

# Public Procurement Reforms

## The Problem

By 2000, the conduct of government business in Nigeria had become difficult and expensive due to widespread corruption, particularly procurement fraud. Although procurement fraud is one of the most common avenues of corruption in most countries, its incidence in Nigeria by 2000 was particularly widespread. A World Bank Country Procurement Assessment survey conducted in 1999 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 Assessment Report revealed that 60k was being lost to underhand practices out of every ₦1.00 spent by government and that an average of US\$10 billion 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 prioritisation, poor budgeting processes, lack of competition and value for money, and other kinds of manipulations of the procurement and contract award processes<sup>1</sup>. Other fraudulent practices include award of contracts for non-existent projects, over-invoicing, diversion of public funds to foreign banks, and low project quality because of the use of inexperienced contractors. Moreover, procurement costs in Nigeria were significantly higher when compared with costs for similar projects in neighbouring West African countries such as Ghana.

## Reform Actions

The federal government noted the urgent need to reform the procurement process and bring about transparency in procurement procedures. In order to address the problem, the federal government in 2000 commissioned the World Bank to collaborate with some private sector specialists to study the financial systems and general procurement-related activities in the country. The essence of the request to the World Bank was to assist the government with a process of enthroning efficiency, accountability, integrity, and transparency in government procurement and financial management systems. The outcome of the study was the production of a Country Procurement Assessment Report (CPAR) 2000, which was a detailed diagnosis of the Nigerian procurement system and included both findings and recommendations (short- and medium-term). Some major weaknesses identified in the public procurement system in Nigeria were as follows:

1. Nigeria lacked a modern law on public procurement and permanent oversight and monitoring of purchasing entities.
2. The Finance (Control and Management) Act, 1958, together with Financial Regulations, which set basic rules for managing public expenditure, had gaps, deficiencies, and faulty implementation of existing regulations on procurement (e.g. lack of permanent arrangements for control and surveillance), which created opportunities for bribery and corruption.

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<sup>1</sup> About BPP: 'Background'. Available at: [www.bpp.gov.ng](http://www.bpp.gov.ng)

3. Due to inflation and lack of regular adjustments on the thresholds of the approving limits of the Tender Boards, their authorisations were constantly being eroded resulting in abuses, prominent among which was the splitting of contracts.
4. There was proliferation of Tender Boards which were perceived by the private sector as non-transparent and sources of delays. In addition, the Tender Boards appeared to have limited mandates, with powers to decide contracts *de facto* resting with the Permanent Secretary and the Minister/Commissioner.
5. Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption.
6. Procurement was often carried out by staff who substantially lack relevant training.

The Country Procurement Assessment Report (CPAR) 2000, therefore, formed the basis of the Public Procurement Bill later sent to the National Assembly, which was revised and enacted into law in 2007 as the Public Procurement Act, 2007.

Consequent upon the Country Procurement Assessment Report, and prior to preparation of a bill for procurement reforms, the federal government moved to implement the recommendations of CPAR, to the extent possible prior to legislative reforms. The federal 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. The BMPIU was charged with the responsibility of serving as the clearing-house for all federal government contracts and procurements of goods and services, and functioned until commencement of implementation of the Public Procurement Act 2007.

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

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

Following the enactment of the Public Procurement Act, (PPA) 2007, the federal government established the Bureau of Public Procurement (BPP) to take over the functions of BMPIU and implement the provisions of the Act. The Bureau also inherited the staff and physical structures of the BMPIU.

## Main Achievements

The federal government introduced a 'Due Process' regime that informed the processes set out in the PPA (2007). These reforms have saved, and continue to save, the country more than ₦618 billion (more than US\$3 billion) that could have been lost to inflated contracts or contracts for non-existent goods, works, and services. The Due Process regime and the

Public Procurement Act aim to effectively regulate public procurement, harmonise existing government policies and practices on procurement, set common procurement standards, and develop the legal framework and professional capacity for public procurement in Nigeria.

Other key achievements of the public procurement reform policy include:

