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The Impact Of The Public Procurement Act, 2007 On Public Procurement Fraud In Nigeria

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Abstract: *Public procurement in Nigeria before the enactment of the Public Procurement Act, 2007 was known to be unprofessional, inefficient and ineffective; as it was based on the Treasury Circulars of 1958, which provided only guidelines on public expenditure management. This necessitated the enactment of the PPA, 2007. Regrettably, despite the existence of the Act, contract award and execution are still replete with procurement fraud. This study sought to answer the question: Why the persistence of public procurement fraud despite the existence of the PPA, 2007 in Nigeria? To answer this question, analysis of the study was anchored on the institutional theory and a mix research design involving cross-sectional survey – cum- exploratory interviews and documentary research design was utilized. 334 respondents were drawn out of the population of 3,101 in the key institutions (BPP, EFCC & ICPC). Also, 33 respondents were interviewed. Data were presented in a descriptive form. Results generated indicated that; non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. Factors responsible include awards of projects to companies using minimum deviation from In-House Estimates; manipulation of the procurement process to inflate contract costs; contract splitting so as to avoid approval thresholds, among others. The paper therefore recommends comprehensive measures to include application of econometric tools that can assist in the identification of suspicious bidding patterns, and severe sanctions to serve as deterrence, among others.*

Keywords: Public Procurement, Act, Fraud, Impact, Nigeria

Introduction

Public procurement has been acclaimed, based on empirical evidence, as the best means of guaranteeing the provision of public goods to the citizens and public expenditure management (Thai, 2001; Arrowsmith, 2010; Achanya & Cinjel, 2021). Public procurement in Nigeria before the enactment of the 2007 Public Procurement Act was known to be unprofessional, inefficient and ineffective; as it was based on the Treasury Circulars of 1958, which provided only guidelines on public expenditure management (CPAR, 2002; Onyema, 2011). The guidelines were grossly inadequate and created rooms for malpractices and high level corruption in contract management (Onah, 2009; Oguonu, 2013). Hence, President Olusegun Obasanjo, lamented the odious phenomenon of public procurement fraud in the procurement process in Nigeria (Obasanjo, 2003).

The President Obasanjo government noted the urgent need to reform the procurement process and bring about transparency in the procurement procedures (Adeyeye, 2015; Aighesi, 2015). Consequently, the federal government in 1999 commissioned the World Bank to collaborate with some private sector specialists to study the financial systems and general procurement-related activities in the country (Olatunji et al, 2016; Bodunrin, 2016). This was against the fact that the conduct of government business in the country had become difficult and expensive due to widespread corruption (World Bank, 2003). Although public procurement fraud is one of the most common avenues of corruption in most countries, its incidence in Nigeria by 2000 was particularly widespread (CPAR, 2002; Transparency International, 2006). Moreover, procurement costs in Nigeria were significantly higher when compared to costs for similar projects in neighbouring West African countries such as Ghana (Stephen and Basil, 2012).

The rationale for commissioning the World Bank was to assist the government of Nigeria address the aforementioned problem, thereby, enthroning efficiency, accountability and transparency in government procurement and financial management systems (Familoye, et al, 2015; Eze, 2015; Nwogwugwu, 2015; Nworgu & Eyisi, 2015). The outcome of the study was the production of a Country Procurement Assessment Report in 2002, which was a detailed diagnosis of the Nigerian procurement system and included both findings and recommendations (short- and medium-term) (Ezekwesili, 2004; Eze, 2015).

Some major weaknesses identified in the public procurement system were that Nigeria lacked a modern law on public procurement and permanent oversight and monitoring of purchasing entities. There was also the problem of the Finance (Control and Management) Act, 1958, together with Financial Regulations, which set basic rules for managing public expenditure. They had gaps, deficiencies, and faulty implementation of existing regulations on procurement (e.g. lack of permanent arrangements for control and surveillance), which created opportunities for bribery and corruption. Again, due to inflation and lack of regular adjustments on the thresholds of the approving limits of the Tender Boards, their authorizations were constantly being eroded resulting in abuses, prominent among which was the splitting of contracts. Besides, there was proliferation of Tender Boards which were perceived by the private sector as non-transparent and sources of delays. In addition, the Tender Boards appeared to have limited mandates, with

powers to decide contracts resting with the Permanent Secretary and the Minister/Commissioner. Other than this, Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption. And lastly, procurement was often carried out by staffs that substantially lacked relevant training (CPAR, 2002; Obasanjo, 2011).

The Report eventually made recommendations to correct these weaknesses in the six main areas, including the need for a procurement law based on the United Nations Commission for International Trade Law (UNCITRAL) model; and the need to establish a Public Procurement Commission (PCC) to serve as the regulatory and oversight body on public sector procurements. There was also the need to revise key areas of the Financial Regulations to make them more transparent; and the need to streamline Tender Boards and strengthen their functional authority, including powers to award contracts. It was also considered necessary to build a procurement and financial management capacity in the public sector; and to review businesses related to export, import procedures and practices.

