

THE PUBLIC PROCUREMENT REFORMS IN NIGERIA: IMPLEMENTATION AND CHALLENGES

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ABSTRACT: *The paper presents as analyzed insight to the public procurement reforms in Nigeria. The public procurement as one the major functions of government in Nigeria is playing a significant roles toward infrastructural development in Nigeria. Reforming in the public procurement sector was necessary to regulate the entire procurement process. The set up of the due process policy in 2011, Public Procurement Act 2007 his revealed a lot as to the unprofessional nature in the public process in Nigeria. The paper proffer sound public procurement practices as a panacea to the reform and implementation in Nigeria. It revealed that weak public procurement system and practices characterized by corruption and lack of accountability, transparency, competition and fairness. Data were sourced basically from secondary source. The study identified the factors that undermine integrity in the public process.*

KEYWORDS: public procurement, implementation, reforms, transparency,

INTRODUCTION

Public procurement is the process of assigning an external entity to obtain works, goods and ir service to the funded from the public treasury (Tukamuhabwa 2012) from the general perspective public procurement involves the procurement of goods and services by third party on behalf of the procurement, here the government, refer to as public entity when could be various municipalition ministries, provinces, agencies or any other governmental organization (Othman, Zakaria, Nordin, Shahidan, & Jusoff, 2010). Public procurement has been identified as the government activity most vulnerable to corruption. As a major interface between the public and the private sector, public procurement provides multiple opportunities for both public and private sectors to divert public funds for private gain. For example bribery by international firms in OECD countires in more pervasire in public than in utilities, taxation, judiciary and state capture (OECD 2007).

The challenge of ensuring intergrity in the public procurement processes is therefore not a problem peculiar to Nigeria or the developing countries alone. The lack of open processes and procedures and mismanagement of resource in the award of contracts in the government circle

may have necessitated calls by international organizations for governments to pay greater attention to the public procurement process to ensure that award of contracts and other procurement matters are handled professionally, in compliance to acceptable global standards. The establishment of the organization of public procurement ensures compliance to enthrone transparency, accountability, and value for money in the procurement of goods, works and services, both for project planning and implementation. The procurement Act stipulates the punitive measures when aimed at discouraging the arbitrary award of contract and the wanton abandonment of government projects and corrupt activities of some government official. Due process in public procurement and award of contract, among other benefits, accelerate infrastructural development in the country by the elimination of inflation of contract cost and abandonment of project which would launch the country into the comity of progressive nations.

Public procurement reforms is necessitated in Nigeria by transparency and accountability related issues due to rampant public procurement fraudulent practice in addition to conflict of interest, and this has remained the sole reason for reforming public procurement processes in most of the countries that passed through the public procurement transformation process (Jibrin Ejura, & Augustine 2014) The aim is to uplift the status of the country economically by reducing the high level of poor governance, public procurement irregularities fraud and corrupt related practices within the public sector generally (Shwarka & Anigbogu 2012).

The set up of the Bureau of public procurement and the enactment of public procurement Act 2007 were necessary as there was the need to make public procurement processes more professional, efficient and effective.

Objective of the Study

The specific objectives are to:

- To explore/identify the difficulties faced in public procurement implementation
- To identify the reason that led to the implementation of public procurement
- To assess the various reforms strategies needed to improve on public procurement practices.
- Identify the role of public procurement practices on national development.
- To investigate the challenges and problems of public procurement in Nigeria.

RESEARCH METHODOLOGY

This study falls under the survey research typology. Data were sourced basically from secondary sources, such as textbooks, journal, magazines, government publication etc. that are relevant to the subject matter.

Elements of a sound public procurement system

Accountability

Procurement practitioners are held responsible for enforcing and obeying the rules, practitioners often encounter some challenges, if appropriate sanctions are imposed, accountability becomes an inducement to probity, a deterrent to corruption, and a prerequisite for credibility.

Competition

Open competition. Characterised by unrestricted access to notification of all available opportunities to all qualified and interested bidders, this expands the purchaser options and opportunities.