1. The establishment of the Bureau of Public Procurement (BPP) to oversee, regulate, and monitor government procurement process.
2. Establishment of the Procurement Cadre within the federal public service.
3. Development and adoption of a code of ethics for public officers involved in procurement processes.
4. Development of a Procurement Manual and implementing regulations, as well as Standard Bidding Documents (SBDs) and Standard Request for Proposals (SRFPs) for the procurement of goods, works, and consultancy services. The SBDs and SRFPs provide step-by-step processes that must be followed in contracting and provision of procurement of works, goods, and consulting services in the country. The SBDs and SRFPs have been approved by the World Bank for use on the Bank's financed projects since 22<sup>nd</sup> September 2011
5. Development of national database of the particulars, classification, and categorisation of federal contractors and service providers, with a view to encouraging serious business organisations to register and position themselves for competitiveness in government business.
6. Translation of PPA (2007) into the three major Nigerian languages of Hausa, Igbo, and Yoruba.
7. Publication of details of all contracts awarded in the print media and Bureau's website.
8. The development of a robust complaint/recourse mechanism, which allows aggrieved parties in a procurement process to petition against procurement outcomes.
9. The wide applicability of the PPA in the federal public service. Thus, all federal and state MDAs are subject to it.
10. The streamlining of Tender Boards and the strengthening of their functional authority, including powers to award contracts.
11. Increased transparency, competition, integrity, best value, and efficiency in procurement practices.
12. Provision of a system of supplier remedies through administrative review of procurement decisions.
13. Development of a debarment procedure whereby indicted firms are debarred from participation in procurement activities.
14. Publication of *Public Tenders Journal* periodically as a means of reducing patronage in the award of contracts.
15. Certification of completed government projects as a requirement before final payments are effected.
16. The existence of a standard practice for all MDAs to base their annual procurement budgets on verifiable need assessment.
17. Regular and ad-hoc procurement audits of government agencies' procurement activities to check for compliance with the law, regulations, and procedures.

18. Twenty-four states of the Federation have so far passed their own versions of the procurement laws.
19. Continuous capacity building programmes and hands on procurement skills training for procurement officers and key actors involved in the public procurement process; including conversion training for officers migrating to the established Public Procurement Cadre in the Civil and Public Service
20. Continuous Capacity building of Non-State actors involved in procurement monitoring activities and Anti Corruption Agencies
21. Supported the establishment of the Public Procurement Research Centre (PPRC) and its training programmes at the Federal University of Technology, Owerri
22. Recent transfer of the responsibility for posting and transfer of officers in the procurement cadre to the BPP
23. Establishment of a BPP procurement management system/ database with the support of UNODC
24. Establishment of a National Public Procurement Forum which brings together the BPP and Heads of Public Procurement Authorities in the States as a mechanism for deepening procurement reform outcomes across the country.

## Key Challenges

In spite of all these laudable achievements, several procurement challenges still remain in practice. These include:

1. The circumvention of some provisions of the Public Procurement Act. Contract splitting and variation is still a challenge and the process is still being abused
2. There is an inadequate capacity of procurement staff. In many cases, this limited capacity affects the ability of the procuring authority to properly follow the procurement rules and thus obtain the required outcome from a procurement procedure.
3. Inadequate funding to sustain capacity building and other reform outcomes
4. There is a problem caused by the mismatch between budgetary appropriations and the actual release of funds, which often prevents procuring authorities from meeting financial obligations to contractors. This mismatch means that in some cases, procuring authorities have had to cancel contracts awarded or to be tempted to divert funds from other sources when it became clear that the government was not going to release appropriated funds.
5. The amendment to the Act as it affects the National Council on public Procurement (NCPP) should be accelerated by NASS and thereafter NCPP should be inaugurated
6. Bureaucracy and very costly delays in processing and approval of request for “NO Objection” by the BPP
7. There is a lack of harmonised structure of the public procurement cadre in the federal civil service. At the moment, some MDAs still conduct their procurement’s activities in the Department of Policy, Research and Statistics (PRS), contrary to the provisions of the Act. This is mostly because of lack of clarity from the Office of the Head of the Civil Service of the Federation as to whether or not the public procurement cadre and officers should be transferred to the BPP, as accountants and lawyers in the pool of the Offices of the Accountant General and Attorney General of the Federation,

respectively. However, the Postings of procurement officers in the civil service has been transferred to the BPP.

8. Prosecuting offenders for non-compliance with the Procurement Act 2007 suffers the same judicial delays as other anti-corruption cases.
9. Delays in the investigation of alleged infractions and lack of knowledge and capacity in investigating officers
10. Delays in payments and sometimes non payment of contractors for work done tends to truncate the entire reform process and leads erosion of public confidence in public procurement process.
11. Weak enforcement giving rise to pervasive culture of non-compliance.

## Assessment of Reform Initiative

When assessed against the 10 criteria for judging the success of government reform initiatives in this area, the Nigerian public procurement reform has met many of the requirements of international best practice. However, several challenges remain especially in relation to the outcome of the procurement process, even where the procurement process follows the requirements of the PPA.

