

THE PROCUREMENT REFORM STAKEHOLDERS CONFERENCE

AN OVERVIEW OF THE NORMATIVE CHARACTERISTICS OF A VALUE ADDING PUBLIC PROCUREMENT SYSTEM

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AN OVERVIEW OF THE NORMATIVE CHARACTERISTICS OF A VALUE ADDING PUBLIC PROCUREMENT SYSTEM

- Rational for public procurement reform
- Stakeholder of the public procurement system
- Characteristics of a good public procurement system
- **UNICITRAL** Model Law as a benchmark
- Imperatives of an efficient Nigerian public procurement system
 - ✓ Generates value for money, enhances competition, fairness etc.
 - ✓ Is responsive to the Nigeria citizenry as an object of public policy
 - ✓ Focuses on best practice that eliminates **Fraud, Waste and Abuse**
- Key issues in Legal and regulatory framework of a value adding public procurement system.
- Beyond the here and now – Electronic commerce in Nigeria public procurement system
- Ultimate responsibility for procurement policy.
- Conclusion.

AN OVERVIEW OF THE NORMATIVE CHARACTERISTICS OF A VALUE ADDING PUBLIC PROCUREMENT SYSTEM

1.0 Rational for public procurement reform

- ✓ Procurement system is the bridge between public requirements and private sector providers
- ✓ Governments use budgets to decide and indicate what to provide 'in house' and what to 'buy in'
- ✓ Important that 'buy in' should be at **right time and right price** to support government action – **integrity, accountability, effectiveness and national interest therefore crucial**
- ✓ Public procurement accounts for 50 - 70% of imports of developing countries.
- ✓ Even developed countries have taken steps to revise public procurement system to improve efficiency and generate savings:-
 - USA – Reinventing Government
 - UK – Efficiency in Civil Government (1998)
 - France - Improving efficiency of public procurement
- ✓ Above all, public procurement is an instrument of government policy
 - Without key reform here other government reforms cannot produce desired results.

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2.0 Stakeholder of the Public Procurement System.

Procurement activities by government covers:

- Goods-supply of raw materials or commodities
- Services – labour, knowledge based expertise
- Engineering goods and services including buildings, engineering infrastructure, refurbishment etc.

The business operations of government, as controlled by public procurement systems, affect many different elements of society.

- ✓ The procuring entities with the responsibility to perform designated missions
- ✓ The business community of actual or potential suppliers to the government
- ✓ International Organisations and external donors of funds for use by a country
- ✓ Academic, training and public interest groups,
- ✓ The largest interest group is the general public who are more likely to feel satisfaction with an efficient public procurement system.

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3.0 Characteristics of a good public procurement system

- Conforms largely with United Nations Commission for International Law (**UNCITRAL**) Model that
 - draws from different legal cultures;
 - balances the interest of foreign and domestic bidders;
 - promotes transparency; and
 - allows great flexibility in the use of its provisions

The **UNCITRAL** model has the following elements:

- ✓ A legal or regulatory framework with implementing guidelines
- ✓ A means to monitor compliance with the law and regulations
- ✓ A responsible manager of the public procurement system to measure its performance, advise political leaders of its successes and deficiencies, improve it as necessary, and assist procuring entities in their buying operations.
- ✓ Standard terms and contracts.
- ✓ Open and advertised tenders.
- ✓ A means to identify and take advantage of potential economics of scale.
- ✓ High level of procurement professionalism and buying expertise through organised training.

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3.0 Characteristics of a good public procurement system (contd.)

■ Delivers value for money in procurement activities

Economy, Efficiency and Effectiveness in government procurement activities with the ultimate aim of attaining best value for public expenditure; economic development enhanced by transparent, competitive and efficient system.

✓ Economy

The practice of the virtues of thrift and good housekeeping.

✓ Efficiency

Gaining maximum useful output from resources devoted to each procurement activity

✓ Effectiveness

Ensuring that the output from a given procurement activity achieves operating objectives.

■ Meets the fairness criteria

- ✓ all through procurement planning phase, acquisition stage and contract implementation and administration phase
- ✓ sets out a clear statement of rights and obligations of parties.

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3.0 Characteristics of a good public procurement system (contd.)

