

## PUBLIC PROCUREMENT LEGAL REGIME: EFFECTS AND CHALLENGES IN GOVERNMENT CONTRACTING SYSTEM

By

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### Abstract

*Nigeria has made enormous revenues from the sale of crude oil as its monolithic product to the world yet it has made little advance in terms of infrastructure, quality of life and human development of her citizens. This has been attributed to endemic levels of corruption through misappropriation of public funds for private use, most of which have been associated with public procurement. By the instrumentality of World Bank Country Assessment Report (CPAR) 1999, the Public Procurement Act of 2007 was enacted at the Federal level with most of the Nigerian States following suit, chief amongst which is Rivers State. This paper examined most of the provisions of the Public Procurement Act of 2007 for the Federal Government viz-a-vis Rivers State Public Procurement Law, No. 8 of 2008 respectively, so as to show the practice and expectation of the public procurement legal regime both at federal and state levels; the impact, and possible challenges of the implementation of public procurement laws in Nigeria. The Paper identified that Nigeria has to an extent, good public procurement laws but is faced with implementation constraints that present themselves in knowledge deficiency of government officials in public procurement practice, corruption, political interferences, general misconception by government officials that public procurement regulation is a departmental process rather than as governance tool for the development of the country, amongst others. The paper concluded that although Public Procurement laws have had some impact in Nigeria's government contracting process, the regime has not fully been embedded or achieved its goals. In order to fully achieve the aims of the Procurement legal regime in the country, the paper recommended the establishment, development of body of knowledge and institutional teaching/training of public procurement courses in Tertiary institutions in collaboration with Bureaus of Public Procurement; compulsory human capacity training for existing affected public officers; the activation of Bureau's auditing powers on procuring entities; the expansion of powers of the Bureaus to include prosecution of persons engage in public procurement malpractice(s) and the increase of penalties for effective deterrence, amongst others.*

**Keywords:** Procurement, Public Procurement, Legal Regime, Government Contracting Process.

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## 1. INTRODUCTION

Public procurement is a government purchasing activity in Nigeria as it is in many climes. It is a major multi-stakeholder public function, with huge ramifications on public service delivery and therefore on the country's economic and social development.<sup>2</sup> According to European Network on Debt and Development,<sup>3</sup> public procurement accounts for at least 15 percent of global GDP, and it is the largest share of government spending besides wages. Public procurement activities are regulated by laws and policies emphasizing on rule of law, due process and transparency in handling public expenditure thereby birthing a public procurement regime. In this case, the legislature has power to control and regulate how public funds are utilized. It follows that both the National Assembly and the States' Houses of Assembly have concurrent legislative competence in their respective jurisdictions to legislate on issues affecting public procurement.<sup>4</sup> These powers have been exercised by the National Assembly and most houses of Assembly in the Country. Basically, the principal legislation on public procurement in Nigeria, is the Public Procurement Act 2007, No. 14 (PPA).<sup>5</sup> The objective of the Act was the establishment of National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government public procurement policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement practice in Nigeria. More than 30 States of the federation have followed suit and enacted procurement laws to regulate how they engage in their States' public procurement, first amongst which is the Rivers State Public Procurement Law, 2008. (PPL)<sup>6</sup> This State's Law is almost a replication of the federal law with few exceptions as with many other States in the country. Thus, State Governments who have enacted their own procurement laws, operate a parallel procurement legal regime in the country with the Federal Government, except in circumstances the laws may otherwise provide. It is important to note at this juncture that like most developing countries, the World Bank was the driver behind public procurement reforms in Nigeria, when it conducted a Country Procurement Assessment (CPAR) of the Nigerian public procurement system in 1999 and found a number of deficiencies with the system.<sup>7</sup> This necessitated the enactment of the Public Procurement Act in 2007, and it is tailored after the United Nations Commission on International Trade Law

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C. C Ekwewuo, *A Case Study of the Nigerian Procurement Monitoring Program and its Portal and Observatory* (Wyith Limited and Wyith Institute, 2016) 1–5.

<sup>3</sup> EURODAD, 'Driving Sustainable Development through Public Procurement'. (2012) EURODAD submission for the Rio+20 compilation document, Brussels: European Network for Debt and Development

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 80-83, 120-123.

<sup>5</sup> PPA 2007.

<sup>6</sup> PPL 2008.

<sup>7</sup> Sope Williams-Elegbe, 'A Comparative Analysis of the Nigerian Public Procurement Act against International Best Practice', [2015] (59) (01) *Journal of African Law*. 833.

(UNCILTRAL) Model Law on Public Procurement.<sup>8</sup> To this end, it is trite that public procurement is now a regulated government activity that is subject to legal rules and standards.

This paper is divided into seven segments: the first deals with the introduction on the state and prevailing public procurement laws in Nigeria, the second covers the conceptual and theoretical frameworks of public procurement, the third unveiled the principles of public procurement, while the fourth examined the provisions of the public procurement Act/law in Nigeria. The fifth highlighted the impacts of the regime and sixth revealed its challenges. The seventh segment handled the conclusion and recommendations proposed in this paper

## 2. CONCEPTUAL CLARIFICATION

Procurement is described as the action of obtaining or procuring something.<sup>9</sup> The PPA defines Public Procurement as the acquisition by any means of goods, works or services by the government.<sup>10</sup> In essence, whenever government buys, public procurement occurs. According to Transparency International Guide,<sup>11</sup> Public procurement refers to the acquisition by a government department or any government owned institution of goods or services, ranging from bed sheets for hospitals and textbooks for schools to financial and legal services, as well as the commissioning of large-scale construction works, such as roads, bridges and airports. It further described it as all the stages of the contracting process, covering the initial needs assessment, budget allocations and initial market research through to the preparation of the tender, evaluation of applications and award of contracts.<sup>12</sup> In essence, Transparency International considers public procurement as a start to finish cycle, starting from the process of identifying needs, budgeting for the needs, through to the process of award or acquisition of the needs. The Organization for Economic Co-operation and Development (OECD) describes public procurement as the purchase by governments and state-owned enterprises of goods, services and works.<sup>13</sup> Scott and Julius, in their article<sup>14</sup> posited that Public procurement is the use of public funds by the government through its ministries, departments and agencies, on behalf of its citizens, for the acquisition of goods, services and works with the best quality, and/or right quantity, at the best possible price, from the right place or source (contractors, suppliers and service providers), and for the right purpose using the best method(s) and in line with laid down rules and regulations, following due process. They argued that the essence of public procurement is to achieve value for money, which manifests in enhanced human

<sup>8</sup> Samuel Olatunji and Others, 'Nigeria's Public Procurement Law-Puissant Issues and Projected Amendments', [2016] (6), (6) *Public Policy and Administration Research*, 74.

