

# Public Procurement Reform and Good Governance in Nigeria

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## Abstract

This paper dwelled on public procurement process and how the reform of procurement regime fosters good governance in Nigeria. This research intends to address the mechanics of the process of acquisition by government and public entities of goods, works and services that are necessary to fulfill their mandate in the provision of services and facilities to the general public as well as dysfunctions that hamstrung the procurement process such as inefficiency, corruption and disregard of fundamental "value for money" considerations, which informed the imperative of reforming the procurement regime in a bid to ensure efficiency and good governance. In the light of the above objectives, this paper is divided into five sections for orderly discussion of issues central to public procurement reform. The sequence of the paper include: First section which introduced the paper, while section two conceptualized public procurement and highlight practices inherent in its processes including procurement framework that comprise procurement organization, procurement legislation, human resource for procurement and procurement process and procedure; third section will examine content and application of public procurement reform in Nigeria; section four discusses the relationship between procurement reform and good governance particularly in enhancing transparency and accountability as well as effective control of public funds in acquisition of goods and service; and the concluding section support the thesis of this treatise that public procurement reform is one of the prerequisites for good governance in Nigeria.

**Keywords:** Procurement reform, Good governance and Nigeria

## 1. Introduction

Public Procurement has undoubtedly become an increasingly important factor in economic and business circles globally. This is evidenced against the backdrop of growing interest of development partners, civil society organization, professional organizations, the private sector and the general public. After decades of coping with dysfunctional Public Procurement systems, a majority of developing countries, Nigeria inclusive, are now reforming the legal, organizational and institutional frameworks for public procurement. Globally governments are increasingly under strain to provide host of essential services including health, education, defense, infrastructure, etc. To provide these essential services, governments purchase goods and services from the market place through public procurement broadly defined as the purchasing, hiring or obtaining by any other contractual means of goods, construction works and services by the public sector. Reformed public procurement has important economic and political implications, ensuring that the process is economical and efficient is crucial. This requires that the whole process is well understood by both the actors (the government, the procuring entities, the business community/suppliers) and the other stakeholders including professional associations, civil society organizations and the general public.

## 2. Concept of Public Procurement

Procurement refers to the buying or purchasing of a product – i.e. a material good or an intangible service. In the case of goods, at least, the product may be either a discrete product or a whole system. Procurement in this context can be defined along two dimensions; private/ public and regular/ innovative. The former dimension obviously specifies whether the purchaser is a private firm or a public agency. In the latter dimension, regular procurement denotes that the procurement concerns ready-made already existing products whose characteristics are well known or can be readily ascertained. Procurement is central to the government service delivery system, and promotes aims which are, arguably, secondary to the primary aim of procurement such as using procurement to promote social, industrial or environmental policies (Cane, 2004). Over the years, public procurement has sometimes been used to accomplish a variety of policy objectives: to increase overall demand, stimulate economic activity and create employment; to protect domestic firms from foreign competition; to improve competitiveness among domestic firms by enticing 'national champions' to perform R&D activities; to remedy regional disparities; and to create jobs for marginal sections of the labour force (Martin, 1996).

United Nations Development Programme, UNDP (2007) views public procurement as an overall process of acquiring goods, civil works and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration through the end of a service's contract or the useful life of an asset.

Furthermore, Harink (1999) added that, public procurement involves more than the procurement process alone and it should not only consist of supporting but also important components including strategy and policy of the organization, methods and procedures, personnel and organization, and information.

Procurement encompasses the whole process of acquiring property and/or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property and/or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life (Waters 2004).

The public procurement process should uphold integrity by mitigating all malpractices; informed decision-making, which requires public bodies to base decisions on accurate information and ensure that requirements are being met. More still, the Procurement practice should be responsive to aspirations, expectations and needs of the target society. The executing of the responsibility entails professionalism from competent scholars in this paradigm. Also there is need for transparency to enhance openness and clarity on procurement policy and its delivery (World Bank, 2003).

## 2.1 Dimensions of Public Procurement

Two levels can be distinguished in the organization and administration of public procurement, and thus in the realization of its effects. These distinctions are not usually made in the literature. Nevertheless, we consider it useful to differentiate between *general* and *strategic* public procurement.

