is slow, ineffective, expensive and often corrupt.

In improving public procurement in Nigeria as well as reform initiatives have centered on making the acquisition process more efficient, essentially by blocking legal and procedural loopholes believed to be avenues for waste and corruption in the system. Consequently, much effort has been devoted in bringing together existing procurement regulations, including directives, into a single document the Public Procurement Act, 2007 and to making this document clearly understood, easily accessible by and properly enforceable. These efforts remain valid and justified especially considering the general legislative and regulatory weakness that has characterized procurement in Nigeria's public sector over the past decades.

5. RECOMMENDATIONS

From the foregoing the paper therefore makes the following recommendations for effective Nigerian public procurement reforms implementation and compliance.

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

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

3. *Once set up, the NCPP must set out to perform its functions as provided for in the Act.* First, it must develop conditions of service and staff regulations for the Bureau. It must develop internal rules for operation of the Bureau. It must review, revise, or simply adopt and approve procurement policies, guidelines, monetary thresholds, and other such documents already issued by the Bureau.

4. *The Bureau should develop a clear timetable and programs for tackling problems of shortage of technical capacity for public procurement.* Procurement planning, development of good requests for proposals, and bid evaluation, among others, are very technical, practical and hands-on issues in the procurement process. Routine procurement training and sensitization, though a good way to start, do not suffice to develop such capacity.

5. *There ought to be a programme for tackling human factors in public procurement.* For any reform to succeed there should also be a programme of value re-orientation. Public financial management, including public procurements, reforms involves two aspects: systems (including procedures, processes, methods, hardware and software) reforms and human behavioural reforms.

6. *Enhance autonomy of the Bureau by guaranteeing its funding to help minimize the effect of possible political vendetta that may arise as the Bureau acquires teeth following its divorce from political control.* One possible approach is to amend the Act to protect its budget just like the National Judicial Council's (NJC).

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

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