■ **Transparent**

- ✓ Well defined regulation and procedures open to public scrutiny
- ✓ Clear, standardised tender documents
- ✓ Bidding and tender documents with complete information
- ✓ Equal opportunity for all in the bidding process.

■ **Accountability and ethical standards**

- ✓ Holds practitioners responsible for enforcing and obeying the rules and to challenge and sanction those neglecting or bending the rules.
- ✓ Avoids conflict of interest

■ **Responsive to the citizens of the country**

- ✓ Delivers best value,
- ✓ Fighting **fraud, waste and corruption**
- ✓ Effective tool for improving financial accountability
- ✓ When properly integrated into national budget procedures
 - generate realistic market prices, and
 - control of public expenditure and resources.

■ **Appeal rights to redress meritorious grievances**

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4.0 UNCITRAL Model a Law as benchmark of national procurement code

■ At the legislative level

- ✓ National Procurement law
- ✓ Treaty – level obligations in the procurement field e.g. WTO Agreement on Government Procurement (GPA)
- ✓ Finance and budget laws
- ✓ Other applicable laws
 - contract, labour, dispute settlement etc

■ The regulatory level

- ✓ Treasury or finance regulations (Finance control and management) Act 1958 for example
- ✓ Administrative regulations

■ Rules at contract level are derived from:

- ✓ Instruments applicable at contract
 - bidding documents, contract forms, guarantees, undertakings
- ✓ other ancillary international instruments
 - Incoterms for defining import contracts – delivery, insurance, passage or risk relating to transport and clearing of goods issued by International Chamber of Commerce (ICC).

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4.0 UNCITRAL Model a Law as benchmark of national procurement code (Contd.)

■ Rules at contract level are derived from (Contd.):

- Uniform customs and practice for documentary credits
- International stand-by Practices (ISP) covering issues like bids, performance bonds other security, arbitration etc e.g. UNCITRAL Arbitration Rules; ICC Arbitration, Rules.

■ National Procurement codes under UNCITRAL deal with issues including the following.

- ✓ Scope of law
- ✓ Definition
- ✓ Procedures for tendering
- ✓ Qualification and exclusion of bidders
- ✓ Form requirements for communications
- ✓ Record of tendering process
- ✓ Alternative methods of procurements
- ✓ Administrative aspects of state procurement authority including delegation of procurement power, supervisory, review and accountability matters Procurement planning and contract administration

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5.0 Imperatives of an efficient Nigeria Public procurement system

■ A robust public procurement system

- ✓ In line with UNCITRAL Model Law
- ✓ Improves procurement through
 - Development of procurement planning capability
 - Development of contract administration capabilities
 - Enhance supplies and materials management

■ Key Issues in an efficient public procurement system

- ✓ Procurement system that generates **value for money, enhances competition, fairness, transparency, accountability and ethical standards.**
- ✓ Procedures that are responsive to the Nigeria citizenry as object of good public policy.
- ✓ Focus on best practice that eliminate Fraud, Waste and Abuse
- **Procurement Systems that meet competition, fairness, transparency etc – Procurement of goods**

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

■ Open competition bidding (International and National)

- ✓ Provides all **eligible prospective bidders** with timely and adequate notification to all eligible bidders
- ✓ Provides equal opportunity to all bidders.
- ✓ Prequalification based on capability, experience, past performance capabilities (personal, equipment etc) and financial resources.
- ✓ Bidding documents sent to all qualified prospective bidders

■ Two stage bidding

- ✓ Form of open tendering aimed at refining specification in first stage-mainly technical proposal based in conceptual design.
- ✓ Second stage final technical and priced bids evaluation
- ✓ No fundamental part of first stage should be revisited in second stage.
- ✓ Suitable for turnkey and complex plant or works.

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

■ Restricted tendering

➤ Limited bidding (international or National)

- ✓ contract of small value, limited suppliers, or reason justify departure from open competitive bidding
- ✓ bids are obtained from a list of potential suppliers broad enough to ensure competitive price

➤ Shopping (International or National)

- ✓ Based on comparing price quotation obtained from several suppliers usually at least three.
- ✓ Request for quotation or solicitation letters to reputable suppliers indicating description of goods quality and quantity and delivery time are sent.
- ✓ Suitable for off-the-shelves items, standard specification of small value.

