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1. LEGAL AND REGULATORY FRAMEWORK

Summary

1. The main two recommendations in this Chapter are addressed in the proposed model law for procurement attached to this report as Annex 1. The revised model law holds the proposed provisions for implementing the two main recommendations; i.e.

- Introduction of a procurement law; and
- Establishment of an independent oversight body, the Public Procurement Commission (PPC) that will act as the watchdog for public procurement in Nigeria.

LEGAL SYSTEM

2. Nigeria is a federal republic with its legislative powers at federal and state levels in accordance with the statutes of the Constitution. Being a former British colony the legal system is based on English Common Law. There are no specific laws or other acts of parliament regarding public procurement in Nigeria. The Federal Ministry of Finance is vested by the Constitution to issue “Financial Regulations” (FR) which regulate and delegate the responsibilities of public procurement and financial management at federal level. The FR is essentially an internal set of rules for economic control of the Federal administration. They apply only to the Federal administration including parastatals under its control. Currently, the FR are focused on thresholds and the authority of the tender boards without any elaboration on the content of the different tender procedures and their conditions. The FR is not a law or an act of similar authority, but an administrative document, which could be amended by the Minister of Finance without regard to fundamental rights of the suppliers/contractors. Indeed the FR could even be used as a political tool by the Ministry of Finance. The rights of the suppliers/contractors with regard to the protective measures of for example open advertisement, public award criteria and so forth are only protected by the good will of the Government in power at any given time. There is no Codified Contract Law, but a law of contracts based on case law. There are no special contract provisions concerning contracts entered into after a public tender. The legal framework for public procurement (in particular import procurement of supplies) might be solidified by accession of Nigeria to the United Nations Convention on Contracts for the International Sale of Goods.

Internal circulars and Guidelines

3. Circulars and guidelines regarding procurement are issued by many administrative bodies both at Federal and State levels. Recently the Presidency issued circular (SGF/OP/1/S.3/T.1/172) of 11th Oct. spelling out the “policy guidelines” for the Federal administration. This includes an update of thresholds for different tender boards and a policy of open competitive tender whenever possible. There is a proliferation of circulars that have been issued at Federal and State levels by different public bodies with the purpose of clarifying

elements of the FR. The large number of different circulars and guidelines is a symptom of the major shortcomings in the FR that are discussed in the following paragraphs. As a remedy, the introduction of a uniform system of procurement, together with a centralised body of control and monitoring is proposed.

Regulations governing procurement in the States

4. At present the procurement regulations in the states consist mainly of local Financial Regulations based on the Federal FR, supplemented with circulars and guidelines from within each branch of administration in the state governments. The Constitution of the Federal Republic of Nigeria (1998) describes the division of powers between the Federal Government and the States of The Federation. From the Exclusive Legislative List attached to the Constitution, it is evident that legislation concerning public procurement is not a Federal prerogative. Each State has the authority to issue its own regulations concerning procurement. Even though the states visited (and to our knowledge the majority of the states) have implemented state regulations that are identical or similar to the Federal FR it remains a fact that the States are entirely autonomous when it comes to regulating public procurement carried out within their jurisdiction. Thus, to effect a uniform system as recommended for enacting a uniform procurement law and establishing a Public Procurement Commission with nation-wide authority will demand the combined effort of the National Assembly and parliaments in each State. It is only after the necessary legislation is in place at both State and Federal levels will the advantages of a uniform system of procurement and centralised control be possible.

Benchmarking the Existing Legal Framework of Procurement on International Standards

5. World-wide, there are several well-established procurement systems governing a very large proportion of global public sector procurement. For the purposes of this benchmark a broad representation of different approaches to public procurement regulations are discussed. It is a common feature of all these international standards that besides regulating the core procurement activities, for example tender evaluation, they also contain other provisions aimed at supporting the objectives and procedures of the procurement regulations such as means of communication and contracting. It is also important to note that there is a large common ground as to essential transparency and competition features among these international instruments.

6. **The European Union directives on procurement (EUD)** have for over a decade now superseded national regulations regarding the public procurement of goods, services and public works in the member states of the European Union. The four main directives are, on a number of aspects, supplemented by other regulations issued by the European Commission, the organisation trusted with the enforcement of the directives. As directives, only under certain circumstances can they be applied directly by courts in the member states, all member states have by law enacted the directives in their respective legal frameworks. The European Union has for political reasons divided the rules governing procurement into four different sets of regulations addressing the procurement of goods, services, public works and public supply. A large part of the directives contain parallel sets of rules for each sector, with some major exemptions. The European Commission has a stated goal of replacing the directives by a unified set of regulations

covering all sectors within a timeframe of a few years. The directives do not cover all the areas, for example, there is no obligation to procure according to the directives in an area such as social services. It is therefore evident that the European directives for public procurement cannot be considered for direct application to a country such as Nigeria except in those cases where the funding source so requires.

7. The World Bank Guidelines (WBG) for procurement under IBRD loans and IDA credits are an example of procurement regulations enforced by a large global donor organisation. Use of these guidelines is a prerequisite for all loans and credits financed under IBRD and IDA. The purpose of the guidelines are to *“... ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations”*.

Besides being internal guidelines regulating procurement undertaken with the use of funds made available by the World Bank, the guidelines are also an attempt to codify the essence of best practice regarding procurement and thus obtaining the goals mentioned above. The guidelines are not in themselves a “law” though they share basic principles and procedures with the UNCITRAL Model Law.

It is, therefore, the policy of the World Bank to apply the principles of the guidelines not only to procurement financed wholly or partly by Bank loans but also to seek a general compliance within the receiving country of these principles. The guidelines are a set of principles that have been developed over many years and their application to Nigeria would be appropriate but more detailed provisions have to be defined to enable their easy application at all levels in Nigeria.

8. The United Nations UNCITRAL model law on procurement of goods, construction and services (UML) was adopted by the United Nations Commission for International Trade in 1994. The model law is described by UNCITRAL as an answer to *“...inefficiency and ineffectiveness in the procurement process, patterns of abuse, and the failure of the public purchaser to obtain adequate value in return for the expenditure of public funds”*. It is the explicit purpose of the model law to promote transparency, objectivity and efficiency thereby curbing corruption and abuse in the procurement process. The model law is purposely built to suit the needs of developing countries whose economies are in transition, such as Nigeria. The features of the model law are considered to be the minimum set of requirements for a modern procurement law aimed at reaching the objectives mentioned above. The model law is designed as a procurement law to be used under circumstances similar to those present in Nigeria. As further elaborated in the recommendations section the model law however cannot be implemented without the proper administrative and institutional structures in place.

STEP-BY-STEP COMPARISON OF PROCUREMENT ISSUES

9. To assess the strengths and weaknesses of the Nigerian procurement framework a number of specific steps in the procurement process are identified for benchmarking with international standards. Apart from the identified steps of the procurement process the benchmarking also includes general issues, such as the problem of determining the characteristics of an entity that should be covered by the procurement regulations. As the steps and issues of procuring varies slightly depending on the sort of goods, public works or services that are to be procured, the benchmark will focus on a number of general issues common to all sectors.

Benchmark 1 - Procuring entities subject to regulation

FR: As the FR are issued by the Federal Ministry of Finance the scope of the regulations is limited to the Federal Government. This includes all ministries and parastatals under the control of specific ministries although parastatals are not specifically listed as regulated by the FR. However, it was observed that some parastatals, notably the NNPC, deviate from the FR. At State level the same applies, as State Governments and State controlled parastatals are bound by the State FR.

EUD: Contains a very broad definition of the scope of regulation. The target is not to regulate specific sectors of public administration, but rather to ensure that taxpayer's money is spent in a timely fashion regardless of who spends it. Thus the directives cover both public and private companies as long as they are financed or controlled by public entities.

WBG: Seeks to regulate procurement in projects financed in whole or in part by the WB.

UML: Applies to all procurement by procuring entities except procurement involving national security or defence. Procuring entity is defined as any governmental department, agency, organ, or any subdivision thereof that engages in procurement. In the unrevised version the UML does not include coverage of procurement executed by parastatals or private company even though public funds are used.

Benchmark 2 – Applicable Sectors

FR: Covers all public procurement without any difference between the sectors. Procurement of goods, works and services are carried out according to the same rules. There are no exempted sectors or specific purchases.

EUD: The EU has, for political reasons, chosen not to implement its procurement regime in one session. The different sectors are governed by different directives, which include separate directives for goods, works, public supply and services.

WBG: Covers all sectors (goods, works and services) of procurement. There are no exempted sectors when purchases are funded by WB loans. The Guidelines provide distinct rules for the procurement of consultant services.

UML: Initially covers all sectors except purchases within the defence and security sectors where special considerations besides value for money may apply. The law provides for distinct rules for the procurement of consultant services.

Benchmark 3 - Methods of Procurement and their Conditions for use

FR: Open Competitive Tendering. The FR only mentions “tendering” as the method of procurement. The latest circular to the Federal administration (SGF/OP/1/S.3/T.1/172) points to open competitive tendering as the preferred method of tendering to be used by Federal procuring entities. No definition of open competitive tendering is given.

Selective and Limited Tendering. These two alternatives are mentioned in the FR, but no definitions are given. The choice of selective or limited tendering as an alternative to open competitive tendering is left to the discretion of the procuring entity. There are no known guidelines as to which tendering procedures apply to different situations.

EUD: Open and Restricted Tendering. Depending on the nature of the goods, works or services procured, the procuring entities have a free choice of using an open tendering procedure without limit to the number of bidders or a restricted tendering procedure with prequalification. Under both procedures notices of tendering must be public and the criteria for both prequalification and selection are exclusively limited to the ones defined in the directives.

Negotiated Tendering. Under certain circumstances the procuring entity may choose to apply a negotiated tendering procedure where the procuring entity and the bidders engage in post-bid negotiations. This can be done at the discretion of the procuring entity, but observing that the directives (apart from the public supply directive) contain strict conditions for the use of a negotiated procedure. A negotiated procedure with public notice can only be used 1) after having received irregular tenders in response to an open or restricted tender 2) in exceptional cases, when the nature of the services or the risks involved do not permit prior overall pricing 3) the nature of the services to be procured is such that contract specifications cannot be established with sufficient precision, in particular in the case of intellectual services. A negotiated procedure without public notice can only be used in a few very limited situations and the use of this procedure must in each instance be communicated to the European Commission. The European Court has in a number of cases interpreted the access to negotiated tendering very restricted thus leaving this option open only in extraordinary situations.

WBG: International Competitive Tendering (ICB), is the mainstay of the procuring procedures available for WB financed projects. The WBG contains a comprehensive set of

guidelines securing both transparency by advertisement and equality by uniform criteria of award of goods and works contracts and selection of consultants. Other methods for goods and works include Limited International Bidding, National Competitive Bidding, Direct Contracting, and Shopping. For consultancy services, the default method is Quality and Cost Based Selection (QCBS) but there are other methods including Quality Based, Consultants Qualifications, Least Cost, Fixed Budget, Individuals and Single Source Selection. The exceptions to the rule of ICB/QCBS can be applied only when certain conditions for their use are met.

UML: Open Tendering, with or without prequalification. This is the main procuring procedure for all procurement of goods and works under the UNCITRAL law. The open tendering procedure includes all the major features of an international procurement system such as public advertisement of tender notice and exclusive criteria for both prequalification and selection of bidders.

Services Procurement, with or without negotiations. To a higher degree than for goods or works, the UML allows for the use of a negotiated procedure when procuring services. The procuring entity has a choice between simultaneous or consecutive negotiations both intended for situations where a description of the actual needs of the procuring entity is one of the goals of the procurement. As the negotiated procedures can be selected at the discretion of the procuring entity it should be incumbent upon the country implementing the law to make the choice of these procedures subject to approval.

There are exceptions to the rule of open tendering: Two-stage Tendering, Restricted Tendering (available under the Model Law only in prescribed circumstances different from the restricted tendering method available under the EUD rules), Request for Proposals, Competitive Negotiations, Request for Quotations. For various reasons listed in the model law (Annex 1) the procuring entity may choose, subject to the approval of the Public Procurement Commission, to deviate from the rule of open tendering. A State enacting the UNCITRAL Model Law would not necessarily include in its legislation each of two-stage tendering, request for proposals and competitive negotiations.

Benchmark 4 - Application of thresholds

FR: The FR require Public tendering for all contracts with a value exceeding N500,000. Furthermore, the FR contain internal guidelines setting thresholds for approval of the different tender boards: up to N500,000 for the Permanent Secretary; N500,000-1.0 million for departmental tender boards; N1.0-20.0 million for ministerial tender boards; N20.0-50.0 million for federal tenders board (although contracts above N50.0 million are also considered); and above N50.0 million for the Executive Council. However, the FR have no rules concerning the calculation of the value of contracts, apart from a general ban against contract splitting.

EUD: Contains a quite complex set of thresholds for application of the directives with different thresholds for each sector of purchase and purchasing entity. The main thresholds for

purchases within the member states central administrations are: Euro 200,000 for goods and services; and Euro 5,000,000 for works. The thresholds are in the form of secondary legislation allowing the European Commission to continuously conduct updates. To prevent splitting of contracts and to ensure a uniform application of the directives, an elaborate set of calculation rules are included in the directives. A major point is the use of a mandatory 4 year period when calculating the value of continuously running service fees and similar expenses.

WBG: Thresholds differ from project to project and from country to county.

UML: The model law contains the provisions for implementing a general set of thresholds for application of the law, but there are no exact economic thresholds. As a part of the introduction of the law to a country, thresholds should be defined as part of secondary procurement legislation under the supervision of the PPC. This should also be the case for calculation rules.

Benchmark 5 - Advertisement of tenders

FR: Has only a general article stating that the media of publication can be the Gazette and/or the local press, with no obligation to international publication or even national. In addition, advertisement shall be exhibited at the offices of the procuring entity.

EUD: All tenders must be advertised in the Official Journal of the European Communities. The procuring entity may in addition choose to advertise locally or nationally provided the information given in all media is the same.

WBG: All tenders subject to the ICB tendering method must be advertised in the Development Business. In addition the Borrower can advertise in international newspapers, national newspapers, professional publications and in embassies in the country.

UML: A general rule of mandatory advertisement of all tenders is included in the model law. The enacting country may choose to insert the name of its official gazette as the primary means of advertisement and also allowing for secondary legislation concerning the exact form of the advertisement.

Benchmark 6 - Prequalification

FR: There is no regulation concerning the use of a prequalification procedure in the FR. The FR does however mention a selective or limited tender procedure that includes a short-listing of contractors/suppliers to be carried out by the appropriate tender board. The use of some sort of pre-qualification procedure by the procuring entities is not forbidden, but the lack of detailed regulation leaves it to the individual procuring officer to apply his/her own discretion. A very common practice within both Federal and State public administrations are the use of general lists of registered suppliers from where suppliers are invited to bid for specific contracts. The use

of these lists is not mentioned in the FR. Some entities have internal rules on the criteria for inclusion on such lists, but no general legislation exists in this area.

EUD: The procurement method of restricted tendering demands following a strict procedure. Restricted tendering may be the choice of method at the discretion of the procuring entity. The criteria for prequalification are all listed in the EUD. In addition the EUD contains provisions regarding the duration of the prequalification procedure, minimum (5) number of suppliers to be short-listed and rules of advertisement. Not all qualified suppliers have a right to bid, as a limit to the number of bidding suppliers can be set by the procuring entity. The inclusion on a general prequalification list does not substitute the specific evaluation that a supplier is entitled to each application for prequalification.

WBG: Recommends prequalification in complex procurement, but leaves it to the discretion of the procuring entity as to when prequalification should be used. When prequalification is used certain criteria listed in the WBG must be applied and advertisement of invitation to prequalify is mandatory.

UML: Detailed regulation of prequalification proceedings is included in the UML. An exclusive list of allowed criteria for prequalification are listed and all other criteria that might be applied by the procuring entity are banned. The inclusion on a general prequalification list must not substitute the specific evaluation that a supplier is entitled to for each application for prequalification.

Benchmark 7 - Criteria for qualitative selection

FR: As the FR lacks a prequalification procedure it is left to the procuring entities to decide on the criteria for selection of suppliers/contractors. In some States local circulars prescribe the use of contractor experience, quality and quantity of equipment and past performance as prequalification criteria. There exist no general guidelines at either federal or state level that describes the preferred criteria for qualitative selection, leaving it to the local procuring entity to decide. Notably, this gives room for non-transparent local criteria to be applied.

EUD: The directives state that the suppliers/contractors/consulting firms seeking prequalification must be evaluated on their financial and economic standing, skills, efficiency, experience and reliability. To make the procuring entity able to conduct its evaluation, a limited number of documents can be requested. The documentation that can be requested from the suppliers/contractors/consulting firms are:

- (a) the service provider's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services;

- (b) a list of the principal services provided in the past three years, with the amounts, dates and recipients, public or private, of the services provided;
 - ◆ where provided to contracting authorities, evidence to be in the form of certificates issued or countersigned by the competent authority,
 - ◆ where provided to private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the service provider to have been effected;
- (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control;
- (d) a statement of the service provider's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the tools, plant or technical equipment available to the service provider for carrying out the services;
- (f) a description of the service provider's measures for ensuring quality and his study and research facilities;

These documents and only these can form the basis for the qualitative selection under the EUD.

WBG: Similar to the EUD rules the guidelines have a list of exclusive criteria for prequalification. The WGG states: "Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (i) experience and past performance on similar contracts, (ii) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (iii) financial position." The WBG contain no exclusive documents list.

UML: The prequalification proceedings of the UML contain the following exclusive criteria for prequalification of suppliers:

- (i) that they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the procurement contract;
- (ii) that they have legal capacity to enter into the procurement contract;
- (iii) that they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
- (iv) that they have fulfilled their obligations to pay taxes and social security contributions in the country;
- (v) that they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a

period of ... years (the enacting State specifies the period of time) preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.

The UML does not have an exclusive list of documents allowed but the documentary evidence allowed to be submitted by suppliers seeking prequalification could be limited by secondary legislation.

Benchmark 8 - Exclusion lists (blacklisting)

FR: The FR does not ban the use of exclusion lists and as it is evidenced elsewhere in this report these lists are in use within the public sector and based on previous behaviour of suppliers.

EUD: As the directives contain exclusive criteria for prequalification, no exclusion list must be in use if its use means the application of other criteria than those mentioned in the directives.

WGB: It follows from the exclusive list of prequalification criteria that the use of an exclusion is not allowed unless a proper process of blacklisting has been carried and cleared by the Bank.

UML: It follows from the exclusive list of prequalification criteria that the use of an exclusion list is not allowed.

Benchmark 9 - Tender documents

FR: The only reference in the FR to the content of the tender documents is the mentioning of the “statement of particulars”, that must be part of the tender documents.

EUD: Holds no specific regulation concerning the content of tender documents.

WGB: Standard World Bank bidding documents (SBD’s) are mandatory.

UML: Defines the minimum provisions that tender documents must contain.

Benchmark 10 – Bid Submission and Bid Opening

FR: Bids must be submitted to the appropriate tenders board, either sealed or deposited in special containers available for this purpose. Public bid opening is not mandatory but this practice is used by some, for example The Federal Ministry of Works.

EUD: Bids must be submitted to address stated in the notice for tender, but otherwise no special regulations govern the submission of bids and their opening.

WBG: Bids must be opened in public promptly after the deadline for submission, with the participation of bidders who may choose to attend.

UML: Bids must be opened in public at a time specified in the tender documents, with the participation of bidders who choose to attend.

Benchmark 11 - Contract Award Procedure

FR: The relevant procuring entity recommends to the tender board which tender should be accepted.

EUD: No statutes deal with issues of award procedure, as this will be regulated by the codes of civil servants in the member countries respectively.

WBG: The procuring entity conducts its own procedure subject to the clearance of award by the World Bank.

UML: The procuring entity conducts its own procedure.

Benchmark 12 - Contract Award Criteria

FR: No contract award criteria are mentioned in the FR. It is left to the discretion of the procuring entity to decide which criteria to base its decision on.

EUD: Exclusively two criteria are allowed for contract award. The criteria are:

- 1) lowest price only
- 2) economically most advantageous

When using the criterion lowest price only no other factors but the face value of the submitted bids must be considered. When using the criterion economically most advantageous a number of sub criteria may be employed at the discretion of the procuring entity. Defining the sub criteria must comply with the principle of equal treatment. The criterion and sub criteria used must be included in the notice of tender or invitation to tender. Domestic preference is strictly forbidden.

WBG: Contains a variant of the economically most advantageous criteria as the WBG states that contract can only be awarded to the bid that is (i) substantially responsive to the bidding documents and (ii) that offers the lowest evaluated cost. Domestic preference is allowed in certain situations, but only under certain economic criteria.

UML: Either lowest tender price or lowest evaluated tender. If the procuring entity chooses the lowest evaluated criterion it may only consider the following:

- (i) The tender price, subject to any margin of preference applied;

- (ii) The cost of operations and maintenance;
- (iii) The effect that acceptance of a tender would have on the balance of payments position and foreign exchange reserves of the country; and
- (iv) National defence and security considerations.

A margin of domestic preference is allowed when applying contract award criteria, but only if done transparently and with the approval of the procuring authority (Public Procurement Commission suggested below).

Benchmark 13 - Negotiations and modifications of bids

FR: Prohibits changes in the terms of the tender after the receipt of the tenders, unless this is by the approval of the relevant tenders board. With the acceptance of the relevant tenders board the procuring entity has all but free hands in engaging in post-bid negotiations with the suppliers. This allows for major changes of the terms of the tender and also for auctioning off the tender by letting the suppliers continuously lower their bids until a winner emerges. There are apparently no limitations to the negotiations that are allowed and the suppliers are as a consequence allowed to continuously modify their bids in the course of negotiations.

EUD: Only in negotiated procedures with very limited use as described above are post-bid negotiations allowed. In all other cases a strict ban on post-bid negotiations is in place. This ban extends to a ban on all unclear or incomplete terms that might lead to negotiations of contract and as a result discriminating against suppliers not included in the negotiations.

WBG: Alterations of bids after submission, whether through negotiations or not, are not allowed. Only minor clarifying changes in the bids are allowed after submission.

UML: The UML contains a strict ban on negotiations between the procuring entity and the bidder after bid submission.

Benchmark 14 - Contract Content and Implementation

FR: It is specifically mentioned in the FR that no particular contractual measures apply to public contracts. Contracts should be executed and implemented in accordance with the ordinary law of contract.

EUD: No regulation regarding contracts.

WBG: Standard contracts are part of the mandatory standard bidding documents that have to be used by Borrowers.

UML: No regulation regarding content of contracts or use of standard contracts.

Benchmark 15 - Advertisement of contract award

FR: Advertisement of contract award will always be in the official gazette.

EUD: The Official Journal is the media for the mandatory publication of notice of contract award.

WBG: Advertisement of contract award not specifically mentioned.

UML: Contains no provisions for advertisement of contract award, these must be made in the form of secondary legislation.

Benchmark 16 - Complaints and Administrative Review

FR: The ordinary legal system is available. No specific regulation regarding administrative review. The complainant must file his complaint at the same administrative entity he is complaining about. There is no hierarchical administrative review of complaints.

EUD: Each member country is obliged to form an independent body of control and judicial. This body may be administrative or in the form of a competent court. At inter-country level, the European Commission has the administrative task of control and policymaking but also has the authority to bring cases against member countries before the European Court.

WBG: Procedures for complaints exist but no regulations regarding the right to administrative review or special judicial treatment of complaints.

UML: While the Model Law does establish the right of access to judicial review, the bulk of the review chapter in the Model Law is concerned with detailed aspects of administrative review. First a right to administrative review by the administrative body that the complaint is directed at. Secondly a right to appeal to a special administrative body (The Public Procurement Commission) which is equipped with expertise in the area of public procurement and has at its disposal a number of legal remedies including revision of an unlawful decision, annulment of an unlawful decision combined with payment of compensation. Thirdly, access to the civil courts for trial.

Benchmark conclusion and recommendation

10. Comparing the essential features of the different procurement systems, it is evident that the Nigerian legal framework has a number of shortcomings. Besides the lack of important features, such as methods of procurement for consulting services and proper complaints/administrative review mechanism, the Financial Regulations are imprecise and vague in their description of features such as prequalification and award procedures. The UNCITRAL Model Law is being recommended as the basis of a new Nigerian procurement law. In adopting international standards, consideration should be taken of the local circumstances including the

country's level of economic and technical development. To adopt the Model Law to the Nigerian legal system and to more precisely address the issues raised in the benchmark, an annotated version of the Model Law is included as Annex 1. The changes carried out in the actual text of the law are all explained in the attached endnotes.

WTO Treaty

11. The World Trade Organisation has a number of recommendations concerning public procurement in its member states. As Nigeria is a member of the WTO the general conformity of the Nigerian legal framework is required. The WTO recommendations are not included in the benchmark as these do largely fall within the more comprehensive UNCITRAL Model Law. The findings presented in the benchmark above and the major deficiencies of the FR as basis of procurement control are in general also true in the case of the WTO recommendations. Thus, Nigeria's legal framework for procurement is presently in a state of non-compliance with the WTO Agreement on Government Procurement.

ANTI – CORRUPTION INITIATIVES

Code of Conduct – Civil Service Regulations.

12. Both at Federal and State levels the civil service rules form the basic code of conduct for all public employees. In some administrative bodies there are separate codes of conduct supplementing the civil service rules. A section of the rules concern misconduct by public officers, which is a punishable offence under the rules. Code of conduct for public officers is contained in the 5th Schedule to the 1999 Constitution. The Code provides that every public officer must not allow his private interest to affect or influence his official duties. A Code of Conduct Bureau is also established to ensure compliance with the Code of Conduct. The Civil Service Regulations need to be updated to make them consistent with the New Constitution and the Anti-Corruption Legislation. The following is a brief coverage of the anti-corruption initiatives that are on the ground.

The proposed Anti-corruption Law

13. The Parliament has recently passed an anti-corruption law to prohibit and punish bribery and corruption of or by public officers and other persons. The proposed law warrants the establishment of an independent Anti-Corruption Commission with widespread powers. The Commission shall be empowered to both investigate and prosecute crimes under the law. If implemented it will have far-reaching impact on the public administration involved in procurement. In particular, the extended investigative powers that the Commission would be granted will be able to aid the disclosure of malpractice in procurement. Once established, the Commission should look at the possibility of Nigeria's accession to the OECD Anti-Bribery Convention.

Anti-corruption measures in the UNCITRAL model law for procurement

14. In addition to the general demands for extensive documentation and equal treatment of contractors that constitute basic anti-corruption measures the Model Law contains specific anti-corruption provisions. Article 15 compels the procuring entity not only to reject any inducements from contractors, but also to reject any request for prequalification or proposals received from the contractor offering the inducements.

