NIGERIA PUBLIC PROCUREMENT ACT AND THE WAR AGAINST CORRUPTION: IDENTIFYING THE MISSING LINK

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OLUSEGUN Bamidele Solomon
Procurement Unit, University of Lagos Akoka
bolusegun@unilag.edu.ng, olusegunsolomon1@gmail.com

Abstract: Developing countries such as Nigeria have a common enemy of economic, social and political development – corruption. The need to end corruption was one of the major reasons the military gave for forcefully taking over the seat of government in Nigeria. Even when the country returned to civil rule, opposition parties have accused the government in power of mismanagement of public funds and often promised to end corruption if elected into power. It is an incontrovertible truth that one area where corruption exists in Nigeria is Public Procurement. However, in 2007 the Nigerian government enacted the Public Procurement Act (PPA) to battle corruption in its procurement process. Despite this, the nation's procurement process is still characterized by irregularities as evident from the many cases of infractions of the procurement guidelines in some government quarters. This paper undertakes a review of the PPA (2007) vis-à-vis its provisions on anti-corruption in comparison with international best practices to identify any missing link. The study reveals that though the PPA has improved the procurement process in Nigeria, it cannot sufficiently eliminate fraud and corrupt practices because it has some loopholes. These loopholes include, amongst others: non-provision for an automated tendering system, passive roles played by the civil society organizations/ professional bodies in procurement implementation and the absence of an independent administrative review body. The study, therefore, recommends the reform of the PPA which will incorporate the identified missing links to battle corruption in public procurement effectively.
Keywords: Public Procurement Act, Nigeria, Corruption, e-Procurement, Public Finance.

Introduction

The objective of public procurement amongst other things is to ensure that maximum value is achieved for the money spent when acquiring an item. However, achieving this objective will be impossible where the procurement process is not transparent. The World Bank (1995) described public procurement as the purchase of goods, works and services by a procuring entity using public funds through a contractor. These procured items are needed for the effective and smooth running of an organization. An effective and transparent procurement process engenders economic growth (i.e efficiency in government spending thereby reducing wastes of public funds; innovation and SMEs development); reduce social inequality and can serve as a tool for achieving environmental protection in the best possible ways. As one of the main activities of government, public procurement can project the extent of efficiency and prudence of government spending particularly in this period of fiscal austerity occasioned by the outbreak of the covid-19 pandemic. Globally, public procurement takes a very huge percentage of the government's expenditure. It has been argued that after payment of salary, public procurement is the next aspect of government's expenditure where so much of tax payer's money is spent. Ali (2020) averred that global government expenses on procurement are worth as much as US$ 11 trillion which is about 13% of the global Gross Domestic Product. In the Organization for Economic Co-operation and Development (OECD) Countries, approximately 12% of its

GDP is spent on the acquisition of goods and services. Meanwhile, World Bank (2021) estimates reveals that globally, about US$9.5 trillion is spent annually on government contracts which is almost 15-22% GDP of some developing nations (para. 1).

Despite the enormous fund government spend on procurement as well as the significant role efficient public procurement play in national development; government purchasing has come under criticism in the media and literature for being a fertile ground for various corrupt practices in both developed and developing countries but more visible in the latter. Nigeria has a long history of corruption particularly in the area of public finance. (Eweremandu, 2020). The Open Contracting Scoping Study: Nigeria Country Report by Development Gateway, Inc. (2017) revealed that:

The anti-corruption rhetoric in Nigeria dates back to the 1960s and was used to justify back-to-back military coups. Since returning to democracy, the fight against corruption has topped the agenda of every administration. However, in reality, systemic corruption continues to have a devastating effect on all facets of Nigerian society, most notably in the inefficient delivery of public services. Nigeria's public sector, including awards of public contracts, is deeply rooted in cronyism rather than based on merit (p.10).

Some scholars have argued that the long reign of military rule in Nigeria is partly responsible for corruption which has become endemic in the nation (Agha- Ibe, 2020; Ogbeidi, 2012). To corroborate this avowal, Agha-Ibe (2020) noted that "during the military era in Nigeria, corruption permeated every sphere of the society eroding acceptable national, cultural, religious and moral belief" (p.47). Of course, corruption in public procurement was not only pronounced during the military era, even after the country returned to a democratic system, corruption has also continued to become a recurring phenomenon in the country's procurement process.