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

■ Non competitive procurement

➤ Direct contracting (single source)

- ✓ Extension of additional goods or works of a similar nature in an existing contract already properly awarded by open competitive tender;
- ✓ Standardization of equipment or spare parts to be compatible with existing equipment.
- ✓ Equipment proprietary and obtainable from one source
- ✓ In exceptional cases such as response to natural disasters.

➤ Force Account by end - users

This is using in house personnel and equipment for contracting some kind of works and is justified where:

- quantities of work involved cannot be defined in advance
- works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices.

Most suitable in community based participation in procurement to achieve social and employment goals.

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

➤ Emergency/Rapid delivery Procurement

Life and property or human well-being are threatened and rapid action is required.

- ✓ Strict criteria should be put in place to justify and approve
 - A natural event such as flood, or an earthquake
 - The failure of a facility or service
 - An accident
 - War or civil commotion
- ✓ The accounting officer utilising this method should have certified as an emergency
- ✓ Should be auditable

➤ Master or Bucket Arrangement

This comes in several names

- Call off contracts
Supplier holds stock for ordering as and when required on agreed terms on contract.
- Frame work arrangements (or basic ordering agreement) A period contract for suppliers to provide goods, services or works as and when required to an agreed service level.

Suitable for public sector procurement where many individual procuring entities purchase similar goods and services and is useful in negotiating competitive prices.

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

➤ Strategic Alliances

A strategic alliance (an alliance) or strategic partnership (AP) is a long-term business commitment between a supplier and customer dedicated to lowering total costs and / or increasing revenues. It is characterized by joint problem solving and process improvement, high level of trust, respect, cooperation and mutual benefits. Looks at lifecycle cost (Total Cost of Ownership) which competitive tenders often overlook.

5.3 Procedures for the selection of consultants

Professional assignments can be:

- Routine; or
- Complex, conceptual and multi-disciplinary

For complex assignments life cycle costs are dependent on quality of design. Wrongful emphasis on savings on design cost can escalate TCO while poor research by national policy consultants engaged on the basis of price alone can negatively impact on the well being of a nation.

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

5.3 Procedures for the selection of consultants

Professional assignments can be: (Contd.)

- ✓ Selection of consultants on the basis of price alone in a competitive tendering is therefore unsatisfactory.
- ✓ Professional services are best awarded using a quality/ price mechanism with price reflecting 15%-50% depending on nature of the assignment. World Bank recommended criteria include:
 - The adequacy of the work plan submitted by the consultant in response to a brief set out in the terms of reference (TOR)
 - The consultant's general experience in the field of the assignment
 - The qualifications and competence of the personnel proposed for the assignment
 - The cost level quoted by the selected consultant for the assignment

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5.0 Imperatives of an efficient Nigeria Public procurement system (contd.)

■ Key Consultant's Selection types

➤ Quality and cost based selection (QCBS)

- ✓ Uses a competitive process among short listed firms that takes into account the quality of the proposal and the cost of the services.
- ✓ The relative weight to be given to the quality and cost is determined for each case depending on the nature of the assignment.
- ✓ The firm obtaining the highest total score is invited to negotiate a contract.

➤ Quality based selection (QBS)

- ✓ Highly specialized arrangement for which it is difficult to define a precise TOR
- ✓ Consultant with the highest ranked technical proposal is asked to submit a financial proposal.

➤ Selection under a fixed priced budget

- For simple, fixed budget assignments set out in RFP.
- Technical and financial proposed submitted by consultants
- Financial proposed in excess of budget are rejected and consultant with highest ranked technical proposal invited for negotiation.

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5.0 Imperatives if an efficient Nigeria Public Procurement system (contd.)

➤ Least – cost selection

- ✓ Applied for assignment for routine nature (Audit, simple engineering design etc) with established standards and prices.
- ✓ Technical proposal evaluated and those above 'minimum' qualifying mark evaluated on financial with lowest price bid being selected.

5.4 Contents of clear and standard bidding documents

■ Procurement of goods and works

i) Notification and advertising

- ✓ Timely notification of bidding opportunities by advertising.

ii) Pre-qualification of bidders.

