



# **BUREAU OF PUBLIC PROCUREMENT**

**A PAPER PRESENTATION AT THE GOVERNING BOARD INDUCTION PROGRAMME  
ORGANIZED BY THE BUREAU OF PUBLIC SERVICE REFORMS**

**Topic: ESSENTIAL ELEMENTS OF THE PUBLIC PROCUREMENT ACT**

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*by*

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*Time: 11:30am-12:00 am*

# Structure of Presentation

- Public Procurement
  - Overview of the Procurement Process
  - The Procurement Planning Committee
  - Responsibilities of Accounting Officers
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- Approval Thresholds
  - Prior Review Thresholds
  - Procurement Method Thresholds
  - Composition of Tenders Boards
  - Duties of the Tenders Board (TB)
  - The Role and Function of Governing Board in Public Procurement Act (PPA), 2007
  - Administrative Review Procedures
  - Procurement Records
  - Procurement Audit
  - The Public Procurement Process and its Importance to Nigeria's Economy
  - Offences and Sanctions
  - Challenges in Review of Procurement
  - Importance of the Public Procurement Process
  - Way Forward
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# Public Procurement

## Introduction

- Public Procurement means the acquisition of goods, construction or services by a procuring entity (Article 2, UNCITRAL)
- It encompasses a sequence of related activities starting with assessment of needs through to Contract award to Contract management and then final payment
- Public Procurement is a Global System adopted by both the Developed and Developing Nations on how to derive value for money and improve efficiency in the use of its scarce resources.



# Introduction continued..

At the inception of democratic government in 1999 Federal Government observed that the contract award system lacked the required competition and transparency in the award process.

The World Bank was commissioned in 1999-2000 to carry out a Country Procurement Assessment Review (CPAR).

The CPAR report revealed that 60k was lost to underhand practices out of every ₦1:00 spent by Government. Some other key problems identified by the World Bank included:

- lack of competition and transparency in project procurement leading to high cost of projects and loss of confidence in Government by the public;
- non publication of contract opportunities;
- non prior disclosure of rules to be used in the selection process;
- lack of standard bidding documents.

Budget Monitoring and Price Intelligence Unit (BMPIU) was set up in 2001 to address these short comings.

BMPIU operations were guided by Treasury Circulars issued by the Accountant-General of the Federation.

Nigeria became signatory to the United Nations Convention against Corruption (UNCAC) on 9<sup>th</sup> of December, 2003 and ratified it on 24<sup>th</sup> October, 2004.

## Introduction continued..

In line with Article 9 of the UNCAC Nigeria was required to establish an appropriate procurement system. To Institutionalize the operations of the BMPIU, the Public Procurement Act( PPA) was signed into Law on June 4, 2007.

Nigeria's Public Procurement Act is modeled after the UNCITRAL Procurement Model Law which has been adopted by several other countries.

Nigeria's procurement reform was one of the important reforms that the International Monetary Fund (IMF) and World Bank got Nigeria to commit to during the debt relief negotiations.

Like the UNCITRAL Law, the PPA 2007 has 5 key elements of:

- Disclosure of all the rules that apply in the procurement process;

- Publication of the opportunities;

- Prior determination and publication of what is to be procured and how offers can be considered;

- Visible conduct of procurement according to the prescribed rules and procedures; and

- The existence of a system to monitor that these rules are being followed –

- a Regulator to enforce compliance(Bureau of Public Procurement).*

# Parts and Sections of the Act, 2007

- Part I – Establishment of National Council
  - 2 sections (1-2)
- Part II – Establishment of BPP
  - 12 sections (3-14)
- Part III – Scope of Application
  - 1 section (15)
- Part IV – Fundamental Principles for Procurements
  - 1 section (16)
- Part V – Organisation of Procurements
  - 8 sections (17-24)