No-Bribery Pledges (NBP)

15. These measures against corruption and bribery can take various forms, but are essentially a contract between bidders and the procuring entities with the purpose of attracting attention to the no-bribery cause. Both Transparency International (TI) and other organisations promote pledges for use in public procurement. A NBP can take the form of a mandatory pledge from the CEO of a bidder to be included in the tender by that bidder. The content of the pledge is that of strict adherence to existing anti-corruption legislation coupled with an agreement to pay compensation in case any misconduct is detected. The value of the NBP lies not as much in the legal measure that it is, but mainly in the signal value of a pledge given by the highest officer of the bidding firm. Forced use of NBPs in all public contracts can thus be a way of raising awareness for the general struggle against corruption, but the NBP must be introduced as one of several initiatives that together have the desired effect. A strong effort to secure compliance with regulatory initiatives must also be initiated; otherwise the NBP would only lead to a further loss of confidence by the suppliers that are complying. This is especially true in a country like Nigeria, which TI has ranked one of the most corrupt countries in the world. Bribery is so deep-rooted in some areas of the administration that concerted efforts are required to up-root it. For any form of NBP to be effective in Nigeria, it must be introduced in *parallel* with the other recommendations suggested in this report.

THE PUBLIC PROCUREMENT COMMISSION (PPC)

Role of the Public Procurement Commission

16. There is a need for an independent regulatory body overseeing the numerous public entities engaging in procurement utilising public funds. The current situation is one of scattered and inadequate control and monitoring as these important tasks are left to bodies within the same entities that undertake the spending of public funds. In fact this is a system of self-control, and as it is shown in the benchmark above, this is not according to international standards of control and monitoring. Furthermore, the FR as the primary legislative instrument in this area display a complete lack of rules describing a specialised body handling matters of public procurement. This leaves both procuring entities and suppliers and contractors in a void concerning such important matters as detailed knowledge of the general procurement policies and the available paths of complaint in cases of abuse of power by procuring entities. The creation of an independent Public Procurement Commission can be the answer to such shortcomings, provided the Commission is equipped with adequate authority and an organisation and staff that command the respect of all parties involved.

17. With the power deriving from a specific procurement law as recommended on the basis of the UNCITRAL model law, the following tasks will be the main focus of the PPC

- Developing government **procurement policy** at a macro level and ensuring regular update of such policies consistent with the country's economic and technological development. The PPC will be the foremost advisor to the Government and the Parliament on matters of public procurement. Thereby the extensive knowledge gathered by the PPC as a result of its monitoring tasks will benefit the future legal initiatives concerning public procurement.
- **Monitoring** the public administration and the procurement environment in order to implement corrective measures when necessary. This can for example be in the area of publicising notices of tenders where monitoring the previous impact of notices will lead to the PPC initiating changes in the publicising requirements. As a result of the monitoring task the PPC shall be obliged to annually or more frequently publish a report with detailed description of the work carried out by the PPC in the past period including statistics regarding prices of tendered items.
- Acting as instrument of **administrative review** the PPC will be the second level of complaint for a supplier/contractor/consultant being subjected to malpractice in procurement proceedings. The path of complaint according to the proposed procurement law has three levels, the first being the entity responsible for the purchase, the second is the PPC applying the principles of transparency and non-discrimination set forth in the law, and the third level is the High Court where full legal guarantees are present. The PPC will define its own administrative procedures including the issue of written or verbal proceedings only. In the long term when the PPC has been able to exercise the necessary authority over the administration of procurement, the need for administrative review should decline as the procuring entities become aware that their own treatment of complaints will be overturned by the PPC if the regulations are not strictly adhered to.
- **Serving as a Regulator** with responsibilities that include the issuing and updating of regulations regarding thresholds for application of the procurement rules, usage of domestic preference, calculation of contract value and others mentioned in the proposed procurement law. As the PPC draws its authority from the law only areas defined in the law will be subject to regulations issued by the PPC. No administrative body has the authority to change or amend the law outside these defined areas. This is the sole prerogative of the Parliament as lawmakers.
- Providing **Coordination Services** to ensure that the government obtains **value for money** in the use of public funds by the use of best professional practices within public procurement by:
 - ◊ Developing best practice guides covering all areas of procurement
 - ◊ Developing standard tender documents
 - ◊ Facilitating bulk procurement among procuring entities to obtain the benefits of scale

- ◇ Undertaking research to implement useful procurement practices and market research to provide information to the government and the individual procuring entities on items and sources
- ◇ Developing procurement-related database management procedures and providing advice on database systems and information technology equipment
- ◇ Publishing major contract awards by procurement entities
- ◇ Developing policies for the professional procurement development of staff resources including adherence to proper ethical standards.
- ◇ Organizing training programs
- ◇ Ensuring professional procurement input into the contracting process by means of internal staff resources or the use of external consultants.

Members of the Public Procurement Commission

18. To ensure the independence and secure the public trust of the PPC it is of paramount importance that the PPC is staffed by reputable people with a high degree of integrity. Not only must the members of the PPC be beyond all conflict of interest, but it is also important that the members are actually perceived by the public as being without conflict of interest regarding matters brought before the PPC. The size and exact formation of the PPC is a matter that will need further study but it is recommended that the PPC be comprised of representatives from at least the following groups:

- **Legal professionals** from universities or independent lawyers appointed by the bar association.
- **Procurement professionals** appointed by the Nigeria procurement body(s)
- **Procurement professionals** appointed by the government and representing the procuring entities and the interests of the public administration.
- **Suppliers/Contractors** appointed by the Chambers of Commerce or other organisations representing private interests with due regard to possibility of conflict of interest.

To ensure the independence of the PPC from the public administration, which it oversees, the representatives appointed from the public administration or those who indirectly represent the interests of the government must always constitute a minority in the PPC. As the PPC will experience quite a workload especially in the transition phase where the principles of exercising the approval authority that rests with the PPC are to be defined, it is important that the PPC be equipped with a strong and qualified secretariat.

Establishing the Public Procurement Commission

19. While the proposed procurement law will contain the tools with which the PPC will exercise its control of the procurement environment, the actual formation of the PPC should be

done through an act of law by the Parliament. A supplementary law should address the issue of the position of the PPC within the public administration. For the PPC to maintain independence, the body to which it reports needs to be as independent as possible from the procuring entities. A number of options are available including reporting to: the Parliament, the Presidency, the Ministry of Finance, or the Anti-corruption Commission. It is recommended that the PPC reports directly to the Minister of Finance. The Procurement Workshop (**Annex 6**) raised a number of questions regarding whether the establishment of a PPC would be the appropriate way of addressing the problems identified. Opponents felt that the Commission may become draconian, as its structure may not easily lend itself to a Federal structure being practiced in Nigeria. They also said that the building of such a Commission will take a long time to put in place given current lack of capacity across the country. Besides, an anti-corruption bill has just been passed by the Parliament. Notwithstanding these arguments, the desirability for the Commission was so overwhelming that the participants agreed to adopt the recommendation. To this extent, the donor and Multilateral Agencies were urged to intensify their efforts to assist the Government in building procurement capacity in the country.

2. PROCUREMENT PROCEDURES AND PRACTICES

20. In this Chapter the most important issues relating to procurement procedures and practice are presented including recommendations for improvement. It covers issues such as registration lists and how they are used, methods of tendering actually used, the role of negotiation, how evaluation of tenders is being performed, bid opening, contract conditions, monitoring and budgeting.

Eligibility

21. The Registration Lists. In order to be eligible to bid at Federal, States and parastatals, it is a precondition to be registered at the Tender Board/Registration Board. The registration system is decentralised; every State has its own registration list and registration form, and larger parastatals may have their own lists. Other parastatals will use the list from the parent Ministry or State. At Federal level the central place for registration is the Ministry of Works. There are no binding countrywide guidelines describing the set-up and functioning of the system for registration. Registration is done upon request by submitting the required information described below and by paying the registration fee. Registration has to be renewed yearly together with payment of a fee. The registration is a standard form, which with variations contains information of the following nature:

- Name, address registration of company
- Name of Director, partners,
- CV of Directors and key staff
- Interest in other contracting firms or limited liability companies
- Capital
- List of plant and equipment owned
- References of major jobs carried out in past 5 years
- Certificate of Incorporation
- Memorandum & article of Association
- Tax clearance Certificate
- Reference letter from bank
- If agent, proof of appointment as agent
- VAT registration certificate
- Category, nature and value of contracts, which the company wishes to bid for.
- Interviews with the contractor if higher contract value category

22. A bidder/contractor can be disqualified (taken out of the list) for the following reasons (but not limited to) if the contractor/bidder:

- Fails to complete a contract satisfactorily.
- Sub-lets a contract without the permission of the Tender Board.
- Fails to renew registration after one year

Once registration is cancelled there are no clear rules for how the bidder can get back on the list again.

23. Nigeria is not the only country using registration lists for bidders as a prequalification criterion. Such systems are a concern to many because they are found to be part of the problems in relation to irregularities and collusion. In Nigeria the main concern is that despite the system's apparent objectivity (using standardised registration forms) it is used as a means of adding legitimacy to the process by claiming that the registration is based on objective criteria and has no influence on the selection of contractors. In reality the list is a powerful tool used to favour certain companies or persons. The current practice of bidder and supplier registration should be reviewed. In many countries the registration process itself has become a source of bribes and distortion, and there is evidence this is happening in Nigeria. In Nigeria, registration is used as a source of revenue to Government and also as basis for evaluation of the status as well as monitoring the performance of suppliers/contractors. There was extensive discussions between the Task Force and the Bank team regarding the use of registration lists as eligibility criterion for bidding. While agreeing that these lists should not be used as an eligibility criterion for International Competitive Bidding (ICB), the Task Force insisted that they should be used in all national competitive bidding (**Annex 7**). The Bank team recommends the use of these lists only for selective tendering. The process of registration and the use of the registration lists need to be reformed as recommended below.

Recommendation

Develop uniform process for registration of contractors/suppliers which includes qualification criteria. The list should be open to the public. Registration should not be used as a pre-qualification criterion for open competitive bidding. Bidding should be open to all qualified eligible bidders irrespective of their registration status. If need be, for every case, pre-qualification should be carried out in accordance with international standards to ensure that only qualified bidders submit bids.

Procurement Methods

24. As indicated in Benchmark 3 of the Legal Framework, the FR provides very little guidance to procuring entities in Nigeria on the methods to be used for each procurement. FR clause no. 3302 states: "*A contract should be awarded as a result of competition by tender, unless there are specific reasons to the contrary. This is the sole responsibility of the Accounting Officer*". Further the FR includes the following clause no. 3408: "*Where the implementation of a project is to be accelerated, selective or limited tender procedure may be used*". The procurement methods are not detailed further, leaving implementing agencies plenty of room for interpretation both in terms of use of procurement method and in terms of procurement process. Therefore, the current practice where individual assessment is used to determine what type of procurement method to apply is consistent with the FR. In 1998 The Federal Ministry of Finance

issued a Circular¹ stressing that Open Tendering and advertisement should be the main rule. This was followed by a Circular² issued on the 18th of August 1998 by the Presidency where Open Tendering was stated as the method for all contracts for construction, supply of equipment and other goods and services. However, there are no detailed guidelines spelling out how to live up to the requirement of competitiveness as stated in the FR and Open Tendering as stated in the Circulars. The Tender Boards are empowered to handle works (capital projects), services and goods. For works it is described that certain conditions must be fulfilled before a tendering process is initiated³. Apart from this requirement, there is no distinction between works, goods and services.

25. The general current practice in all implementing agencies is to use three different variations of tendering methods. The first method is *local shopping or direct placement*, the second is *selective tendering* where 3-5 contractors from the registration list will be asked to submit quotations. The third method is *open tendering* where an advertisement is placed in the local newspaper and all contractors registered in a certain category can submit tenders. In the States it is often the Permanent Secretary/Commissioner who decides the method of tendering for contracts >500,000 Naira. The general picture is that the methods used are determined by individual decisions rather than as a result of criteria or fixed principles.

Recommendation

In the short term, revise the FR to incorporate details of the various procurement methods and their application for goods, works and services. Once the new Procurement Law has been passed, new regulations dealing exclusively with procurement will be issued.

Negotiation

26. Furthermore, negotiation of contractual conditions will often take place. In some cases all conditions are open for negotiation. Contractors are asked to renew their price bids until the lowest bid is found or one contractor is contacted and informed that he will get the contract if a certain price is agreed. The timeframe for performing the work and size of advance payment can be negotiated and work can be added to the contract. When this common practise of negotiation is combined with the fact that method of tendering is individually decided and often not open, it is obvious that the system could easily be manipulated.

Advertisement

27. Timely and wide-spread notification of bidding opportunities is essential in competitive bidding. the timeliness is a requirement to ensure that the bidders get enough time to prepare their response. Further the aim of advertisement is to reach enough bidders to get the wanted competition, and to make the process open to both the public and interested bidders. In Nigeria

¹ Circular No. OAGF/PRS/323/Vol. 1/60 of 29th April, 1998

² SGF,11/S,1/T/2

³ FR clause 3303 states the conditions for initiating tender for constructions by defining what must be in place before the Tender Board can consider any construction work.

there are no clear rules determining *when* advertisement should be used. there is a general clause in the FR no. 3406⁴, but it is not precise enough to give any real guidance. The circular from 1998⁵ stresses the importance of using advertisement by referring to a circular⁶ from the ministry of finance. This circular still leaves it open to the implementing units to decide on whether and how advertising should be done. This practice, together with the fact that the official gazette is not published on regular basis leads to the following issues.

- Advertisement of tenders does not happen as a routine matter neither at State nor at Federal level.
- Advertisement is in some States and Ministries seldom used
- Advertisement is avoided because it is said to result in too many unqualified bids

Recommendation

Advertisement of tender possibilities should primarily be published in the Government Gazette. It should also be published in two widely circulating national daily newspapers. To take advantage of modern information and communications technology, advertisement should also be done on the INTERNET to the extent possible.

The PPC shall be empowered to regulate this activity fully. It will define requirements for local, country and international advertisement. The advertisement shall be issued 6 weeks before the deadline for submission of bids for goods and works, and one month for services. Contracts awards should also be published.

Standard Tender Documents

28. International procurement standards call for the use of standard procurement documents. Typically there are dossiers designed to match tendering for goods, works and services. This issue is not regulated in Nigeria at the moment. Standard bidding documents are generally not used although it has been seen that some parastatals and States have taken the initiative to develop such documents. Standard contracts are, however, developed and in use at both States and Federal levels including parastatals.

Recommendation

Develop standard procurement documents for goods works and services, following international standards.

⁴ FR clause 3406: "The media of publicity for tenders notices shall be the Gazette and/or the local press. In addition, notices shall be exhibited at the offices of the Ministry/Department concerned and such other public offices."

⁵ SGF, 11/S, 1/T/2

⁶ OAGF/PRS/323/Vol. 1/60

Bid opening procedures

29. World Bank and UNCITRAL standards define the time for bid opening to be the same time as for the deadline for bids submission. No bids can be accepted after the deadline. The time and place shall be announced in the bid documents. Bids shall be opened in public and bidders or their representatives shall be allowed to be present. The name of the bidder and the total amount for each bid shall be read aloud. Bid Opening is not regulated in Nigeria at the moment. In practice bid opening is performed in different variations. While in many cases bid opening is done in closed sessions, there now seems to be a tendency at both Federal and State levels for having public bid opening sessions in order to make the process more transparent.

Recommendation

All bids advertised will be opened in public at a designated place, date and time. Opening should immediately follow the closing of the bidding period to minimize the risks of bid tampering. Bidders or their representative should be invited to attend, and members of civil society or the press should not be excluded, if they wish to attend. These particulars will be included in the bidding documents.

Bid Evaluation

30. **Bid Evaluation Award Criteria:** Bid Evaluation is one of the most critical steps in the procurement process. Bidding documents should specify the relevant factors, in addition to price, to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated price. No criterion that has not been specified in the bidding documents should be used for evaluation. In Nigeria, bid evaluation and award criteria are not usually described in detail in the bidding documents. In general, the criteria are a combination of price and quality except for services where only quality is the criteria. Bank guidelines, as well as the UNCITRAL Model Law, allow a selection procedure for services that factors in price, in addition to quality. The common practice is that of negotiating all contracts, which completely goes against the principles of open and fair competition. Reference price and profit margins are usually used as a criteria for evaluation but the way these are applied is not made known to the bidders. As indicated below, the use of these evaluation criteria appears very non-transparent.

31. In many cases the implementing agency will have its own calculated price expectations (so called reference price) calculated by their own technical staff. This is in practice a very important *not open* criterion for award of contract since the reference price forms the basis of price comparison of the bids. Bidders, who are too far from the reference price either in the high or low end, for example +/- 10%, will be excluded. Previously bidder were *somehow* informed about the expected reference price and of course had no problems reaching the right level, which would lead to contract negotiation. Now it is understood that ministries might wait with the calculation of the reference price until just before the bid opening to avoid disclosure of the expected price.

32. For the profit margin, a criterion unknown to the bidders is set. For instance, the Federal Ministry of Agriculture uses a profit margin of around 15%. The profit margin criterion is used to calculate the profit margin of each bid and based on this the implementing agency determines whether the price is too low or too high. It is the general perception that a low price is an indicator of low quality of goods or works and not a result of competition.

33. Some new initiatives are under way to prepare guidelines on acceptable profit margins that will be based on contract size. These guidelines will not exclude very low bids but set a limit for how much profit is acceptable compared with the expected price calculations.

Recommendation.

Bid evaluation criteria should be clearly defined in the bidding documents. Negotiations of contracts in an open competitive tender should be discontinued immediately. Awards should be purely based on criteria defined in the bidding documents. Profit margins and reference prices shall not be allowed as evaluation criteria.

34. **Bid Evaluation Process:** There are no specific instructions on how bid evaluation should be organized and carried out. Evaluation can be done by the Secretary to the Tender Board, a Sub-Committee to the Tender Board, technical experts or the implementing ministry or department. **There are also no provisions to guard against conflict of interest** of the evaluation committee. Thus, a member of the evaluation committee could have very close connections with a bidder, for example a family member, but that member would participate in the evaluation just like any other member.

Recommendation.

(a) Evaluation committees should be set as the basic unit for evaluating all bids. An evaluation committee is appointed ad hoc for every contract. Such a committee could be composed of a chairman a secretary and 2-5 members depending on the complexity of the contract. The members can be a combination of technical experts, if such has been used for preparation of technical specification it shall be the same persons, and civil servants from the Ministry buying the goods/services or works. The chairman could be Tender Board member or a professional from the project agency who must be responsible for formalities in the process including development of the evaluation format and the weights, which must be discussed and agreed with the committee members before commencing the bid evaluation process. The Secretary would prepare the evaluation report, which will be signed by all members.

(b) Members of Evaluation Committees, tender boards and approval authorities should be obliged to declare any conflict of interest and exclude themselves from bid evaluation and approval process.

Payment, Interest and Security

35. Normally, Conditions for payment, advance payment and guarantee for advance payment, bid security, and penalty for late payments are normally regulated in the standard contracts used in international bidding. In Nigeria payment procedures are partly regulated by the FR but enforcement has been a major problem. Advance payments have been impossible to recover from defaulting contractors because such contractors use bid securities issued by insurance companies. The experience has been that such securities have been impossible to collect. Payments to contractors are normally delayed but the FR have no provision for interest payments for delayed payments. To safeguard against this, bidders offer prices which are much higher than they would otherwise offer.

Recommendation.

Stop accepting bid bonds and advance payment security bonds from insurance companies and only accept those issued by reputable Banks. Develop standard contracts for service, goods and works where these issues are regulated according to normal international standards. This will make issues like size of advance payments a non-negotiable issue, provision for interest payments to contractors will be introduced, and liquidated damages will be included. Advance payments should be limited to a maximum of 20% of contract price.

Monitoring and Contract Management

36. Contract Monitoring can be described as a systematic method of checking whether activities and outputs comply with the contract signed. It is a process of assessing whether the contracted works/goods/services are being implemented/delivered efficiently and effectively in accordance with the contract conditions. The financial monitoring must ensure financial control of the contract by checking proof and eligibility of expenditure together with a strict compliance with the payment schedule. In Nigeria the monitoring practice depends on the type of contract and on locally developed routines. It is normally a co-ordination effort between the Ministry of Economic Planning and Budgeting and a Project Manager appointed by the Ministry implementing the project, but there are no standardised guidelines for the reporting system.

37. The monitoring system is by many described as a well functioning system. However, it is a known fact that many capital projects are implemented by using lower quality of materials than contracted. As a capital project develops or as goods are delivered a certificate will be signed by the Buyer as proof of delivery/progress. The signed certificate is a condition for partial or total payment. This means that a contractor cannot receive payment without a representative of the Buyer certifying the delivered goods or the work. It is believed that during this process, unscrupulous actions take place in the form of approval of low quality work in return for bribes. There are strong indications from representatives from the private sector and from persons from within the civil service that the monitoring system is weak and in fact ridden with corruption. The conclusion is that contrary to what is said by many, the monitoring system is weak and full of loopholes.

38. Furthermore, the Federal Government owes significant amounts to contractors who have partially or fully completed projects. The current budgetary system (paragraph 39) was cited as one of the major problems in the procurement process.

Recommendations

(a) Develop a handbook for monitoring services, goods and works. The handbook shall build on best practice and guide contract managers through the job in a systematic and professional manner. The handbook must be designed to suit the existing organisation to enable easy application. It must deal with both financial and technical issues its development must be linked to the implementation of the new procurement law and the requirements derived from this.

(b) For larger contracts, include as a condition for final payment, that an external expert together with the employer's representative co-sign the certificate releasing final payment. In a construction project the external expert can be an engineer who is asked to check that basic quality and quantity is fulfilled by the contractor according to the contract. The external expert shall be nominated by a professional organisation and appointed by the Government. The appointment will be done immediately before the inspection to avoid collusion between the expert and the contractor.

(c) Strengthen the monitoring system by developing adequate sanctions which must be well known to both contractors and implementing agencies.

Budgeting

39. The CPAR focuses on the link between budgeting/planning and public procurement and the degree to which this link is well co-ordinated. In the past, budgeting was seen as a mere academic exercise, not a tool by which the Management could assess and control recurrent and capital costs. Budget estimates prepared by Departments/Ministries are just wish lists which the Department/Ministry would like to implement in the next financial year, if resources are available. The estimates showing the expected cost for a project are, when included in the budget, not based on thorough calculated cost estimates or feasibility studies. This often leads to a subsequent need for higher amounts to complete the project.

40. Due to changes in available funds during the financial year the work programme and budget is adjusted on a quarterly basis. This leads to new quarterly prioritisation in the Department/Ministry and both ongoing projects and planned projects can be affected by being postponed or dropped. Payments depend on cash flow and release of available funds as the project develops. When funds are not available and payments not made, the contractor would often stop working and delays or total abandonment of projects is not uncommon. In the case of purchase of supplies it is sometimes necessary for the purchasing unit to save up the released funds during several months before enough cash is available for the purchase. Furthermore,

capital projects are often revised during implementation. The revision will at times result in changes in the contractual basis such as changing the scope by additional work or changing the cost level due to higher prices for materials or labour. This revision often leads to a significant higher total cost than expected at the time of budgeting and planning. The FR do not give guidelines for contract extensions. They also have no guidelines on when and how price variation should be determined. As a result, contracts documents have also not got provisions for contract extensions. The lack of such guidelines often leads to unnecessary contract extensions and expenditure.

41. Delay in payments is considered by private contractors as one of the most serious problems in contract implementation. The lack of payments or delayed payments from the Governments side is more the rule than the exception. Due to the current budgetary system where funds may not be released at the time they are required to pay for ongoing contracts, contractors are not being paid in time leading to cost increases and delayed project completion. Delayed payments are costly to the contractor who has already incurred expenses in executing the contract. He/she is likely to offset these costs either by allowing for them in the initial bid or through reduced quality of work. The lack of adequate funds is often used by unscrupulous individuals to solicit bribes from contractors who are desperate to be paid in time.

Recommendations

(a) Develop and use procurement plans to determine the requirement of funds for various Government Agencies at different quarters during the fiscal year. Procurement Plans would spell out the timing for different procurement actions and hence the funding requirements at different stages. Release of funds on the basis of realistic approved procurement plans would go a long way towards alleviating the current problems. Project funds should never be released without up-dated procurement plans.

(b) Contract variations should be done only under very exceptional circumstances. When this is absolutely necessary, approval must be obtained from the appropriate tender board. The method for determining price variation during contract execution must be incorporated in the contract. The formula method is recommended rather than the method of documentary evidence.

Appeal System

42. There is no special independent system where a bidder can formally file a complaint regarding irregularities or fraudulent activity in the tendering process. Complaints can be filed directly to the relevant implementing agency or to the Minister, Governor etc. However, almost all involved parties consider complaining as an extremely bad strategy if a contractor wants to get contracts in the future. In reality no contractor ever complains. In the absence of an appeal system the court system could be a possibility. However, besides being slow, the court system itself it is not always trusted to be fair and impartial. A Public Complaints Commission does exist but it does not appear to be very effective.

Recommendation on Appeal System

The new Independent PPC shall, as one of its functions, receive and process complaints related to public procurement.

Recording Keeping

43. A basic principle in public procurement is *recording of the process*. Recording is a precondition for establishing accountability for the process. Filing is required of the whole procurement process including advertisement, bid documents, correspondence with bidders, minutes of bid opening, evaluation reports, negotiations, contracts, minutes from meetings etc. These should be available for inspection by the oversight body and the Auditor General. Filing systems do exist in Nigeria, however, the quality varies a lot from Department/Ministry to Department/Ministry. It was observed that the staff employed for filing duties have not had training in record management. There also appears to be a shortage of filing facilities such as filing cabinets, binders, etc., which means that at times files have to be stacked together in big piles, making access to and maintenance of records very difficult. The filing problem is aggravated by the lack of archiving policy.

Recommendations

- (a) Review the effectiveness of the current procurement filing system in all public entities to ensure transparency and accountability according to international best practice. Include record management as part of basic procurement training program.
- (b) If a new filing system is not feasible as a short-term recommendation another solution aimed at public procurement must be developed. This can be as a description of minimum requirements for a paper based filing system, which can document the procurement process and ensure accountability according to international standards.
- (c) Filing systems and accountability shall be included as part of the basic training of the procurement professionals to ensure capacity on how to establish and maintain the filing system. Further it must be ensured that necessary funds are available for the filing and documentation process. It must be possible for the procurement professionals to have access to copy facilities, paper, ring binders, filing cabinet etc.
- (d) An archiving system should be established.

3. ORGANIZATION AND RESOURCES

The organizational set-ups of Tender Boards in terms of their organizational environment, membership and procurement capacity is presented in the following paragraphs. Further, the future organizational set-up of these Boards is recommended.

Tender Boards Organisation

44. Chapter 34 of the FR, deals with the set up of Tender Boards (TBs) but in a very limited way. The organisational set-up is one of the few issues, which have been regulated by designating Tender Boards (TBs) as the unit "*empowered to deal with contracts for works, services, purchases etc*"⁷. The FR describes the number of TBs, where they belong in the organisation, the composition of the TB members and the size of contract each TB deals with.⁸ Effectively, there are three levels of tender boards: departmental, ministerial and federal. Although the States have their own regulations, in practice they generally follow the same organisational set-up as described in the FR.⁹ The Local Governments also have TBs, their larger contracts are referred to the State. Similarly, Parastatals have their own TBs but contracts over a certain size are in some cases referred to the Ministry or the State as the case may be.