- ✓ Ensures that invitation to bid are extended only to those who have adequate capability and resources based on experience, best performance, capability and financial resources.
- ✓ Scope of contract and clear statement of the requirements for pre-qualification sent to those who respond to the invitation.
- ✓ All applicants are informed of the result of pre-qualification.

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5.4 Contents of clear and standard bidding documents (contd.)

iii) Bidding Documents

- ✓ To furnish all information necessary to prepare a bid for the works or goods
 - invitation to bid
 - instruction to bidders
 - form of bid
 - form of contract
 - conditions of contract (general and specific)
 - specification and drawings
 - list of goods or bill of quantities
 - delivery time or schedule of completion
 - necessary appendices such as format for various securities
- ✓ The basis of bid evaluation and selection of **lowest evaluated bid**
- ✓ Set out in clear language

iv) Bid Opening, Evaluation: and Award of contract

- ✓ Time for preparation of Bids not less than six weeks from date of invitation to bid
- ✓ Bid Opening Procedures
 - Open all bids at stipulated time and place in public with bidders or their representative allowed to be present
 - Name of bidders and total amount of each bid be read aloud and recorded when opened.

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5.4 Contents of clear and standard bidding documents (contd.)

v) Examination of bids

Bids should be examined for

- eligibility
- have been properly signed
- are accompanied by required securities
- are substantially responsive to the bidding document,
- are otherwise generally in order

Bids not substantially responsive to be rejected.

vi) Evaluation and comparison of bids.

- ✓ The bid with the **LOWEST EVALUTED** cost and not necessarily the **LOWEST SUBMITTED PRICE** is selected for the award.
- ✓ Evaluation expressed in monetary terms or in the form of **pass/fail** requirements for enhanced transparency.

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5.5 Selection of consultants

The selection process that ensures competition includes the following

- ✓ Preparation of Terms of Reference (TOR);
 - prepared by specialist in the area
- ✓ Preparation of cost estimate and the budget
 - divided into fees or remuneration ; and reimbursables etc
 - To obtain expression of interest, contracts should be advertised in national gazette or national newspaper
- ✓ Preparation of the short list of consultants;
 - from those expressing interest that are qualified say 3-6 firms from wide geographical spread are selected
- ✓ Preparation and issuance of the Request For Proposal (RFP); to comprise:
 - Letter of Invitation (LOI),
 - Information to consultants (ITC); to bring as much transparency to the process as possible
 - Proposed contract ;

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5.5 Selection of consultants (contd.)

- ✓ Receipt of proposals;
 - enough time should be allowed for the preparation of proposals say minimum of four weeks
- ✓ Evaluation of technical proposal;
- ✓ Consideration of quality;
 - experience, methodology, qualification of key staff etc.
- ✓ Evaluation of financial proposal;
- ✓ Final evaluation of quality and cost;
- ✓ Proposed weighting should be set out in the RFP. The firm obtaining the highest total score is invited for negotiations.
- ✓ Public procurement system should facilitate and not frustrate the discharge of government obligations
- ✓ Need to have policies to ensure government policies produce desired results.

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5.6 Procurement as an instrument of public policy

■ Registration of suppliers, service provider and contractor

- ✓ Primary Registration Used as a means of reducing government risk exposure and to ensure only organisation of proven capability are used.
- ✓ Information clearing house on corporate compliance.
 - establish database on compliance history of suppliers
 - renewal to reflect past performance of contracts verifiable by accurate data

■ Lifecycle costing and to optimum Total Cost of Ownership

- ✓ Best value is optimum combination of whole life cost and quality to meet a user departments requirement
- ✓ Whole life cost and not lowest short term cost is important which could be 20% of lifecycle cost.
- ✓ Value analysis essential-emphasis on functional worth/cost

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5.6 Procurement as an instrument of public policy (contd.)

■ Affirmative action procurement to stimulate local economy

- ✓ World Bank Domestic preference rules
- ✓ Selection of contract strategies to
 - compel major foreign contractors to make use of local sub contractors
 - breaking down major projects unto small manageable package to accommodated local contractors.
 - establish database of local supplies where less formal tendering rules apply.