Consequently, Nigeria has in recent times performed abysmally in the area of corruption rating. According to the Transparency International (T.I) rating in 2018 Nigeria scored 27 out of 100, 26 in 2019 and 25 in 2020 declining every year to become of the most corrupt nations in the world. T.I in its submission concluded that if the spate of bribery and corruption is not checked in Nigeria and other countries in sub-Saharan Africa, achieving the Social Development Goals by 2030 will be a mirage. Nevertheless, incessant cases of corrupt practices in the public sector have necessitated consistent efforts to battle it by various governmental organizations and multilateral banks particularly through the instrumentality of law and regulation. Nigeria is one of the countries of the world that have promulgated national law with the sole aim of entrenching transparency in the country's public spending. Despite the enactment of the Public Procurement law (2007), not very much achievement has been made in terms of eradicating corruption as public procurement in Nigeria is still besieged with corrupt and unethical practices as evident in the alarming reported cases of infractions of the public procurement Act in the country.

This present study, therefore, seeks to unravel the mystery behind the inability of the PPA as a tool to effectively eliminate or at best reduce the menace of corrupt practices which have bedevilled the procurement process in Nigeria. The paper begins by explaining the concept of corruption and how it manifests in public procurement. Thereafter, it looks at the various efforts of the government directed towards preventing corrupt practices. The next section of the paper succinctly undertakes an overview of the PPA concentrating efforts on the specific provisions of the Act that address corruption juxtaposing it with best practices as contained in the UNCITRAL Model Law on Public Procurement to identify

the differences/ similarities. The last section of the paper gives useful suggestions on what the government should do to ensure that the PPA, 2007 effectively achieved the desired aim of battling corruption in the Nigeria Procurement process.

Defining corruption and its relationship with public procurement in Nigeria

More than ever before, there is an increasing interest and discussion on corruption particularly as it relates to Public Procurement. The plethora of literature on corruption, debates and calls for reforms of the procurement process at the local, national and international level are all testaments that indeed corrupt practices abound in public procurement and needs to be eradicated.

The term corruption has been defined in various ways. For instance, the Nigeria Public Procurement Regulations for Consultancy Services (2011) defined Corruption or corrupt practices as " the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or contract execution" (p.524). However, for convenience, this study would adopt the definition by Transparency International (2006) which described corruption as the "abuse of entrusted power for private gain" (p.14). Albeit, Klitgaard, Abaroa and Parris, (1996) maintained that in a situation where a public official enjoys the monopoly or power as well as the freedom to exercise his/her judgment without being held accountable for his action, there is bound to be corruption practices. Corruption happens when government officials or private individuals disobey laid down rules for self-interest.

Existing literature has affirmed the nexus between government procurement and corrupt/fraudulent practices. (see Basheka, 2009; Olken, 2007; Olusegun & Ikenwa 2020). It has been argued in different quarters that no other activities of government are more disposed to corruption than public procurement. Several reasons have been adduced for the vulnerability of government procurement to fraudulent and or corrupt practices. In the opinion of the Organisation for Economic Co-operation and Development (OECD, 2016) corruption in public procurement is aggravated by "the volume of transactions and the financial interests at stake" as well as "the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders" (p.6).

It is a well-known fact that Corruption in public procurement comes with attendant costs and consequences. Its implications on the economic, social and environmental progress of a nation are enormous and damaging. Corruption in construction contracts increases the price of the contract due to cost or time overrun as well as leads to loss of lives and properties when there is building collapse due to engagement of incompetent contractors or use of inferior building materials. When corrupt practices influence the choice of a supplier or service provider the result is a waste of public funds. Corruption in public procurement is witnessed both in developed and developing nations. However, while those in the developed are strategically addressing the scourge of corruption, public procurement corruption is growing in leaps and bounds in the developing nation as they are seen to be fighting corruption with kid gloves.

Nigeria has consistently performed abysmally in the area of corruption rating. The poor ranking of the Nigeria Corruption index by Transparency International is partly due to the cases of corruption in the country's procurement process. Vanguard Newspaper (2016) quoting Dr Anthony Onyilimba of ICPC, revealed that in recent times, much of the cases handled by the Economic and Financial Crime Commission (EFCC) against public

officials are connected to procurement. As such, the country's procurement process is notable for corruption which has not only led to a waste of public funds; it has also prevented active participation of SMEs in tendering for public contracts. Achua, (2009) asserted that, despite the enormous government expenditure in the acquisition of public goods, there has been a noticeably wide expectation gap as the country is still categorised among the poorest nations of the world.