<sup>9</sup> Oxford English Dictionary, (2<sup>nd</sup> edn, Oxford University Press, 1989)

<sup>10</sup> PPA 2007, s 60.

<sup>11</sup> Transparency International: Curbing Corruption in Public Procurement, a Practical Guide. 2014, .6.

<sup>12</sup> Ibid.

<sup>13</sup> OECD: Public Procurement. <[www.oecd.org/gov/public-procurement/](http://www.oecd.org/gov/public-procurement/)> accessed on 8/7/21.

<sup>14</sup> Oziengbe Scott Aigheyisi and Ovufeyen Julius Edore, 'Public Procurement, Governance and Economic Growth: Some Policy Recommendations for Africa's Growth and Development; [2015] (10) *International Journal of Development and Management Review* (INJODEMAR) 110.

welfare and improved economic growth.<sup>15</sup> It is submitted that this view may be idealistic, bearing in mind the rightness of factors of price, source and quality, which though every system thrive to achieve, may not be met at all time for public procurement to occur.

World Bank in line with the foregoing has described Public procurement as the process of purchasing goods, services or works by the public sector from the private sector.<sup>16</sup> From the foregoing, the single term “procurement” is wholly different from public procurement. Public procurement typically involves procurement systems, process, method and contractual framework of government and third parties, which in this case, has government body on one side and private sector on the other, clearly identifying the structure of responsibilities and obligation of the respective parties within the procurement contract. Procurement system is the organizational structure and process, adopted by procuring entity for the engagement and management of a procurement item. Procurement methods are systematic procedures or prescribed means by which procurement can occur, usually determined by a set monetary threshold. All these constitute government contracting process. In essence government contracting process connotes the system, the structure, the process, the procedures government has put in place to conduct its procurement.

The nature of public procurement to a large extent represents a distinctive financial contract between the government and the private sector, in other to meet their needs whether administrative or for public good, according to laid down rules. Accordingly, other financial spend like payment of salaries, bonuses, allowances, honorarium, etc. to government workers or functionaries which do not represent financial contract with 3<sup>rd</sup> parties do not fall within the purview of public procurement. They may be subjects of regulation of other national or state laws. Thus, Public Procurement typically involves the procurement of Goods, Works and Services for administrative purposes or on behalf of the public for the public’s enjoyment.

The act of public procurement is hinged on the social contract and agency theories that exist between the government and the governed. According to Elahi,<sup>17</sup> The social contract theory as postulated by Thomas Hobbes, emerged when man, who has been in a constant fear of state of nature agreed to live together with one another under an authority, for the protection of their lives and property and in return surrendered all their rights to this authority. The authority is to carry out the expectations and common good of the citizens. However John Locke and Jean Rousseau’s theories on social contract were not necessitated by a *miserable* state of nature as postulated by

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<sup>15</sup> Ibid.

<sup>16</sup> World Bank, ‘Global Public Procurement Database: Share, Compare, Improve!’  
<https://www.worldbank.org/en/news/feature/2020/03/23/global-public-procurement-database-share-compare-improve>  
accessed on 12/7/2021.

<sup>17</sup> Manzoor Elahi Laskar, ‘Summary of Social Contract Theory by Hobbes, Locke and Rousseau’, 2013, SSRN Electronic Journal, 2.

Hobbes but pivoted on protection of property which gave rise to social contract and government or general will.<sup>18</sup> Apparently, the formation of government is the desire of man and in exchange of giving up full or part of his liberties, is to have a government that protects lives, ensure they are free to prosper, and enforce a system of laws that improves society economically. Thus, Public procurement legal regime is an example of efforts of the government to protect people's common wealth and guarantee wellbeing of its citizens as part of their pact to preserve a society that has acceded its rights to it. On the other hand, the agency theory is relevant to procurement legal regime as it is predicated on the social contract theory. In furtherance to the social contract, an implied agency relationship exists; two parties exist – the agent and principal, the government (agent) who acts on behalf of the principal and the governed (principal). The former acts and takes decisions on behalf of the latter.<sup>19</sup> This is because the rights acceded to the government for the wellbeing of the masses, connotes an implicit consent of the masses, who has acceded these rights to the government for their wellbeing, to also enter contracts on their behalf with third parties for their economic prosperity. According to Ikechi *et al*,<sup>20</sup> The theory puts a principal-agent relationship between the State/ her Citizens and government officials and employees. This arises from the fact that government officials and employees are holding resources in trust for their employers and more specifically to the Nigerian citizens and perform all their transactions for and on behalf of these citizens. The theory thus puts it that it is in the best interest of government officials to discharge all their duties owing transparency and accountability to their principals who are the Nigerian citizens and governments. This also involves fiduciary relationship between the public and private sectors in legitimate and legally regulated transactions.<sup>21</sup> It has also been perceived as contracts entered into between sovereign states and private commercial entities for the procurement, by the former from the latter, of goods, services and construction works".<sup>22</sup>

The scope of public procurement is not exclusive to the contract between government and 3<sup>rd</sup> parties, it begins from the identification of needs and assessment, to market surveys and budgetary allocation, procurement planning, allocation of funds, to actual procurement, and extending to contract award, contract administration and in recent times, procurement sustainability-Sustainable Public Procurement (SPP).<sup>23</sup> SPP is a growing advocacy for organizations to procure

<sup>18</sup> Manzoor Elahi Laskar, 'Summary of Social Contract Theory by Hobbes, Locke and Rousseau', 2013, *SSRN Electronic Journal*, p.4, 6.

<sup>19</sup> <https://efinancemanagement.com/financial-management/agency-theory>. Accessed on 22/3/2022.

<sup>20</sup> Kanu Success Ikechi and Others, "Effectiveness of Public Procurement Act (PPA), in Curbing Corruption in the Public Service in Nigeria – A Study of Selected MDAs in FCT, Abuja" [2020] (7), (1), *International Journal of Management Science and Business Administration*, 42-58.

