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GOVERNANCE REFORM AND PUBLIC PROCUREMENT LAW REGIME IN NIGERIAN FEDERATING STATES: A CASE STUDY OF OYO STATE

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ABSTRACT: *Public procurement law regime is a veritable governance reform mechanism that seeks to institutionalize transparency, accountability, probity and zero-corruption in public procurement system. The federating states and local governments across Nigeria are under pressure to embark on governance reform. One of the key components of governance reforms is institutionalization of public procurement law regime in line with the federal government by both the state and local tiers of government. Unfortunately, most states in Nigeria have strong apathy and are unwilling to subscribe due to chronic corrupt tendencies of political class who are averse to change on one hand and mostly due to knowledge gap on their expectations of public procurement law regimes. Using Oyo state as a case-study, the paper X-ray some of the basic features and expectations of public procurement law regime. It observes that procurement law regime seek to achieve the purpose of good governance through institutionalization of standard procurement practices. It conclude by allaying fears of federating states and local government across Nigeria insisting that procurement law regime enhances proper governance as well as safeguard officials from likely repercussions of operating without standard procurement regulatory framework*

KEYWORDS: Nigeria, Governance Reform, Procurement law, States and Local Governments

INTRODUCTION

The Nigerian nation is in dire need of structural reforms in key aspects of her national life. She needs structural reforms in order to shore up her development horizon. There is urgent need for governance reform in order to attain desired growth and national development. This because Nigeria has been confronted with excruciating development challenges since 1960 when she obtained independence. Adeyeye. (2005). Some of Nigerian development challenges include poverty, political instability, monolithic economic structure, food insecurity, weak technology base, uncontrolled pollution, illiteracy, social insecurity, ethnic rivalry etc. More critical to national growth are also the problems of bad leadership, corruption and weak institutional framework which are necessary for sustainable national development.

Two major issues have driven development practices in Nigeria.
The first one is occasional leadership conscious effort which in development envisioning Aguda (1995), Ochulor (2010) Afegbua & Adejuwon (2012). By the approach, leadership is expected to come with visionary programs that lay solid foundation for national development and growth. In this sense, leaders that are sufficiently knowledgeable, possess the right vision come up and are able to establish development frontiers. Unfortunately Nigeria has not been that lucky to have visionary and purposeful leaders in this category since independence. Available models of

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leadership in Nigeria since independence are based on anti-development and mundane tendencies. It includes leadership configurations that are determined by unexciting considerations such as godfatherism, religious consideration, good luck factor. Other negative models in Nigerian leadership configurations include reluctant leaders, accidental leaders, tribal leaders, leaders by thuggery, leaders through non cognitive years of experience, concessional leaders and leaders by good governance tours Adeyeye (2014). The implication of this is that leadership in Nigeria generally lacks requisite philosophical cum ideological vision and orientations that is committed to developing a dream society beyond satisfaction of personal selfish desires of such leaders Oyinlola (2011). The second is development idea imposition as a precondition for assistance by international development partners such as IMF and the World Bank which Okonjo et'al (2007) argue was due mainly to lack of visionary leaders. The object of this model is for relevant international development agencies to encourage and where necessary use demands for development or governance program reform as a pre condition for certain support and assistance. Of these two models that drive development practice in Nigeria, the need for Nigeria to embark on governance reform arose mostly as a consequence of requests and pressure by international development partners particularly the World Bank. Specifically, the World Bank Country Procurement Assessment Report (CPAR), which painted an intriguing picture of how public procurements drive corruption in Nigeria, and President Olusegun Obasanjo was put under pressure to lay appropriate foundations for governance reform in the public procurement sub-sector.

By 1999, according to World Bank Country Procurement Assessment Report (CPAR) report, it was obvious Nigeria was in for serious trouble as the nation lost $10 billion dollars every year to corruption in public award of contracts. The initial response to the problems was the setting up Bureau of Monitoring and Price Intelligence Unit (BMPIU). Stephen & Basil (2012). President Olusegun Obasanjo sent public procurement bill to National Assembly between 2003/2004. The eventual signing of Public Procurement Bill into law by President Musa Yar' Adua on the 4th of June 2007 has remained one of the most remarkable water shed in Nigeria governance reform efforts particularly in the Public Procurement sub-sector. The cardinal objective of Public Procurement Law 2007 is to pro-actively address past anomalies and defects in public procurement systems. This include absence of ombudsman regulatory institution, lack of procurement thresholds and the need to effectively drive public procurement process in order to achieve accountability, transparency, openness, value for money and zero-corruption Adeyeye, (2008), Achimugu, (2013)

