

Nigeria's Public Procurement Law- Puissant Issues and Projected Amendments

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Abstract

The Public Procurement Act 2007 brought a sense of regulation or framework to the procurement process in Nigeria. Preceding this law, Nigerian public procurement was not formally regulated in the sense that there was no law, which governed procurement at the federal or State level. This paper examined the various parts and sections of the PPA Act 2007 towards identifying major loopholes of the Act, as it may allow one party to circumvent the Act's intention without actually breaking that law. Some identified loopholes included ambiguity in the qualification criteria of a procurement manager, non-inclusion of the AEC professional on the National Council on Public Procurement, its failure to provide methods for dispute resolution etc. Meanwhile, some challenges militating against the implantation of the PPA Act 2007 identified were the absence of strong and compelling institutions, pervading corruption that has become Nigeria socio-cultural value, citizen's refusal to demand accountability etc. Although some provisions of the PPA Act were amended in 2009 by the Nigerian Senate, some other vital amendments were proposed to the relevant authorities for evaluation and legislation. The findings of this research provide instrument and ideas that can improve the efficiency and effectiveness of the Nigeria's procurement process.

Keywords: Public Procurement Act 2007, PPA Challenges, PPA Loopholes, PPA Amendments, Nigeria.

1.0 INTRODUCTION

Public procurement has largely been a public sector activity in Africa. From a back room administrative function, it is however now being recognized as a major multi-stakeholder public function, with huge ramifications on public service delivery and therefore on economic and social development (Ekwekwuo, 2016). A nation's construction industry plays a pivotal role in the nation's development through the provision of infrastructure and contribution to the country's gross domestic product (Dada & Oladokun, 2008; Ogunlana, 2010). While the arrangement and organisation of participants for construction procurement are critical to project delivery, participants are often faced with a maze of possible procurement paths and regulation (Dada, 2012). He further stressed that the industry is responsible for the provision of shelter, buildings, and other infrastructure that add to or supports the quality of life of the population. Infrastructure development remains a sine-qua-non to national development regardless of the method used to procure projects (Dada, Okikiolu & Oyediran, 2006).

Nigeria is one of the African countries with a new legal framework for public procurement meeting the benchmarks described by the African Development Bank Concept note. Procurement reforms in Nigeria have been part of the broader public sector reform effort, seeking to improve government effectiveness in service delivery. In 1999, there was a clear understanding by the government that weaknesses in the existing procurement system were contributing to the nagging issue of corruption (Ekwekwuo, 2016; Jacob, 2010). In the last two decades or so, a good number of African Governments have implemented Public procurement Reforms aimed at strengthening their public procurement systems e.g. Ghana, Liberia, Sierra Leone, Kenya, Zambia, Lesotho, Nigeria etc. (Ezeh, 2013; Familoye, Ogunsemi, & Awodele, 2015). They all agreed that these governments have obviously realized that sound public procurement policies and practices are among the essential elements of good governance and that good procurement practices reduce costs and produce timely results whereas poor practices lead to waste and delays and often lead to allegations of corruption and government inefficiency.

In 1999, Nigeria transitioned to a democratic government under President Olusegun Obasanjo after over a decade and a half of military dictatorship. Aboki (2006) stressed the need for change in governance and argued that the government structures inherited by the new administration then, naturally had all the traditional drawbacks of dictatorship, especially with regard to the lack of accountability to the citizenry and general arbitrariness in governance. Specifically, the federal government of Nigeria under President Olusegun Obasanjo alerted the nation to the serious and catastrophic danger that characterized public contract processes (Adewole, 2014; Ezeh, 2013). He also alerted on the World Bank Country Procurement Assessment Report (CPAR) which revealed that Nigeria was losing an average of \$10 Billion (Ten Billion United states dollars) annually due to various abuses associated with public procurement and contract awards.

A major initiative initially designed to respond to this challenge was setting up of Budget Monitoring and Price Intelligent Unit (BMPIU) at the presidency. The BMPIU was a stop-gap due process measure aimed at

due diligence in government procurements and awards so as to facilitate fair deals for the government through price monitoring. However, the challenge with the Budget Monitoring and Price Intelligence Unit (BMPIU) stop-gap measure include absence of legal framework; inability to reduce corrupt practices as a result of collusion by public officials and the lack of clear role definitions and delineation for proper public procurement practices in line with global best practices so as to adequately ensure transparency, probity, accountability and openness (Adewole, 2014; Eze, 2015; Udoma & Belo-Osagie, 2012).

In recent years, several reforms had been initiated on virtually every aspect of public service delivery such as the Due Process Certification Policy in 2002, the National Economic Empowerment and Development Strategy (NEEDS) in 2004, infrastructure concession regulatory commission (establishment, etc.) Act, 2005 whose goal is to regulate, monitor and supervise the contracts on infrastructure or development projects; the 'Service Compact with All Nigerians' (SERVICOM) which committed the civil service to providing quality basic services to all citizens "in a timely, fair, honest, effective and transparent manner" (Federal Government of Nigeria, 2004).

International development partners and other multilateral agency have invested valuable time and resources in order to assist in deepening public procurement practices across all the 36 states and 774 local government in line with the federal nature of Nigeria nation. The World Bank through the Civil Society Organizations (CSOs) has embarked on advocacy initiatives in order to achieve this objective. State governors were visited while key local government stakeholders were also encouraged to consider passage of public procurement laws in their respective jurisdiction. Awosemusi (2013) stated that working to convince the states and local governments in order to and make them adopt public procurement practices is a herculean task. So much time and resources have been expended with the low response from these two tiers of government. Apart from the fact that there is a low response from concerns states and local governments, there seem to be deliberate efforts by concerned states across Nigeria to whittle down their versions of public procurement laws in order to achieve certain agenda other than good governance in most states that have responded (Adeyeye, 2012).