<sup>21</sup> A Endeshaw, 'Government Contracts and Procurement in Singapore' (1999) 5(2) *International Trade Law and Regulation* 33

<sup>22</sup> M L Ahmadu, 'Evaluating Public Procurement Regimes in the South Pacific Perspective on Fiji, Samoa and Vanuatu' [2005] (13) (1) *Journal of South Pacific Law*, 1

<sup>23</sup> NESG Policy Brief: 'Public Procurement Process: Global Practices and Nigerian Experience,' [2017] (16), *Economic & Policy Review*, 6.

their needs in a way that achieves value for money, item generating benefits not only to the organization, but also to society and the economy, whilst minimizing damage to the environment. SPP takes developmental, social and environmental criteria into account and makes public procurement contribute to reaching internationally agreed development goals.<sup>24</sup> SPP is a whole concept which this article will not examine in further.

As much as the name ‘procurement’ implies buying and acquisition, the Nigerian Public Procurement laws include disposal of public property. Thus, the legal framework for public procurement also serves as the legal framework for public disposal in Nigeria.<sup>25</sup> However, the PPA makes it clear that disposal matters, although provided in the Act, is subject to the Public Enterprises (Commercialization and Commercialization) Act 1999. This is however not the case in PPL, where the law overrides anything contrary in any existing law that relates to divestment of government interest in public enterprises or in any company, making PPL 2008, the principal legislation on disposal.<sup>26</sup>

From the foregoing, public procurement relates to government buying and disposing, starting from the identification of need(s) to the conclusion and handover of a contract to the respective government organ, ministry, department or agency and any other body using government fund, while observing public procurement laws and principles.

### **2.1. Scope of Application and Exemptions**

Public Procurement applies to goods, works and or services. The PPA expressly stated 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; all entities outside the foregoing description which derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund. It however excluded the procurement of special goods, works and services involving national defence or national security unless the President’s express approval has been first sought and obtained.<sup>27</sup>

PPL does not have this leeway of approval. Procurement of Special goods, works and service, involving State’s security is expressly excluded from application of the PPL of Rivers State. Similarly, Emergency procurements and procurements which the Federal Government and State Government are jointly executing except in circumstances where the state government solely

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<sup>24</sup> Aighesiyi and Edore (n.13) 111

<sup>25</sup> PPA 2007, s 55; PPL 2008, s 52.

<sup>26</sup> Ibid.

<sup>27</sup> PPA, 2007, Section. 15.



executes project(s), of which it may be entitled to reimbursement from the federal government; are all excluded from application of the law.<sup>28</sup> The Government of Rivers State and all of its procurement entities; all entities outside the aforesaid that derive their funds from the government for their procurement(s); and all the Local Governments in the state are subject to the application of the Law.<sup>29</sup> The Law prevails in all State's procurement except as aforementioned, or by the operation of mandatory provisions of rules of funding agencies.<sup>30</sup>

### 3. PILLARS OF PUBLIC PROCUREMENT

Public Procurement is not just a process to get procurements done but has become a governance tool used to address developmental challenges and governance through which governments of the world bring development and economic prosperity to its citizenry.<sup>31</sup> The Economic Review Journal put it as, "the underlying objective of public procurement in most countries remains to promote healthy competition, create value for money and ensure economic growth and development. This indicates the strategic importance and role of public procurement."<sup>32</sup> The actualization of any government's mandate is realized through the utilization of procurement of goods, works and services. The quality of public procurement practices in a country is determined by the quality of governance there in and Governance is a key determining factor of the productiveness or sustainability of public procurement.<sup>33</sup> Thus, good public procurement practices are indications of good governance in countries where they exist. Accordingly, Public procurement has pillars or principles upon which it stands and without which it would utterly disappoint the idea upon which it was built. Procuring Entities are responsible and accountable for complying with these principles in the practice of procurement if the objectives of sound procurement practice are to be achieved.<sup>34</sup> Unlike some spheres of endeavor that have best practices, in public procurement, many countries may have to adopt procurement principles as it suits their circumstances and expectations, and as a result, different ideals that may be considered as 'best practices' within what they seek to achieve from public procurement regulation<sup>35</sup> but if the goals of public procurement are to be achieved, observance of specific practices that form the pillars of public procurement must take place.<sup>36</sup>

According to Nigeria's federal Bureau of Public Procurement (BPP), the pillars of public procurement are economy, efficiency, transparency, reliability, fairness and accountability and

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<sup>28</sup> PPL 2008, Section. 13(2), s 40.

<sup>29</sup> Ibid, s. 13(1).

<sup>30</sup> Ibid. s. 13 (3).

<sup>31</sup> NESG Policy Brief: (n. 22) 39.

<sup>32</sup> Ibid.

<sup>33</sup> Aigheyisi and Edore, (n.13) 118.

<sup>34</sup> Belize Ministry of Finance and Economic Development, Public Procurement Procedures Handbook, Vol 1, Standardized Procurement Procedure (1<sup>st</sup> Ed. 2013), p.6.

<sup>35</sup> Sope Williams-Elegbe, (n.6) 834.

<sup>36</sup> ISO 10845.

ethical standard.<sup>37</sup> The General Procurement Guidelines of South Africa identifies ethics and fair dealing, accountability and reporting, equity amongst others (such as value for money and open and effective competition) as the pillars of procurement.<sup>38</sup> The PPL also recognizes a public procurement that is hinged on competitive bidding process, conducted in a manner that is transparent, efficient, equitable, ensuring economy, accountability and compliant with applicable procurement laws, with the aim of achieving procurements that are fit for purpose while giving value for money.<sup>39</sup> Williams-Elegbe identified these pillars as competition, transparency, integrity, best value and efficiency; and rightly noted that this list is not exhaustive and the goals are interrelated and interdependent.<sup>40</sup>

The summation of the above presents integrity, transparency, fairness, competition, economy, accountability, fitness for purpose, efficiency, value for money and professionalism as some of the core pillars of public procurement. These as have been earlier stated is not an exhaustive list but it is often not possible to achieve any of these goals without the achievement of the others.<sup>41</sup>

#### **4. PUBLIC PROCUREMENT LEGISLATIONS, REGULATIONS AND POLICIES IN NIGERIA.**

The development of public procurement reforms through legislations, have been viewed as part of the movement for liberalization of the international economy,<sup>42</sup> where international markets are open and accessible to the world. It also serves as a medium for encouraging industrial and sector growth, i.e. support for small and medium sized enterprises, minority owned businesses, disadvantaged ethnic groups or certain geographic regions. Nigeria erstwhile chaotic procurement system witnessed huge expense of money on development and infrastructure with little result, thus the existing framework.