As expected, the Nigerian Public Procurement Law 2007 took the bull by the horn. The law is radical in its approach to some of the major procurement issues that have inhibited Nigerian growth and development. It is divided into twelve parts. Part 1 of Public Procurement Law (2007) establishes the National Procurement Council (NPC) to provide uniform national regulatory platform for procurement broad policy formulations. Part II of the law establishes the Bureau of Public Procurement (BPP). The Bureau of Public Procurement (BPP) according to the law is to act as supervisory organ and provide operational guidelines to regulate public it procurement practices. Part III of public procurement law (2007) exemplifies the scope of its application. By this, it is clear that the law is applicable only to federal government of Nigeria due to the federal nature of Nigerian nation. Part IV establishes legal format with regard to procurement thresholds.

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It also makes it a legal imperative for government procurement entities to engage in procurement plans and open competitive bidding. It also provides clear definition for the status of contractors/suppliers/service provides among other critical issues with the aim of strengthening public procurement practices.

While Part V of public procurement law (2007) gives legal basis for the establishment of procurement planning units and sets criteria for pre-qualification of bidders, Part VI deals with procurement methods that are permitted under the law. Part V11 focuses on conditions for special or restricted methods of procurement and Part V111 of the law gives conditions and steps for engaging consultants. Part IX deals with procedures for procurement surveillance and reviews by the Bureau of Public Procurement (BPP), while Part X focuses on methods of disposing public property. Part XI of public procurement law specifies code of conducts to regulate activities of stakeholders (Bureau officials, Tender Board, Contractors, CSO's, Procurement officers etc) and Part XII deals with offences for various categories of infractions under the law.

A general review of the objective principles and framework by relevant legal researchers and development practitioners indicates that Public Procurement Law (2007) provides adequate leverage for countering recurring problems of lack of regulatory framework. It attempts to solve problems of absence of thresholds and other obvious lapses that have precipitated gargantuan corrupt practices in Nigerian public procurement system. COPE-AFRICA (2010). The law also has been described as a breakthrough in Nigerian governance reform package. Although, the law is acclaimed as a desirable governance mechanism to institutionalize transparency, professionalism, due-process, value for money, accountability, cost effectiveness and zero-corruption in Nigerian public procurement processes. Igwe et'al there have also been some agitations for the laws to be amended in view of some obvious lacuna Ossai (2014) and the exigencies of unfolding challenges Ogege, (2010). These agitations are not in any way misplaced. Laws often undergo periodic amendments based on emerging realities which may not be foreseen.

Nevertheless, the public procurement law regime in Nigeria has become a watershed in governance reform programs. With the public procurement law 2007, public procurement practices have become institutionalized. Sanity is gradually being restored in procurement practices while past errors in which public procurements are shrouded in secrecy are beginning to be a thing of the past at the federal level. The procurement practices of most Nigerian federal ministries, departments and agencies (MDAs) have been brought under complete watch of public procurement law regime. Certain degree of openness through invitation to bid and public bid-opening, accountability; responsibility and reduced corruption have been brought to bear. Public procurements at the federal level of Nigerian government are being advertised and there are now mandatory open calls to bid. The Bureau of Public Procurement (BPP) has also being empowered by the law to provide required guidelines and other activities to strengthen procurement practices. Without doubt, the new public procurements law regime is a major boost to Nigerian governance reform profile Ogege, (2010). It is also noteworthy that nations across West African Sub-region have commended the initiative. Some countries within the region have come to understudy and adopt key aspects of Nigerian public procurement laws in their respective national procurement management models. Beauty (2013)