■ Quality

- ✓ Ability to meet implied need as stated in specifications
- ✓ Insist that quality be contract specific by disclosing
 - full and proper specification requirement
 - take cognisance of whole life costing, value engineering
 - meet SON certification
 - Prequalification used to achieve appropriate quality level particularly where exceptional quality is required.

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5.6 Procurement as an instrument of public policy (contd.)

■ Health, Safety and Environmental Issues

Public procurement policy should influence behavior of tenders to

- ✓ comply with HSE legislation
- ✓ offer less environmentally damaging products and services
- ✓ develop products from recycled materials

■ Allocation of risk and change management

- ✓ Policy should be for government to identify and access procurement risk construction risk, delay, performance, operational, legal, financial risk etc.
- ✓ Allocation risk to those best able to manage it provided cost of transferring it does not exceed cost of retaining it.

The unending list of abandoned projects across Nigeria is testimony to the onesided allocation of project risk to government over the years.

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5.6 Procurement as an instrument of public policy (contd.)

■ Early payment cycle

- ✓ Delayed payment aggravate access to finance, compounds ability to attract capital and debt to fund business growth
- ✓ procurement system should address
 - early payment cycle
 - interest at rates equal to bank overdraft rates to be paid to suppliers in respect of overdue payments.
 - establish a mechanism to facilitate factoring of payment certificate.

■ Subcontractor issues

Subcontracts have very little negotiating power with prime contractors due to the “next job syndrome” delayed payment, victimisation etc.

Subcontracting is an effective means of involving small and medium scale enterprises in public sectors procurement activities

- ✓ conditions for subcontracting should be regulated to ensure fairness in terms of engagement
- ✓ root cause of late and non-payment to subcontractors should addressed.

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5.6 Procurement as an instrument of public policy (contd.)

■ Insurance and guarantees

- ✓ Policy should make provision for government to insure procurement related risks
- ✓ Performance guarantees to be commensurate with the degree of contractual risk concerned.
- ✓ Provision to be made in engineering and construction contracts for funds to be available to rectify defects.

■ Labour Issues

- ✓ Frequently miscrepulous employers fail to comply with labour laws and regulation to maximise profit.
- ✓ There should be a provision to discipline suppliers who abuse labour standards.

■ Strategic Alliances

A strategic alliance (an alliance) or strategic partnership (AP) is a long-term business commitment between a suppliers and customer dedicated to lowering total costs and / or increasing revenues.

An alliance includes the following elements:

- Shared business objectives;
- Strategies to accomplish the objectives;
- Metrics to measure progress;
- Ongoing customer/supplier team work; and
- Communication

Reforms should recognise this as a procurement strategy for technology transfer long term commitments with strategic and technological risks.

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5.6 Procurement as an instrument of public policy (contd.)

■ Parastatals as suppliers

Parastatals should be encouraged to compete as Direct Service Office (DSO). DSO's sections or departments, at local, state or federal government level carrying out defined activities competition with private producers

The advantages of government being able to source service provision from available alternative providers is that it:

- ✓ creates competition between service providers;
- ✓ preserves maximum flexibility for policy makers to respond to changing circumstances;
- ✓ helps policy makers to insist on accountability for quality performance;
- ✓ sends clear signals to the contractor that they will lose the opportunity to provide the service if quality is compromised; and
- ✓ establishes transparency in the application of resources in the pursuit of desired results.

Services single sourced from public sector monopoly cannot be subject to the above parameters. Competition in service provision is cheaper, more efficient, more flexible and more adaptive.

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5.6 Procurement as an instrument of public policy (contd.)

■ Reforming Requisitioning and Materials Management Processes

Waste in public procurement is epitomized by negligent or reckless requisition and purchase of materials several times in excess of requirement.

- ✓ Requisitioning should be fully documented and authorized and should indicate that **there is a need, available funds and a legitimate request.**
- ✓ Authority for Expenditure (AFE) should be an authority to commit funds and a confirmation that Due Process has been complied with.

Mandatory Materials Management and reporting parameters covering

- Minimum stock – lowest acceptable level of inventory;
- Maximum inventory level – highest acceptable inventory level;
- Re-order level – lowest level acceptable before an order for additional quantity is placed; and
- Economic Order Quantity – least cost order quantity

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5.6 Procurement as an instrument of public policy (contd.)