S/No.	Assessment Criteria	Result of Assessment
1.	Has the public procurement (PP) reform improved the quality and quantity of public services?	The PPA has improved the quality and quantity of public services in terms of the effective regulation of public procurement, harmonisation 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.
2.	Do more people now have access to services, including disadvantaged groups such as women, young persons, and people with disabilities?	There is now a level playing field for all bidders. More bidders are emerging as successful in government tenders on merit and without knowing anybody in government. All major Federal government tenders are now published in the print media and the Tenders Journal
3.	Has the public procurement reform reduced the cost of governance?	The cost of governance has reduced to an appreciable level in terms of transparency and accountability process in procurement exercise. The federal government is estimated to have saved over ₦200 billion (about US\$1.5 billion) since 2001 in the form of reductions from inflated contract prices and initial prices quoted by various government contractors. It is also on record that BPP

S/No.	Assessment Criteria	Result of Assessment
		saved the sum of ₦216.6 billion during the 2010 appropriation year alone from review of contract processes before the issuance of Certificate of No Objection. Again, in 2013, the sum of ₦58 billion was saved from the review of capital projects alone. <sup>2</sup> Over ₦618 billion has been saved cumulatively over the period (and still counting)
4.	Has the public procurement reform made the service more affordable for citizens?	The PPA has made services more affordable for citizens through the promotion of an open tender process with competitive bidding for government contracts. This means that government is able to get better value for money for citizens.
5.	Has the public procurement reform reduced corruption?	The PPA has reduced corruption through the activities of the BPP, civil society organisations (CSO), and anti-corruption agencies, which have succeeded in tracking and prosecuting and convicting public procurement offenders. Whistle-blowing by CSOs has increased and the BPP has exhibited courage in reporting cases of corruption in the areas of collusion, unlawful influence, bid rigging, use of fake documents in bidding, bid splitting, etc. to EFCC and ICPC. Despite the inherent frustration in the judicial system, the anti-corruption agencies have arraigned and helped in prosecuting and convicting some public procurement suspects. There has been notable improvement in the efficiency of capital spending, more sanity, transparency, and competition into the previously opaque procurement process. Regular BPP procurement Audits have also reduced opportunities for non-compliance and corruption.
6.	Has the PP reform reduced unnecessary bureaucracy and red tape?	The PP reform has reduced unnecessary bureaucracy and red tape to an appreciable level. Hitherto, PP was regulated by financial regulations, which were issued by the Minister of Finance. These regulations were not accessible to the public or to contractors,

<sup>2</sup>Procurement reforms saved FG ₦58bn in 2013'-BPP (Emeka Eze), *Punch*, 13 January 2014.

S/No.	Assessment Criteria	Result of Assessment
		and could be changed by the Minister when he/she likes. This process was tedious and delayed the procurement process unnecessarily.
7.	Is the PP reform likely to lead to improved development outcomes?	The PP reform has already led to improved development outcomes because of the increase in the quality of government capital projects, resulting in good service delivery to citizens.
8.	Are things improving, staying the same, or getting worse?	Things are improving and corruption is being reduced, although MDAs are now finding ways to circumvent the provisions of the Act. However, such cases are often detected during procurement audits and appropriate actions taken by the BPP.
9.	Where things are improving, will those improvements endure?	The improvements made in public procurement reform will continue to endure as a result of their institutionalisation, although there is need to further tighten existing loopholes and sustain the reform outcomes. Culture of non-compliance should be checked and sanctions applied accordingly.
10.	Where things are not improving, what should be done?	Not Applicable

## Proposed Next Steps

1. The amendment to the Act as it affects the National Council on Public Procurement (NCP) should be accelerated by NASS and thereafter NCCP should be inaugurated;
2. The BPP should continue to rebuild procurement and financial management capacity in the public sector;
3. The BPP should adopt measures to block loopholes in the implementation of PPA 2007.
4. The compulsory use of the standard bidding documents endorsed by the World Bank for the conduct of all government procurement process should be effectively and widely enforced.
5. Identified corrupt high-ranking officials in the public service should be prosecuted without exception based on the PPA to serve as deterrent to others.
6. BPP should commit to a set of service standards for issuing 'No Objection' certificates once all documentation is complete.
7. The yearly budget should recognise and give priority to ongoing and long-term projects.

8. The BPP should step up procurement reviews, compliance audits, and field inspection/monitoring of ongoing projects and apply appropriate sanctions for contravention of the PPA. Weak enforcement and lack of sanctions appear to be the norm.
9. Awareness campaign should be intensified to ensure that a critical mass of stakeholders understand the rules and processes along the procurement value chain.
10. BPP budget should be increased to enable the Bureau to effectively carry out its statutory functions and build on the successes achieved thus far
11. Government should adopt a clear budget calendar to assist MDAs plan their procurement activities better.
12. The courts should be encouraged to fast-track cases of infringements against offenders to serve as a deterrent to public servants.
13. The remaining states in the country that are yet to enact the public procurement laws should be encouraged and supported to domesticate the Public Procurement Act in their states.
14. Strict sanctions should be applied to arrest pervasive culture of non-compliance.