Corrupt practices in public procurement manifest in various ways in Nigeria. Among the various manifestations of corrupt practices in the Nigeria Procurement Process are:

Bribery:

This is the most frequent type of public procurement corruption. It involves the act of offering, giving, receiving or soliciting any item of valuables probably to influence procuring entity's decision or get classified information about a bidding process which may give the bidder an advantage over others. In 2017 United Nations Office on Drugs and Crime (UNODC) in conjunction with the Nigeria Bureau of Statistics carried out a study on Corruption in Nigeria on Bribery: public experience and response. Among the findings from the study are that approximately One- third of Nigerian adults give bribes to public officials and that almost N 400 billion Naira equivalent of $ 977 million is paid on bribes annually. Every contractor wants to win and of course, if bribing their way through would make this possible then they would gladly do even when they are not being asked to do so.

Contract Splitting

This involves the process of dividing a major piece of procurement into several smaller contracts to evade monetary threshold and rules governing big tenders which prevent efficiency and economic advantage. This is a common practice in some MDAs in Nigeria. The extant circular on the Approval threshold dated 11th March 2009, issued by the Secretary to the Government of the Federation gives guidelines on the approval threshold. Some contracts within a certain threshold must go through prior review by the Bureau. For instance, for works contract such as road construction with a contract sum of 500 Million naira and above, the procuring entity must obtain a certificate of "no objection" to the award from the Bureau. In granting this request, the Bureau will take a critical look at the process from the pre-bidding to the bidding stage. The essence is to ensure that the provisions of the law are followed strictly and, that the principles guiding procurement such as competition, transparency and fairness are observed, particularly where huge government fund is involved. It is based on a satisfactory due process report that recommendation is made to the relevant approving authority for deliberation and approval.

Though the PPA frowns at contract splitting and categorises it as a punishable offence, the practice is a common phenomenon in some MDAs in Nigeria. Some federal government agencies with corrupt intentions would unbundle a single project into smaller units just to ensure that the project cost is within the procuring entity's tender's board approval limit. Allowing the project to remain as a single project would mean that it will require a Certificate of "No objection" which may reveal their dubious act or infractions of the law. Ifejika (2018) averred that, despite the PPA, 2007, contract splitting, one of the major problems that led to the promulgation of the PPA, persist even under the new procurement regime. Cases of government ministries not obtaining a certificate of no objection where necessary are common national newspaper headlines in recent times. For instance, Adanikin (2021) referenced the audit report written by the International Centre for Investigative Reporting which revealed that the Ministry of Works and Housing led by

Babatunde Fashola on September 5, 2017, engaged in contract splitting by unbundling a single contract (Supply of Furniture) into 51 separate contracts where each was valued between N 4.5 Million and between N 9.4 Million all amounting to N 216, 633,322 awarded to different companies. However, further evidence revealed that though the contracts were awarded to different companies, the invoices submitted were signed by one person.

Frequent adoption of selective/ restricted tendering procedure:

By Section 16 of the PPA, 2007, the default method of effecting procurement is Open Competitive Bidding where it is expected that the contract is advertised. However, the law allows the use of selective/restricted tendering methods subject to the Bureau's prior approval. Some conditions guide the use of selective or restricted tendering. The conditions include factors economy, emergencies or where there are few contractors or suppliers that can carry out the procurement and advertisement would be a waste of funds. However, the waiver has created a sort of leeway for some MDAs to perpetrate an act of corruption. Some MDAs often time exhibit dilatory that is they deliberately delay the process to create an atmosphere of the need to carry out the procurement through restricted tendering for wants of time and avoid mopping up of the allocated funds. Adopting restricted tendering would avoid them the opportunity of selecting contractors by themselves most of whom are their family friends and cronies.

Collusion is a fraudulent agreement or secret cooperation between two or more parties to limit open competition by deceiving, misleading or defrauding others of their legal right. This could take place between two or more contractors or between contractors and public officials in this case, the procurement officials. The most common collusive practice in Nigeria public procurement is bid-rigging, in which competing companies organize their tenders on procurement or project contracts. Sometimes the firms may agree within themselves to submit a common proposal to remove price competition. On the other hand, participating companies may agree within themselves the firm that will submit the lowest bid price and as well as decide to rotate winning of the contract in succession. Those who do not win as a result of the mutually agreed plan may be compensated with the other aspect of the contract through a sub-contracting system.