2.1.1 General Procurement. For the use of state procurement as an innovation instrument, on the one hand, government procurement can *generally* be so organized, that innovation can become an essential criterion in the tender and assessment of tender documents. Such an approach is being pursued at present by the United Kingdom. As a rule, central procurement offices are responsible for procurement in general. They are typically located in ministries of either the Interior or Finance, but not in the ministries responsible for innovation policy.

2.1.2 Strategic Procurement. *Strategic procurement* occurs when the demand for certain technologies, products or services is encouraged in order to stimulate a certain market. Strategic procurement is as a rule associated with sectoral policy and therefore to a large extent neither initiated nor coordinated by the ministries responsible for innovation policy. It is more likely to be located in ministries associated with specific sectors – for example, the various public utilities (or infrastructure branches), and the few remaining “natural monopolies” controlled by the state, such as national defence.

A systematic utilization of both forms of government procurement calls for coordinated action, i.e. coordination between various ministries and authorities and their admittedly widely different targets and incentive structures. Ministries responsible for innovation policy might, with appropriate mandates, play an important role in bringing about such co-ordination.

Not all public procurement is carried out in order to meet the direct needs or goals of public authorities or agencies. There are also instances of procurement cases where purchasing by state or public sector actors is directed not only towards fulfilling their own (original) tasks, but also aims to influence and support certain patterns of demand on the part of private consumers. In addition, there are some instances in which the latter goal is primary. On this basis, we can distinguish three main varieties of public procurement: direct, co-operative, and catalytic procurement. Essentially, these distinctions refer to different types of end-users and corresponding categories of societal need.

2.1.3 Direct Procurement. *Direct public procurement* corresponds to the case where a government body, public agency, or authority, purchases a product for its own use – i.e., to fulfill its particular mission or mandate. The procurement of a high-speed train by a state-owned railway company provides an example of this type of procurement. Although the railway company subsequently makes use of the train to provide public transportation services, it is not the travelling public, but rather the state-owned railway company that is the primary user of the high-speed train. The societal need that has motivated the procurement can in this respect be said to have been *intrinsic* to the public sector buyer.

2.1.4 Cooperative Procurement. So-called *cooperative public procurement* occurs when public authorities or agencies buy jointly with private purchasers and both utilize the bought innovations. In such cases, initial demand from the public sector is very often intended to provide a “launching” market that will eventually lead to the development of an equally strong articulation of demand from the private sector. Government purchasing of energy efficient and/or environmentally office equipment provides an example of this kind of public procurement. The same products can also be purchased and used by private firms and individuals, once they become readily available in the market, and government purchasing thus provides one important means of realizing broader societal goals of energy efficiency or environmental sustainability. These goals, however, reflect needs that are broadly shared by, and thus *congeneric* to, a very broad range of social and economic actors.

2.1.5 Catalytic Procurement. We can speak of *catalytic public procurement* when a state or public sector actor is involved in the procurement, or even initiates it, but the purchased innovations are in the last instance used exclusively by private end-users. The crucial feature of catalytic procurement is that the state or public sector plays a key role as the initial buyer, but it does not purchase the product(s) in question for its own, direct use. Rather,

the intention is to support private actors by providing them with the opportunity to buy new or alternative product(s). The real market penetration effect is eventually achieved by subsequent private demand. This type of public procurement can be exemplified by the market transformation programmes in the energy sector that were carried out in Sweden and elsewhere during the 1990s. Such programmes involved, for instance, the procurement of energy-efficient home appliances, the main end-users of which would not be public-sector organizations but rather private individuals and households. Naturally, widespread market acceptance of such products would reduce demands for energy provision by public utilities, but the primary need that they addressed was that of private individuals and households to reduce energy costs. In this respect, the needs addressed by such procurements were external, or *extrinsic*, to the procurers.