Consequently, the federal government moved to implement the recommendations of the Report. It set up the Budget Monitoring and Price Intelligence Unit (BMPIU) in June 2003 as an operationally independent body headed by a Senior Special Assistant to the President (Onah, 2015). The BMPIU was charged with the responsibility of serving as the clearing-house for all federal government contracts and procurements of goods and services, and functioned until commencement of implementation of the Public Procurement Act, 2007 (Ekpenkhio, 2003).

Following the enactment of the Public Procurement Act, the federal government established the Bureau of Public Procurement (BPP) to take over the functions of BMPIU and implement the provisions of the Act. Hence, provisions of Section 5(n) of the Act, particularly mandates the Bureau to "prevent fraudulent and unfair procurement and where necessary apply administrative sanction" on violators **(**Ezekwesili, 2005; PPA, S. 5(n)). Regrettably, despite the existence of the PPA, 2007 contract award and execution in Nigeria are still replete with public procurement fraud (Waheed, 2015; Achanya et al, 2022; BPP, 2024). Some of the big procurement frauds include: N1.9 trillion (US $5 billion) for the construction of railway lines, Honourable Dimeji Bankole N2.8 billion Peugeot scandal in the National Assembly, US $500 million defiance contract awarded to Mr. Arthur Eze to weaponize six puma helicopter, Stella Oduah car scandal purchase of N255 million, US $21 million loan to buy equipment supposedly for the printing of ballot papers for election, over N75 billion defiance contracts awarded by Sambo Dasuki the former National Security Adviser, which indicted more than 300 companies and prominent citizens including serving and retired officers of the armed forces, among others (Onah, 2015; Achanya & Cinjel, 2020).

Statement of the Research Problem

Several studies and development partners have argued that with its twelve parts, the PPA, 2007 provides desirable solutions to lingering problems of public procurement fraud and high level corruption in contract management in Nigeria (Williams-Elegbe, 2011; Udoma & Belo-Osagie, 2012; Adeyeye, 2014). However, one would ask, why the persistence of public procurement fraud despite the existence of the PPA, 2007 in Nigeria?

Objective of the Study

The specific objective of this study was to find out why the persistence of public procurement fraud despite the existence of the PPA, 2007 in Nigeria.

Research Hypothesis

The null and alternate hypotheses are as follow:

H_0: Non-compliance with the PPA in the award and execution of public contracts by officials of public procuring entities and bidders is not the major reason for the persistence of public procurement fraud in Nigeria.

H_1: Non-compliance with the PPA in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria.

REVIEW OF RELATED LITERATURE

Public Procurement and Public Procurement Fraud

Public procurement is a public financial management activity. It has been variously defined (Lloyd & McCue, 2004; OECD, 2007; Arrowsmith, 2010; Sarfo & Mintah, 2014) but essentially "it is the process of acquisition by established rules and procedures of goods, services and works by the government" (PPA, 2007). The process according to Thai (2001:9) involves (i) deciding which goods and services are to be bought and when (procurement planning); (ii) the process of placing a contract to acquire those goods and services which involves, in particular, choosing who is to be the contracting partner and the terms on which the goods and services are to be provided; and (iii) the process of administering the contract to ensure effective performance. As one of the four major economic activities of government, it has become an issue of public attention and debate, and has been subjected to review,

restructuring, rules and regulations because it has been perceived as an area of waste and corruption (Soreide, 2002; Thai, 2004; Kaufman, 2004; Lengwiler & Wolfstetter, 2006; Jones, 2007; Mamiro, 2012).

The adoption of public procurement rules and regulations in both developed and developing countries is imperative (African Development Bank, 2009). This is because, studies in contract management show that public procurement is prone to procurement fraud (World Bank, 2000, 2003 & 2004; CPAR, 2002; Hunja, 2003; Transparency International, 2016; Agaba & Shipman, 2007; Commonwealth Secretariat, 2022; PPDC, 2023) despite the fact that government all over the world use public procurement policy and implementation to achieve economic, social and other objectives (Arrowsmith, 1998; Oguonu, 2005). It is particularly susceptible to procurement fraud because of the sheer magnitude of procurement outlays (Calender & Mathews, 2000) or the vast sums of money governments spend on procuring goods, services and capital assets, and the relatively high degree of discretion public officials and politicians typically have in such matters in comparison to other areas of public expenditure management (Thai, 2009; Arrowsmith, 2010).