Collusion between public officials and bidders is also a common feature in Public Procurement. Here, the public official abuses his offices for private gain by releasing information within his disposal to the advantage of the preferred bidder(s). He may then be rewarded in kind or cash. Though the law frowns vehemently at this, however, proving this act is very difficult except the perpetrators are caught red-handed with substantial evidence.

Williams- Elegbe (2018) observed that another method of bid-rigging among Nigerian bidders is a situation where one bidder would submit more than a bid for the same lot in an attempt to increase his chances of winning a contract. According to her, this practice takes place with or without the knowledge of the procuring entity. Sometimes, it is hard to detect this act when bids are carefully packaged differently with distinctive features that make them different from each other.

Conflict of interest

Section 57 (12) of the PPA, explained behaviour that is considered a conflict of interest. For instance, Section 57 subsection 12(b) provides that:

conflict of interest occurs where a public official possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently

unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings or where a public official discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractor or service provider to an unauthorized person. (See Section 57(12b) of the PPA.

Conflict of interest is a common feature in Nigeria procurement dealings. It is not unusual to see public officials involving their privately held business interests in the contract where they are working as public officials. Another common method employed by people to perpetuate conflict of interest in Nigeria is the involvement of family members in government contracts.

Abuse of procurement rules and guidelines:

Corruption involves the breaking of set rules. Procurement rules and guidelines are set to ensure transparency, accountability, fairness and competition in a public contract. In MDAs where there are corrupt public officials, these rules are either bent, circumvent or partly obeyed to favour their preferred bidders in return for a favour in cash or kind. For instance, to guarantee the principle of competition in the procurement process, the PPA provides that all bidders are given equal access to procurement information (see Section 24(2) of the PPA, 2007. To fulfil this provision of the law, procuring entities (PE) are expected to ensure that invitation to tender i.e advertisement is done in at least two national newspapers, the website and notice board of the PE and the Federal Tenders Journal published by the Bureau. Procuring entities that have ulterior motives may decide to use local newspapers that have limited coverage around their preferred contractors. Some MDAs also deliberately create entry barriers for small firms by setting onerous prequalification criteria that can only be fulfilled by a few selected bidders. (Olusegun & Akinbode, 2016).

Another system adopted by some procuring entities is that they intentionally give insufficient information about the selection or award criteria so that those submitting bids based on the insufficient information are termed not responsive and disqualified to create a space only for preferred or anointed bidders. Furthermore, in some instances, the specification may be tailored to favour the chosen bidder. During the bidding stage, privileged information may be given to a few contractors who are ready to pay for it. At the project execution stage, work not done may be recommended for payment as a result of collusive action between a representative of the procuring entity and the contractors.

Institutional structure for fighting corruption in Nigeria before the advent of PPA (2007)

It will be incorrect to say that no system was put in place to fight corruption in Nigeria financial system before the advent of the Public Procurement Act. Being one of the countries which have perennially faced with allegations of corrupt practices in financial management, each successive government has put in place a mechanism to make sure the government process of acquiring goods, works and services is corruption-free. Among the earliest efforts of the government directed towards fighting corruption in government expenditure is the introduction of the Financial Regulations (FR) in 1958, During these periods, the Country's Federal Procurement process and financial management were been controlled by this Regulation which is published by the Federal Ministry of Finance. Essentially, the FR is an internal rule that contains specific information on the composition

of the Tenders Board, procurement guidelines of contract execution and management in Nigeria. However, much could not be achieved in terms of curbing corrupt practices because the Financial Regulation was merely administrative guidelines and not a law which is often-time amended at will due to political interferences and subject to the discretion of the Finance Minister without respect for bidders right such as the right to participate in public bidding through the placement of advertisement and the need to know the selection or award criteria beforehand. Furthermore, there was no provision for an aggrieved bidder to make complaints as well as no separate institution was set up to hear complaints arising from poor procurement proceedings.

Worthy of mention is the clause 1999 constitutions of the Federal Republic of Nigeria which abolishes all kinds of corrupt practices in government spending. Specifically, Section 15(5) of the Constitution 1999 (as amended) provides that "The state shall abolish all corrupt practices and abuse of power." Asides from the Constitution there were also Criminal, Penal and Codes of Conduct for Public Officials which give guidelines on how to handle corruption in financial and procurement matters.

