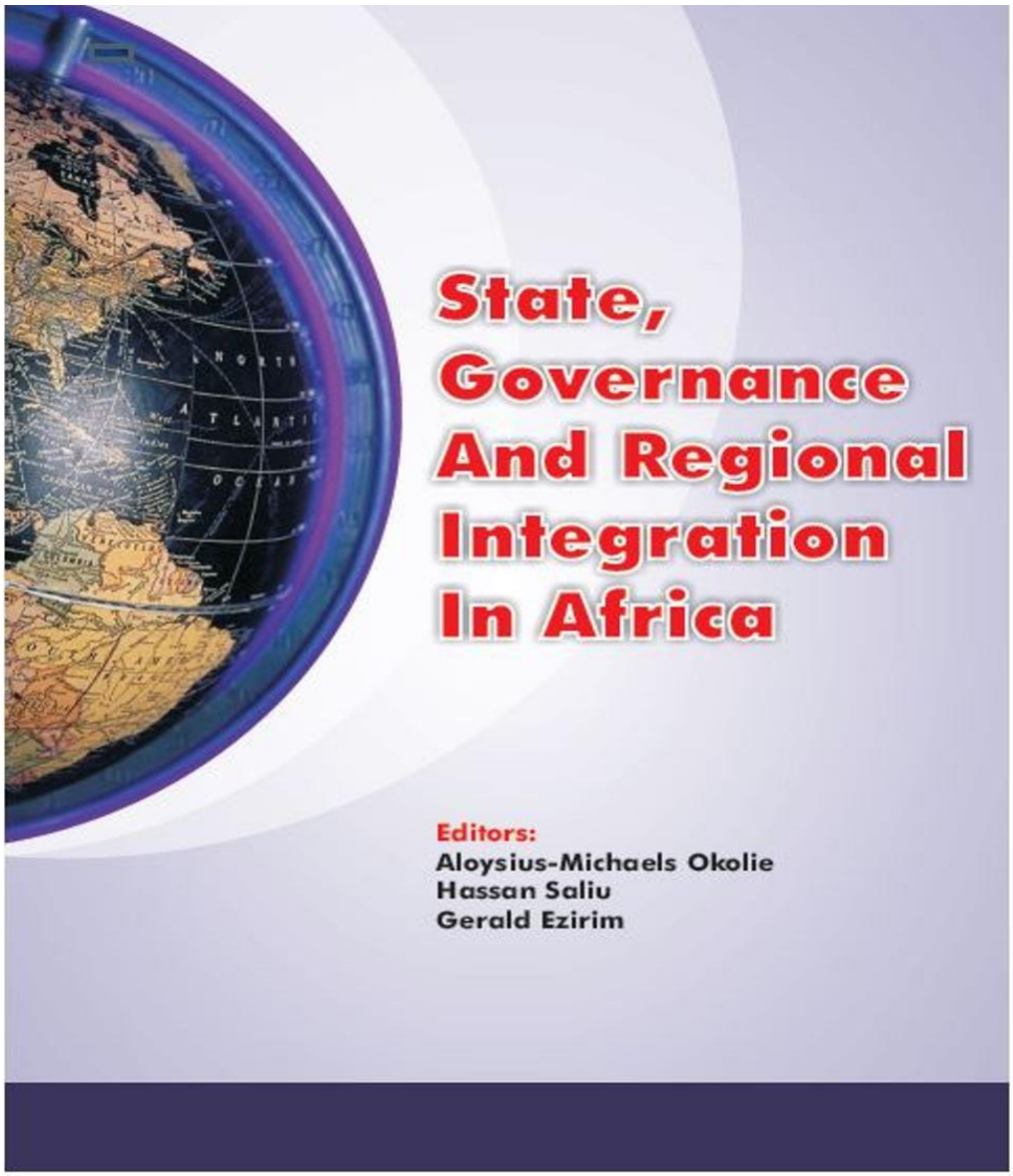

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Strengthening Good Governance in Nigeria's Public Procurement System

Solomon I. Ifejika
Department of Political Science, University of Ilorin,
Ilorin, Kwara State, Nigeria

Abstract
Nigeria, in line with the requirements of the international public procurement framework-law, the UNCITRAL Model Law, has reformed her public procurement system and practice and institutionalized statutory measures for ensuring good governance in public procurement regulation, through the enactment of a modern public procurement law - the Public Procurement Act (PPA), 2007. However, since the PPA came into effect in 2007, these measures have largely remained ineffective and less result-oriented due to certain inadequacies. Against this backdrop, this paper examines the existing mechanisms for good governance in public procurement administration in Nigeria as enshrined in the PPA, as well as factors responsible for their ineffectiveness. The study findings that partial implementation of the provisions of the PPA and undue interference in the procurement process by the political executives, among other issues, are key in explaining the ineffectiveness of the measures. The paper thus argues that Nigeria needs to take urgent actions towards strengthening the measures. In view of this, the study recommends, among other things that the Federal Government - the executive should take steps to fully implement the provisions of the PPA, especially with regards to the issue of constituting and inaugurating the National Council on Public Procurement (NCPP) as the PPA clearly stipulates. Also, the political executives should desist from interfering in public procurement process to allow professional civil servants who are statutorily saddled with the procurement functions to discharge their duties uninterruptedly. The study adopts the documentary methods of data collection and analysis as the approaches enabled adequate attainment of the objective of the study. The paper adopts the documentary method of data collection and analysis as the approaches enabled adequate attainment of the objective of the study.

Keywords: Good Governance, Public Procurement, Public Procurement Act 2007, Transparency and Accountability, UNCITRAL Model Law.

