

ASSESSMENT OF THE CHALLENGES FACING THE EFFECTIVE OPERATIONS OF THE NIGERIA PUBLIC PROCUREMENT ACT 2007

Olajide Familoye

Quantity Surveyor, Steve - Time Associates, Lagos, Nigeria

Deji Rufus Ogunsemi

Department of Quantity Surveying, Federal University of Technology, Akure, Nigeria

Oluwaseyi Alabi Awodele 

Department of Quantity Surveying, Federal University of Technology, Akure, Nigeria

deledayo4christ@yahoo.com

Abstract

Public Procurement Acts (PPAs) of most nations especially developing nations have not been able to achieve its desired purpose. This is because of the challenges, among others, faced by the stakeholders in the implementation of the Acts due to the economic, social and political environment where the Act is operating. This paper assessed the challenges facing the effective operations of the Nigeria Public Procurement Act 2007 so that actions could be concentrated on addressing significant challenges so as to public procurement process to achieve its intended objectives. Questionnaire survey was employed for the study which was administered among procuring entities, contractors and consultants. The result indicated that the most significant challenges are size and complexity of procurement, political interference by the executive and shortage of public procurement practitioners. The paper recommends that procurement studies shall be included in academic studies of Universities and Polytechnics in order to move public procurement from clerical to strategic level. And, that for the Act to succeed the political class should muster enough political will to ensure proper process function. Moreover, there should be mechanism in place to monitor the meddlesomeness of the process by the political class.

Keywords: Public Procurement, Challenges, Effective operation, Procurement Acts, Nigeria

INTRODUCTION

Nigeria joined the league of countries with procurement laws when the Public Procurement Act 2007 was signed to law on June 4, 2007 by the then President, Late Musa Yar' Adua. The purpose of the Act is to ensure transparency, competitiveness, value for money and professionalism in the public sector procurement system (Jacob, 2010). According to Lex Mundi Publication (2012) the essence of the Act is to ensure that all the public procurements are conducted in a manner that is transparent, timely and equitable and based on the agreed guidelines, thresholds and standards. Krivish and Krekele (2013) state that the procurement law is to ensure openness of the procurement procedure, free competition of suppliers as well as equal and fair attitude thereto, effective use of state and local government funds and to reduce the risk of the commissioning party to the minimum. According to Fayomi (2013), 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 (Fayomi, 2013). The Act was therefore enacted to improve the procurement process and reduce the incidence of corruption in Nigeria. To improve procurement procedures, Krasniqi (2012) says it requires a comprehensive public procurement law, establishing a central body for public procurement, developing the capacity of spending units in efficient procurement procedures, and establishment of effective control and review of complaints regarding the procedures. The PPA 2007 contains these five identified elements which will ensure transparent, efficient and accountable public procurement process. Unfortunately, the ills identified during the Country Procurement Assessment Report (CAPR) submitted by the World Bank in collaboration with local consultants still common eight years after the continuous implementation of the Act.

The report on Nigeria's procurement assessment identified some weaknesses in the then existing procurement system which included lack of appropriate legislation, shortage of basic skill and inappropriate organisation of the procurement process (World Bank, 2000). A similar study in Ghana as cited by Ameyaw, Mensah and Osei-Tutu (2012) identified the weaknesses in Ghana procurement system as lack of comprehensive public procurement policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities for procurement entities, absence of comprehensive legal regime to safeguard public procurement, lack of rules and regulations to guide, direct, train and monitor public procurement. The World Bank report on the assessment of Nigeria procurement system recommended the establishment of Public Procurement Commission while in the medium action plan, it further recommended the introduction of a Public Procurement Law based on United

Nation Commission on International Trade Law (UNCITRAL). Government accepted the two recommendations. Immediately Budget Monitoring and Price Intelligent Unit (otherwise known as Due Process) was established and the process of enacting a procurement law was started (World Bank, 2000; Anago, 2011). The expected contributions of these steps by government have not been felt because of the daunting challenges faced by the implementation of the Act.