## 2.2 Public and Private Procurement

Public sector procurement refers to procurement by or on behalf of ministries, departments and agencies (MDAs) of federal and state governments, as well as local governments and state – owned enterprises. Procurement in the public sector aims to achieve multiple objectives. These include: economy, efficiency, fairness (i.e. non-discrimination among potential suppliers), accountability, transparency and, where more than one country is involved, respect for international obligations. Besides its business objectives, public procurement is an instrument for the attainment of broader national socio- economic objectives such as supporting employment of citizens and income creation through preference for local suppliers; promotion of indigenous small scale industries and service providers; and enhancement of regional integration through improvement of cross-border trade. Accordingly, public procurement is checked by various regulations including laws, statutes and ministerial orders in form of regulations specifically enacted to protect public interest. It is also subject to scrutiny by the auditing arm of government, which in itself assumes ultimate responsibility for obligations incurred in relation to third parties.

Procurement in the private sector, on the other hand, seeks merely to achieve efficiency and a good economic result for the buyer; securing the best price for goods and services is paramount. Consequently, procurement in the private sector does not follow any firm procedure. As a result of these and other differences, the public procurement process is much more complicated and slower, and not always as efficient as private sector purchasing.

## 2.3 Principles of Public Procurement

Public procurement regime is underpinned by number of principles aimed at fostering accountability, transparency and economy in spending public funds to acquire goods and service. These include:

**Value for money (VFM):** VFM) is the most important principle of procurement (Raymond, 2008). According to Bauld and McGuinness (2006), VFM in the public sector involves consideration of the contribution to be made to advance government policies and priorities while achieving the best return and performance for the money being spent. Cummings and Qiao (2003) indicated that in order to obtain VFM, sometimes the government is at liberty to consider other criteria than the lowest price; for example technical capabilities, qualifications of key personnel, and past performance records in awarding contracts to potential suppliers. Palmer and Butt (1985) identified barriers such as weak governing bodies, politics, tradition and lack of education and training programmes which need to be conquered so as to achieve VFM.;

**Ethics:** Another important principle of public procurement is ethics. Atkinson (2003) stated that purchasing professionals are held to higher standards of ethical conduct than people in other professions, yet some do not even know what is expected of them. It is therefore important that employees are adequately educated in such matters so that it does not lead to serious consequences like breach of codes of conduct (Raymond, 2008). Atkinson (2003) further noted that there are approximately 500,000 professional purchasing people in the United States and only 10% of these have been members of a professional Supply Chain Management Association which trains members in purchasing ethics, and the rest are not even aware that there are ethical and legal standards involved in procurement;

**Competition:** Competition is the means by which most goods and services are procured (Raymond, 2008). It is a means by which buyers make the best use of competitive market forces to obtain the best offer that can be obtained from the market at that particular point in time. Competition occurs in the tendering process as bids are submitted by various tenders for consideration. Also competition occurs in issues such as suppliers' credibility in carrying out previous contracts of the same nature, the price and the most competitive bidder would be awarded the contract (Raymond, 2008). Erridge *et al.* (1999) believes that competitive tendering would avoid accusations of favouritism and fraud and that the openness of the system would encourage more suppliers to participate and that increased competition would help reduce prices, improve quality and lead to greater competitiveness among suppliers;

**Transparency:** Transparency is another important principle in public procurement. Transparency in procurement means openness in the tendering process. This involves having regard for the procurement laws, policies and practices in the country. Transparency provides an assurance for both domestic and foreign firms that

contracts will be awarded in a fair and equitable manner. According to Smith- Deighton (2004), transparency requires governments to adhere to higher standards of conduct by ensuring that conduct will be open to scrutiny. Transparency therefore is an essential aspect of ensuring accountability and minimizing corruption, and has gained prominence in Organization for Economic Cooperation and Development (OECD) countries, and is particularly associated with the rise of the governance agenda as transparency is a core governance value (Smith-Deighton, 2004). In all markets, a lack of transparency in the sense of absence of information on rules and practices could operate as a barrier to trade and may affect foreign suppliers more than local ones (Arrowsmith, 2003); Accountability: Accountability is the final principle in public procurement and it comes in to play at both the national and international levels (Raymond, 2008). The public, however, is also demanding greater accountability and better service (Gunasekaran, 2005). Therefore, managing the risks associated with the complex competitive environment give rise to accountability problems (Barrett, 2000) as the roles and responsibilities of the participants in the process are not clear (Raymond, 2008).