The need to fast-track development horizon in Africa and other underdeveloped countries of the world is never an easy task (Adewole, 2014). It requires taking some hard choices, punching and jettisoning old methods of doing things that have contributed to underdevelopment Ray (1998) and stagnations Peter et al. (2007). However, Nigeria has made some considerable steps in these regards as noted by Aboki (2006) argued that the transparency and effectiveness in the expenditure of Nigeria's debt relief gains showcased the country's continual reform agenda and her ability to spend scarce funds honestly and competently. However, this ensures full compliance with the procurement act, it is required that a comprehensive and robust tracking system that would adequately and transparently monitor and evaluate the impact of the gains from debt relief should be put in place.

The research adds to the body of existing knowledge by assessing the implementation of the 2007 Public Procurement Act (PPA), disseminating the lessons learnt thus far and making a relevant or proposed amendment to the 2007 PPA that could make it more robust and comparable to similar procurement act as evident in another clime. Procurement in this paper is described as the process adopted or used to obtain construction projects. It involves the selection of a contractual framework that clearly identifies the structure of responsibilities and authorities of the respective stakeholders or parties within the building process; while the procurement system is defined as the organisational structure adopted by the client for the management of the design and construction of a pre-conceived project or facility.

Procurement methods are the organisational or contractual formalisation for the arrangement of parties for the delivery of construction projects (Dada, 2013). Often times, the construction project brings together individuals or organizations that are separate and disparate to form what has been termed a temporary multi-organization or a temporary project coalition (Murray et al., 1999; Rowlinson, 1999). However, strategic procurement involves three key elements: people, process and technology (Ezeh, 2013). Key terms used in this research are MDGs- Millennium Development Goals; MDAs- Ministries, Departments, and Agencies, PPA- Public Procurement Act; AEC- Architectural, Engineering, and Construction.

2.0 THE CONCEPT OF THE PROCUREMENT ACT 2007

Like most developing countries, the World Bank was the driver behind public procurement reform in Nigeria (Williams-Elegbe, 2016). In Africa and Nigeria in particular, governance reform is expected to introduce acceptable benchmarks for legitimacy in public affairs while promoting economic choices among people and institutions and part of the major benefits of governance reform is that it helps entrench transparency, accountability, openness, and appropriate value for money in all matters that concerns public procurements (Adewole, 2014; Ekwewkwo, 2016). The public procurement bill was sent to the National Assembly in 2003 and by 4th June 2007, the Public Procurement Act was passed in Nigeria and it becomes a watershed in Nigeria attempt at key governance reform. The PPA Act 2007 is designed primarily after the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (Eze, 2015; Ezech,

2013; Familoye et al., 2015; Udeh, 2015).

The report on Nigeria's procurement assessment identified some weaknesses in the then existing procurement system which included lack of appropriate legislation, shortage of basic skill and inappropriate organisation of the procurement process (World Bank, 2000). A similar study in Ghana as cited by Ameyaw, Mensah and Osei-Tutu (2012) identified the weaknesses in Ghana procurement system as lack of comprehensive public procurement policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities for procurement entities, absence of comprehensive legal regime to safeguard public procurement, lack of rules and regulations to guide, direct, train and monitor public procurement.

Furthermore, according to Mlinga (2009), the challenges facing Tanzania public procurement are its size and complexity, striking a balance between key pillars of public procurement, managing stakeholders' expectations, managing the adequate supply of procurement and supplies professionals and technicians, and managing ethical standard. Wittig and Jeng (2005) argued that resistance to change; procurement cadre and capacity constraint; and acting as a central tender board and procurement supervisor are equally militating against the successful implementation of public procurement act in Gambia. In Zimbabwe, indigenisation policy of the government has resulted in public tenders being awarded to incompetent companies (Musanzikwa, 2013).

The purpose of the PPA Act 2007 is to ensure transparency, competitiveness, value for money and professionalism in the public sector procurement system. According to Udoma and Belo-Osagie (2012), the essence of the Act is to ensure that all the public procurements are conducted in a manner that is transparent, timely and equitable and based on the agreed guidelines, thresholds and standards. Krivish and Krekele (2013) stated that the procurement law is to ensure openness of the procurement procedure, free competition of suppliers as well as equal and fair attitude thereto, effective use of state and local government funds and to reduce the risk of the commissioning party to the minimum.

Until 2007, Nigeria did not have a statute that specifically regulates public procurement. This led to the enactment of the Public Procurement Act (No. 14) of 2007 (the "Procurement Act"), which requires public institutions and other relevant parties to ensure that all public procurements are conducted in a manner that is transparent, timely and equitable and based on the agreed guidelines, thresholds and standards (Udoma & Belo-Osagie, 2012); and Ghana a neighbouring country had earlier enacted her own version of the Public Procurement Act in 2003 (Ghana-PPA, 2003). Ezeh (2013) noted that previous reform efforts failed because those leading the reforms were public servants who wanted to maintain the status quo, he also reiterated the fact that contracts were used to reward those in government to serve specific political interests; the open abuse of rules and standards in the award and execution of public contracts e.g. over invoicing, inflation of contract costs, white elephant projects and diversion of public funds through all manner of manipulations of the contract award process; award of contracts to friends, relations and use of primordial considerations in exercising public procurement decisions pervaded the system.

Public procurement is important because of its role in the development process, the amount of resources it consumes, and its susceptibility to undue influences. A 2006 study by Transparency International found that public procurement amounts to about 15-30% of GDP or more in many countries (Ekwewuo, 2016). It estimated procurement-related corruption at normally 10% to 25% and in some cases as high as 40 to 50%, of the contract value. It also found that few activities create greater temptations or offer more avenues for corruption than public procurement.