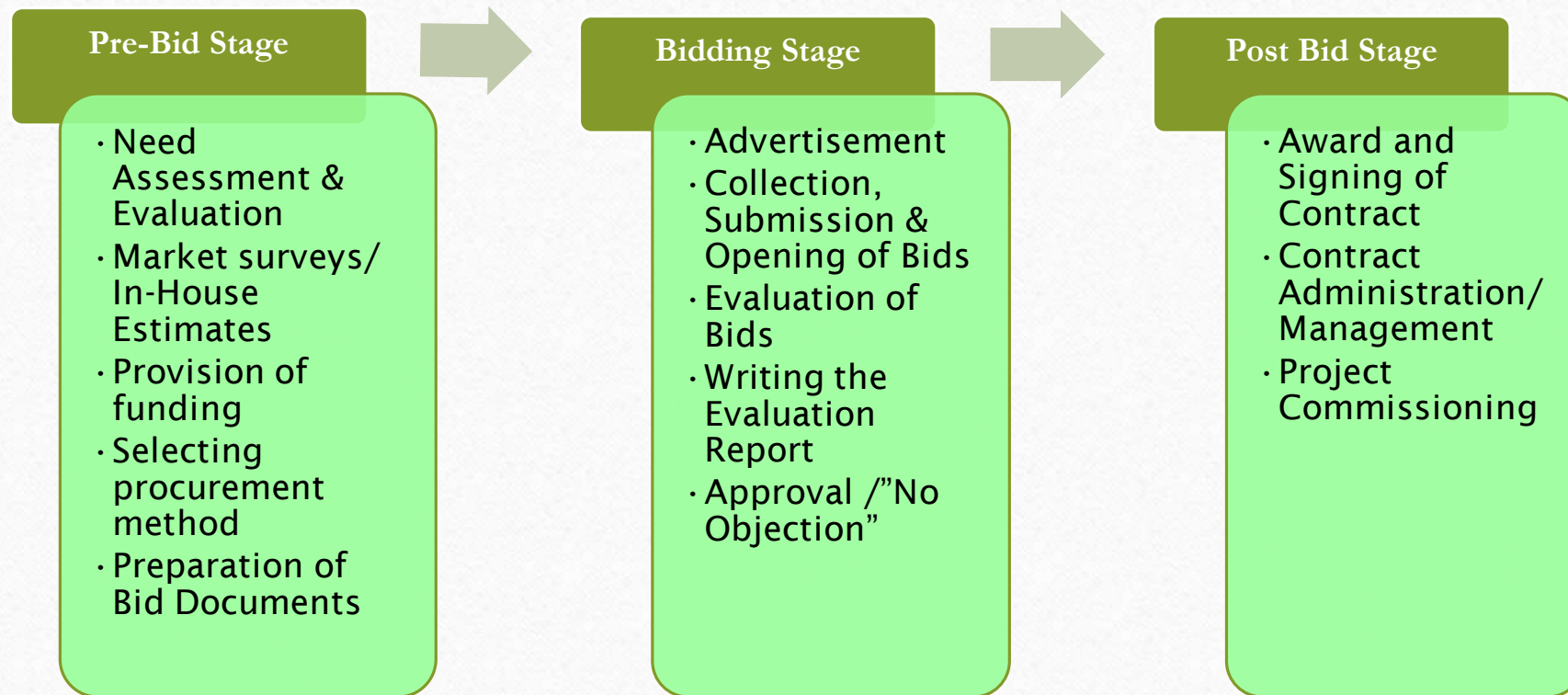


# Parts and Sections of the Act

- Part VI – Procurement Methods
  - 14 sections (25 -38)
- Part VII – Special and Restricted Methods
  - 5 sections ( 39- 43)
- Part VIII – Procurement of Consultant (Services)
  - 9 sections (44-52)
- Part IX – Procurement Surveillance and review
  - 2 sections ( 53-54)
- Part X – Disposal of Public Property
  - 2 sections ( 55-56)
- Part XI– Code of Conduct
  - 1 section (57)
- Part XII– Offences
  - 1 section (58)
- Part XIII– Miscellaneous
  - 3 sections (59-61)