Economy and Value for Money

Value implies more than price. It includes quality, quantity, and even a lifetime operating cost, the basic objectives here is the highest overall quality for lowest overall price. In other words, economy means delivery of maximum benefit at the least cost possible, after spending a given amount of money.

Efficiency

The procurement process must be simple and swift, positive results should be consistently achieved without protracted delays, the system must be practical and compatible with available administrative and human resource. There must be no wastage of financial, material and human resources in executing a procurement exercise.

Fairness

The system must be fair in opportunity, objective and impartial in evaluation, it should offer a level playing field to all interested contractors, suppliers and consultation.

Planning

A sound procurement system, firmly integrated with the budget cycle (i.e. it includes procurement planning) it ensures that proposed capital projects are included in the national budget and funds properly appropriated.

Transparency

Rules and procedures should be accessible to all, must be consistent and unambiguous. The process should be fair and more importantly, seen to be fair (Edom 2015).

Public Procurement Act 2007

By the provision of public procurement Act 2007, the following should be noted about award of contract and public procurement.

1. Procuring entities should outsource those services that are either not part of their core business activity, or to which there is a fluctuating requirement in terms of specialist skills or equipment, or where the open market provides a more efficient and commercial alternative.
2. The approval and maintenance of monetary and prior review threshold is important for the faithful implementation of the PPA. The thresholds establish relevant approving authorities and methodologies monetary threshold is detailed in the interpretative section of Act to mean the value limit in naira set by the Bureau outside of when an approving authority may not award a procurement contract.
3. Procurement to be Executed:
 - a. By open competitive bidding, except as otherwise exempted
 - b. In a manner which is transparent, timely and equitable for ensuring accountability and conformity when the public procurement Act and regulations derived there from.
 - c. With the aim of achieving value for money and fitness for purpose
 - d. In a manner which promotes competition, economy and efficiency.

4. Where the Bureau has set prior review thresholds, no funds shall be disbursed from the Treasury/Federation account/ or any bank of any procuring entity for any procurement falling above the set thresholds, unless the cheque, warrant or other form or request for payment is accompanied by a “certificate of No objection to award of contract, duly issued by the Bureau.
 5. Subject to the monetary and prior review thresholds for procurements, the parastatal tenders Board of a government agency, parastata, or corporation or in the case of ministry or extra-ministerial entity, the ministerial tenders Board shall be the approving authority for the conduct of public procurement.
 6. The following procurement shall be observed of government in implementing their procurement plans.
 7. All bidder in addition to requirement contained in any solicitation documents. Shau.
 - a. Possess the necessary professional and technical qualifications to carry out particular procurementFinancial capability
Equipment and other relevant infrastructures
Shall have adequate personnel to perform the obligations of the procurement contracts.
 - b. Possess the legal capacity to enter into the procurement contract.
 - c. Not be in receivership, the subject of any form of insolvency form of winding up petition or proceeding.
 - d. Must have fulfilled all its obligation to pay taxes, pension, and social security contribution.
8. Procurement approval threshold (PPA ACT 2007)

Scenario of Public Procurement reforms in Nigeria

Public procurement reforms basically involved the development and implementation of procurement legal framework and procedural regulation, the procurement process, system and methods, as well as reforming the organizational structure and stakeholders responsibilities (Thai 2005) the move toward establishing public procurement regulations started in the twenty century, and it became merely a global revolution in the public procurement sector (Arrow & Trybuy 2003) therefore in an attempt to comply with world Bank recommendations, in June 2007 the country followed the footsteps of other developing nations and passed a legislation known as public procurement Act (PPA 2007) to ensure economy, efficiency, fairness, reliability, transparency, accountability and ethical standards in the procurement process of the public sector.

The PPA 2007 requires the establishment of Bureau for public procurement (Bpp) and National council on public procurement (NCP) as administrative units for ensuring the implementation of the new procurement law. This is also to provide ground to developing a legal framework and professional capacity for effective monitoring and thorough checks of all the aspect of public procurement within the country (Shem 2014).

What led to the procurement reform

- Preview procurement was bedeviled from corruption and nepotism
- Suffered abuse of regulation and procedure
- Lacked openness and transparency in competition in the selection process
- Lack of integrity in government spending within budget. There was in value forming.

