



## Preventing and Combating Corruption in Nigeria's Public Procurement: The Pivotal Role of the Bureau of Public Procurement (BPP)

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**Abstract.** Public procurement is one of the most significant avenues through which government provides goods, works, and services to its citizens. It constitutes the primary channel for delivering development and public welfare projects in Nigeria. However, the procurement process has been deeply undermined by entrenched corruption, resulting in waste, inefficiency, and diversion of resources. In an attempt to address these challenges, the National Assembly enacted the Public Procurement Act (PPA) 2007, designed to harmonize procurement practices, promote transparency, and strengthen accountability. The Act further established the Bureau of Public Procurement (BPP) as the regulatory authority mandated to oversee and enforce compliance with its provisions. The PPA incorporates progressive mechanisms aimed at preventing corruption, enhancing competitiveness, and ensuring value for money in public contracting. Yet, despite these frameworks, corruption in public procurement remains pervasive. Institutions such as the Federal Executive Council (FEC), which also functions as a procurement entity, frequently disregard statutory provisions by awarding contracts without due process. Worryingly, members of the FEC who also sit on the National Council on Public Procurement, including the Attorney-General of the Federation and the Minister of Finance, often fail to enforce compliance. Moreover, the National Assembly, vested with constitutional oversight responsibilities, has not consistently exercised its powers to check these infractions. To achieve meaningful reform, the BPP

must be empowered and supported to fully discharge its statutory functions. Strengthening its regulatory role is pivotal not only for curbing corruption in procurement but also for advancing Nigeria's broader anti-corruption agenda.

**Keywords:** Public Procurement, Bureau of Public Procurement, Public Procurement Act 2007, Corruption, Transparency, Accountability, Nigeria, Governance

### 1. Introduction

Governance is essentially a business of public administration regulated by law, and one of its principal mechanisms is public procurement. Public procurement is indispensable to the delivery of goods, works, and services to citizens, and thus constitutes a cornerstone of governance in Nigeria. Recognizing this, the National Assembly enacted the Public Procurement Act 2007<sup>1</sup> to regulate procurement processes, ensure accountability, and promote transparency in the management of public resources. The Act established the National Council on Public Procurement and the Bureau of Public Procurement (BPP), with the latter vested with the day-to-day administration of the Act, while the Council provides oversight and policy direction.

The abuse of public procurement processes has long been identified as a major source of corruption in governance<sup>2</sup>. Indeed, corruption in Nigeria transcends

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<sup>1</sup> Cap. P44, Laws of the Federation of Nigeria (LFN) 2004 (as Revised).

<sup>2</sup> Chinua Achebe, *The Trouble with Nigeria* (Enugu: Fourth Dimension Publishers, 1983), 37- 43. On page 38 of the book, Achebe replied to the comments on page 37 credited to the former President, Shehu Shagari in 1983, to the effect that "there was corruption in Nigeria but that it had not yet reached alarming proportions," to which he replied

the public sector, as the private sector—being a primary supplier of goods and services—often facilitates and perpetuates corrupt practices. The Supreme Court of Nigeria in *Attorney-General of Ondo State v. Attorney-General of the Federation*<sup>3</sup> underscored that corruption is not limited to public officers but afflicts every segment of society, demanding comprehensive solutions that cut across both public and private spheres. As Katsina-Alu, JSC, observed in the same case, corruption and abuse of power permeate society, and efforts to eradicate them must bring every participant in corrupt practices to justice.

Corrupt practices and abuse of power spread across and eat into every segment of society. It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their power. It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm. This I believe is the intention of the framers of our constitution.<sup>4</sup>

Despite the enactment of the Public Procurement Act, weekly meetings of the Federal Executive Council (FEC) remain dominated by the award of contracts, often with limited recourse to the Bureau or Council as mandated by law. This raises questions about the effectiveness of the legal framework in curbing entrenched practices.<sup>5</sup> For clarity, the Act defines “goods” as all objects of every kind and description, “works” as activities relating to construction, renovation, and related services.

... all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation of a building, installation of equipment or materials, decoration and finishing, as well as service incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services pursuant to procurement contract, where the value of such services does not exceed that of the construction itself.<sup>6</sup>

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that “corruption in Nigeria has passed the alarming and entered the fatal stage; and Nigeria will die if we keep pretending that she is only slightly indisposed.” This was in 1983. More than three decades after that altercation, can anyone in Nigeria still doubt the fatal stage of corruption in the country?