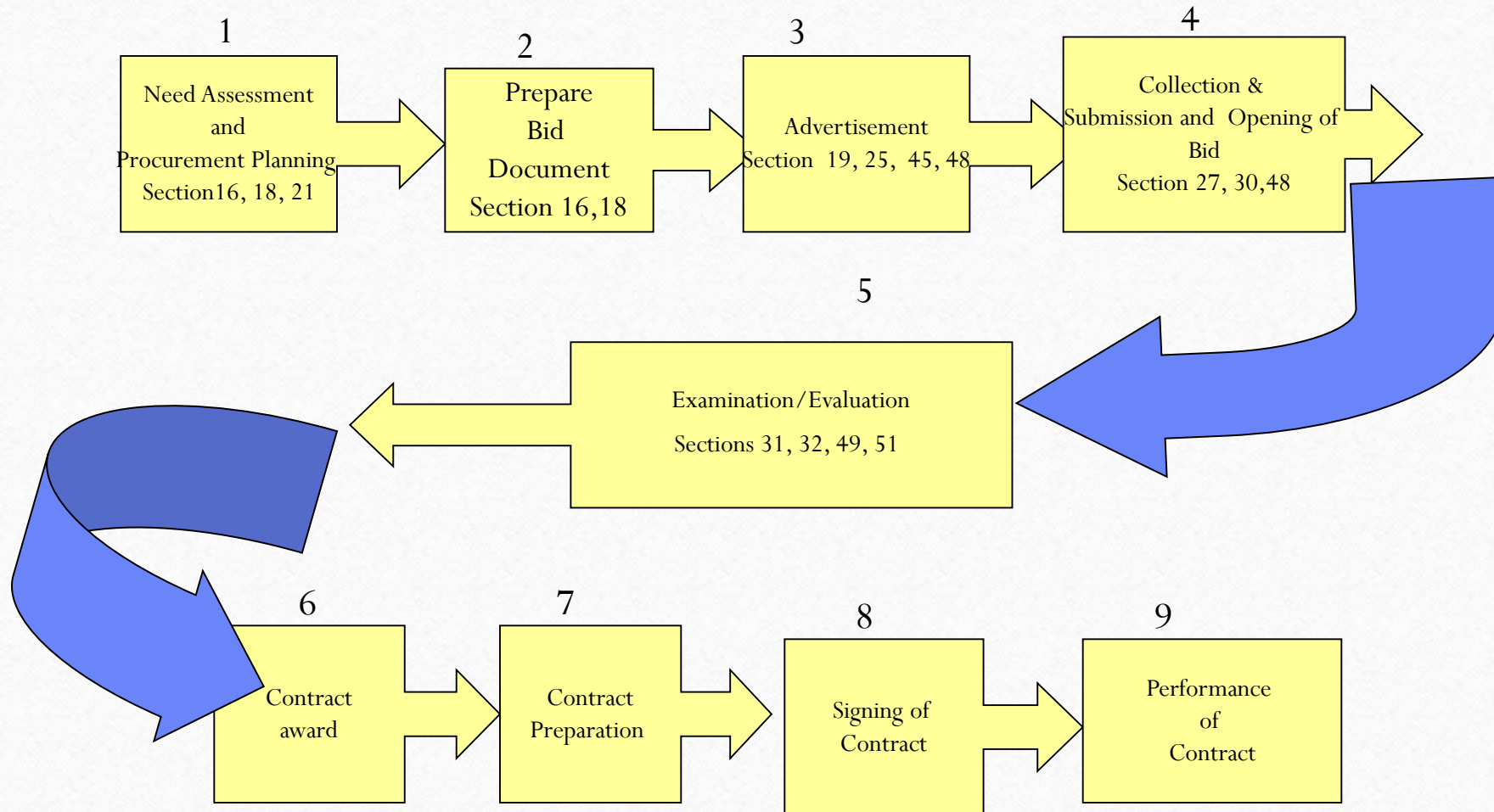
# Overview of The Procurement Process..1/2

The basic stages of Due Process in Public Procurement are as shown in flow chart below





# Overview Of The Procurement Process..2/2



# Procurement Planning Committee (PPC)<sup>...1/2</sup>

- In line with Section 18 of the PPA, 2007, a procuring entity shall plan its procurement by:
  - (a) preparing the needs assessment and evaluation;
- (b) identifying the goods, works or services required;
- (c) carrying appropriate market and statistical surveys and on that basis prepare an analysis of the cost implications of the proposed procurement;
- (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- (f) prescribing any method for effecting the procurement subject to the necessary approval under this Act ; and
- (g) ensuring that the procurement entity functions stipulated in this Section shall be carried out by the ***Procurement Planning Committee (PPC)***.