At the federal level, the Public Procurement Act 2007 is the principal procurement statute. It is divided into 13 parts and has undergone one amendment in 2019. Part I of the Act establishes the National Council on Public Procurement (the Council) and the Bureau of Public Procurement (BPP)<sup>43</sup> respectively. The Council, as the first regulatory authority under the PPA, is responsible for: (1) considering, approving and amending the monetary and prior review thresholds for the application of the provisions of the PPA by procuring entities; (2) considering and approving policies on public procurement; and (3) approving changes in the procurement process to adapt to improvements in modern technology amongst others. The Council has however never been

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<sup>37</sup> Aigheyisi and Edore (n. 13) 118.

<sup>38</sup> *ibid*

<sup>39</sup> PPL 2008, s 14.

<sup>40</sup> Sope Williams Elegbe, (n.6)834.

<sup>41</sup> *ibid*

<sup>42</sup> McCrudden and S G Gross, 'WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: A Malaysian Case Study' [2006] (1) *the European Journal of International Law*, 151-183.

<sup>43</sup> PPA 2007, ss 1 and 3



inaugurated till date. The BPP under Part II is created, as the second regulatory authority and has the following responsibilities, amongst others: (1) to harmonise the existing government policies and practices on public procurement and ensure probity, accountability and transparency in the procurement process; (2) to establish pricing standards and benchmarks; (3) to ensure the application of fair, competitive, transparent, value-for money standards and practices for the procurement and disposal of public assets and services; and (4) to attain transparency, competitiveness, cost-effectiveness and professionalism in the public sector procurement system.<sup>44</sup> Part III deals with scope of application wherein certain procurements are restricted from the applicability of the Act as discussed above.

Parts IV and V (i.e. Fundamental Principles for Procurements and Organisation of Procurement) established rules with regards to the conduct of public procurement which includes thresholds, exigencies of procurement plans, prior budgetary appropriations, availability of funds, the imperatives of open competitive bidding, transparency, efficiency, value for money, rule of law and accountability in public procurement processes. It also specifies proper definition of the status of contractors/suppliers/service providers and appropriate qualifications for bidders with regards to financial, equipment and technical competence;<sup>45</sup> bidders' compliance requirement for taxes pensions and insurance payments; procedures for issuance of a Certificate of No Objection, conferment of responsibility on accounting officer and the conditions for the award of contract.<sup>46</sup> PARTS VI, VII, and VIII deal with procurement methods, chief amongst which is the open competitive bidding system, the receipts, management of bid processes, its evaluation and awards.<sup>47</sup> Parts IX, X, XI, XII and XIII deal with administrative reviews, disposal of public property, code of conducts for people involved in public procurement, offences relating to public procurement such as collusion; and miscellaneous issues such as stamps and execution of documents by the Bureau and Interpretation section respectively.

The BPP by virtue of PPA has quasi legislative powers to make policies and regulations to guide procurement process.<sup>48</sup> Accordingly, The Public Procurement Regulations for Consultants' Services 2007 (PPRCS) and Public Procurement Regulations for Goods and Works, 2007 (PPRGW) were made by the BPP in the exercise of the powers granted to it under the PPA. The PPRCS and PPRGW constitute subsidiary legislation which applies to the procurement of consultancy services and the procurement of goods and works respectively. Other policy

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<sup>44</sup> Ibid, s 4, 5.

<sup>45</sup> A Adewole, 'Governance Reform and the Challenge of Implementing Public Procurement Law Regime across Nigerian State and Local Governments' [2014] (2)(4) *International Journal of Public Administration and Management Research (IJPAMR)*, 25–32.

<sup>46</sup> PPA 2007, s. 16-24; U Udoma and Belo-Osagie, *Public Procurement- Nigeria* (Lex Mundi Publication 2012).

<sup>47</sup> PPA 2007, ss 25-52.

<sup>48</sup> Ibid, s 5(a).

documents like the Procurement Procedure Manual exist pursuant to the powers granted to the Bureau.

In the same vein, the Public Procurement Law No. 4 of 2008 of Rivers State, is the principal legislation covering public procurement in the state. The law is nearly a replication of the PPA's provisions except in few provisions excluded or modified. Part I of the Law created the Rivers State Bureau on Public Procurement (RSBoPP), as the regulating authority to monitor and oversee public procurement, harmonize existing government policies and practices, setting standards and developing legal framework and capacity for public procurement in the state, amongst others. The Bureau has the Board of Directors in contrast to PPA's National Council on Public Procurement as its governing body.<sup>49</sup> The PPL has 12 parts. These parts cover similar subject matters with PPA and may pass word for word except in few instances of deletion or addition or modification such as the National Council in Part 1 which is not applicable to the State, and the covering of the Law on Local Governments that is not present in the PPA.<sup>50</sup> Similarly, the PPL has a peculiar provision which is absent from its PPA blueprint and indeed the gamut of public procurement legal framework worldwide. This is the power of the Governor to award contract which displaces the power of the tender's board to do so in a procurement process under the Law.<sup>51</sup> The section provides thus:

*Notwithstanding, the provisions of this law, with respect to the award of contract, the Governor shall have the power to award contract for the execution of projects and other jobs which total value shall not exceed 30% of the total annual budget approved for the execution of projects and other jobs in the State: PROVIDED ALWAYS that the Bureau shall exercise supervisory powers in the execution of such projects.*

It could be argued that this provision gives a Governor arbitrary power of award of contracts in procurement process, up to 30% of the total annual budget approved for execution of projects in the state. However, nothing in the provision excluded the observance of procurement processes up to the point of award. Thus, a needy procuring entity can activate the procurement process starting from need identification/assessment, procurement planning, procurement advertisement where required and other stages of procurement. What the Governor does is to exercise a prerogative of award to contractor(s) of his choice. This nevertheless is not in tandem with the spirit of public procurement.

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<sup>49</sup> PPL 2008, Long title, ss 1 and 3(a).

<sup>50</sup> Ibid, s. 13(1) (c).

<sup>51</sup> Ibid s 19(3).

Furthermore, in pursuance to powers granted it by PPL 2008,<sup>52</sup> RSBoPP has made the Monetary & Prior Review Thresholds and Procurement Method Regulations (RSBoPP Reg No. 1 of 2010) and Guide Notes on Work Programmes and Handover of Sites to Contractors. It has also developed Standard Bidding Documents to be observed in course of public procurement proceedings. The legal regime in the State provided how public procurement would be conducted, in accordance with monetary thresholds, procurement planning, competitive bidding, transparency, rule of law amongst others.<sup>53</sup> As earlier pointed out, the Nigerian public procurement legal regime covers public disposal legal regime which is not included in the short title of the Act/Law. Thus, Government disposal exercises like sale contracts and disposition of public assets, carried out by all Procuring Entities,<sup>54</sup> are inclusive in the procurement legal regime. Typically, procurement centres on acquisition while disposal centres on divestment of interest, notwithstanding, public procurement laws are invoked even when disposal of public assets takes place.

