



**THE ROLE OF THE BUREAU OF PUBLIC
PROCUREMENT IN PROJECT DEVELOPMENT
IN NIGERIA**

***A PAPER PRESENTED AT THE 2015 ANNUAL
GENERAL CONFERENCE OF THE NIGERIAN BAR
ASSOCIATION***

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Abstract

The paper takes a critical look into the evolution of the Bureau of Public Procurement and elucidates more on fundamentals process of developing infrastructure projects. The roles of BPP were enumerated and discussed. The paper established that the Bureau Through the prior review of the of projects from 2009 to December 2014 saved over six hundred billion naira, while a total number of 557 complaints were received. 66% of these complaints have been resolved. Also over 30,000 stakeholders have been sensitized on the provisions of the PPA, Over 3000 people trained on procurement procedures and about a thousand people certified as procurement officers.

In the final analysis, the paper concluded that the procurement process can be categorized into pre-bid, bidding and post bid stages by connecting development to infrastructure and BPP's role in ensuring that all actors operate by the rules of transparency, fairness, efficiency, economy and value for money.

1.0 Introduction

I thank you for the opportunity to stand before the learned society on this day at the break out session of the Nigerian Bar Association Annual General Conference. The general theme of this conference "**Lawyers and National Development**" could not have come at a more auspicious time in this era of change and government's resolve to develop a self-sustaining economy through sustained Infrastructural Development. This has become the main thrust of the present administration which was made clear to the

National Planning Commission when it was stated that “capital projects must now be given the fullest possible priority because Nigeria cannot achieve real development without adequate investment in capital and infrastructure projects”.

Developed economies are often associated with developed infrastructure. Therefore National Development involves development of projects to achieve national infrastructure master plan.

Infrastructure has special characteristics that have traditionally justified or encouraged government involvement. Infrastructure means beneath (infra) the building (structure), and this usually encompasses services or facilities that are underground, such as piped water and sewerage or that is on the surface, such as roads and railways. Electric Power and telecommunication are often included as well, even though they are frequently provided by lines strung on poles or towers rather than in underground conduits (some electric power are distributed in underground conduits especially in most advanced countries and few districts in Abuja). Therefore, infrastructure involves networks that distribute products or services over geographic space, and in most cases the networks are capital extensive and the investments are durable and immobile. Infrastructure industries are often public utilities

One motivation for government involvement is the tendency towards monopoly in infrastructure business. This tendency arises because many infrastructure networks have the characteristics of natural monopoly; which are a combination of durable and immobile investments and strong economies of scale. The economies of scale mean that the cheapest way to serve a community is with a single company, particularly if the local network has a relatively low density of traffic. The durability and immobility of the networks increase the risk for new entrants who seek to challenge the incumbent. Concern over monopoly often leads governments either to

provide infrastructure services itself or to regulate the prices and quality of service of private infrastructure providers.

A second motive for government involvement and one that often predates and enhances concerns about monopoly is the difficulty of assembling the right of way required for an infrastructure network. Railways, highways and power, water and telephone lines all require long linear and contiguous rights-of-way that would be difficult to assemble without the government power to expropriate private property through the process of eminent domain.

Without the threat of eminent domain, private land owners along the alignment could extort high prices for key or missing parcels. Government often exercises the power of eminent domain on behalf of infrastructure ministries.

A third rationale for government involvement is that some types of infrastructure generate benefits beyond those that accrue to its immediate users or subscribers. For instance, clean drinking water and sanitary waste disposal protect the general public from the spread of diseases and the contamination of the environment. Similarly, a street light outside a private residence reduces the risks of accidents and crimes for neighboring properties and passersby. If important benefits of infrastructure services accrue to non subscribers, then it may be difficult to persuade subscribers to pay voluntarily for this level of services that is socially acceptable.

Economic development and equity considerations are two additional and related motives for government intervention in infrastructure provision. Infrastructure is seen as an important ingredient to local economic development, and ensuring universal access to a basic level of infrastructure services is often thought to be important to the protection of equal opportunity for individual citizens, much as universal access to basic education and basic healthcare is.

2.0 Evolution of the Bureau of Public Procurement

The acquisition of infrastructure including goods and services in the country by the government prior to 2007 was guided by the Treasury Circulars based on 1958 Act authorizing the Accountant – General of the Federation to issue guidelines on public expenditure. Between 1958 and 2007, a lot of changes have taken place not only in Nigeria but all over the world on how best public funds should be expended to achieve value for money. While many nations have revised their pre independence laws to fit their independence status, Nigeria still operated a pre independent colonial law, set in a parliamentary democratic set up in a presidential democratic systems. This left huge gaps in the implementation of major infrastructure projects over the years. There were no legal, framework to prosecute offenders, where there were, they were tried under old legal and obsolete laws that at most could only achieve correction.