Another deliberate effort of the government in ensuring financial probity in Nigeria is the creation of bodies like the Independent Corrupt Practices Commission (ICPC) in 2000. The ICPC was set up to prohibit and punish bribery, corruption and related offences. Agha – Ibe (2020) observed that all past efforts geared towards eradicating corruption in Nigeria only scratched the surface of the problem. She argued that the introduction of the ICPC Act, 2000 gave a boost to the fight against the dreaded scourged known as corruption. Similarly, in 2004, the government set up the Economic and Financial Crimes Commission (EFCC) with the sole aim of battling economic and financial misdemeanours. Agha- Ibe (2020) further stressed that unlike in the past, so much have been achieved through the activities of ICPC and EFCC in terms of saving public funds which could have been lost through fraudulent government purchase. It is important to note that for each of the institutions set up to fight corruption before the introduction of the PPA in 2007; procurement was just one of the many areas they covered.

Overview of the PPA (2007) vis-a-vis its provision on anti-corruption

As observed by the duo of Musa and Aderonmu (2016) the Nigerian public procurement process was characterized by unprofessionalism, inefficiency and ineffectiveness before the introduction of the PPA in 2007. In an attempt to address the inadequacies in the country's procurement process, the then President Obasanjo in 1999 appointed the World bank in 1999-2000 to carry out a Country Procurement Assessment Review (CPAR). The CPAR report revealed that 60k was lost to underhand practices out of every N1:00 spent by Government and that. Some other key issues identified by the CPAR in the country's procurement process were: no clear guidelines on how and when the advertisement should be used while some states rarely advertise their procurement opportunities; proliferation of Tenders Board (TBs) across the nation and where there are TBs, they exercise limited authority on contract award as this solely lies with the Permanent Secretary or Minister to decide, procurement activities are carried out by non-professionals, anti-competitive practices that resulted into increase in contract cost and loss of confidence in Government by the public; non-publication of contract opportunities; non-prior disclosure of rules to be used in the selection process; lack of standard bidding documents.

In a bid to implement the recommendations of the CPAR, then Nigeria President Olusegun Obasanjo established the Budget Monitoring and Price Intelligence Unit (BMPIU). BMPIU procedures were conducted by Treasury Circulars issued by the Accountant-General of the Federation. As part of its responsibilities, the BMPIU was to ensure that: Due Processes are followed in the acquisition of goods, works or services, Establish and update pricing standards and benchmarks for all supplies to Government, Monitor the implementation of projects during execution to provide information on performance, output and compliance with specifications and targets and ensure that only projects which have been budgeted for are admitted for execution. The intention is that with the setting up of the Due Process in Nigeria, government financial activities such as procurement can now be done in a manner that is open, transparent and fair to all without a show of favouritism and corrupt or fraudulent acts.

BMPIU to an extent was able to sanitise the country's procurement process and it was a complete departure from what was in existence before its formation. It helped to ensure fair play and competition in the nation's procurement process as well as saved the country from losing public funds to dubious contractors and public officials. However, the BMPIU at some points suffered setbacks such as unfamiliarity with the due process guidelines on the part of those implementing procurement proceedings, the burdensome nature of the processes failure of some public officials to follow the laid down guidelines and coupled the fact it was not the law of the Federation of Nigeria but just an administrative documents officials. Consequently, to give legal weight to BMPIU as a body of the government, the PPA was signed into law on June 4, 2007. Nigeria's Public Procurement Act is modelled after the UNCITRAL Procurement Model Law of 1994 which has been adopted by several other countries.

Following the introduction of the Public Procurement Act, 2007, the Federal Government established the Bureau of Public Procurement to take over the functions of BMPIU and implement the provisions of the Act. The Public and Private Development Centre (2011) observe that corruption in public procurement seems to be on the decline since the introduction of the Public Procurement Act, 2007. Unlike the EFCC and ICPC Acts, which address the general financial issues, the PPA addresses matters that mainly concerned public procurement. It gives guidelines on the process and procedures for effecting the acquisition of government goods, works and services. It is an act set up for the establishment of the National Council on Public Procurement and the Bureau of Public Procurement as the regulatory bodies charged with the roles and duties of monitoring procurement activities; harmonizing the existing government policies on public procurement. The law contains roles, power and responsibilities of the NCPP, Bureau and the accounting officers and approving authorities in each procuring entity. Its scope of application is limited to all federal ministries, departments and agencies. The various methods by which procurement can be carried out as well as the offences/sanctions are well stated in the Act. Since the promulgation of the PPA tremendous and appreciable progress has been made in the government contracting system. At least it is a complete departure from the old system. Nevertheless, the Open Contracting Scoping Study report on Nigeria submitted by Development Gateway Inc. (2017) revealed that "there remain challenges to rooting out corruption and ensuring efficient and effective procurement" in Nigeria" (p.3). The Act also contains anti-corruption provisions. These provisions are succinctly discussed in the next section.