Introduction

Nigeria has undertaken fundamental reform of her public procurement system between 2000 and 2007. This was born out of the need to reposition and reinvigorate the nation's procurement system and practice in order to facilitate the achievement of long-term social and economic development goals. The protracted military rule in Nigeria resulted in gross relegation of the rule of law and all basic principles of good public financial management and expenditure control – probity, transparency, accountability, and efficiency and effectiveness which worsened the country's socio-economic conditions. Consequently, since the restoration of democracy in 1999, civil

society, donors and international community have ceaselessly mounted pressures on successive governments regarding the need to provide good public sector governance' at all levels, especially in the public procurement field. This is based on the understanding that public procurement is central to social and economic development in all societies, developed and developing countries alike. Hence, good governance in public procurement is an essential aspect of the overall strategies for engendering good governance in the broader context. This is true as all elements that constitute the pillars of good governance – preeminence of the rule of law, accountability, transparency, probity, equity, popular participation, efficiency and effectiveness, among others, are also the hallmarks of an adequate and well-governed public procurement system.

Public procurement operation involves the management of huge public financial resources to providing essential public goods and services to the people, as well as for proper functioning of the State. Procurement is thus pivotal in delivering on the developmental goals of society. It suffices to state that procurement improves the quality of governance and it is one most important way citizens directly feel the impact of government. In developing countries, Nigeria for example, provision of socio-economic infrastructures – quality roads, bridges and fly-overs, government housing estates, educational facilities, hospitals, sports complexes, ultra-modern market facilities, to mention a few, are often used to gauge the achievements and/or failures of various governments, at the most primary level. Good governance in public procurement administration is, therefore, a criterion for measuring governance effectiveness and responsiveness to the yearnings of the people. It entails absolute compliance with established procurement rules and procedures, and greater integrity, equity, citizens' involvement**,** transparency, accountability, efficiency, and effectiveness in the use of government financial resources in providing important services to the citizenry.

Through the recent procurement reform, Nigeria has institutionalized basic statutory, institutional, and administrative mechanisms aimed to promote good governance in public sector procurement. However, these measures, most of which are enshrined in the Public Procurement Act, 2007, have observably remained weak and ineffective due to certain factors or circumstances. Against this backdrop, this paper basically advocates the need for Nigeria to strengthen the mechanisms put in place for enhancing good governance in her public procurement practice so as to regain public confidence in the system and facilitate quick actualization of the country's much-needed social and economic development. The rest part of the paper is structured into four sections. Section two defines or explains the meaning of concepts or terms that are key to the topic of the study. Section three looks at global effort at promoting good governance standards and practices in public procurement in States, using the specific examples the United Nations Commission on International Trade Law (UNCITRAL). Section four examines Measures put in place for enhancing good governance in public procurement in Nigeria and the observed inadequacies. Section five suggests workable ways of strengthening the existing measures, while section six is the final conclusion.

Conceptual Elucidation

Good Governance and Public Procurement

According to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (n. d., p. 1), governance means, "the process of decision-making and the process by which decisions are implemented (or not implemented)". The United Nations Commission for Global Governance (1995, p. 9) defines governance as follows:

> Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interests.

Governance is applicable in a variety of contexts such as corporate governance, international governance, national governance and local governance (UNESCAP, n. d).

The concept of good governance gained popularity as many international organizations, particularly those involved in developmental and financial assistance require good governance by a borrowing state, to ensure that the financial assistance they provide are properly directed (Wouters & Ruyngaert, 2004). The concept was a rarely used term until it was brought to the fore by the World Bank in a 1989 report on the economic and development problems of sub-Saharan Africa (Roos & Harpe, 2008). Barber Conable, the then president of the World Bank stated thus in the foreword to the report regarding sub-Saharan Africa:

> A root cause of weak economic performance in the past has been the failure of public institutions. Private sector initiative and market mechanisms are important, but they must go hand-in-hand with good governance – a public service that is efficient, a judicial system that is reliable, and an administration that is accountable to its public (World Bank, 1989, p. xii).

From the foregoing, it can be deduced that efficiency, reliability and accountability are among the principles of good governance.

Similarly, according to the European Commission White Paper on Administrative Reform, the key principles of good governance are service, independence, responsibility, accountability, efficiency and transparency (Roos & Harpe, 2008). Furthermore, the Organization for Economic Co-operation and Development (OECD) defines good governance as follows:

> Good governance is the respect for the rule of law, openness, transparency and accountability to democratic institutions; fairness and equity in dealings with citizens, including mechanisms for consultation and participation; efficient, effective services; clear, transparent and applicable

> laws and regulations; consistency and coherence in policy formation; and high standards of ethical behavior (Roos & Harpe, 2008, p. 129).

For the UNESCAP (n.d), good governance has eight (8) major characteristics, which include participation, consensus oriented, accountability, transparency, responsiveness, effectiveness and efficiency, equity and inclusiveness, and the rule of law. A closer look at the above definitions reveals that there is a consensus that the following: the rule of law, accountability, transparency, equity and inclusiveness, participation, efficiency, effectiveness among other others, are the core principles of good governance. These principles, as earlier stated, are also applicable to public procurement.

On its own, "public procurement refers to the government's activity of purchasing the goods and services which it needs to carry out its functions" (EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation, 2010, p. 1). According to Djankov, Saliola and Islam (2016), the term is used to refer to the process of purchasing goods, services or works by the public sector from the private sector. Generally, "the range of economic sectors concerned by public procurement is as wide as the needs of a government to properly function and deliver services to its citizens" (Djankov, Saliola and Islam (2016, para. 2). Good governance in public procurement means the application of the principles of good governance: compliance with procurement rules and regulations, integrity, accountability, transparency, equity, participation, efficiency, and effectiveness in the process of hiring or purchasing goods, services and works by government entities. As Kasim (2016, p. 124) corroborates:

> Good governance programmes require that public procurement reforms support essential concepts and values, as follows: Accountability to establish clear lines of responsibility in decision-making structures; Responsiveness to citizens of the country; Professionalism to improve individual and system performance; Transparency to ensure that procedures and policies are understood and acceptable by procuring entities; Competition to attract high-quality national and international partners investing in meeting government needs through contracts; and, Appeal rights to redress meritorious grievances of suppliers.

The application of good governance principles in public procurement is of high imperative in that, as a major economic activity of government, the huge yearly capital outlays in the public procurement sphere in every country presents an almost irresistible lure to corruption and various sorts of malpractices in the procurement process. Thus, good governance mechanisms in public procurement aim to ensure utmost integrity of the procurement processes and systems.

