

**COMPLIANCE WITH PUBLIC PROCUREMENT ACT, 2007 IN THE
PROCUREMENT OF GOODS AND SERVICES IN THE JUDICIARY**

Presenter

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INTRODUCTION

The Public Procurement Act (PPA) 2007 was established on 4th day of June 2007, an act to establish the National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria; and for related matters

The Public Procurement Act 2007 provides the legal and institutional framework for the enthrone-ment of Transparency, Accountability, Value for Money and Efficiency in the procurement of works, goods and services within the Ministries, Departments and Agencies.

WHAT IS PUBLIC PROCUREMENT?

- Public Procurement may be defined as the Government's activity of acquiring the goods, works and services which it needs to carry out its functions;
- Public Procurement is the procurement of goods, works and services on behalf of a public authority
- Public Procurement means procurement for or on behalf of a procuring entity using public funds by way of purchase, rental, lease, concession or hire-purchase with or without an option to buy but not with a view to commercial resale or use in the production of goods and services by private commercial entities for commercial use;

CHALLENGES PRIOR TO THE PUBLIC PROCUREMENT ACT 2007

Before the enactment of PPA 2007, procurement practice was very defective and consequently did not lead to achievement of desired project goals. Some of the Challenges that necessitated the enactment of the PPA 2007 are as follows:

- Absence of legal & institutional framework
- Award of contracts to friends, relations and use of primordial considerations in exercising public procurement decisions
- Abandonment of government projects after huge sums of money had been paid out to unqualified and ill-equipped contractors
- lack of procurement capacity within the MDAs
- Use of fake documents and falsification of records
- kickbacks and bribery
- Wrongful exclusion of qualified bidders
- Limited or no advertisement
- Absence of functional Database
- Excessive advance payments
- Delay in payment, uncertainty and sometimes non- payment for jobs done
- Selective Tendering beyond threshold without NO OBJECTION
- Sole source contracting beyond threshold without NO OBJECTION
- Contract price negotiations were common practices rather than exceptions
- Limited and ineffective public bidding: the process lacked competitiveness and transparency
- Unclear evaluation and award criteria
- Procurement without approval of Tenders Board or Accounting Officers
- Limited or no procurement planning
- collusion between bidders, between bidders and procuring agency staff, conflict of interest were dominant and unchecked
- Lack of periodic reviews and evaluations of procurement practices.

WHAT DOES THE PUBLIC PROCUREMENT PROVIDE FOR?

The Act provides for the establishment of supervisory Institutions and operational structures for procurement practices as well as defined scope, process, method, supervision, complaint mechanism, code of conduct and offences relating to Procurement of goods, works, services and disposal of assets at the federal level in Nigeria.

OBJECTIVES OF THE PAPER:

- To abreast participants with the importance and relevance of the PPA, 2007.
- To acquaint participants with importance of complying with the PPA, 2007
- To determine the extent of Compliance to the PPA 2007 by the Judiciary.

SCOPE OF APPLICATION OF THE ACT (SECTION 15)

- The Federal Government of Nigeria and all Procurement Entities.
- All entities outside the foregoing which derive at least 35% of funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation Share of Consolidated Revenue Fund.
- Shall not apply to procurement of special goods, works and Services involving national defense, or national security unless the president's express approval has been first sought and obtained

FUNDAMENTAL PRINCIPLES OF PUBLIC PROCUREMENT

According to Section 16 of the PPA 2007, the fundamental principles of procurement are based on:

- Prior procurement plans and prior budgetary appropriation
- Procurement shall not be formalized until funds are available
- There must be open competitive bidding (except NO OBJECTION IS SORT)
- The process must be transparent, timely and ensure accountability.
- Promote competition, economy and efficiency
- Must be in accordance with the laws\rules issued there from

DRIVERS OF PUBLIC PROCUREMENT

- Regulators
- Internal Stakeholders. within MDAs
- External Stakeholders outside the MDAs
- Investigators and Prosecutors of offenders

COMPLIANCE WITH PPA 2007

The Public Procurement Act 2007 is a vehicle for transparent administration of procurement activities in Nigeria. Compliance with the Act is executed by strictly following the procurement Cycle which begins from Procurement Planning to Project implementation and adhering to the prescribed thresholds for approving authority and procurement/selection methods and prequalification.