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It is however not yet the time for total celebration galore. This is because there is critical hurdle of how to deepen public procurement law regime across entire 36 federating states and all the 774 local governments in Nigeria. The Public Procurement Law (2007) is applicable only to federal government. This is due to the federating nature of Nigerian political configurations. Other tiers of government (states and local government) are expected to adopt the law out of their own volition. It is a fact that until all the three tiers of government (federal, states and local) subscribes to public procurement law regime, the obvious gains of public procurement sub-sector as a major governance reform agenda may not make any meaningful impact and help achieve desired Nigerian development goals. The budget office, (2004) has confirmed that the federal share of public expenditure from federal collectable allocation stands at 48%, while the combined expenditure by other tiers (states and local) governments is 52%. The implication of this is that substantial part of public procurement expenditure profile is yet to be institutionalized or captured by public procurement reform agenda. It will be pretty difficult to feel real impacts of public procurement reform in national development context. Unless every segments of government adopt and practice Public Procurement Law regimes, the original expectation was that all the tiers of government will subscribe to public procurement law regime given the potency of public procurement laws as veritable reform mechanism to fast track sustainable national development.

While substantial number of states have refused to pass the law, those that passed it have remarkably tinkered with the law in order to achieve objectives other than good governance reform. There is also no single local government in Nigeria that deemed it fit, to key into public procurement law regime in order to enhance proper procurement practices. Various reasons have been advanced for this appalling situation. These include the problems of Nigerian federating system of government which encourage laxity and free choice among the tiers of government to pass law. There is also the issues of lack of political will towards radical national development change; absence of strong or compelling institutions, high-level corrupt tendencies among political class, absence of philosophical and ideological vision and orientation to developing a dream in society Oyinlola (2011) lack of commitments to corruption war in Nigeria and the pervading corrupt practices that has almost become accepted as Nigerian socio-cultural values system. Of all the above, the problems of knowledge-gap as to the real intention of public procurement law regime in terms of how it can help to enhance security, independence and good governance instead of endangering the political class and making government officials prone to unnecessary probe by anti-corruption agencies has been identified as key disincentive. While efforts have been made by concerned and relevant stakeholders such as International Development Partners (IDP), the World Bank and relevant Civil Society Organizations (CSOs) to broaden the scope of application of public procurement regime in order to ensure that all the three tier of government come under the new procurement regime COPE-AFRICA (2013) the Nigerian political class seems averse to public procurement law regime because they see it as endangering. They are more concerned about their political future and capacities for unencumbered access to political and economic resources. They believe that procurement laws limit their capacities for unrestrained access to government largesse. They believe that the law will stifle their expected return on political investments. This is pathetically so against the backdrop of the fact that in Nigeria and other developing African countries, quest for political office is not about service but Stephen & Basil (2012) what political office can offer in term of wealth, power and other perks of office. Ogbeidi (2012), Gyong (2012), Ene et'al (2013). For these reason, state governors and local government political gladiators' seems

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averse and are out rightly unwilling to subscribe to public procurement law regime. They seem not to be too happy about legal requirements of procurement law regime. They are also not easily disposed to new way of doing things. Political office holders prefer the old secretive and opaque manner of public procurement that does not in any way expose transactions in government business. Besides, there is utter distaste and disdain for the new legal arrangement which seeks to subject their transactional activities to future legal scrutiny.

The public procurement law regime is therefore seen as a dangerous legal instrument which may backfire. Concerned Nigerian public officials both at the state and local government levels appear not to see or feel unconcerned by governance reform potentials of public procurement law regime. They out rightly did not want to understand that the aim of the law is to institutionalize due process. They never bother about the capacity of public procurement laws regime to insulate, protect and safeguard officials and their activities against undue influence and future probes. They did not care to know that the duty of the new regime is to define roles and responsibilities of every official in a way that makes officials perform optimally without encumbrances apart from promoting good governance.

However, it is the position of this paper that public procurement law regime enhances good governance and even protect political office holders. Using Oyo state as a case study, the study articulates the basic features of public procurement laws (2010) in the context of a given state in Nigeria. It examines the objective applications of Oyo state public procurement law (2010) regime in relation to how political office holders and other categories of officials are insulated and safeguarded. The aim is to bridge the existing knowledge gap among politicians and officials in states and local government against unnecessary apathy and fears. The aim is also to put public procurement law regime in proper perspective and also to make it clear that public procurement law regime does not seek to endanger but rather strengthen the positions of officials and help to institutionalize good governance practices across all tiers of government. So that all tiers of government (federal, states and local) can key into public procurement regime in order for Nigeria to maximally reaps the fruit of governance reform in public procurement sub-sector.