Research into the challenges facing the implementation of the Public Procurement Law has been undertaken especially in the developing countries including Nigeria. Ameyaw, Mensah and Osei-Tutu (2012) identified various implementation bottlenecks to the Ghana Public Procurement Law. Musanzikwa (2013) provides an overview of the public procurement challenges in developing countries with reference to Zimbabwe. Jacob (2010) examined the objectives, coverage, and compliance strategy and efficacy effectiveness of the Nigeria Public Procurement Law. He concludes that full implementation of the law remains an elusive objective despite some measure of its impact. Thai, (2004) and Wittig & Jeng, (2004) have looked at challenges facing Public Procurement globally. This paper is to extend the frontiers of available knowledge in the implementation of the public procurement reform in Nigeria and specifically to assess the challenges facing the implementation of the PPA 2007 with a view to draw the attention of the stakeholders to the identified challenges. The paper is divided into five sections. Section 1 contains this introduction, section 2 review relevant literatures on the subject, section 3 contains the research methods, section 4 presents the data and its analysis and section 5 shows the recommendation and conclusions.

LITERATURE REVIEW

Public procurement is a big market player in the economy of most nations both in its size and complexity. Most countries of the world, especially the developing nations, spend between 10 - 30% of their GDP on public procurement (Reich, 2009, Wahab & Lawal, 2011). It has been said that the sheer magnitude of the procurement outlays impact greatly on the economy (Thai, 2005), its effect on the economy becomes a challenge. Moreover, public procurement is a complex process involving huge documentations which has been daunting to the stakeholders especially the small scale contractors. More documentation is required which are tangential to the core construction business but are essential to participate in the public procurement process. For example, statutory requirements of various taxes, pension scheme and industrial training requirement make the process daunting.

Prior to 2007, Nigeria did not have a statute that specifically regulates public procurement (Lex Mundi Ltd (2012). According to World Bank (2000) there was no law or other acts of Parliament regarding public procurement in Nigeria. Public procurement was administered

through "Financial Regulations" issued by Federal Ministry of Finance to "regulate and delegates the responsibilities of public procurement and financial management at the Federal level." Such administrative document was not enough to regulate public procurement processes which spend a very huge percentage of the national budget. A similar study (World Bank 2003) as cited by Ameyaw, et al (2012) in Ghana reported that about 50-70% of the national budget is procurement related.

In 2007, Nigeria joined the league of countries with procurement law to regulate the public procurement process (Anago, 2011). Public procurement reform serves the economic purpose of transparency, accountability and value for money. It can also be used to achieve social objectives redressing inequality among the social strata of the masses of a people. For example, it was used in the UK by government departments to direct all government contractors pay their workers generally accepted rates (McCruden, 2004) and in South Africa to correct the imbalances in the award of contract during the Apartheid regime (Bolton, 2006). The primary objective of public procurement is to obtain value for money. It is also a tool to achieve economic, social and other objectives. According to Thai (2005) balancing these secondary objectives with the core objective of value for money possess a great challenge to practitioners. Practitioners are also expected to comply with international agreements. Many countries have moved to regional or global economy that they are obligated to comply with their government regulations and social and economic procurement goals without violating regional and/or international trade agreements (Thai, 2005).

Unfortunately, Nigeria Public Procurement Act has not been able to achieve the primary objectives of transparency, accountability and value for money. Public Procurement Acts of most nations especially developing nations have not been able to achieve the purpose for which it was set to achieve. This is because of the challenges, among others, faced by the stakeholders in the implementation of the Acts due to the economic, social and political environment where the Act is operating. According to Jacob (2010), the greatest challenge for the enforcement of procurement law in Nigeria is the involvement of government functionaries in the procurement process and this is possible because government has not fully implemented the provisions of the Act. The Act is a threat to both the executive and the civil servants who argue that they must be involved in the procurement process in order to safeguard public resources (Jacob, 2010). The new procurement regime has limited their capacity to perpetrate those evils that an unreformed process is known for. Dza, Fisher and Gapp (2013) identify the teething problems of the procurement reform as inadequate qualified personnel, the inability of practitioners to adequately and accurately interpret their countries' respective procurement laws, and the perception of corruption still high. According to Mahmood (2010), contract awards

provide opportunity for procurement and there have been reported cases of extensive corruption, political influence and pressure from trade unions in the procurement process. Much as competition and transparency are necessary for any efficient procurement process (Hunja, 2003), the stakeholders are not willing to relinquish their source of illegal avenue to make money which the procurement law set to block or reduce.