#### 2.4 Procurement Legislation

Prior to 1994, public procurement in most countries was regulated by administrative fiat and some obsolete legislations. In Nigeria before the enactment of Public procurement Act in 2007, procurement in public sector was regulated simply by financial regulations and official circulars issued by ministries of finance at the center and regions which complement the provisions of Finance(Control and Management) Act of 1958. Inadequacy of laws dealing with procurement informed the dysfunctions of Public procurement regime in most countries, and need for reforms. The United Nations Commission on International Trade Law (UNCITRAL) the main legal body of the United Nations system issued a Model Law on procurement of Goods, Construction and Services in 1994 “Model Law”. The Model Law is a template available to national governments seeking to introduce or reform procurement legislation for their domestic economies. It is intended to provide all the essential procedures and principles for conducting various types of procurement proceedings in a national system, with a view to the achievement of value for money for the taxpayer, and avoiding abuse or corruption. In this regard, and in the UNCITRAL context, the Model Law is an example of a harmonization text: that is, one that can be flexibly implemented to accord with local circumstances, while preserving the desired outcomes.

UNCITRAL’s work on the Model Law was undertaken in response to the fact that in a number of countries the existing legislation governing procurement was perceived to be inadequate or outdated, resulting in inefficiency and ineffectiveness in the procurement process, abuse, and the failure of the public purchaser to obtain adequate value in return for the expenditure of public funds. The link between this activity and the overall mandate of UNCITRAL was explained thus: “ the Model Law may help to remedy disadvantages that stem from the fact that inadequate procurement legislation at the national level creates obstacles to international trade, a significant amount of which is linked to procurement. Disparities among and uncertainty about national legal regimes governing procurement may contribute to limiting the extent to which Governments can access the competitive price and quality benefits available through procurement on an international basis.

#### 2.5 Procurement Organizations

Many countries have established a central procurement agency, to oversee the procurement activities of contracting entities in line ministries and other public bodies covered by public procurement law. This body should be responsible for drafting the rules and regulations, establishment of an information system and a system for all government publications to ensure that government purchasing entities employ qualified personnel, to develop a training and conduct of overall procurement systems. Central procurement body may be an independent body or almost independent, who reports to the Government or Parliament, a subordinate agency or department of the Ministry of Finance.

Public procurement organization in some countries may be a central procurement office for the whole country. In other countries, public procurement organizational structure is very complicated. According to Choi and Hong (2002) managers in the private sector simultaneously face three different forms of structural complexity in supply network: vertical, horizontal and spatial. Vertical complexity refers to the number of hierarchical levels in the whole system (i.e. number of tiers), horizontal complexity refers to the number of different entities in the same level of the supply network (e.g. Number of suppliers in each tier), and spatial complexity refers to the average distance between operating locations. An essential element of the role of public procurement organization in a governmental entity is the placement of procurement authority.

Centralization occurs when all the rights, powers, duties and authority relating to public procurement are vested in a central procurement officer. That central authority often delegates some of these powers to others. Such delegations are normally carried out within a regulatory or policy framework by means of specific letters or memoranda to those receiving delegated powers. On the other hand decentralization occurs when procurement personnel from other functional areas can decide unilaterally on source of supply or negotiate with suppliers directly (Dobler and Burt, 1996).

In many transition countries, the purchasing function is decentralized itself. In other countries, although less and less, there is a central purchasing unit. In principle, the centralization of purchases has the advantage of the possibility of achieving lower prices, due to pooling of purchases. However, the results are often disappointing because of problems such as slow and bureaucratic response to customers, inefficient encounter of large, losses, small leaks, and slow reactions to changes in the technology market.

