REPORT ON THE 4TH EDITION OF THE BPSR MONTHLY LUNCH TIME REFORM SEMINAR SERIES ON THE IMPLEMENTATION OF PUBLIC PRIVATE PARTNERSHIP IN NIGERIA HELD AT THE BANQUET HALL OF THE NIGERIAN NATIONAL MERIT AWARD HOUSE, MAITAMA, ABUJA ON THURDSAY, 16TH APRIL, 2015.

1.0 Introduction

One of the features of developing countries is poor infrastructural development which could be attributed to inadequate budget provision. The major complaint of Government at all levels in Nigeria for poor execution of capital projects was inadequate funding which means that the available financial resources cannot meet the execution of its expenditure. The increase in population coupled with infrastructural demand has put pressure on limited Government financial resources. With this development, the expansion in recurrent expenditure would continue to be on the increase thereby leaving a small percentage of the budget for infrastructural development. This is difficult situation facing many developing countries today and apparently, Nigeria, being a country which mainly depends on oil, is facing a serious problem. Any changes in price of oil at the international market have always posed a serious threat to the nation's financial stability.

1.1 What then is the way out? The Federal Government of Nigeria is aware of this situation and that is why the Infrastructure Concession Regulatory Commission (ICRC) was established to guide the execution and operation of Public Private Partnership (PPP) in Nigeria for the infrastructural development of the country. However, the awareness of the opportunity inherent in the ICRC has not been fully utilized by various Ministries, Departments and Agencies (MDAs) of Government and it is against this backdrop that the Bureau of Public Service Reforms (BPSR) has taken it upon itself, being a Reform Agency of Government, to bring the awareness, opportunities and advantages of PPP to the Nigerian Public, through the Lunch Time Seminar Series.

1.2 Participants present at the April Lunch Time Seminar were the Director-General, BPSR; the Director-General, ICRC, who was represented by the Head/Deputy Director, Special Projects and who also doubled as the Guest Speaker; Chairman, Police Service Commission; Police Officers; the Directors of Planning, Research and Statistics; General Services; Procurement; Human Resource and Reform Coordination and Service Improvements in Ministries, Commissions and Parastatals in Abuja and members of staff of BPSR.

2.0 Welcome Address by the Director-General (BPSR)

Delivering his welcome address, Dr. Joe Abah, Director-General (BPSR) disclosed that the first edition of the Lunch Time Seminar Series focused on "The New Pension Reform Act, 2014 and its Implication on the Public Service". The second edition was on "The Challenges of Budget Implementation in Nigeria" while the third edition focused on "The Common Challenges of Public Procurement in Nigeria". He further disclosed that the 2015 Appropriation Bill submitted to the National Assembly indicated there was a drop of 43.4% in the Capital Budget as compared to the 2014 Budget Appropriation. The Director-General averred that Nigeria, being a developing country was required to grow its infrastructural base and invest heavily in capital intensive projects like power, roads, schools and hospitals. He stated that the financial resource constraints facing developing countries like Nigeria had made it impossible to fund all their capital projects requirement especially in this era of dwindling revenue from oil.

2.1 He told participants that the developed countries such as the United Kingdom, France, South Korea and Portugal were few examples of countries where the execution of their capital projects were augmented with the Public Private Partnership participation. According to him, it was a clear indication that the normal budgetary provision could not meet their capital expenditure in these countries and PPP therefore, represented 20%, 15% and 28% of their capital budgets respectively. It was a new concept in Africa and that accounted for its low performance.

2.2 The Director-General identified few challenges confronting the implementation of PPP in Nigeria as the fact that the technical nature of the concept had not been fully understood, unstable political environment for the enforcement of contracts, policy somersaults and unilateral cancellations of PPP contracts midstream which might erode investors' confidence. In some cases, resources obtained through PPP arrangement were not properly accounted for through normal budgetary, accounting and audit systems of government. He was of the opinion that the application of proper procurement legislation such as the Public Procurement Act, 2007 could be a panacea.

2.3 Concluding his address, he noted that with the identified challenges, it was obvious that the normal annual budgetary provision could not be sufficient to execute our capital projects. It is therefore, imperative for us as a nation to explore the benefits of PPPs to augment the execution of our infrastructural development. He suggested that the synergy among the functions of Infrastructure Concession Regulatory Commission, Bureau of Public Procurement, Budget Office of the Federation, Bureau of Public Enterprises and the Federal Ministry of Justice could provide the enabling environment for successful implementation of PPP projects in Nigeria.