# Procurement Planning Committee (PPC)...2/2

- In line with Section 21(1) of the PPA, 2007, each procuring entity shall establish a *Procurement Planning Committee* for each financial year. The Procurement Planning Committee shall consist of:

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- (a) the accounting officer of the procuring entity or his representative who shall chair the Committee;
- (b) a representative of:
  - (i) the procurement unit of the procuring entity who shall be the Secretary,
  - (ii) the unit directly in requirement of the procurement,
  - (iii) the financial unit of the procuring entity,
  - (iv) the planning, research and statistics unit of the procuring entity,
  - (v) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and
  - (vi) the legal unit of the procuring entity



# Responsibilities of Accounting Officers

- In line with Section 20 of the PPA,
- The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes; in the case of ministries the Permanent Secretary and in the case of extra-ministerial departments and corporations the Director-General or officer of co-ordinate responsibility.
- The accounting officer of every procuring entity shall have overall responsibility for the planning of, organization of tenders, evaluation of tenders and execution of all procurements and in particular shall be responsible for:
  - ensuring compliance with the provisions of this Act by his entity and liable in person for the breach or contravention of this Act or any regulation made here under whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function duty or power to any person or group of persons;
  - constituting the Procurement Committee and its decisions ;
  - ensuring that adequate appropriation is provided specifically for the procurement in the Federal budget ;
  - Integrating his entity's procurement expenditure into its yearly budget;
  - ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
  - Constituting the Evaluation Committee;
  - liaising with the Bureau to ensure the implementation of its regulations.

# Approval Thresholds

- The Bureau is empowered to enforce monetary and prior review thresholds- *S.6(1) of the PPA 2007*
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- In the absence of the Council, Mr. President approved the current thresholds which was conveyed vide *SGF Circular Ref No SGF/OP/1/S.3/VIII/57 of March 11, 2009*
  - Accounting Officers are expected to comply with the current Prior Review and Procurement Method Thresholds shown in Tables overleaf:

# Prior Review Thresholds

Approving Authority/ “No Objection” to award	Goods	Works	Non-Consultant Services	Consultant Services
BPP issues “No Objection” to award/ FEC approves	<del>₦</del> 100 million and above	<del>₦</del> 500 million and above	<del>₦</del> 100 million and above	<del>₦</del> 100 million and above
Ministerial Tenders Board	<del>₦</del> 5 million and above but less than <del>₦</del> 100 million	<del>₦</del> 10 million and above but less than <del>₦</del> 500 million	<del>₦</del> 5 million and above but less than <del>₦</del> 100 million	<del>₦</del> 5 million and above but less than <del>₦</del> 100 million
Parastatal Tenders Board	<del>₦</del> 2.50 million and above but less than <del>₦</del> 50 million	<del>₦</del> 5 million and above but less than <del>₦</del> 250 million	<del>₦</del> 2.50 million and above but less than <del>₦</del> 50 million	<del>₦</del> 2.50 million and above but less than <del>₦</del> 50 million
Accounting Officer: Permanent Secretary	Less than <del>₦</del> 5 million	Less than <del>₦</del> 10 million	Less than <del>₦</del> 5 million	Less than <del>₦</del> 5 million
Accounting Officer: Director General/ CEO	Less than <del>₦</del> 2.50 million	Less than <del>₦</del> 5 million	Less than <del>₦</del> 2.50 million	Less than <del>₦</del> 2.50 million



# Procurement Method Thresholds

Procurement/ Selection Method and Prequalification	Goods	Works (₦)	Non-Consultant Services (₦)	Consultant Services (₦)
International/ National Competitive Bidding	₦100 million and above	₦1 billion and above	₦100 million and above	Not Applicable
National Competitive Bidding	₦2.5 million and above but less than ₦100 million	₦2.5 million and above but less than ₦1 billion	₦2.5 million and above but less than ₦100 million	Not Applicable
Shopping (Market Survey)	Less than ₦2.5 million	Less than ₦2.5 million	Less than ₦2.5 million	Not Applicable
Single Source/ Direct Contracting (Minor value procurements)	Less than ₦0.25 million	Less than ₦0.25 million	Less than ₦0.25 million	Less than ₦0.25 million
*Prequalification	*₦100 million and above	*₦300 million and above	*₦100 million and above	Not Applicable
Quality and Cost Based	Not Applicable	Not Applicable	Not Applicable	₦25 million and above
Consultant Qualifications	Not Applicable	Not Applicable	Not Applicable	Less than ₦25 million
Least Cost	Not Applicable	Not Applicable	Not Applicable	Less than ₦25 million