## 2.6 Human Resource for Procurement

A sound procurement system has to have a competent professional workforce equipped with defined skills and knowledge for specified procurement jobs (OECD – DAC, 2006). Professionalization of procurement personnel is seen as crucial function in increasing the efficiency of any national public procurement system. Contracting authorities/entities face a more complex procurement environment, with a wider set of functions and responsibilities or at least a significantly different situation compared with traditional procurement tasks, which affect required competences and the choice of organizational and co-operative solutions. Therefore, there is a continuing demand for higher education as well as specialized training in public procurement in various disciplines and professions. The central issue in the context of administrative capacity concerns human resources. The staff size – the number of people working for the main central procurement body and other relevant institutions – is the starting point. If these institutions are continuously understaffed, their human resources capacity is not sufficient to carry out their numerous functions effectively. Moreover, the educational background of the staff is important. The number of lawyers, economists, political scientists, former practitioners, engineers or accountants is as important as the training of support staff. In addition, continuing education provided either internally or externally, plays an important role. The relation between the size of the national public procurement market and the complexity of tasks attributed to the central procurement organization and its staff size are other relevant considerations.

## 2.7 Public Procurement Process

Procurement process is a cycle or chain that shows the activities that procurement goes through in obtaining a given need for operational and strategic purpose. Wan Lu (2007) argued that process consisted of flow chart and blue print to describe a process in pictures using symbols with arrow lines connecting each operational step.

Emmett and Crocker (2008) also argued that the traditional procurement model for most sectors is represented in Figure 1.

**Figure 1: Procurement Process Model**



**Source:** Emmert and Crocket 2008

Public sector procurement process has a similar phase which starts with the identification of operational requirements that are determined and specified by the user and subsequently consolidated as a composite requirement for the procurement of annual procurement plan which according to the procurement legislation, is mandatory for every public sector institution to have. The approach is decided; including consideration such as whether to produce the product(s) in house or source them externally. The goods, work or services may be available under existing framework contract. Decision will be taken on funding the applicable procurement rules and the method of procurement, which should be used (example open or restricted tendering, request for quotations or proposals single source, etc). A timetable for procurement process is prepared to serve as a guideline. Specification is defined as a communication tool used by procurement to communicate the need of the organization to the external users that has interest in the product or service in question (Sollish & Semanik 2007; Baily, David, Barry, Jossop & Jones (2005); Weele 2010). Lysons and Farrington (2006) also argued in the same line by saying that, sourcing stage includes, activities or processes like enquires or request for quotation which are sent to suppliers, accompanied by additional documents, such as drawings, specification and any document or information that will enable potential suppliers to submit a quotation. Enquiry and evaluation stage is very important in the procurement

cycle because this determined the quality of the output (product) to be procured. Suppliers are requested to give information on the details of the organization, financial details, equipment and facilities, management skills and reference to assess the capabilities of that particular source before it will allow providing information (quotation or tender) on the product or service (Emmert & Crocker, 2008). This stage determines the technical and financial capabilities and competencies of the source identified.

Negotiation can be defined as conflict resolution mechanism. Lysons & Grillingham, (2006) and Burt, Dobler & Starling, (2006) add that negotiation is where substance issues are properly resolved, relationship can be developed and an agreement reached in enhancing performance to attain efficiency and harmonization. In public procurement, certain conditions must prevail before negotiation will be allowed as a method of procurement. These conditions according to Carter and Kirby, (2006) and must prevail; when sole source action has been approved; suspected "Cartel" amongst the suppliers; when competitive tendering is not feasible and when country's regulation allows for negotiation.

Early delivery can be achieved if effective progressing work is done well. Activities may include; expediting, arranging inspection or freight forwarding chock bank guarantees, establish letters of goods, verification of document and making payment. Payment of goods procured will largely depend on the terms of contract (payment terms). If the payment terms indicate pre-payment or finance of contract, then payment is probably effected at the early stage of the procurement process before goods are delivered. However if the payment terms affirm payment after delivery and submission of the approved documentation, then that will be the last before reviewing of the entire procurement process.

Reviewing of the whole contract process can be done from any angle of the procurement process. The extent of reviewing, monitoring and control allocated will depend on the importance of the product or service being procured in relation to the business strategy (Emmett & Crocker, 2008). Otterheim and Strand (2006) argued that, activities at this stage can include setting warranty claims and penalty clauses, recording the user's experience with the specific products and suppliers and total compliance pre-project.