There are other national laws, such as government transparency rules, that are relevant to public procurement. For instance, Executive Order No. 001 of 2017 on Promotion of Transparency and Efficiency in the Business Environment is relevant to public procurement. The Order requires every Ministry, Department and Agency (MDA) of the Federal Government of Nigeria to publish a complete list of all requirements or conditions for obtaining products and services within the MDA's scope of responsibility, including permits, licenses, waivers, tax-related processes, filings and approvals.<sup>55</sup> Another law is the Fiscal Responsibility Act.<sup>56</sup> Under section 38 of the Act, all contracts with regard to the execution of the annual budget are to comply with the rules and guidelines on: (a) procurement and award of contracts; and (b) due process and clarification of contract. PPA the procurement law is still the principal law on disposal. Other laws that ensure transparency and are relevant to public procurement include the Public Enterprises (Privatization and Commercialization) Act 1999,<sup>57</sup> Economic and Financial Crimes Commission Act,<sup>58</sup> the Independent Corrupt Practices and Other Related Offences Act,<sup>59</sup> etc.

#### **4.1 THE EFFECTS OF PUBLIC PROCUREMENT LEGAL REGIME IN NIGERIA**

Upon the enactment of procurement laws in Nigeria, certain institutions, behaviours, process and procedures became the incident or norms of government contracting process. These are:

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<sup>52</sup> Ibid, s 57.

<sup>53</sup> PPL 2008, s 14; PPA 2007, s.16.

<sup>54</sup> PPA 2007, s 55(2).

<sup>55</sup> ICLG: 'Public Procurement Laws and Regulations in Nigeria', 2022, <https://iclg.com/practice-areas/public-procurement-laws-and-regulations/nigeria>, accessed 9/3/2022.

<sup>56</sup> Fiscal Responsibility Act, 2007.

<sup>57</sup> Public Enterprises (Privatization and Commercialization) Act 1999.

<sup>58</sup> Economic and Financial Crimes Commission Act, 2004.

<sup>59</sup> Independent Corrupt Practices and Other Related Offences Act, 2000.

- a. **Establishment of Central Procurement Regulatory Authorities:** the establishment of the BPPs, Public Procurement Authorities (PPAs) Due Process boards, Procurement Agencies today across government space are all incidents of the public procurement regime. Over 30 states have a central regulatory authorities overseeing public procurement in their states. This were hitherto almost absent in pre-procurement legal regime as MDAs conducted their procurement according to their internal guiding accounting principles.<sup>60</sup>
- b. **Observance of Monetary Thresholds:** The introduction of thresholds to public procurement is one of the hallmark of this regime. Now, procuring entities are regulated in procuring by observing a naira limit within which they can engage in procurement without a prior approval from the Bureaus.<sup>61</sup> The laws empower the Bureaus to set monetary thresholds within which a PE can engage in diverse procurements. The PPA defined 'threshold' as "*only to the approving and not the actual process of [a]ward*". This does not explain what prior review thresholds mean. The PPL however throws more light when it defined it as "*“Prior Review Threshold” means the value limit in Naira set by the RSBoPP within which a procuring entity can only enter into, and award, a procurement contract with a prior certification by the Bureau.*" What this means is that PES can no longer award contracts of certain high amounts without any scrutiny and issuance of certificate of no objection by the Bureau.
- c. **Projects Procurement Planning:** According to a study one of the core objectives of the public procurement reform was to enhance project efficiency in projects delivery<sup>62</sup>, it was thus expected that the reform initiative would lead to more adequate project planning in terms of better projects definition, setting of realistic budget estimates, effective scope control and transparent tendering process and contract awards.<sup>63</sup> By virtue of the Public Procurement laws, all government contracts except otherwise provided are to be planned under the regime. Procurement Planning entails the identification, assessment, evaluation, price/market surveys and the inclusion of items into the budget and transpose same from the budget to a procurement plan document which has detailed steps on the process, timeframe and procurement methods that will be deployed to execute each projects named therein.<sup>64</sup> The Act/Law made it mandatory for procurements to be based on a procurement plan. This has to be supported by prior budgetary appropriations and availability of funds.<sup>65</sup> This is very significant as before now, public procurement suffered anticipatory and

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<sup>60</sup> Samuel Olantunji and Others, (n.7) 73.

<sup>61</sup> PPA 2007, s 16 (1)(a); PPL 2008, s14 (1) (a).

<sup>62</sup> M.S. Shwarka, 'Impact of the Nigerian Procurement Reform on Planning Practices of Construction Practitioners', 2019, (13) (2) *FUTY Journal of the Environment*. 19

<sup>63</sup> Ibid.

<sup>64</sup> PPA 2007, s. 16, 18; PPL 2008, s. 14.

<sup>65</sup> PPL 2008, s 14.

impulsive procurement habits even when procurement entity knows that there is no funding to back up such procurements. The study revealed that the public procurement reform has made a significant impact on the planning practices of construction practitioners of public building projects. That all the respondents administered with questionnaires, unanimously ranked enhanced uniformity in bidding documents and in procuring standards as the greatest impact of the procurement reform on planning practices.<sup>66</sup>

- d. **Procurements/Contract Advertisement:** Hitherto to the procurement laws, many contracts were conceived and awarded without recourse to notice to the public.<sup>67</sup> It was reputed that contracts were awarded secretly to preferred persons. Now the law makes the planning and advertisement of intended public procurement mandatory, especially for contracts of particular thresholds that must use the default open competitive bidding process. Likewise, the contract award must also be advertised. This are mechanisms to ensure that public procurement is as transparent as possible and procurements are not conceived and executed in secrecy.
- e. **Competition:** Prior to this regime, public office holders could award contracts of their interests to their cronies. This is to a large extent no longer the case as such procurement condition has been displaced with competitive tendering process.<sup>68</sup> Ezech noted that previous reform efforts failed because those leading the reforms were public servants who wanted to maintain the status quo, he also reiterated the fact that contracts were used to reward those in government to serve specific political interests.<sup>69</sup>
- f. **Use of Procurement Methods:** Before now, public procurement was carried out without any particular procurement method. It largely depended on the whim and caprices of the public officer in charge of award. The new regime introduced procurement methods that are available for different procurement. This requirement made open competitive bidding a default method for public procurements, except where expressly excluded.<sup>70</sup> This has changed government habits positively as officials can no longer engage in deliberate direct procurement but would choose a suitable method of procurement that would bring best value to the public.
- g. **Procurement Reports:** procurement carried out by government of officials were notorious for not being traced. In effect, procurement records were hardly kept. The public procurement legal regime has at least in law, stemmed the complete absence of

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<sup>66</sup> Shwarka (n.60)

<sup>67</sup> Ezech, E. M., Public Procurement Reform Strategies: Achieving Effective and Sustainable Outcomes, (2013). <[www.cips.org/Documents/Engr. Emeka Ezech presentation \(21 May\) \[Repaired\].pdf](http://www.cips.org/Documents/Engr.EmekaEzechpresentation(21May)[Repaired].pdf)>

<sup>68</sup> PPA 2007, s 16 (1) (c) (f); PPL 2008 s 14 (1) (c) (f)

<sup>69</sup> Ezech, (n.65).