Like the concept of public procurement, public procurement fraud has also been subjected to several definitions and description but essentially it involves collusive arrangements referred to as *"over invoicing of government contracts or corruption related to purchases"* (Ijewereme, 2015:1). It means a corrupt act in which, the purchase price of an item is inflated so that the difference between the inflated price and actual price is shared between the person who does the purchasing and the sellers or it is taken by the purchaser alone with the seller conniving. Many believe that public procurement fraud thrives because of the absent or existent of weak public procurement process that governs the award and execution of public contracts. The weak process according to Thai (2009) provides multiple opportunities for violators to divert public funds for private gain. Although the processes are fairly complex, their three main phases are: *(1)* Procurement planning and budgeting; *(2)* Procurement solicitation; and *(3)* Contract award and performance. Procurement fraud can arise in various forms in each of these separate phases of the procurement process (Thai, 2009).

Theoretical Framework

This study is anchored on the institutional theory which seeks to examine the strengths and effectiveness of public procurement laws in organizational studies (Scott, 2008). Its foundational authors include but not limited to Max Webber and Émile Durkheim (Scott, 2005). The choice of this theoretical paradigm is predicated on the fact that institutional theory is the traditional approach that is used to examine elements of public procurement laws (Checkland & Scholes, 1990; Thai, 2001; Scott, 2001). Institutional theory comes from the concept of institutions described as the building blocks of society, providing the assurance of security, ease of social transactions, and a sense of established order (Scott, 2008; Green et al, 2009).

Iconic sociologist W. Richard Scott provided a comprehensive conceptual schema based on his extensive survey to institutional literature that guides directions for pursuing this theory. He posits that institutions consist of carriers (cultures, structures, and routines) and pillars (cognitive, normative, and regulative structures). Central to the application of this theory is the regulatory pillar which emphasized the use of laws, rules and sanctions as enforcement mechanism, with expedience (deterrence) as means for compliance (Scott, 2008).

For effective implementation of the PPA, 2007 against procurement fraud in Nigeria, authorities are encouraged as a matter of expedience to apply sanctions where necessary to control fraudulent practices in the procurement process because studies have shown that deterrence is more reliable in dealing with procurement fraud than relying on cultures and values, particularly in developing societies (Imperato, 2005). According to Zubcic & Sims (2011), enforcement action and increased penalties lead to greater levels of compliance with laws. Corruption among government procurement officials in developing countries such as Bangladesh, India, Sri Lanka, Nigeria and Venezuela has been linked to a weak enforcement of the rule of law (Nwabuzor, 2005).

A study on corporate governance in Africa revealed that countries such as Nigeria and Ghana suffer from weak law enforcement mechanisms (Okeahalam, 2004). As such, the threat of legal sanctions is essential and necessary to regulatory compliance and that enforcement action will have cumulative effect on the consciousness of regulated organizations and a reminder to organizations and individuals that violators will be punished for contravening or circumventing the provisions of the PPA, 2007. Additionally, sustained enforcement action will instill a culture of compliance and would have direct impact on corporate compliant behaviour in the award and execution of public contracts in Nigeria.

Methodology

The study utilized a mix research design involving cross-sectional survey, exploratory interviews and analysis of official documents. The survey was used as the primary source of data. Essentially, it involved the use of questionnaire formulated based on the OECD's, the Global Fund's and World Bank's Methodology for Assessment of National Procurement Systems. While, interviews conducted and official documents examined were extrapolated to give vent to the analysis of the questionnaires where necessary. The secondary data for the study were collected from copies of the PPA, 2007, procurement regulations, standard bidding documents, procedure procurement manuals, annual reports, public procurement journals, procurement records, contract case files, among others. Others materials were drawn from World Bank reports, Transparency international, text books, website pages, journals, newspapers and magazines, periodicals, government publication/documents, workshop papers and official administrative documents.

Thus, a mix of administration of survey questionnaires (structured on the Likert-scale format), exploratory interviews (unstructured interview schedules that was used to follow up ideas, probe responses and investigate motives and feelings to cover sensitive and core implementation issues on procurement fraud), and analyses of documents were utilized to triangulate evidence. The first was utilized to maintain uniformity and sequence of questions, while the second enabled the study ask the respondents questions which do not restrict answers, such that they were encouraged to express their views freely and elaborately. This gave the study the opportunity and latitude for an in-depth investigation into the issues under study. The essence of triangulating the evidence was to enable the study to see the same thing from different perspectives and thus to be able to confirm or challenge the findings of one method with those of another. The interview and documentary sources served as supplementary sources of data and a means of validating the consistency of the questionnaires. Thus, primary and secondary sources were utilized to collect data that were analyzed to reach a generalizable conclusion.

The population of the study comprised of the staff of the three institutions within the regulatory framework for public procurement practice in Nigeria. These include the BPP with the mandate to regulate, monitor and oversight public procurement practice in MDAs and the EFCC and ICPC with the mandates to investigate and prosecute procurement crimes. Thus, in all, the total population of the study is 3,101 comprising of BPP (107), ICPC (818), and EFCC (2173) (Culled from Agencies' Annual Reports, 2024). The total sample size used in this study was 334 determined by Dillman sample formulae and allocated across the stakeholders using Bourdley allocation formula. The sample was divided into 3 strata of employees cadre representing; management, senior and junior staff.