Global Advocacy for Good Governance in Public Procurement: Mainstreaming the United Nations Commission on International Trade Law (UNCITRAL)

There has been a long sustained international effort at propelling states, especially the developing nations, to institutionalize good governance mechanisms

and standards in their public procurement administrations in order to promote integrity of the systems and drive rapid attainment of set national development goals. One notable global effort in this regard is the United Nations Commission on International Trade Law (UNCITRAL), otherwise known as the 'UNCITRAL Model Law' or the 'Model Law'. The UNCITRAL Model Law on Procurement of Goods, Construction and Services was adopted by the United Nations Commission on International Trade (UNCITRAL) on 15th June, 1994, at its twenty-seventh session (UNCITRAL, 1994). The Model Law is a non-binding international legal instrument. It serves as an ideal pattern for reforming public procurement regulatory systems (Arrowsmith, 2004). In other words, the Model Law is purely a model designed to assist states undertake reform or develop their public procurement systems. As the name depicts, UNCITRAL is an organization responsible for promoting trade, and advocating for the adoption of the Model Law as with other UNCITRAL instruments (EU AIUNTRPPR, 2010).

The rationale for promoting the adoption of the Model Law remains that trade with governments will be improved if countries embrace more standardized approach to public procurement. However, it is important to mention that the Model Law is only intended to provide a standard framework for regulation of public procurement and not a complete and comprehensive code (EU AIUNTRPPR, 2010). It aims to assist states in achieving their domestic procurement objectives – value for money, efficiency, probity among other things. At the outset, it was anticipated that the Model Law would be mostly used by developing countries, but evidence shows that its influence was initially felt in Eastern and Central Europe. Notwithstanding, in the recent time, it is increasingly being used in many regions, including Africa and Asia. The Model Law is published in several important languages including English, French, Spanish, and Arabic (EU AIUNTRPPR, 2010). The law embodies internationally recognized and approved good governance best practices for public procurement regulation expected of states to adopt and enthrone in their domestic public procurement systems for optimal performance. In terms of scope, Article 1(1) of the UNCITRAL Model Law states that: "This law applies to all procurement by procuring entities, except as otherwise provided by paragraph (2) of this article".

However, Article 1(2) stipulates that, subject to the provisions of paragraph (3) of this article, this Law does not apply to:

(a) Procurement involving national defence or national security;
(b) …(the enactment State may specify in this Law additional types of procurement to be excluded); or
(c) Procurement of a type excluded by the procurement regulations.

In the preamble to the UNCITRAL Model Law, it is stated thus: Whereas the (Government) (Parliament) of…considers it desirable to regulate procurement of goods, construction and services so as to promote the objectives of:

(a) Maximizing economy and efficiency in procurement;
(b) Fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially where appropriate, participation by

suppliers and suppliers regardless of nationality, and thereby promoting international trade;

(c) Promoting competition among suppliers and contractors for the supply of the goods, construction or services to be procured;
(d) Providing for the fair and equitable treatment of all suppliers and contractors;
(e) Promoting the integrity of, and fairness and public confidence in, the procurement process; and
(f) Achieving transparency in the procedures relating to procurement.

These objectives are aimed at putting the enacting States on the path to easy actualization of their desired domestic procurement objectives.

The Model Law is a harmonization framework-law. It sets froth basic rules governing procurement that are intended to be supplemented by regulations promulgated by the appropriate authority of the enacting State. These rules as set-out in various chapters and article of the UNCITRAL Model Law are aimed at ensuring good governance in public procurement systems of the enacting States. Specifically, the Model Law contains provisions intended to enhance accountability, transparency, integrity, and participation in public procurement among other elements, which domesticating States are expected to integrate into their procurement rules and regulations in order to guarantee good and adequate administration of their procurement systems. The most important among these provisions are highlighted below under the following sub-headings:

Requirement for Regulatory Institutions/Authorities

To promote the good governance principle of compliance with constituted rules, or respect for the rule of law, the Model Law requires the enacting States to put in place proper institutional structures for the overall supervision of the implementation of their domestic procurement laws and regulations. Such institutions are necessary to operate and administer the procurement procedures provided for in the Model Law. Article 4 of the Model Law provides that the enacting States need to specify the organ or authority authorized to promulgate the procurement regulations in order to fulfill the objectives and to carry out the provisions of the Model Law. An enacting State may vest all the powers and functions for procurement regulations in a single central procurement organ or authority, or they may be allocated among two or more organs or institutions. The rationale behind the establishment of appropriate institutional structures is to guarantee optimal compliance with, and enhance the effectiveness of procurement regulations.

Transparency Promotion Requirement

For example, in line with the good governance principle of transparency, the UNCITRAL Model Law (1994, Article, 5) requires enacting States to ensure public accessibility to all procurement-related rules, regulations and other legal texts, including all administrative rulings and directives, and all amendments thereof. This is also intended to ensure unlimited public knowledge and awareness of existence of

legal frameworks within which public procurement is conducted in States. Moreover, in order to promote transparency in the procurement process, and the accountability of the procuring entities to the general public for their use of public funds, Article 14 of the Model Law emphasizes the need for States to include in their domestic procurement regulations provision requiring the procuring entities to publish a notice of award of procurement contracts. The Model Law does not, however, specify the manner of publishing the notice; it rather enjoins the implementing States to provide for manner of publication of the notice in their procurement regulations.

Accountability Enhancement Requirement

One of the principal mechanisms for facilitating accountability and transparency, and promoting compliance with rules and procedures set forth in the Model Law, by procuring entities to supervisory government authorities, as well as to suppliers and contractors, and to the entire public is record maintenance, in accordance with the provision in Article 11 of the Model Law. The said article of the Model Law requires implementing countries to enshrine in their national procurement regulatory frameworks provision mandating government procuring entities to main a record of key decisions and actions they take in the course of conducting the procurement proceedings. These records facilitate the auditing of the procuring entities. Fundamentally, in line with the good governance principles of respect for the rule of law, this mechanism is aimed at ensuring that procuring entities duly conform or adhere to established rules and procedures while implementing procurement proceedings. Maintenance of adequate record of procurement proceedings by procuring entities is also useful in case of any need to seek redress or review by any aggrieved contractors of suppliers.