The Nigerian Public Procurement Law 2007 is one of the most radical and commendable institutional reform agenda that the country embarked upon in recent years. Basically, the law is a pro-active response to Nigerian weak institution in order to achieve good governance in public procurement sub-sector (Adewole, 2014; Ezeh, 2013; Udoma & Belo-Osagie, 2012). This is due to the fact that corruption which is a big inherent problem for many African countries, of which Nigeria is not an exception has resulted in crippled and weak institutions which have constituted impediments to Nigerian sustainable growth and development. The public procurement law in the main is divided into thirteen parts. Each of the parts deals with specific previous structural defect that have plagued the Nigerian public procurement system over time.

Part I (section 1 & 2) of PPA 2007 establishes the National Council on Public Procurement (NCPP) and defines its function. The aim is to address the problems of the institutional framework, development of policies and the need to drive the entire procurement process in accordance with statutory extant regulation (Adewole, 2014; Udeh, 2015; Udoma & Belo-Osagie, 2012). Some highlighted functions of the council includes- to consider, approve and amend the monetary and prior review thresholds for the application of the provisions of the PPA Act by procuring entities; to consider and approve policies on public procurement; to consider, for approval, the audited accounts of the Bureau of Public Procurement; and to approve changes in the procurement process to adapt to improvements in modern technology (PPA, 2007).

Part II (section 3 – 14) establishes the Bureau of Public Procurement (BPP) as a form of agency to coordinate, harmonize' and benchmark prices in Public Procurement processes (Adewole, 2014; Ezeh, 2013; Udoma & Belo-Osagie, 2012). The part also makes it the functions of (BPP) to undertake procurement research

and survey, coordinate institutional capacity, acts as supervisory platform, maintain a national database of the particulars and classification and categorization of federal contractors and service providers, prevent fraudulent and unfair procurement and where necessary apply administrative sanctions and provides guideline for regulating Public Procurement practices (Ezeh, 2013; PPA, 2007). Essentially, the aim of the first two parts is to establish a strong institutional framework for public procurement.

Specific achievements of the Bureau of Public Procurement in Nigeria include (Ezeh, 2013):

- Publication and Circulation of the Public Procurement Act (PPA) 2007
- Issuance of Procurement Procedures Manual
- Issuance of Procurement Regulations
- Issuance of Standard Bidding Documents for Works, Goods and Consultancy services
- Translation of PPA, 2007 into the three major Nigerian languages of Hausa, Igbo, and Yoruba
- Functional procurement data centre
- Functional BPP website
- Publishing of a Quarterly Procurement Journal since Year 2008
- Publishing the Procurement Plans of the MDAs since Year 2009
- Publishing of Procurement Records of MDAs since Year 2009
- Uploading of FEC approved contracts on the BPP website
- Publishing of details of all contracts awarded in the print media and Bureau's website
- On-going development of a contractor categorization and classification system to ensure only competent and capable contractors are invited to tender for government projects

Part III (Section 15- Scope of Application) of Public Procurement law 2007 deals with the scope of applications. This aspect of the law respect the federal nature of Nigeria as a nation, where states are expected to enact their own laws as they deemed fit, the public procurement act presumptively should covers only federal public procurements (Adewole, 2014).

Part IV (section 16) of public procurement law (i.e. Fundamental Principles for Procurements) establishes legal format with regard to thresholds, exigencies of procurement plans, the imperatives of open competitive bidding, and proper definition of the status of contractors/suppliers/service providers in public procurement processes. It also specifies appropriate qualifications for bidders with regards to financial, equipment and technical competence (Adewole, 2014). It provides an alibi for benchmarking on the needs for evidence of taxes pensions and insurance payments; while it gives guidelines for issuance of a certificate of no objection, conferment of responsibility on accounting officer in procurement entity and the conditions for the award of contract (Adewole, 2014; Udoma & Belo-Osagie, 2012).

Part V (sections 17 – 23: Organisation of Procurements) of the Act deals with establishments of procurement planning and the role of procurement planning committee. The section identifies the approving authority, procurement planning process, procurement implementation, accounting officer, procurement planning committee, tenders board and prequalification of bidders. This is very significant. Adewole (2014) observed that before now, public procurement has suffered from anticipatory procurement even when procurement entity knows that there is no funding to back up such procurements. By so doing, he stressed that most Ministries, Departments, and Agencies (MDAs) have suffered undue pile up of debts even when such procurements are not a priority. Projects Procurement planning as required by the new law regime ensure that there is proper procurement planning with regard to availability of funds; and it must be of priority, etc. before such procurement plan can be approved by the statutory committee (Adewole, 2014). It also set criteria for prequalification of bidders.

Part VI (Section 24 - 38: Procurement Methods- Goods and Services) of the law deals with procurement methods which include an invitation to bid, bid opening and bid examination in a manner that ensures and promotes open transparent, competitive bidding exercise (PPA, 2007). The section states clearly that except as may be provided by PPA, 2007, all procurement of goods and works by procuring entities shall be conducted by open competitive bidding. This part went further to direct on invitation to bids, bid security, submission of bids, rejection of bids, bid opening, examination of bids, evaluation of bids, acceptance of bids, records of procurement proceedings among others

Part VII (section 39-43: Special and Restricted Methods of Procurement) and VIII (Procurement of Consultant Services) of the PPA Act 2007- these aspects are important in view of past experience where public officials hide under special or restricted procurements to perpetuate corrupt practices (Adewole, 2014; Udoma & Belo-Osagie, 2012). These sections define the new rule of engagement. These methods include two stage tendering, restricted tendering, request for quotations, direct and emergency procurement. For any procuring entity to adopt any of these methods, in line with provisions of section 39-43 of PPA, 2007, there must be an approval from the Bureau of Public Procurement.