<sup>70</sup> PPL 2008, s. 19, 20, 21.

procurement records by providing for the mandatory taking and maintenance of a procuring entity's procurement record for a period not less than 10 years.<sup>71</sup>

- h. **Indigenous/Domestic preference:** in order to stimulate local economy and boost small medium enterprises (SMEs), the law enabled a margin of preference for local economy in order to stimulate growth in the industry through public procurement.<sup>72</sup>
- i. **Bidders Complaints and Administrative Review:** In the laws, detailed procedures have been stipulated how a bidder can seek administrative review of any omission or breach by a procuring or disposing entity under the laws or its regulations or guiding documents.
- j. **Public disposal:** as was earlier stated public procurement legal regime covers disposal of public property. Disposal of public property is now a regulated exercise, it could be by lease, transfer, sale or gift, etc.<sup>73</sup> There is now a requirement of inventory, asset register, and valuation report and disposal methods for disposing public property.<sup>74</sup>
- k. **Creation of Procurement Cadre:** as a fallout of procurement regulation, MDAs witnessed the creation of and conversion of existing civil servants to procurement cadre by the Federal Government as a distinct office separate from administration, finance and human resources roles. Similarly, the Rivers State Government converted some civil servants to the procurement cadre.<sup>75</sup> In continuation of the Bureau's training programme to build institutional capacity as enshrined in Part II, Section 5(k) and (s) of the Public Procurement Act, 2007, the procurement cadre now exist as procurement professionals to assist in the execution of procurement in their respective ministries.<sup>76</sup> Accordingly, the BPP has launched out trainings and capacity building for the procurement cadres and established an institutional learning programme in conjunction with the Federal University of Technology FUTO, Owerri, in discharging this function. The RSBOPP has also engaged in several trainings and capacity building for the Rivers State MDAs and Local Governments and enlightening them on the expectations and their responsibility under the legal regime.<sup>77</sup>

## 4.2 CHALLENGES OF PUBLIC PROCUREMENT REGIME IN NIGERIA

The Public Procurement Act of 2007 itself and the States' replicating Laws have many provisions that accord with international best practices as revealed above. Elegbe-Williams has pointed out that Nigeria is one of the African countries with the legal framework for public procurement that meet the standards of internationally practiced public procurement and benchmarks described by

<sup>71</sup> PPA 2007, s. 16(12); PPL 2008, s. 14(11).

<sup>72</sup> Ibid. s. 34 & s. 31

<sup>73</sup> Ibid, s. 55(6) & 52(6)

<sup>74</sup> Ibid s. 54 & 52.

<sup>75</sup> Rivers State Establishment, Training & Pension Bureau: Circular No.2/2017.

<sup>76</sup> BPP: Procurement Officer Conversion Registration; <[www.bpp.gov.ng/procurement-conversion-officer-registration](http://www.bpp.gov.ng/procurement-conversion-officer-registration)> on 1 November 2021.

<sup>77</sup> RSBOPP, 'Two-Day Capacity Development Programme on Public Procurement'. 24 Sept 2020 <[www.rsboop.rv.gov.ng/index.php/blog/](http://www.rsboop.rv.gov.ng/index.php/blog/)> accessed on 15 July, 2021.



the African Development Bank Concept note.<sup>78</sup> In spite of its statutory benefits, Nigeria public procurement system is still failing. A close observation and analysis of the regime by erudite scholars and critics have revealed the following factors as posing challenges to the country's procurement system.

- A. Political influence/Interference:** the procurement laws amply show the authority and roles of political office holders in selection and constitution of the entire members of Council or Board of Directors who oversee the policies and direction of the procurement regulatory authorities.<sup>79</sup> It is submitted that this does have overwhelming influence on the policy/decision making of the procurement bureaus in their fight against the hitherto chaotic and corrupt procurement practices perpetrated by corrupt political officials and their cronies. Elegbe Williams pointed out that many public officers confirmed the facts that political interferences exist and most times have procurement officers bowing to the pressure.<sup>80</sup> Section 21(4) of the Rivers State PPL is a strong indication of the interference of political office holder in procurement process. This does not accord with global public procurement principles and practice as the interference is capable of distorting procurement process and eroding any public confidence in public procurement.
- B. Corruption:** W. Holdings holds that Corruption is an age long malaise in government and Public procurement is not spared in view of the huge amounts of money involved.<sup>81</sup> In commenting on the issue of corruption in international business transactions, Pierros observed that in the last five years, corruption has been placed high on the international agenda. He further opined that corruption has taken an alarming dimension in recent years, at the same time spreading geographically and growing in intensity; illicit payments now account for approximately ten to twenty per cent of international transactions.<sup>82</sup> The Nigeria public procurement practice before the enactment of the Public Procurement Act had been known to be unprofessional, inefficient and ineffective. According to Fayomi, Nigeria can be described as a country of irony as the socio-economic performance over the years remained superficial and unimpressive. This was largely attributed to high level of corruption or mismanagement of public resources closely linked up with the public sector procurement systems.<sup>83</sup> Nigeria's Finance Minister lamented that over US\$400 billion is

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<sup>78</sup> Sope Williams-Elegbe, (n 6), 73.

<sup>79</sup> PPA 2007, s. 1(4); PPL 2008, s. 1(4).

<sup>80</sup> Sope Elegbe Williams, (n.6) 97.

<sup>81</sup> W Holding Jnr, 'Problems of State Procurement' [1976] (8) (1) *Public Contract Law Journal*, 17.

<sup>82</sup> P Pierros, 'Bridges and Barriers: Corruption and International Business Transactions' ([1998] (4) (1) *International Trade Law and Regulation*, 4.