- ✓ **Mandatory Regular Certified Stock take of materials carried which should regularly establish the volume and value of**
 - Operative materials (both normal and insurance);
 - Slow moving materials;
 - Surplus materials;
 - Obsolete materials; and
 - Scrap

AN OVERVIEW OF THE NORMATIVE CHARACTERISTICS OF A VALUE ADDING PUBLIC PROCUREMENT SYSTEM

6.0 Public Procurement Oversight

- The focus of best practices targeted at value for money in procurement activities should ensure not only compliance but also to avoid **Fraud, Waste and Abuse** occasioned by opportunity, motivation, knowledge, and skill to circumvent the system.
 - **Fraud** is a dishonest and deliberate course of action, which results in the obtaining of money, property or an advantage to which the recipients would not normally be entitled.
 - **Waste** entails expenditure or allocation of resources significantly in excess of need.
 - **Abuse** is a subject of waste and entails the exploitation of the “loopholes” to the limits of the law, primarily for personal advantage.
- Enforcement of compliance, and elimination of **Fraud, waste and abuse** in government procurement addressed by four basic measures:
 - ✓ **Prevention**
Systems and policies that minimize motivation and opportunities to engage in these vices.
 - ✓ **Detection**
System for the rigorous internal and external audit and reporting procurement activities.

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6.0 Public Procurement Oversight (contd.)

✓ Investigation

- Preparations of evidence for the sanction process; and
- The establishment of “what went wrong” for process improvement.

✓ Sanction

This serves four goals

- Deterrence, restitution, denunciation and rehabilitation

■ Procurement contract oversight

■ Detection Mechanism

✓ Value for Money Reviews

These are audits of economy, efficiency and effectiveness of procurement activities

✓ Value Analysis

Review through the initial policy decision, engineering procurement, fabrication/ construction, installation, start-up and commissioning and operations in order to ensure that:

- The original objectives of the project are being achieved;
- Policies, processes and procedures were adhered to in project execution; and

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6.0 Public Procurement Oversight (contd.)

- Lessons learned in the course of project execution are taken on board on a permanent basis.

Independent accredited companies, or “**Certified Investigative Auditing Firms**” (CIAFs), to verify contract compliance on large projects, particularly large public works projects under value for money and value analysis reviews.

- CIAFs would themselves be licensed by governmental authority;
- The cost of their services (somewhere in the vicinity of 2 percent of the overall contract amount) as is done in USA, Canada etc incorporated in the contract cost.

■ **Performance Measurement and Benchmarking**

Drive continuous process improvement by looking at their own processes, policies, procedures and structures, analyse their performance and continuously implement improvement opportunities.

For all major procurement – projects programme etc.

- ✓ Define the level of performance to be achieved (goal)
- ✓ Express such goals in an objective, quantifiable and measurable form

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6.0 Public Procurement Oversight (contd.)

■ Performance Measurement and Benchmarking (contd.)

- ✓ Describe the operational process, skills and technology and the human, capital, information or other resources required.
- ✓ Establish performance indicators to be used in measuring or assessing the relevant output, service levels and outcomes.
- ✓ Provide a basis for comparing actual programme results with initial established performance goals.

Performance measure and benchmarking are key procurement process improvement tools and need to be incorporated in the procurement reform.

■ Whistle blowing

Encouragement of personnel who become aware of an incident and are willing to disclose it to do so. There should be internal channels through which these concerns can be articulated.

■ Hotlines

Organisations should be compelled in the procurement reform to encourage and make it easy for their employees to report fraud by use of Hotlines.

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6.0 Public Procurement Oversight (contd.)

■ Measurement to Combat Corruption

Corrupt actions within public procurement activities include:

- ✓ preparing slanted specifications
- ✓ approving inappropriate tenders
- ✓ tampering with tenders
- ✓ breaching confidentiality
- ✓ taking bribes
- ✓ lax contract administration
- ✓ use of position to obtain a private benefit.
- ✓ collusion
- ✓ influencing the choice of procurement method and technical standards
- ✓ inciting breaks of confidentiality
- ✓ influencing the work of evaluators
- ✓ offering of bribes
- ✓ over or under invoicing
- ✓ “fast pay” action
- ✓ inaccurate disclosures

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6.0 Public Procurement Oversight (contd.)