Tender Board Members

45. The composition of TB members at Federal Level is regulated in the FR clause 3402. Politically appointed Civil Servants (Ministers at Federal level and Commissioners at State level) and elected politicians will in most cases have a final decision making role in relation to the final award of contracts. At the Federal level, it is the Federal Executive Council (basically all the Ministers) who, as a joint group, approves the award of all contracts greater than Naira 50 million (Approximately US\$500,000). At State level, the Commissioners and the Governors play an important role in approval of almost all contracts.

Tender Board Practice

46. The TBs are only approval bodies. The technical and process aspects of tendering are managed by the implementing agencies including: development of technical specifications, price calculations, market surveys and evaluation of bids. The technical staff are co-opted to attend TBs meetings as the need arises. A secretariat is normally attached to the TB, often with a full time secretary, who on a daily basis co-ordinates meetings and activities.

⁷ FR 3403

⁸ (Please refer to Annex 2 where an overview of TB is presented including organisation, members and approval thresholds).

⁹ The State FR has not been updated since 1968. It is understood that the States are waiting for the result of the ongoing revision of the FR. The States intend using the FR as a basis for revision of their own FR.

Parastatals and Procurement Practice

47. For many years the Federal parastatals existed without Boards of Directors. Approval of tendering went directly from the Parastatal TBs to the Minister in the parent Ministry. Parastatals generally follow the same practice as Ministries at Federal and State level and Boards of Directors have been re-established. Parastatals vary considerably in size and importance in the public procurement activity.

Thresholds

48. As described in Annex 3 the TBs have different thresholds within which they operate. At Federal level these are regulated by Clause 3403 in the FR. The thresholds for the Federal, Lagos, Kaduna, and Zamfara are presented in Annex 2. For example, a Departmental Tender Board is empowered to approve any contract valued over Naira 500,000.00 but not more than N1,000,000.00. The Federal Government has recently decided that all contracts greater than Naira 5 million shall be referred to the Executive Council for approval. This has been done in recognition of the weak public procurement system existing at the moment. There is a need for revision of the thresholds as they are now considered to be too low. There is no adjustment mechanism (inflation/price index for example) in the current legislation that ensures regular adjustments to compensate for inflation. This undermines the authorisation of the TBs.

Recommendation

(a) Tender Boards should be retained but should be better organized and streamlined to function more efficiently, independently and professionally. Members should be drawn on professional basis ensuring that procurement, finance and legal are represented.

(b) A formal Procurement Unit (PU) staffed with procurement professionals need to be established in each Ministry to support the work of the TB.

Tender Boards and Professional Procurement Units

49. Not all countries have TBs or PUs as their basic organisational set-up for public procurement. Denmark is a good example of this. In Denmark international EU Procurement Standards are followed for public procurement. However, when it comes to the organisational set-up there are no requirements in Danish law for Ministries to set up special professional units or appoint persons with certain qualifications to handle public procurement. This more and more often results in the need to hire external consultants, because the growing number of international bidding procedures requires specialist know-how. So even in a country where the level of education of the civil servants and the basic organisation of the public sector is both well functioning and developed there is a growing need for capacity building and for strengthening the organisational support of public procurement. The reasons for the development are among

others increased international trade and international competition both for the private and the public sector.

50. There is no doubt that Nigeria needs strengthening of both the organisational set-up and of the procurement capacity. The country's current efforts to eradicate corruption, improve international relations and trade, and the need for reform of the legal framework and practice all make it necessary to consider carefully how the organisational set-up can be strengthened. The fact that TBs already exist as a well-known concept makes it easy to build on this deep-rooted way of organising procurement. There is though a strong need for streamlining the organisation to make it more efficient and more transparent. There is also a strong need for improving the practice and the documentation of the procurement process. Both needs can be addressed firstly by strengthening and reforming the TBs, and secondly by establishing a professional staffed PU to support the TB in its role of considering and approving contracts.

51. Furthermore, there is a need for capacity building regardless of whether new procurement rules are implemented or not. A new procurement law building on International Standards will of course enhance the training needs. Organising the daily work around PUs and TBs will actually make it easier to create continuity in capacity building because the training can be targeted at persons working full time with these functions or at persons who have a clear decision making role. Experience is a vital part of capacity building.

52. Currently, the procurement function is not generally performed by professionally qualified staff. Although there is a shortage of such staff in the public service, even the few available are not properly utilized. There is a tendency to believe that the procurement function can be performed by anybody and hence the procurement profession is held in low esteem. Their functions are usurped and their opinions are not sought. Consequently, procurement specialists have not received much training over the years. There is a need to raise the professional standing of procurement staff, and their skills.

Recommendations on PU

(a) TBs should be kept as the responsible units for considering and approving contracts and TB members should be persons who are not part of the political system. All TB members should be trained in basic procurement rules.

(b) To support the TB's decision making role, every TB shall have a PU established to support it. The PU shall be staffed with procurement professionals who are given the needed support in terms of training, guidelines, legal framework, clear delegation of responsibility etc. The PU will be responsible for the process aspects of procurement including:

- general co-ordination within the ministry;
- organising development of technical specifications;
- preparation of bid documents;
- organisation of advertisement;
- Issuing bid documents;
- Organisation of communication with bidders;
- Organisation of bid receipt and keeping bids till opening date;
- arranging public bid opening sessions;
- participating in bid evaluation as determined by the TB;
- preparing evaluation reports;
- preparing draft contracts;
- presenting the result of a tendering procedure to the TB for approval;
- arranging for contract signature;
- managing the procurement process during contract execution; and
- maintaining appropriate records for the whole procurement process.

Special technical specialists will be used in relation to development of technical specifications.

The Number of Tender Boards

53. Tender Boards are an important part of the organizational set-up of the public procurement system at both federal, state, local government and parastatals. There is a proliferation of these tender boards which are seen by the private sector as a source of delays and non-transparency. In addition, these tender boards appear to have a limited mandate with power to decide contracts *de facto* resting with the Permanent Secretary and the Minister/Commissioner. To develop TBs and the PUs into professional procurement bodies the PUs supporting the TB shall have minimum 3-5 members working full time to maintain continuity. Departmental TBs do not seem to have enough activity to support a PU of its own. In addition, the existence of Departmental TBs is a source of duplication and large diseconomies in the procurement process. For example in the same Ministry each department would be buying small quantities of stationary at unit prices much higher than those that could be negotiated if the ministerial requirements were combined. The same can be said of the entire Government but the organisation at this level would be too difficult at this time. It is therefore suggested that the

activities of the Departmental TBs be taken over by the Ministerial TB. This should lead to reduction in prices due to economies of scale. Each Ministry would also optimise on the use of the few available procurement professionals in the Ministry. If the activities of the Departmental TBs are taken over by the Ministerial Tender Board then the approval thresholds for the Permanent Secretary/or Head of Department will need to be adjusted.

54. The members of the Federal TB are Ministers who due to their political role shall not and cannot be expected to deal with details in procurement procedures. It is therefore considered that the Federal Tender Board does not add value to the procurement process. High level politicians such as Governors, Ministers and Commissioners should use their valuable time for major policy and strategic issues rather than approving contract awards. Elected officials are responsible for allocation of resources but the mechanics of spending these resources should follow laid down procurement regulations and procedures. Since budgetary resources are allocated to individual Ministries, the responsibility to manage these resources should be left to the Ministry concerned. The role of the Federal Tender Board could therefore be taken over by the Ministerial Tender Board. Once the changes to the law have been made, regulations issued, standard documentation prepared and the oversight body created, contract award approval will amount to an administrative process which can be executed as a matter of routine. There will be clear rules for engagement. What will be most critical is to conduct regular audits to ensure that the resources have been utilized properly, procedures have been followed, and the Government is getting good value for money.

Legitimacy in the Procurement Process

55. As stated above, politicians should devote their valuable time on policy and strategic issues and not actual procurement. Politicians are responsible for prioritisation of investments. Many countries, including the least corrupt country in the World, Denmark, do not involve politicians in the procurement process. The political level is not authorised to be involved in the final process of selecting suppliers or contractors and awarding contracts; and they would not want to be part of this process, because it places them in a questionable position in the public opinion. The politicians will have lots of political and technical discussions before they determine how funds shall be allocated. However, once a project is defined and funding in place, they will leave the details of procurement to the technicians.

56. Politicians in Nigeria would argue that it is their responsibility to safeguard public resources by ensuring that corruption is minimised in the procurement process. However, what is most critical is to build legitimacy in the procurement process through appropriate legislation and regulations and not direct involvement in the procurement process. This legitimacy is very important for both civil servants and the politicians because they, in the end, need to be able to work in a system where the public has faith in what is going on and where they can account for their dispositions. Denmark is considered to be one of the least corrupt countries in the world and many would say that this is mostly explained by deep-rooted culture of trust in the public administration. But even so, it is still necessary also in Denmark to have structural and procedural safeguards, which give legitimacy to those involved, both civil servants and the elected politicians. Administrative means of supporting the need for legitimacy include audit

functions and open administration, where in the public interest access to information in the administration is possible according to special law. The point is that the use of these tools does not imply distrust in the integrity of the persons involved. On the contrary, the tools are applied to benefit all the persons involved, because they allow them to work in an environment perceived as legitimate. In the current system, approval of all major contracts is done by Ministers, Governors and Commissioners. This may be quite appropriate at this time because the legal and regulatory framework is very weak. However, after implementing the proposed reforms it is the view of the Bank team that this may no longer be appropriate. Once a law on public procurement has been enacted and regulations, manuals and standard bidding documents issued, carrying out public procurement including contract awards will clearly be an administrative function the mechanics of which should be disengaged from the executive. Currently, high level politicians such as Governors, Ministers and Commissioners are operationally involved in the procurement process. However, under the reformed procurement system, high level politicians should maintain their overall managerial oversight responsibilities while leaving administrative and operational matters (including procurement) to the civil servants. The benefits inherent in this arrangement are that (i) it clearly delineates responsibility for administrative decisions and actions and puts these in the hands of the professional civil service and (ii) it makes the professional civil servants accountable for their actions under the general responsibilities and oversight of politicians. This is an area where the opinion of the Bank team differs from that of the Task Force (**Annex 7**). The Task Force's view is that the Ministers, Governors and Commissioners should remain the approving authorities so as to ensure transparency and accountability, even after reforming the procurement system.

Recommendation

- Departmental tender boards should be abolished and thresholds for approval by the Permanent Secretary and Departmental Heads revised. The rationale for this is to avoid duplication and to take advantage of reduction in unit prices for bulk purchases when done at ministerial level. The Federal Tender Board should also be abolished and its functions assumed by the Ministerial Tender Board.
- The Ministerial Tender Board should be chaired by the Permanent Secretary and be composed of senior procurement, financial management and other technical specialists (such as lawyers and engineers). The tender board should be given the powers to make final approval of all tenders for that ministry.
- The Executive Council should not be involved in the procurement process.
- Contracts issued by parastatals which are fully autonomous should be approved by their Board of Directors upon recommendation of tender boards, utilizing best practice procedures based on the model law.

TRAINING

Current Practice

57. Currently, the training offered to civil servants in public procurement procedures is generally far less than needed due to lack of funding. There is plenty of scope for improvement of the capacity and almost everybody interviewed during the study was not satisfied with the amount of training received. Implementation of the proposed procurement reforms is expected to generate great demand for training over and above the pent-up demand that is already existing. Training for the reform program will not only cover the rules and regulations, it will also involve changes in ethical and cultural ways of doing procurement. Future procurement training will also include anti-corruption measures. All these will require a lot of resources.

58. There are very few training institutions with procurement as part of their curriculum. Part of the capacity building exercise in the reform program will be to introduce procurement as a subject in more training institutions of higher learning. The Institute of Purchase Management and Supply (IPMS) has for many years provided training in public procurement. It will be natural to build on the already existing experience in the IPMS. The need for a certification system for procurement cadres built on an extensive training program was discussed and agreed during the study. To ensure the right quality and quantity of training, the process must start with training needs analysis as basis for development of the training program.

59. Training must deal with two main issues. The first issue is capacity building focusing on how to administer the new rules and regulations. The second issue is the change in ethics and values, which essentially is a cultural change for the individual and the organisations. Both elements are important in relation to an overall anti-corruption strategy. Training can also be used for building networks between the procurement professionals across ministries. If networking is made part of the training program it will support the trainees and strengthen the process. The training programme can include incentives like study tours if it is found to give value for money. It can also include incentives like providing computers for the PUs and specially the PU members who follow the training programme.¹⁰

60. Technical experts are often used for development of technical specifications and evaluation of the bids. It is therefore important to target training specifically at these experts. Although they will not have to be procurement specialists, since the process is handled by the PU staff, the technical experts must know why high quality of technical specifications is important in the procurement process. They should also be trained on the various regulations that affect them such as conflict of interest and communication between bidders and the Client during the bidding process especially during the bid evaluation process.

¹⁰ The following is an idea: Provide one computer with email and Internet access (and one small printer if printing is not assessable) for the first 100 procurement professionals who obtains certification following the new system Or done in another way, for example: Provide one computer to each TB (federal and State) established after the new requirements, if the TB has enrolled minimum one person in the new certification programme.

The Role of PPC in Training

61. The PPC will be responsible for development and updating of a user-friendly procurement manual based on the new law and regulations. The manual must contain the rules for public procurement of works, goods and services. The manual shall include all standard dossiers needed both in paper and in electronic form. The manual will explain, by using a best practice approach, the whole tendering process including thresholds in easy to read schematic form, how to work with the standard documents, approvals needed, the evaluation process and a step by step approach from planning to the final payment - the whole procurement cycle. As a medium strategy, the PPC will establish a helpdesk service for example via e-mail or phone and a homepage on the Internet, where all documents and guidelines from the procurement manual can be found. It may not be possible to implement this immediately due to lack of technology.

Recommendation

1. Develop professional standards for procurement cadres, through a certification system.
2. Develop training program and training materials leading to certifications as cadre.
The training material must build on the procurement manual developed by the PPC.
3. The IPSM is commended for providing the sort of procurement training that is desired and the Government needs to support the Institute as much as possible. To this effect, the Government needs to look into IPSM's efforts to be legally established and recognized as a professional body. More organizations providing this sort of training, such as the polytechnics, are needed to satisfy the training needs of staff at Federal, States and Local Government levels. Such agencies should operate in a network to share experiences and optimize the benefits of cooperation.
4. The general, systematic and continuous on-the-job training for all civil servants should be considered alongside the specialized training of procurement experts.
5. Since decisions on procurement are made by multiple layers of administrative officers, procurement training needs to be broadly conceived to benefit such officers as well.
6. The high cost of training and capacity building, which the proposed reforms entail, should be weighed against the benefits of enhanced capacity and reduction in corrupt practices.

DEVELOPMENT OF COMMUNICATION STRATEGY

Communication Strategy

62. A public awareness must be created in relation to implementation of these procurement reforms. The procurement reform will constitute major changes in the legal framework and in procurement practice. This must be communicated to the public explaining why it has been done, and what effect it will have on the society in general and on specific groups in particular. The overall target groups can be defined as:

- The political environment
- The civil servants in the public administration at the federal level, states and parastatals levels
- The public at large/communities
- Different key players: Organisations representing the private sector, NGOs, training institutions, professional organisations for lawyers, engineers, accountants etc.
- The media

The above stakeholders will all be involved in the actualisation of the proposed reforms.

63. The communication strategy must include different means of addressing the target groups mentioned above by using different means of communication such as:

- information material, leaflets, posters etc.
- information meetings for private contractors
- articles in newspapers and magazines
- radio and television
- formal training
- Internet Homepage etc.

The Press

64. The role of the press on information flows will have to be carefully analysed and handled. On one hand, the press can be seen as the watchdog always on the lookout on behalf of the public, flagging problems and supporting the good intentions behind the reform program. On the other hand, the press can play a negative role. The press has therefore got to be sensitised on the benefits of the reforms through appropriate communication channels.

Recommendation

(a) To support information build on facts, the press should be informed about the reforms by sending out factual material, which explains how and why. Training courses could also be offered to journalists on international procurement principles

including why this is important and where the major problems in Nigeria are when compared to international standards. This will give the journalists basic information, which can prevent stories building on factual misunderstandings.

(b) Part of the communication strategy could be to create forums for key players to discuss the reforms. This can be done in conferences, newsletters etc. The aim is to create an internally driven dialogue, which supports the reform on an ongoing basis and also raises questions if the reform is not kept on track. This could strongly support the initiatives in the reform programme strongly.

CIVIL SERVANTS AND CONDITIONS OF EMPLOYMENT

Salary

65. It is part of the CPAR to compare the remuneration of “procurement professionals” with that of other technical specialists in the public and private sectors. Salary levels for civil servants are generally lower than those in the private sector. Salaries are often not enough to support a family with basic needs and there is therefore a need for supplementing incomes. This is given as one of the reasons for regular absenteeism by some civil servants. It is believed that these absentees spend their time undertaking activities that earn them additional incomes, although this is generally not sanctioned by civil service regulations. Low salaries are believed to be one of the main reasons for fraudulent activity and mismanagement of public funds. While Civil Service Rules paragraphs 04307, 04428 and 04429 clearly forbid this kind of absenteeism enforcement of sanctions by Government departments and agencies have neither been strict nor even. The culture of observing rules and regulations has been deeply eroded in the civil service mostly as a result of many years of military rule.

66. Salaries and benefits of procurement specialists in the public sector compare well with other professionals in the civil service but they are not adequate for basic living and they are much lower than the private sector, in the order of 50% lower. The lack of efficiency and poor morale of staff are attributed mainly to low salary. In addition, pension benefits are completely inadequate. The existing salary structure is presented in **Annex 3**. It consists of grade levels from 01 - 17 (no grade 11). Every grade level has a number of steps from 1 to 15. Promotion is needed to go from one grade level to the next¹¹.

The promotion system

67. The promotion system is based on multiple criteria which include merit, seniority vacancy etc. Merit is particularly emphasised especially since the assumption of office by the present Administration whereby written tests carry greater weights than all other criteria put together for promotion exercise. A quota system is part of the promotion and employment system and this is seen by some as an obstacle for a real merit based promotion system. The

¹¹ Annex 6 with salary scale

promotion system as it works right now does not seem to be transparent to the individual civil servant. This means that it is not clear to the individual what is good performance and what is bad performance. A clearer code of conduct is needed to give civil servants guidance regarding what is expected of them in their daily performance. A system where responsibility and accountability goes hand in hand will make it possible to reward and enforce sanctions if quality or accountability is not satisfactory.

Recommendation

A civil service reform is needed to restore an acceptable formal pay level for civil servants in order to improve efficiency and reduce malpractice.

4. PERFORMANCE ON WORLD BANK FUNDED PROJECTS

Recent Procurement Audit

68. A procurement audit was conducted by the Bank on 6 selected projects (3 in the Agriculture sector) in different implementing agencies: (i) National Water Rehabilitation Project; (ii) Oyo State Urban Project; (iii) Primary Education Project; (iv) National Agricultural Research Project; (v) National Fadama Development Project; and (vi) National Agricultural Technology Support Project. The following were the findings:

Procurement Planning

- There is lack of appropriate procurement planning leading to uneconomic procurement. Procurement planning of goods, works and services required for the project and the subsequent monitoring of procurement according to the plan did not exist.

Procurement Methods

- Procurement methods used were many times inconsistent with those stipulated in the Loan Agreement. For instance contracts which should have been awarded on the basis of ICB were awarded through NCB and contracts which should have been awarded on the basis of ICB/NCB were awarded on the basis of International/National Shopping. In the Agriculture Sector the use of International Shopping was particularly abused leading to contracts in excess of US\$28.0 million being awarded through this method instead of ICB.
- Even in those cases where the Loan Agreement permitted the use of Shopping procedures, these procedures were not followed and there was serious lack of transparency in the choice of firms selected under shopping procedures leading to uneconomic procurement and unacceptable practices.
- Wrong packaging of contracts for supply and works leading to uneconomic procurement. Contract packaging has not been done in a professional way and contains a mixed bag of goods and works.

Prequalification

- Non-observance of the requirement relating to prequalification of bidders for works contracts specified in the Bank's Loan agreements leading to the selection of non-qualified contractors. Problems relating to contractor's capability and endemic delays in completion of works are manifestations of this deficient practice.

Preshipment

- Absence of appropriate provisions relating to Pre-shipment Inspection and Manufacturer's Warranty in the bidding documents resulting in costlier procurement. In all cases of IS/NS procurement, there was no requirement by the Purchaser, either in the contract or through a provision in the Letter of Credit, as to "pre-shipment inspection certificate"

Consulting Services

- There were definite weaknesses in the processing and managing of consulting services contracts, proper procedures were not followed.
- Quality of proposal evaluation is generally poor. It was observed that many evaluation reports contain discrepancies and are not consistent with principles of transparency and competition.

Monitoring and Contract Management

- Contract Management is generally poor leading to delays in project completion, poor quality and more costly contracts. In most cases liquidated damages are not collected and no penalties are imposed on delinquent contractors.
- Monitoring of procurement in Bank financed projects by the Government was generally poor because of over-reliance on project staff and Bank supervision.

Record Keeping

- The overall state of “filing and documentation” and “contract documentation” is not satisfactory. Specifically, documentation for assets acquired under the project are particularly weak.

Bank Financed Projects - Recommendations

- At the design stage, focus on decentralization of project implementation and procurement to the State Level/End User Institutes with a need for appropriate monitoring and coordination mechanism at Federal level. Specifically, beneficiary communities should be involved in the design and implementation of projects.
- Structure and quantify realistic levels of monetary contributions by Government and communities (if applicable) to avoid delays in obtaining counterpart funds during implementation.
- Implement procurement for Bank financed projects within the framework of existing structures and such procurement to be subject to the same hierarchy of Government approvals in accordance with the Loan/Credit Agreement.
- Pay more attention to procurement during supervision missions. The Government and the Bank to devote more resources in monitoring procurement.
- Insist on preparation of detailed procurement plans with details of the contract bid packages, the method of procurement, the timing of contract etc. The Plan must be reviewed and updated at least once every year by the PIU in association with the Bank.
- At the beginning of the project, assess Capacity Requirements (including to carry out ICB in a professional manner), and fill the gaps between needs and availability, through outsourcing, training, and possibly recruitment. The use of professional Procurement Agents and Custom clearance agents should be considered as necessary.
- Provide procurement training to all project staff before project starts and periodically during implementation. This training to include, besides procurement staff, project managers and financial controllers in training Institutes such as in (GIMPA) (Accra) and ESAMI (Arusha). Bank to organize one week courses in Nigeria also.
- Focus on post-contract award. Contract management capacity must be beefed up, adequate information must be provided to the end users on details of procurement such as warranties and availability of after sale service, pre-shipment and pre-delivery inspection that protect the purchaser and should be used systematically.
- Enforce adequate record keeping, and periodic reporting in Bank financed projects.
- Carry out regular procurement audits. In addition to the financial audits, auditors should be asked to look systematically into procurement activities, contract management, and carry out end use verifications, as a minimum on an annual basis.

5. PRIVATE SECTOR PROCUREMENT

Introduction

69. This chapter presents the findings and recommendations regarding the private sector in Nigeria. The findings and recommendations are presented in two main sections. The first concern procurement practices in the private sector in Nigeria and the second elaborate upon customs and trade regulations, procedures and practices. The findings have not provided any input from the procurement procedures and practices in the private sector that can enhance effectiveness in public sector procurement.

The Private Sector in Nigeria

70. Information and data on the size and structure of the private sector are scarce¹². To some extent the size and structure of the actual sectors can be determined but it is not possible to be very specific on split between private and public involvement in each sector. The agricultural sector accounted for about 36% of Nigeria's GDP in 1998 and provides a living for almost two-thirds of the population. It is predominantly composed of small subsistence farmers with only a small number of commercial farms. The manufacturing sector is not substantial, contributing only 7% of the GDP in 1998. Exploitation of solid minerals contribute only 0.3% of the GDP despite considerable abundance of deposits. The upstream oil industry is by far the most important sector of the Nigerian economy to an extent where the Nigerian economy can be regarded as mono-cultural. This sector accounts for about 95% of all Nigerian export and provides more than 80% of the Federal Governments revenues. NNPC dominate the industry, although there is international private sector involvement, primarily through Shell Nigeria. Shell International is, however, a minority partner in this company where the Nigerian Government owns 51% of the equity. The downstream oil industry is also under control of NNPC, which owns the four refineries and is a significant shareholder in all marketing companies. Lack of money and widespread corruption have, however, contributed to a state of disrepair of the downstream infrastructure and caused the Government to consider deregulation. A recent report recommends a partial take over of operations by private companies on a management contract basis.

71. The informal sector – private by definition – is of immense significance in Nigeria accounting for about 70% of all economic activities and employing about 60% of the work force. Finally, an important characteristic of the organised private sector in Nigeria seems to be that the majority of activities are directed towards performing contracts in terms of goods, works and services for the public sector (Federal, State and Parastatals). Hence, besides importation and trading of consumer goods procurement activities within the private sector are quite limited.

¹² Information so far is available from the WTO Trade Policy Review (1998), Report of the Vision 2010 Committee (1997, most WTO information stems from this report), Country Assessment Report Nigeria EIU and CBN.

**Table 2 - GDP at 1984 Factor Cost: Contribution by Sector in 1997 – 1998
(Percentage Distribution)**

Sector	1997	1998
Agriculture	34.74	36.46
Livestock	5.74	5.89
Crude petroleum and gas	14.17	13.10
Manufacturing	6.96	6.98
Wholesale and retail trade	12.90	13.16
Finance and Insurance	10.28	10.79
Others	15.21	13.63
Total	100.00	100.00

Source: Central Bank of Nigeria

Private Sector Procurement

72. Implemented procedures for procurement in terms of international bidding as well as open and limited competition are only present with subsidiaries of multinationals. According to the Chamber of Commerce (NACCIMA), Nigerian companies do not develop or implement procedures for procurement. Given the size of most private Nigerian enterprises direct purchasing will also be the more effective way to acquire goods works and services. The way most Nigerian enterprises purchase supplies reflects the practices of the public sector to a certain extent. This is not surprising as the Nigerian economy is traditionally characterised as public sector driven. The most common procedure seems to be to purchase with suppliers that already have record with the company or suppliers that are recommended by trustees. To establish a price, the purchasing enterprise will ask to see prices for materials, labour etc. necessary for the production of the order. The purchasing enterprise will then have a policy for an acceptable profit margin given the specific goods, works or services which will be added and establish the final price.

Organisation

73. Some international companies in Nigeria have procurement assigned to a specific department. This is frequently the case for companies from the EU and the USA, whereas it is rarely the case for Asian companies. The department handling procurement is often identical with or has strong a relation to and collaboration with the department that handle company logistics and the financial department. Procurement is normally a team effort. Typically, Purchasing Managers and/or Commercial Managers will be responsible for implementation and maintenance of the procurement and purchasing procedures. A cross-functional team will do procurement or purchase of works or services given need for specific professional expertise in the process from the requiring departments whereas procurement of goods often can be handled by the procurement department alone. A cross-functional team can involve the above mentioned, as well as:

- the Systems Manager;
- the relevant person (user) from the ordering department who together with the Quality Manager will handle the technical aspects;
- the Finance Manager; and
- depending on the size of the contract the company's legal advisor has to vet and approve the contract, i.e. for contracts above Naira 100,000.