THE PROCUREMENT CYCLE

- i. Pre-Bidding Stage
 - Procurement Plan (Needs Assessment & Evaluation)
 - Market Surveys/In House Estimates
 - Provision of Funding
 - Selecting Procurement Method
 - Preparation of Bid Documents

- ii. Bidding Stage
 - Advertisement
 - Collection, Submission & Opening of Bids
 - Evaluation of Bids
 - Writing Evaluation Reports
 - Approval/No Objection

iii. Post Bidding State

- Award and Signing of Contract
- Contract Administration/Management
- Project Commissioning

Although the three phases are distinct and at times involves different players, they should be regarded as a single cohesive “Cycle” for the process to be successful;

APPROVAL THRESHOLDS FOR SERVICEWIDE APPLICATIONS

According to SGF Circular Ref.No.PROC/OSGF/BPP/709/85 dated 19th January, 2022, in order to ensure sustained and realistic procurement outcomes in the face of current economic realities and to enhance budget implementation and ease of doing business, the Federal Government has approved the revision of the subsisting Prior Review and Monetary Thresholds for Service-Wide Application for procurement of Goods, Works and Services as follows:

Approving Authority	Goods	Works	Non-Consultant/ Consultant Services
BPP/FJTB Certificate of No Objection to Contract Award	₦300m and above	₦1.5bn and above	N300m and above
Ministerial Tenders Board	₦20m and above but less than N300m	₦30m and above but less than ₦1.5bn	N100m and above but less than ₦300m
Parastatal Tenders Board	₦10m and above but less than ₦100m	N20m and above but less than ₦500m	₦10m and above but less than ₦100m
Accounting Officer: Permanent Secretary	Less than ₦20m	Less than ₦20m	Less than ₦20m
Accounting Officer: Director General/CEO	Less than ₦10m	Less than ₦10m	Less than ₦10m

...CONTINUATION OF APPROVAL THRESHOLDS FOR SERVICEWIDE APPLICATIONS

Procurement/Selection Method	Goods	Works	Non-Consultant Services	Consultant Services
International /National Competitive Bidding	₦300m and above	₦1.5bn and above	₦300m and above	Not Applicable
National Competitive Bidding	₦20m and above but less than ₦300m	₦30m and above but less than ₦1.5bn	₦20m and above but less than ₦300m	Not Applicable
Request for Quotation	Less than ₦20m	Less than ₦30m	Less than ₦20m	Not Applicable
National Shopping (Market Survey)	Less than ₦5m	Less than ₦5m	Less than ₦5m	Not Applicable
Single Source/Direct Contracting	Less than ₦1m	Less than ₦1m	Less than ₦1m	Less than ₦1m
Prequalification	₦100m and above	₦300m and above	₦100m and above	Not Applicable
Quality and Cost Based (QCB)	Not Applicable	Not Applicable	Not Applicable	₦50m and above
Consultant Qualifications	Not Applicable	Not Applicable	Not Applicable	Less than ₦50m
Least Cost	Not Applicable	Not Applicable	Not Applicable	Less than ₦50m

Complying with the above procedure and guidelines will lead to harmonizing the process of procurement. This will further ensure a judicious economic and efficient use of Public Funds and ensure that Public Procurement is carried out in a fair, transparent and non discriminatory manner.