X-Ray of Public Procurement Practices in Oyo State

There is a close resemblance between experiences at the federal level of government in Nigeria and Oyo state in public procurement reform scheme. The public procurement mechanism in Oyo state passed through three unique stages. These are: Pre-Due Process Stage; Due Process mechanism stage and the stage of Oyo state Public Procurement Law 2010 regime. The Pre-Due Process stage was an era when there was no formalized, responsive public procurement system. The era Pre date 1999 and it is not peculiar to Oyo state. It was a normal practice by all tiers of government at this stage to operate haphazard public procurement policies. There were no unified mechanisms. Government did not enjoy best value for money and there were no transparency. No standard operational framework for public procurement practices. The pre due-process stage was also characterized by various procurement abuses. They were over-invoicing, contract cost inflations, arbitrary pricing and poor tracking of performances. The stages also give room for unethical and sharp practices. At its peak, Oyo state like other tiers of government (Federal, states and local) were grossly enmeshed in financial recklessness. Government contracts became easy

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avenues for rip-offs, corrupt practices and there were reckless contract infractions by various shades of contractors mostly with the support of public officials.

The Due-Process Mechanism stage in Oyo state was a spillover of initial reforms by the federal government of Nigeria. Consequent upon the setting up of Budget Monitoring and Price Intelligence Unit (BMPIU) by the federal government as a stop-gap due-process measure, other states keyed into the scheme with the aim of enhancing due-diligence in public procurements practices and other contract related awards so as to achieve fair deal for government through price monitoring. Specifically, Oyo state government under Senator Rasheed Ladoja follow the footstep of federal government by instituting Budget Monitoring and Price Intelligence Unit (BMPIU) popularly called Due Process Unit under a Special Adviser. Alao Akala on assumption of office in 2007 followed suit by putting more relevance and effectiveness into the office of the Special Adviser on due process with responsibilities that include development of procurement core-parameters. The Unit establish threshold of approvals, encourage evaluation of bids while it become resolute on right process, right winner and right price with focus on competitive lowest responsive evaluated bid. The Unit also embark on issuance of certificate of award and other post-contract award monitoring activities.

There is no doubt that the due process mechanism was able to assist Oyo state in a number of ways. It helps to develop a unified procurement format for the state. It assists in getting best-value for money invested in procurements by the state to some extent. It also ensures that procurement proposals comply with checklist on competitiveness and transparency. Oyo state government was able to save money because due process mechanism gives room for post-award project monitoring. Nevertheless, there are certain fundamental problems with due process mechanism era as it were just like the way it was with the federal and other states that adopted the system.

First, there is absence of strong enabling legal framework to regulate public procurement practices. The Oyo state due-process mechanism was merely an ad hoc arrangement. The activities and operations of Oyo state due process mechanism do not have the force of law. Most of the decision and actions are haphazard and therefore could not be enforced. Secondly, the Oyo state Due Process stage could not substantially reduce or eradicate corruption. There exists opportunities for collusion among contractors and public officials to perpetrate corrupt practices. Public advertisements of government contract do not guarantee openness, and transparency. Thirdly, due diligence were not strong enough as engineers, accountants, architects and other certifying officials become honey pot for corrupt manipulation through collusions and compromise. With the promulgation of Public Procurement law by the federal government in 2007 however, it was apparent that the standards for procurement practices have shifted. The public procurement law 2007 became a critical challenge to all the 36 states and all the 774 local government in Nigeria. Oyo state government was able to key into the new public procurement regime sometimes in December 2010 when the Oyo state public procurement law (2010) was signed into law.

Basic Features of Oyo State Public Procurement Law 2010.

The objective principle of public procurement law (2010) in Oyo state is to pro-actively response to reform exigencies public sector procurement system in order to ensure fairness, competition, transparency and cost accuracy COPE (2011). It is also aimed at institutionalizing culture of

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effectiveness and efficiency in the implementation of budgetary expenditures. The public procurement law (2010) also seeks to eliminate waste, reduce corruption and recurring incidences of abandoned projects.