2.4 In an attempt to secure the attention of the participants, he further disclosed that the Lunch Time Seminar on "The New Pension Reform Act, 2014 and its Implication on the Public Service" formed part of the questions administered on the Permanent Secretaries in their last promotion examinations. He advised them to visit the Website of BPSR www.bpsr.gov.ng for previous presentations on the Lunch Time Seminar Series including the present one. Participants were requested to subscribe to the BPSR monthly electronic newsletter called "The Reformer". He thereafter, invited the Guest Speaker to deliver his lecture.

3.0 **Presentation on the Implementation of Public Private Partnership in Nigeria**

3.1 Commencing the presentation, Mr. Emmanuel Onwodi, Head/Deputy Director, Special Projects at the ICRC defined Public Private Partnership as a contractual agreement between a Public Agency which could either be Federal, State or Local Governments and a private sector entity. To further define the PPP, he listed the following as the seven essential conditions of Public Private Partnership: (a) Arrangement between public and private entities (b) Provision of services for public benefit by private partner. (c) Investments in and/or management of public assets by private partner. (d) Time period for a specified time. (e) Risk Sharing optimally between contracting parties. (f) Standards focus on quality of service and performance. (g) Payments are linked to performance.

3.2 The agreement would spell out how the skills and assets of each sector (public and private) would be shared in the delivery of service or facility for the use of the general public. The potential risks and rewards would also be shared by each party in the delivery of service and/ or facility. He explained to the participants that the infrastructure gap was very wide in Nigeria and there was a small and depleting Government Financial Resources to reduce the gap. It had been observed that there was a growing demand for private sector participation in the infrastructure development and therefore, there was urgent need for alternative funding of infrastructure. The goal of PPP in the face of inadequate financial resource was to combine the best capabilities of public and private sectors for mutual benefit of the citizenry. He disclosed that PPP represented a balance between State ownership and privatization in such that risks and rewards would be shared by each party and services would also be effectively and efficiently delivered to the general public.

3.3 **Types of Public Private Partnership**

The Guest Speaker informed the participants that there were different types of PPPs, although the agreement would state the terms and mode of operations and the few of them were:

- Design, Build, Finance and Transfer (DBFT)
- Build, Operate and Transfer (BOT)
- Build, Operate and Own (BOO)
- Build, Own, Operate and Remove (BOOR)
- Design, Build, Finance and Operate (DBFO)

- Build, Lease and Transfer (BLT)
- Build, Transfer, Operate (BTO)

3.4 **<u>Forms of Public Private Partnership</u>**

The Guest Speaker noted that the agreement between the two parties would spell out clearly the forms of PPP they intended to enter into and few forms of PPPs were as follows:

- <u>Service Contracts:</u> In this form, the private sector is contracted for specific tasks. Capital investment and ownership of the asset is retained by the public sector. Public entity pays the private company for provision of services but retains the commercial risks.
- <u>Management Contracts</u>: Private sector manages the utility but does not finance it. Capital investment and ownership are retained by the public entity. The public entity pays the private manager a fixed management fee and commercial risk is borne by the public.
- <u>Lease:</u> Private sector manages the utility and finances the operation and management. Capital investment and ownership are retained by the public. Private sector collects revenues and pays to the public entity a fixed fee and commercial risk is shared.
- <u>Concession</u>: Private operator manages the utility and finances new investments as well as operation and management. Capital investment is provided by the private sector but ownership is retained by the public. Private operator collects revenues and pays concession fee to the public entity but the commercial risk is borne by the private operator.

3.5 **<u>Features of Public Procurement and Public Private Partnership</u>**

He listed the features as follows:

Characteristics	**Public procurement**	**PPP**
Focus	Procuring Assets	Procuring Services
Project management	Public sector is responsible for all project management roles	Private sector manages overall project - design, construction, operations and maintenance. Focus on project life cycle expected to bring efficiency.