<sup>3</sup> (2002) 9 NWLR [Pt. 772] 222 at 306.

and “services” as the rendering of effort and expertise not falling under goods or works.<sup>7</sup>

Adherence to the rule of law remains central to preventing and combating corruption in public procurement. Procurement processes must therefore be conducted transparently, within the bounds of legality, and subject to scrutiny. Ultimately, the rule of law ensures justice—justice for the offended, for the offender, and for society at large.<sup>8</sup>

This article examines the pivotal role of the Bureau of Public Procurement in preventing and combating corruption in Nigeria, evaluates the successes and shortcomings of its implementation, and offers recommendations for strengthening the Bureau to achieve optimal performance and minimize corruption in public procurement.

## 2. Legal Framework on Public Procurement

Public procurement of goods and services constitutes a critical component of public administration in Nigeria. Public procurement means the acquisition by any means of goods, works, or services by the government.<sup>9</sup> No government can function effectively without engaging the private sector to obtain the goods and services necessary for delivering the dividends of democracy to its citizens. Accountability and transparency in public expenditure remain the cornerstones of good governance.

Confronted with the pervasive challenge of corruption in public procurement, the National Assembly enacted the Public Procurement Act, 2007, which was passed on 4 April 2007 and assented to by President Umaru Musa Yar’Adua on 4 June 2007.<sup>10</sup> The Long Title of the Act provides:

“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 existing government policies and practices by regulating, setting standards and developing the legal framework and professional

<sup>4</sup> *Ibid*, 364.

<sup>5</sup> Public Procurement Act 2007, s. 60.

<sup>6</sup> *Ibid*.

<sup>7</sup> *Ibid*

<sup>8</sup> *Josiah v. State* (1985) 1 NWLR [Pt. 1] 125 at 141 per Oputa, J.S.C. (as he then was).

<sup>9</sup> Public Procurement Act 2007, s. 60.

<sup>10</sup> Public Procurement Act 2007, Cap P44, Laws of the Federation of Nigeria (LFN) 2010.

capacity for public procurement in Nigeria; and for related matters.”<sup>11</sup>

By virtue of this Act, the National Council on Public Procurement (NCP) and the Bureau of Public Procurement (BPP) were formally established. The establishment of the Bureau of Public Procurement aligns with Nigeria’s international obligations to adopt legislative and other measures to criminalize corrupt practices, as provided in Article 4(1) of the African Union Convention on Preventing and Combating Corruption (2003).<sup>12</sup> Similar provisions appear in the United Nations Convention against Corruption (2004)<sup>13</sup> and the ECOWAS Protocol on the Fight against Corruption (2001).<sup>14</sup> These obligations are rooted in the international law principle of *pacta sunt servanda*, as enshrined in Article 26 of the Vienna Convention on the Law of Treaties (1969), which provides that every treaty in force is binding upon the parties and must be performed in good faith.<sup>15</sup> A follow-up rule to the above is that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>16</sup> *Pacta sunt servanda* is the principle that international agreements are binding on the parties to them.<sup>17</sup> Article 27 further stipulates that a party may not invoke its internal law as justification for failing to perform a treaty.<sup>18</sup> Thus, Nigeria’s legislative action under the Public Procurement Act reflects its adherence to the principle that treaties and conventions impose binding obligations on state parties. The Public Procurement Act, 2007 contains sixty-one sections divided into thirteen parts.

Part I establishes the National Council on Public Procurement, outlining its membership and functions.<sup>19</sup>

Part II establishes the Bureau of Public Procurement, setting out its objectives, functions, powers, staffing structure, and operational procedures.<sup>20</sup>

Part III defines the scope of application of the Act.<sup>21</sup>

Part IV lays down the fundamental principles of public procurement.<sup>22</sup>

Part V details the procedures and processes governing procurement.<sup>23</sup>

Part VI provides the methods for procuring goods and services.<sup>24</sup>

Part VII prescribes special and restricted methods of procurement.<sup>25</sup>

Part VIII governs the procurement of consultancy services.<sup>26</sup>

Part IX introduces procurement surveillance and review mechanisms.<sup>27</sup>

Part X provides for the disposal of public property.<sup>28</sup>

Part XI establishes a code of conduct for public procurement.<sup>29</sup>

Part XII sets out offences and penalties relating to public procurement.<sup>30</sup>

<sup>11</sup> Ibid, Long Title to the Public Procurement Act 2007.

<sup>12</sup> African Union Convention on Preventing and Combating Corruption (adopted 11 July, 2003, entered into force 5 August 2006) Art 4(1).

<sup>13</sup> United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

<sup>14</sup> ECOWAS Protocol on the Fight against Corruption (adopted 21 December 2001, entered into force 14 June 2006).

<sup>15</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art 26.

<sup>16</sup> Ibid, art. 27.

<sup>17</sup> Malcolm N. Shaw, *International Law* 5<sup>th</sup> ed. (Cambridge: Cambridge University Press, 2003), 10.