Requirement for Promoting Popular Participation

To ensure equal opportunities for/to all entities desiring to do business with governments, Article 8(1) of the Model Law demands that domesticating States permit suppliers or contractors, regardless of their nationalities, to participate in procurement proceedings, unless whereby the procuring entity, on grounds specified in the procurement regulations or other provisions of law, decides to limit participation in procurement based on nationality. This provision is meant to create a level playing field for all contractors and bidders, and to make participation in procurement process as inclusive and broad as possible.

Requirement for Promoting Integrity and Safeguard against Corruption

Public procurement is generally prone to corruption and malpractices that usually undermine its integrity public interest in the long-run. Consequently, the Model Law provides appropriate safe-guard measures intended to assist implementing States to guard against the phenomenon of corruption, and to uphold the integrity of the procurement process and system as well as to protect public interest. Article 15 of the Model Law requires that enacting countries include in their domestic procurement regulations provision for the rejection of a tender, proposal,

offer or quotation by any supplier or contractor that attempts to improperly influence a procurement entity or its officials. It acknowledges that abusive practices in public procumbent cannot be completely eradicated by a procurement law, but the safe-guards in the Model Law are designed to promote transparency and objectivity in the procurement proceedings and thereby to reduce corruption. The article states generally, in addition, that enacting States should put in place an effective system of sanctions against corruption by Government officials- employees of procuring entities, and by suppliers and contractors, which would also be applicable to the procurement process. Article 12 of Model Law also requires States regulations to provide for rejection of all tenders, proposals, offers or quotations by procuring entities where there is need to protect public interest, including where there seems to have been a lack of competition or to have been collusion in the procurement proceedings. Still on safe-guards against corruption, Article 35 suggests a clear-cut provision prohibiting negotiations between the procuring entity and suppliers or contractors with regard to tenders submitted by the suppliers or contractors. This provision is necessary to avoid familiarity and collusion between officials of procuring entities and contractors or suppliers.

Compliant/Review Mechanism Requirement

The Model Law prioritizes the rights to seek review or redress, and adequate mechanisms for handling complaints by any aggrieved contractors or suppliers, should they observe any irregularities in the procurement proceedings. Thus, the Model Law contains provisions establishing a right to review and rules governing its exercise. The Article 52(1) of the Model Law requires State regulations to make provisions enabling any supplier or contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by Law, to seek review. The Model Law provides framework rules for Internal, administrative, and judicial reviews. Specifically, in Article 53, the Model Law provides for internal review by the procuring entity itself, or if its decisions are to be approved by an authority, by that authority. Article 54 contains the provision for administrative review by administrative bodies, as may be established by enacting States, whereas Article 57 provides for judicial review by appropriate court of jurisdiction. According to Article 52(2) of the Model Law, certain decisions in the procurement process are however not subject to review by administrative bodies. The essence of an effective means to review acts and decisions of procuring entities during procurement proceedings is to ensure proper functioning of the procurement system and to promote trust and confidence in the system.

Measures for Promoting Good Governance in Public Procurement in Nigeria and observed Inadequacies

Through the reform of her public procurement system which was completed in 2007, Nigeria has joined the league of countries with modern laws on public procurement - the Public Procurement Act (PPA), 2007 designed after the UNCITRAL Model Law. The PPA, 2007 aligns Nigeria’s public procurement

practice with international standards as it contains required provisions for achieving good governance in the regulation of public procurement in the country. This section of the paper highlights the measures instituted in the PPA for ensuring good governance in public procurement regulations in Nigeria under similar sub-headings as in the UNCITRAL Model Law, and factors or developments that currently renders them weak and ineffective.

Regulatory Institutions/Authorities

In conformity with the UNCITRAL Model Law's requirement for a procurement regulatory institution(s) or authority-(ies), Nigeria's Public Procurement Act of 2007 establishes two main bodies or authorities to oversee the implementation of public procurement policies in the country – The Bureau of Public Procurement (BPP) and National Council on Public Procurement (NCPP). The establishment of the NCPP is provided for in Section 1(1) of the PPA, 2007, to serve as the apex procurement regulatory authority in Nigeria. On the other hand, Section 3(1) of the Act establishes the BPP which is saddled with the primary responsibility of regulating implementation of procurement proceedings in all federal government's Ministries, Departments and Agencies (MDAs). As the highest procurement regulatory institution, the NCPP is meant to directly supervise the activities of the BPP, while the BPP in-turn supervises the execution of procurement functions by MDAs. The essence is to provide checks and balances and to ensure superlative operations of the BPP in delivering on its mandate in the public sector procurement sphere.

Thus, based on the global procurement regulation framework-law – the UNCITRAL Model Law, the PPA, 2007 adequately provides for regulatory structures necessary for promoting good governance in public procurement administration in Nigeria. The challenge, however, has been that of implementation. Since the PPA became effective in 2007 till date, the Federal Government of Nigeria – the executive branch has refused to constitute and inaugurate the NCPP as provided for in the law. Consequently, Attah (2011), Onyema (2011) and Onyekpere (2013) argued that the BPP has been functioning as the sole and all-in-all authority without the Council, which is meant to exercise oversight functions on its activities. Apart from hindering the attainment of the goal of good governance in procurement regulations and reducing public confidence in the system, this state of affair portrays outright disrespect for the rule of law. As Akosile (2010) and Onyekpere (2010) explain, not setting-up the NCPP is a gross violation of the provision of the PPA, and it leaves much unprecedented negative consequences for the operations of the BPP in the public procurement field.