With the dawn of a democratic government in 1999, Nigeria took a major step to review the public expenditure framework. Subsequently, the World Bank was commissioned by the Federal Government of Nigeria to conduct the Country Procurement Review. The resultant Country Procurement Assessment Review (CPAR) conducted in 1999 – 2000 revealed that, 60k was lost to underhand practices out of every ₦1 spent by Government. Besides, a number of consequences arising from the defects in the procurement system were also identified by a study group set up by the Federal Government of Nigeria and several other authors in the country. The problems identified included:

- (i) lack of competition and transparency in project procurement leading to high cost of projects;
- (ii) projects not being prioritized and harmonized leading to several ministries pursuing the same needs simultaneously;
- (iii) existing unjustifiable gap between budget and actual releases resulting to underfunding, time and cost overrun and project abandonment;
- (iv) neglect of maintenance and refurbishment because the cost of such will not generate enough "cuts" derivable as in a new project;

- (v) lack of effective evaluation and monitoring of projects resulting in payment of some contractors when projects have not commenced;
- (vi) budget was simply a wish list of officials not related to justifiable needs for the citizenry proliferation and ineffectiveness of Tender Boards; and
- (vii) absence of an enabling Act regulating procurement in the public sector.

In order to address the problems listed above, the Federal Government decided to establish an agency that will ensure a sound public procurement process and practice in line with the principles of good governance such as transparency, accountability and open economy based on healthy competition. Consequently, the Federal Government of Nigeria in 2001 set up the Budget Monitoring and Price Intelligence Unit (BMPIU) to address the observed shortcomings.

The BMPIU Operations were guided by the Treasury Circulars based on 1958 Act authorizing the Accountant – General of the Federation to issue guidelines on public expenditure. To institutionalize the operations of the BMPIU, the Public Procurement Bill was sent to the National Assembly in 2003/2004 and on May 31, 2007 the two Houses passed the Bill and on June 4, 2007 the then new President signed it into law; the first law to be signed by the then President.

The Public Procurement Act 2007 established the Bureau of Public Procurement as the regulatory authority responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria. The Public Procurement Act (PPA), 2007, thus puts Nigeria in the league of countries with legislation on how public funds should be expended. About 22 States in the Federation have followed suit by enacting Public Procurement Laws in their respective States with corresponding superintending Agencies to implement these laws.

3.0 Developing Infrastructure Projects

For any infrastructure project to be successful, pre project studies by experts must be carried out first. Therefore procurement of infrastructure requires procurements of services first.

For example in road construction project, Surveyors have to do a mapping of the road, Engineers, Geologists and Soil Scientists have to be present to determine the strata and composition of the soil for a fitting engineering solution.

Transaction Advisers and Social Scientists are also required to determine whether or not the project qualifies for a Public Private Partnership (PPP) based on the statistics and information garnered thereby freeing government resources for other pressing needs.

Engineers are also needed to design and prepare Engineering drawings, specifications and bills of quantities which will form the basis for engagement of contractors (engineering contractors that will eventually execute the physical construction, Works).

The Bureau of Public Procurement pursuant to the provisions of the PPA 2007 has developed Standard Bidding Documents for the engagement of Contractors and Suppliers as well as Standard Request for Proposals for the engagement of Consultants. Each of these documents came with draft Standard Agreements to quicken service delivery. But that is not the case. Simple agreements take three months in ministries until contractors "consult" the legal departments.

4.0 Processes of Project Development

A Project development typically should go through three basic stages, namely: i) Pre-bid stage, ii) Bidding stage and iii) Post bid stage

❖ **The Pre-bid stage**

- Needs assessment
- Procurement Planning
- Funding Source
- Development of solicitation document

❖ **The Bidding stage**

- Advertisement
- Bid collection, submission and opening (technical and financial tender)
- Bid examination and evaluation
- Approvals
- Award

❖ **The Post bid stage**

- Implementation

4.1 Pre-Bid Stage

- i. Needs Assessment:** As problems, needs, or opportunities for improvements arise, they are addressed through the development of a project specifically tailored to solving the identified needs or problems. Projects begin with the identification of a problem, need, or opportunity. The value, risks, complexity and criticality of the proposed project is determined by the need to be addressed. At this stage it is necessary for a procuring entity to meet with the potential stakeholders (procuring entity planning team) and the beneficiaries such as the community members to articulate challenges and possible solutions for the project, which will ensure a proper project development with fewer problems during implementation.
- ii. Procurement Planning:** In this phase, the procuring entity identifies issues, impacts, and potential approvals required so that subsequent design and permitting processes are outlined and

followed. Procurement Planning is an integral part of the project cycle and needs to be aligned and synchronised with other project activities to achieve desired outcomes. Project planning also helps to define project responsibilities and benefits.

The level of planning needed will vary widely depending on the complexity of the project. The procuring entity is encouraged to tailor plan activities appropriate to the extent, complexity, and type of project to ensure that all project benefits, impacts, and costs are objectively estimated.