Essentially, the Oyo State Public Procurement law (2010) has some major resemblance with Public Procurement (2007) of the Federal government of Nigeria. The areas of difference are in the extent of domestications as well as on issues of taking ownership of the process. While the public procurement law 2007 applies only to federal procurements, the Oyo state public procurement law 2010 focuses only on Oyo state. Whereas, with public procurement law 2007 people are given wider opportunities to take full charge of the process, the Oyo state public procurement law 2010 gives too much of ownership and power to the executives in public procurement process and management. Other major highlights of the Oyo state public procurement law 2010 are as follows:

Part 1 of the Oyo state public procurement law (2010) establishes the Oyo state public procurement council. It specifies membership of the council. Other key features of part 1 of the law is that it makes Permanent secretary, Oyo state Bureau of Public Procurement (BPP), the secretary of the council, while the Special Adviser to the Governor on Due Process; Commissioners for Finance, Justice; Head of Service are permanent members. Other members are representatives of Nigeria Bar Association (NBA), Nigerian Society of Engineers (NSE) Civil Society Organizations' (CSOs') and the Media are part-time members. It specifies the functions of Oyo State Public Procurement Council. Part 11 of Oyo State Public Procurement law (2010) establishes the Oyo State Bureau of Public Procurement (BPP), the roles, functions and powers of the bureau. It makes the Special Adviser to the Governor (Due Process) the head and chief executive officer of the bureau while it makes the Permanent secretary the accounting officer. It also defines the tenure of the office of the permanent secretary which is four-year term that is renewable only once. Part 111 defines the scope of application of Oyo state public procurement law (2010). The law shall apply only to all procurement of goods, works and services carried out by the Oyo state government and all her procurement entities.

Part IV establishes fundamental principles for procurement in Oyo state. Some of these principles are the imperatives of setting thresholds, and needs for procurement plans; use of competitive bidding, specifying bidders' qualifications/requirement etc. Part V of Oyo state public procurement law (2010) focuses on organization of procurements. It gives definitions and legal status to approving authority, procurement planning, initiative on bids, competitive opening and it specifies, role of tender board and procurement entity. Part VI specifies the legal methods for procurements of goods and services. It exemplifies procedures invitation to bid, bids examination, bid validity period, rejection of bid, conditions for bid modification or withdrawals and bid evaluation. Part VII of Oyo state public procurement law (2010) specifies conditions for domestic preference and also makes it legal for proper recording of procurement proceedings. Part VIII gives legal conditions for special and restricted methods of procurement including direct procurement while Part IX focuses on legal conditions for procurement of consultancy services and the procedures for request for proposals (RFP), clarification and modification of request for proposal, proposal evaluations and setting criteria for proposal selection. Part X of Oyo state public procurement law (2010) establish legal framework for procurement surveillance and reviews, while Part XI deals with procedures for disposal of public properly. Finally, the final Part which

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is part XII of Oyo state public procurement law 2010 defines codes for public procurement and specifies penalties for infractions or any forms of contravention.

Implications of Oyo State Public Procurement Law 2010 to other states and local governments across Nigeria

The Oyo state Public procurement law 2010 has some critical implications for Nigerian states and local governments that are yet to enact their versions of public procurement law and those that have enacted the law. First, the Oyo state Public procurement law 2010 has been able to provide required enabling legal framework and general guide for regulating public procurement practices. This is a remarkable departure from the past when there was no legally binding regulatory benchmarks on public procurement practices. The law has also been able to put in place clear objective principles for public procurement practices. This includes attainments of competitiveness, best value for money and transparency. The law is also able to provide standard definition of procurement and this has helped to avoid possible ambiguities. It has been able to define procurement in clear legal context as acquisitions of goods and or services at the best possible total cost of ownership in the right quantity and quality at the right time and place for direct benefit or use of Oyo state government.

Another critical implication of Oyo state Public Procurement law 2010 is that it has been able to create, recognize substantive institutions and structures that are necessary for sustainable procurement activities Adeyeye,(2010). For instance, it establishes the Oyo state Public Procurement Council (PPC) and the state Bureau for Public Procurement (BPP). The duties of these institutions are to initiate and establish enduring templates for effective public procurement practices. The law has been able to strengthen concerned institutions by specifying the composition, funding and modus operandi. The Oyo state Public Procurement Law (2010) spelt out functions of the state Public Procurement Commission to include formulation of general procurement policies, operational rules and guidelines relating to public procurements. It mandate the bureau to maintain database on public procurement issues; engage in public procurement coordination, monitor prices, embark on procurement research and survey, train professionals; issue certificates prior to award of contracts and develop approving thresholds Adedayo (2013)