Reasons for Review of procurement System

The following are the reason for reviewing the procurement system

- Over involving
- Non execution of contract
- Full payment made for contract not completely executed
- Non- availability of any law of guid procurement practice in the past
- Short supply of items ordered
- Officer in government connive through bureaucracy
- Fictitious allocation of import licenses
- Absence of transparency and accountability
- Non- recognition of professionals in this field of enfeavour.

Implementation Challenges of the reform Initiatives

The three major implementation challenges identified include unfamiliarity with the procurement guidelines, fraudulent practices, and influencing project award.

1. Unfamiliarity with the procurement initiative familiarity is one of the major significant factors of the public procurement rules (Onyinkwa 2013). The Nigeria public procurement reforms have reaches recommendable stage in term of developing procurement regulatory and standard procedures and guildines. There is serious lack of awareness on the public procurement guidelines in Nigeria leading to unfamiliarity with the procurement guildelines among the major stakeholder (Shehu, 2014).

2. Fraudelent Practices: The hazardous effect caused by fraudulent practices within the public procurement sector necessiate government in initiate procurement reforms as anticorruption proposal, this is very vital to the economy grwoth of every anntry especially those within the developing category (Wittis, 1999).

Adequate transparency and competition are among the basic features of efficient procurement system, unfortunately, they are sadly hacking in the developing economic thus creating rooms for fraudulent irregularities within the public procurement practices (Thai 2008).

Evidence of fraudulent related irregulation in public procurement tends to be more obvious developing countries, Nigeria inclusive (Jibrin 2014). Evidence from the exsting literature shows that those developing countries links with fraudulent practices are the same time hihgly characterised by improper implementation with the procurement regulations (Obandi, 2010).

Influenciny Project Award

The long term effects of project award influecne either political or otherwise the ethical standards of procurement entities, and the loosed of confidences on the entire procurement systems and the stakeholder involved (Kanyogo & Kiptoo 2013). In developing countries especially Nigeria, public procurement consititutes the major activities of ministries, government departments, and organization. The activity involved in public procurement process tends to be politically sentive (Scheffer, Malta, Giber).

These give room to the external and internal influence of project award both at the ministry and at the procurement entity level, thus leading to non-compliance with the procurement reforms regulations.

Public Procurement Act 2007: Issues and Challenge

Some of the serious issues and challenges contained in the Nigerian Public Procurement Act 2007 are as follows:

- (i) The Nigerian Public Procurement Act came into being in June, 2007 but the National Council on Public Procurement provided for in the Act is yet to be constituted by the Federal Government;
- (ii) Many relevant subsisting Government policies and regulations on procurement just prior to the enactment of the Act were completely left out;
- (iii) The Federal Executive Council, FEC approves contracts when that mandate is not provided for in the Act;
- (iv) Large contracts are being approved by the civil servants of the Legislative and Judicial arms of Government without the involvement of the Political and Judicial Principal officers,
- (v) For smaller contracts the Procurement Planning Committee of the procuring entities are mandated to issue the Certificates of No Objection but for larger contracts no such committee is provided. As such the Director General of the Bureau of Public Procurement can single-handedly issue such Certificates This may be a major source of corruption in public procurement; After contracts are approved and advanced payments made, the Act did not provide who approves subsequent payments as the contracts progress;
- (vi) The Act provides for a number of alternative procurement methods but did not provide adequate controls on their applications by the procuring entities in order to minimize misuse, abuse and corruption; and
- (vii) Despite the existence of the Public Procurement Act in Nigeria and the provisions of the open competitive bidding, it is still very common and very easy for corrupt Chief Executives of procuring entities to award contracts to themselves, their families, their friends and associates. These are achieved by compromising the bidding and prequalification processes.

Challenges of Public Procurement in Nigeria

The public procurement practice and system have been acclaimed, based on empirical evidence, as the best means of guaranteeing the provision of public goods for the citizen and public expenditure management. The Nigeria public procurement practice before the enactment of the public procurement ACT 2007 had been known to be unprofessional, inefficient and ineffective; as it was based on treasury circular of 1958, which provided only guidelines on public expenditure management.