<sup>18</sup> Ibid, Art 27.

<sup>19</sup> Public Procurement Act 2007, ss. 1-2.

<sup>20</sup> Ibid, ss. 3-14.

<sup>21</sup> Ibid, s. 15.

<sup>22</sup> Ibid, s. 16.

<sup>23</sup> Ibid, ss. 17-23.

<sup>24</sup> Ibid, ss. 24-38.

<sup>25</sup> Ibid, ss. 39-43.

<sup>26</sup> Ibid, ss. 44-52.

<sup>27</sup> Ibid, ss. 53-54.

<sup>28</sup> Ibid, ss. 55-56.

<sup>29</sup> Ibid, s. 57.

<sup>30</sup> Ibid, s. 58.

Part XIII contains miscellaneous provisions, including interpretation and the short title.<sup>31</sup>

Accordingly, the Public Procurement Act, 2007, provides the most comprehensive legal framework for the regulation of public procurement of goods, works, and services at the federal level in Nigeria. The Public Procurement Act 2007 identifies certain acts as constituting corruption and infractions of the Act which include inflation of contract sums; conducting or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption; attempting to influence the procurement process to obtain an advantage in the award of a procurement contract; splitting of tenders to enable the evasion of monetary thresholds; bid-rigging; altering any procurement document with the intent to influence the outcome of a tender proceeding; uttering or using fake documents or encouraging their use; and willful refusal to allow the Bureau or its officers to have access to any procurement records.<sup>32</sup> In addition, several state governments have enacted their own public procurement laws, modeled after the federal legislation, to strengthen accountability, promote transparency, and combat corruption in state-level procurement processes.

The acts of corruption, especially in the public service, have been identified by several international bodies including the African Union (AU). The African Union Convention on Preventing and Combating Corruption 2003 has identified nine instances of corruption of which the full spectrum can be distilled from its scope of application thus:

This Convention is applicable to the following acts of corruption and related offences:

The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

The offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or

omission in the performance of his or her public functions;

Any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;

The diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;

The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;

The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;

illicit enrichment;

The use or concealment of proceeds derived from any of the acts referred to in this Article; and participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this article.<sup>33</sup>

The list of what amounts to corruption is very long as can be deduced from the above provisions.

Secondly, the United Nations Convention Against Corruption (UNCAC) 2004 has specifically identified lapses in public procurement and management of public finances as major causes of corruption in both the public and private sectors of the economy.<sup>34</sup> In order to entrench a culture of accountability and transparency into public procurement and

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<sup>31</sup> Ibid, ss. 59-61.

<sup>32</sup> Ibid, s. 58 (4) (a)-(h).

<sup>33</sup> African Union Convention on Preventing and Combating Corruption 2003, art. 4.

<sup>34</sup> United Nations Convention Against Corruption (UNCAC) 2004.

management of public finance, the UNCAC provides thus:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia*:

- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.<sup>35</sup>

The sub-regional body of the Economic Community of West African States (ECOWAS) has also identified public procurement as a source of corruption in public governance and has, therefore, made provisions for transparency in public procurement as one of the preventive measures against corruption, thus:

In order to realize the objectives, set out in Article 2 above, each State Party shall take measures to establish and consolidate:

- (a) ...
- (b) transparency and efficiency in the procurement and disposal of goods, works and services and in the recruitment of personnel into the public service.<sup>36</sup>

Corruption in public procurement is a very sad reality in governance in Nigeria in particular and all over the world in general. Every person in Nigeria, especially public office holders, cannot claim ignorance of the existence of corruption in the country and the adverse effects it has in the polity. This is important because shying away from the virus will inflict more harm on Nigeria and Nigerians. We have already alluded to comments made to the effect that corruption in Nigeria had not yet reached alarming proportions.<sup>37</sup> We do not need corruption to reach alarming proportions before embarking on curbing it. Incidentally and most unfortunately, corruption in Nigeria has even passed the fatal stage. In *Hon. Minister for Environment, Housing and Urban Development & Anor v. County & City Bricks Development Company Ltd.*,<sup>38</sup> the case concerned grant of Certificate of Occupancy (C of O) to private individuals after the said land had been reclaimed by the CCBD Co. Ltd. These individuals went to Court and obtained judgement against the CCBD Co. Ltd and the then Attorney-General of the Federation, Michael Aandokaa SAN, refused to appeal the judgement but instead advised the CCBD Co. Ltd to go into negotiations with the trespassers. A new Attorney-General of the Federation came in and decided to appeal the matter in the interest of justice. The Court of Appeal held that the application was meritorious and granted the prayers of the appellant. The Court, per Saulawa JCA, lamented the existence

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<sup>35</sup> Ibid, art. 9.