Anti-corruption provisions in the PPA

Exclusion of bidder offering gift to influence procurement proceeding

Section 16(8) of the PPA, 2007 frowns at the offering of gifts or anything tangible or monetary value to government officials or the Bureau to influence the outcome of a procurement process in their favour. The law provides that whenever it is proven beyond doubt that any bidder gives or promises to give anything of value to any official of a procuring entity or the Bureau with the motive of influencing a bidding process in his/ her favour, such bidder will be excluded from the bid process. While this provision is laudable, to apply it there must be substantial verifiable evidence. Second, even where such evidence is available, exclusion of the erring bidder is under probability because the law says "may". Also, the erring bidder is "an anointed bidder" such an act may be covered. Also, the law is silent about who punishes the erring bidder? All these make the fight against corruption difficult.

Code of conduct / subscribing to the oath

The PPA made provisions to a code of conduct which is expected to be observed by all participating bidders, government officials carrying out procurement and the Bureau. Section 57(2) of the PPA, provides that anyone saddled with the responsibility of carrying out public procurement activity as well as all participating bidders must be guided by the principle of honesty, accountability, transparency, fairness and equity.

Subsection 3 of PPA, 57 provides that all officers of the Bureau, members of Tender Boards and other persons that may come in contact regarding the conduct of public procurement shall subscribe to an oath as approved by Council. However, the consequences of lying on oath are not stated.

Prohibition of collusive practices, and other sharp practices.

The PPA recognizes collusion between public officials and bidders as one of the factors depriving procuring entities of achieving value for money. It, therefore, prohibits and criminalises any form of bid-rigging and collusive practices in procurement proceedings. They are captured as "offences" under the Law with attendant punishments (See Section 58 of the PPA). Some of the anti-competitive and corrupt practices are a collusive agreement with public officials, contract splitting, altering of procurement documents, and use of fake documents amongst others.

It is important to note these offences are punishable by law as captured in Section 58(5 & 6) of the PPA. The punishment is meant to serve as deterrence to those who may be indulging themselves in these unholy acts. The punishment ranges from a term of imprisonment of not less than 5 calendar years without any option of fine to summary dismissal from government services in the case of the officer of the Bureau, or a public official of procuring entity (s) who have been found guilty by a competent court. Meanwhile, any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of (a) debarment from all public procurements for a period not less than 5 calendar years; and (b) a fine equivalent to 25% of the value of the procurement in issue

Shorting comings of the PPA in battling corrupt practices in Nigeria Public Procurement Process

This section discusses the noticeable differences in the PPA, 2007 compared with Anti-Corruption provisions in UNCITRAL Model Law 2011.

Non-provision for an automated tendering system

Unlike in the developed countries where procurement has been automated, Nigeria is still practising a paper-based procurement where bidders have to be physically present to collect and submit bids. However, studies have shown that why corruption persists in the Nigeria Procurement process is because of the face-face contact that exists between bidders and public officials. Where the procurement process is automated, the advertisement can be accessed anywhere, the chances of accepting late bids or including bids that were not originally part of the submitted will almost be impossible. The UNCITRAL Model Law on Public Procurement 1994 which form the template for the promulgation of the Nigeria Procurement Act, 2007 has been updated to allow for e-procurement where all procurement processes are automated. This is in recognition of the role technology play in limiting physical contact between public officials and prospective bidders as best as possible thereby eliminating corrupt practices.