Transparency Measures

To ensure greater transparency in the procurement process, the Nigerian PPA, 2007 makes some provisions aimed at making important information related to public procurement available to the entire public. Section 19 (a-j) of the PPA, 2007 lays down well-articulated and transparent procedures to be followed by MDAs in executing procurement functions, and the implementation of procurement

proceedings by procuring entities is subject to the regulations of the BPP. In Section 19(a), the PPA requires the procuring entities to advertise details of all procurement contracts intended to be embarked upon by them and solicit for bids. This advertisement is done in at least two national newspapers. Section 5(f) of the PPA, also mandates the BPP to publish details of major contracts in the Public Procurement Journal. By virtue of Section 5(g) of the Act, the BPP is to publish both print and electronic editions of the Public Procurement Journal. In addition to these, the BPP also provides Standard Bidding Documents to MDAs, Contractors, Service Providers and the general public (Onyema, 2011, p. 6). The whole essence is to ensure that all and sundry are well informed about government procurement activities and opportunities, thereby making the process of award and execution of public contract as transparent as possible.

Despite the existence of these measures, interference by the political executive still determines the outcomes of procurement proceedings in Nigeria. True, as Onyema (2011, p. 12) poignantly alludes:

> In many instances, contracts are alleged to have been shared by the politicians, with the assistance and supervision of the Ministers manning the Ministries even before they are advertised. Also, perhaps, in order to obey their Masters, the Accounting Officers, are also alleged to often-times direct Procurement Officers to work towards ensuring a 'preferred Contractors/Service Providers are pre-prequalified and emerged as winners of contracts.

The Public and Private Development Center (2011) alludes that Ministers do bring memos to Federal Executive Council's weekly meetings for approval of procurements above the threshold, and that the trend has created a new role for ministers in the procurement process which the PPA does not recognize.

To lend more credence, Elegbe (2012, p. 847) brings to the fore:

> At present, high-ranking politicians are able to influence the outcome of the procurement process by putting undue pressure on civil servants who feel unable to refuse to bend to this pressure. This means that in practice, the procurement process is manipulated at the instance of the interested politician and contracts awarded to the person or firm in which the politician has an interest.

To expatiate on this argument the more, a study conducted by Familoye, Ogunsemi, and Awodele in 2015 revealed that public servants in Nigeria are persistently under pressures to do the bidding of the Political Executives. A major finding of the study is that political interference ranks as the second most significant challenge confronting the existing public procurement practices in Nigeria (Familoye, Ogunsemi, and Awodele, 2015). The foregoing assertions show that political interference in the procurement process inhibits the attainment of desired level of transparency in Nigeria's procurement process, despite that the PPA enshrines adequate measures for promoting the important good governance principle in the

regulation of public procurement in the country.

Accountability Strategies

Accountability in the use of public funds is an essential element of good public sector management. Thus, as required by the UNCITRAL Model Law, the Nigerian PPA, 2007 aligns itself with the international public procurement framework-law as it adequately provides for measures meant to achieve this objective in the country's public procurement system. Section 38(1) of the PPA demands all procuring entities to maintain a record of the comprehensive procurement proceedings. In Section 38(5) the PPA states that the records and documents maintained by procuring entities are to be made available for inspection by the BPP, an investigator appointed by the BPP and the Auditor-General upon request, and where donor funds are used for procurement, donor officials should also have access upon request to procurement files for the purpose of audit and review. More importantly, Section 88 of the Nigerian 1999 Constitution sufficiently empowers the National Assembly to carry out investigations with the view to exposing and curtailing corruption (Public Private Development Center, 2011) and, to ensure proper protection of the interests of the general public.

Further, by the virtue of Section 5(p) of the BPP, the National Assembly has responsibility to carry-out oversight function on public procurement activities in the country to ensure strict conformity with the law. To ensure activism in undertaking this responsibility, there exists in the Nigerian National Assembly House Committee on Public Procurement. Despite these, however, available evidences indicate that the National Assembly has not been performing this important function of procurement oversight effectively. In specific sense, revelation by Public Private Development Center (2011) suggests that the National Assembly has not been consistent in demanding the BPP to submit bi-annual audit reports of government procurement activities to it as the law demands. The docile posture of the National Assembly in terms of demanding the BPP to submit reports of the bi-annual procurement audits to it has contributed in lax on the part of the BPP in doing its due diligence in this regard. Another development hindering full attainment of the objective of accountability in public procurement in Nigeria is the refusal by the Legislature itself to subject the conduct of its own procurement activities to BPP's regulations and supervision. The PPA provides in Section 15(1)(a) that the provisions of the Act are meant to be applicable to all procurement of goods and services carried out by the Federal Government of Nigeria and all procurement entities.

The only exception, according to Section 15(2) of the Act, is where the procurement of special goods, works, and involving national defense or national security are involved. By virtue of these provisions, it is clear that the PPA applies to all procurements by the Federal Government of Nigeria and all its institutions including the National Assembly and the Judiciary. In spite of these express provisions, the National Assembly has been engaged in gross abuse of the procurement Act which itself passed as it does not subject its procurement activities to BPP's regulations, and this brings moral contractdiction and indictment on the

Legislature for its constitutional law-making function (Public Private Development Center, 2011). The "refusal of the National Assembly to subject its procurements to provisions of the Public Procurement Act, 2007 suggests impunity, contempt, hypocrisy, and disrespect for the rule of law" (Public Private Development Center, 2011, p. 67). This unwholesome development renders the statutory mechanisms for ensuring accountability in public procurement process almost completely ineffective and meaningless.

Popular Participation

To ensure participation by all categories of contractors, service providers, and suppliers in the public procurement process as prescribed by the UNCITRAL Model Law, the PPA in Section 24(1) demands that all procurements of goods and works by all procurement entities are to be conducted by the means of open competitive bidding, which according to the Act means the process by which procurement entities offer every interested bidder equal simultaneous information and opportunity to be involved in offering good and works needed. This applies to both National Competitive Bidding and International Competitive Bidding. More fundamentally, to ensure that the citizens take part in the procurement process, the PPA in Section 19(b) provides that while implementing procurement proceedings, procurement entities must ensure the presence of private sector professional organizations and non-governmental organizations working in the areas of transparency, accountability and anti-corruption, as representatives of the general public. The organizations are to write report and submit to any relevant government bodies regarding the execution of the procurement proceedings. This measure not only ensures citizens participation in the procurement process, but also promotes transparency in the system.