<sup>36</sup> Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption 2001, art. 5 (b).

<sup>37</sup> Achebe, *The Trouble with Nigeria*, 37.

<sup>38</sup> (2002) All FWLR [Pt. 644] 66.

of corruption in the public service and the need for its aggressive eradication.<sup>39</sup>

However, it would be impossible for any government to function efficiently and effectively without engagement with the private sector in obtaining the goods and services required for delivering the dividends of democracy to the people. Accountability and transparency in government business are the cornerstones of good governance.

The Public Procurement Act 2007, therefore, provides the basic and most comprehensive legal framework for the regulation of public procurement for goods, works and services involving the Federal Government of Nigeria. The State governments have also enacted their laws, along the same line with the Act, to prevent and combat corruption in the State procurement of goods, works and services.

The National Council on Public Procurement (the Council) and the Bureau of Public Procurement (the Bureau)

The two regulatory institutions, also known as regulatory authorities, in public procurement established by the Act, are the National Council on Public Procurement (the Council) and the Bureau of Public Procurement (the Bureau).

The Council on Public Procurement (the Council): The Council is the apex regulatory authority in public procurement of goods, works and services involving the Federal Government of Nigeria.<sup>40</sup> The membership of the Council consists of the following persons and office holders:

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;  
Economic Adviser to the President;  
Six part-time members to represent:  
(i) Nigeria Institute of Purchasing and Supply Management;  
(ii) Nigeria Bar Association;  
(iii) Nigeria Association of Chambers of Commerce, Industries, Mines and Agriculture;  
(iv) Nigeria Society of Engineers;  
(v) Civil Society;  
(vi) the Media; and  
the Director-General of the Bureau who shall be the Secretary of the Council.<sup>41</sup>

The Act further provides that the Council may co-opt any person to attend its meeting but the person so co-opted does not have a casting vote or be counted for the purpose of forming a quorum.<sup>42</sup> This provision takes care of any person that may be invited as a professional, expert or in any other relevant capacity basically to give full effect to the functions of the Council and for the effective implementation of the provisions of the Act.

The functions of the Council are admirably captured in the Act as follows:

The Council shall:

consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities;

consider and approve policies on public procurement; approve the appointment of the Directors of the Bureau;

receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;

approve changes in the procurement process to adapt to improvements in modern technology; and

give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.<sup>43</sup>

The major functions of the Council are the supervision of the Bureau, act as the approving authority for the decisions of the Bureau and be the apex regulatory authority in public procurement in accordance with the provisions of the Act. This will be enough on the Council since our major concern is the Bureau.

The Bureau of Public Procurement (BPP) (the Bureau): The Bureau, on the other hand, is also established by the Act as the agency that performs the day to day regulatory administrative functions of the Act and reports to the Council.<sup>44</sup> The outstanding features of the Bureau are that it is a separate corporate entity with perpetual succession and a common seal; may sue and be sued in its corporate name; and has the legal capacity to acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out its functions under the Act.<sup>45</sup>

The Objectives of the Bureau: The objectives of the Bureau, as enunciated in the act, are the following:

the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;

<sup>39</sup> Ibid, 95-96.

<sup>40</sup> Ibid, s. 1 (1).

<sup>41</sup> Ibid, s. 1 (2).

<sup>42</sup> Ibid, s. 1 (3).

<sup>43</sup> Ibid, s. 2.

<sup>44</sup> Ibid, s. 3 (1).

<sup>45</sup> Ibid, s. 3 (2).

the establishment of pricing standards and benchmarks; ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services; and the attainment of transparency, competitiveness and professionalism in the public sector procurement system.<sup>46</sup>

The objectives of the Bureau are in line with the objectives of the Act especially the Long Title earlier referred to in this article.

The Functions of the Bureau: the functions of the Bureau are such that they are geared towards attaining the objectives of the Act and the Bureau. Accordingly, the functions of the Bureau, nineteen in number, are the following:

- formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;
- publicize and explain the provisions of this Act;
- subject to thresholds as may be set by the Council, certify public procurement prior to the award of contract;
- supervise the implementation of established procurement policies;
- monitor the prices of tendered items and keep a national database of standard prices;
- publish the details of major contracts in the procurement journal;
- publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
- maintain a national database of the particulars and classification and categorization of federal contractors and service providers;
- collate and maintain in an archival system, all federal procurement plans and information;
- undertake procurement research and surveys;
- organize training and development programmes for procurement professionals;
- periodically review the socio-economic effects of the policies on procurement and advise the Council accordingly;
- prepare and update standard bidding and contract documents;

- prevent fraudulent and unfair procurement and, where necessary, apply administrative sanctions;
- review the procurement and award of contract procedures of every entity to which this Act applies;
- perform procurement audits and submit such report to the National Assembly bi-annually;
- introduce, develop, update and maintain related database and technology;
- establish a single internet portal that shall, subject to section 16 (21) to this Act, serve as a primary and definitive source of all information on government procurement containing all public sector procurement information at all times; and
- co-ordinate all relevant training programmes to build institutional capacity.<sup>47</sup>

The functions of the Bureau so spelt out above are comprehensive enough to prevent and combat corruption in public procurement and in the disposal of public property in Nigeria.