In addition to the above, the researcher also took cognizance of other stakeholders in the procurement process. These groups were identified and interviewed. They include principal officers of the Federal High Court with the mandate to try all legal cases that involved contract disputes; principal officers of the standing committees on public procurement in the Senate and House of Representatives and the Office of the President of the Federal Republic of Nigeria (the Special Adviser to the President on Economic Matters) which implement procurement statutes and procurement authorization and appropriation. Others were selected contractors, consultants and suppliers registered with BPP, principal officers of the Nigeria Bar Association and Civil Society Organizations. A total of 33 respondents were purposively selected and interviewed. And the information generated from primary and secondary sources was analyzed using both qualitative and quantitative descriptive methods.

Results/Findings

A total number of 334 questionnaires were administered, out of which 302 were returned valid. This represents 90% response rate. Such a response rate is viewed as being highly favorable according to Mugenda & Mugenda (2003) who assert that a response rate of 50% is adequate, 60% good and above 70% may be rated as being very good. Therefore, this response rate was adequate for analysis and generalizations on the issue (s) under investigation. This, in a nutshell implied that the respondents were an adequate representation of the entire targeted population. The table below illustrates the category of respondents, the number of questionnaires administered and those returned:

Table 1: Total Number of Questionnaires Administered and Returned

Respondents	Number of Questionnaires Administered	Percentage of Questionnaires Administered (%)	Number of Questionnaires Returned	Percentage of Questionnaires Returned (%)
Management	94	28	78	26
Senior	160	49	150	50
Junior	80	23	74	24
Total	334	100	302	100

Source: Field Work (2024)

Table 1 above shows the distribution of questionnaires administered to respondents according to staff category. The table also shows that, 334 questionnaires were administered, however, only 302 representing 90% were returned valid while 32 representing 10% were not returned. It further shows that, out of the 94 questionnaires administered to the management cadre, only 78 representing

26% of the total number of questionnaires was returned valid. Equally, out of the 160 questionnaires administered to the senior cadre, only 150 representing 50% of the total number of questionnaires was returned valid. In like manner, out of the 80 questionnaires administered to the junior cadre, only 74 representing 24% of the total number of questionnaires returned was valid. In all, the return rate of 90% response is significant in that it will suffice in eliciting the expected data while the unreturned rate of 10% is insignificant because it cannot distort the expected result for analysis and generalizations on the issue (s) under investigation.

Presentation and Analysis of Personal Data of Respondents

Table 2: Age Distribution of the Respondents

Age Range	Number of Respondents	Percentage (%)
20-29 Years	118	39.10
30-39 Years	80	26.49
40-49 Years	66	21.85
50 Years and above	38	12.58
Total	**302**	**100**

Source: Field Work (2024)

Table 2 above shows the age distribution of the respondents. The bulk of the respondents were between the ages 20 and 29 with 118 respondents representing 39.10 % of the total respondents. This was followed by the respondents between the ages 30 and 39 with 80 respondents representing 26.49% of the total respondents. Those between ages 40 and 49 with 66 respondents representing 21.85% came third while those above the age 50 came last with 38 respondents representing 12.58% of the total respondents.

Table 3: Distribution of the Length of Service of the Respondents

Length of Service	Number of Respondents	Percentage (%)
1-10 Years	160	52.98
11-20 Years	80	26.50
21-30 Years	49	16.22
31 Years and above	13	4.30
Total	**302**	**100**

Source: Field Work (2024)

Table 3 above indicates the distribution of the length of service of the respondents. The table shows in a descending order that those below 10 years in service have the highest respondents of 160 which represents 52.98% of the total respondents. However, those between the range of 11 and 20 years in service came second with 80 respondents which represents 26.50% of the total respondents and half of the number of respondents below 10 years in the service. Also, the table shows that 49 respondents representing 16.22% fall between the range of 21 and 30 years in service while 13 respondents representing 4.30% were those above 31 years in service.

Table 4: Distribution of the Educational Qualifications of the Respondents

Educational Qualification	Number of Holders	Percentage (%)
O' Level	Nil	-
OND	22	7.30
HND	30	9.93
Degree	211	69.86
Others	39	12.91
Total	**302**	**100**

Source: Field Work (2024)

Table 4 above shows the distribution of the educational qualifications of the respondents. The table shows that those with 'First Degree' came highest with 211 respondents representing 69.86% while those classified as 'Others' (Masters and other professional qualifications) with 39 respondents representing 12.91% came second. What this implies is that the majority of the respondents are educated and knowledgeable enough to elicit the needed data for the study. Furthermore, 22 respondents representing 7.30% are OND holders while 30 respondents representing 9.93% are HND holders. Again, this is an added impetus to the quality of respondents under investigation as indicated in the table. However, the returned questionnaires did not register any O' Level holder among the respondents under investigation.