Service Delivery	Public sector directly responsible for service delivery to users	Private sector directly responsible for service delivery to users
Financing	Public sector responsible for financing the project. Thus financing impacted by budgetary allocations and then actual disbursements	Private sector may contribute finance through debt and equity issuances
Risk Sharing	Public sector bears all project risks. Risk sharing limited to the extent of warranties.	Risks allocated to parties enable them to manage the entity efficiently
Contractual Arrangement	Short term, generally segregated contracts for asset creation (BOQ based) and maintenance.	Long term contracts- Public sector/users pay for services linked to performance.

3.6 Participants were made to understand that there were differences between Privatization and PPP and few differences identified by the Guest Speaker were:

- Accountability/Responsibility: Responsibility for accountability for delivery and funding rests with the private sector whereas the responsibility and accountability for service delivery lies with the public sector.
- Ownership: Ownership rights and associated costs and benefits are sold to the private sector but the legal ownership of assets is retained by government in PPPs.
- Nature of Service: Private sector determines the nature and scope of services but in PPPs, both public and private sector contractually determines the nature and scope of services.
- Risk and Reward: Private sector assumes all inherent risks but in PPP, both public and private sector share risks and rewards.

3.7 **Why PPPs is part of the Reforms:** The Guest Speaker elucidated and advanced reasons why Government had embarked on a number of reforms in the Public Private Partnership as follows:

(i) To fill a critical resource and expertise gap in infrastructure procurement, delivery and operation;

(ii) To engender accelerated procurement of infrastructure and services;

(iii) To promote faster implementation of projects and reduce lifecycle costs and operation due to private sector efficiencies;

(iv) To provide for better risk allocation between public and private sectors, thus offering a better and sustainable incentive to perform.

3.8 **Advantages of Public Private Partnership**

He told the participants that the implementation of Public Private Partnership had inherent advantages to the public, private sector and the general public. They are as follows:

(i) Maximizes the use of each sector's strength
(ii) Reduces development risk
(iii) Reduces public capital investment
(iv) Mobilizes excess or underutilized assets
(v) Improves service to the to the community
(vi) Improves efficiencies /quicker completion

3.9 The Guest Speaker mentioned some areas of intervention where Public Private Partnership could be utilized to make significant impacts on the general public. The identified areas were Transport (road, rail ports and airports); Fixed links (bridges, tunnels); Water resources (filtration plants, irrigation, sewage treatment, pipelines); Tourism (facility development); Health (hospitals and specialized health services); Educational facilities (schools, museums, libraries). He illustrated the PPP arrangement between the Federal Ministry of Works and Bi-Courtney Consortium which was signed in 2009 on Lagos/Ibadan Expressway. It was an agreement of 25 years duration valued at N89 Billion ($593 million). The 4 phases of construction of the 105 kilometres was to last for four years but the project did not achieve financial close 5 years after signing of the agreement. The Presenter further identified few lacunas in the agreement which were:

- Inadequate project development
- Procurement not competitive and transparent
- Signed with no firm traffic model, financial model or evidence of financial capacity
- Of course, there was no due diligence (technical and financial by grantor.

4.0 **Interactive Session (Questions and Answers)**

Participants expressed satisfaction with the presentation and apprised that Government would not be able to fund every project effectively on lean resources, thus the need for Public-Private Partnership (PPP) which is being regulated by the ICRC. PPP would create value for money for both the Government and the Citizens. Most countries were moving away from direct government funding and that the PPP was a programme where risk is shared between two partners, i.e. the investors and Government.

4.1 A stable political environment would be necessary to stabilize the implementation of PPP in the country as being witnessed in the smooth transition from one political party's Administration to another in Nigeria. Uncertainty of policy or policy summersault was another area where potential investors were not very sure that their businesses would be protected. They need consistent government policies to be able to invest. Participants further raised the following questions and comments:

4.2 On the creation of PPP Units in MDAs, it was noted there would be overlapping of functions and duties with the Procurement Department. For PPP Units in MDAs to be effective, multi-disciplinary personnel should be deployed if not the Unit will not function effectively.

4.3 Would the PPP scheme not be 'Chop Now and Pay Later?' How many years we would need to pay back what was invested and at what rate? In order words, the rate of returns on a project and the ideal number of years to conclude the contract agreement.

4.4 MDAs should live up to their contractual obligations despite the end of a regime. Considering the times we were in, a new Government was about to take over, it was possible that some of the PPP projects and their Contractual Agreements would not stand the test of time, stressing that some of the PPP projects might either be stopped or terminated and sometimes the counterpart fund might not be paid.