The Powers of the Bureau: By powers, the Act refers to what the Bureau is allowed to do under the Act especially in aid of fulfillment of the provisions and the realization of the aims and objectives of the Act. The Act provides that the Bureau has the power to do the following:

- enforce the monetary and prior review thresholds set by the Council for the application of the Act by the procuring entities;
- subject to paragraph (a) of this subsection, issue certificate of “No Objection” for Contract Award within the prior review threshold for all procurements within the purview of this Act;
- from time to time stipulate to all procurement entities, the procedures and documentation pre-requisite for the issuance of certificate of “No Objection” under this Act;

where a reason exists:

- (i) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act;
- (ii) review and determine whether any procuring entity has violated any provision of this Act;

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<sup>46</sup> Ibid, s. 4.

<sup>47</sup> Ibid, s. 5.

debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act;

maintain a national database of federal contractors and service providers and, to the exclusion of all procuring entities, prescribe classifications and categorizations for the companies on the register;

maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal; call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and/or collusion has been alleged, reported or proved against a procuring entity or service provider;

recommend to the Council, where there are persistent breaches of this Act or regulations made under this Act, for:

(i) the suspension of officers concerned with the procurement or disposal proceeding in issue;

(ii) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the chairperson of the Tenders Board as the case may be;

(iii) the discipline of the Accounting Officer of any procuring entity;

(iv) the temporary transfer of the procuring or disposal function of a procuring or disposing entity to a third-party procurement agency or consultant; or

(v) any other sanction that the Bureau may consider appropriate;

call for the production of books of accounts, plans, documents and examine persons or parties in connection with any procurement proceeding;

act upon complaints in accordance with the procedures set out in this Act;

nullify the whole or any part of any procurement proceeding or award which is in contravention of this Act; and

do such other things as are necessary for the efficient performance of its functions under this Act.<sup>48</sup>

The Bureau serves as the secretariat for the Council.<sup>49</sup> Subject to the approval of the Council, the Bureau also has power to do the following:

enter into contract or partnership with any company, firm or person which, in its opinion, will facilitate the discharge of its function;

request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Act; and

liaise with relevant bodies or institutions, national or international, for the effective performance of its functions under this Act.<sup>50</sup>

The provisions on the powers of the Bureau are innovative and have the capacity, where they are meticulously implemented, to prevent and combat corruption in public procurement and in the disposal of public property in Nigeria.

Scope of Application of the Act:

The Act applies to all procurement of goods, works and services carried out by:

- the Federal Government of Nigeria and all procurement entities;<sup>51</sup> and
- all entities outside the foregoing description which derive at least 35% of the fund appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of the Consolidated Revenue Fund.<sup>52</sup>

The provisions of the Act do not apply to the procurement of special goods, works and services that involves national defence or national security. The exclusion is, however, not absolute as the provisions of the Act can apply where the express approval of the President is first sought and obtained.<sup>53</sup>

The scope of application of the Act affirms our position that the full implementation of the Act, *via* the Bureau, has the capacity to prevent and combat corruption in public procurement in Nigeria. This is even so as the Act applies to all government Ministries, Departments and Agencies (MDAs). On the other hand, the exclusion of the Act from the purview of public procurement involving national defence or national security does not imply freedom to violate the basic principles of procurement in those areas. Recent revelations concerning unbridled

<sup>48</sup> Ibid, s. 6 (1).

<sup>49</sup> Ibid, s. 6 (2).

<sup>50</sup> Ibid, s. 6 (3).

<sup>51</sup> Procurement entity means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Office, government agency, parastatal and corporation.

<sup>52</sup> Ibid, s. 15 (1) (a) and (b).