The Managing Director and the Executive Director are also possible participants in the procurement process, but mostly for larger contracts and mainly in a controlling and signing function. The use of procurement agents is not uncommon, but no systematic pattern of the use can be established.

Procurement Methods

74. Contracts for capital goods and very large supply contracts are often procured through international bidding. International head offices of the multinationals, based outside Nigeria usually do this and it rarely involves Nigerian based staff. The procedures of the head office are observed in these cases. Smaller contracts and contracts for supplies are handled locally and procured or purchased in Nigeria after standards and procedures for the Nigerian subsidiary. Procurement and purchasing procedures differ greatly as standards are developed in the specific companies and does not refer to a common standard. Open national competition is seldom practised as the size of contracts where this would be optimal generally is subject to international bidding. To the extent that this takes place, the competition is advertised in national newspapers and technical magazines. Should the privatisation of the larger parastatals be realised, these companies will most likely procure contracts of a size where open competition should be the preferred method.

75. Limited competition is practised extensively and the companies keep records of potential suppliers. Such records can include information on:

- Name, location, legal status and size of the company in terms of employees and turnover
- Company directors, level of Nigerian participation in the company and source of finance
- Product range, process capacity and list of commodities
- Nature, sources and list of suppliers to the company
- Stock in terms of items, size, capacity and administration and business locations in Nigeria
- Major customers and status as an agent to overseas manufacturers
- Previous registration and record between the two companies (including the company under an earlier different name)

76. Registration of companies is not used as a pre-qualification criterion. However, market surveys are often done to determine the range of possible suppliers as well as the likely price level of the desired goods, works or services. Market surveys can also include requiring samples from potential suppliers for testing by the technical department. For tenders of some size (this can be 500,000 Naira) a tenders committee will often be formed to evaluate quotations for orders of goods works or services. Such a committee can be comprised of the Executive Director, the

Purchasing Manager, the Commercial Manager and the head of the user department. Evaluation criteria are technical competence, compliance with specification, ability to meet delivery/completion targets and costs. Prices are considered along with the other variables. The final contract will typically be negotiated and approved by the head of the user department, the Purchasing Manager and the supplier. For longer lasting contracts the company will often have a routine for periodic assessment of price, competitiveness and quality of the goods, works or services provided by comparing with suppliers offering similar services. For works and services part of the contract sum, i.e. 5% is often withheld and not made payable until a month after the completion of the job to allow a sufficient period for assessment of the quality of the job done. All monetary transactions are often done by cheque only, involving the cashier, the purchasing manager and the supplier who will sign the cheque and payment voucher on receipt of the cheque.

Areas of Possible Improvement

77. The fact-finding has pointed towards two interrelated areas that can improve private sector procurement in Nigeria. The first area concerns the buyers' possibilities of assessing a potential supplier's capacity to deliver the goods, works or services that the buyers' requires. Especially for medium and long-term contracts, it is very difficult for buyers' to assess the stability or liquidity of a potential supplier. This is due to the fact that the official figures that companies have to provide to the Corporate Affairs Commission (the body responsible for registration of companies) in annual reports and budgets generally do not reflect the actual situation or liquidity of a given company.

78. According to information obtained through interviews, many companies tend to report an advantageous rather the real situation. The second area represents a different angle of approaching a similar problem. There is a lack of capacity in the private sector to specify, understand and assess quality in terms of both products and processes. This complicates and sub-optimises the relationship between the buyer and the supplier as the buyer lacks capacity to be sufficiently specific about the needs and the supplier lacks capacity to sufficiently understand the demands and document the capacity to fulfil them. In other words there is a need to build capacity for quality management in the Nigerian private sector. So far, commercial and industrial policies have focused mainly on introducing and enhancing inspection and control. It does, however, seem very likely that the introduction of tools and training for quality management systems and certification could benefit and enhance the effectiveness of not only the procurement process but also the performance of the private sector in general. To make this happen, a public-private collaboration around starting a quality management movement and introducing ISO and Total Quality Management standards and certifications will be necessary.

79. Procurement and quality management are intimately linked not only in the private but also in the public sector. Procurement procedures and standards are typically an integrated part of a quality management system. A quality management system is one of the most powerful tools to ensure effective procedures and production in the private sector (and a crucial factor in exporting more and higher value added goods) as well as transparency and accountability in the public sector. A long-term recommendation to establish a Quality Management Systems Institute

was rejected by the Task Force on the basis that most of the Private Sector companies have already put in place Quality Control Management (QCM) and maintain standards in line with franchise and brand agreements.

6. TRADE PRACTICES AND CUSTOMS IN NIGERIA

80. This Chapter presents the findings and recommendations on customs and trade regulations and practices in Nigeria. The overall assessment is that a review of existing Export, Import and Transit regulations with related customs and trading procedures and practices is urgently needed. Further that the overall Customs performance and management, staffing levels and training systems need urgent attention.

Export, Import and Transit Procedures

A brief account of export, import and transit procedures is given here to elaborate a framework for the following discussions in this section.

Recommendations

- In the very short term: A comprehensive review of the business processes related to export, import and transit regulations, procedures and practices in Nigeria should be carried out, including the ASYCUDA system.
- For all procedures and practices it is recommended to separate cash flow and paper flow. This means that papers will be handled by customs while all cash flows between traders and customs are handled by authorised banks and the CBN.
- In the short to medium term: to conduct an analysis of the overall Customs performance, management, technical solutions and staffing levels including possibly re-designing of the structure, and establishment of a more efficient and effective Customs service.

Export Procedures

81. All categories of goods exported from Nigeria are subject to quality control before leaving the country. The Standard Organisation of Nigeria (SON) controls technical appliances, while raw materials, consumer commodities and petrochemical products are controlled by NAFDAC – National Agency for Food and Drug Administration and Control. The standard fee for performing the quality control is one percent of the total value of a given export based on the presented invoice for the export. This practice has an unfortunate implication for Nigerian export. The way of pricing the quality control tends to make exporters to present undervalued invoices to reduce fees and expenses in connection with export.

Recommendations

- A new system needs be worked out for calculating the price of quality control in relation to export from Nigeria. The calculation of the price shall be based on the nature (how expensive is the given test) of the control and the necessary volume of the control as opposed to the volume or value of the export.

Import Procedures

82. Import is restricted for a whole range of goods. The restrictions vary from complete ban to minor restrictive regulations based on Nigerian standards for imported goods. Within these restrictions, any company or individual is allowed to import goods and services to Nigeria. Both the public and the private sector have recognised the Incoterms as required by the International Customs Guidelines. Central issues in the import procedure are customs clearing, quality control, transactions of a merchant (in terms of Letters of Credit) and the CBN and transport insurance. Quality control will be treated separately later.

Customs Clearance

83. Until recently, customs clearing of imported goods could only take place with direct involvement of a merchant bank and indirect involvement of the CBN. The importer would present a pro-forma invoice at the merchant bank indicating all financial details of the import transaction. The importer would also fill in a so-called M-form for the merchant bank, which constitutes the importers application for foreign currency to pay the import transaction. This M-form summarises quantity and quality of the goods, net prices, packing and shipping costs, transport insurance costs and the addresses of both the importer and the foreign exporter. It also specifies the data of the goods to be imported and their packing with the Free On Board and Cost and Freight value as well as specifications regarding the mode of transport, country of origin and port of discharge of the commodities. With liberalisation of foreign exchange importers no longer have to source their foreign exchange through the CBN. Importers can source their foreign exchange through the bureau de change and can import without LCs. Such importation is regarded as “Not Valid for Foreign Exchange”. All that is required is an approved form “M” which is to be marked “Not Valid for Foreign Exchange”.

84. Finally the Nigerian importer must submit a pre-shipment control certificate along with the pro-forma invoice to the merchant bank. The foreign exporter must have a pre-shipment control performed at the exporter’s warehouses on quantity, quality and customs tariff number to establish the pre-shipment control certificate. In most cases what is inspected is just a fraction of what is actually imported. In some situations, different items are imported in place of what is actually inspected. A pre-shipment control company with a representation in Nigeria is contracted by the Nigerian Government to perform the control. Upon receipt of the pre-shipment control certificate the exporter is permitted to ship the goods and forward the certificate to the Nigerian importer. Having received the pro-forma invoice, the M-form and the pre-shipment control certificate, the merchant bank launches an Import Duty Report (IDR) to the local customs authorities. The document (IDR) has now been replaced with Clean Report of Inspection (CRI)

issued by the same appointed Pre-shipment Inspection Agents. Besides these procedures, the importer must take out a transport insurance at minimum or all risk conditions for the shipment. It is obligatory that this insurance must be taken out with a Nigerian company and the insurance covering the cargo is in Naira. Most importers will, however, also take out transport insurance with an international company. Three factors lead the importers to take out double transport insurance: a) Nigeria is considered a high-risk country to import goods into; b) the Nigerian insurance is in Naira and importers may need the coverage in hard currency if the value of a shipment is to be replaced; and c) based on experience, importers do not feel they can rely on the Nigerian company to pay the insurance if the cargo is lost.

85. This double transport insurance of imports is unfortunate as it raises the cost of imports by doubling the premium and by creating higher duties and VAT on the import. The latter is due to the fact that the Cost Insurance Freight (CIF) value is registered as higher than the actual value as both insurance premiums are included when the CIF value is calculated. Having received the IDR and the transport policy, the merchant bank can procure the required foreign currency from the CBN. When the disposal of the foreign currency is confirmed by the CBN, the Merchant Bank in favour of the foreign supplier can open the Letter of Credit and shipment of the import can be processed. As the description of the import procedures show, the customs value of a given import shipment is calculated by different institutions in connection with different steps in the import procedures. It is calculated in relation to the pre-shipment inspection, the Customs Declaration, the quality control, the transport insurance, the merchant bank and the CBN. International practices in this field are quite different.

86. Firstly, WTO member countries are using the WTO standard for calculating the Transaction Value as the method of calculating the customs value. Nigeria is actually obliged to apply this standard as a member of the WTO. Secondly, it is common practice that only one company or institution determines the Transaction Value, which is then to be used by all other companies and institutions in relation the import process. Nigeria is a contracting party to GATT Valuation System. The system emphasized extensively on the use of transaction value method on dealing with imports and the effective date for implementation was 1st January, 2000. Being an active member of the Technical Committee on Valuation, Nigeria has, in conjunction with the World Customs Organization (WCO) already worked out detailed action plans for the implementation of WTO Valuation Agreement. The Service has already set up an Implementation Committee which has since produced a new Valuation procedures in accordance with the WTO Valuation Agreement. The Service has also trained a lot of officers both at local and international levels for the full implementation of the new Valuation System. In addition, the Valuation Unit of the Service has built up a value file for use through the Federation.

Recommendations

- The WTO standards for determining the Transaction Value (the invoiced value of a shipment and costs of bringing the goods to the Nigerian border) should be fully implemented as the standard for calculating the customs value of import to Nigeria.
- One uniform Transaction Value or Customs Value should be used by all institutions for all calculations in connection with import to Nigeria.

Transit Procedures

87. Transit of cargo through Nigeria to neighbouring countries is allowed and regulated under the ECOWAS agreement. The majority of the transit traffic through Nigeria is bound for Chad and the Republic of Niger. Transit business is performed by registered Transit Agents in co-operation with transport companies using almost exclusively trucks. The Transit Agent pays a bond to the Customs Authorities to ensure that the export is in transit to the Hinterlands and will not end up at the Nigerian market. The bond is reimbursed when the Transit Agent through submission of an export certificate witnesses the export of the cargo. Customs regulations also state that customs officers should escort transit cargo to the border of the Hinterlands. Before commencing transit the Transit Agent fills in the Nigerian Customs Service form. It is, however, a known fact that despite these procedures some transit commodities are found back on the grey market in Nigeria, although officially exported.

88. An efficient system to monitor and control the transit cargo is not in place. Implementation of an improved border control will be very costly given the vast borderlines. Poor working conditions of the customs officers in terms of lacking equipment, low salaries and poor or no accommodations compound the difficulties. There are known cases where the only accommodation available to customs officers have been offered by known smugglers. Illegal levy of fees by the legal road control staff is also said to take place due to the poor working conditions. There is a clear need for a complete review of transit procedures in Nigeria to put an efficient system of transit regulation in place. An efficient system includes as a minimum:

- Fixed compulsory routes for transit transport;
- A limited number of fixed entry and exit posts;
- Rigid time tables for allowed transport time including loss of bond if the transport does not report at the boarder at the set time;
- Transit prohibitions of high-risk goods possibly combined with satellite monitoring of selected goods like cigarettes and used cars;
- Restriction of transit operators on certain high risk goods;
- Registration of transit companies which are allowed to perform transit operations; and
- Introduction of bonds issued by international insurance companies, combined with severe sanctions and penalties including loss of transit operation licence, bond and seizure of means of transport

Recommendations on Transit Procedures

- A study based on transit statistics and consumer figures in the borderline regions should be conducted to calculate the loss of import duties and taxes on the most smuggled items. This study will provide vital data to the recommended (in the section on customs tariffs) reduction of import duties and taxes and the prospects of reducing irregularities by doing so.
- A review and reorganisation of transit procedures. The review and reorganisation will result in procedures including fixed compulsory routes for transit transport, time tables for allowed transport time with a loss of bond if the transport is not at the boarder at the set time, limitation of entry and exit posts and satellite monitoring of selected goods like cigarettes and used cars. Following the review the task of revenue collection, monitoring and control should be procured in on competitive basis.
- Working conditions, especially concerning accommodation, for customs personnel must be improved in borderline areas.

Quality Control Systems - Pre-Shipment Control System

89. The pre-shipment control systems generally serve to assure the buyer that the shipment contains the quantity and quality of the goods ordered. In addition to this, the second generation of pre-shipment control systems estimates the customs or transaction value of the shipment. The system is generally agreed between the international trading partners on a voluntary basis. The system is implemented in several countries to assist the collection of customs revenues. Pre-shipment quality control was fully implemented in Nigeria with Decree No 11 of 1996 to guarantee the importer quantity and quality of the imported goods. It also provides evidence of value and customs tariff to both the Nigerian Customs and the CBN. The monetary value indicated in the Pre-shipment control certificate is based on the invoice of the foreign supplier of the goods. The Pre-shipment control does not guarantee correct invoicing as the value can be manipulated through the presentation of manipulated commercial invoices of the supplier to the Pre-shipment Control Company. PSI Control Companies may, however, provide FOB-price indication quotes in accordance with world market prices on commonly traded goods, which can be used as a basis for calculating the customs value.

90. The results of this Pre-shipment control on quantity, quality, price and customs tariff numbers are specified in a pre-shipment control certificate which has to be sent to the Nigerian importer with copies to the Nigerian Customs Authority and the local representative of the PSI company. The system has partially reduced the problems of undervalued invoices. However, the Pre-shipment inspection is not successful due to poor specification of the goods in the import documents. Delays are also observed due to pre-shipment inspections. The efficiency of pre-shipment inspection today is being questioned because fake and substandard products are still being imported. Inspection practices in Nigeria have shifted between destination inspection and pre-shipment inspection in the country of embarkation more than once in recent years. This is the

course of some confusion among importers and exporters as to which procedures are actually in operation and to be followed.

Recommendations

- A study should be conducted into the possibilities of optimising the effect of pre-shipment inspection. This study should among other things include a review of the PSI-contract and procedural design including the introduction of proper ex-post reconciliation procedures.
- Pre-shipment inspection causes trade delays and is therefore not an efficient tool in relation to import from neighbouring countries. Shipment inspection based on destination inspection should therefore be applied for a limited number of imports from neighbouring countries.

Technical Quality Control System

91. Nigeria has developed its own technical standards. Imported technical and/or investment goods have to pass a technical control procedure, performed by SON - Standard Organisation of Nigeria. SON performs its tests within 48 hours. A technical test certificate has to be presented at the customs before release of the commodities.

Consumer Quality Control System

92. The consumer quality tests are performed by National Agency for Food and Drug Administration and Control (NAFDAC). This institution is responsible for the quality control of Chemical products, food, cosmetics, detergents, drugs, medicine and bottled drinking water; in brief its professional activities are similar to those of the US based FDA - Food and Drug Administration. NAFDAC's activities comprise both export and import control of the above commodities as well as prevention of illegal trafficking of narcotics and monitoring and control of local manufacturing of the above product groups. Major activities of NAFDAC are the control of fish and other consumer commodity exports to the EU countries and others. Due to strict regulations imposed by the EU and USA on food import, extensive chemical analysis and biological tests of bacteria, food additives and ingredients must be carried out.

93. NAFDAC charges a one-percent fee of the export value from the exporter for its services. Exporters are known to reduce this fee by undervaluing the export price. The working conditions of the institution are not optimal and should be improved. The network of branch offices is not adequate. Three new laboratories are envisaged to be constructed, but construction has not commenced due to lack of funds. Established NAFDAC laboratories are suffering from lack of equipment and basic reagents. Quality inspections by NAFDAC can last up to three weeks. The long duration of NAFDAC examinations is related to the volume of chemical analysis and of the significant quantity of import cargoes. The duration of analysis may exceed expiry dates of consumption and spoiling of imported food. NAFDAC offices were formerly located on the same premises as the customs in Lagos. The institution has now been transferred to premises outside the seaport. NAFDAC has expressed concern that this arrangement could lead to sub-optimal control of imports. Transporting goods to the laboratories could ruin goods

before they reach the laboratories making tests irrelevant. If tests are to be carried out, laboratories must be established in all seaports and airports handling import and exports. NAFDAC could then be called back after the establishment of its laboratories in the ports.

Recommendations on Consumer Quality Control

- The quality control measure should be limited to a minimum covering only dubious imports from certain countries. Imports from other countries where tests have shown high quality should be subjected to random control only. Quality control on goods for exports should be limited to goods where there is a demand for control from the recipient country. A modification of local regulations needs to be done.
- Funds should be provided for the procurement of laboratory equipment and reagents. Commencement of construction of the three new laboratories is also recommended. These laboratories must, however, be constructed inside the ports if efficiency is to be improved substantially.
- The organisation, equipment and performance of NAFDAC have to be reviewed and eventually reorganised. This will have to include a relocation of NAFDAC back into the ports. Privatisation of NAFDAC should be examined as part of the reorganisation. Privatisation could also be one way to finance the needed equipment and other improvements. If privatised, NAFDAC must of course compete on market terms with other companies that are capable of performing the required tests.

Customs Clearing System

94. The calculation of import duties and taxes were performed manually in past years. Today Nigeria's membership of ECOWAS - Economic Community of West African States – allow Nigeria to implement and make use of a data processed customs clearing system developed by UNCTAD - Automatic System for Customs Data Entry (ASYCUDA). The most recent version of the system is the ASYCUDA ++, which includes a transit module. ASYCUDA (The history of development and global perspectives are summarised in the document¹³ referred to in the footnote) was developed for the ECOWAS member states in 1980's. It is operating in approximately 60 countries world-wide in a number of different versions. It provides accurate processing of import, export and transit declarations leading to reduction of time for clearing commodities and increased revenues. The system also provides reliable trade and revenue data to the Government and links to the quality control laboratories. One of the most successful implementations of the ASYCUDA systems is in the Philippines where it has led to significant revenue increases, enhanced services to the traders and improvements of transparency and efficiency in one of the most active port complexes of the world.

¹³ ASYCUDA - National, Regional, Global Perspectives and the Nigerian Service of Customs

95. The ASYCUDA system is not fully implemented in Nigeria and does not work efficiently. The implementation process is hampered by both financial constraints on the level of available funds for software and hardware, equipment, maintenance and sufficient training of staff to operate the system. ECOWAS has supplied Hardware worth US\$ 1,042,695.00 that has remained unpaid by the government. Further costs estimates for scheduled activities to complete the implementation amount to US\$ 1,744,000.00. This request is supported by another request amounting to US\$ 900,000.00. The customs authorities have informed the Ministry of Finance accordingly, and the Ministry is trying to raise funds for settlement of the ECOWAS debt as ECOWAS has threatened to abandon the project. The system is Internet based and the lack of sufficient telephone lines and the unpaid telephone invoices to the Ministry of Communication constraints the implementation of the system further. To abandon further implementation of the ASYCUDA system will create chaos in the main ports, as no clearing system is available to replace the project. Port congestion will be the consequence.

96. The complete implementation of the latest version of the system will provide specific data on any company involved in international trade. The databases will create a working base for tax fraud inspectors. There is a possibility of identifying paid bribes and undervalued commercial invoices through analysis of profits in the financial accounting of the companies. In absence of an implemented system, the stations are, however, producing periodic statistical reports regarding their revenues from import duties and taxes¹⁴. The reporting system is not computerised and is therefore has limited use. It does not for example provide the Ministry of Finance with data to monitor its revenues daily. Furthermore, the customs clearance process is still unduly long. Training facilities for customs officers are insufficient and there is a urgent need for training of professionals. Above all, training is needed in the operation of ASYCUDA. At present one thousand inspectors are said to have some training in operating the system. From the present operations of the system it is, however, clear that this training is not adequate and that further training is needed.

¹⁴ Two reports are enclosed in Annex 5 - List of Documents.

Recommendations on the ASYCUDA

- The ASYCUDA system must be implemented completely and made fully operational with a direct link to the Ministry of Finance in the largest international ports, airports and at main land border crossings. This is also a recommendation of the Organised Private Sector in their comments to the Pre-Budgets Memorandum for the year 2000. A crucial aspect of implementing the system is to plan and secure funding for continued operations and maintenance of the system. Without this, implementation is not sustainable.
- A full integration of all import and exported related procedures and workflow from shipping agents, pre-shipment inspection, customs clearance, other Government institutions, merchant banks and the CBN should be done.
- Training of the staff in the operation of the ASYCUDA system is crucial. A modular training system which includes training of trainers and managers at all levels should be included in an ASYCUDA assistance project.
- A team of experts should be contracted to complete and upgrade the set up of the system.
- A web-site for the Nigerian Customs Service should be created as part of the implementation of ASYCUDA.
- Government should purchase and install X-Ray inspection machine for the purpose of examining containerised cargoes. There already exists a pool of officers who are well trained on the operation of X-Ray and scanning machines but the service could also be privatised.

Customs Tariffs

97. Imports of all kind of commodities and goods seem to be heavily taxed. The actual import duties range from 10 - 50 percent for industrial goods depending on the tariff number and country of origin. The percentage is specified in the Brussels-number tariff nomenclature (HS tariff numbers in Nigeria), which constitutes a tariff-based system that meets international standards. The import duties are charged on the CIF value of the cargo. Further surcharges as port handling fees and special levies are to be paid as well as inspection fees and a 5 percent Value Added Tax are levied on top of the total costs. Apart from normal customs duty, other charges on imports are: (i) 7% surcharge; (ii) 5% VAT; (iii) 5% sugar levy for sugar import; (iv) 2% NAC level for import of Automobiles; and (v) 1% FOB CISS Administrative charges. Importers are frequently trying to reduce these import duties and taxes, often by the presentation of undervalued commercial invoices in collusion with foreign exporters. Wrong labelling of goods is also used to achieve the same goal. Transit cargoes to the hinterlands also play an important role in avoiding import duties and taxes. Local importers are often trying to misuse these transit facilities for illegal imports by giving false statements to local customs authorities.

Recommendations on Customs Tariffs

- The level of import duties should be lowered to the level where the cost of corruption is higher than cost related to legitimate imports. Experience from other countries show that this: (a) is an efficient way of fighting corruption; and (b) increases overall revenues as most imported goods will be declared and declared at the right value.
- A low uniform tariff structure should be introduced. The basis for the exact tariff structure should be analysed in detail and could allow, for say, three levels of import tax: zero, five and ten percent plus VAT. Levels have to be fixed for major groups of similar commodities, i.e. one level for all fruits, not different levels for apples and oranges.

Remuneration

98. Customs staff are not properly remunerated. Their salaries are low and housing facilities are very modest. The lack of efficient working equipment and tools is also a source of increasing frustration in everyday work. Training opportunities are also limited. These very modest working conditions do not promote integrity and accountability and are believed to be the cause of wide spread bribery and corruption. However, with a staff of more than 20,000, there appears to be substantial overstaffing. A rough international comparison would suggest that a staff of 10,000 would be sufficient to perform the task.

Recommendations

- A review of staff levels/needs, salary and housing conditions should be done in to compare working conditions for customs inspectors with working conditions for employees in similar jobs in the private sector. An increase in salaries and improvement in housing conditions is clearly needed. Such improvements can, however, only take place after reviewing the staffing levels and needs.
- There is a need to establish a performance based incentive scheme for customs personnel where a minimum salary is guaranteed, but part of the salary is given based on performance. Performance can be measured for groups or individuals. It is essential that performance first and foremost be measured against an increase in import, export and transit transactions that are performed correctly according to rules and regulations. The incentive scheme shall, however, also include rewarding customs inspectors for efficient conduct in detection of fraud and irregularities.
- Standards of the equipment available to customs officers should be improved.
- One way of raising funds for a performance based increase in salaries, improvement in housing conditions and acquirement and maintenance of equipment is to use part of the collected revenue for such investments. A percentage of the collected revenue could be returned to the customs authorities. The appropriate level of the percentage to be returned must be examined, but a realistic level is based on experience between 0.2 and 0.8 percent. However, a minimum level of revenue must be collected before any is returned.

THE BANKING SYSTEM

99. This section gives a brief account of the banking system in relation to trade and customs. Specific attention is given to the assessment of the creditworthiness of banks and the establishment of letters of credit.

The Central Bank of Nigeria (CBN)

100. In relation to trade and customs the activities CBN among other tasks include:

- Assessment of the credit worthiness of private banks
- Follow up on import documents
- Provision of foreign currency for import transactions

A major task of the CBN used to be the responsibility for management of the Nigerian customs authorities and for import duty tariff modifications. Today the responsibilities for these tasks have been transferred to the Ministry of Finance. Foreign currency is supplied by CBN for foreign trade transactions upon request from the merchant banks. Merchant banks do not have access to all the foreign currency they need.

The Creditworthiness of Banks

101. The credit worthiness of commercial and merchant banks is assessed and verified annually by the CBN. The system used for the assessment is known as **CAMEL** - Capital, Asset, Management, Earnings and Liquidity system. The system was introduced in 1990 and focuses its analysis on five main areas:

- **Size of Capital:** The minimum requirement for capital in any bank in Nigeria is now 500 million Naira. The required capital has to exist in cash.
- **Asset:** The quality of the loan portfolio is analysed taking the good or poor performance of individual loans into consideration
- **Management:** Performance of the bank management.
- **Earnings:** The profitability of the bank seen from an investor's point of view.
- **Liquidity:** Access to foreign exchange and general liquidity.

The CAMEL system is used for an internal ranking of banks by the CBN including an assessment of the credit worthiness. The system is complemented by the Prudential Guidelines. These guidelines specify the rules for when and how loans, which are not performing, should be shown in the internal accounts of the banks assets. The consequences for a bank having loans that do not perform seem to be rather strict and in line with to international standards. Since 1990, substantial effort has been put into the improvement of the condition of the banking sector in Nigeria. The sector has been analysed and banks have been required to re-capitalise, some have been liquidated, some have been forced to change management. At the moment, 22 banks

are described as distressed in the sense that they are in a serious situation of not having enough liquidity or they are insolvent.

