

**PROCUREMENT POLICIES AT THE
SUBNATIONAL LEVEL**

**A PAPER PRESENTED BY GEORGE-KELLY D.
ALABO FNIQS, PhD**

**HONOURABLE COMMISSIONER
RIVERS STATE MINISTRY OF WORKS**

AT

NIQS 2-DAYS WORKSHOP

**THEME: “MANAGING CONSTRUCTION
PROJECTS IN TURBULENT TIMES”**

HELD ON

30TH – 31ST AUGUST, 2023

AT

SIO EVENT CENTRE, BENIN CITY, EDO STATE

Introduction

Public procurement refers to the process by which public authorities, such as government ministries, departments, agencies or local authorities acquire works, goods or services using public funds.

The public procurement process is the sequence of activities starting with the assessment of needs, developing procurement plans, budgetary appropriations, solicitation processes, evaluation and award of contract, contract management, final payment and disposal.

Public procurement policy refers to the set of rules that outline the overarching principles and standards used to set the direction and decisions of the procurement process.

Many countries of the world today are using the public procurement policies and implementation mechanisms to tackle a number of problems that have to do with budget implementation, service delivery, social and economic development. This is in response to the evolving complexities of the global market place and part of efforts to obtain the best possible value and ensure equitable and efficient deployment of public resources.

The objective of public procurement policy is to promote transparency and accountability in governance. It is to ensure that the requisite standards are transparently maintained in the conduct of government business. Sound procurement practices constitute part of the essential elements of good governance.

Although public procurement is perceived as a major function of government, and although governmental entities, policy makers and public procurement professionals have paid a great deal of attention to procurement improvements or reforms, public procurement has been a neglected area of academic education and research.

Procurement Policy at the National Level

The implementation of public procurement policy in Nigeria started in 2007, when the National Assembly passed the Public Procurement Act (PPA) into law. The PPA was drafted based on the principles of the United Nations Commission on International Trade Law (UNCITRAL).

The UNCITRAL is the essential legal body of the United Nations in the area of international trade law. It was established by the United Nations General Assembly after the realization that differences in national laws governing international trade are creating hurdles to the free flow of trade. Hence, this commission was established with the view to play an active role in reducing or removing these hurdles. The UNCITRAL Model law has been designated to assist the States to establish their domestic laws and modernize it to meet the needs of the States. It highlights worldwide consensus on the key aspects of international arbitration practices adopted by states, of different parts of the states and different legal or economic systems of the world. The Model Law comprises 8 chapters, 36 Articles and is to be adopted by different nations into their national laws or to adapt their national laws of arbitration based on the principles of this model law.

The Model Law is a template for domestic procurement legislation. Its main objectives are to enhance efficiency and effectiveness, and to avoid abuse in the procurement process (through promoting competition and participation, integrity, fair and equitable treatment and transparency). It is used by the multilateral development banks as a tool for procurement reform and as part of the country systems approach to procurement. The Model Law contains procedures to implement its objectives, whether procurement is conducted electronically or on paper; and reflects the professionalization of the procurement function.

In introducing the PPA in Nigeria in 2007, the government took cognizance of the fact that increasing the efficiency and transparency in the use of public fund requires the existence of an adequate national procurement system that meets both national and international standards.

This is also in view of the fact that quality of procurement practices in a country is determined by the quality of governance therein. Governance is a key determining factor of the productiveness of public procurement.

Procurement Policies at the Subnational Level

Further to the enactment of the Public Procurement Act (PPA) in 2007, Several States of the federation have followed suit and enacted procurement laws to regulate how they engage in their State's public procurement, first amongst which is the Rivers State Public Procurement Law, 2008. Other States of the Federation that have enacted the Public Procurement Laws include Lagos State; Kaduna State; Delta State; Edo State; Kwara State; Adamawa State, etc.

The enactment of public procurement laws across various States in the Federation gave rise to the establishment of public procurement bureau's and agencies, saddled with the responsibility of formulating policies, setting standards, monitoring and overseeing public procurement, to ensure transparency, accountability, competition, economy, fitness for purpose and achieving value for money.

Furthermore, public procurement bureau's and agencies across the Federation have continued to synergize, for effective collaboration and partnership. Experience sharing amongst public procurement bodies and procurement experts would assist in ensuring efficient resource management at all the levels of government and enhance compliance with international best practice in procurement in the country.

Overview of Rivers State Public Procurement Law and Regulations

Further to the passage of the Public Procurement Act into law in 2007 by the National Assembly, the Rivers State House of Assembly enacted the Rivers State Public Procurement Law (PPL) which was assented to on 3rd May 2008 by the Governor. The law established the Rivers State Bureau on Public Procurement (“the Bureau”) with a mandate to set standards, regulate, monitor and oversee public procurement in Rivers State to ensure transparency, accountability, competition, economy, fitness for purpose and achieve value for money.