<sup>53</sup> Ibid, s. 15 (2). By section 60 of the Act, special purpose goods means any objects of armaments, ammunition, mechanical, electrical equipment or other thing as may be determined by the President needed by the Armed Forces or Police Force as well as the services incidental to the supply of the objects.

corruption in the purchase of military hardware in Nigeria are causes for concern.<sup>54</sup>

### 3. Other Innovative Provisions of the Act

#### 3.1 Fundamental Principles for Procurement

Fundamental principles for public procurement are the guidelines that must be adhered to and kept in focus when dealing with the processes, actual awards and performance of contract for goods, works and services involving public procurement in Nigeria. The fundamental principles enhance transparency and also provide the safeguards against corruption in public procurement. Some of the fundamental principles, as captured in section 16 of the Act, include the following:

Public procurement must be conducted subject to the prior review thresholds as set from time to time by the Bureau. By threshold, the Act is referring to the monetary limits above which the procurement authority cannot award such contract for the public procurement. In the case of *Chief Olubode George & 5 Ors. V. Federal Republic of Nigeria*<sup>55</sup>, one of the issues for determination involved the award of several contracts by the Board of the Nigerian Ports Authority (NPA) without due process and above the prior review threshold for the Board. Evidence as led by the prosecutor sustained the charge; and the members of the Board who were involved in the negotiation and award of the contract were convicted. On appeal, the Court of Appeal affirmed the conviction and further held that by not adhering to the prior review threshold, the accused had committed a crime punishable by law. The Court of Appeal specifically stated that “a man is presumed to intend the natural and probable consequences of his actions”<sup>56</sup> as the members of the Board of NPA were involved in contract splitting to evade the authorized monetary threshold.

Public procurement must be based on procurement plans supported by prior budgetary appropriations; funds must be available to meet the obligation before procurement proceeding is formalized; and the procuring entity must obtain a “Certificate of ‘No Objection’ to Contract Award” before the proceeding is formalized.

Every procurement contract must be done by open competitive bidding.

The open competitive bidding must be in a manner that is transparent, timely, equitable for ensuring accountability and conformity with the Act and regulations therefrom.

Every procurement contract must be with the aim of achieving value for money and fitness for purpose.

Every procurement contract must be done in a manner which promotes competition, economy and efficiency. Every procurement contract must also be in accordance with the procedures and timelines laid down in the Act and as may be specified by the Bureau from time to time.

No fund is to be disbursed from the Treasury of the Federation Account of any bank account of any procuring entity for any procurement falling above the set thresholds unless the request for payment is accompanied by a “Certificate of ‘No Objection’ to Contract Award” duly issued by the Bureau.

All bidders must possess the necessary:

- (a) professional and technical qualifications to carry out particular procurements;
- (b) the financial capability;
- (c) equipment and other relevant infrastructure;
- (d) shall have adequate personnel to perform the obligations of the procurement contracts.

The fundamental principles for public procurement are codified in twenty-eight sub-sections with several paragraphs and sub-paragraphs in the Act. They are, therefore, exhaustive and capable of delivering on the mandate to prevent and combat corruption in public procurement in Nigeria.

#### 3.2 Organization of Procurements

This part of the Act deals with the procedures for and the bodies involved in the procurement contracts for the purpose of an orderly exercise aimed at fulfilling the purposes of the Act. This part makes provisions for the approving authority for the conduct of public procurement: in the case of a government agency, parastatal, or corporation, the Parastatal’s Tender Board is the approving authority. In the case of a Ministry or extra-ministerial entity, the Ministerial Tender Board is the approving authority.<sup>57</sup> It must be emphasized that the two Tender Boards work in conjunction with the Bureau and must always keep in mind the mandatory monetary threshold provisions of the Act or regulation made pursuant to the Act.

<sup>54</sup> We are referring to the so called Dasuki Gate of 2015.

<sup>55</sup> (2011) All FWLR [Pt. 587] 664.

<sup>56</sup> Ibid, at 742-743.

<sup>57</sup> Public Procurement Act 2007, s. 17.

Every public procurement must be done only after careful procurement planning which includes preparing the needs assessment and evaluation; identifying the goods, works or services required; an analysis of the cost implications of the proposed procurement *via* market and statistical surveys; integrating the procurement expenditure into its annual budget, etc.<sup>58</sup>

Public procurement plan also has its methods of implementation which include advertisement and solicitation for bids; two external observers in every procurement process; receive, evaluate and make a selection of the bids received; obtain the approval of the approving authority before making an award; resolve complaints and disputes if any; obtain the “Certificate of ‘No Objection’ to Contract Award” from the Bureau; execute all contract agreements; and announce and publicize the award in the stipulated format.<sup>59</sup>

This part also names the accounting officer of the procuring entity as “the person charged with line supervision of the conduct of all procurement processes.”<sup>60</sup> The accounting officer in Ministries is the Permanent Secretary while that in the extra-ministerial departments is the Director-General or officer of a co-ordinate responsibility. The direct import of this provision is that the Ministers have no power to undertake any process for the award of contracts in their Ministries. The irresistible conclusion is, therefore, that the government of Nigeria has always operated in contravention of and total disregard for the law in public procurement. The Procurement Planning Committee and the Tenders Boards are established and the provisions for pre-qualification of bidders are also made in this part of the Act.<sup>61</sup>

#### 4. Procurement Methods

One of the cardinal innovations of the Act is the entrenchment of transparency, through open competitive bidding, in public procurement processes in Nigeria.<sup>62</sup> This part has a total of sixteen procurement methods that encompass all aspects of

openness, devoid of secrecy, in the process of public procurement.