# Tenders Board

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- Section 22(1) of the PPA, 2007 established the Tenders Board in each procuring entity.
- The constitution of the Tenders Board is as follows:

# Composition of Tenders Boards

Procuring Entity	Member of Tenders Board	Position
<b>Ministry</b>		
	1. Permanent Secretary	Chairman
	2. Heads of Departments	Member
<b>Parastatal</b>		
	1. Chief Executive Officers	Chairman
	2. Heads of Departments	Member



# Duties of the Tenders Board

In line with **Sections 22(3) and 22(4) of the PPA, 2007**, the duties of the Tenders Board shall be:

- The functions of the Tenders Board shall be to approve :

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- (a) procurement plans ;
  - (b) Entity's Procurement Manual ;
  - (c) prequalification evaluation reports ;
  - (d) bid evaluation reports for goods and works ;
  - (e) technical evaluation reports for consultant and non-consultant services ;
  - (f) negotiated contracts for consultant and non-consultant services ;
  - (g) contract variations resulting in price changes ; and
  - (h) responses to complaints.

# The Role and Functions of the Governing Board in the PPA, 2007

- The Board is an important governance structure which has both leadership and Governance roles in any organization some of which include:
  - In the leadership role, the Board provides the strategic direction in supporting the vision of the Administration for institutional and human capacity development among others through effective training and re-training of public servants of the organization;
  - In the governance role, the Board ensures that good corporate governance practices are embedded in the management of the organization;
  - The Board approves the organizational structures;
  - The Board appoints the CEO through a competitive process and on terms approved by the Government; and approves the appointment of senior management staff. The Board also removes the CEO;
  - The Board appoints and removes the Corporation Secretary;
  - The Board ensures effective communication with stakeholders;
- There have been series of complaints from procuring entities that the Governing Boards are beginning to take up the roles of the Accounting Officers-a practice that is not acceptable as this **is against** There have been complaints from procuring entities that the Governing Boards are assuming the roles of the Accounting Officers. **This is against best practice global best practice. The Public Procurement Act (PPA), 2007 has not given any role to the Governing Board.** Therefore, the **assumption of the roles of the Accounting Officer** by any Governing Board amounts to **interference**, hence the Governing Board should be properly informed and well guided.

# Administrative Review Procedures...1/5

- Bidders who are not satisfied with the conduct of a procurement proceeding are entitled to seek Administrative Review- **Section 54 of the PPA 2007**

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- Administrative Reviews **can be time-barred** and should be handled expeditiously by procuring entities.
- The petitioner is expected to **first notify the accounting officer within 15 working days** from the date the bidder first became aware of the circumstances giving rise to the complaint- **Section 52(2)(a) of the PPA 2007**



# Administrative Review Procedures ...2/5

- The accounting officer has **15 working days** to address the issues raised by the aggrieved bidder- **Section 54(2(b) of the PPA 2007**.
- Where the complainant is not satisfied with the decision, or where there is no response from the accounting officer, the bidder may make a complaint to the Bureau **within 10 working days** from the date of communication of the decision of the accounting officer- **Section 54(3) of the PPA 2007**

# Administrative Review Procedures ...3/5

- Section 54(4): *Upon receipt of a complaint, the Bureau shall promptly:*
  - *(a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter ;*
  - *(b) unless it dismisses the complaint:*
    - *i. prohibit a procuring or disposing entity from taking any further action*
    - *ii. nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity*
    - *iii. declare the rules or principles that govern the subject matter of the complaint ; and revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.*

## Administrative Review Procedures ...4/5

- In resolving a complaint the Bureau may request for a Right-of-reply Meeting with all interested bidders and the procuring entity- **Section 54(5) of the PPA 2007**.
- The Bureau has **21 working days** to take a decision on the complaint stating the reasons for its decisions and remedies granted, if any- **Section 54(6) of the PPA 2007**
- Where the Bureau fails to render its decision within the stipulated time or the bidder is not satisfied with the decision of the Bureau the bidder may appeal to the Federal High Court within **30 days- Section 54(7) of the PPA 2007**



# Administrative Review Procedures ...5/5

- Some key challenges observed by the Bureau from administrative reviews include:

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  - Intimidation of bidders that make complaints to the Bureau.
  - Late and incomplete submission of procurement documents required for administrative review by MDAs
  - Failure to adhere or delay to comply to the Bureau's directives
- The Bureau is continually reviewing steps used to enforce appropriate sanctions on procuring entities that fail to comply with directives issued after administrative reviews.