The PPL under section 1(3) provides for the Bureau to be governed by a Board of Directors which shall consist of:

- a) a non Executive Chairman;
- b) the Attorney General and Commissioner for Justice;
- c) seven other members four of whom shall be experts in procurement law, management and engineering;
- d) the Director General of the Bureau

Functions of the Board

- a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of the law by procuring entities;
- b) consider and approve policies on public procurement;
- c) approve the appointment of the Directors of the Bureau;
- d) receive and consider, for approval, the audited accounts of the Bureau on public procurement;
- e) approve changes in the procurement process to adapt to improvements in modern technology;
- f) as far as practicable, benchmark the policies on procurement under this law with policies for procurement approved from time to time by partner agency created or existing under the Public Procurement Act of the Federal Government of Nigeria; and
- g) give such other directives and perform such other functions as may be necessary to achieve the objectives of the law.

Functions of the Bureau

- a. formulate the general policies and guidelines relating to public procurement for approval by the board;
 - b. publicize and explain the provisions of the law;
 - c. supervise the implementation of established procurement policies;
 - d. monitor the prices of tendered items and keep a database of standard prices;
 - e. publish the details of major contracts in the procurement journal;
 - f. publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
 - g. maintain a database of the particulars and classification and categorization of State contractors and service providers;
 - h. collate and maintain in an archival system, all state procurement plans and information;
 - i. undertake procurement research and surveys;
 - j. organize training and development programs for procurement professionals;
 - k. periodically review the socio-economic effect of the policies on procurement and advise the Board accordingly;
 - l. prepare and update standard bidding and contract documents;
 - m. prevent fraudulent and unfair procurement and where necessary, apply administrative sanctions;
 - n. review the procurement and award of contract procedures of every entity to which the law applies;
 - o. perform procurement audits and submit such report to the State House of Assembly bi-annually;
 - p. introduce, develop, update and maintain related database and technology;
 - q. establish a single internet portal that shall, subject to section 14(20) of the law, serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times;
 - r. coordinate relevant training programs to build institutional capacity;
- and

- s. in so far as standards and database are concerned, adopt by official gazette and make applicable in Rivers State any similar standard or database, as, for the time being, are applicable in public procurement by the Federal Government of Nigeria, with or without modifications.

Scope of Application

The provisions of the Rivers State Public Procurement Law applies to all procurement of works, goods and services carried out by

- a) the Government of Rivers State and all procurement entities
- b) all entities which derive funds proposed to be appropriated for any type of procurement described in the law from public funds; and
- c) procurement by Local Governments in the State

Key Features of the Rivers State Public Procurement Law

Procurement Methods (Goods, Works and Services)

Open Competitive Bidding

Section 21

- 1) Except as provided by the law, all procurement of goods, works and services by all procuring entities shall be conducted by open competitive bidding.
- 2) Any reference to open competitive bidding means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every bidder, equal simultaneous information and opportunity to offer the goods, works and services needed
- 3) The winning bid shall be that, which is the lowest evaluated responsive bid, which has been responsive to the bid with regards to specification and standard

- 4) Notwithstanding the provisions of the law, with respect to the award of contract, the Governor shall have power to award contract for execution of projects and other jobs which total value shall not exceed 30% of the total annual budget approved for the execution of projects and other jobs in the State: PROVIDED ALWAYS that the Bureau shall exercise supervisory powers in the execution of such projects.

Special and Restricted Methods of Procurement

Other forms of procurement for goods, works and services recognized under the Rivers State Public Procurement Law include the following:

1. Two stage tendering
2. Restricted Tendering
3. Request for Quotation
4. Direct Procurement
5. Emergency Procurement

Procurement of Consultancy Services

The procurement of consultancy services as provided under the Rivers State Public Procurement Law is classified as follows:

1. Expression of interest to provide services for ascertained needs
2. Expression of interest to provide services for unascertained needs

Disposal of Public Property

For the purpose of the Rivers State Public Procurement Law, every procuring entity is also a disposal entity

The open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale

Public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to the unserviceable)

- a) created through public expenditure

- b) acquired as a gift or through deeds;
- c) acquired in respect of intellectual or propriety rights
- d) acquired on financial instruments (including shares, stocks, bonds,etc); and
- e) acquired by goodwill or any other gifts of the State Government

Monetary thresholds

The Bureau sets the monetary thresholds for procurement transactions in Rivers State as follows:

- a) all procurements of monetary value up to Fifty Million Naira (₦50,000.000.00) only or less shall be subject to post review, PROVIDED that where a project has significant preliminary works that are integrated or dependent on each other, or where there is high process intensity in the project, the threshold shall be One Hundred Million Naira (₦100,000.000.00)
- b) any procurement where the monetary value exceeds Fifty Million Naira (₦50,000.000.00) only, shall be subject to prior review and certification by the Bureau

Mobilization Fees

Section 32(1): In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% of the contract sum shall be paid to a supplier or contractor supported by a contract performance bond:

- a) In the case of National Competitive Bidding, an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity; and
- b) In the case of International Competitive Bidding, an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity

Amendment of Section 32(1)

The Rivers State House of Assembly amended Section 32(1) of the PPL to increase the mobilization fee payable to a supplier or contractor from 30% to 75%, subject to approval by the Governor. This move is to curb

contract price variation due to price escalation and to ensure speedy completion of projects.