#### 4.1 Procurement Surveillance Review

The Bureau has the power to review and recommend for investigation any procuring contract if it considers that a criminal investigation is necessary to prevent or detect a contravention of the Act.<sup>63</sup> The bidder equally has the right to seek administrative review for any omission or breach of the Act by a procuring or disposing entity.<sup>64</sup>

#### 4.2 Code of Conduct for Public Procurement<sup>65</sup>

Public procurement and disposal of public property are highly regulated activities through the Act. The code of conduct for public procurement dispels any doubt about the purpose and intendment of the Act with regard to the conduct of every person, especially public officers and corporate bodies, involved in the operation of the Act. The bottom-line is to inject accountability, probity and transparency into all the processes of public procurement so as to rid them of corruption and corrupt practices.

#### 4.3 Penal Sanctions for Offences Relating to Public Procurement<sup>66</sup>

The Act reels out some of the criminal responsibilities that relate to the offences that it frowns at and for which every person who violates the provisions shall be liable to in terms of fines, imprisonment, both fines and imprisonment, summary dismissal from government services, debarment from all public procurement, etc.

The Federal High Court is the court vested with the jurisdiction to try offenders while the Attorney-General of the Federation is the prosecuting authority for the offences in the Act.<sup>67</sup>

The Act is a comprehensive, innovative, forward-looking and result-oriented piece of legislation aimed at injecting transparency and accountability into public procurement thereby preventing and combating

<sup>58</sup> Ibid, s. 18.

<sup>59</sup> Ibid s. 19.

<sup>60</sup> Ibid, s. 20 (1).

<sup>61</sup> Ibid, ss. 21-23.

<sup>62</sup> Ibid, Part VI: ss. 24-38.

<sup>63</sup> Ibid, s. 53.

<sup>64</sup> Ibid, s. 54.

<sup>65</sup> Ibid, s. 57.

<sup>66</sup> Ibid, s. 58 generally.

<sup>67</sup> Ibid, s. 58 (2) and (3).

corruption and corrupt practices in the system and process of public procurement in Nigeria.

### **5. Critical Analysis of the Legal Framework**

We have identified the Bureau as the democratic institution that has the greatest capacity to prevent and combat corruption in public procurement in Nigeria. This is because most of the corruption cases emanate from and are fueled by manipulations in public procurement through the awards of contracts for goods, works and services. The question that keeps agitating our minds is, why does corruption persist in public procurement despite the innovative and legislative safeguards in the Public Procurement Act 2007? Several answers come to mind: the government of Nigeria has no respect for the rule of law. Government appointees, especially Ministers and Heads of Departments and Agencies, have a deliberate propensity to subvert the law. The Bureau does not appreciate the extent of her responsibilities under the Act. Government prioritizes politics of development instead of politics in development. All the above are happening in Nigeria and can be sum up as being the direct result of the emasculation of the familiar concept of the rule of law in governance.

The Act provides that the provisions of the Act shall apply to all procurement of goods, works and services carried out by the Federal Government of Nigeria and all procurement entities except procurement of special goods, works and services involving national defence or national security unless the express approval of the President is first sought and obtained.<sup>68</sup> The above provision is reinforced by the fact that the Council and the Bureau are the regulatory authorities responsible for the monitoring and oversight of public procurement, which involves the Federal Government, in Nigeria.<sup>69</sup>

A practical example of the subversion of the law on public procurement is the weekly awards of contracts by the Federal Executive Council (FEC) without recourse or any input from the Bureau. This is even happening when the Chairman of the Council, who is the Minister of Finance, Attorney-General of the Federation and Minister of Justice, and the Secretary to the Government of the Federation are all members of the Council and also members of the FEC. This is even more worrisome when the Attorney-General of the Federation is the Chief Law Officer of the

Federation and also the prosecuting authority of the Act.

Other challenges that undermined the Act effectiveness includes but not limited to the challenges are:

#### **Weak Enforcement and Institutional Capacity**

Although the Act provides for robust oversight through the Bureau of Public Procurement, enforcement remains weak. Many procurement infractions are overlooked, and sanctions are rarely imposed. Limited staffing, inadequate funding, and bureaucratic bottlenecks hinder the BPP's operational capacity.

#### **Political Interference**

Procurement processes are often compromised by undue political influence. High-level government officials sometimes override due process, awarding contracts to political allies or cronies in violation of procurement rules. This erodes public confidence in the system.