Passive roles played by the civil society organizations/ professional bodies in procurement implementation

The roles of the Civil Society Organisations CSOs/ professional bodies in entrenching transparency and social accountability in public finance have been established both in literature and practice. Although these categories of members of the public are allowed to witness bids openings, their roles are restricted to observers and they are not allowed to make any contribution even when their prompt action could have salvaged a damaging situation. They are only allowed to make a report to the Bureau which may be or may not be looked into unlike in the countries like the Philippines and Mexico. In the Philippines, Section 13 of the Republic of Philippine Procurement Act 9183 expressly assigned roles for the CSOs to perform in procurement proceedings. Also in Mexico, as part of its procurement monitoring programme tagged "Social Witness scheme, initiated by Transparencia Mexicana, the involvement of CSOs in public procurement are statutorily required in some major capital projects. They sometimes assist the procuring entities in designing the terms and conditions of a bid. According to Peixoto, Caddy, and McNeil (2007) the Social Witness initiative has greatly helped in reducing the costs of public contracts as well as built public confidence and trust in the Mexico public procurement as evident in the high participation of both small and big firms in a public contract. The Kenya Public Procurement and Asset Act No 33 of 2015 allows a procuring entity to report any erring contractor or service providers to their respective professional body for disciplinary action and their judgment or recommendation would be taken seriously by the procuring entity as empowered by the law. In the UNCITRAL Model Laws, for instance, civil society / professional bodies play vital roles during bid processes.

Absence of independent review body

As part of the measures to ensure that aggrieved bidders can make a complaint about any irregularities noticed during a bidding process within a specified time- frame, the PPA made provisions for a complaint mechanism known as the administrative review. The procedure to follow is well stated in section 54 of the PPA It is important to note that the Nigeria law still maintains the review mechanism of the UNCITRAL Model Law of 1994 where the aggrieved bidder is compulsorily mandated to first make a complaint in writing to the accounting officer, then to the Bureau if not satisfied with the decision of the accounting officer and then to the high court if not satisfied with the decision of the Bureau. The practice where the Bureau as the regulator also act as a review body put a question on

its independence and ability to handle political interference/ conflict of interest or give an unbiased decision without fear or favour. There are cases where the Bureau is the procuring entity carrying out procurement activities. If a bidder has an issue with a procurement process involving the Bureau as a procuring entity, it thus means that the Bureau will be the accused and the judge in the same matter. Unlike in Nigeria, the Kenya Public Procurement and Asset Disposal Act No. 33 of 2015 Section 27 of the PPA provides for a central independent procurement appeals review board known as the Public Procurement Administrative Review Board. The board which is headed by a High Court judge is saddled with the responsibilities of examining and resolving all procurement disputes brought to it. Membership of the board also includes other members who are nominated by various relevant professional bodies ranging from law, arbitration to Architecture. This arrangement by Kenya Government made access to justice very quick, less burdensome, transparent and prevent conflict of interest. Under the UNCITRAL Model Law 2014, a bidder who has suffered any infringement or contravention of the law to his/her detriment can seek redress straight at the court. This saves time and resources too. Also, the independence of the review body ensures fair hearing.

Non- Constitution of the National Council on Public Procurement (NCPP)

The discussion on the corruption in Nigeria Public Procurement would be incomplete without mentioning the failure of the government to constitute the NCPP fourteen years after the promulgation of the Act. The NCPP is expected to carry out the following functions amongst other things, consider, approve and amend the monetary and prior review thresholds for the application of the provisions of the PPA; Consider and approve policies on public procurement and approve changes in the procurement process to adapt to improvements in modern technology. However, these functions are is being performed by the Federal Executive Council in contravention of the provision of the law.

One of the reasons the country has not experienced the desired changes in the procurement process is the refusal to constitute the NCPP, the non-constitution of the NCPP has contributed to public apathy towards participation in government contracts. Essentially, when NCPP is properly constituted and allowed to perform its responsibilities without undue interference, the spate of corruption will reduce in the public procurement process of Nigeria. The fight against corrupt and fraudulent practices will not be a difficult one without institutional restructurings and the setting up of organs such as the NCPP that will ensure integrity and transparency in a government contract.