The Process of the procurement of Consultant (services) was distinctly covered in part VIII (Section 44-

52) of the Act. The process includes but not limited to the following: expression of interest, request for proposals, clarification, submission of the proposal, criteria for evaluation of proposals and selection procedures among others.

Part IX (section 53-54: Procurement Surveillance and Review) deals with procurement surveillance, the reporting and review mechanisms by Bureau of Public Procurement (BPP) which were nonexistence in the old order. The part authorise the Bureau of Public procurement to review and recommend for further investigation by any relevant authority any matter related to the conduct of a procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of PPA, 2007. Section 54 of PPA, 2007 clearly stated the complaint procedure or administrative review by a bidder.

Part X (Section 55-56: Disposal of Public Property) of the PPA Act 2007 focuses on methods and process of disposing of public property and assets. This part elaborates the disposal methods, planning of disposals, and went further to clearly state that all procuring entities must distribute responsibilities for the disposal of public property between the procurement unit and tenders board.

Part XI (section 57: Code of Conduct) of the Public Procurement Law specifies the code of conduct to regulate activities of relevant stakeholders which include Bureau Officials, Tender Board, CSO's, and Procurement Officers etc. The purpose is to make relevant stakeholders responsible and consequently liable in case of any infractions (Adewole, 2014). The conduct of all persons involved with public procurement shall at all times be governed by principles of honesty, accountability, transparency, fairness, and equity. Conflict of interest must be declared by all persons involved in procurement proceedings.

Part XII (Section 58: Offences) of the Public Procurement law 2007 specifies offences for various categories of infraction in public procurement processes. It identifies the offences in public procurement and went further to recommend sanctions for any natural person not being a public official, public official and company or firms that contravene any provision of PPA, 2007.

Part XIII (Section 59-61: Miscellaneous) of the PPA Act emphasised the importance of both the seal of the BPP and the signature of its chairman, Director-General or any other person authorized by the council, it also enumerated basic interpretation for some terms and short titles used in the PPA Act 2007

The Public Procurement Act 2007 as noted by Onyekpere (2009) seeks to introduce the application of accountability, fairness, competitiveness, cost-effectiveness, professionalism, transparency, value for money and standard for procurement/disposals of public assets. The Act also seek to introduce timeliness, sustainability of process, fitness of purpose, better risk management, auditing, strict oversight and benchmarking into the public procurement process. All these are in line with governance institutional reforms that ensure appropriate structure in order to achieve national growth and development (Redcliff, 1987; Brown, Sandra & Christopher, 1992; Diamond, 2005). Nevertheless, the advantage derivable from governance reform through public procurement law regime is limited only to public procurement practices at the federal level of Nigerian government (Adewole, 2014).

Aboki (2006) highlighted the following as critical criteria to be adhered to in order to improve the procurement planning process:

- i. Links to overarching policy thrusts such as sector goals, the MDGs or the national development strategy;
- ii. That they were "quick wins" for maximum output within the shortest period;
- iii. Evidence of pre-budget submission planning in the form of a work plan and cash flow for each project, and feasibility studies, where relevant;
- iv. Evidence of the inclusion of cross-cutting issues in project planning;
- v. Detailed locations for each project with appropriate rationales, such as a geophysical survey in the case of a borehole project, or mappings of existing health facilities showing gaps;
- vi. Details of quantified project outputs and outcomes, and their relation to Nigeria's achievement of the MDGs;
- vii. Key performance indicators for each project and baseline data by which to evaluate these indicators;
- viii. Details of the linkages between this project and other projects within and outside the sector; and
- ix. Details and evidence of appropriate monitoring and evaluation structures to supervise the projects

The adherence to these criteria entailed improved procurement planning procedures relative to the inadequate processes that existed in the MDAs. Due Process is a mechanism for ensuring strict compliance with the openness, competition and cost accuracy rules and procedures that should guide contract award within the Federal Government of Nigeria (Adebisi, Ayo, & Adebisi, 2010). The procurement process in Nigeria follows this sequence- advertisement in at least two dailies; pre-qualification, submission of bids; the opening of tenders; analysis and evaluation of tenders; negotiation and award of contracts; mobilization to the site; supply and installation; final valuation and payment.