Nigeria, like any other developing countries, faces the challenge of ensuring the successful operations of the Act. Jacob (2010) finds out the Nigeria government is not totally committed to comply fully with the regulations enshrined in the Act. He further says since 2007 when the Act became operational the Federal Government yet to constitute National Council on Public Procurement (NCP) an important arm for successful execution of the provision of the Act. The appointment of the Director General of the Bureau of Public Procurement (BPP) which should be on the recommendation of the NCP was directly appointed by the President in contravention of section 7 sub section 1 of the Act. The continuous involvement of the Federal Executive Council in the award of public contracts violates the provisions of the Act. Jacob (2010) and Musanzikwa (2013) identify the involvement of government functionaries especially the executives in the procurement process as a challenge. According to Dza, et al (2013), the politicians lack the political will to commit fully to the reforms. The main function of government should be policy formulation rather than policy implementation (Musanzikwa, 2013).

Public procurement especially public contracts are an area of waste and corruption (Thai, 2005; Jones, 2007; Fayomi, 2013; Musanzikwa, 2013). The huge capital outlay in public procurement and the fact that public officials are poorly paid, corruption thrives among them especially in Nigeria. According to Jenny (2005), in some countries the alleged low level of income of civil servants may prompt them to engage more frequently the private sector employees in corrupt practices to achieve a level of earnings similar to the private sector. These poorly paid public officials are the executors of government policies who interact with private sector. This interface with the private concerns couple with urge by the private sector practitioners to secure the available scarce jobs breeds corruption. When contracts worth billion of Naira are won, these public officials still manage the construction process.

Other studies on challenges facing public procurement have made daunting discoveries. Ameyaw, et al (2012) identifies low capacity of procurement professionals. low interaction between procurement entities and the public procurement Authority, deliberate control of competition, non - compliance with the provisions of the law, splitting of contract into smaller lots, lack of funds and non cooperativeness of suppliers as the major challenges militating against the implementation of Ghana Public Procurement Act (PPA) 663. Thai (2005) identifies the challenges facing the public procurement as sheer magnitude of procurement outlays, public

perception of public procurement, problems faced by public procurement practitioners, balancing the economic, social and political goals of government, public procurement as a clerical function rather than a tactical one, procurement organisation structure, culture of the people, political environment, quality of workforce and their welfare and procurement regulations. According to Mlinga (2009), the challenges facing Tanzania public procurement are its size and complexity, striking a balance between key pillars of public procurement, managing stakeholders' expectations, managing adequate supply of procurement and supplies professionals and technicians, and managing ethical standard. Wittig and Jeng (2005) argue that resistance to change; procurement cadre and capacity constraint; and acting as central tender board and procurement supervisor are equally militating against the successful implementation of public procurement act in Gambia. In Zimbabwe, indigenisation policy of government has resulted in public tenders being awarded to incompetent companies (Musanzikwa, 2013). However, empirical research seems not to exist in Nigeria on the challenges of PPA (2007) due largely to the recentness of the Act in the country. It is this gap in the body of literature that this study sought to fill so as to help inform policy makers as well as the procuring entities to be aware of possible challenges that could confront effective implementation of the Act.

RESEARCH METHODOLOGY

The study employed a survey research design in the conduct of the research. Data were collected from the Federal Procuring Entities, Contractors and Consultants based in Abuja and Lagos. The choice of these two locations was predicated upon the fact that Abuja is the capital of Nigeria while Lagos is the commercial city where majority of the construction companies have their head offices. This assertion is in line with the submission of other researcher such as Dada and Akpadiaha, (2012), Wahab and Lawal, (2011), and Ogbu, (2011).

The lists of procuring entities of Ministries, Departments and Agencies (MDA) in Lagos and Abuja were obtained. Registered Contractors who were financial members as at June 2011 were obtained from the Federation of Construction Industry (FOCI, 2011), that of the Consultants who were financial members and were registered by their various professional bodies were obtained from their respective professional bodies. The lists of the Architectural firms were obtained from Architects Registration Council of Nigeria, the Engineering firms from the Association of Consulting Engineers of Nigeria (ACEN, 2011), the Consulting Quantity Surveyors from the Quantity Surveying Registration Board of Nigeria (QSRBN).