Table 5: Category of Staff

Categories	Number of Respondents	Percentage (%)
Management	78	25.70
Senior	150	49.70
Junior	74	24.50

Total	**302**	**100**

Source: Field Work (2024)

Table 5 above shows the distribution of staff that participated in the survey. The staff was categorized into management, senior and junior respondents. The table indicates that 78 respondents representing 25.70% were of the directorate or management category while 150 respondents representing 49.70% were of the middle level or senior category. However, 74 respondents representing 24.50% were of the junior category. The table also reflects the fact that all the category of staff in the service was duly represented in the survey.

Table 6: Research Questionnaire

S/N	ITEMS	SA	A	U	D	SD
1	That some projects are awarded to companies using minimum deviation from In-House Estimates which is contrary to the provisions of the PPA.					
2	That some procuring entities and bidders engage in the manipulation of the procurement process to inflate contract sum or offer excessive costs and prices for goods, services and works.					
3	That some procuring entities engage in contract splitting so as to avoid approval thresholds and appropriate procurement methods.					
4	That companies owned by the same individual/source submit multiple bids for the same projects.					
5	That some procuring entities do not advertise and solicit for bids in adherence to the PPA and the Standard Bidding Documents (SBDs).					
6	That some bidders fake documents and procurement records to prequalify for the award of contracts.					
7	That some procuring entities do not invite credible persons as observers like CSOs as required by the Act in every procurement process.					
8	That some procuring entities do not set out precise criteria upon which it seeks to give consideration to the prequalification applications and in reaching decisions as to which supplier, contractor or service provider qualify.					
9	That some projects are at times allocated rather than being subjected to open competitive bidding					
10	That some procuring entities collude with contractors to make unresponsive bid responsive.					

Source: Field Work (2024)

In order to test the posed hypothesis, questions 1-10 were posited and their outcome condensed to generate the aggregate response from the three categories of respondents using the five point Likert Scale. Using the Statistical Package for Social Sciences (SPSS) version 20 and Chi-square to test the nature of the relationship between the variables, the contingency table below emerged which shows the aggregate responses of the respondents:

Table 7: Contingency Table for the Analysis of Questions 1-10 so as to test the Hypothesis

	Category of the Respondents			
Opinions	**Management Staff**	**Senior Staff**	**Junior Staff**	**Total**
Strongly Agree	27(8.94)	58(19.21)	22(7.29)	107
Agree	38(12.6)	71(23.51)	34(12.26)	143
Undecided	2(0.66)	5(1.66)	12(3.97)	19
Strongly Disagree	8 (2.6)	11(3.6)	4(1.32)	23
Disagree	3(0.99)	5(1.66)	2(0.66)	10
Total	**78**	**150**	**74**	**302**
Chi-square (χ^2 cal) =62.50, Degree of Freedom = 8, Probability Value = 0.256				

Source: Field Work (2024)

Table 7 above shows the summary of data collected from the field survey that was used for the computation of Chi-square so as to test the hypothesis. The data was structured on the five point Likert Scale with the opinions categorized into top, middle and lower level respondents in the 3 focused agencies. It also indicates the value of Chi-square calculated (X^2) put at 62.50 with 0.05 level of significance and degree of freedom at 8 and probability value at 0.256 respectively. From the 302 respondents that responded to questions 1-10 of the study's hypothesis, 8.94% and 12.6% of the management staff attested to the negative relationship between non-compliance with the provisions of the PPA, 2007 and the control of contract scam in Nigeria. However, while 0.06% of the management staff remained neutral, 2.6% strongly disagreed and 0.99% disagreed as well. Similarly, 19.21% and 23.51% of the senior staff affirmed the negative relationship that exists between the variables. Though, 1.66% was neutral, 3.6% strongly disagreed while 1.66% of the junior staff also disagreed. In the same vein, 7.29% and 12.26% of the junior staff also attested to the negative relationship that exists between the variables. However, while 3.97% were undecided, 1.32% strongly disagreed and 0.66% disagreed respectively.

From the table, the chi-square calculated is 62.50.
Degree of freedom (df) is 8. That is, (C-1) (R-1) = (5-1) (3-1) = 4 x 2 = 8
As earlier stated, level of significance (α) is 0.05 and with the degree of freedom at 8, the researcher will now refer to the table of sampling distribution for Chi-square for 8 df at 0.05 level of significance.

The critical Chi-square tabulated value for 8 df and 0.05 level of significance is 37.73. With the Chi-square calculated and Chi-square tabulated known, we now take the decision rule.

Decision Rule
The decision rule governing Chi-square states that:
Reject H_0, if Chi-square calculated (χ^2 cal) is greater than (>) Chi-square tabulated and accept H_0 if otherwise.
Conclusion
Chi-square (χ^2) calculated = 62.50
Chi-square (χ^2) tabulated = 37.73
Therefore, H_0 is rejected because (χ^2) calculated (62.50) is > (greater than) (χ^2) tabulated (37.73).