## Procurement Records ...1/3

- Procuring entities are statutorily required to transmit copies of all procurement records shall be transmitted to the Bureau not later than three (3) months after the end of the financial year -Section 16 (13) of the PPA, 2007
- The SGF Circular Ref No. SGF/OP/S.3/XI964 dated 12<sup>th</sup> January, 2017 directed all procuring entities to submit their procurement records on or before 31<sup>st</sup> May, 2017.
- By the end of 31<sup>st</sup> May, 2017, only eighty (70) Ministries, Departments and Agencies complied with this directive.

# Procurement Records ...2/3

- Challenges observed from procurement records submitted by MDAs include:

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  - Late submission contrary to the provision of Section 16 (13) of the PPA, 2007
  - Late submission of procurement records which is a mandatory requirement of the law. However, 85% of the MDA's complied with the submission of 2016 procurement records in 2017 though late.
  - Submission of incomplete information by some Ministries, Departments and Agencies
  - Submission of procurement records in un-editable formats such as scanned copy and PDF by some Ministries, Departments and Agencies



# Procurement Records ...3/3

- In 2019, the way forward is that Procuring entities:

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  - should submit their 2018 procurement records on or before 31<sup>st</sup> March, 2019 in line with the provision Section 16(13) of the PPA, 2007 while awaiting the SGF Circular on same
  - should Use of the updated Excel format which can be downloaded from the Bureau's website
  - should submit soft copy of the fully completed downloaded updated Excel format without alterations to the Bureau

# Procurement Audit ...1/5

- Procurement Audit is one of the core functions of the Bureau- **Section 5(p) of the PPA 2007**
- Procurement Audits identify weaknesses in the procurement systems of MDAs
- The Bureau develops policies, programmes and strategies to address these shortcomings.
- Where it is required, relevant agencies may be invited to conduct criminal investigations- **Section 53(1) of PPA 2007**

# Procurement Audit ...2/5

- Some major findings from procurement audits carried out by the Bureau include:

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  - Suspected cases of procurement fraud such as:
    - Allocation of contracts to cronies
    - Collusion among bidders
    - Bid-rigging
  - Execution of non-budgeted expenditures
  - Absence of proper Procurement Plans
  - Refusal to use Standard Bidding Documents



# Procurement Audit ...3/5

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- Refusal to request for performance guarantees from bidders before signing contracts
  - Poor and inadequate documentation of procurement processes
  - Reluctance or delay by Ministries to provide relevant documents to BPP or its Agents
  - Failure to respond promptly to audit findings/queries

# Procurement Audit ...4/5

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- The way forward has been identified as follows:
    - Procurements should be transparently conducted and must promote competition, efficiency and value for money
    - Procurements should be based only on procurement plans supported by prior budgetary appropriations- **Section 16(1)(b) of the PPA 2007**
    - Provision of Performance guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid- **Section 36 of PPA 2007**

# Procurement Audit ...5/5

- Record Keeping- Sections 16(13) and 38 of the PPA, 2007

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  - MDAs should maintain complete and detailed records of procurement proceedings
  - There should be proper coordination between Procurement Department and other User Departments
  - Copies of all procurement records should be transmitted to the BPP not later than 3 months after the end of the financial year
- Improved cooperation with the BPP and its Agents during Procurement Audits as emphasised in SGF Circular Ref. No. SGF/OP/I/S.3/IX/297 of 6<sup>th</sup> January, 2012
- Response to Audit findings should be prompt to enable the BPP take relevant remedial actions



## Offences and Sanctions in Public Procurement Act, 2007



# Offences And Sanctions

- Offences
  - The following constitutes offences- **Section 58(4) of the PPA, 2007**

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  - a. Collusion with contractors
  - b. Conducting procurement fraud
  - c. Splitting of tenders to evade monetary thresholds set;
  - d. Bid-rigging
  - e. Altering documents to influence the outcome of a tender
  - f. Uttering or using fake documents or encouraging their use
  - g. Willful refusal to allow BPP access to procurement records

# Sanctions

- On conviction the following sanctions apply to:

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  - **Government Officials-** Section 58 (5) of PPA, 2007
    - a term of imprisonment of not less than 5 calendar years without any option of fine
    - summary dismissal from government services
  - **legal entities/companies-** Section 58(6) of PPA, 2007
    - debarment from all public procurements for a period not less than 5 calendar years; and
    - a fine equivalent to 25% of the value of the procurement in issue.
  - **Directors of the company –** Section 58(7) of the PPA 2007
    - term of imprisonment not less than 3 calendar years but not exceeding 5 calendar years without an option of fine



# Challenges In Review Of Procurement

- Improper presentation of ordinary items as security items.