Albeit, challenges still abound in respect of CSOs' involvement in procurement monitoring and observation in that many MDAs are still not granting access to procurement information and documentation to CSOs according to the PPA, despite repeated requests, and the regulatory authority appears to be doing little or nothing to intervene in the situation (Public and Private Development Center, 2011). Onyema (2011) corroborates this position as he argues that most MDAs still make it difficult for the CSOs to effectively observe the procurement process. According to him, the MDAs usually employ the tactics of giving late and sudden notices to CSOs regarding their bid opening and pre-qualification exercises. They also manifest hostile attitudes towards CSOs when they (CSOs) demand details of their procurement processes (Onyema, 2011). These tactics by the MDAs are aimed at discourage the CSOs from observing and reporting on their procurement proceedings. This practice is against the letters of the PPA and the good governance principle of popular participation which aim at encouraging citizens' involvement in the management of their collective affairs.

Anti-Corruption Measures

To promote integrity and safeguard the country's procurement system against corruption and malpractices associated with public procurement, the PPA, 2007

provides adequate measures for curtailing the malaise. By virtue of Section 5(n) of the PPA, the BPP is empowered to prevent fraudulent and unfair procurement and apply sanction where necessary. Also, as provided for in Section 5(o), the BPP enjoys the powers to review the procurement and procedures for award of contracts by all procuring entities to which the Act applies. The rationale behind this review by the BPP is to ensure that the procedures for award of procurement contracts by procuring entities are devoid of irregularities or sharp practices that could mar the integrity of the procurement process. The PPA criminalizes corruption and places severe sanctions on any entities – public officials and companies that indulge in any form of corrupt practices. Based on Section 58(4)(b) of the PPA, it is an offence to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favor, agreement, bribery or corruption.

Corruption also includes, according to Section 58(4)(c) of the Act, directly, indirectly or attempt to influence the procurement process in any manner in a bid to obtain an undue advantage in the award of a procurement contract. As mater of punishment, Section 58(6)(a-b) empowers the BPP to debar any legal person/company that contravenes any provision of the Act, from participating in all procurements for a period of five (5) years, and a fine equivalent to 25% of the value of the procurement concerned. For public officials involved in public procurement – officers of the BPP or staff of procuring entities, Section 58(5)(a-b) of the PPA specifies a term of imprisonment for five (5) without option of fine, and dismissal from government services. All these measures are put in place to deter participants in the procurement process from engaging in any acts of fraud and corruption during procurement implementation. Despite the existence of these measures, however, corruption has not ceased to rear its ugly face in Nigeria's public sector procurement field.

This suggests that the BPP seems not to have been effectively utilizing the powers conferred on it by Section 58(6)(a) of the PPA to debar or blacklist corruption firms from participating in procurement process. Unsurprisingly, the malaise of corruption has continued to thrive in spite of measures put in place to checkmate it. Elegbe (2012) consolidates this position as he argues that in spite of the enactment of a new law on public procurement – the Public Procurement Act, public procurement in Nigeria is still not functioning well as it is beset by corruption, fraud and irregularities. Similarly, Achua (2011, p. 334) posits that in spite of the procurement rules and regulations, evidences abound that contracts are still being awarded and paid secretly in a bid to satisfy vested interests at the administrative level. Undeniably, Attah (2011) and Nigeria Exchange News (2010) strongly maintain that corruption and related malpractices have continued to thrive in the Nigeria procurement process and system. Describing the nature and form these corrupt practices take, Adegbola et al (2006, p. 7) affirms:

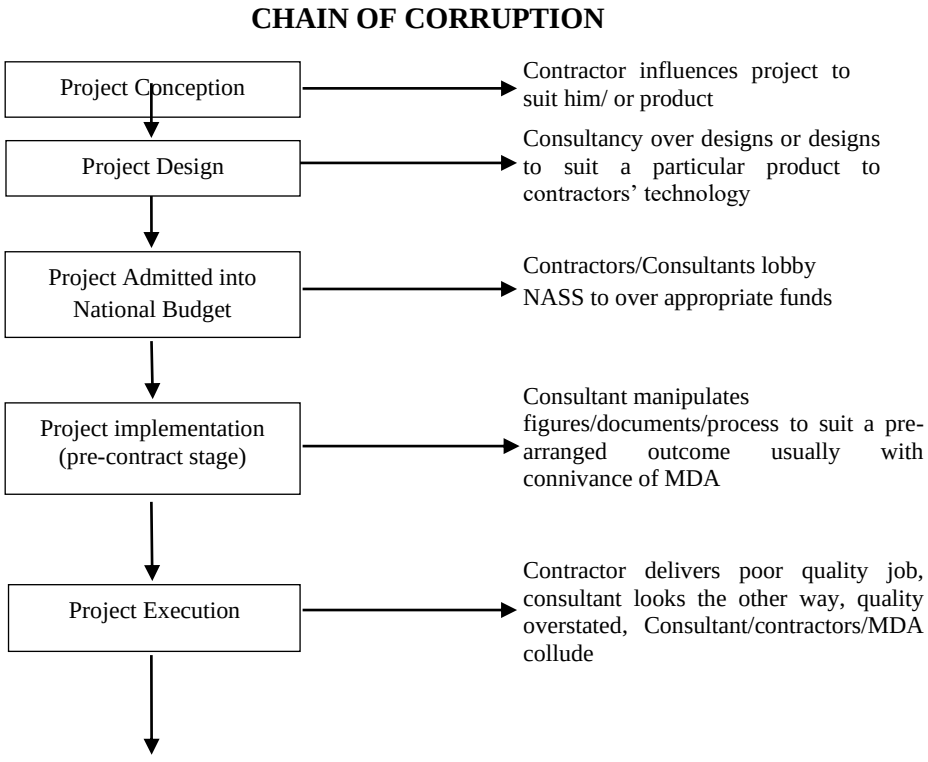
> It is obvious that processes, procedures, and guiding rules for the award and execution of public contracts for the procurement of materials, goods, works and services are grossly abused to the detriment of the nation's development efforts. It is evident that there is over-invoicing for procurement, inflation of