Limited/selective scope of application

While corrupt practices are common in virtually every facet of human endeavour that involves procurement in Nigeria, the PPA as it were has a limited scope of application. That is, some MDAs in Nigeria can procure goods, works and services using government money without recourse to the PPA. Meanwhile, there are reported cases of procurement from those quarters. Specifically, in line with Section 15 – (1) of the PPA, the Procurement Act concerns only to goods or service contracts carried out by federal ministries, departments and agencies as well as entities that derive at least thirty five per cent of their monies appropriated or proposed to be appropriated from the Federation share of Consolidated Revenue Fund. That section of the Act excluded the purchasing of specialized goods or services having to do with national security. This means that the rules that guide military or national defence procurement is different from the national procurement law except in cases where the express permission of the President is required and allowed. Also,

the law cannot be said to be a National law because the Federating States are not obliged to follow this law. However, a few of the states have enacted their state procurement laws which are not universal. As such, what is considered a corrupt or fraudulent act in one state may be a norm in another state. All these help to ensure the continuance of corruption in Nigeria Public Procurement.

Conclusion

Public Procurement Corruption globally and in Nigeria, in particular, is a great concern as it comes with attendant consequences. The Public Procurement Act, 2007 has been a veritable legal instrument in reducing the menace of corruption which the country procurement process is known for before the promulgation of the law. However, the PPA as it were cannot effectively eliminate the dreaded scourge of corruption which has risen to the pandemic stage in our economic endeavour. Hence, this study underscores the need for reform of the existing law to meet up with best practices.

Recommendation

Reviewing of the existing PPA

This study has further revealed the fact there exist gaps in the current PPA. Undoubtedly the law is due for review now that the UNCITRAL Model Law on Public Procurement 1994 from which the Nigerian PPA was adapted has been updated as of 2014. In reviewing the law, the government should among other things: look into the administrative review procedure by setting up an independent administrative review board as obtainable in UNCITRAL Model Law on Public Procurement 2014; ensure that CSOs are given specific roles to play in the procurement process other than just observing the proceeding.

Decentralizing Bureau's office.

It is not enough to have a sound law on public procurement. There is a need for an institution that will ensure efficient and effective implementation of the law. One such institution is the BPP. The BPP has enormous responsibilities to perform as provided in the PPA, 2007 in ensuring and entrenching transparency and value for money. One of such is the prevention of corrupt and prejudiced procurement and the use of administrative sanctions on erring individuals/firms. The Bureau is also expected to carry out periodic audits of procurement processes in federal ministries, departments and agencies in Nigeria which are more than four hundred in Nigeria. The BPP has contributed immensely in building human capacity in public procurement as well as ensuring that the PPA is followed to the letter. However, with the present structure where the Bureau office is centralized and located in Abuja, performing these roles as expected will be very challenging. This study recommends that the Bureau offices should be decentralized and located in the six geo-political zones in the country while still retaining the Head Office.

Constitution of the National Council on Public Procurement

There is no gainsaying in the fact that the Non- composition of the NCPP has created a lot of gaps in the battle against public procurement corruption. Many have argued that the failure to implement this provision of the law itself is tantamount to corruption particularly where its statutory responsibilities are being carried out by unauthorised persons. Therefore, if the country is serious about changing its ugly corruption profile, it must as a matter of urgency put in place NCPP in line with Section 1 and 2 of the PPA, 2007. The inauguration of NCPP is key to addressing the issue of coordination between BPP and other

associated government bodies particularly in the area of ensuring the independence of the Bureau

Implementation of the provisions of the PPA on debarment/exclusion of corrupt bidders

There is a need for adherence to the provisions of the PPA on debarment of bidders who are corrupt or found attempting to commit fraudulent or corrupt practices. The Bureau as a regulator should periodically compile a list of these firms, make the list available to the public and direct that no procuring entity should do business with such firm(s) until they have been fully cleared. In addition, procuring entities should be empowered to subject eligibility documents submitted by bidders to the appropriate authority to confirm the veracity of the documents submitted, and where it is discovered that the document(s) is not genuine, the bidder that submitted such document(s) should be handed over to appropriate authority for legal action. This will serve as deterrence to others who may be having such intention. Once bidders know that they can be reported for using a fake document or debar for committing or attempting to commit procurement fraud be wary of such practices.

Automation of the Procurement Process

Globally, attention is shifting to information and communication technology as a useful tool for preventing corruption in public procurement. This is because e-procurement ensures equal and easy access to procurement opportunities as well as transparency of the procurement process. Primarily, e-procurement prevents collusion and guarantee open competition among competing bidders. Countries like Chile, Georgia and South Korea have benefitted immensely from the adoption of e-procurement tools in their procurement system. Therefore, the reforming of the existing PPA should consider replacing the face to face interaction between bidders and public officials in public procurement with an automated system. This will help to eliminate or reduce corruption to the barest minimum.

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