Major Challenges of Procurement

Some of the public procurement challenges are stated below:

1. Refusal of stakeholders in locations where government projects are sited, of the new procurement reform and paradigm shift from ideology of business as usual.
2. Political interference
3. Refusal to inaugurate the National council on public procurement, whose membership is statutory and well known.
4. Some organizations still conduct their procurement process in the department policy. Research and statistics or Administration contrary to the provision of the Act.
5. The ability of anti-corrupt agencies to promptly try and dispose of public procurement cases

6. The law courts convince with most defending counsel to resort to unnecessary and ridiculous injunctions and adjournments to frustrate the trial of suspect.
7. Non-appreciation of public procurement Act by the public
8. Lack of enlightenment of public procurement to the public
9. Some MDA make it difficult for the chief accounting officer to effectively observe the process.
10. Late passage of annual budget
11. Short record of conduct of the procurement process to avoid the monies being mopped up
12. Poor screening of technical and financial bid.
13. Complaint of long delays in contractors getting agreement prepared and signed.
14. Difficulties in getting advanced payment
15. Guarantees and bid bond from the MDAs nominated or preferred banks.
16. Some MDAs still demand registration of contractors with them, before bidding contrary to the guidelines.
17. The frosty working relationship between the ministry and the parastatals under them.
18. The National Assembly that passed the law and oversight its administration to project transparency rather than abuse the stipulation of the Act
19. Lack of integrity and good character
20. Abuse of procurement processes
21. Conniving with contractors by leaking official information.
22. In-house estimate leaked to the contractors
23. Tax clearance forgery
24. Split of contract
25. Tenders Board approval
26. Award of contract
27. HODs should aggregate request and avoid piece meal purchase
28. Cash purchase should be discouraged, except on emergency.
29. HODs should avoid using wrong specifications
30. Insufficient fund affect the maintenance of stock levels
31. User should understand that in costing, price, suitability and value for the money spent is considered.
32. User should liaise with the procurement department to get what they need at the right time.
33. User should include all that are required for the equipment to work seen as accessories, inverters, consumable and not just the equipment alone.
34. Many HODs don't send their needs on time to the procurement department. This affects procurement planning given the constraint of fund, time, cost and quality. Moreover, due process must be followed (PPA 2007).

CONCLUSION

Since the enactment of PPA 2007, implementation of the regularised procurement reforms initiatives in Nigeria has not been without challenges. The major identified challenge facing the procurement reforms as initiative as identified include unfamiliarity fraudulent practices, and influence. To ensure full implementation there is need for adequate awareness scheme, imposing penalty for defaulter as well limiting the influence of project award. The establishment of

National Council of public procurement is well recommend; as provided by section 1 of PPA 2007. Sound public procurement system is a reflection of goods governance while weak public procurement system is a reflection of bad governance. Many direction, poor coordination lack of open competition and transparency, differeing levels of corruption and most importantly not having a cadre of trained and qualified procurement specialist who are compotent to conduct and manage such procurements in a professional, timely and cost effective manner.

Recommendation

The following are the recommendation for effective public procurement reforms and implementation and change.

1. There should be an autonomous agency charged with the responsibility of monitoring the processes of bidding, award and execution of contracts with powers to prosecute those who abuse the processes.
2. Capacity building by way of training and refraining of procurement offers or personnel of procuring entities.
3. Ensuring that all government agencies or institution saddled with the responsibility of ensuring sound public procurement practices.
4. Strict adherence to the legal framework for regulation of public procurement
5. Ensuring transparency, completitiviness and fairness in the award of government contract.
6. The Nigeria government should also ensure that organs promptly approve and release funds to avoid undue stress on procurement process.
7. There should bne proper database for proper record keeping and documentation in the BPP and in all the government MDAs in the country.
8. The Bureau should develop a clear timetable and programs for tackling problems of shortage of technical capacity for public procurement.
9. There is need to set up the National Council on public procurement to reduce the level of political interference with public procurement.
10. There should full implementation of public procurement Act 2007 and compliance in Nigeria.

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