Competition and transparency serve to combat corruption. Other measures, that need to be instituted to minimize corruption are:

- ✓ The establishment of codes of conduct for suppliers/ service
- ✓ The publicizing of anti-corruption programmes by means of staff training and meetings.
- ✓ The institution of routine check points at the pre-award stage, or in the post-award stage, on the measurement of performance by contractors or on contract amendments.
- ✓ The performance of internal audits on specifications.
- ✓ The implementation of a “whistle-blower” system.
- ✓ The encouragement of strict observance of procurement regulations.
- ✓ The provision in tender documents for the disqualification of tenderers who attempt to influence the award of tenders.
- ✓ The deregistration/ de-barring of offending suppliers/ service

AN OVERVIEW OF THE NORMATIVE CHARACTERISTICS OF A VALUE ADDING PUBLIC PROCUREMENT SYSTEM

7.0 Legal Framework

■ Principles

- ✓ Purpose of legislation
 - foster competition equal opportunity, fairness, value for money etc
- ✓ Scope – identification of procuring entities
 - The regulated process – purchasing, hiring, etc.
- ✓ The essence of regulated process
 - define and enforce procurement procedures
- ✓ Enforcement of rules
 - VFM reviews, value analysis, PM&B, whistle blowing, hotline, disqualification etc.
- ✓ Procurement appeal and dispute resolution mechanism

■ Institutional Framework

- ✓ Individual procuring entities
- ✓ Central Procurement Policy Office
 - to develop coherent policy, rules and regulations
- ✓ Independent Appeal Board
 - power to address complaints from aggrieved bidders and provide corrective remedies.

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7.0 Legal Framework (contd.)

■ Role of Central Procurement Policy Office

- ✓ Sustained management advise and assistance to support budgetary consideration
- ✓ Development of procurement policies
 - use of international technical standards
 - domestic preference
 - application of electronic commerce etc
- ✓ Development of procurement regulations and procedures
 - maintenance and updating
 - dissemination
 - compliance with law, regulation, procedures
 - establishing financial thresholds etc.
- ✓ Standardisation of procurement procedures in a national procurement document
 - A Nigeria procurement document
 - A National standard bidding Documentation

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7.0 Legal Framework (contd.)

■ Role of Central Procurement Policy Office

- ✓ Maintain registration of suppliers service providers and contractor
 - establish database
 - regulate participation
 - establish code of conduct and good business practices
 - renew registration on observance of code of conduct
 - create information cleaning house on corporate compliance
- ✓ Promote professional practice
- ✓ Help professional existing staff resources
- ✓ Obtain economic benefit of scale using Market, Bucket, Call off arrangement.

■ Key issues in legal and regulatory framework

- Implementing procurement guidelines
- Standard terms and conditions for contract
- Open and advertised tenders
- Establishment of:-
 - Procurement Commission
 - Independent Appeal Board

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7.0 Legal Framework (contd.)

■ Key issues in legal and regulatory framework (contd.)

• Legal backing for:

- ✓ Registration of contractors and the establishment of information clearing house on corporate compliance
- ✓ Lifecycle costing as a means of optimising Total Cost of Ownership and best value.
- ✓ Emergency / Rapid delivery procurement.
- ✓ Bucket or master arrangement for economies of scale
- ✓ Strategic alliances where OCT will not be optimal
- ✓ Local content development policy to create affirmative procurement practices that will stimulate local industries and encourage small and medium scale enterprises.
- ✓ Institution of quality assurance, Total quality management in procurement activities
- ✓ Identification of procurement risk on a case by case basis
- ✓ Allocation of the risk to the party best able to manage it
- ✓ Health, Safety and Environmental compliance by contractors.

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7.0 Legal Framework (contd.)

■ Key issues in legal and regulatory framework (contd.)