### **3. Content and Application of Public Procurement Reform in Nigeria**

Public procurement is a major function of governments, and governmental entities, and this has been recognized by most African governments including Nigerian government. This recognition has led to the institution of reforms in these countries public procurement processes aimed at encouraging competition, transparency, efficiency and ensuring accountability (Hunja, 2003). Prior to the institution of reforms, public procurement in Nigeria was based on systems inherited from the colonial era in which procurement was regulated by ministerial directives rather than a comprehensive procurement code. This often resulted in fragmentation and complexity in procurement decision making. As the old systems became progressively weaker and uncontrollable it provided scope for abuse and inefficiencies (Hunja, 2003). Since the international conference on reforms of public procurement in Africa held in Abidjan in 1998, the African development bank group (AfDB) has been assisting member countries in reforming their national procurement systems. In line with its commitments under the Paris Declaration, the AfDB has been working together with other development partners in establishing tools and strategies to move towards the use of country systems regarding procurement. Assisting African governments to modernize and strengthen their public procurement systems at both regional and national levels, it is believed will open the way for development partners to use country procurement systems, which will facilitate the implementation of projects and improve overall public financial management capacity of implementing countries (AfDB, 2012). The aftermath of the Abidjan conference saw several African countries embark on procurement reform programs with the support of the AfDB, the World Bank and other development partners, and the assistance of sub-regional organizations such as the Common Market for Eastern and Southern Africa (COMESA), the West African Economic and Monetary Union (WAEMU), which have adopted regional directives on public procurement (AfDB, 2009).

Public procurement reforms among African countries are not significantly different in terms of stages of reform, components of reform strategies, and implementation. In Nigeria like in most African countries, public procurement reforms have been preceded by assessments of the existing system, the World Bank through country procurement reports. Such studies made recommendations to government based on which reforms of public procurement have been modeled. In terms of components of the reforms, most African countries have created new procurement legislations that have put in place new institutional frameworks through which procurement is expected to be managed. Every country that has attempted to reform its public procurement system, have instituted control measures like a central authority where procurement activities are coordinated to ensure that systematic processes are followed (Thai, 2008).

#### **3.1 Procurement Legislation in Nigeria**

Since the inception of oil boom in the early 1970s, Nigeria has been experiencing a high degree of mismanagement of resources particularly in the area of public procurement. There have been existing open abuses to rules and

standards in the award and execution of public contracts in Nigeria. These were evident in over-invoicing, inflation of contract costs, and proliferation of white-elephant projects and diversion of public funds through all kinds of manipulation of contract system. The regulatory bodies that were set up to ensure compliance with laid down rules and regulations on procurement and award of contracts in the public sector appeared ineffective. This resulted in a high level of corruption and enormous wastage of public resources, lack of transparency, accountability, fairness and openness. The situation made foreign and even local investors to lose confidence in the Nigerian economy. It must be noted that the prevailing high level of corruption was closely linked up with the public sector procurement systems, and considering that about ten percent of the gross domestic product (GDP) must pass through the procurement systems. It then became imperative that the public procurement systems must be reformed if Nigeria must achieve economic growth and developmental strides in this new millennium. It was in the light of the above that Federal government, in 1999, sought for and obtained the World Bank assistance to undertake a study of the existing procurement and financial systems in Nigeria. The outcome was the proposal submitted by the World Bank to Mr. President in 1999 that was tagged the “Country Procurement Assessment Report” (CPAR) which indicated the need for reform of the procurement law based on the United Nations Commission on International Trade Law (UNCITRAL) which has proven effective in a number of countries in the developed world, even in Lithuania, Estonia and Tanzania. The findings of the Study (CPAR), which covered institutional as well as organizational structures relating to the existing procurement regime, are (World Bank, 1999):

- i. Proliferation and ineffectiveness of Tender Boards.
- ii. Lack of professionalism in the execution of the procurement functions.
- iii. Weaknesses in bank financed projects
- iv. Excessive deposit for opening of letters of credit.
- v. Lack of communication strategy.
- vi. Weaknesses in the export, import and tariff procedures.
- vii. Lack of streamlined quality control practices.
- viii. Lack of knowledge in electronic procurement in the public sector.