102. In 1998, 26 banks were liquidated. There are now 89 banks left in Nigeria - 28 commercial banks and 51 merchant banks. Efforts are being made to restore trust in the banking sector of Nigeria. There is, however, a long way to go before their credit worthiness is up to international standards. Companies and private persons still have reasons to be very careful when choosing a bank. International banks are starting to establish branch offices in Nigeria. This is likely to have positive impact on the existing local banks. The increased competition will be a strong incentive for the local banks to improve the services and security they offer to their clients. Presence of international banks will also mean an overall increase in capacities in banking transactions.

Establishment of Letters of Credit

103. Local merchant banks establish letters of Credit in foreign currency, most commonly in USD. Foreign currency is procured from the CBN by the merchant bank. The importer pays the Letter of Credit in Naira at the ongoing exchange rate. The Nigerian importer is charged a fee of 0.75 percent of the total value of the import in Naira for the establishment of the Letter of Credit and an additional 0.75 percent per annum of the total value in Naira for the use of the Letter of Credit. Fees to the foreign correspondence bank are individually determined between the importer and the beneficiary of the Letter of Credit. Apart from this the importer must deposit 50 percent of the total value of the Letter of Credit with the CBN, who will reimburse the deposit to the importer, with interest, after the period of one month. The interest paid is variable. The deposit could be considered as a fund raising method of CBN which puts substantial financial strain on the importer.

Recommendation

- The practice that importers must deposit 50 per-cent of the total value of the Letter of Credit with the CBN for one month, should be abolished.

7. ELECTRONIC COMMERCE IN PUBLIC PROCUREMENT

104. Electronic commerce (e-commerce) refers to business transactions that are conducted on the Internet normally through a buyer visiting the seller's website and making a transaction there. The transactions are carried out using a network of computers connected through the telecommunications infrastructure. The website acts as a source of information. Information is the driving force for efficient public procurement and by improving its access and quality, it will be much easier for both procuring entities and suppliers to exploit the opportunities offered. E-commerce is still in its infancy and its use in public procurement is still very limited. To-date most e-commerce has been business-to-business (80%¹⁵) and business-to-consumer interactions. The procurement regime described in the preceding chapters is based on the use of traditional administrative practices and means of communication; it is mainly a paper-based system of notification, dissemination and tendering. However, with the ongoing rapid development in information technology, the use of computer systems and telecommunications is expected to revolutionise the way in which public procurement will be carried out in future. Electronic tendering will play a key role in the enhancement of transparency and access to public procurement, cutting operating costs and reducing delays.

105. In addition to the technological progress, the international community has been discussing electronic procurement in the context of the ongoing globalisation of trade. A Global Procurement Agreement (GPA) is in place and this has already had a strong influence, and will continue to have an even stronger influence, on the workings of national and regional trade regimes. For instance, the GPA has had direct effect on the EU procurement directives where EU Member States have the option to allow the presentation of offers by other methods than writing and thus allowing for an entirely electronic procurement process. Within the group of signing countries of the GPA, USA and Canada already have working national systems of electronic procurement. These systems are the results of both public and private initiative and their use is usually not mandatory.

106. In the development of electronic procurement systems, there is a major risk of establishing incompatible national systems that could create major new trade barriers. A major goal in the development of electronic public procurement is therefore the establishment of a common standard as a means for exchanging procurement information and thereby fulfilling the goals of the GPA. Besides the option of electronic procurement introduced with the GPA the World Trade Organisation (WTO) is preparing guidelines on the issues of e-procurement. The latest (1999) report from The Working Group on Transparency in Government Procurement under the WTO mentions the issue of electronic procurement in conjunction with the special problems of the developing countries. Under the headline of "TECHNICAL COOPERATION AND SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES" the report states the following as major issues on the use of information technology:

¹⁵ Economist, February 26th – March 3rd 2000

- “the development of information technology tools which could be used to disseminate information about procurement opportunities and practices, and/or to establish full electronic tendering, as well as to facilitate the collection of relevant economic data and statistics;
- the provision of office, information technology and/or other equipment necessary for the implementation and enforcement of legislation, procedures and/or practices

The issue of technical co-operation should be discussed not only in terms of ensuring compliance of developing countries with the requirements of a future agreement, but also in terms of the practical steps that could be taken to enhance transparency in developed as well as developing countries.”

Major Issues in electronic public procurement

107. The main issues in electronic public procurement relate to, security, technological, organisational, and legal problems. In order to succeed as a tool not only of information, but also of actual contracting, an electronic procurement system must maintain a number of minimum requirements:

- The sender of notices, tender documents or offers must be convinced that his message is at least as secure as a paper based document. An electronic signature must therefore be used to ensure:
 - Authenticity - The contents of the document are locked
 - Security - The document is encrypted
 - Signature - The identity of the sender is ensured
- The applicable law for the procurement process has to be defined clearly to ensure that all parties know which contract laws (bidder or contracting authority) are applicable at all stages of the process.

Enabling Electronic Commerce for the Reformed Public Procurement System in Nigeria

108. Future e-commerce capabilities in Nigeria will dependent on the availability of adequate reliable information infrastructure (computer hardware and software, telecommunications and manpower resources). Although the enabling infrastructure is not currently in place, with liberalization of the telecommunications infrastructure and the Government’s deliberate effort to introduce information technology in the offices, the necessary infrastructure is likely to be in place in the next few years. Nigeria being part of the global economy and given the global trends in e-commerce, the Government has to prepare for the impending impact e-commerce will have on the way Nigeria does business internationally and even domestically. The main question to be answered is how the Government will go about preparing for this imperative. Many countries, including the EU, are implementing electronic public procurement through pilot projects. A number of countries have undertaken such projects in EU and currently there is an

ongoing project to identify, analyse and evaluate the pilot projects carried out or planned, in order to obtain a reliable and comprehensive overview of the situation of electronic public procurement in Europe.

Recommendation

109. It is going to take a long time before the necessary information infrastructure is available for nation-wide introduction of electronic public procurement in Nigeria. In the mean time, there is a need for the Government to consider the possibility of implementing a pilot project to gain experience in this field. The main objective of such a pilot would be to test how electronic public procurement could be used to support the needed transparent and streamlined procedures recommended in this report including: information management; streamlining procurement processes; and supporting electronic communications. Such a pilot would enable the Government to address the following aspects:

- Determining the rationale and decision chains that would lead to a successful introduction of electronic public procurement
- Determining areas of the procurement lifecycle that are mature for electronic procurement, and areas which will be (or not) mature in the coming years
- Determining the stages of the procurement lifecycle that most savings can be realised and how these can be organised
- Identifying appropriate procurement solutions for different procuring agencies and communities
- Identifying responsibilities and actions to be taken by the Federal, States, Local Governments, suppliers and contractors
- Documenting the lessons learned and identifying re-engineering needs and processes
- Preparation of roll out plans

8. GENERAL RISK ASSESSMENT

110. There are serious weaknesses in the current procurement system including lack of appropriate legislation, shortage of basic skills and inadequate organization. On top of these it is likely that there will be resistance from some quarters towards the suggested reform program. However, there is a strong sense of optimism based on the fact that Nigeria has recently managed to go from a military regime to a democratically elected civilian rule. There are strong indications at all levels in the public and private sector that Nigeria is ready for new initiatives. It is also clear that the international community is ready to assist the Government in the difficult transition from dictatorial corrupt military regime to a democratic one where transparency is one of the overarching objectives. Based on this relatively new political situation the country appears to be ready to embrace the proposed reforms. It was a feeling of many Nigerians that for the first time in years there is a real opportunity to initiate reforms. Having said this, the changes needed are massive and it will be an uphill struggle for those implementing them. Success in implementing the reforms will largely rest on political will and support from the donor community. The present Government has the political will and the donor community is ready to give support.

9. RECOMMENDED ACTION PLAN

Strategic Approach

111. The recommendations presented in this report are many and complex. The report has made extensive recommendations on improving the business environment because this is the major determinant for efficient and transparent procurement processes. Implementation of the proposed procurement reforms is expected to accrue substantial benefits to the economic development of Nigeria. The reformed environment is expected to:

- attract more donor financing;
- fuel local and foreign investments; and
- realize efficient and timely completion of development projects.

112. Due to the number and complexity of these recommendations, it is necessary to prioritise and plan what can be done on a short, medium or long term basis -- an Action Plan is presented in Tables 1A and 1B of Volume I. Substantial resources will be required to implement these recommendations and the availability of funds will have a crucial influence on the timing for the implementation. The actual financial requirements to implement the recommendations will be one of the first exercises to carry out after the recommendations have been approved by the Government.

113. The proposed reforms will require expertise that may not be available in Nigeria and experience from abroad may be required in the form of Technical Assistance. However, to ensure the best possible and sustainable results, Nigerian experts should spearhead the implementation and the foreign experts should only play an advisory role. This means that any foreign consultant must work closely with Nigerian counterparts to ensure transfer of know-how and sustainability in the long run. Ownership of the reforms by Nigeria is critical. It is therefore proposed that a Steering Committee, with high level members from the Presidency and Ministry of Finance be created to lead the reform process until the PPC is created, when the role will be transferred. A Procurement Reform Implementation Unit will also be established to manage the reforms on a day-to-day basis and provide the secretariat services for the Steering Committee. The Government is advised to work closely with donors to mobilise the required resources.

114. Many of the recommendations are dependent on successful establishment of the PPC. It is therefore of paramount importance that this recommendation is given the highest priority. In the interim period, the Steering Committee will be driving the reforms.

ANNEX 1

Uncitral Model Law on Procurement of Goods, Construction and Services

**UNCITRAL MODEL LAW ON PROCUREMENT OF GOODS, CONSTRUCTION
AND SERVICES**

Revised and annotated for application in The Federal Republic of Nigeria

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I. UNCITRAL MODEL LAW ON PROCUREMENT OF GOODS, CONSTRUCTION AND SERVICES

Preamble

WHEREAS the [Government] [Parliament] of ... considers it desirable to regulate procurement of goods, construction and services so as to promote the objectives of:

- (a) Maximizing economy and efficiency in procurement;
- (b) Fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially where appropriate, participation by suppliers and contractors regardless of nationality, and thereby promoting international trade;
- (c) Promoting competition among suppliers and contractors for the supply of the goods, construction or services to be procured;
- (d) Providing for the fair and equitable treatment of all suppliers and contractors;
- (e) Promoting the integrity of, and fairness and public confidence in, the procurement process; and
- (f) Achieving transparency in the procedures relating to procurement,

Be it therefore enacted as follows.

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

This Law applies to all procurement by procuring entities.

Article 2. Definitions

For the purposes of this Law:

- (a) "Procurement" means the acquisition by any means of goods, construction or services;
- (b) "Procuring entity" means:
 - Any governmental department, agency, organ or other unit, or any subdivision thereof, in Nigeria (Federal and State) that engages in procurement
 - and
 - any body financed for the most part by public funds or subject to management supervision by governmental entities
 - and
 - any body otherwise under the control of governmental entities or persons acting on their behalf²
- (c) "Goods" means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves.
- (d) "Construction" means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself;
- (e) "Services" means any object of procurement other than goods or construction
- (f) "Supplier or contractor" means, according to the context, any potential party or the party to a procurement contract with the procuring entity;

- (g) "Procurement contract" means a contract between the procuring entity and a supplier or contractor resulting from procurement proceedings;
- (h) "Tender security" means a security provided to the procuring entity to secure the fulfillment of any obligation referred to in article 32 (1) (f) and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes and bills of exchange;
- (i) "Currency" includes monetary unit of account.

Article 3. International obligations of this State relating to procurement and intergovernmental agreements within Nigeria

To the extent that this Law conflicts with an obligation of this State under or arising out of any

- (a) Treaty or other form of agreement to which it is a party with one or more other States,
- (b) Agreement entered into by this State with an intergovernmental international financing institution, or
- (c) Agreement between the federal Government of Nigeria and any subdivision or subdivisions of the states that comprise the federation

the requirements of the treaty or agreement shall prevail; but in all other respects, the procurement shall be governed by this Law.³

Article 4. Procurement regulations

The Public Procurement Commission is authorized to promulgate procurement regulations to fulfill the objectives and to carry out the provisions of this Law.⁴

Article 5. Public accessibility of legal texts

The text of this Law, procurement regulations and all administrative rulings and directives of general application in connection with procurement covered by this Law, and all amendments thereof, shall be promptly made accessible to the public and systematically maintained.

Article 6. Qualifications of suppliers and contractors

- (1) (a) This article applies to the ascertainment by the procuring entity of the qualifications of suppliers or contractors at any stage of the procurement proceedings;

- (b) In order to participate in procurement proceedings, suppliers or contractors must qualify by meeting such of the following criteria as the procuring entity considers appropriate in the particular procurement proceedings:
- (i) That they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the procurement contract;
 - (ii) That they have legal capacity to enter into the procurement contract;
 - (iii) That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
 - (iv) That they have fulfilled their obligations to pay taxes and social security contributions in Nigeria;
 - (v) That they have not, and their directors or officers have not, been convicted of any criminal offense related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period 5 years⁵ preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.
- (2) Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the suppliers or contractors are qualified in accordance with the criteria referred to in paragraph (1) (b).
- (3) Any requirement established pursuant to this article shall be set forth in the prequalification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations, and shall apply equally to all suppliers or contractors. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those provided for in this article.
- (4) The procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria and procedures set forth in the prequalification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations.

- (5) Subject to articles 8 (1), 34 (4) (d) and 39 (2), the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof on the basis of nationality, or that is not objectively justifiable.
- (6) (a) The procuring entity shall disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was false;
- (b) A procuring entity may disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was materially inaccurate or materially incomplete;
- (c) Other than in a case to which subparagraph (a) of this paragraph applies, a procuring entity may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in a non-material respect. The supplier or contractor may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity.
- (7) Subject to the detailed regulation of the Public Procurement Commission the procuring entity can establish a system of prequalification lists that suppliers or contractors may apply for inclusion in so as to facilitate the application of the criteria set forth in the article. Only with the express permission of the Public Procurement Commission can suppliers or contractors be forced to seek inclusion on such lists.⁶

Article 7. Prequalification proceedings

- (1) The procuring entity may engage in prequalification proceedings with a view towards identifying, prior to the submission of tenders, proposals or offers in procurement proceedings conducted pursuant to chapter III, IV or V, suppliers and contractors that are qualified. The provisions of article 6 shall apply to prequalification proceedings.
- (2) If the procuring entity engages in prequalification proceedings, it shall provide a set of prequalification documents to each supplier or contractor that requests them in accordance with the invitation to prequalify and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the prequalification documents shall reflect only the cost of printing them and providing them to suppliers or contractors.
- (3) The prequalification documents shall include, at a minimum:
- (a) The following information:
- (i) Instructions for preparing and submitting prequalification applications;

- (ii) A summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings;
 - (iii) Any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications. The Public Procurement Commission can issue specific regulations regarding the character of documentary evidence allowed.⁷
 - (iv) The manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procuring entity;
 - (v) Any other requirements that may be established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings; and
- (b) (i) In proceedings under chapter III, the information required to be specified in the invitation to tender by article 25 (1) (a) to (e), (h) and, if already known, (j);
 - (ii) In proceedings under chapter IV, the information referred to in article 38 (a), (c) if already known, (g), (p) and (s).
- (4) The procuring entity shall respond to any written request⁸ by a supplier or contractor for clarification of the prequalification documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by the procuring entity shall be given within a reasonable time, and time permitting no later than 4 days before the date of submission of request for prequalification so as to enable the supplier or contractor to make a timely submission of its application to prequalify. The response to any request that might reasonably be expected to be of interest to other suppliers or contractors shall, without identifying the source of the request, be communicated within reasonable time, and time permitting no later than 4 days before the submission date⁹, to all suppliers or contractors to which the procuring entity provided the prequalification documents.
 - (5) The procuring entity shall make a decision with respect to the qualifications of each supplier or contractor submitting an application to prequalify. In reaching that decision, the procuring entity shall apply only the criteria set forth in the prequalification documents.
 - (6) The procuring entity shall within 15 days from the date of submission of requests for prequalification¹⁰ notify each supplier or contractor submitting an application to prequalify whether or not it has been prequalified and shall make available to any

member of the general public, upon request, the names of all suppliers or contractors that have been prequalified. Only suppliers or contractors that have been prequalified are entitled to participate further in the procurement proceedings.

- (7) The procuring entity shall latest 8 days after receiving a request¹¹ communicate to suppliers or contractors that have not been prequalified the grounds therefor, but the procuring entity is not required to specify the evidence or give the reasons for its finding that those grounds were present.
- (8) The procuring entity may require a supplier or contractor that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such supplier or contractor. The procuring entity shall disqualify any supplier or contractor that fails to demonstrate again its qualifications if requested to do so. The procuring entity shall promptly notify each supplier or contractor requested to demonstrate again its qualifications as to whether or not the supplier or contractor has done so to the satisfaction of the procuring entity.

Article 8. Participation by suppliers or contractors

- (1) Suppliers or contractors are permitted to participate in procurement proceedings without regard to nationality, except in cases in which the procuring entity decides, on grounds specified in the procurement regulations, according to other provisions of law or with the specific acceptance of The Public Procurement Commission¹² to limit participation in procurement proceedings on the basis of nationality.
- (2) A procuring entity that limits participation on the basis of nationality pursuant to paragraph (1) of this article shall include in the record of the procurement proceedings a statement of the grounds and circumstances on which it relied.
- (3) The procuring entity, when first soliciting the participation of suppliers or contractors in the procurement proceedings, shall declare to them that they may participate in the procurement proceedings regardless of nationality, a declaration which may not later be altered. However, if it decides to limit participation pursuant to paragraph (1) of this article, it shall so declare to them.

Article 9. Form of communications

- (1) Subject to other provisions of this Law and any requirement of form specified by the procuring entity when first soliciting the participation of suppliers or contractors in the procurement proceedings, documents, notifications, decisions and other communications referred to in this Law to be submitted by the procuring entity or administrative authority to a supplier or contractor or by a supplier or contractor to the procuring entity shall be in a form that provides a record of the content of the communication.

- (2) Communications between suppliers or contractors and the procuring entity referred to in articles 7 (4) and (6), 12 (3), 31 (2) (a), 32 (1) (d), 34 (1), 36 (1), 37 (3), 44 (b) to (f) and 47 (1) may be made by a means of communication that does not provide a record of the content of the communication provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which provides a record of the confirmation.
- (3) The procuring entity shall not discriminate against or among suppliers or contractors on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

**Article 10. Rules concerning documentary evidence provided
by suppliers or contractors**

If the procuring entity requires the legalization of documentary evidence provided by suppliers or contractors to demonstrate their qualifications in procurement proceedings, the procuring entity shall not impose any requirements as to the legalization of the documentary evidence other than those provided for in the laws of this State relating to the legalization of documents of the type in question.

Article 11. Record of procurement proceedings

- (1) The procuring entity shall maintain a record of the procurement proceedings containing, at a minimum, the following information:
 - (a) A brief description of the goods, construction or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers;
 - (b) The names and addresses of suppliers or contractors that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered into and the contract price;
 - (c) Information relative to the qualifications, or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations;
 - (d) The price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract, where these are known to the procuring entity;¹³

- (e) A summary of the evaluation and comparison of tenders, proposals, offers or quotations, including the application of any margin of preference pursuant to articles 34 (4) (d) and 39 (2);
 - (f) If all tenders, proposals, offers or quotations were rejected pursuant to article 12, a statement to that effect and the grounds therefor, in accordance with article 12 (1);
 - (g) If, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement contract, a statement to that effect and of the grounds therefor;
 - (h) The information required by article 15, if a tender, proposal, offer or quotation was rejected pursuant to that provision;
 - (i) In procurement proceedings involving the use of a procurement method pursuant to paragraph (2) or subparagraph (a) or (b) of paragraph (3) of article 18, the statement required under article 18 (4) of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;
 - (j) In the procurement of services by means of chapter IV, the statement required under article 41 (2) of the grounds and circumstances on which the procuring entity relied to justify the selection procedure used;
 - (k) In procurement proceedings involving direct solicitation of proposals for services in accordance with article 37 (3), a statement of the grounds and circumstances on which the procuring entity relied to justify the direct solicitation;
 - (l) In procurement proceedings in which the procuring entity, in accordance with article 8 (1), limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation;
 - (m) A summary of any requests for clarification of the prequalification or solicitation documents, the responses thereto, as well as a summary of any modification of those documents.
- (2) Subject to article 33 (3), the portion of the record referred to in subparagraphs (a) and (b) of paragraph (1) of this article shall, on request, be made available to any person after a tender, proposal, offer or quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
- (3) Subject to article 33 (3), the portion of the record referred to in subparagraphs (c) to (g), and (m), of paragraph (1) of this article shall, on request, be made available to suppliers or con-tractors that submitted tenders, proposals, offers or quotations, or applied for

prequalification, after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract. Disclosure of the portion of the record referred to in subparagraphs (c) to (e), and (m), may be ordered at an earlier stage by a competent court. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose:

- (a) Information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition;
- (b) Information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations, and tender, proposal, offer or quotation prices, other than the summary referred to in paragraph (1) (e).
- (4) The procuring entity shall not be liable to suppliers or contractors for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with the present article.
- (5) At the latest 15 days after award of contract a copy of the record of procurement proceedings shall for each individual purchase be forwarded for statistical purposes to the Public Procurement Commission. The records shall not be subject to approval by the Public Procurement Commission.

Article 12. Rejection of all tenders, proposals, offers or quotations

- (1) Subject to approval by The Public Procurement Commission and if so specified in the solicitation documents or other documents for solicitation of proposals, offers or quotations, the procuring entity may reject all tenders, proposals, offers or quotations at any time prior to the acceptance of a tender, proposal, offer or quotation. The procuring entity shall upon request communicate to any supplier or contractor that submitted a tender, proposal, offer or quotation, the grounds for its rejection of all tenders, proposals, offers or quotations, but is not required to justify those grounds.
- (2) The procuring entity shall incur no liability, solely by virtue of its invoking paragraph (1) of this article, towards suppliers or contractors that have submitted tenders, proposals, offers or quotations.
- (3) Notice of the rejection of all tenders, proposals, offers or quotations shall be given promptly to all suppliers or contractors that submitted tenders, proposals, offers or quotations.

Article 13. Entry into force of the procurement contract

- (1) In tendering proceedings, acceptance of the tender and entry into force of the procurement contract shall be carried out in accordance with article 36.

- (2) In all the other methods of procurement, the manner of entry into force of the procurement contract shall be notified to the suppliers or contractors at the time that proposals, offers or quotations are requested.

Article 14. Public notice of procurement contract awards

- (1) The procuring entity shall promptly publish notice of procurement contract awards.
- (2) The procurement regulations issued by the Public Procurement Commission may provide for the manner of publication of the notice required by paragraph (1).
- (3) Paragraph (1) is not applicable to awards where the contract price is less than the threshold set forth in the procurement regulations.¹⁴

Article 15. Inducements from suppliers or contractors

A procuring entity shall reject¹⁵ a tender, proposal, offer or quotation if the supplier or contractor that submitted it offers, gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procuring entity or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the procurement proceedings. Such rejection of the tender, proposal, offer or quotation and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.

Article 16. Rules concerning description of goods, construction or services

- (1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods, construction or services to be procured, and requirements concerning testing and test methods, packaging, marking or labeling or conformity certification, and symbols and terminology, or description of services, that create obstacles to participation, including obstacles based on nationality, by suppliers or contractors in the procurement proceedings shall not be included or used in the prequalification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.
- (2) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, construction or services shall be based on the relevant objective technical and quality characteristics of the goods, construction or services to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, construction or services to be procured and provided that words such as "or equivalent" are included.

- (3) (a) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, construction or services to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the prequalification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations;
- (b) Due regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the prequalification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.

Article 17. Language

The prequalification documents, solicitation documents and other documents for solicitation of proposals, offers or quotations shall be formulated in English.¹⁶

CHAPTER II. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

Article 18. Methods of procurement

- (1) Except as otherwise provided by this chapter, a procuring entity engaging in procurement of goods or construction shall do so by means of tendering proceedings.
- (2) In the procurement of goods and construction, a procuring entity may use a method of procurement other than tendering proceedings only pursuant to article 19, 20, 21 or 22.
- (3) In the procurement of services, a procuring entity shall use the method of procurement set forth in chapter IV, unless the procuring entity determines that:
- (a) It is feasible to formulate detailed specifications and tendering proceedings would be more appropriate taking into account the nature of the services to be procured;
or
- (b) It would be more appropriate, subject to approval by The Public Procurement Commission to use a method of procurement referred to in articles 19 to 22, provided that the conditions for the use of that method are satisfied.
- (4) If the procuring entity uses a method of procurement pursuant to paragraph (2) or subparagraph (a) or (b) of paragraph (3), it shall include in the record required under article 11 a statement of the grounds and circumstances on which it relied to justify the use of that method.

Article 19. Conditions for use of two-stage tendering, request for proposals or competitive negotiation

- (1) Subject to approval by The Public Procurement Commission a procuring entity may engage in procurement by means of two-stage tendering in accordance with article 45, or request for proposals in accordance with article 47 in the following circumstances:
- (a) It is not feasible for the procuring entity to formulate detailed specifications for the goods or construction or, in the case of services, to identify their characteristics and, in order to obtain the most satisfactory solution to its procurement needs,
 - (i) It seeks tenders, proposals or offers as to various possible means of meeting its needs; or,
 - (ii) Because of the technical character of the goods or construction, or because of the nature of the services, it is by the Public Procurement Commission deemed unavoidable¹⁷ and necessary for the procuring entity to negotiate with suppliers or contractors;
 - (b) When the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs; and
 - (c) When tendering proceedings have been engaged in but no tenders were submitted or all tenders were rejected by the procuring entity pursuant to article 12, 15 or 34 (3), and when, in the judgment of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract.

Article 20. Conditions for use of restricted tendering

Subject to approval by The Public Procurement Commission the procuring entity may, where necessary for reasons of economy and efficiency, engage in procurement by means of restricted tendering in accordance with article 46, when:

- (a) The goods, construction or services, by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors; or
- (b) The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, construction or services to be procured.

Article 21. Conditions for use of request for quotations

- (1) Subject to approval by The Public Procurement Commission a procuring entity may engage in procurement by means of a request for quotations in accordance with article 49 for the procurement of readily available goods or services that are not specially produced or provided to the particular specifications of the procuring entity and for which there is an established market, so long as the value of the procurement contract is less than the amount set forth in the procurement regulations issued by The Public Procurement Commission.
- (2) A procuring entity shall not divide its procurement into separate contracts for the purpose of invoking paragraph (1) of this article.
- (3) The Public Procurement Commission can issue regulations regarding the calculation of contract value.¹⁸

Article 22. Conditions for use of single-source procurement

- (1) Subject to approval by Public Procurement Commission a procuring entity may engage in single-source procurement in accordance with article 50 when:
 - (a) The goods, construction or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the goods, construction or services, and no reasonable alternative or substitute exists;
 - (b) There is an urgent need for the goods, construction or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;
 - (c) Owing to a catastrophic event, there is an urgent need for the goods, construction or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
 - (d) The procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in

relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;

- (e) The procuring entity seeks to enter into a contract with the supplier or contractor for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs; or
 - (f) The procuring entity applies this Law, pursuant to article 1 (3), to procurement involving national defense or national security and determines that single-source procurement is the most appropriate method of procurement.
- (2) Subject to approval by Public Procurement Commission, and following public notice and adequate opportunity to comment, a procuring entity may engage in single-source procurement when procurement from a particular supplier or contractor is necessary in order to promote a policy specified in article 34 (4) (c) (iii) or 39 (1) (d), provided that procurement from no other supplier or contractor is capable of promoting that policy.