Implication
The implication of this result is that the alternate hypothesis (H_1) was upheld, which states that: Non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. Factors deduced from the analysis of data for non-compliance were due to many reasons including but not limited to awards of projects to companies using minimum deviation from In-House Estimates which is contrary to the provisions of the PPA, 2007; manipulation of the procurement process to inflate contract sum; contract splitting so as to avoid approval thresholds and appropriate procurement methods; companies owned by the same individual/source submit multiple bids for the same projects; some procuring entities do not advertise and solicit for bids in adherence to the Act and the Standard Bidding Documents (SBDs). Others were that, some bidders fake documents and procurement records to prequalify for the award of contracts; some procuring entities do not invite credible persons as observers as required by the Act in every procurement process; some procuring entities do not set out precise criteria upon which it seeks to give consideration to the prequalification applications and in reaching decisions as to which supplier; contractor or service provider qualify. Also, some projects are at times allocated rather than being subjected to open competitive bidding while some procuring entities collude with contractors to make unresponsive bid responsive amongst others.

Discussion of Findings

The study was aimed at finding out if non-compliance with public procurement laws in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. After the statistical testing and analysis of the research question posited for the study's hypothesis using the Chi-square method, it was discovered that non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. Chi-square (χ^2) calculated = 62.50 was greater than Chi-square (χ^2) tabulated = 37.73, therefore, H_0 was rejected and H_1 upheld.

In order to ensure that the result from the statistical testing was accurate, we triangulated the results with findings from other sources of data collection. Results generated from interview, official documents (such as case files, annual reports, procurement journals, PPA, 2007 etc.), and secondary sources depicts that non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. For instance, in the interview conducted with a former Head of Certification, Compliance and Monitoring of the BPP, he cited the case of non-compliance with the provisions of PPA, 2007 by a former Director General of a public sector organization, for awarding contracts without following due process. According to him, "about 70 per cent of the contract awards by the said DG were usually unadvertised and awarded over the phone to contractors who determine how much they wanted to be paid for the job, while the 30 per cent advertised still lack due process". Obviously, this was in contravention of the PPA, 2007.

To corroborate the above interview with a case in point, the researcher was opportune to examine the case file between an undisclosed company and the said agency. A careful examination of the audit report of the procurement process by the said agency revealed that, the DG had unilaterally, without recourse to the BPP awarded the construction of perimeter fence and gate-house to the company at a whopping sum of N158, 448,052.77 which was above his and his board's approval limit. Consequently, an audit review by the Bureau was conducted on the procurement process which revealed a hand full of non-compliance with the provisions of the Act.

The Bureau, in its vide letter, which was transmitted to the agency, noted that the recommended contractor, ought not to have been pre-qualified by the agency in the first place considering that the company submitted suspected fake pension clearance certificate and should have been disqualified on that ground and the documents should have been forwarded to the EFCC/ICPC for further investigation and prosecution in line with provision of Section 58(4)(9) of the Act. The study believes it was against this backdrop that the sixth item on the contingency table for the computation of substantive data for questions 1-10 shows that 136 respondents representing 45% of the total sampled population strongly agreed that some bidders fake documents and procurement records to prequalify for the award of contracts. In the same vein, 143 respondents representing 47.3% of the total responses also agreed. However, 13 respondents representing 4.3% were undecided while 6 respondents representing 2.1% and 4 respondents representing 1.3% disagreed and strongly disagreed respectively.

Secondly, the Bureau stated that the rates quoted by the company for the project were very excessive and not in compliant with any provision of the Act. It was in the light of this that the third item on the table shows that 120 respondents representing 40% of the total sampled population strongly agreed that some procuring entities and bidders engage in the manipulation of the procurement process to inflate contract sum or offer excessive costs and prices for goods, services and works. In the same vein, 151 respondents representing 50% of the total responses also agreed. However, 15 respondents representing 5% were undecided while 7 respondents representing 2.3% and 8 respondents representing 2.7% disagreed and strongly disagreed respectively.

It was also noted that the basis for recommendation for award of the contract using +/- 5% deviation from the In-House Estimate is not supported by any provision of the PPA, 2007 especially because the quantities of items in the In-House Estimate were astronomically higher than what was given to the bidders and on which basis bids were received. Again, it was in view of this reason that out of the total of 302 responses to item one, 130 respondents representing 43 percent of the total responses strongly agreed that some projects are awarded to companies using minimum deviation from In-House Estimates which is contrary to the provisions of the PPA, 2007. Similarly, 150 respondents representing 49.7% of the total responses also agreed. However, 12 respondents representing 4% were undecided while 6 respondents representing 2% and 4 respondents representing 1.8% disagreed and strongly disagreed respectively.

According to a key informant in BPP, one of the most controversial but common practice by MDAs was the use of +/- 5% to 10% deviations from In-House Estimate as a basis to determine the evaluated least responsive bid. Usually, bid sums with percentage deviation from this set range are adjudged non-responsive even when they were earlier prequalified. Best practices suggest that In-House Estimates are only to serve as guides not stringent parameters for the determination of the responsiveness of bids. The In-House Estimate is supposed to be a product of appropriate market and statistical surveys carried out during procurement plan as stipulated in Section 18(c) of the PPA, 2007.