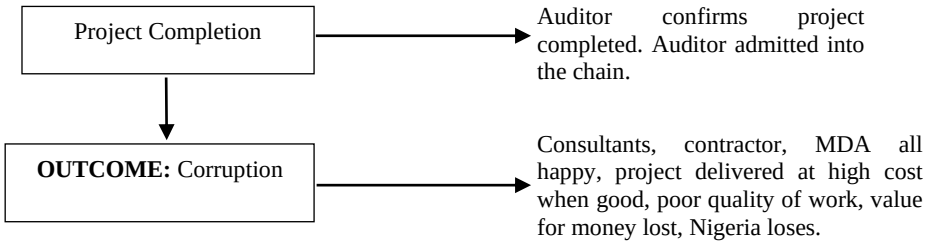
contract costs, proliferation of white elephant projects and mass diversion of public funds through all forms of manipulations of procurement and contract processes leading to acquisition of substandard goods and low quality services. Considerable portion of public treasury is lost due to poor contracting system which accommodates opaqueness, influence peddling, inefficiency, inflated costs and other incidences of corruption.

This situation must have informed Adebayo and Arawomo (2008, pp. 6-7) assertion that "corrupt practices in procurement in Nigeria is so systemic that the country's story may remain the same if the Due Process is not positioned appropriately in terms of structure and ability to deliver". It is due to entrenched corruption that the huge government budgetary expenditures for the provision of goods and services over the years have not yielded expected results (Achua, 2011). This is true as corruption, according to experts in public expenditure management, usually reduces the value for money and public procurement economy in Nigeria's yearly Appropriations to about 40%, and it manifests in various forms and degrees (Onyema, 2011). Corruption in public procurement takes place by means of collusion by government officials' in-charge of procurement functions in MDAs with contractors/bidder, suppliers and service providers.

The diagram below clearly depicts the dimension or form corruption takes at each stage of public procurement process in Nigeria.

Figure 1.1 Chain of Corruption in Nigeria's Public Procurement Process





Source: Bureau of Public Procurement (n. d., p.7).

In view of the above diagram, there is no doubt that, as Ahmed (2011) argues, corruption is indeed the main cause of the very high costs of government projects in Nigeria. It also the root cause of the subsisting unethical practice of delivering poor quality or sub-standard works and/or projects in Nigeria, even after quality prescription is given to contractors. From the diagram, it is also evident that top government officials are usually involved in most instances of procurement corruption that milk Nigeria's economy and results in huge waste of the nation's scarce financial resources.

Another major reason why corruption and malpractices has continued unabated in Nigeria's procurement environment is the inherent weaknesses of the country's key anti-corruption agencies – the Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC). Apparently, Onyema (2011) and Public Private Development Center (2011) posit that the Anti-corruption agencies have manifested gross inability to promptly try and pass verdict and dispose of cases related to public procurement. Onyema (2011) brings to the fore the fact that laws that established the EFCC and ICPC do not allow them to charge cases to courts after investigation without the authorization of the Attorney General. Public procurement analysts argue that this situation is frustrating the eagerness of the anti-graft institutions to prosecute procurement offences, and highly placed and influential individuals would normally ensure that their cases are either dropped or unnecessarily delayed (Onyema, 2011).

Also worthy of note is the posture of the Courts and the Lawyers in prosecuting procurement related offences. Close observers assert that the law courts connive with most defending Counsels and deploy the tactics of unnecessary and unreasonable injunctions and adjournments of cases to frustrate quick trials of suspects. Some cases, mostly those involving past Governors and other Politicians, that were charged to courts since 2007 are still pending. As Onyema (2011) claims, one of them even went as far as obtaining an injunction restraining the EFCC, sine die, from mentioning the offences against him. This delay, as a result of the prevailing attitude and posture of the EFCC, ICPC and the Court, can be contributing to the growing level of impunity and rampant and unfettered violation of the Public Procurement Act.

Complaint/Redress Mechanism

In consonant with the principles of equality and fairness the PPA, 2007 provides for measures conferring rights on aggrieved contractors or bidders, who feel that the procurement process has been compromised to their disadvantages, to seek redress. In Section 54(1), the PPA states that a bidder may seek administrative redress for any omission or breach of the Act by any procuring entity. This provision and practice, no doubt, helps to build confidence in the system, but it is associated with its own challenges. This largely relates to the long and cumbersome bureaucratic process of launching complaints and obtaining final decisions by appropriate authorities, as outlined in the PPA. Section 54(2)(a-c) of the Act stipulates that any complaint against a procuring entity by a bidder should be submitted in writing to the accounting officer, who would within fifteen (15) working days from the date the bidder became aware or should have become aware of the circumstances giving rise to the complaint, review the complaint and make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings if deemed necessary, and must give reasons for his decision.

If the accounting officer does not take any decision within fifteen (15) working days, as specified, or as Section 54(3) stipulates, if the bidder is not satisfied with the decision of the accounting officer, he could then forward a complaint to the Bureau within ten (10) working days from the date the decision of the accounting officer was disclosed or communicated to him. In view of Section 54(4)(a-b), once the Bureau receives the complaint, it would immediately notify the respective procuring or disposing entity about it and suspend any further action by the entity until the matter is resolved by the Bureau. Unless the Bureau dismisses the complaint, it would prohibit the procuring or disposing entity from taking any further action, nullify in whole or in part any unlawful act or decision made by the procuring or disposing entity, declare the rules or principles that govern the subject matter of the complaint, and revise an improper decision by the procuring or disposing entity or substitute its own decision for such an inappropriate decision. Notwithstanding, Section 54(5) provides that, before the Bureau would take any decision on a complaint, it would first communicate the complaint to all interested bidders and may take into account representations from the bidders and from the respective procuring or disposing entity.