CHAPTER III. TENDERING PROCEEDINGS

SECTION I. SOLICITATION OF TENDERS AND OF APPLICATION TO PREQUALIFY

Article 23. Domestic tendering

In procurement proceedings in which

- (a) Participation is limited solely to domestic suppliers or contractors pursuant to article 8 (1), or
- (b) The procuring entity decides, in view of the low value¹⁹, as defined by the Public Procurement Commission, of the goods, construction or services to be procured, that only domestic suppliers or contractors are likely to be interested in submitting tenders, the procuring entity shall not be required to employ the procedures set out in articles 24 (2), 25 (1) (h), 25 (1) (i), 25 (2) (c), 25 (2) (d), 27 (j), 27 (k), 27 (s) and 32 (1) (c) of this Law.

Article 24. Procedures for soliciting tenders or applications to prequalify

- (1) A procuring entity shall solicit tenders or, where applicable, applications to prequalify by causing an invitation to tender or an invitation to prequalify, as the case may be, to be published in the official gazette or other publication defined by The Public Procurement Commission.²⁰

The invitation to tender or invitation to prequalify shall also be published, in a language customarily used in international trade, in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international circulation..

Article 25. Contents of invitation to tender and invitation to prequalify

- (1) The invitation to tender shall contain, at a minimum, the following information:
 - (a) The name and address of the procuring entity;
 - (b) The nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be effected, or the nature of the services and the location where they are to be provided;
 - (c) The desired or required time for the supply of the goods or for the completion of the construction, or the timetable for the provision of the services;
 - (d) The criteria and procedures to be used for evaluating the qualifications of suppliers or contractors, in conformity with article 6 (1) (b);
 - (e) A declaration, which may not later be altered, that suppliers or contractors may participate in the procurement proceedings regardless of nationality, or a declaration that participation is limited on the basis of nationality pursuant to article 8 (1), as the case may be;
 - (f) The means of obtaining the solicitation documents and the place from which they may be obtained;
 - (g) The price, if any, charged by the procuring entity for the solicitation documents;
 - (h) The currency and means of payment for the solicitation documents;
 - (i) The language or languages in which the solicitation documents are available;
 - (j) The place and deadline for the submission of tenders.

- (2) An invitation to prequalify shall contain, at a minimum, the information referred to in paragraph (1) (a) to (e), (g), (h) and, if it is already known, (j), as well as the following information:
 - (a) The means of obtaining the prequalification documents and the place from which they may be obtained;
 - (b) The price, if any, charged by the procuring entity for the prequalification documents;

- (c) The currency and terms of payment for the prequalification documents;
- (d) The language or languages in which the prequalification documents are available;
- (e) The place and deadline for the submission of applications to prequalify.

Article 26. Provision of solicitation documents

The procuring entity shall provide the solicitation documents to suppliers or contractors in accordance with the procedures and requirements specified in the invitation to tender. If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of solicitation documents to each supplier or contractor that has been prequalified and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the solicitation documents shall reflect only the cost of printing them and providing them to suppliers or contractors.

Article 27. Contents of solicitation documents

The solicitation documents shall include, at a minimum, the following information:

- (a) Instructions for preparing tenders;
- (b) The criteria and procedures, in conformity with the provisions of article 6, relative to the evaluation of the qualifications of suppliers or contractors and relative to the further demonstration of qualifications pursuant to article 34 (6);
- (c) The requirements as to documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
- (d) The nature and required technical and quality characteristics, in conformity with article 16, of the goods, construction or services to be procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate; the quantity of the goods; any incidental services to be performed; the location where the construction is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the construction is to be effected or the services are to be provided;
- (e) The criteria to be used by the procuring entity in determining the successful tender, including any margin of preference and any criteria other than price to be used pursuant to article 34 (4) (b), (c) or (d) and the relative weight of such criteria;
- (f) The terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

- (g) If alternatives to the characteristics of the goods, construction, services, contractual terms and conditions or other requirements set forth in the solicitation documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared;
- (h) If suppliers or contractors are permitted to submit tenders for only a portion of the goods, construction or services to be procured, a description of the portion or portions for which tenders may be submitted;
- (i) The manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes;
- (j) The currency or currencies in which the tender price is to be formulated and expressed;
- (k) The language or languages, in conformity with article 29, in which tenders are to be prepared;
- (l) Any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by suppliers or contractors submitting tenders, and any such requirements for any security for the performance of the procurement contract to be provided by the supplier or contractor that enters into the procurement contract, including securities such as labor and materials bonds;
- (m) If a supplier or contractor may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
- (n) The manner, place and deadline for the submission of tenders, in conformity with article 30;
- (o) The means by which, pursuant to article 28, suppliers or contractors may seek clarifications of the solicitation documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of suppliers or contractors;
- (p) The period of time during which tenders shall be in effect, in conformity with article 31;
- (q) The place, date and time for the opening of tenders, in conformity with article 33;
- (r) The procedures to be followed for opening and examining tenders;
- (s) The currency that will be used for the purpose of evaluating and comparing tenders pursuant to article 34 (5) and either the exchange rate that will be used for

- the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (t) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under article 51 or give rise to liability on the part of the procuring entity;
 - (u) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings, without the intervention of an intermediary;
 - (v) Any commitments to be made by the supplier or contractor outside of the procurement contract, such as commitments relating to the transfer of technology;
 - (w) Notice of the right provided under article 51 of this Law to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement proceedings;
 - (x) If the procuring entity reserves the right to reject all tenders pursuant to article 12, a statement to that effect;
 - (y) Any formalities that will be required once a tender has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to article 36;
 - (z) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.

Article 28. Clarifications and modifications of solicitation documents

- (1) A supplier or contractor may request a clarification of the solicitation documents from the procuring entity. The procuring entity shall respond to any request by a supplier or contractor for clarification of the solicitation documents that is received by the procuring entity within a reasonable time²¹, and no later than 15 days, prior to the deadline for the submission of tenders. The procuring entity shall respond within a reasonable time, and no later than 8 days before the deadline for the submission of tenders, so as to enable the supplier or contractor to make a timely submission of its tender and shall, without identifying the source of the request, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the solicitation documents.
- (2) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the solicitation documents by issuing an addendum. The

addendum shall be communicated promptly and simultaneously²² to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors. Modifications and amendments to the solicitation documents must not be of such a magnitude that otherwise eligible suppliers and contractors might have avoided participation on the grounds of the now changed character of the goods, construction or services procured. In this case the procuring entity must cancel the procurement process.²³

- (3) If the procuring entity convenes a meeting of suppliers or contractors, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all suppliers or contractors to which the procuring entity provided the solicitation documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders.

SECTION II. SUBMISSION OF TENDERS

Article 29. Language of tenders

Tenders may be formulated and submitted in any language in which the solicitation documents have been issued or in any other language that the procuring entity specifies in the solicitation documents.

Article 30. Submission of tenders

- (1) The procuring entity shall fix the place for, and a specific date and time as the deadline for, the submission of tenders.
- (2) If, pursuant to article 28, the procuring entity issues a clarification or modification of the solicitation documents, or if a meeting of suppliers or contractors is held, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers or contractors reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.
- (3) The procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline if it is not possible for one or more suppliers or contractors to submit their tenders by the deadline owing to any circumstance beyond their control.
- (4) Notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring entity provided the solicitation documents.

- (5) (a) Subject to subparagraph (b), a tender shall be submitted in writing, signed and in a sealed envelope;
- (b) Without prejudice to the right of a supplier or contractor to submit a tender in the form referred to in subparagraph (a), a tender may alternatively be submitted in any other form specified in the solicitation documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality;
- (c) The procuring entity shall, on request, provide to the supplier or contractor a receipt showing the date and time when its tender was received.
- (6) A tender received by the procuring entity after the deadline for the submission of tenders shall not be opened and shall be returned to the supplier or contractor that submitted it.

Article 31. Period of effectiveness of tenders; modification and withdrawal of tenders

- (1) Tenders shall be in effect during the period of time specified in the solicitation documents.
- (2) (a) Prior to the expiry of the period of effectiveness of tenders, the procuring entity may request suppliers or contractors to extend the period for an additional specified period of time. A supplier or contractor may refuse the request without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiry of the unextended period of effectiveness;
- (b) Suppliers or contractors that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders. A supplier or contractor whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.
- (3) Unless otherwise stipulated in the solicitation documents, a supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

Article 32. Tender securities

- (1) When the procuring entity requires suppliers or contractors submitting tenders to provide a tender security:
- (a) The requirement shall apply to all such suppliers or contractors;

- (b) The solicitation documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
 - (c) Notwithstanding the provisions of subparagraph (b) of this paragraph, a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in this State if the tender security and the issuer otherwise conform to requirements set forth in the solicitation documents.
 - (d) Prior to submitting a tender, a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer, if required; the procuring entity shall respond promptly to such a request;
 - (e) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness;
 - (f) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security; any requirement that refers directly or indirectly to conduct by the supplier or contractor submitting the tender shall not relate to conduct other than:
 - (i) Withdrawal or modification of the tender after the deadline for submission of tenders;
 - (ii) Failure to sign the procurement contract if required by the procuring entity to do so;
 - (iii) Failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.
- (2) The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, after whichever of the following that occurs earliest:
- (a) The expiry of the tender security;
 - (b) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
 - (c) The termination of the tendering proceedings without the entry into force of a procurement contract;

- (d) The withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

SECTION III. EVALUATION AND COMPARISON OF TENDERS

Article 33. Opening of tenders

- (1) Tenders shall be opened at the time specified in the solicitation documents as the deadline for the submission of tenders, or at the deadline specified in any extension of the deadline, at the place and in accordance with the procedures specified in the solicitation documents.
- (2) All suppliers or contractors that have submitted tenders, or their representatives, shall be permitted by the procuring entity to be present at the opening of tenders.
- (3) The name and address of each supplier or contractor whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders, communicated on request to suppliers or contractors that have submitted tenders but that are not present or represented at the opening of tenders, and recorded immediately in the record of the tendering proceedings required by article 11.

Article 34. Examination, evaluation and comparison of tenders

- (1) (a) The procuring entity may ask suppliers or contractors for clarifications of their tenders in order to assist in the examination, evaluation and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted;
(b) Notwithstanding subparagraph (a) of this paragraph, the procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders. The procuring entity shall give prompt notice of any such correction to the supplier or contractor that submitted the tender.
- (2) (a) Subject to subparagraph (b) of this paragraph, the procuring entity may regard a tender as responsive only if it conforms to all requirements set forth in the tender solicitation documents;
(b) The procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

- (3) The procuring entity shall not accept a tender:
- (a) If the supplier or contractor that submitted the tender is not qualified;
 - (b) If the supplier or contractor that submitted the tender does not accept a correction of an arithmetical error made pursuant to paragraph (1) (b) of this article;
 - (c) If the tender is not responsive;
 - (d) In the circumstances referred to in article 15.
- (4) (a) The procuring entity shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender, as defined in subparagraph (b) of this paragraph, in accordance with the procedures and criteria set forth in the solicitation documents. No criterion shall be used that has not been set forth in the solicitation documents;
- (b) The successful tender shall be:
- (i) The tender with the lowest tender price, subject to any margin of preference applied pursuant to subparagraph (d) of this paragraph; or
 - (ii) If the procuring entity has so stipulated in the solicitation documents, the lowest evaluated tender ascertained on the basis of criteria specified in the solicitation documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable;
- (c) In determining the lowest evaluated tender in accordance with subparagraph (b) (ii) of this paragraph, the procuring entity may consider only the following:
- (i) The tender price; and
 - (ii) The cost of operating, maintaining and repairing the goods or construction, the time for delivery of the goods, completion of construction or provision of the services, the functional characteristics of the goods or construction, the terms of payment and of guarantees in respect of the goods, construction or services.
- (5) When tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to the same currency, and according to the rate specified in the solicitation documents pursuant to article 27 (s), for the purpose of evaluating and comparing tenders.
- (6) Whether or not it has engaged in prequalification proceedings pursuant to article 7, the procuring entity may require the supplier or contractor submitting the tender that has been found to be the successful tender pursuant to paragraph (4) (b) of this article to demonstrate again its qualifications in accordance with criteria and procedures

conforming to the provisions of article 6. The criteria and procedures to be used for such further demonstration shall be set forth in the solicitation documents. Where prequalification proceedings have been engaged in, the criteria shall be the same as those used in the prequalification proceedings.

- (7) If the supplier or contractor submitting the successful tender is requested to demonstrate again its qualifications in accordance with paragraph (6) of this article but fails to do so, the procuring entity shall reject that tender and shall select a successful tender, in accordance with paragraph (4) of this article, from among the remaining tenders, subject to the right of the procuring entity, in accordance with article 12 (1), to reject all remaining tenders.
- (8) Information relating to the examination, clarification, evaluation and comparison of tenders shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted, except as provided in article 11.

Article 35. Prohibition of negotiations with suppliers or contractors

No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor.

Article 36. Acceptance of tender and entry into force of procurement contract

- (1) Subject to articles 12 and 34 (7), the tender that has been ascertained to be the successful tender pursuant to article 34 (4) (b) shall be accepted. Notice of acceptance of the tender shall be given promptly to the supplier or contractor submitting the tender.
- (2) (a) Notwithstanding the provisions of paragraph (4) of this article, the solicitation documents may require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming to the tender. In such cases, the procuring entity (the requesting ministry) and the supplier or contractor shall sign the procurement contract within a reasonable period of time after the notice referred to in paragraph (1) of this article is dispatched to the supplier or contractor;
- (b) Subject to paragraph (3) of this article, where a written procurement contract is required to be signed pursuant to subparagraph (a) of this paragraph, the procurement contract enters into force when the contract is signed by the supplier or contractor and by the procuring entity. Between the time when the notice referred to in paragraph (1) of this article is dispatched to the supplier or contractor and the entry into force of the procurement contract, neither the procuring entity nor the supplier or contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.

- (3) Except as provided in paragraphs (2) (b) and (3) of this article, a procurement contract in accordance with the terms and conditions of the accepted tender enters into force when the notice referred to in paragraph (1) of this article is dispatched to the supplier or contractor that submitted the tender, provided that it is dispatched while the tender is in force. The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor, or conveyed to an appropriate authority for transmission to the supplier or contractor, by a mode authorized by article 9.
- (4) If the supplier or contractor whose tender has been accepted fails to sign a written procurement contract, if required to do so, or fails to provide any required security for the performance of the contract, the procuring entity shall select a successful tender in accordance with article 34 (4) from among the remaining tenders that are in force, subject to the right of the procuring entity, in accordance with article 12 (1), to reject all remaining tenders. The notice provided for in paragraph (1) of this article shall be given to the supplier or contractor that submitted that tender.
- (5) Upon the entry into force of the procurement contract and, if required, the provision by the supplier or contractor of a security for the performance of the contract, notice of the procurement contract shall be given to other suppliers or contractors, specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.

CHAPTER IV. PRINCIPAL METHOD FOR PROCUREMENT OF SERVICES

Article 37. Notice of solicitation of proposals

- (1) A procuring entity shall solicit proposals for services or, where applicable, applications to prequalify by causing a notice seeking expression of interest in submitting a proposal or in prequalifying, as the case may be, to be published in the official gazette or other publication decided by the Public Procurement Commission²⁵. The notice shall contain, at a minimum, the name and address of the procuring entity, a brief description of the services to be procured, the means of obtaining the request for proposals or prequalification documents and the price, if any, charged for the request for proposals or for the prequalification documents.
- (2) The notice shall also be published, in a language customarily used in international trade, in a newspaper of wide international circulation or in a relevant trade or professional publication of wide international circulation except where participation is limited solely to domestic suppliers or contractors pursuant to article 8 (1) or where, in view of the low value of the services to be procured, the procuring entity decides that only domestic suppliers or contractors are likely to be interested in submitting proposals.

- (3) Subject to approval by The Public Procurement Commission where direct solicitation is necessary for reasons of economy and efficiency, the procuring entity need not apply the provisions of paragraphs (1) and (2) of this article in a case where:
- (a) The services to be procured are available only from a limited number of suppliers or contractors, provided that it solicits proposals from all those suppliers or contractors; or
 - (b) The time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be procured, provided that it solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition; or
 - (c) Direct solicitation is the only means of ensuring confidentiality or is required by reason of the national interest, provided that it solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition.
- (4) The procuring entity shall provide the request for proposals, or the prequalification documents, to suppliers or contractors in accordance with the procedures and requirements specified in the notice or, in cases in which paragraph (3) applies, directly to participating suppliers or contractors. The price that the procuring entity may charge for the request for proposals or the prequalification documents shall reflect only the cost of printing and providing them to suppliers or contractors. If prequalification proceedings have been engaged in, the procuring entity shall provide the request for proposals to each supplier or contractor that has been prequalified and that pays the price charged, if any.

Article 38. Contents of requests for proposals for services

The request for proposals shall include, at a minimum, the following information:

- (a) The name and address of the procuring entity;
- (b) The language or languages in which proposals are to be prepared;
- (c) The manner, place and deadline for the submission of proposals;
- (d) If the procuring entity reserves the right to reject all proposals, a statement to that effect;
- (e) The criteria and procedures, in conformity with the provisions of article 6, relative to the evaluation of the qualifications of suppliers or contractors and relative to the further demonstration of qualifications pursuant to article 7 (8);
- (f) The requirements as to documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
- (g) The nature and required characteristics of the services to be procured to the extent known, including, but not limited to, the location where the services are to be

provided and the desired or required time, if any, when the services are to be provided;

- (h) Whether the procuring entity is seeking proposals as to various possible ways of meeting its needs;
- (i) If suppliers or contractors are permitted to submit proposals for only a portion of the services to be procured, a description of the portion or portions for which proposals may be submitted;
- (j) The currency or currencies in which the proposal price is to be formulated or expressed, unless the price is not a relevant criterion;
- (k) The manner in which the proposal price is to be formulated or expressed, including a statement as to whether the price is to cover elements other than the cost of the services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes, unless the price is not a relevant criterion;
- (l) The procedure selected pursuant to article 41 (1) for ascertaining the successful proposal;
- (m) The criteria to be used in determining the successful proposal, including any margin of preference to be used pursuant to article 39 (2), and the relative weight of such criteria;
- (n) The currency that will be used for the purpose of evaluating and comparing proposals, and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (o) If alternatives to the characteristics of the services, contractual terms and conditions or other requirements set forth in the request for proposals are permitted, a statement to that effect and a description of the manner in which alternative proposals are to be evaluated and compared;
- (p) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings, without the intervention of an intermediary;
- (q) The means by which, pursuant to article 40, suppliers or contractors may seek clarifications of the request for proposals, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of suppliers or contractors;
- (r) The terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

- (s) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under article 51 or give rise to liability on the part of the procuring entity;
- (t) Notice of the right provided under article 51 to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement proceedings;
- (u) Any formalities that will be required once the proposal has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, and approval by a higher authority or the Government and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;
- (v) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and submission of proposals and to other aspects of the procurement proceedings.

Article 39. Criteria for the evaluation of proposals

- (1) The procuring entity shall establish criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of proposals. Those criteria shall be notified to suppliers or contractors in the request for proposals and may concern only the following:
 - (a) The qualifications, experience, reputation, reliability and professional and managerial competence of the supplier or contractor and of the personnel to be involved in providing the services; and
 - (b) The effectiveness of the proposal submitted by the supplier or contractor in meeting the needs of the procuring entity.

Article 40. Clarification and modification of requests for proposals

- (1) A supplier or contractor may request a clarification of the request for proposals from the procuring entity. The procuring entity shall respond to any request by a supplier or contractor for clarification of the request for proposals that is received by the procuring entity within a reasonable time prior to the deadline for the submission of proposals. The procuring entity shall respond within a reasonable time so as to enable the supplier or contractor to make a timely submission of its proposal and shall, without identifying the

source of the request, communicate the clarification simultaneously²⁶ to all suppliers or contractors to which the procuring entity has provided the request for proposals.

- (2) At any time prior to the deadline for submission of proposals, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the request for proposals by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the request for proposals and shall be binding on those suppliers or contractors. Modifications and amendments to the request for proposals must not be of such a magnitude that otherwise eligible suppliers and contractors might have avoided participation on the grounds of the now changed character of the goods, construction or services procured. In this case the procuring entity must cancel the procurement process.²⁷
- (3) If the procuring entity convenes a meeting of suppliers or contractors, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all suppliers or contractors participating in the procurement proceedings, so as to enable those suppliers or contractors to take the minutes into account in preparing their proposals.

Article 41. Choice of selection procedure

- (1) The procuring entity, in ascertaining the successful proposal, shall use the procedure provided for in article 42 (2) (a) and 42 (2) (b). Where notification of procedure to the suppliers or contractors is missing or unclear the process described in article 42 (2) (a) shall be used.²⁸
- (2) The procuring entity shall include in the record required under article 11 a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure pursuant to paragraph (1) of this article.
- (3) Nothing in this chapter shall prevent the procuring entity from resorting to an impartial panel of external experts in the selection procedure.

Article 42. Selection procedure without negotiation

- (1) Where the procuring entity, in accordance with article 41 (1), uses the procedure provided for in this article, it shall establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of those criteria as set forth in the request for proposals.

The procuring entity shall then compare the prices of the proposals that have attained a rating at or above the threshold.

- (2) The successful proposal shall then be:
- (a) The proposal with the lowest price; or
 - (b) The proposal with the best combined evaluation in terms of the criteria other than price referred to in paragraph (1) of this article and the price.

Article 43. Selection procedure with consecutive negotiations

Where the procuring entity, in accordance with article 41 (1), uses the procedure provided for in this article, it shall engage in negotiations with suppliers and contractors in accordance with the following procedure:

- (a) Establish a threshold in accordance with article 42 (1);
- (b) Invite for negotiations on the price of its proposal the supplier or contractor that has attained the best rating in accordance with article 42 (1);
- (c) Inform the suppliers or contractors that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the suppliers or contractors with better ratings do not result in a procurement contract;
- (d) Inform the other suppliers or contractors that they did not attain the required threshold;
- (e) If it becomes apparent to the procuring entity that the negotiations with the supplier or contractor invited pursuant to subparagraph (b) of this article will not result in a procurement contract, inform that supplier or contractor that it is terminating the negotiations;
- (f) The procuring entity shall then invite for negotiations the supplier or contractor that attained the second best rating; if the negotiations with that supplier or contractor do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

Article 44. Confidentiality

The procuring entity shall treat proposals in such a manner as to avoid the disclosure of their contents to competing suppliers or contractors. Any negotiations pursuant to article 43 shall be confidential and, subject to article 11, one party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party.

CHAPTER V. PROCEDURES FOR ALTERNATIVE METHODS OF PROCUREMENT

Article 45. Two-stage tendering

- (1) The provisions of chapter III of this Law shall apply to two-stage tendering proceedings except to the extent those provisions are derogated from in this article.
- (2) The solicitation documents shall call upon suppliers or contractors to submit, in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals without a tender price. The solicitation documents may solicit proposals relating to the technical, quality or other characteristics of the goods, construction or services as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence and qualifications of the suppliers or contractors.
- (3) The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected pursuant to articles 12, 15 or 34 (3) concerning any aspect of its tender.
- (4) In the second stage of the two-stage tendering proceedings, the procuring entity shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices with respect to a single set of specifications. In formulating those specifications, the procuring entity may delete or modify any aspect, originally set forth in the solicitation documents, of the technical or quality characteristics of the goods, construction or services to be procured, and any criterion originally set forth in those documents for evaluating and comparing tenders and for ascertaining the successful tender, and may add new characteristics or criteria that conform with this Law. Any such deletion, modification or addition shall be communicated to suppliers or contractors in the invitation to submit final tenders. A supplier or contractor not wishing to submit a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the supplier or contractor may have been required to provide. The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in article 34 (4) (b).

Article 46. Restricted tendering

- (1) (a) When the procuring entity engages in restricted tendering on the grounds referred to in article 20 (a), it shall solicit tenders from all suppliers and contractors from whom the goods, construction or services to be procured are available;
- (b) When the procuring entity engages in restricted tendering on the grounds referred to in article 20 (b), it shall select suppliers or contractors from whom to solicit tenders

in a non-discriminatory manner and it shall select a sufficient number of suppliers or contractors to ensure effective competition.

- (2) When the procuring entity engages in restricted tendering, it shall cause a notice of the restricted-tendering proceeding to be published in the official gazette or other publication decided by The Public Procurement Commission.
- (3) The provisions of chapter III of this Law, except article 24, shall apply to restricted-tendering proceedings, except to the extent that those provisions are derogated from in this article.

Article 47. Request for proposals

- (1) Requests for proposals shall be addressed to as many suppliers or contractors as practicable, but to at least three, if possible.
- (2) The procuring entity shall publish in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international circulation a notice seeking expressions of interest in submitting a proposal, unless for reasons of economy or efficiency the procuring entity considers it undesirable to publish such a notice; the notice shall not confer any rights on suppliers or contractors, including any right to have a proposal evaluated.
- (3) The procuring entity shall establish the criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of the proposals. The criteria shall concern:
 - (a) The relative managerial and technical competence of the supplier or contractor;
 - (b) The effectiveness of the proposal submitted by the supplier or contractor in meeting the needs of the procuring entity; and
 - (c) The price submitted by the supplier or contractor for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods or construction.
- (4) A request for proposals issued by a procuring entity shall include at least the following information:
 - (a) The name and address of the procuring entity;
 - (b) A description of the procurement need including the technical and other parameters to which the proposal must conform, as well as, in the case of procurement of construction, the location of any construction to be effected and, in the case of services, the location where they are to be provided;

- (c) The criteria for evaluating the proposal, expressed in monetary terms to the extent practicable, the relative weight to be given to each such criterion and the manner in which they will be applied in the evaluation of the proposal; and
 - (d) The desired format and any instructions, including any relevant timetables applicable in respect of the proposal.
- (5) Any modification or clarification of the request for proposals, including modification of the criteria for evaluating proposals referred to in paragraph (3) of this article, shall be communicated to all suppliers or contractors participating in the request-for-proposals proceedings.
- (6) The procuring entity shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing suppliers or contractors.
- (7) The procuring entity may engage in negotiations with suppliers or contractors with respect to their proposals and may seek or permit revisions of such proposals, provided that the following conditions are satisfied:
- (a) Any negotiations between the procuring entity and a supplier or contractor shall be confidential;
 - (b) Subject to article 11, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party;
 - (c) The opportunity to participate in negotiations is extended to all suppliers or contractors that have submitted proposals and whose proposals have not been rejected.
- (8) Following completion of negotiations, the procuring entity shall request all suppliers or contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals.
- (9) The procuring entity shall employ the following procedures in the evaluation of proposals:
- (a) Only the criteria referred to in paragraph (3) of this article as set forth in the request for proposals shall be considered;
 - (b) The effectiveness of a proposal in meeting the needs of the procuring entity shall be evaluated separately from the price;
 - (c) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.
- (10) Any award by the procuring entity shall be made to the supplier or contractor whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals set forth in the request for proposals, as well as

with the relative weight and manner of application of those criteria indicated in the request for proposals.