<sup>83</sup> I O Fayomi, 'Public Procurement and Due Process Policy in Nigeria: Thrust, Process, and Challenges' [2013] (1) (4) *Peak Journal of Social Sciences and Humanities*, 39-45.

lost annually worldwide due to sharp practices in public procurement.<sup>84</sup> The fight against corruption in the procurement space has still not been won as corrupt procurement practices continue to ail the States and country at large. According to OECD,<sup>85</sup> the direct costs of corruption include loss of public funds through misallocations or higher expenses and lower quality of goods, services and works. Those paying the bribes seek to recover their money by inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work or using inferior materials, in case of public procurement of works. This results in exaggerated costs and a decrease in quality and in overall undermines the goal of public procurement regime.

**C. Unskilled and resources limited Procurement Cadre:** it has earlier on noted that upon the operation of the procurement regime, some civil servants both in federal and states' civil service were converted to procurement cadres. There was no prior compulsory procurement qualification or cognate criteria for procurement cadre who had little or no procurement skills, training or qualification.<sup>86</sup> The line officers/accounting officers in charge of procurement implementation most times do not have the requisite procurement proficiency and or qualifications and where they do they are limited by the availability of resources to effectively carry out their jobs<sup>87</sup>. Most accounting officers who are at the front burner of public procurement are there only by virtue of their positions and this usually do not require procurement qualifications, thereby posing a challenge to effective discharge of their procurement role that are most times unconnected to public procurement roles.<sup>88</sup> This has affected to a reasonable extent the procurement tone and output to the procurement regime. Bodunrin<sup>89</sup> identified problems of Public Procurement Act, 2007 as existence of multiple procurement guidelines and procedures for public procurement stipulated in PPA 2007, frequent updates of manuals lead to procurement official not aware of immediate changes and thus are at variance with latest guidelines or instructions. The procurement trainings carried out by the Bureaus appears not far reaching compared to the humongous number of officials and MDAs involved in procurement implementation, which requires training and retraining in public procurement practices.

**D. Budgeting Practice and Paucity of Public Fund:** Part of the activities required for the implementation of procurement under the regime is integrating procurement expenditure into the yearly budget of the procuring entity. Before this is done, budget items must have undergone needs assessment and evaluation exercise, followed by identification of the

<sup>84</sup> Agheisiyi and Edore, (n.13) 111.

<sup>85</sup> OECD, *Preventing Corruption in Public Procurement*, (2016) 7.

<sup>86</sup> BPP: Circular on Deployment of Procurement of Officers on Salary Grade Levels 15-17 in the Federal Civil Service, dated 3/8/2021.

<sup>87</sup> Elegbe Williams, (n. 6) 97.

<sup>88</sup> PPA 2007, s. 20. PPL 2008, s. 15.

<sup>89</sup> A K Bodunrin, 'Empirical Review and Analysis of Public Procurement Practices in Nigeria: Challenges and Prospects' [2016] (6) (3) *Public Policy and Administration Research*, 3.

needed goods, works or services to meet an identified need. A market and statistical survey exercise to properly obtain the estimated cost implication of the project amongst others are required before a budget is drawn. What is however majorly obtainable in MDAs, is a transplant of budget items and more addition, their estimated cost from year to year, even when such needs no longer exist to a present budget year. The chain reaction is a bloated budget with little revenue to perform, since paucity of fund is a constant challenge to most governments. With unavailability of funds, most procurement steps and implementation exercises most times become fruitless. This, to a large extent distort procurement plans and implementation and causes a drift from planned procurement that would yield results. In the circumstance, resort is usually had to make shifts procurement, which falls short of the provisions of the laws. According to Wahab,<sup>90</sup> unjustifiable gap existed between budget and actual released, leading to underfunding, delayed completion, price escalation and project abandonment; preference for new projects to the detriment of the completion of current projects and needed maintenance/refurbishment of existing ones; absence of efficient and effective project monitoring aimed at ascertaining compliance with original project plans and targets; and frequent government policy reversal are some of the challenges of the regime. World Bank has noted that the mismatch between budgetary appropriations and the actual release of funds, which often prevents procuring authorities from meeting financial obligations to contractors, is a problem affecting sound procurement practices.<sup>91</sup> This mismatch meant that in some cases, procuring authorities had to cancel awarded contracts or divert funds from other sources when it became clear that the government was not going to release appropriated funds. Although from the Laws perspectives, there is a commitment to sound procurement principles and to the development of a procurement system that meets the requirements of international best practice, the lack of commitment on the part of both civil servants and politicians is severely constraining the procurement system.

- E. Misconception of Public Procurement regime:** most civil servants perceive public procurement regime as one government agency's (Bureau) process; Bureaus asserting authority over the MDAs, rather than as governance tool/system, and such have not shown so much commitment for the full enthrone of the regime. This is contrary to the prevailing understanding that Public procurement law has become a deliberate governance reform mechanism to institutionalize fairness, openness, accountability and anti-corruption in public procurement. Arrowsmith reiterate public procurement as an important tool that

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<sup>90</sup> K A Wahab, 'Importance of Due Process in University Governance'

<[http://www.unijos.edu.ng/Partnership/Advancements/Advancement%20home\\_files/JOS%20SPEECH.ppt](http://www.unijos.edu.ng/Partnership/Advancements/Advancement%20home_files/JOS%20SPEECH.ppt)> accessed 2 September 2021.

<sup>91</sup> World Bank, 'Nigeria: A Fiscal Agenda for Change - Public Expenditure Management and Financial Accountability Review (PEMFAR)' (main report) May 25, 2007, 33-37

has been utilized for achieving economic, social and other objectives.<sup>92</sup> In fact, the World Bank believes that procurement transcends just the purchase of goods, services and works, but that it also plays key role at effort to curtail corruption and improve good governance around the world.<sup>93</sup> The misconception of the role of the Bureau and public procurement has adversely affected the full implementation of the public procurement laws as most procuring entities rather stick to their traditional ways than bow to the authority of another government department. Ikechi noted this in his study<sup>94</sup> that the Nigerian population is yet to appreciate the provisions of the public procurement Act 2007 and its amended version, The frosty working relationship between ministries and the parastatals under them is a challenge in guaranteeing good public procurement process. Most MDA's are hostile to moves aimed at implementing the public procurement act. They will stop at nothing in sabotaging or kicking against the establishing a body of knowledge on public procurement.