4.5 What was the status of the Law and its effectiveness as to the issues of arbitration and reconciliation processes in PPP projects particularly within the social sector?

4.6 What was the role of Government to the citizenry, considering the untold hardships being experienced in accessing the services of PPP programmes? He cited the examples of Garki Hospital and Parking Lots in Abuja.

4.7 What efforts were being put in place by ICRC to build the capacity of staff on PPP in MDAs considering its technicalities in areas of executions and agreements? What was the alternative way to build the capacity of civil servants in view of restriction on foreign trainings to Public Servants?

The Guest Speaker responded as follows:

4.8 There had been a wonderful synergy between the Procurement Department and PPP Unit in MDAs over the years. This, according to him, was why members of the TWO TEAMS (projects monitoring and projects delivery teams) were drawn from the various Departments within an MDA and the PPP Unit serves as the Secretariat for effective execution of projects. These teams were inaugurated by either the Honourable Minister or the Permanent Secretary of a Ministry.

4.9 The issue of concession and effective regulations were well taken care of in the concession agreements usually carefully looked at before contracts were signed and that, ICRC had Contract Compliance Department which oversees concession agreements. Furthermore, on the issue of ETHICS, he informed participants that no investors would put her money in projects where the safety of their investments would not be guaranteed and that every contract with the involvement of ICRC had an agreement that ensures its effective implementation, stressing that such agreements were binding on both parties, which he believed, was either the 'Bible' or the 'Koran' for the projects.

4.10 On the rate of returns on investments, he said that the implementation of PPP is a new concept in Nigeria and therefore, the rate of returns on investments had been measured appropriately. However, the financial Risk was purely a shared responsibility between the Public entity and the private sector. He further stated that in PPP, you run the project and generate the funding to pay debts and still continue in business; that full cost recovery and marginal profit was allowed; that it was a win-win situation where the recovery period might be extended while the rate would be reduced so as to minimize the pressure on the end-users of the project, and that emphasis was on marginal rate of returns. This was one of the reasons why adequate sensitizations were usually carried out on the end-users in some countries that had gone far with PPP programmes to ascertain their willingness to pay at the end of the day.

4.11 There had never been cases of non-cooperation recorded among departments/units and members of staff so far and staffing requirements of the PPP Units had not encountered any hitches since inception.

4.12 All concession agreements had laid down procedures to resolve issues and that there was an effective Monitoring and Evaluation framework put in place where ICRC officials carry out visits to ascertain compliance with laid down procedures and agreements. Examples of efficient and effective PPPs were the Garki General Hospital and NIMASA Security Surveillance Platform.

4.13 ICRC had been involved in the building of capacities of members of staff of MDAs on PPP and efforts would be made to sustain it. ICRC had developed programmes for insiders and outsiders in MDAs and had been collaborating with OHCSF, CMD, ASCON, PSIN, and a few Consultants for training purposes and capacity utilization.

4.14 A sample Template (known as Situational Document) had been developed in conjunction with the World Bank and it is called DISCLOSURE DOCUMENTS. This document is on the ICRC website.

4.15 On issue of risk, he stated that the ICRC had always been in contact with the Federal Ministry of Finance for guidance and direction.

4.16 Commenting, the Head of PPP Unit in the Federal Ministry of Health, Dr. (Mrs.) Olowu disclosed that there was a directive from the Office of the Head of the Civil Service of the Federation for PPP Units to be established in MDAs to work closely with Procurement Department and other relevant departments. Project Monitoring and Delivery Teams were established in MDAs with the PPP Unit as the Secretariat. She informed the participants that there had been no case of overlapping of functions as alleged, because Department/Unit involved had clear mandates on where their functions/roles start and end.

5.0 **Conclusion**

Concluding the Lunch Time Seminar, Mr. Yamusa Bin (Director, RC, BPSR) apologized to the participants for initial change of date of the Seminar and explained that it was due to the 2015 general election. He expressed appreciation to the EU-SUFEGOR for their financial support for the organization of the Seminar and also went further to advise that ICRC should emulate the BPSR by organizing workshops/retreats for various Ministries, Departments and Agencies of Government on the workability of the PPP projects.