PROCUREMENT METHODS

- Sections 24 and 25 of the Public Procurement Act, 2007 recognize the following Procurement Methods and the mode of Invitation to Bid depending on the monetary thresholds:
 - Open Competitive Bidding:
 - i. International Competitive Bidding (ICB)
 - ii. National Competitive Bidding (NCB)
- Sections 39 and 40 of the Public Procurement Act, 2007 also recognize the following Procurement Methods and the mode of Invitation to Bid depending on the monetary thresholds
 - i. Two Stage Tendering
 - ii. Restricted Tendering
- Section 41: National Shopping (Request for Quotations)
- Section 42: Direct (Single Source) Procurement
- Section 43: Emergency Procurement

NATIONAL COMPETITIVE BIDDING (NCB)

- This is for Contracts below a certain monetary threshold as set from time to time by BPP
- NCB is applicable for most Federal Government funded projects when goods and works are available within Nigeria at prices significantly below the international markets.
- Domestic contractors shall have valid and appropriate CAC registration and meet other responsive criteria in Section 16 (1 – 28); BPP Registration, Tax Clearance Certificate, Audited Accounts, PENCOM Certificate, VAT Registration & Remittance, NSITF, ITF, FRC.
- Invitation should be as stipulated in Section 25(2)ii) of PPA, 2007; (*Advertisement – Two national dailies, Procurement Journal, Websites of Procuring Entity and BPP and Notice Board of Procuring Entity*)
- Registration with procuring entity shall not be criterion for purchasing bid documents

RESTRICTED TENDERING SECTION 40 of PPA, 2007

- Restricted tendering is essentially by direct invitation without open advertisement
- Is an option where there is a limited number of possible suppliers or contractors,
- Advertising would be a waste of time and cost, or
- Where contract values are small or special circumstances
- Where MDAs uses restricted tendering, bids should be solicited from a list of potential suppliers broad enough to ensure competition, Section 40(2)a
- In adopting this method the MDA should publish the procedure adopted in the Procurement Journal for public information, Section 40 (3)

NATIONAL SHOPPING OR REQUEST FOR QUOTATIONS SECTION 41 of the PPA, 2007.

- An appropriate method for procuring
 - Readily available off-the-shelf goods.
 - Small value commodities for which specifications are standard.
 - Small value works or services.
- Under National shopping, procuring entity
 - For works and supplies, request for quotation shall be from shortlisted contractors or suppliers and minimum number shall be three (3) unrelated firms.
 - Select based on comparison of prices; have no negotiation with respect to quotation.
 - Award to qualified contractor or supplier that gives the lowest priced responsive quotation, Section 41(5).
 - May not seek BPP “No Objection” if the total value of the procurement is not more than a sum set in the financial threshold, Section 41(6).
 - Publish notice for inviting applications from contractors and suppliers

EMERGENCY PROCUREMENT SECTION 43

Procuring Entity may carry out emergency procurement where

- Threatened or confronted with disaster, war catastrophe (responding to an act of God) etc.
- Protecting existing investment that may deteriorate if urgent actions are not taken. May engage in direct contracting of goods, works and services.
- Insurrection and National security
- Emergencies shall be handled with expedition but all principle of accountability
- Immediately after cessation, file a detailed report thereof to the Bureau which shall verify and if appropriate issue Certificate of “No Objection”

STAKEHOLDERS OF PUBLIC PROCUREMENT IN THE FEDERAL JUDICIARY

The stakeholders are as follows:

1. Federal Judiciary Tenders Board
2. Federal Judiciary Due Process Committee
3. The Departmental Tenders Boards and Courts Tenders Board
4. Accounting Officers

The Finance Act 2022 recognizes the Judicial Bodies Tenders Board and Courts Tenders Board as stakeholders in the public procurement with explicit roles for Accounting Officers.

CONCLUSION

Recent economic indices in the Country have shown that not every goal tied to a project can be achieved at the desired set time due to inflationary pressure and insufficient availability of funds. Therefore, it is imperative for Courts and Judicial bodies to strictly adhere to the PPA 2007 for all Procurement activities in order to be able to achieve set goals with limited financial resources. If this is complied with, it will help to impact positively on public procurement practice especially in the area of prevention, curbing of fraud, enhanced transparency and accountability in the award of Contracts in the Judiciary

Credits

- Public Procurement Act 2007
- Finance Act 2020
- Engr (Dr.) B.G Ibrahim, 2020, Public Procurement Bid Evaluation
- SGF Circulars
- Wikipedia, Government Procurement
- Law Insider, Public Procurement

THANK YOU