Effective procurement planning and preparation will produce more efficient and economical procurements which will deliver goods, works and services in an acceptable and timely manner.

iii. Funding Source: There is no doubt that a project can't be implemented without assured source of funding.

iv. Development of Solicitation Document: upon the completion of the first three stages of project development viz, need assessment, procurement planning, and source of funding, the procuring entity is expected to develop a solicitation document which will be issued out to the public as the basis upon which bidders will compete. For complex projects, the Procuring Entities are expected to engage, by way of Services Procurement, the services of industry experts to design and properly scope the project and relevant specifications and biddings conforming to standards solicitation documents issued by the Bureau in order to avoid pitfalls.

4.2 Bidding Stage.

i. Advertisement: all procurements of goods and works by all procuring entities shall be conducted by an open competitive

bidding except for a few exceptions allowed by the law. Open competitive bidding in this regard refers to the process whereby a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.

Public procurements are publicly advertized in widely circulated news papers with ample time to respond to the invitation to bid. All the statutory requirements for bidders should be explicitly stated and information as to how bidders shall be evaluated should also be made known in the advert. Information on the place and time for submission including date for submission deadline should be contained in the advert.

ii. Bid Collection, Submission and Opening (technical and financial tender): The procuring entity is charged with the responsibility of providing a safe tamper proof box for collection of bids. In addition to dropping bids in tamper proof boxes, the bids should be acknowledge at the point of submission by providing a bid submission register and a receipt.

All bids received are to be opened immediately following the close of bid submission. Register should be provided to bidders in attendance and records of the bids as read should be taken. There should be observers present at opening.

iii. Bid examination and evaluation: bid examination is one of the most important stages in procurement. This is because, it is at this stage that technical competence and financial capabilities of contractors are determined.

The bids are examined in line with the criteria set out in the solicitation document to determine their responsiveness to the bid requirements.

Bid examination and evaluation comprises of technical and financial evaluation. The technical evaluation is done to determine the technical qualification of bidders as it relates to equipment, personnel, similar experience, and financial capacity etc. this is to ensure that bidders that make it to the financial stage are those qualified to execute the project if awarded the contract. This also seeks to eliminate the issue of project abandonment and poor performance.

The financial evaluation seeks to ensure that the lowest evaluated responsive bidder is awarded the job.

iv. Approvals: Before a procurement process is finalized, the Bureau has the duty under the provisions of Sections 6(b) and 16(b) of the Public Procurement Act, 2007 to issue Certificate of "No Objection".

Subject to the monetary and prior review thresholds for procurement in the Act, the following are the approving authority for the conduct of public procurements Nigeria, in the case of:

- (i) A Government Agency, Parastatal, or Corporation, a **Parastatals Tenders Board**; and
- (ii) A Ministry or Extra-Ministerial entity, the **Ministerial Tenders Board**

v. Award: consequent upon compliance with the above stages of project development and the issuance of certificate of no objection, the procuring entity forwards the certificate of no objection vide a memo to federal executive council for

approval and the if approved, the recommended lowest evaluated responsive bidder is then awarded the contract.

4.3 Post bid stage

Project implementation: consequent upon award of contract for project development, a Contract Agreement is executed in furtherance of the implementation of the project.

The procuring entity will hand over the project site to the contractor who then executes the project in compliance with the project design and time lines stated in the procurement plans.

5.0 The Role of the Bureau of Public Procurement (BPP) in Project Development

Having established the relevance of Infrastructure in National Development as well as various stages of project development, what then is the role of the Bureau of Public Procurement in project development?

Principally, as a regulator, the Bureau ensures that the five major objectives of public procurement are achieved to, wit

- Transparency
- Economy and value for money
- Fairness in competition
- Efficiency
- Accountability

This is by ensuring that for every project the principles enshrined in the PPA are observed and adhered through

- a. The public disclosure of the rules that apply in the procurement process.

- b. The publication of procurement opportunities through publication in Federal Tenders Journals and in at least two national newspapers.
- c. The prior determination and publication of what is to be procured and how offers are to be considered.
- d. The visible conduct of procurement according to the prescribed rules and procedures through involvement of Civil Societies and Professional Bodies.

Through the prior review of the Bureau from 2009 to December 2014, a total sum of ₦658,886,962,004.01 (Six hundred and fifty-eight billion, eight hundred and eighty-six million, nine hundred and sixty-two thousand and four naira, one kobo only) has been saved while a total number of 557 complaints were received. 365 of these complaints have been resolved. Also over 30,000 stakeholders have been sensitized on the provisions of the PPA, 3,467 people trained on procurement procedures and 960 people certified as procurement officers.

6.0 Conclusion

In conclusion, infrastructure is a key enabler for economic development, and involves development of many projects in different sectors ranging from rails to roads, power, telecoms etc.

The Bureau of Public Procurement, as a regulator of procurement of goods, works and services for the Federal Government ensures that all actors - MDAs, Contractors and Consultants,- play according to the rules set out in the Public Procurement Act so as to achieve value for money and build public confidence in Government.

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