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- Insufficient and improper documentation when making requests to the Bureau for approvals.
- Award of Contracts to Nigerian companies that do not possess the mandatory criteria for doing business with the Federal Government i.e. CAC, TCC, ITF, PenCOM, IRR
- General increase in the adoption of emergency procurement method suggesting inadequate planning.

# “ THE PUBLIC PROCUREMENT PROCESS AND ITS IMPORTANCE TO NIGERIA’S ECONOMY ”





# Reduction In Inflated Federal Contracts

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- The role of the budget in socio-economic transformation of societies need not be over-emphasised. Procurement and procurement practices cover the whole gamut of the capital component of any national or state government budget.
- The Bureau of Public Procurement (BPP) saves the nation a huge sum of money through its review of contracts for capital projects in the past years.
- From inception of BPP to date, about 345 billion has so far been saved by BPP through its review of contracts.
- Savings made from review of contracts impact on the economy through the reduction of deficits recorded in the annual budget



## Investors Confidence Building

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- Advertisement of procurement opportunities in line with the provisions of PPA,2007;
- Proper bidding process as enshrined in the PPA,2007; and
- Contract dispute redress mechanisms in the PPA, 2007, have boosted Investors Confidence over the years in the real sector which translates into more jobs and improved income distribution in Nigeria.
- The ripple effect of investors' confidence goes beyond the real sector.

# Improved Budget Implementation

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- Public Procurements amounts to 10 -25% of Nigeria's GDP hence , the improved implementation of Budgets of both federal and states governments' with procurement laws over the years has significant positive impact on the economy which was recently experienced by Nigeria's exit from recession.

# Promotion Of Good Governance

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- Good governance entails effective and efficient services to the people and the use of public resources to secure the maximum welfare for the greatest number of the people. It is the provision of essential social amenities and infrastructure to enable the people realize their potentialities.
- Public Procurement is a process whereby the government meets its needs for goods, construction and services in a way that achieves value for money on a whole-life cycle basis; in terms of generating benefits not only to the government department involved but also to society and economy as a whole whilst minimizing damage to the environment.
- With the gradual and deliberate enforcement of the Public Procurement Act, the much needed accountability and transparency is fast returning to the public sector and good governance is enhanced.



# Reduction in procurement related grafts in Nigeria

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- The sanctions stipulated in Section 58 of the PPA,2007 for offences has served as a major deterrent to the abuse of due process by the drivers of Public Procurement in Federal Ministries , Departments, Agencies their collaborators in the private Sector.
- Furthermore, the PPA has placed more liability on the Chief Accounting Officers(**Section 20 of PPA,2007**) thereby discouraging tendencies for the abuse of due process from the top thereby increasing better value for money in public projects delivery in Nigeria .

# Way Forward

1. To Prepare adequate Procurement Plans;
2. To always adopt Standard Bidding Documents (Templates) prepared by the BPP for Goods and Works;
3. Adopt and use Request for Proposals (RFPs) for Services;
4. Place Advertisements and solicit for Bids in accordance with Sections 16(1)(c), 19(a), 25(2) of PPA, 2007 where appropriate;
5. Adopt Procurement Methods that would deliver optimum value for money;
6. Designs and Specifications must be holistic and detailed so as to avoid ambiguous specifications which can be subject of controversy and variation;
7. Proper and detailed Procurement Records should be kept;
8. Procurement proceedings should be formalized only when funds are available - *Section 16(1)(b) of PPA 2007*;
9. Adequate documents should be forwarded with requests.



**THANK  
YOU**

A decorative sign with a blue background and a white ornate border. The border features intricate scrollwork and flourishes. The words "THANK" and "YOU" are written in a bold, white, serif font, stacked vertically in the center. The sign is mounted on a light brown, textured surface, possibly a wall or a board, with two dark brown horizontal strips visible on the left and right sides.