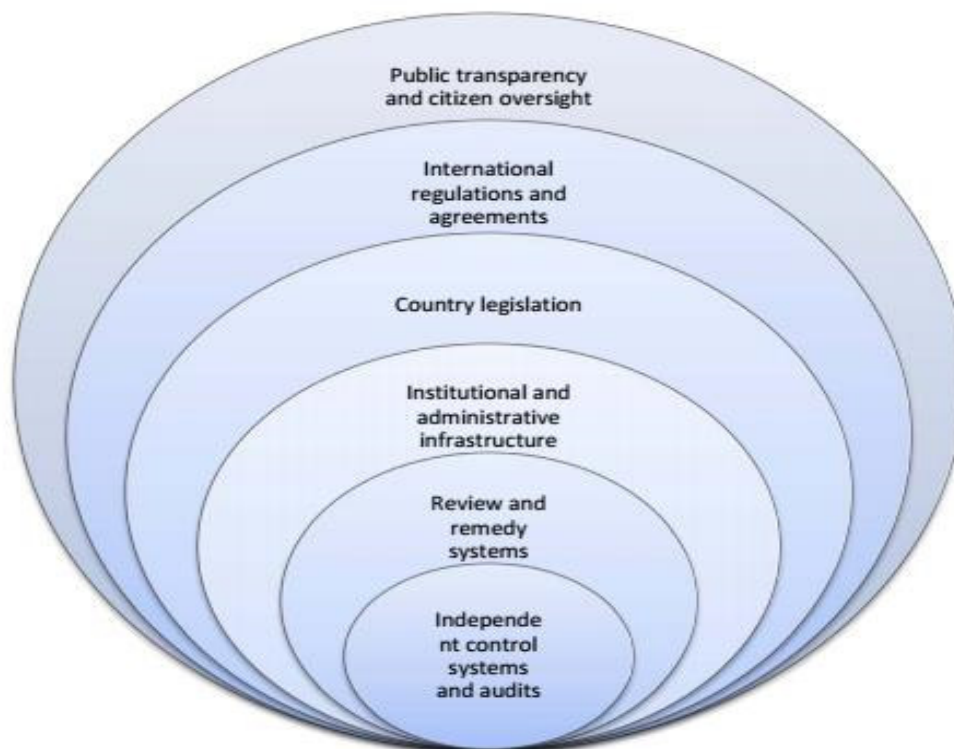


Figure 1- Model framework for procurement [Source: Heggstad and Frøystad (2011)]

3.0 PUBLIC PROCUREMENT ACT 2007- ITS CHALLENGES

Public Procurement Acts (PPAs) of most nations especially developing nations have not been able to achieve its desired purpose and this is as a result of the challenges, among others, faced by the stakeholders in the implementation of the Acts due to the economic, social and political environment where the Act is operating (Familoye et al., 2015). According to Fayomi (2013), Nigeria can be described as a country of irony as the socio-economic performance over the years remained superficial and unimpressive. This was largely attributed to high level of corruption or mismanagement of public resources closely linked up with the public sector procurement systems (Fayomi, 2013).

Adewole (2014) observed that the apparent successes attained at the federal level as a consequence of Public Procurement Law 2007 are taking too long for replication by the entire 36 states and 774 local governments across Nigeria. Apart from the fact that the old pre-governance reform era in Nigeria gives rooms for impurity, it was also extremely difficult to get the best value for money in public procurement practices (Adewole, 2014). There is an absolute lack of strong regulatory framework. Government contracts and public procurements became easy avenues for rip-offs by various shades of contractors with collaborative support of Nigerian public officials (Onyekpere, 2009).

In addition, the general expectation of stakeholders is that all tiers of government should have implemented public procurement laws by now. This is informed by the strong conviction that implementing public procurement law is the surest way of institutionalizing public procurement system in order to achieve the key objective of governance reform agenda. According to Ikeji (2011), the federal share of public expenditure in Nigeria is 48% while the 36 states and 774 local governments across Nigeria take the lion share of 52%. The implication of this is that substantial share of public expenditure is yet to be institutionalized or captured by standard public procurement law regime (Adewole, 2014; Udoma & Belo-Osagie, 2012).

Although, about 24 states were confirmed to have passed public procurement laws in Nigeria while no single local government has enacted public procurement edict. Most of the concerned states actually passed the law reluctantly after undue pressure by World Bank and CSOs (Adeyeye, 2010; Awosemusi, 2013); despite, the enormous time and resources expended, it was met with a low response from these two tiers of government. Besides, a comparative analysis of some of the law passed by the states indicates that the laws were substantially manipulated and reduced in veracity thereby defeating the fundamental objectives for which the laws were enacted in the first place. It is disheartening to note that no single local government in Nigeria deemed it fit to pass public procurement edict despite the volume of money that are expended Nigerian by local government system (Adewole, 2014).

Public procurement is a big market player in the economy of most nations both in its size and

complexity. Most countries of the world, especially the developing nations, spend between 10 - 30% of their GDP on public procurement (Reich, 2009, Wahab & Lawal, 2011). It has been said that the sheer magnitude of the procurement outlays impact greatly on the economy (Thai, 2005) and its effect on the economy becomes a challenge (Familoye et al., 2015). Ossai (2014) decried the widespread practice of manipulating the procurement act is a common practice among most states government, LGA councils, MDAs, and even the Federal Government. The process he noted has become so rampant that it is depriving younger contractors of keying into the system. The current procurement approaches has the following identified procurement approaches:

- It is assumed that each project is procured on an individual basis
- That vast majority of construction works currently undertaken are procured in a ‘one-off’ manner with each party trying to extract maximum reward for minimum risk.
- Little thought is given to the form of supply relationships that must be adopted in the supply chain in order to satisfy client’s needs.
- Parties are forced to start at the bottom of the ‘learning curve’ on a project by project basis.

Meanwhile, according to Wahab (2006) the following are the problems with the procurement system in Nigeria- the absence of economic cost/benefit analysis of projects as a way of justifying the need for the project; the lack of competition and transparency in project procurement leading to high cost of projects, that is, a situation when advertisement was made, the applicable rules were tilted in favour of a predetermined winner; projects were not prioritized and harmonized, consequently, several ministries were pursuing similar programs simultaneously without coordination; unjustifiable gap existed between budget and actual released, leading to underfunding, delayed completion, price escalation and project abandonment; preference for new projects to the detriment of the completion of current projects and needed maintenance/refurbishment of existing ones; absence of efficient and effective project monitoring aimed at ascertaining compliance with original project plans and targets; and frequent government policy reversal.

Key challenges militating against the adoption of the Public Procurement Law across the Nigeria Federation include:

3.1 The challenge of the Federal System of Government

The federal system of Nigeria government has militated against wholesale adoption of public procurement law by all the states and local government across Nigeria (Adewole, 2014). Jacob (2010) stated that government contract falls within the concurrent list which means both the states and the federal governments can legislate on it and that is the constitutional limitation in the application of the PPA. It was enacted by the National Assembly and its coverage does not go beyond the federal government expenditure. It regulates public contracts at the federal level by the national government.