Guidance Note on the Implementation of the Rives State Public Procurement Law

Following a review of its operations, discussions and interactions with procuring entities and other stakeholders, the Bureau identified the principal factors responsible for the drawn-out process leading to the issuance of “Certificate of No Objection” and deemed it imperative to address these factors effectively to the end that the objectives of the law may be realized. Pursuant to the powers conferred on the RSBOPP, the following guidance note were issued to all procuring entities in the State:

Packaging an Application for a Certificate of No Objection

Every application for a Certificate of No Objection shall be accompanied by

- a) Reference to an agreed procurement plan
- b) Budget Certificate
- c) Record of the Process for Selecting the Consultant, Contractor or Service Provider
- d) Statement of Purpose
- e) Statement of Impact
- f) Sustainability Plan
- g) Proposed Cost
- h) Engineering Analysis and Design Calculations
- i) Work program
- j) Anti-Bribery Compliance Statement

Procurement Policy and Good Governance in Rivers State

Procurement policy to a large extent has brought about good governance in Rivers State, Government expenditure as a matter of fact is now geared towards the realization of set priorities and targets at the most effective cost and efficient basis. Through the policy, the Rivers State Government has been able to save several billions of Naira from review of contract

process before issuance of certificate of ‘No Objection’ and contract vetting.

The public procurement policy has become a watershed in governance reform programs as sanity has gradually been restored in procurement practices, taking cognizance of the fact that past procurements were shrouded in secrecy. Procurement practices of most Ministries, Departments and Agencies are now brought under complete watch of public procurement law regime.

A lot of money that would have been lost through inflated contracts costs are now being saved to meet developmental projects for the benefits of the public. The policy has brought about transparency, accountability, due process, fairness and value for money, which are critical elements of good governance. The policy has also helped to promote efficient and effective service delivery, in addition to improvement in the value for money due to increased standard of quality of service, as unnecessary purchases are being avoided to ensure that money spent is well worth and would provide maximum benefits for the end users.

Many failed contracts and abandon projects across the State in the past are pointers to negative impact that the State has suffered from debilitating pangs of relatively non-accountable and opaque procurement system. The current procurement reforms in the State are critical integrity agenda of government put in place for the State to achieve good governance.

Challenges

Notwithstanding the successes recorded as a result of the introduction of the policy, there are still implementation challenges. The following challenges have been identified in the implementation of the policy:

1. Non compliance
2. Corruption and fraud
3. Lack of commitment
4. Inadequate enforcement

5. Regulatory resources

In view of the laudable and lofty goals of the Procurement Policy, both the present and successive governments should do all things possible not only to sustain it but to re-invigorate it by putting “biting razor teeth” and “hot iron knot” to block leakages through which it is being abused. What remains is for everybody to join hands in supporting and developing strategies that will help to sustain it, especially in area of combating procurement corruption and fraud, which has been identified as its greatest challenge. This is the only way to promote good governance in the country. Without good governance, sustainable national growth and development becomes an illusion.

Conclusion

Public procurement bureau’s and agencies across the Federation have continued to synergize, for effective collaboration and partnership. This move has continued to reinforce and strengthen public procurement policies at the subnational level. However, there is need to increase the mobilization fees payable to contractors and to reduce the procurement cycle time for effective delivery of critical infrastructure within budgeted cost, quality and delivery timeline.

The Rivers State Government through this policy was able to deliver twelve flyover projects in four years and the Nigerian law school campus within eleven months, amongst several other projects in the State. These achievements in projects delivery earned the immediate past Governor of Rivers State His Excellency Chief Barr Nyesom Wike a “**Distinguished Award on Infrastructure Delivery,**” by the immediate past President Muhammadu Buhari at the Nigeria Excellence Awards in Public Service (NEAPS) ceremony.

The secrets of speedy completion of quality projects/ infrastructure delivery in Rivers State include;

- ✓ Proper (sufficient) budgetary provisions for projects which is made to align with project completion duration
- ✓ Payment of between 30% to 75% as mobilization fees backed up with performance bonds and APG
- ✓ Proper pre-qualification of contractors and selection of contractors with technical and financial capacity

In view of the theme of this workshop “Managing Construction Projects in Turbulent Times,” it is imperative for our public procurement policies to be domesticated in recognition of the peculiarities of each state as envisaged by the UNCITRAL Model Law which was designated to assist the states to establish their domestic laws and modernize it to meet the needs of the States.

The policy has come to stay in Nigeria. What remains is for everybody to join hands in supporting and developing strategies that will help to sustain it, especially in area of combating procurement corruption and fraud, which has been identified as its greatest challenge. This is the only way to promote good governance in the country. Without good governance, sustainable national growth and development becomes an illusion