It is in the light of the above that Federal government reformed the public procurement system in Nigeria. It introduced new procurement system called “Due Process” Policy in 2001, that is transparent, efficient, and effective and which delivers value for money in public finance budgeting and expenditure. This reform constitutes a major landmark in the contemporary Nigeria, which is a deliberate departure from the previous procurement regimes in the country.

The “Due Process Policy” was introduced into the nation’s procurement system via Treasury Circular by the Federal Ministry of Finance No, TRY/F15775 of 27<sup>th</sup> June, 2001 Federal Republic of Nigeria, (2002). It was enacted as a procurement law after passing through several phases of legislation which is now called “Public Procurement Act” 2007. It is this Parliamentary Act that puts Nigeria in the league of countries with legislation on how public funds would be expended or disbursed. Prior to 2007, Nigeria was among the few African countries without legislation on Public Procurement.

The Nigerian Public Procurement Law 2007 is divided into twelve parts. Part 1 of Public Procurement Law (2007) establishes the National Procurement Council (NPC) to provide uniform national regulatory platform for procurement broad policy formulations. Part II of the law establishes the Bureau of Public Procurement (BPP). The Bureau of Public Procurement (BPP) according to the law is to act as supervisory organ and provide operational guidelines to regulate public procurement practices. Part III of public procurement law (2007) exemplifies the scope of its application. By this, it is clear that the law is applicable only to federal government of Nigeria due to the federal nature of Nigerian nation. Part IV establishes legal format with regard to procurement thresholds. It also makes it a legal imperative for government procurement entities to engage in procurement plans and open competitive bidding. It also provides clear definition for the status of contractors/suppliers/service providers among other critical issues with the aim of strengthening public procurement practices. While Part V of public procurement law (2007) gives legal basis for the establishment of procurement planning units and sets criteria for pre-qualification of bidders, Part VI deals with procurement methods that are permitted under the law. Part VII focuses on conditions for special or restricted methods of procurement and Part VIII of the law gives conditions and steps for engaging consultants. Part IX deals with procedures for procurement surveillance and reviews by the Bureau of Public Procurement (BPP), while Part X focuses on methods of disposing public property. Part XI of public procurement law specifies code of conducts to regulate activities of stakeholders (Bureau officials, Tender Board, Contractors, CSO’s, Procurement officers etc) and Part XII deals with offences for various categories of infractions under the law.

#### **4. Procurement Reform and Good Governance Nexus**

Currently most governments in Africa have come to the realization that a well organized procurement system contributes to good governance by increasing public confidence and assuring judicious government spend (Ahuja,

2000). Indeed, African governments have accepted the fact that increasing the efficiency and transparency in the use of public funds requires the existence of an adequate national procurement system that meets both national and international standards and operates efficiently (Ameyaw *et al.*, 2011). A well-functioning procurement system is the one that is governed by a clear legal framework establishing the rules for transparency, efficiency and mechanisms of enforcement, coupled with an institutional arrangement that assures consistency in overall policy formulation and implementation (Hunja, 2003).

Good governance programmes require that public procurement reforms support essential concepts and values, as follows: Accountability to establish clear lines of responsibility in decision-making structures; Responsiveness to citizens of the country; Professionalism to improve individual and system performance; Transparency to ensure that procedures and policies are understood and acceptable by procuring entities; Competition to attract high-quality national and international partners investing in meeting government needs through contracts; and, Appeal rights to redress meritorious grievances of suppliers. A well-functioning public procurement system must seek value-for-money in meeting the needs of government agencies for goods and services to support public missions. These needs must be reconciled with those of suppliers conducting commercial operations for their own profit when supplying goods and services to government entities. This must be done within the bounds of public policies established to ensure that procurement transactions take appropriate consideration of the public good and political decisions in the allocation of state resources. An effective public procurement system allows suppliers to provide satisfactory quality, service and price within a timely delivery schedule. The basic tenet of public procurement is straightforward: acquire the right item at the right time, and at the right price, to support government actions. Although the formula is simple - it involves questions of accountability, integrity and value with effects far beyond the actual buyer/seller transactions at its centre. A serious and sustained review of such decisions is needed to properly manage the public procurement function.