Article 48. Competitive negotiation

- (1) In competitive negotiation proceedings, the procuring entity shall engage in negotiations with a sufficient number of suppliers or contractors to ensure effective competition.
- (2) Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that are communicated by the procuring entity to a supplier or contractor shall be communicated on an equal basis to all other suppliers or contractors engaging in negotiations with the procuring entity relative to the procurement.
- (3) Negotiations between the procuring entity and a supplier or contractor shall be confidential, and, except as provided in article 11, one party to those negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party.
- (4) Following completion of negotiations, the procuring entity shall request all suppliers or contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals. The procuring entity shall select the successful offer on the basis of such best and final offers.

Article 49. Request for quotations

- (1) The procuring entity shall request quotations from as many suppliers or contractors as practicable, but from at least three, if possible. Each supplier or contractor from whom a quotation is requested shall be informed whether any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.
- (2) Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor.
- (3) The procurement contract shall be awarded to the supplier or contractor that gave the lowest-priced quotation meeting the needs of the procuring entity.

Article 50. Single-source procurement

In the circumstances set forth in article 22 the procuring entity may procure the goods, construction or services by soliciting a proposal or price quotation from a single supplier or contractor.

CHAPTER VI. REVIEW

Article 51. Right to review

- (1) Subject to paragraph (2) of this article, any supplier, contractor or organization²⁹ authorized by The Public Procurement Commission and acting on behalf of suppliers or contractors that claim to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Law may seek review in accordance with articles 52 to 56.³⁰

Article 52. Review by procuring entity (or by approving authority)

- (1) Unless the procurement contract has already entered into force, a complaint shall, in the first instance, be submitted in writing to the head of the procuring entity. (However, if the complaint is based on an act or decision of, or procedure followed by, the procuring entity, and that act, decision or procedure was approved by an authority pursuant to this Law, the complaint shall instead be submitted to the head of the authority that approved the act, as the case may be.)
- (2) The head of the procuring entity (or of the approving authority) shall not entertain a complaint, unless it was submitted within 20 days of when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or of when that supplier or contractor should have become aware of those circumstances, whichever is earlier.
- (3) The head of the procuring entity (or of the approving authority) need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force.
- (4) Unless the complaint is resolved by mutual agreement of the supplier or contractor that submitted it and the procuring entity, the head of the procuring entity (or of the approving authority) shall, within 30 days after the submission of the complaint, issue a written decision. The decision shall:
 - (a) State the reasons for the decision; and
 - (b) If the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.
- (5) If the head of the procuring entity (or of the approving authority) does not issue a decision by the time specified in paragraph (4) of this article, the supplier or contractor submitting

the complaint (or the procuring entity) is entitled immediately thereafter to institute proceedings under article 53 or 56. Upon the institution of such proceedings, the competence of the head of the procuring entity (or of the approving authority) to entertain the complaint ceases.

- (6) The decision of the head of the procuring entity (or of the approving authority) shall be final unless proceedings are instituted under article 54 or 56.

Article 53. Administrative review

- (1) A supplier, contractor or organization³¹ authorized by The Public Procurement Commission and acting on the behalf of suppliers or contractors entitled under article 51 to seek review may submit a complaint to The Public Procurement Commission³²:
- (a) If the complaint cannot be submitted or entertained under article 52 because of the entry into force of the procurement contract, and provided that the complaint is submitted within 20 days after the earlier of the time when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or the time when that supplier or contractor should have become aware of those circumstances;
 - (b) If the head of the procuring entity does not entertain the complaint because the procurement contract has entered into force, provided that the complaint is submitted within 20 days after the issuance of the decision not to entertain the complaint;
 - (c) Pursuant to article 52 (5), provided that the complaint is submitted within 20 days after the expiry of the period referred to in article 52 (4); or
 - (d) If the supplier or contractor claims to be adversely affected by a decision of the head of the procuring entity (or of the approving authority) under article 52, provided that the complaint is submitted within 20 days after the issuance of the decision.
- (2) Upon receipt of a complaint, the Public Procurement Commission shall give notice of the complaint promptly to the procuring entity (or to the approving authority).
- (3) The Public Procurement Commission may grant one or more of the following remedies, unless it dismisses the complaint:
- (a) Declare the legal rules or principles that govern the subject-matter of the complaint;
 - (b) Prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;

- (c) Require the procuring entity that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
 - (d) Annul in whole or in part an unlawful act or decision of the procuring entity, other than any act or decision bringing the procurement contract into force;
 - (e) Revise an unlawful decision by the procuring entity or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
 - (f) Require the payment of compensation for Loss or injury suffered by the supplier or contractor submitting the complaint in connection with the procurement proceedings;³³
 - (g) Order that the procurement proceedings be terminated.
- (4) The Public Procurement Commission shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.
- (5) The decision shall be final unless an action is commenced under article 56.

Article 54. Certain rules applicable to review proceedings
(1) under article 52 and article 53

- (1) Promptly after the submission of a complaint under article 52 or article 53, the head of the procuring entity (or of the approving authority) , or The Public Procurement Commission], as the case may be, shall notify all suppliers or contractors participating in the procurement proceedings to which the complaint relates of the submission of the complaint and of its substance.
- (2) Any such supplier or contractor or any governmental authority whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings. A supplier or contractor that fails to participate in the review proceedings is barred from subsequently making the same type of claim.
- (3) A copy of the decision of the head of the procuring entity (or of the approving authority The Public Procurement Commission], as the case may be, shall be furnished within five days after the issuance of the decision to the supplier or contractor submitting the complaint, to the procuring entity and to any other supplier or contractor or governmental authority that has participated in the review proceedings. In addition, after the decision has been issued, the complaint and the decision shall be promptly made available for inspection by the general public, provided, however, that no information shall be

disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Article 55. Suspension of procurement proceedings

- (1) The timely submission of a complaint under article 52 or article 53 suspends the procurement proceedings for a period of seven days, provided that the complaint is not frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the complaint will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to other suppliers or contractors.
- (2) When the procurement contract enters into force, the timely submission of a complaint under article 53 shall suspend performance of the procurement contract for a period of seven days, provided the complaint meets the requirements set forth in paragraph (1) of this article.
- (3) The head of the procuring entity (or of the approving authority) [, or the [insert name of administrative body],] may extend the suspension provided for in paragraph (1) of this article, [and the [insert name of administrative body] may extend the suspension provided for in paragraph (2) of this article,] in order to preserve the rights of the supplier or contractor submitting the complaint or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed 30 days.
- (4) The suspension provided for by this article shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such urgent considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of review except judicial review.
- (5) Any decision by the procuring entity under this article and the grounds and circumstances therefor shall be made part of the record of the procurement proceedings.

Article 56. Judicial review

The High Courts has jurisdiction over actions pursuant to article 52 and petitions for judicial review of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time-limit, under article 52 or 53.

² As a consequence of the structure of the Nigerian public sector, where a dominant portion of public income derives from the oil sector and passes through the National Nigerian Petroleum Company and previously a number of funds, it is recommended that the definition of procuring entity be widened thereby also widening the general scope of the procurement law.

One of the main purposes of the Procurement Law is to ensure that all public expenditure is done with due respect of value for money. It is therefore essential that all spending of public funds, irrespectively of the organisational position of the spending body be submitted to the rules of this law.

Therefore the recommended amendments broadens the definition of a procuring entity to include all funds, private companies and other legal entities with the only condition that the body is financed by public funds or otherwise controlled by the government. This measure is intended to prevent uncontrolled spending of public funds, whether it is in parastatals or other (private) companies under governmental control.

³ This procurement law is intended for implementation on federal level and subsequent implementation in each of the 36 states of The Federal Republic of Nigeria. As local circumstances may in very few cases warrant localised modifications to the law we recommend that the law can be circumvented by specific agreement between the federal government and the particular state. Note that this option does not allow the federal government to grant itself exemptions from the law and that such agreements cannot be made between states.

⁴ As this model law is intended for application on both federal and state level the authority of the PPC on all levels are depending on the timely application of the law. Because of the constitutional divisions of power between the federal government and the states the PPC will only be able the exercise its rule over public administration in the states when that particular state implements the law that grants power to the PPC. On a short term we recommend that only one PPC, covering all procurement on all federal, state and local levels, be established. This is to insure a uniform administration of the many new rules and practices that will be the result of the recommended reform.

⁵ The period of 5 years is consistent with commonly used European criminal debarment rules

⁶ The widespread practice within the Nigerian public sector of using prequalification lists as a prerequisite for suppliers and contractors for participation in procurement is hindering transparency. This is the case as the actual evaluation of the suppliers is removed from the procurement itself. The use of prequalification lists on he other hand can be a useful tool for excluding suppliers, which have proved unable to perform. In the special business environment of Nigeria we recommend that prequalification lists be allowed but under the strict control of the PPC.

⁷ The PPC might realise a need for more stringent control of the demands put on the procuring entities and the suppliers in terms of documentary evidence. This could be implemented by the PPC as the need arises.

⁸ It is emphasized that only written requests are allowed and the answers to such requests must be made available to all those wishing to prequalify. All oral request must be ignored by the procuring entity.

⁹ It seems too lax to leave to the discretion of the procuring entity the authority to decide which request to communicate to the other suppliers seeking prequalification and the time limits for this communication. For this reason exact time limits of minimum 4 days are set and the exemptions to the duty of communicating request and answers are removed.

¹⁰ A time limit is introduced for the sake of simplicity and control

¹¹ A time limit is introduced for the sake of simplicity and control

¹² Discrimination on the basis of nationality can in certain cases be justified, but the acceptance of the PPC must be given in each instance thereby enabling a statistical registration of the use of this option.

¹³ This section balances the need for transparency and the suppliers needs to asses their performance relative to each other versus the secrecy of prices and other confidential business information. An adjustment of this section towards a higher degree of protection of confidential information can easily be implemented by removing litra (d) concerning prices.

¹⁴ The thresholds for compulsory advertisement of contract awards are published by the PPC on a regularly basis e.g. annually.

¹⁵ The rejection of bidders shall be the sole responsibility of the procuring entity but subject to the option of complaint to the PPC by the suppliers.

¹⁶ As English is the common and official language of Nigeria, and also a recognised language in international trade no exceptions to the rule of English as the language of procurement is allowed.

¹⁷ It is stressed that the acceptance of negotiations before award of contract is a rare exception demanding approval of the PPC in each case.

¹⁸ The model law lacks regulations concerning calculation of contract value. The calculated contract value is the measurement that decides whether a procuring entity is eligible to use the request for quotations process and thereby bypass the strict rules of advertising and contract award. For the purpose of avoiding these rules a procuring entity could use a creative calculation of contract value and it is therefore necessary that precise rules of calculation be presented. On the other hand the different sectors i.e. goods, construction (works) and services each pose very different types of contracts wherein the contract value might be an initial amount or interval payments of for example a service subscription. It is recommended that the PPC be given the task of issuing thorough rules describing calculation of contract value for each sector and contract type. By not including the calculation rules in the law itself but leaving to the PPC to update the rules as needed, a high level of flexibility is preserved.

¹⁹ In order to avoid different discredional uses of the term "low value" when choosing the domestic procurement process it its left to the PPC only to define, and update, the threshold below which domestic procuring is allowed.

²⁰ As a rule all advertising of tenders must be in the official gazette, but a provision is left for the PPC to order advertising in other publications as well. This could be the case if the PPC decides to establish a specific "Procurement Gazette" or other publication of the same nature.

²¹ The term “reasonable time” has been precisely defined to minimum 15 and 8 days respectively.

²² To ensure the equal treatment of bidders it is not only important that all bidders are made aware of changes in the tender documents but also that none of the bidders receive advance oral or written notice of the changes.

²³ It must not be possible for a procuring entity to completely change the type, content or value of a purchase without cancelling the ongoing procurement and starting over again with advertisement and so forth. Otherwise suppliers that might have wished to submit a bid but refrained because of the original description of the purchase have not been treated with equality and transparency.

²⁴ Contrary to the model law our proposed revisions include removal of the option of domestic preference as a valid factor in determining the best bid. The arguments pro et contra domestic preference are many. It is however our recommendation that domestic preference not be allowed as the protection and development of domestic businesses should not be sponsored by a loss of efficiency in public procurement. There are other more suited measures for developing a strong domestic base of suppliers and contractors.

²⁵ See note 21

²⁶ See note 23

²⁷ See note 24

²⁸ In the event that the notice of procurement process is missing or inadequate, the parties and especially the suppliers must not be left in a void concerning the demands of due process that can be made against the procuring entity. A procurer wishing to evade the rules must not be able to do so by deliberately issuing unclear notice of procurement process.

²⁹ Currently, a major barrier to suppliers seeking review of decisions made by procuring entities is fear of future exclusion and blacklisting. To avoid illegal blacklisting of individual suppliers we recommend that also organisations, such as chambers of commerce, be given the right to seek review on the behalf of a member that remains anonymous.

³⁰ The Model Law contains a number of exemptions to the general rule of all suppliers having the right to review. As the PPC is established with competence within all fields of procurement there is no reason to limit the issues, which a supplier can seek review on.

³¹ See note 29

³² The Public Procurement Commission is the specialist administrative body which, as a part of its tasks, is equipped with the necessary competence in the field of procurement and is independent of the government thereby preventing a conflict of interest with the procuring entity.

³³ This compensation statute gives the PPC a broad access to grant a supplier compensation for not only direct losses but also for loss of profit and market disruption.

ANNEX 2

Tender Boards: Organization, Composition and Thresholds

Tender Boards: Organization, Composition and Thresholds

Federal Level	Tender Board	Thresholds	Final Approval Given By	Members
		< 500.000 N	Permanent Secretary, Heads of Extra-Ministerial Departments	
	Departemental Tenders Board	> 500.000 N < 1.000.000 N	Final Approval Permanent Secretary	Chairman: The most senior Director of another Department other than that seeking Tender Members: Officers not below the level of Deputy Director from each of the Departments including the Heads of Accounts and Supplies Division
	Ministerial Tenders Board	> 1.000.000 N < 20.000.000 N	Final Approval by the Minister	Chairman: The Permanent secretary Members: All Directors/Heads of Departments
	The Federal Tenders Board	>20.000.000 N < 50.000.000 N	Federal Executive Council is informed about awards	Chairman: Minister of National planning Members: Permanent Secretary of: - Ministry of Works & Housing - Ministry of Finance - Ministry of Industry - Ministry of Commerce & Tourism - Ministry of Transport - Ministry of Aviation - General services Office + the Permanent Secretary whose project is being considered.
	Federal Tenders Board	>50.000.000 N	Federal Executive Council to give final approval	

Karduna State	Tender Board	Thresholds	Final Approval Given By	Members
		< 500.000 N	The Commissioner/Permanent Secretary/Head of Department	
	State Tender Board	> 500.000 N < 5.000.000 N	Final Approval by the Governor	
	State Tenders Board	> 5.000.000 N	Final approval by Executive Council (Governor the Chairman and all Commissions members)	
Lagos State				
		> 100.000	The Ministry/Permanent Secretary, Head of Department	
	Ministerial Tenders Board	< 100.001 N - 2.000.000 N	Final Approval Chief Executive of agency	<p>Chairman: Director General of the Ministry/Office/Bureau</p> <p>Members:</p> <ul style="list-style-type: none"> - Director/head of planning, research and statistics (PRS)- Directro/head of Finance and Supply--Representative of the Plans programmes and Budget Bureau- Representative from Ministry of works- Representative of the Ministry Finance and Economic Development-- Heads of Directorates most closely involved with the contracts being considered (in case of general supply the Stores)- A Secretary, to be assigned by the Ministry/Office/Bureau from the Planning, reserach and Statistics (PRS) Directorate who is serving the Board

Lagos State	Tender Board	Thresholds	Final Approval Given By	Members
	State Tenders Board	> 2.000.000 N	Final Approval by Chief Executive of State (The Governor)	Chairman: Rotating basis renewed every four months Members: Commissioner/Director general from: - Ministry of Justice, - Ministry of Finance & Economic Development - Ministry of Works - Plans, Programmes and Budget Bureau + 3 members on rotating basis can be Commissioners and Director Generals
Zamfara State				
	Ministry Tenders Board	< 200.000 N	Final approval by Permanent Secretary	
	State Tenders Board/Finance and General Purpose Committee	> 200.000 N < 50.000.000 N	Final approval by Executive Governor	
	State Tenders Board/ Finance and General Purpose Committee	> 50.000.000 N	Final approval by Executive Governor in Council	
Local Governments - Zamfara				
		< 50.000	The Chairman of the Council	
		> 50.001 - 500.000	The Tenders Board	
		> 500.001	State Ministry of Local Governments	
Local Governments - Lagos				
	Tenders Board for Local Government Council	No limit	Final approval Chairman of the Local Governments Councils	

Federal parastatals	Tender Board	Thresholds	Final Approval Given By	Members
		< 300.000	Director of parastatal	
	Parastatal Tenders Board	> 300.000 < 1.000.000	Parastatal Tenders Board Head of departments	
	The Parastatal Board	> 1.000.000 < 10.000.000	The Parastatal Board	
	The Ministerial Tenders Board	> 10.000.000	The Ministerial Tenders Board	
Lagos parastatals				
Parastatal without a Board	Parastatal Tenders board	< 2.000.000	Final approval by Director	
	State Tenders Board	> 2.000.000	Final Approval by Chief Executive of State	
Parastatal with Board	Parastatal Tenders Board	No limit	Final approval Chairman of the Board	

ANNEX 3

Grade Levels (Amounts in Naira)

Grade Levels (Amounts in Naira)

Grade level	Salary/year step 1	Salary/year last step 9-15
01	15680	20640
02	16224	22944
03	16764	25164
04	17604	27684
05	20064	31824
06	24660	38940
07	33072	50712
08	43428	64596
09	51192	76392
10	60264	87984
12	70848	102168
13	79212	112332
14	87612	123252
15	97968	136464
16	108360	154632
17	120816	173328

ANNEX 4

List of Persons Met

List of Persons Met

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
Fed. Min. of Finance	A.S. Arikawe P. O. Benemoh	D. Mult (FMF) D.D.
Ministerial Tenders Board	A.E. Ogbuehi Baba Umar Faruk Ogunleye J.O. (Mrs) Ibe D.C.	Perm Sec. (GSD) DES/SGF SEC (MTB) DDF
National University Commission	Dr. D.C. Onyekwelu Engr. U.A. Nurudeen Dr. Steve Osiobe Mrs. M.I. Barrow Mrs. A.E. Omole V.E. Uyo Austin Akudemor Ajayi C.S.	Chairman Project Implementation unit. Chairman Equipment Acquisition sub. Committee. Chairman, Sub. Committee on books and journals acquisition. Ag. Director Pers. Mgt. Ag. Director Finance & Supply Prin. Executive Officer. Ag. Director Finance & supply Prin. Executive Officer Admin. Sec (PIU) Legal Adviser
Nigerian Custom & Excise	Z.A. Ajikobi D.A. Ogungbemile M.T. Bello A.I. Ogilo J. Nwaiwu M.M. Ahmed Y. G. Goronyo P.J. Dibie M.O. Duronoju A. Onwubuya	D.C.G. (FATS) DCG (Customs) DCG (Enforcement) DCG (INS/INR) 5234683 DCG (Exp&P) DCG(EFU) CSC Acet S.C. Stones DSC (DTB)

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
Co-operate Affairs Commission	Edwin Orosuhor E.G. Ekong Umar Shaaibu Herietta Talabi	Registrar DFP DAP SEC
Ministry of Commerce	Dr. Hakeem B. J.U. Kaigamo M.D. Usman Mrs. Olaniyan	Perm. Sec. D. (PRS) D. (Ext. Trade) (2341792) P.A. to Perm. Sec.
NIPC	Alh. B.B. Guybawu Lawan Gana Lantawa Julius Jubril Bala Akin Sawyerr Ezekiel Uche Stephen Amase Soji Olamijulo G. Ismaila Bello Alh. Y. Kwasyang	Executive Secretary Dir. Finance & Admin Dir. Promotion & investor Services Dir. Plan. & Info. Tech. Dir. Reg. & Monit. D.D. Plan. & Info. Tech. D.D. (Prom. & Monetry) D.D. (F& Admin)
Fed. Attorney General Office	Mr. A.A. Akinleye D.I. Kifasi Alh. S. Ibrahim M. O. Idowu	Solicitor General & Perm Sec. MOJ DFS Dir. Pers. Mgt. Pers. Assit. To SGT & PS Justice
Kaduna State Government	H/E Alh. Ahmed. Mohammed Makarfi Engr. Dariye Mohammed A. Bello Abubakar H. Moriki Suleiman Hunkuyi Haruna Saeed A.M. Ishaku Bilus Emishe Kabir Umar	The Executive Governor Deputy Governor SSG Comm. For Finance Perm. Sec. Min. of Finance (062- 239979) Acct. General (062-239980) Solicitor General Exe. Chairman State BIRS. (062- 237960) G.N. Kaduna State Water Board
Technical Section Kaduna State	D.P.T. Karaski Abraham Waji Sabo Abdul Ibrahim Balase Musa Musa Abdul Ayba Jatan	Sec. Tender Board M.O.W.H. M.O.W.H.

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
ZAMFARA STATE GOVT.	H. E. Ahmed Sani A. H. Morike Mohammed Bello Ahmed B. Mahmud Muazu M. Gusan Haruna Abubakar Mohammed M. Musa	The Executive Gov. Comm for Finance Sec. To State Govt. Attorney General Accountant General Auditor General Chairman BIR
TECHNICAL SECTION ZAMFARA STATE	Alh. Aliu Mohammed Shinkafi Bala Wakili	Deputy Governor Sec. To FGPC
LAGOS STATE GOVERNMENT	Olawale Edun Olayemi Cardoso Alh. Y. A. Balogun Mr. W. O. Allison G. O. W.	Hon. Comm. Of Finance Hon Comm. Economic. Plan. & Budget. Perm. Sec. (SMF) Dir. (Tech. Aid) P.D.B.B. MOEPR
TECHNICAL SESSION LAGOS STATE	G. Owolabi N. M. Salami Olalemi K. K. Engr. R. R. Pedro Mrs. R. T. Akesode Mr. C. O. Majekodunmi Mr. Arowa O. O.	P. S. (Cabinet) Sec. STB DPRS Min. of Finance Dir. Mech. MOW Ag. Dir. (Finance & supplies) MOW Chief Purchasing Officer, MOW Dir. Audit
TRANSPARENCY INTERNATIONAL	Gerrad R. O. Ishola Mr. Rotimi Bankole Wilson Mrs. Bimbola Adesanya	Secretary General Prog. Office P. T. Prog. Officer
CROWN AGENTS	Mr. Semion Williams Mr. Kenneth Chukwuemaka	Managing Director D. MD.
NIGERIA INSTITUTE OF PURCHASING AND SUPPLY MANAGEMENT	Mr. R. G. Adejumo	Administrative Officer
STANDARDS ORG OF NIGERIA	Mr. S. R. Ilagija Prof. G. a. Agbalaka P. O. Solarin (Mrs.) D. U. Agbanelu F. I. Enuani J. T. Oshikanlu L. N. Ugoroji Prof. G. A. Abalaka Mrs. M. I. Ayiror Mr. A. O. J. Timothy Mr. A. A. Musa	D. Director - Director-General (PM) QATC Hlab Serv. CSO (QA) HOD (Stds) Deputy Director (F & S) Director General) PA to the Director General Admin. Asst., DG Chief Accountant

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
Office of the Auditor- General of the Federation	Joseph O. Ajiboye V. S. C. Azie R. U. Igbo T. O. S. Nwatarali A. E. Ogbuehi M. M. Alkali Stephen O. Ugbooduna	Director of Audit/ Deputy Auditor- General. Director (Projects) Deputy Director Asst. Director - (Fin. & Supply) Permanent Secretary - General Services Office (OSGF) Director - PAC Asst. Director - PAC
Public Accounts Committee (Presidency)	Baba Umar F. P. A. Giwa Y. A. Kosoko Ibrahim Zukogi H. O. Ilo	OSGF ACAO (PAC) ACEO (Accts)- PAC Chairman Secretary
Joint Tax Board/ Fed. Inland Revenue Service	Y. N. Giwa Arogundade (Mr.) K. M. Mashi A. O. Pitan (Mrs.) Kalu Awa	Director - (F & S) Director - Collection Ag. Director Deputy Director PA to the Chairman
Office of the Accountant - General of the Federation	J. E. Odiri O. A. Oni L. N. Dangin (Mrs.) N. J. Aziagba E. E. Nwokoye	Director - Treasury Director - PRS Director - Insp. Director - MOFI Snr. Accountant
National Planning Commission	A. T. Ikomi C. D. Gali	Ag. Permanent Secretary Director - Plans, Budgets & Projects
Federal Attorney - General's Office	Akin Akinleye Sani Ibrahim D. I. Kifasi	Solicitor-General & Permanent Secretary Director - Personnel Director - (Fin. & S)
Public Accounts Committee of the Senate	Bola Ominiya	Clerk of the Senate

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
Kaduna State Government	H/E Alhaji Ahmed Mohammed Makarfi Engr. Dariye Mohammed A. Bello Abubakar H. Moriki Suleiman O. Hunkuyi Haruna Y. Sa'eed A. M. Ishaku Bulus James Engr. Kabir	The Executive Governor The Deputy Governor Secretary to the State Government Honourable Commissioner for Finance Permanent Secretary - Ministry of Fin. State's Accountant General State's Solicitor General Exe. Chairman - State Board of Int. Revenue GM KSWB
Kaduna State Government - Public Accounts Committee of the State House of Assembly	Abdul Umar Abdullai A. Ikara Kawu A. Ibrahim Yakasai	Clerk of the House of Assembly Majority Leader Chairman - Kaduna State PAC
Zamfara State Government	H/E Alhaji Ahmad Sani Ahmed B. Mahmud Abubakar H. Moriki Muhammed A. Bello Mu'azu M. Gusau Haruna A. Moriki Muhammad M. Isah	The Executive Governor Honourable Commissioner for Justice & Attorney General Honourable Commissioner for Finance Secretary to the State Government State's Accountant General State's Auditor General Exe. Chairman - State Board of Int. Revenue

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
Lagos State Government	Olawale Edun Olayemi Cardoso Yomi Osinbajo Y. A. Balogun Josephine Williams Alh. S. A. Rabiun Dr. M. O. B. Shasi Wasiu O. Allison L. O. Adeyinka Bola Odujoko Bayo Sadade	Honourable Commissioner for Finance Honourable Commissioner for Economic Planning Honourable Commissioner for Justice & Attorney General Permanent Secretary Ministry of Finance State's Accountant General Chairman - State Board of Internal Revenue Director - Economic Planning Director - Technical Aids - PPBB. Director of Audit Office of the State's Auditor - General Director of Budgets- Economic Planning Ministry of Eco. Planning & Budgets.
Lagos State Government - Public Accounts Committee of the State House of Assembly	Dr. Leke Mamora L. A. Gbadamosi Tajudeen Agoro Niyi Fabikun Jide Omoworare Femi Adebajo Tunde Oyewo Dauda Kako Are Taiwo Kolawole	Honourable Speaker Clerk of the House of Assembly Chairman - PAC Chairman - Finance Chairman - Judiciary Chairman - Projects Chairman - Inform. Chairman - Industry Chairman - H & T
The Institute of Chartered Accountants of Nigeria	H. A. Agbebiyi Phillip Omoregie S. A. Raji Toyin Adepate Mariam Abdulai A. A. Aseni	Vice President of the Council Registrar/ C. E. Deputy Registrar Director - Admin. Arthur Andersen P. A. to the Registrar/C.E.
Association of National Accountants of Nigeria	O. O. Osinuga (Mrs.) Bayo Osineye	Under - Secretary Business Manager

ORGANISATION/ INSTITUTION	PERSON(S) MET	DESIGNATION
The Nigerian Institute of Taxation	T. O. Aiyewumi J. B. Okele Femi Jegede G. F. Fasoto O. Simplice (Mrs.) M. O. Oyeleke	President of the Council Immediate Past President Registrar / C. E. Honorary Treasurer Fed. I. Rev. Service Akintola Williams
University of Lagos	Prof. E. O. Ogunjimi	Head of Department of Accounting
Yaba College of Technology	M. O. Afolabi (Mrs.) John Nwafa	Director , School of Management & Business Studies Head of Department of Accounting & Finance
KPMG - Nigeria	J. K. Randle A. S. Gbodimowo R. U. Uche Tunde Oremade	Chairman / C. E. M/P Consulting Partner Partner
Akintola Willaims - Delloite & Touche - Nigeria	Victor Hammond Segun Odubogun Godwin Oporum Victor Akhuemokhan	Chairman / MP M. D. Consulting Partner Partner
Nigerian Accounting Standard Board	G. S. Nnadi J. O. Onayemi J. O. Obazee	Exe. Secretary/ Chief Executive Director- (F & A) Principal Manager

ANNEX 5

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List of Documents

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ANNEX 6

Summary of Discussions of the Procurement Syndicate Group on Country Procurement Assessment Report (CPAR)

**SUMMARY OF DISCUSSIONS OF THE PROCUREMENT
SYNDICATE GROUP ON COUNTRY PROCUREMENT
ASSESSMENT REPORT (CPAR)**

General Overview

The discussions were carried out in the context of the current globalisation of ideas, economies and policies in which the World has truly become a global village. In this regard, Nigeria, as well as other developing nations is principally a consumer of foreign industrial goods equipment and services; and of accepted international practices. A total of 49 participants attended the first day's discussion while 53 attended on the second day. The sessions were chaired by a seasoned Civil Servant on the first day and an equally seasoned Procurement practitioner.