Again, it was noted that the contract award by the agency did not comply with Section 19(b) of the Act. It was observed that it did not invite credible persons such as CSOs as required by the Act to participate in the procurement proceedings as observers to monitor compliance with procurement rules (PPA, 2007 S. 19(b)). It was observed that the agency just like many other MDAs in practice invite or permit CSO observers only during the opening bids and exclude them from other stages of the procurement process. This is despite the fact that the Act expressly states that CSO observers shall be invited in 'every procurement processes' not just bid opening. In fact, the marginal note and title of section 19 of the Act, where the role of the observers is provided for, is entitled 'Procurement Implementation', whereas it is section 30 that deals with 'bid opening'. Indeed, these observers have right to monitor and access information on all aspects of public procurement. The only lawful restriction to this right is the restriction on the time for accessing information provided by section 32(8) of the Act, which states that after the opening bids, information relating to examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until successful bidder is notified of the award.

In order to achieve their perceived mischief, most MDAs like the agency in question still make it difficult for the CSOs to effectively observe the processes. For example, most MDAs have resorted to giving the CSOs short notices of their bid opening and pre-qualification exercises. They are equally known to be hostile to the CSOs when some details of the procurement processes are being demanded for. The role of CSOs entails having access to and analyzing solicitation and bidding documents; being present to observe procurement proceedings; and gaining access to procurement records and information (Freedom of Information Act, 2011). The CSOs do not have the right to interfere directly with the procurement proceedings; but they can send a report of the observations to the relevant regulatory or anti-corruption agencies for further action (PPA, 2007 S. 19(b)(ii)).

To address this anomaly, the Bureau had in a memo, signed by the Director-General, stated that it computed the actual value of work done and discovered that the total value of the contract based on the physical measurement on site using the rates posted by the contractor in its Bills of Quantities is N122, 953,059.41 as against the contract sum of N158, 448,052.77 awarded to the contractor by the agency. In the report that followed the audit and surveillance review, the Bureau had maintained, that the agency should have noted that ordinarily, the company having been adjudged disqualified ought not to have been the winner of the bid, however, considering the status of the project which was almost completed, the Bureau ruled that for overall public interest and to achieve value for money, the contractor should be allowed to complete the remaining work but at a price which is reasonable, fair and reflects the actual work done on site. Consequently, the new contract sum was reviewed and put at N122, 953,059.41.

In the MDAs, appropriated contracts are still being split to keep their value within the approved threshold of the Accounting Officers. This ultimately, when not found, shield such contracts from the proper scrutiny/review of the BPP before the issuance of Certificate of NO Objection and therefore results to public procurement fraud. This finding like others was duly affirmed by the respondents within the regulatory framework and also reported in the BPP 2024 Procurement Audit Report contained in its Annual Report (2024). The main objective of the Procurement Audit was to review the procurement, contracting, and implementation processes of a sample of contracts selected from key MDAs. And also to confirm their compliance with the PPA, 2007 and other Procurement Guidelines issued by the Bureau. The scope of the audit covered goods, works and consultancy services contracts awarded by the MDAs in the last three years. The consultants audited specific MDAs as selected by the BPP and the sample size of procurement transactions reviewed was based on the assessed risks and procurement profile of each MDA. The audit was conducted under the general framework of the PPA and the Civil Service Circulars relating to the practice of procurement within the MDAs and covering the detailed review of all essential steps in the public procurement process. The summary of the audit report shows that:

- Many MDAs did not prepare procurement plans and records and where these plans were prepared, there was very little effort in following them;
- Many procuring entities used the restricted tendering method without prior "No Objection" from BPP;
- Wrong classification of procurement as goods, works or services to evade financial approval thresholds was common – e.g many MDAs classified services or goods as works with a view to evading approval thresholds or goods classified as works so as to enable Ministerial Tender Board approval;
- Wrong use of In-House Estimates (consultants' estimate) by many MDAs as a basis of determination of winning bids instead of the lowest evaluated responsive bids as stipulated by the Act was prevalent. This has led to awards of contracts to wrong bidders over the years;
- Disorderly and poor procurement record keeping was rampant: even MDAs with procurement departments did not have files with details of procurement proceedings
- Many MDAs were reluctant to provide all the documents required for the audit, probably because there were no documents or they were being hidden;
- The PPA and other Procurement Guidelines by the BPP with regards to essential parts of the procurement cycle, such as procurement planning, classification of procurement into goods, works and services, restricted tendering selection method and procurement records have been frequently ignored by MDAs. The result was that the bid evaluation process of many MDAs also leaves much to be desired especially relating to the use of In-House Estimates (consultants' estimates);

- Furthermore, many MDAs seem to be unaware of the offences relating to public procurement resulting in missing documents on procurement carried out. The coordination between Procurement Department and other implementing departments of many MDAs was also unsatisfactory.