Hence, most state government and subsequently local councils had refused to domesticate the PPA Act 2007 because of their usual argument that the National Assembly cannot be making ‘arbitrary, non-convenient’ laws and then passing it ‘through the throat of state governors for implementation in their respective states. Thus, these governors and council chairmen likewise are never in a hurry to enact the law or may even jettison it. However, as noted by Adewole (2014), some states that eventually enact the public procurement laws did it in a way that satisfies their selfish agenda. In essence, states and local governments have capitalized on their independence to law making as guaranteed by the Nigerian federal system of government to work against the effective deployment of public procurement laws as a veritable governance mechanism to fast track Nigerian sustainable development.

3.2 Lack of Political will to Initiate Development Change

Glaring in the face of similar existing laws in Nigeria is the law of the required political will to initiate and enforce the implementation of such laws. To facilitate a meaningful and radical change that could assist Nigeria to climb up the developmental ladder, Adewole (2014) advocated stronger and efficient political will among leaders as they current crop of Nigerian’s leaders pay lip service to development transformation apart from their lack of political will, there existed an insufficient knowledge and ethics of leadership practices for pushing forth and achieve sustaining structural governance reform particularly at the state and local government levels. Familoye et al. (2015) observed that the full implementation of the law remains an elusive objective despite some measure of its impact.

3.3 Absence of Strong and Compelling Institutions

There is the absence of strong and compelling institutions to make state and local government enact public procurement laws in order to enhance governance practices in Nigeria (Adewole, 2014). Apart from support through subtle means by World Bank and other international development partners, there is no strong institution to compel states and local governments (Adeyeye, 2011). Most often, concerned state executives pass public procurement law because there is perceived threat to their political survival while some State governors passed

the law as landmines in the way of their successors after they have lost political power. Public procurement law has become a mere political weapon instead of deliberate governance reform mechanism to institutionalize fairness, openness, accountability and anti-corruption (Adewole, 2014). Heggstad and Frøystad (2011) listed structural causes as one of the causes of corruption, by this they relate to a country's political system, history, and culture, and to other systemic factors which can influence the overall level of corruption. Individualistic causes relate to decisions by individuals, companies, and other groups to engage in corruption.

3.4 Pervading Corruption that has become Nigeria Socio-Cultural Value

The Act was enacted to improve the procurement process and reduce the incidence of corruption in Nigeria (Familoye et al., 2015; Jacob, 2010), however, this objective is yet to be realized. The pervasive corruption in Nigeria is a major disincentive to any effort at institutionalizing public procurement laws that would eventually reduce or confront corrupt practices. In Nigeria, corruption is widespread (Adewole, 2014). It is overwhelming and spreading fast despite efforts by the government. It has been observed that corruption has defied efforts by successive governments because it has infiltrated entire Nigeria socio-cultural fabric (Ekanem & Ekefre, 2013). Incentives for corrupt behaviour according to Heggstad and Frøystad (2011) include- the perceived value of possible benefits, the low degree of professional integrity, the actual need of the individual, and low risk of sanctions. They listed methods of corruption to include- bribery, kickback, embezzlement, facilitation payments, fraud, extortion, informal networks, nepotism, patronage, conflict of interest.

For this reason, any initiatives either directly or indirectly through public procurement law initiative are bound to failure from onset on most occasions. Nigeria's public procurement system is also reportedly prone to corrupt practices, with as many as 45% of companies expecting to give gifts to public officials in order to secure a government contract (Adebiyi et al., 2010). Heggstad and Frøystad (2011) noted that many country procurement systems are fundamentally sound in terms of their basic organisation and procedures. However, they further observed that weaknesses in execution, compliance, monitoring, and enforcement of existing regulations are common, potentially exposing donors to increased levels of fiduciary risk, including the risk of corruption.

3.5 Citizen's Refusal to Demand Accountability and fully Participate in Political Process

In Nigeria, there is a wide gap between citizens and constituted authority. Due to factor such as illiteracy, poverty and reduced standard of living, most citizens in Nigeria are not conscious of their rights in the political relationship with constituted authority (Adewole, 2014). They are gullible, credulous and easily manipulated and do not get involved in political process and never bother to demand accountability and transparency in public governance and if they eventually demand accountability, it is usually on a questionable basis such as tribal or sectional interest. This is a major challenge that has repeatedly militated against effort at governance reform, particularly public procurement law regimes.

Also, most procurement observers lacked capacity in procurement monitoring and oversight. It was clear that without capacity and the needed tools, procurement observers will be merely fulfilling the legal obligations without really achieving the intended outcomes of improved transparency and accountability which the PPA 2007 envisaged (Ekwekwuo, 2016).

4.0 IDENTIFIED LOOPHOLES IN THE NIGERIA'S PPA ACT 2007

It is worthy of note that the public procurement law 2007 with its 13 parts provides desirable solutions to lingering problems of lack of regulatory frameworks, the absence of thresholds and another related lacuna that have to engender widespread corrupt practices in Nigerian public procurement systems. However, despite these benefits, the following loopholes were identified in the Nigeria's Public Procurement Act 2007

4.1 Ambiguity in the qualification criteria of a procurement manager

There was no clear cut definition for who can be or can act as a procurement manager; also the academic and professional prequalification for such sensitive post was left for the imagination. Furthermore, although the Act (Part V section 21, subsection 2b) stated those who can constitute the procurement planning committee, it fails to give the minimum qualification for each member.

4.2 No clear distinction between the various forms of procurement

Dada (2012) noted that while the choice of a procurement method is principally that of the client through its organisation or an advisor organisation, clients can vary depending on their exposure and experience and the volume and repetitiveness or continuity of their works. However, construction projects differ in scope, nature and complexity; and project objectives may also differ in importance (Mbanjwa, 2003). Part VI, section 25-28 which deal with procurement methods, only deals with procuring for goods and services; there is no clear indication on how to procure for specialised projects or even construction projects.