Within twenty-one working days after receiving the complaint, the Bureau shall take decision on it and state the reasons for the decisions it has taken and remedies it recommends, if any, as Section 54(6) of the Act requires. If the Bureau fails to make a decision and communicate same within the specified period, or the bidder happens not to be satisfied with decision of the Bureau, Section 54(7) states that he may appeal to the Federal-High Court within 30 days after receiving the Bureau's decision, or at the expiration of the time stipulated for the Bureau to offer a decision. By all indications, this process is excessively lengthy and cumbersome and can be discouraging aggrieved contractors from seeking redress even in any glaring cases of express violations of the provisions of the Act, as may occur during procurement proceedings.

Strengthening the Measures

In view of the inadequacies or weaknesses of the existing measures for promoting good governance in public procurement regulations in Nigeria, the study recommends the following strategies for strengthening them in order to facilitate the actualization of the country's public procurement objectives:

The Political Executive should take necessary steps to fully implement the provisions of the Public Procurement, 2007, particularly as it concerns the constitution and inauguration of the National Council on Public Procurement (NCPP). The NCPP needs to be quickly set-up and begin to discharge its responsibilities in the public procurement field, including its supervisory role on the BPP as the PPA envisaged so as to make the BPP more effective and diligent in the performance of its regulatory functions in MDAs.

The Political Executives should desist from interfering or determining the outcomes of public procurement process. They should allow the professional civil servants saddled with the task of undertaking the procurement functions, as the PPA stipulates, to perform their duties interruptedly so as to guarantee greater transparency in process of award and execution of government contracts, and ensure that awards of contracts in Nigeria are based on merit and not on nepotism or favouritism.

To enhance accountability in public procurement process and system, some steps need to be taken: Firstly, the House Committee on Public Procurement in the National Assembly should begin to utilize the powers conferred on it by the Section 5(p) of the PPA to effectively exercise its procurement oversight responsibilities. In this sense, the National Assembly should be consistent and insistent in demanding the BPP to regularly submit the bi-annual audit reports of government procurement activities to it as the law specifies. Secondly, the National Assembly should cease from any form of violations of the PPA, 2007 which itself enacted; as the maker and custodian of law and government policies, it should set example in terms of showing absolute regard for the rule of law by ensuring that it regularly subjects its own procurement activities to the provisions of the PPA, 2007 and the regulations of the BPP, as the law requires.

To ensure adequate participation or involvement of Nigerians in the public procurement process, Ministries, Departments and Agencies (MDAs) should ceased from their hostile attitudes towards the civil society organizations (CSOs) and professional bodies representing the entire citizens in the procurement system. In other words, the MDAs should desist from the unwholesome deliberate practice of giving late information to the CSOs regarding the conduct of their procurement proceedings with the aim of denying them opportunity to do their due diligence of procurement monitoring and observation on the behalf of the entire citizens. Also, as the representatives of the citizens, MDAs should cease from the attitude of denying CSOs full access to their procurement documents or records as the trend is against the law. More importantly, the BPP should intensify its procurement monitoring and supervisory role on MDAs and ensure that no MDA conduct its procurement proceedings in the absence of officials of relevant CSOs and professional bodies.

Adequate sanctions or punishments shout be meted out to the top management staff of any MDAs that violate this provision of the PPA, in accordance with the law.

Based on the provisions in Sections 5(o) and 58(6)(a) of the PPA, the BPP, is supposedly the strongest anti-corruption agency in Nigeria's public procurement system. Specifically, Section 58(6)(a) of the PPA empowers the agency to debar or blacklist corrupt companies from participating in the procurement process as mater of deterrence. The BPP thus needs to begin to use this power in order to reduce or curtail the malaise of corruption in Nigerian procurement system to the barest minimum. The EFCC and ICPC should always expedite actions on investigating and trying procurement corruption related cases so as to ensure quick disposal of such cases. The Laws establishing the EFCC and the ICPC should be amended to empower the anti-graft agencies to directly charge procurement corruption cases to the court after due investigation, instead of the current practice of waiting for the approval of the Attorney General, which causes delay in the process of prosecution of alleged corrupt persons in the court. Moreover, there should be no sacred cows; the anti-corruption agencies should ensure that any person found guilty of procurement corruption is properly prosecuted in accordance with the law and without preferential treatments, no matter their statuses and affiliations. This will be a good way to demonstrate their eagerness to rid the procurement environment of corrupt practices. The Judiciary, on its own, should be sanitized and cases of procurement corruption should be handled by juries of trusted and impeccable reputations, who would not compromise integrity and fairness for materials benefits, and who would ensure quick and proper trials of suspects regardless of their profiles in the society.

Considering the nature of public procurement, the process or mechanism for seeking redress needs to be more efficient, concise and less cumbersome so as to be result oriented. In view of this, the existing long bureaucratic processes involved in treating or addressing complaints or petitions arising from procurement proceedings should be made shorter and simple so as to make for quicker delivering of verdicts on such cases. This will encourage the reporting of any observed violations of the provisions of the PPA during procurement proceedings, and by extension promote adherence to the procurement rules and regulations by all stakeholders.

Conclusion

Nigeria, through the reform of her public procurement system and practice between 2000 and 2007, has aligned her procurement practices with international standards and best practices, which require the institutionalization of measures for promoting good governance in public procurement regulations. The UNCITRAL Model Law is a global framework-law which serves to help States reform or improve their procurement regulations while upholding the good governance principles of respect for rule of law, transparency, accountability, among others. Nigeria enacted her public procurement law – The Public Procurement Act, 2007 wherein statutory measures for achieving good governance in public procurement in the country are enshrined in line with the requirements of the UNCITRAL Model Law. However, these mechanisms have largely been weak due to certain notable factors or

developments, such as partial implementation of the provisions of the PPA and political interference in procurement process, to mention a few, which render them ineffective. Notwithstanding, there is optimism that the adoption of the recommendations of this study by appropriate authorities will, in no small measure, address the observed inadequacies and enhance the attainment of the country's public procurement objectives and national development in the long-run.

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