It was in the light of the foregoing that Messic (2016) submitted that public procurement fraud or collusion in the tendering schemes is a collection of acts of non-compliance with established procurement law involving some or all of the following:

Tender preparation

- Project selected on improper basis (political pressure, financial inducement, conflict of interest)
- Package size manipulated to favor one bidder or subgroup of bidders (contracts split or combined)
- Specifications skewed to favor a certain firm or product
- Tender documents incomplete/misleading or so complex only certain bidder can understand
- Confidential documents leaked

Evaluation of offers

- Firms wrongfully disqualified
- Member or members bribed/have undisclosed interest in a bidder (ownership or employment)
- Member or members threatened or pressured
- Evaluation criteria changed or manipulated

Submission of offers

- Time to submit shortened or lengthened
- Pre-submission meeting attendance restricted/erroneous information provided
- Shortlist manipulated
- Submission location changed or inaccessible
- Inadequate notice of tender -- advertisement restricted/insufficient information provided
- Post-announcement changes to tender not adequately publicized
- Tender documents falsified
- Complaints about process ignored/dismissed
- Bidders or subgroup of bidders collude on price/terms amongst others.

The secondary data generated also indicated that non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria. Review of studies on the compliance assessment report conducted in 2023 by the Public and Private Development Centre (PPDC) on the procuring activities of federal entities is quite instructive in view of the study's hypothetical position. The main findings of the report shows that the number of ministries, departments and agencies that have established procurement departments with designated procurement personnel is on the rise. However, there was only but partial compliance with the provisions of the Act. Therefore, much more is necessary to ensure substantial compliance with the 'spirit' of the Act throughout the country, especially in the geopolitical zones (PPDC, 2023). The study explained in part that, non-compliance with the provisions of the PPA, 2007 was one of the major reasons that accounts for planned acts of collusion between procuring entities and bidders and between bidders and bidders with the clear intention of defrauding the public.

In the same vein, Jibrin et al., (2014) reveals that Compliance or Audit Reports produced by the BPP over the years show that there is non-compliance with the provisions of the Act by procuring entities and bidders which often give rise to collusive behavior and corrupt practices in the procurement process in Nigeria. They attributed this unethical behavior to several factors, chief among which were political interference and control of the procurement process by political office holders, difficulties to part with the old, bad, internalized procurement habits of the pre-PPA, 2007 difficulties in enforcing compliance with the Act by the Bureau**,** under capacity to conduct periodic surveillance, audits and other oversight functions by the Bureau, probity and integrity issues, non-inauguration of the National Council on Public Procurement (NCPP), and weak and ineffective observance of procuring activities in MDAs by the CSOs among others.

Available documents like the BPP Annual Reports and Procurement Journals corroborates the field survey, where it was observed that almost all the petitions to the BPP are but a deep reflection of collusive arrangements. A close look at the nature of the petitions in the annual reports reveals offences bothering on non-compliance. It ranges from contraventions bothering on contract award to prequalification, financial evaluation/inflated contract, advertisement, post award/implementation, bid opening, bid submission, post qualification and bid exclusion. A further cursory look at the annual reports reveals a steady increase in the number of petitions received by the Bureau. From all indications, it is crystal clear that the non-compliance with public procurement laws by officials of procuring entities and bidders is the major reason for the persistence of public procurement fraud in Nigeria.

Conclusion

The PPA, 2007 in Nigeria is yet to impact public procurement fraud in any significant manner. This could largely be attributed to non-compliance with the PPA, 2007 in the award and execution of public contracts by officials of public procuring entities and bidders; and the major reason for the persistence of public procurement fraud in Nigeria. Stakeholders, especially, some officials of MDAs, consultants, contractors, service providers, and politicians would rather prefer to circumvent the provision of the PPA, 2007 than comply. To them, the provision of the Act is frustrating the "business as usual" syndrome, and a hindrance to easy money making and should be resisted by every means necessary. Consequently, they have resorted to fraud to frustrate the law for personal gains.

Recommendations

Public procurement fraud thrives on non-compliance with public procurement laws, to control its persistence thereby guaranteeing reasonable impact, comprehensive measures are necessary. First, all procuring entities must procure in strict compliance with the Act and other subsidiary laws or face severe consequences. Second, is to establish rules requiring bidders to disclose certain cost information during the bidding process and impose penalties for failure to disclose accurate cost data. Third, is to require bidders to certify that they have set their prices independently and not in collusion with officials of procuring entities or other bidders or face permanent debarment. Fourth, involves the preparation of an internal estimate of the competitive-market cost of significant projects, goods or services as a benchmark to evaluate the possibility of collusive overcharges. Yet another will be the detection of procurement fraud which can be facilitated by econometric tools that can assist in the identification of suspicious bidding patterns.

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