4.3 Non-inclusion of the AEC professional on the National Council on Public Procurement

Part I, section 1 deals with the constitution of the National Council on Public Procurement (NCPP), unfortunately, the PPA Act 2007 excludes key stakeholders and/or professional bodies of the construction industry as members of the NCPP. It states that “*the council shall consist of the Minister of Finance as Chairman, the Attorney-General and Minister of Justice of the Federation, the Secretary to the Government of the Federation, the Head of Service of the Federation and the Economic Adviser to the President*”. It allows for part-time membership of Nigeria Institute of Purchasing and Supply Management, Nigeria Bar Association (NBA), Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture, Nigeria Society of Engineers (NSE), Civil Society, the Media; and the Director-General of the Bureau who shall be the Secretary of the Council.

The built environment professional bodies such as Nigerian Institute of Quantity Surveyors (NIQS), Nigerian Institute of Architects (NIA), Nigerian Institute of Estate Surveyors and Valuers (NIESV), Town planners were not included. Meanwhile, the Act states that “*the council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards quorum*”; this implies that even for the procurement of construction works, the main stakeholders in the construction industry are neglected which poses a greater danger for accountability and effective delivery of such projects. It is worthy of note that some states, such as Ekiti State who had domesticated the PPA Act 2007 in the state, had amended by including the aforementioned professional bodies, although such is yet to be reflected at the federal level.

4.4 Favours the ‘lowest evaluated responsive bid’

According to the PPA (2007), Lowest evaluated responsive bid is the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document. It stated in section 6, subsection 17 of Part IV of the act that “*A contract shall be awarded to the lowest evaluated responsive bid from the bidders substantially responsive to the bid solicitation*”. This approach of bid evaluation though convenient in terms of evaluation often leads to project abandonment, as contractors tender prices below the prevailing market conditions just to win the contracts, if when compared to the ‘best value bid’ approach which offers the procuring entity a reasonable cost for the project at a value that is reliable in the long run. Williams-Elegbe (2016) defined best value or ‘value for money’ as a policy goal that desires to obtain the best bargain with the public’s money.

4.5 Accommodate only two methods of tendering

The PPA Act 2007 favours only open tendering and two-stage tendering procedures, whereas the Ghanaian Public Procurement Act favours not only the two but also, restricted tendering, single-source procurement, request for quotations (Ghana-PPA, 2003). No single procurement method is judged suitable for all situations emphasises the importance of this study (Dada, 2012). Furthermore, while it is posited that no one method can be useful in all situations, not choosing an appropriate procurement method can have dire consequences on project objectives and can lead to project delays, cost overruns, team relationship problems and sometimes project abandonment and building collapse. Some of these problems are present in the construction industry in Nigeria and have been described in various reports (Aibinu & Jagboro, 2002; Oyedele & Tham, 2005).

While the literature recognises that the dominant procurement method in many countries, including Nigeria, has been the traditional method (Gordon, 1994; Ling, Ofori & Low, 2003; Nubi, 2003), the fastest growing procurement method in some countries is the design-and-build method (Petersen & Murphree, 2004). In Nigeria, for example, the traditional method has partly been used due to the institutional requirements for releasing public sector contracts on a competitive basis with the assumption that doing so can promote accountability.

4.6 Favours only open competitive tendering

It only favours open competitive tendering, it does not provide provisions for selective tendering or negotiated tendering. It defines open competitive bidding as “*the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services*” (PPA, 2007). The principal method of procurement as provided by the PPA Act 2007 is by open competitive bidding known as a Sealed Bidding, a process by which a procuring entity, based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed (Ezeh, 2013; Jacob, 2010). All bids by the contractors under open competitive bidding must comply with special requirements that might be prescribed by the procuring entity. It should be in writing and sign by an official authorized to bind the bidder to a contract and placed in a sealed envelope (Jacob, 2010).

4.7 Failure to recommend or provide methods for dispute resolution

The PPA Act 2007 fails to provide methods for dispute resolution which may or do often arises during project

execution which might result in litigation although the Act in its Part XII highlighted various activities that might be charged as an offence, it stills fails to provide alternatives way to resolve conflict on the project site. Various methods for dispute resolution includes arbitration, adjudication, litigation, alternative dispute resolution (ADR), among others.

Conflict is an expressed struggle between at least two interdependent parties who perceive that incompatible goal, scarce resources and interference from others are preventing them from achieving their goals (Wilmot & Hocker, 2001, as cited in Dada (2013)). Ng et al. (2007) asserted that project conflicts can be described as a spiral between various parties in a design and construction project. Conflicts occur on construction projects and may degenerate into unpleasant situations such as claims, lawsuits and project abandonment (Dada, 2013). Causes of conflict in a project lifecycle into seven major sources: project priorities, administrative procedures, technical opinions and performance trade-offs, manpower resources, costs, schedules, personality, communication, reward, structure/performance appraisal, politics, leadership, ambiguous role/structure, and unresolved prior conflicts among others.

Extant literature (Kassab, Hegazy, & Hipel, 2010; Dada, 2013) revealed that conflicts remain a challenge in the construction industry with the potential to leading to project failures, litigation and sometimes outright project abandonment. Ng, Pena-mora and Tamaki (2007) gave the high cost of resolving lawsuits arising out of disputes and conflicts in the United States design and construction projects, as averaging 5 billion Dollars annually. This value could have translated to 40,000 jobs in an era of job losses (Dada, 2013). In Nigeria, the direct monetary losses due to litigation on construction projects is not known, yet what is known is that conflicts occur on projects and sometimes degenerate into lawsuits, contract determination, project abandonment and other manifestations of project failure, which are costly features for a developing economy like Nigeria (Dada, 2004; Olateju, 1997). Ezeh (2013) also emphasised the need for complaints/recourse mechanism.