#### 4.1 Transparency in Public Procurement

The degree of transparency helps to determine the effectiveness of the public procurement system. Transparency, in the context of public procurement, refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. Transparency is a central characteristic of a sound and efficient public procurement system and is characterised by:

1. Well-defined regulations and procedures open to public scrutiny
2. Clear, standardised tender documents
3. Bidding and tender documents containing complete information
4. Equal opportunity for all in the bidding process

In other words, transparency means the same rules apply to all bidders and that these rules are publicised as the basis for procurement decisions prior to their actual use. It is an effective means to identify and correct improper, wasteful--and even corrupt--practices.

Fighting waste and corruption and improving financial accountability are essential elements of good governance, needed to institute effective government policies. No country in the world appears to have escaped improper, wasteful and corrupt practices in public procurement.

Corruption deserves special attention because it works in insidious ways. It tends to undermine the whole fabric of economic and political life. Thus, it is of extreme importance to establish and sustain correct behaviour in all procuring entities. Corruption, as defined by the World Bank is the abuse of public office for private gain. Such behaviour by persons concerned with the procurement process often leads to economic losses for the public. Thus, many lose for the benefit of a few. Often there is some form of collusion between the purchasing and selling entities. Responsible officials on the contracting side request -- or are induced -- to accept gratuities from bidders or contractors to make favourable award decisions. Such influence in the decision-making and executive processes of a country has legal, administrative and economic costs.

Other benefits of an effective transparent public procurement system integrated into improved national budgeting procedures are a more realistic market price structure, and a better control of public expenditures and resources.

The presence of strong institutional support at the top levels of government for administering and monitoring the public procurement process is an essential factor for promoting integrity and proper application of procurement law. This leads to increased efficiency and professional performance in procurement operations.

Many developed and developing countries have undertaken reforms of their national procurement systems aimed at ensuring that public funds are used in the most efficient and economical way and that the system delivers value for money. Increasingly, it is argued that governments recognize the (financial) savings from a better organized and transparent procurement system (Hunja, 2003). The main objectives of the public procurement reforms are value for money, efficiency, transparency, probity and accountability (Arrowsmith, 2005). A related issue is opening up of the procurement market to foreign competition, where agreements have been reached at both the regional and international levels. The rationale behind opening up public procurement is that protectionist



measures in public procurement can constitute barriers to trade (and competition) that promote costly inefficiencies (Cecchini 1992). It is therefore important for governments to open up procurement to international competition since competitive procurement practices promote efficiency in public spending and helps public authorities acquire cheaper, better quality goods and services at lower costs (Falvey *et al.*, 2007).

European Commission (2004) suggested that enhanced competition and transparency reduce prices by around 30%. Open, non-discriminatory and transparent procedures can also help boost the competitiveness of firms operating in public procurement markets (*The Cecchini Report* 1988). However, when considering the size of contestable procurement in developing countries one has to take into account that a considerable part of procurement in Africa, Caribbean and Pacific (ACP) States which is financed through aid and very often tied to the procurement of goods and services from the donor country that is, irrespective of the Government's own policy, procurement is not open (Falvey *et al.* 2007). However, Raymond (2008) contended that such power or control is often misused by the politicians thereby bringing about disastrous consequences for the country.

## 5. Conclusion

Public procurement is increasingly recognized as a key concept that plays a significant role in the successful management of public resources. For this reason, several countries have become more aware of the importance of procurement as an area vulnerable to mismanagement and corruption, and have thus instituted efforts to integrate procurement in a strategic position of government efforts. Nigeria was not left behind in this direction. Public procurement reform in Nigeria has to some extent improved financial management, transparency, and fairness among government ministries, departments and agencies (MDAs). The reform has necessitated the setting-up of new administrative and legal frameworks for dealing with public procurement and other procurement related issues. The establishment of Bureau of Public Procurement (BPP) and enactment of Public Procurement Act (2007) shore up the procurement reform. Institutions and structures have been established to ensure that systems are effectively managed and consolidated. Reforming public procurement regime has engendered good political and economic governance in Nigeria.

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