#### **Delayed Constitution of the National Council on Public Procurement**

Despite the Act's clear provisions, successive governments have delayed the formal constitution of the NCPP. This has left the BPP to function without the full institutional backing of the Council, weakening its authority and independence.

#### **State-Level Variations**

While many states have enacted procurement laws modeled on the federal Act, the degree of compliance varies widely. Some states fail to operationalize their laws effectively, while others lack the political will to enforce procurement discipline.

#### **Procurement Fraud and Loopholes**

Practices such as contract splitting, inflated contract sums, and the use of emergency procurement provisions without genuine justification remain widespread. These undermine the integrity of the procurement system.

#### **Lack of Public Awareness and Participation**

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<sup>68</sup> Ibid, s.15.

<sup>69</sup> Ibid, Long Title to the Act.

The role of civil society and citizens in monitoring procurement is weak. The absence of effective whistleblower protection and limited access to procurement information discourage public participation in oversight.

## 6. Recommendations

The challenges listed above give us an idea of what is hampering the full implementation of the Act. Without the honest and full implementation of the provisions of the Act by the Bureau, corruption will persist in public procurement in Nigeria. The Bureau must, therefore, as a matter of urgency re-calibrate itself and assume the full extent of her powers under the Act and do her work with honesty, integrity and transparency.

Members of the Council who are also members of the Federal Executive Council must stick with the Constitution of the Federal Republic of Nigeria to which they swore to uphold. They must be ready to advise the President on the provisions of the law on public procurement in Nigeria. The President should be ready and willing to listen to legal advice given by the insider Council members who are also members of his cabinet. This is captured in the popular concept always referred to as the rule of law. The rule of law is supreme and is even in aid of the development of democracy and democratic practices. In *Peoples' Democratic Party v. Sheriff*, the Supreme Court of Nigeria, per I. T. Muhammad, JSC (as he then was) reiterated the need for the interest of citizens to be first and foremost in the minds of politicians.<sup>70</sup>

The Minister of Finance should work with the provisions of the Act by refusing authorization for payment for any contract that is not in line with the provisions of the Act. Otherwise, the Minister should be sanctioned under the provisions of the Act.

The Attorney-General should take his or her pride of place and perform his or her role within the provisions of the law with regard to the Constitution and the Act. He has enormous powers to prosecute under the Constitution<sup>71</sup> and is also the prosecuting authority under the Act. Nothing must be left undone.

The prosecuting powers of the Attorney-General of the Federation do not encumber the powers of the

Economic and Financial Crimes Commission (EFCC)<sup>72</sup> and the Independent Corrupt Practices Commission (ICPC) especially if the offenders are public officers of the federation.<sup>73</sup>

Above all, the two Arms of the National Assembly have to rise up to their constitutional responsibilities of over-sight functions of the MDAs as they relate to public procurement as enshrined in the Constitution.<sup>74</sup>

## 7. Conclusion

Public procurement is one of the most critical mechanisms through which government delivers essential goods, works, and services to its citizens. Unfortunately, it has equally become one of the most entrenched avenues for corruption and the mismanagement of public resources in Nigeria. The enactment of the Public Procurement Act (PPA) 2007, and the establishment of the Bureau of Public Procurement (BPP), were deliberate steps to promote transparency, accountability, and efficiency in the procurement process. The Act contains innovative provisions capable of transforming the system, ensuring value for money, and eliminating corruption, provided they are fully implemented and enforced.

Yet, corruption in procurement continues to thrive, largely because institutions and officials entrusted with oversight often circumvent or neglect statutory requirements. The persistent disregard for the law whether by the Federal Executive Council, the National Assembly, or even high-ranking members of the National Council on Public Procurement undermines the objectives of the Act and entrenches impunity.

Meaningful reform demands a firm commitment to the transparent implementation of the law. The Bureau must be empowered and allowed to discharge its statutory responsibilities without interference. Effective enforcement of the Act remains the only pathway to curbing corruption in procurement, restoring accountability, and reinforcing Nigeria's wider anti-corruption agenda. If faithfully implemented, the PPA 2007 can usher in a culture of integrity and a corruption-free public procurement system in Nigeri

<sup>70</sup> (2017) 15 NWLR [Pt. 1588] 219 at 291-292.

<sup>71</sup> CFRN 1999 (as Amended), s. 174 (1).

<sup>72</sup> Economic and Financial Crimes Commission (Establishment) Act, Cap. E1, LFN 2004 (as Revised).

<sup>73</sup> Corrupt Practices and Other Related Offences Act, Cap. C31, LFN 2004 (as Revised).

<sup>74</sup> CFRN 1999 (as Amended), s. 4.