A total population of 356 was identified comprising of 26 Federal Ministries, 57 Department and Agencies of government; 59 Contractors and 214 Consultants. From this population, 188 were conveniently sampled made of 14 Federal Ministries, 30 Departments and Agencies, 31 Contractors and 113 Consultants (see table 1). The data for the study were collected through the administration of questionnaire to the sampled respondents. The questionnaire was divided into two sections. Section one identified the profile of respondents to ensure the reliability and quality of information gathered. Section two addressed the specific objective of the study. The designed questionnaire was a multi-choice structured type on a 5-point Likert scale with 5 being the highest. A total of 77 respondents returned their questionnaires out of which (6) six were found inadequate for analysis as they are not properly filled making it difficult to analyse all the necessary questions. This resulted in getting a total of 71 respondents for analysis. The data collected were then analysed using both descriptive statistics for the background information of the respondents while Mean Item score (MIS) was used to assess the challenges facing the operations of the PPA 2007.

Table 1: Population and Sample size

Nature of Respondents	Total Number	Sample Size	Percentage sampled
Federal Ministries	26	14	7.45
Departments and Agencies	57	30	15.96
Contractors	59	31	16.49
Consultants	214	113	60.10
Total	356	188	100.00

ANALYSIS

The nature of business of the respondents showed that 38% of them are professionals in Contracting and Consulting organisations while 24% worked in Public client organisations. It can be observed also that 78% of the respondents have a minimum of 15 years experience in procurement process dating beyond the 1999 public procurement reform starting point. The qualification of the respondents showed that 78% of them have a minimum of post graduate diploma in their various fields. Table 2 shows the significance of the challenges facing the successful operation of the Public Procurement Act 2007. In ranking the significance of the identified challenges on the operations of the public procurement act 2007, the result revealed that the public clients' organisation ranked shortage of public procurement practitioners as the most significant challenges followed by political interference by the executives with a mean score of 4.29 and 4.18 respectively. Faulty implementation and culture of the people were ranked 3rd most significant challenges both having a mean score of 4.12. The contracting

organisation considered size and complexity of procurement as the most significant challenge followed by both political interference by the executives and delay from bureau of public procurement as the 2nd and 3rd most significant challenges facing the successful operation of the Act. The consultants ranked size and complexity of procurement, political interference by the executives and striking balance between key pillars of public procurement as 1st, 2nd and 3rd most significant challenges facing the successful operations of the Act. In the overall ranking, size and complexity of procurement, political interference by the executives and shortage of public procurement practitioners are 1st, 2nd and 3rd most significant challenges facing the successful operation of the Public Procurement Act 2007.

Table 2 Significance of the Challenges facing the Successful Operation of PPA 2007

Challenges	Contracting's Mean	Rank	Public Client Organization's Mean	Rank	Consultancy's Mean	Rank	Overall Mean score	Rank
Size and complexity of procurement	4.27	1	4.06	5	4.23	1	4.20	1
Political interference by the executives	4.04	2	4.18	2	4.07	2	4.09	2
Shortage of public procurement practitioners	3.67	5	4.29	1	3.67	8	3.82	3
Faulty implementation	3.63	8	4.12	3	3.78	4	3.80	4
Culture of the people	3.64	7	4.12	3	3.67	8	3.77	5
Managing ethical standard by the stakeholders	3.69	4	3.82	9	3.78	4	3.76	6
Complexity of procurement regulations	3.67	5	3.88	8	3.70	6	3.73	7
Meeting the expectations of stakeholders	3.56	10	3.94	6	3.69	7	3.70	8
Striking a balance between key pillars of public procurement	3.48	11	3.71	10	3.85	3	3.68	9
Incompetency of the practitioners themselves	3.35	13	3.65	11	3.59	10	3.51	10
Procurement entities repulsive attitude	3.40	12	3.94	6	3.33	15	3.51	11
Delay from Bureau of Public Procurement processes	3.81	3	2.88	15	3.59	10	3.50	12
Procurement officials not part of decision makers	3.63	8	3.63	12	3.19	16	3.46	13
Remunerations of procurement staff members	3.22	15	3.50	13	3.48	14	3.39	14
New entrants are disadvantaged	3.12	16	3.18	14	3.52	12	3.29	15
Public perception of public procurement as waste and corruption.	3.33	14	2.82	16	3.50	13	3.27	16

N=71;5=Very Very High;4=High;3=Average;2=Low;1=Very Low

DISCUSSIONS

From the above, the procurement entities ranking of the shortage of public procurement practitioners as the most significant challenge are expected. This results to using less competent staff to fill the shortage of procurement personnel. The public officials play a very significant role in the full implementation of the Act and so their shortage and competency have negative effect on the success of the Act. This agrees with the finding of Musanzikwa (2013)

that most practitioners are incompetent that of Ameyaw, et al who says that the procurement officers are not proficient and Mlinga (2009) who concluded that managing adequate supplies of public procurement practitioners as a challenge. In other to increase both the numbers and quality of practitioners, Familoye, Ogunsemi and Awodele (2015) recommended the need for our tertiary institutions to train public procurement practitioners at both degree and graduate levels. Another important revelation of the study is the ranking of political interference as the second most significant challenge facing the success of public procurement. Public servants as the executors of government programmes are always under pressure to do the bidding of the executive. Musanzikwa (2013 and Ameyaw et al have earlier listed political interference as a challenge.