5.0 PUBLIC PROCUREMENT ACT 2007- PROPOSED AMENDMENTS

Adewole (2014) posited that if Nigeria as a nation is to achieve the objectives of openness, transparency, probity, accountability and reduced corruption in line with global best governance institutional reform agenda, efforts should be intensified to deepen public procurement practices across all the states and local governments in addition to federal government. Meanwhile, in order to facilitate more growth and development to the construction industry, the need for critical governance reforms and some measures of openness, transparency and accountability as against the old opaque methods and secrecy in public transactions cannot be overemphasised. Governance institutional reform is seen as essential aspects of development facilitation mechanisms in order to achieve desired sustainable growth and development (Adewole, 2014; Ezeh, 2013).

Ossai (2014) advocated the need to review the procurement act and establish a sole department to handle the award of every government contracts in Nigeria. He noted that though establishing a single department to handle all government contracts and delivering on time might be quite challenging, he further stresses that it is possible. Ossai further advocated the need for State Governors, Commissioners, LGA Chairmen and Ministers to relinquish the power that they wield over who gets whatever contracts in their various domains. Of course, the Public Procurement Law 2007 may not be perfect as it should have been; this is because there have been some agitations on the need to amend some sections of the law to make it more effective (Ossai, 2014; Sabbath, 2014). Nevertheless, it remained an essential governance reform package to help fast-track Nigerian sustainable development and as noted by Adewole (2014), the new public procurement law regime has been able to institutionalize procurement practices. The key elements of any reform program should include: a diagnostic/baseline Study of existing systems with a view to addressing shortcomings; legal and institutional framework; implementation/evaluation of the system (Ezeh, 2013).

Jacob (2010) observed that an amendment was made to some provisions of the PPA by the Senate in 2009. The amended Bill allows for the negotiation of mobilization fees to be prescribed in the bid document for approval by the tenders boards; whereas, the original Act exclusively vested such power in the Bureau of Public Procurement. The Senate also used the amendment to break the monopoly currently enjoyed by the Executive to give approval for procurements by other arms of government. Also, Section 22 was also amended to provide that the decision of the Tenders Board shall be communicated to both the Minister and the Accounting Officers of the entities making the procurements in the Legislature and the Judiciary. In the original Act, the decision was communicated to only the minister. Another amendment to the Bill was the inclusion of the Nigerian Union of Journalists (NUJ) as against the media under composition of the membership of the NCPP (Jacob, 2010).

Based on the assertion of Williams-Elegbe (2016) that there needs of a reassessment of the Nigerian procurement system in order to determine how to build the capacity necessary to properly manage and conduct the procurement process; as a result of the earlier stated assertion, the following amendments are recommended for evaluation and legislative purpose :

- i. Provision(s) to ensure non-interference of political appointees in the procurement process.
- ii. The inclusion of relevant construction stakeholders and/or professional bodies such as NIQS, NIESV,

- iii. Provision(s) to accommodate the evaluation of tendered bid on 'best value bid' approach.
- iv. Provision(s) to allow for negotiated tendering, single source procurement and restricted tendering.
- v. Provision(s) to allow for ways of resolving a dispute that does often arise during the execution of a project.
- vi. Provision(s) to ensure effective monitoring of the procurement process to facilitate its efficiency and effectiveness and debar corruption or any behaviour inimical to the success delivery of such projects.

6.0 CONCLUSION

The history and concept of the procurement process and the procurement law (that is, PPA Act 2007) was expatiated on with focus on the challenges, loopholes of the PPA Act 2007 while recommending relevant amendments that can be made to the existing public procurement act to make it more reliable and effective for the procuring and delivering of assets in Nigeria. Some challenges identified included- the challenge of the Federal System of Government, lack of political will to initiate development change, absence of strong and compelling institutions, pervading corruption that has become Nigeria socio-cultural value, citizen's refusal to demand accountability and participate fully in the political process.

Meanwhile, the following loopholes following a rigorous review of the Nigeria's Public Procurement Act 2007, these are- ambiguity in the qualification criteria of a procurement manager, no clear distinction between the various forms of procurement, non-inclusion of the AEC professional on the National Council on Public Procurement (NCP), it favours the 'lowest evaluated responsive bid', it accommodate only two methods of tendering, it favours only open competitive tendering, its failure to recommend or provide methods for dispute resolution. The domestication of public procurement law by all the 36 states and the entire 774 local governments in Nigeria promises to be a major boost to governance institutional reform agenda towards fast-tracking Nigerian sustainable development. It is disheartening that the domestication is taking too long. It is also sad that states that have adopted public procurement laws have not pass proper laws that are capable of achieving desired objectives. The reasons for this appalling situation despite obvious benefits of public procurement law regime to national sustainable development have been identified, thereby providing an inkling as to what strategies to adopt in order strengthen future approaches to strengthen adoption of public procurement law regime across all tiers of government in Nigeria.

Although the Nigeria's Senate had made three major amendments to the PPA Act in 2009, some other amendments were recommended in this research, this includes provision(s) to ensure non-interference of political appointees in the procurement process; inclusion of relevant construction stakeholders and/or professional bodies such as NIQS, NIESV, NIA in the National Council of Public Procurement (NCP); provision(s) to accommodate the evaluation of tendered bid on 'best value bid' approach

Conclusively, the PPA Act 2007 is a major milestone in the development of a standard and an international recognised procurement process for the country. Provided that the existing challenges and loopholes are evaluated and resolved and the new amendments proposed for this act is looked into, otherwise, the country may not yet enjoy the fully benefit derivable from the enactment of the PPA Act 2007.

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