In addition, Oyo state Public Procurement law 2010 provides general qualifications for prospective bidders in public procurements. It also provides ground for disqualifications. It streamlines roles and responsibilities of Ministries, Departments and Agencies (MDAs) by making it lawful for MDAs to set up procurement planning committee. By so doing, Ministries, Departments and Agencies (MDAs) are made to avoid old haphazard approach to procurement practices. The duties of public officials have also been clearly spelt out and safeguarded, provided they follow steps outlined by extant law. By so doing, the law becomes a mantra of some sort thereby making public officials activities in procurement management rule bound. The Oyo state Public procurement law 2010 also specifies and highlights approved methods of public procurements and the acceptable procurement processes. For instance, all public procurement must be by open competitive bidding. In the case of needs for exception such as restricted bidding or direct procurement, the conditions for such exceptions have also been clearly stipulated by law. This requirement, apart from safeguarding against abuse in procurement practice, it has safeguard and strengthens position of officials.

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Finally, the Oyo state procurement process as outlined by procurement law (2010) insists that the legally acceptable procurement processes must include preponderance of invitation to bid; either through pre-qualification or expression of interest (EOI). The law also provides standard format for bid submission, the acceptable methods of bid-openings, method for bid evaluation and the criteria for selecting winning bids or proposals. It also makes provisions for complaint procedure and dispute resolution.

In general, the Oyo state public procurement law (2010) has the capacity to assists procurement entities and other categories of public official towards entrenching due process. It has succeeded in setting up unambiguous template for public procurement operations. The law is able to insulate officials from practices that are likely to jeopardize their position. The Oyo state Public Procurement law (2010) also sets standard procedures for public asset disposal. Asset disposal is an issue which has generated untoward crisis among officials. With the law, there is proper recognition of the fact that if asset can be procured procedurally; it is also important that used or disposable asset must equally be disposed off in a legally binding manner that follows clearly spelt-out procedures. Above all, the public procurement law (2010) regime has benefited Oyo state immensely. Governance and due process audit report has confirmed that Oyo state government has achieved concrete gains in the areas of waste reduction, enhanced government contract monitoring, financial discipline and more essentially it has enjoy the gains of proper institutionalizations of public procurement practices.

The Oyo state Public Procurement Law 2010 may not be perfect in every respect as there are obvious lacunas inherent in the law. In fact, some sections of the law did not capture ideal situation. The law may not seem to measure up to expectations in term of promoting good governance. There is over concentration of power and activities on the executive arm of Oyo state government rather than increased public engagement in public procurement so as to enhance probity and transparency. For instance, there is no visible role for civil society organizations (CSO's) and media in terms of access to information's on public procurement as a way of strengthening good governance and accountability. Nevertheless, the law is an important milestone in the entrenchment of good governance practices as well as ensuring that public officials are insulated from unnecessary future probes if they act according to the dictate of the law.

CONCLUSION

The Oyo state Public Procurement law (2010) experience has clearly indicate that there are no reasons what so ever for apathy among states and local government in Nigeria on public procurement law regime. There is no justifiable by all the states and local government across Nigeria not to domesticate and implement public procurement law regime. The Oyo State public procurement law regime as it were, exists to strengthen governance practices; promote probity, accountability and transparency in public procurement practices. Beyond this, it has the capacity to guarantee and secures officials by insulating them from unnecessary corrupt practices and influences. The Oyo state Public Procurement law (2010) parades due-process templates which delineates roles and responsibilities of relevant officials. By so doing, it does not give room for unbridled manipulations that put officials' in unnecessary future jeopardy. Essentially, the Oyo State public procurement law (2010) has laid the foundation for good governance using

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procurement reform as a fulcrum. If the purpose of good governance and attainment of overall sustainable growth and development should supersedes selfish interests of political and public officials in public management configurations, the needs to domesticate and implement public procurement law regime by all the states and local government has become imperative. Political leaders and concerned public officials at states and local governments across Nigeria should immediately purge themselves of Aristotelian moral Akrasia by doing what is right. There is urgent need for entrenchments of public procurement law regime so that Nigerian can adequately maximize the benefits of good governance in public procurement reform towards improved good government profile...

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