On the other hand, contracting organisation sees the size and complexity of the public procurement as the most significant challenge. This must be due to what legal requirements they must satisfy before they are considered for the public procurement process. Moreover, the size of the market as an all comers will impact negatively on the volume of the work they must do to remain competitive. Thai (2004) sees the sheer magnitude of the public procurement outlays and its impact on the economy as a challenge. Reigh, (2009) and Wahab and Lawal (2011) noted that public procurement takes up to 30% of the GDP of the developing countries. The second most significant challenge of political interference agrees with that of the client organisation. The 3rd most significant of the challenge is the delay from the Bureau of Public Procurement. One of the requirements for the award of contract by public client is the issuance of certificate of 'No Objection'. Section 6 sub section 1(c) empowers the Bureau to issue the 'certificate of no objection' before contracts can be awarded by the procuring entities. Both this section and section 16 subsection 1(b) which stipulates that the procuring entities must obtain 'Certificate of No objection' to Contract award from the BPP, have no time limit indicated in the Act. The Contracting firms must have suffered delay in the issuance of the certificate by the Bureau even when the Procuring entities have completed their own process.

For the Consultants, their ranking of striking a balance between the key pillars of public procurement as the third most significant challenge after the size and complexity of public procurement and political interference is surprising. Ordinarily this should not be their concern. To strike a balance between these key pillars is a policy issue and should be the concern of both the executive and to a lesser extent the procuring entities. In the overall ranking, the three most significant challenges are the size and complexity of public procurement, political interference and shortage of practitioners. In literatures the most reoccurring challenge to the successful operation of public procurement reforms is waste and corruption (Musanzikwa, (2013); Ameyaw, et al, (2012); Shrouder, (2010); Jones, (2007) and Thai, (2004). In Nigeria

corruption reports are commonplace in the media both print and electronic. It was even a major determinant in the Nigeria 2015 election - to stem the incidence of corruption in the polity. Surprisingly this challenge was ranked 13, 14 and 16 by Consultants, Public clients and Contractors respectively with overall ranking as the 16 most significant challenges. A phenomenon that impact negatively on the economy and affect the poor greatly is treated with levity by the major players in the procurement process. The fact that former President of Nigeria, Goodluck Jonathan, saying stealing is no corruption is apt here that we have not accorded corruption the attention needed to fight the menace to a standstill.

CONCLUSION AND RECOMMENDATIONS

The paper assessed the challenges facing the successful operations of Public Procurement Act 2007 and the result showed that the size and complexity of public procurement, political interference by the executives and shortages of public procurement practitioners are the three most significant challenges facing the implementation of Public Procurement Act 2007. It is also discovered that corruption that impact negatively on the economy and affect the poor disproportionately are not so treated by the stakeholders.

The paper therefore recommends that more concerted effort should be made to surmount the most significant challenges by all the stakeholders concerned with the implementation of the PPA 2007. The size and complexity challenge must be tackled by continuous education of the stakeholders on the public procurement process by the Bureau of Public Procurement (BPP). The President must, as a matter of urgency constitutes the National Council of Public Procurement, an important implementation arm of the Act. This will free the Executive from interfering in the award of public contracts. Moreover, Government must imbibe the needed political will to obey its own laws for good governance. The paper also recommends that procurement studies must be included in the academic studies of our Universities and Polytechnics in other to produce quality and qualified public procurement practitioners. Moreover, there should be mechanism in place to monitor the meddlesomeness of the process by the political class by strengthening the Civil Society Organisation, the media, judiciary and the professional group to properly serve as the watchdogs of the process. Where it is discovered that the political class has interfered in the procurement process, adequate punishment should be meted out to such person(s) to serve as deterrent to others. In this wise, the judiciary has a role to play in quick dispensation of justice involving public procurement offences.

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