- F. Lack of Accountability and Penal Enforcement:** According to a study,<sup>95</sup> impairment of judicial systems, police and investigative institutions are particularly destructive in this respect, bringing about frequent failures to sanction and arrest offenders. The then Director-General of BPP, Emeka Ezech, stated sometime in 2014 that 156 contractors are being prosecuted for violating the procurement law,<sup>96</sup> but no significant numbers of contractors or public officials have suffered penal sanctions in the face of the obvious procurement breaches in the system. In many States in the country where the laws operate, not one or significant number of persons has been convicted for procurement offence. The Bureaus have been labelled as being weak and ineffective in the discharge of their mandate in applying the law and bringing offenders to book. This is even moreso as the statutory audit requirement by the Bureas on the MDAs appears not have been activated.<sup>97</sup> To this end, the public procurement laws have made minimal impact in enforcement and implementation. **Public Apathy:** In Nigeria, there is a wide gap between citizens and constituted authority. According to Samuel Olantunji and others,<sup>98</sup> public indifference to

<sup>92</sup> Khi. V. Thai, Challenges of Public Procurement, Chap 1.<[www.ippa.org/images/BOOKS/IPPC1/Chapter\\_1.pdf](http://www.ippa.org/images/BOOKS/IPPC1/Chapter_1.pdf)>

<sup>93</sup> Stephens, P. (2013). News Analysis: World Bank Reform – World Bank Procurement team to Join Governance Global Practice, *The Development Newswire*, December.

<sup>94</sup> Kanu Success Ikechi et al, *Imperatives for Setting up a Body of Knowledge on Public Procurement Practice in Nigeria*, 2021, p.58.

<sup>95</sup> The Impact of Public Procurement Act on the Procurement Process in Nigeria Public Sector (A case study of bureau of public procurement), 38.

<sup>96</sup> <https://www.vanguardngr.com/2014/06/govt-prosecuting-156-contractors-violating-procurement-law-bpp-boss/> accessed on 18 March 2022

<sup>97</sup> PPA 2007, s. 5(p); PPL 2008, s. 3(o)

<sup>98</sup> Samuel Olusola Olatunji et al: Nigeria's Public Procurement Law-Puissant Issues and Projected Amendments, Public Policy and Administration Research, Vol 6, No 6, July 2016, p. 80.

public procurement process are caused by factors such as illiteracy, poverty and reduced standard of living. These limit them from participating actively in demanding accountability from their government. He posited that citizens are gullible, credulous and easily manipulated and do not get involved in political process and never bother to demand accountability and transparency in public governance and if they eventually demand accountability, it is usually on a questionable basis such as tribal or sectional interest. This is true as the public has become wary of complaints and angst towards authorities who are not accountable to them. This is a major challenge that has repeatedly militated against effort at governance reform, particularly public procurement law regimes.

## **5 CONCLUSION AND RECOMMENDATIONS**

It is evident that Nigeria do have an established public procurement legal regime, most of which provisions accord with international best practices. Therefore the malaise that bedevils the infrastructural and economic prosperity of its citizens which are the end products of good public procurement regime, is not a function of the absence of good legal framework or regime. Except for few provisions of the laws, a sheer implementation and enforcement problem, associated with political influence/interference, lack of accountability, lack of skilled and experienced procurement actors and weak penal enforcement are some of the bane of Nigeria public procurement system.

In that vein, this article recommends as follows:

- i. Amendment of the Procurement Act/Laws to include statutory checks to the President/Governors' arbitrary powers of Appointment of Council/Board members: Under the existing framework, the President/Governor has unilateral power to appoint members of the Council/Board without any input, recommendation or nomination from any quarters. Thus, the power of their appointment could be influenced by arbitrariness. The selection, nomination and appointment of members of the Council/Board of Directors of the Bureaus is a sensitive one and as such should observe some form of checks. The powers of appointment it is submitted, be subjected to nominations from Civil service, Universities Council, Private Sector and Non-Government Organisations (NGOs), etc, of persons who have proven track records of achievements in relevant fields as required by the public procurement laws. This will ensure that competent individuals of proven achievement in their respective fields, take the helm of affairs in the procurement Bureaus/authorities as against unchecked appointment of cronies without any track records. Secondly, the indulging section 21(4) of the Rivers State PPL, 2008, should be deleted as it is totally against the tenets, spirit and principles of global public procurement practice and it is capable of discouraging foreign and local participation in government contracting process.

- ii. **Provision for Whistle Blowing Mechanism and Protection:** The law allows bidders to complain of breaches or perceived breaches in a procurement process. The law also allows the Bureau to review and recommend for investigation any breach or detection of breach to the law. There is however no insider whistle blowing mechanism. There is need for a secured whistle blowing mechanisms and protection in the law, where stakeholders who are involved in the process, may inform the Bureau or any relevant authority, of any breach or impending breach of the law. This will to a large extent curtail corrupt practices and promote stakeholder participation in procurement practices.
- iii. **Institutional Education/Training and Development of Public Procurement Body of Knowledge:** The Bureau has the statutory function to train and build institutional capacity for procuring entities. Although the procurement officers are the primary target of these trainings, it is becoming imminent that political office holders, accounting officers, Budget Departments, etc, all require public procurement trainings likewise to achieve a coherent procurement system within an entity. Apparently, the gamut of personnel involved in public procurement in all the MDAs are quite enormous. This is quite a daunting task for the Bureau. This article proposes the establishment, development of body of knowledge and compulsory institutional teaching/training of public procurement courses in Tertiary institutions and other institutions of higher learning, in collaboration with Bureaus of Public Procurement; compulsory human capacity training for existing affected public officers; and all government workers involved in procurement decisions, approvals, processes and or execution. This is to facilitate an institutional learning/syllabus for government procurement workforce, with the aim of building durable procurement knowledge as opposed to the compressed and short duration courses presently prevailing. This will promote a structured and enduring capacity building that would address learning and outcome targets effectively.
- iv. **Activation of Audits and Penal measures:** There is need for deeper investigation on procurement frauds by the Bureaus and commensurate punishment meted out on offenders whether institution or individual, as to forestall depreciation of the positive effects the regime has had on Nigeria's procurement process thus far.
- v. **Activation and compulsory signing of Code of Conducts:** it is submitted that subscription to oath of code of conduct by public officers who are involved in any line of public procurement should be compulsorily enforced, filled and signed by affected persons. This goes to say that the States' Bureaus would of necessity prescribe a code of conducts for the practice of public procurement in their states of operation.



It is submitted that if the limitations and challenges affecting the implementation of public procurement regime are not arrested with the measures they require, the regime will fall into decline and consequently fail completely to the detriment of the populace.