- ✓ Procurement compliance oversight procedures covering:
 - Value for money reviews
 - Value Analysis (ex-post audits) or look back reviews
 - Establish the concept of Certified Investigative Auditing Firms (CIAF) to verify contract compliance particularly on large public works project.
 - Sets aside 2% of project cost for oversight reviews.
 - Establish mechanism for 'Whistle blowing and Hotlines'.
- ✓ Establish Performance Measures and Benchmarking to drive continuous process improvement in procurement activities.
- ✓ Strengthen Requesting, Capital project appraisal and Material Management to reduce waste embedded in materials acquired in excess of use, abandoned projects etc.
- ✓ Protection of sub contactors
- ✓ Permit Parastatals as suppliers
- ✓ Sanctions
 - criminal penalties, administrative remedies contract cancellations, debarment etc.

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7.0 Legal Framework (contd.)

■ Key issues in legal and regulatory framework Additional possible issues for procurement regulation

- ✓ the precise and flexible setting and application of various monetary thresholds
- ✓ reporting requirements applicable to procuring entities;
- ✓ utilisation of different contract structures to address the different types of circumstances
- ✓ selection of the appropriate contracting form;
- ✓ dissemination of information (guidance and regulatory)
- ✓ detailed aspects of conflict of interest rules;
- ✓ detailed aspects of qualification requirements and their application;
- ✓ appointment, termination and authority of procurement officers;
- ✓ confidentiality obligations
- ✓ supply and materials management, including common use items;
- ✓ elements of drawing up technical specifications;
- ✓ publication of notices;
- ✓ conduction of the opening tenders etc

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8.0 Beyond the here and now in Nigeria Procurement System

- Electronic commerce in national public procurement.

- Electronic commerce (EC or ecommerce) is exchange of business information with the assistance of technologies such as the Internet, Electronic Data Interchange (EDI), electronic mail (e-mail) and electronic funds transfer (EFT).
- At the most basic level, EC is the quick, paperless exchange of critical business information by electronic means.
- Means final user (requisitions), Procurement office, Supplier, paying officer and bank can operate online without the pushing around of documents.
- **Benefits:**
 - ✓ More cost effective and higher quality performance of procurement administration.
 - ✓ More effective management of operations of procuring entities.
 - ✓ Increased competition and better value resulting from wider diffusion of information about procurement opportunity etc.
 - ✓ Improved co-ordination among companies involved in the supply chain (customer suppliers, financial institutions) and with public sector entities
 - ✓ Reduction of inventory (through improved lead-times and better communication links)

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8.0 Beyond the here and now in Nigeria Procurement System

- Electronic commerce in national public procurement (contd.)

For example: in a February 19 1999 presentation to the WTO Committee in Trade and Development, Michele d'Auray the Executive Director of the Canadian Electronic Commerce Task Force talked about the cost of sending a 42 page document from Ottawa to Tokyo.

	Sending Method	Length of Time	Sending Cost
1. Overnight Delivery		24 Hours	\$39.
2. FAX		31 minutes	\$25.42
3. Internet		2 Minutes	\$.15

This example illustrates the fact that use of the Internet to send the 42-page document was 720 times faster and 260 times cheaper.

The UNCITRAL Model Law has set guiding principles for implementing electronic commerce. These guiding principles are valid for both the public and the private sectors and the Nigeria Procurement Reform should acknowledge this and thereafter work towards its attainment.

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8.0 Ultimate Responsibility for Procurement Policy.

- ✓ Ought to reside with the Minister of Finance but MOF is also a procuring entity
- ✓ Several countries have placed overall responsibility in the office of Prime Minister or Office of the President
 - Helps to increase appearance of independence
 - Recommended for Nigeria.

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9.0 Conclusion

Procurement is a critical instrument of Public Policy, bearing in mind that Government policies often translate into Government expenditure, with attendant economic and socio-economic implications and expectations. It has been variously suggested that the failure of previous national efforts at planning and implementation of infrastructural development in Nigeria was mainly due to a procurement process, which left a lot of room for corruption, fraud, waste and abuse.

It is critical that as the nation grapples with economic restructuring focused on the elimination of corruption, undue rent seeking, waste, and move towards an efficient and effective market economy, develop sustainable infrastructure to drive industrial growth and create economic balance, that the nation adopts a framework for public procurement that is consistent with Best International Practices, with built-in structure for continuous process improvement.

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**THANK YOU FOR
LISTENING**