Participants generally agreed that Nigeria could not at this stage afford to develop her economy in a vacuum, isolated from the compelling global environment. The economy has necessarily to be opened up to foreign participation, thereby making it possible for Nigerians too to have equal access to participation in other global economies. Subsequently, the country needs to modify her operating procedures and practices to be in line with those similar to International business culture and practices.

In the same vein, the adaptation of this International framework should not be done in such a way as to place local experts and industries at a disadvantage. This is because Nigeria, being largely a consumer nation at the moment needs to be given a chance to reap the fruits of her ongoing efforts in technological development. To this extent, this dream could be stifled by a wholesale adaptation of business practices relating to procurement. In other words, while largely embracing the adaptation of the International framework on procurement practices, participants cautioned that due consideration should also be given to national human/industrial capacity building and utilisation.

Highlights of the discussions and agreements are as follows:

PUBLIC SECTOR PROCUREMENT

1. LEGAL FRAMEWORK

The finding under this heading was that the existing primary legislation and secondary laws were inadequate and unclear.

The issue is “How to make legislation and secondary rules comprehensive and clear”. The solutions were presented in three scenarios namely:

- a. Adapt International standards i.e. UNCTRAL model Procurement Law;
- b. Maintain the existing Status Quo by leaving the existing legal framework intact;
- c. Reform existing legal framework with necessary modifications to Financial Regulations

Discussion

Participants commended the work of the task force but observed that a level playing field should be created for the Nigerian participants in order to promote industrial development of the country. They were not fully in support of a wholesome adaptation of the International standards but rather, a combination of the proposed scenarios. This position was reinforced by the existing practice by some foreign companies’ operating in Nigeria, who would rather import primary or secondary production inputs from their subsidiary outside the country instead of sourcing the same thing from a local company operating in Nigeria. Participants believed that the Nigerian Industries are suffering as a result and were in support of government introducing a legislation to protect local interests.

In the context of the just concluded World Trade Organization (WTO) conference in Seattle, Washington in USA, where the major issue

was how to protect the poor nations against unfair trade, option 2 was shot down by participants.

Although some participants believed that adequate laws on procurement exist in the country and some states of the federation, further clarifications revealed that what was on ground could not be classified as laws but rather as regulations. This is because these regulations have neither sanctions nor penalty for any action or inaction taken during the procurement process.

Further discussions revealed participants' fears over the long gestation period usually preceding the enactment of legislation under a democratic government and the tendency to enforce laws at the state level that were formulated at the federal level. Concerns were also raised over a wholesome adaptation of what was being described as the International model. These fears were all dispelled. Legislation could take a long time to pass into law, but once passed the benefits continue forever. Also, the states will be free to operate at their own free will if they deem so fit but certainly, the existence of best practices is likely to be attractive to those who may wish to adopt them. Thirdly, the World Bank clarified the status of the said International standards. This is merely a framework and not a forced set of rules, which must be swallowed hook, line, sinker, and sinking rod. Each country is at liberty to adapt this framework to formulate its own set of laws subject to individual country's own peculiar environment and circumstances.

After a very long debate the group agreed as follows:

- a. Nigeria needs a transparent procurement system in order to reduce incidence of waste and corruption;
- b. The country is part of the international community and should find it desirable to work within the context of laws acceptable to the international community;

- c. In adopting the international standards, we should take into consideration our local circumstances and ideals to the best interest of our people and the country's technological development

In the light of the above, scenario 1 and 3 were adopted. Scenario 3 will serve as a short-term measure while the ultimate long-term solution lies in scenario 1.

2. ELIGIBILITY CRITERIA

The finding under this heading was that the registration at the Tender Board or Registration Board is used as eligibility criteria for bidders' participation in the procurement process.

The issue is "Whether other criteria different from those relating to the bidders' capability and resources should be used as criteria for eligibility to participate in the procurement process".

The solutions were presented in three scenarios namely;

- a. **Abolish Registration lists;**
- b. **Maintain the existing Status Quo'**
- c. **Keep registration lists but stop using them as eligibility criteria**

Discussion

The participants were convinced that registration is a necessary step in the procurement process because it enables government to predetermine genuine contractors who can deliver qualitatively. Some people believed that registration has been abused in the past (like in the case of Education Trust Fund, which registered contractors without allowing them to participate in the procurement process) and should therefore be abolished. In addition, registration is restrictive as it precludes new and better bidders from participating in the process if they

were not registered. However, registration is considered useful for petty contracts that require urgent attention.

Participants finally adopted option 3 i.e. to maintain registration procedure provided they are not to be used as eligibility criteria for participating in the procurement process.

2. METHOD OF TENDERING

The finding is that the methods for tendering are not detailed enough.

The issue is “How can procuring units be given more uniform guidelines in relation to use of tendering method”. The solutions were presented in three scenarios namely;

- a. Adapt International standards**
- b. Maintain the existing Status Quo;**
- c. Develop and clarify existing regulations**

Discussion

Participants agreed that although government procurement procedure is not as transparent as necessary, misapplication of the international procedure too could produce the same result. The example was given of drugs delivered to states under an international arrangement without due participation of the stakeholders. It was however generally agreed that international standards are sufficiently open and give room for wider participation of bidders. Most foreign donors and agencies prefer to use the ICB procedure, which is based on international open tender and helps to get the best quality goods and works and the lowest evaluated price. Also, it is used to select Consultants based on Quality and cost basis.

Participants were unanimous in the belief that open tender is not possible for specialised goods. In this case, the Limited International Bidding is used. It was also noted that in order to get full advantage of

the ICB procedure, the specification for the required goods must be sufficiently comprehensive. Under the international system, there is also room for a sole-source approach in times of emergency. National Competitive Bidding procedure as well as shopping are also available for small contracts and can be used in line with the graduated authority provided to different authority levels of officers, under the federal government rules. This will convey the necessary transparency and accountability most desirable by the international community. For Consultancy services, the preferred methods of selection are Quality based; quality and cost-based, consultant's qualification, best cost, fixed budget and Sole source.

Option 1, i.e. using international standards was eventually adopted because of its transparency, accountability, economy and flexibility to accommodate all levels of procurement.

4. ADVERTISEMENT

In line with the advantages prevalent in the international tendering Method, participants did not find it difficult to adopt the international Standards for advertising bids. This has the advantages of clarifying bidding requirements, give more guidance to bidders, support the need For timely notification and can be adjusted to special needs.

5. BID OPENING

The finding under this heading is that the bid opening process was Neither described nor regulated during a Procurement process.

The issue was “How a more open and transparent standard can Be developed”. The solutions were presented in two scenarios namely:

- a. Adapt International standards;**
- b. Maintain the existing Status Quo intact;**

Discussion

There was not must debate on this issue as this supports the principle of transparency, accountability and economy.

6. EVALUATION

The finding under this heading is that evaluation criteria used are Usually not open to bidders.

The issue was “How to promote transparency and strengthen Evaluation process”. The solutions were presented in two scenarios namely:

- g. Adapt International standards;**
- h. Maintain the existing Status Quo;**

Discussion

Discussions centred on technological development of the country and the need to provide evaluation criteria that will not be inimical to their development. The suggestion to use minimum requirement for evaluating bids in order to allow local bidders to win bids was not accepted by participants.

The International standard was eventually adopted on the grounds that it is open and fair to all parties. It also gives preference to local bidders and leads to more efficient utilization of resources. Its adaptation is also in line with Nigeria’s membership of the International Community.

7. MONITORING

The find under this heading is that the monitoring system is weak.

The issue is “What are the real problems and how can the problems be addressed?”. The solutions were presented in two scenarios namely:

- a. Adopt best practice and engage in more training of government officials;**

c. **Maintain the existing Status Quo;**

Discussion

Participants toyed with the idea of introducing what was called a “visible” system whereby the parties are also monitored along with projects. They however agreed that customers verification is a standard process in procurement monitoring. Discussants rejected the status quo suggestion, claiming that there was no need to keep what has lead to many projects being abandoned. In this case, the international scenario was adopted on the grounds that it is the most sensible to do at the current state of the country’s project implementation situations.

In order to enhance the monitoring activity at the appropriate time, it was agreed that the stakeholders should be involved from project identification stage.

8. TENDER BOARDS

The finding under this heading is that the structure and practical function of the Tender board system is not clear.

The issue was “How can the function and the organizational set up of the Tender Board be strengthened”. The solutions were presented in three scenarios namely:

- a. **Abolish the Tender Boards;**
- b. **Reform Tender Boards;**
- c. **Maintain status quo.**

Discussion

Discussions centred on the abuse of Tender Boards by politicians and its use mainly for political patronage. Notwithstanding, participants still believing that the Tender Boards should be retained but should be better organized to function more efficiently, independently and professionally.

The current way for drawing membership was heavily criticised by participants who believed that this should be professionally based. There was also a suggestion that membership should not be static and predictable as the case is at the present time.

Members reacted differently to the suggestion to have professionalised procurement department within the government ministries. Whereas some felt that the introduction of a specialised department for procurement could lead to better efficient procurement practices, others did not share the view. The latter based their judgement on the minimal impact which the presence of professional Auditors and Finance experts have made on the financial portfolio.

On the strength of these arguments, scenario 2 was adopted to enable reforms of the existing systems to take place.

9. POLICIES, GUIDELINES AND REGULATIONS

The finding under this heading is that there is lack of compliance and Enforcement of the existing policy guidelines and Regulation. The issue was “Whether there are adequate bodies in place to carry out policy making, monitoring, control and prosecution of these policies, guidelines and regulations?”. The solutions were presented in three scenarios namely:

- a. Strengthen by establishing a new body;**
- b. Maintain the existing Status Quo;**
- c. Enforce existing rules.**

Discussion

The suggestion to establish a new body was not immediately acceptable to most participants. Supporters felt that a similar body – Nigerian national supply Company had collapsed on the grounds that a Commission of the nature being proposed did not exist. In addition, there is no such body in the country to regulate procurement practice and where

aggrieved parties can lay their complaints over any failure experienced in procurement processes. Proponent also said that the Commission is not designed to award contracts but rather to formulate guidelines, collate reports and deal with complaints from parties affected by poor procurement practices.

Opponents felt that the Commission may become draconian, as its structure may not easily lend itself to a Federal structure being practice in Nigeria. They also said that the building of such a Commission will take a long time to put in place given current lack of capacity to put it in place across the country. In addition, if an efficient Tenders Board is in place, the need for the Commission being proposed may not be so overwhelming. Besides, an anti-corruption bill is in the house for approval in addition to a Public Complaints commission to deal with any problems arising from misapplication of procurement laws.

The desirability for the Commission was so over-powering that the participants agreed to adopt it (Scenario I) as a long-term measure to be introduced when the time is right and evidence of sufficient capacity is on ground to implement it. To this extent, the donor and Multilateral Agencies will intensify Training on Procurement is subsequent assistance to the country.

10. CAPACITY BUILDING

The finding under this heading is that a strong need and wish for training was identified.

The issue was “How can development of skills be organized and regulated?”. The solutions were presented in three scenarios namely:

- a. Regulate sector and introduce certification system;**
- b. Staff Training Programme;**
- c. Maintain Status Quo.**

Discussion

Participants believed that several training can be done for targeted audience such as Professionals, Tenders Board members, attitudinal change and for other who may need such training. The topic was not debated much and Scenarios 1 and 2 were adopted. It was however agreed that though the goal is desirable, it is not one that can be achieved immediately. The NIPS is already on ground and is currently awarding certificates in purchasing and supply. However, efforts should be made to charter the Institute as other professional bodies in Engineering, Architecture, Accountancy, etc. Scenario 1 and 2.

10 STAKE HOLDERS

The finding under this heading is that dialogue with stake holders have no forum for discussion.

The issue was “How can stakeholders be involved in a process of change and received information about new initiatives”. The solutions were presented in three scenarios namely:

- a. Maintain status quo;**
- b. Distribute Information Materials;**
- c. Adopt Communication strategy.**

Discussion

Scenario 3 was adopted in combination with Scenario 2 on the strength that communication is now used to bridge the distance barrier in the World and has truly made the globe into a small village.

PRIVATE SECTOR PROCUREMENT

Procurement practices in the public sector represents an important element because of the relatively large proportion of private sector share in the economic activity of Nigeria. It was also recognized that good procurement practices can lead to increment in the profit margin of the sector.

As already mentioned the private sector in Nigeria is relatively large. However, 70% of Nigeria's economic activities and 60% of the work force are engaged in the informal sector. Other salient statistics are as follows:

- a. Crude oil accounts for 95% of Nigeria's exports and provides more than 80% of FGN revenues;
- b. The same crude oil accounts also for 36.5% of GDP
- c. Agriculture employs about 2/3rd of the work force;
- d. Agriculture also accounts for 30.1% of GDP
- e. Manufacturing sector takes 6.1% of GDP
- f. Mining sector takes only 0.3% of GDP

In discussing Private sector procurement, focus was placed on Customs and Trade in Nigeria in order to explore how much support these areas render to procurement practices. Discussion therefore covered the following areas:

- a. Export procedure
- b. Import procedure
- c. Transit procedure
- d. Quality control
 - Pre-shipment control system

- Technical quality control system
- Consumer quality control system
- e. Customs clearing system
- f. Customs Authorities
- g. The banking sector

Highlights of the discussion are as follows:

Discussion under Private Procurement Procedure was more exploratory than decision making. On the Import and Export procedures in the country, it was observed that purchase of goods in the private sector is strictly based on cash. Participants felt that, even if it were possible to make the activities of Corporate Affairs Commission (CAC) procedures more efficient, it is still not the institution to provide sufficient information on liquidity and stability of suppliers of goods.

Export procedure

Participants discussed the merits and demerits of pre-export quality tests. The initial belief was that such a procedure was an unnecessary burden on both the government and exporters. This impression was clarified by other discussants. It came out that the step was aimed at protecting the exporters from exploitation much as it is for the protection of the country's image abroad. Because of this pre-determined condition, it will be possible for the Nigerian exporters to receive reasonable prices for their exports. Again, such goods exported rise to a high level of competitiveness in the international market and create a good image for the country.

Participants therefore agreed that this procedure should be continued to prevent people who are wont to ship any available goods abroad, despite its poor quality.

Because of the delays associated with the process and the possible negative impact, which it may have on small-time exporters, participants

agreed that this quality verification approach should be restricted to goods of crucial economic value to Nigeria. Suggestions made to the effect that the phrase “caveat emptor” should be allowed to rule on this matter were not acceptable to participants and in fact, were considered not applicable in this case.

Import procedure

Some participants initially considered the insurance policy, which compels all imports to be insured in Nigeria as cumbersome and unnecessary burden on suppliers of goods to the country. Majority of the participants did not share this view and held the belief that government decision was well focused. They argued that this decision would help to reduce the use of scarce foreign exchange. However, it was noted that this practice does not affect imports affecting donor agencies and Multilateral organizations. Insurance for such goods is still denominated in any convertible currency. Participants want this rule to be maintained.

Transit procedures

The recommendations made by the Task Force were acceptable to the participants. These are that:

- a. a study should be conducted to calculate the loss of import duties and taxes
- b. a review and reorganization of transit procedures should be undertaken
- c. improvement of working conditions and accommodation for Customs Officers in border areas

Pre-shipment control system

Participants believed that the issue of quality inspection should not be restricted to quantity and price alone. Whether pre-shipment or destination inspection is used for this purpose, what is important is to get value for money.

Participants however expressed concern over the effectiveness of pre-shipment inspection as against destination inspection. The Customs expert in the group assured that both have their strengths and weaknesses. The shift from destination inspection to pre-shipment inspection was informed by lack of adequate equipment at the ports to carry out an effective work. There is a chance of returning to it once that situation is redressed. He explained that in both cases, the penalty for false declaration of goods (and these are many) is on the importer rather than the Agent. Participants were of the view that the Agents too should be held liable for false declaration, as this cannot be seen as the importer's problem alone. Clearly, some sharp practices prevail in this area irrespective of the system used. Participants expressed the hope that this will be gradually reduced with people becoming more honest and patriotic.

Pre-shipment inspection however can lead to delays and it is not a guarantee against fraud. Most importers prefer to ship goods through ECOWAS countries in order to avoid paying duty. It has been discovered that this is one source of bringing goods to Nigeria without paying proper duties and taxes or meeting Nigerian standards. Participants agree that the need is there for the ECOWAS countries to meet on this issue so that importers can be made to comply with International procedures by delivering goods at country borders, where destination inspection may be applied.

Regarding the suggestion to publish information folder to enable all players know the procedure for shipment without having to guess through the system, a representative of the Inspection Agent stated that materials with this information existed. The problem was actually not the availability of the publication but lack of will to keep to existing rules. It was explained that the Federal Ministry of Finance, Central Bank of

Nigeria and the Agents publish relevant information. The CBN publishes “circular” at the beginning of each year and these information are widely circulated and also available on internet.

Technical Quality Control System

The Standard Organization of Nigeria believed that as a standard setting body, they have done well using various international standards. They provide free service to importers except where product-type certification is involved. They also use private laboratories where necessary and do collaborate with others based on special recognition agreement. They wish to benefit from future capacity building initiative arising from this workshop, or emerging projects. Participants agreed that the test laboratory being recommended for this purpose should be located at the ports.

On the Tariff structure, participants agreed to the recommendation of using single uniform tariff structure. It was actually felt that “zero” duty tariff structure would be best for some industries. The recommendation on the acquisition of ASYCUDA + system was embraced as well as creating a web-site for the Customs Service.

With regards to the suggestion to create an incentive system into the revenue collection mechanism by customs and indeed other similar organizations, Participants supported this idea. This was on the ground that it will lead to better efficiency in the system.

The Banking system

Participants supported the recommendations to:

- Abolish the requirement that importers must deposit 50% of the total value of imports of the L/C with the CBN for one month.

ANNEX 7

**Comments of the Task Force Set Up to Work
With the World Bank on the Draft Country
Procurement Assessment Report (CPAR)**

**COMMENTS OF THE TASK FORCE¹ SET-UP TO WORK
WITH THE WORLD BANK ON THE DRAFT COUNTRY
PROCUREMENT ASSESSMENT REPORT (CPAR)**

Members of the Task Force on the CPAR met on March 21 and 29, 2000 to consider and review the draft Report on the Country Procurement Assessment Report (CPAR) prepared by the World Bank. The World Bank and members of the Task Force jointly undertook the research work and field trips that preceded the preparation of the report but it was the World Bank that put the report together on behalf of both the Bank and the Nigerian side. The comments and views below are suggested modifications to aspects of the report otherwise, the Task Force is in support of the report which is hereby recommended for Government's adoption.

Legal and Regulatory Framework

2. In reviewing the Legal and Regulatory Framework, it is pertinent to recall that as part of the initial measures taken to ensure transparency and accountability in the conduct of government business activities, a review of

¹ The Task Force is made-up of representatives of the Federal Ministries of Finance, Justice, Commerce, Works and Housing, Agriculture and Rural Development; National Planning Commission, Nigerian Customs Service, Office of the Accountant-General of the Federation, Office of the Secretary to the Government of the Federation, Office of the Auditor-General of the Federation; the Lagos State Government; and the Nigerian Institute of Purchasing and Supplies Management (NIPSM).

the Financial Regulations (FR) and the composition of the Traders Boards was undertaken by the present Administration. While it is evident that some of the recommendations in the draft report had been addressed in the revised FR, it is necessary for Government to indicate acceptance in principle of the proposal for the introduction of a public procurement law based on the United Nations Commission for International Trade Law (UNCTRAL) model, the establishment of a public procurement oversight body and the reform of the Tenders Boards system.

Registration as eligibility condition for Tendering

3. The proposal that registration as eligibility condition for tendering should be discontinued is not supported. In addition to being a source of revenue to Government, registration for purposes of tendering also serves as basis for evaluation of the status as well as for monitoring the performance of bidders. Registration, should however, not be applicable to cases involving International Competitive Bidding (ICB).

Tenders Boards

4. It would be recalled that Government recently introduced some reforms

to improve the operations of the Tenders Boards as well as ensure transparency in the award of contracts. The reform has to a large extent addressed some of the issues raised in the report. The recommendation that Ministers, Governors and Commissioners should not be members of Tenders Board, is in line with the existing regulations. They should however remain the approving authorities so as to ensure transparency and accountability. The Task Force is in support of the recommendation that Departmental Tenders Boards should be abolished since the level of their authority could be delegated to Departmental heads.

Procurement Procedures and Practice

5. The recommendations proposed on updating procurement methods, advertisement of requests for tenders, development of standard procurement document, bid opening and evaluation, monitoring and contract management are recommended for Government's adoption. Meanwhile, Government has up-dated the Financial Regulations (FR) to meet the current challenges.

Training

6. The proposals under training are recommended for Government's adoption, subject to the following modifications:

- (i) Paragraph 58 The focus here is on "procurement training".

Comment

- (a) The general, systematic and continuous on-the-job training for all civil servants should be considered alongside the specialized training of procurement experts.
 - (b) Since decisions on procurement are made by multiple layers of administrative officers, procurement training needs to be broadly conceived to benefit such officers as well.
 - (c) The high cost of training and capacity building, which the proposed reforms entail should be weighed against the benefits of enhanced capacity and reduction in corrupt practices.
- (ii) Paragraph 59: The Nigerian Institute of Purchasing and Supply Management (NIPSM) is commended for providing the sort of procurement training that is desired.

Comment:

More organizations providing this sort of training, such as the polytechnics, are needed to satisfy the training needs of staff at the Federal, States and Local Government Levels. Such agencies should operate in a network to share experiences and optimize the benefits of cooperation.

- (iii) Paragraph 62: Suggests that beside developing a procurement manual, the Public Procurement Commission (PPC) should also establish a helpdesk via e-mail or a homepage on the Internet.

Comments: The recommendation is supported.

- (iv) Paragraphs 63, 64: Suggest ways of communicating major aspects of proposed procurement reforms to different target groups to ensure maximum co-operation and compliance.

Comment: What is needed is to involve a wide stakeholder groups such as politicians, civil servants, private sector groups,

NGOs, media practitioners etc in the conception, formulation and actualisation of the reforms.

- (v) Paragraph 66 States that:
- (a) absenteeism by civil servants from work to engage in activities that earn them additional incomes is not sanctioned. This is not true. See Civil Service Rules, paragraphs 04307,04428 and 04429 which clearly forbid this. While there are sanctions however, enforcement by Government departments and agencies have neither been strict nor even.
 - (b) "irregularities among civil servants and the management seem to be an accepted fact". This is an overstatement and should be deleted.
 - (c) that "Many of the regulations over the years have been replaced by ad-hoc arrangements which are aimed at serving individual purposes rather than the interest of the nation". The statement is not true. We still have regulatory documents e.g the Civil Service Rules, Financial Regulations, Civil Service Handbook,

Extant Circulars etc. which are neither ad-hoc nor meant to serve individual interests.

- (vi) Paragraph 67: The incremental steps on Salary Grade Levels 1 -17 are from step 1-step 15, and not from step 9-step 15 as stated.

- (vii) Paragraph 68: The opening statement that “The promotion system is primarily on seniority and not merit” is a gross misrepresentation. The truth is that promotion is based on multiple criteria which include merit, vacancy, seniority etc. Merit is particularly emphasized especially since the assumption of office by the present Administration whereby written tests carry greater weights than all the other criteria put together for promotion exercises.

Performance of World Bank Assisted Projects

7. The recommendations made are supported. We also wish to propose that adequate attention be given to the training of procurement officers while

periodic monitoring of projects by Federal Ministry of Finance and World Bank Staff should be emphasized. It was observed that inadequate counterpart funding was one major constraint to smooth project implementation and propose that future projects should be structured in a manner that minimizes the level of counterpart funds contribution by the Government. Contribution in kind by communities and the Government should also be quantified in monetary terms.

Private Sector Procurement

8. The recommendations proposed are accepted with the exception of:
Paragraph 81: Proposal for the Establishment of a Quality Management Initiative (QMI). We are of the view that the proposal for the establishment of a QMI was not necessary as most of the Private Sector companies have already put in place Quality Control Management (QCM) and maintain standards in line with their franchise and brand agreements.
Paragraph 72: The data supplied in this paragraph were found to be inadequate. The whole paragraph should therefore be deleted and replaced as follows:

The Private Sector in Nigeria

“Information and data on the size and structure of the private sector are scarce. To some extent, the size and structure of sectors of the economy can be determined but it is not possible to be very specific on the split between private and public involvement in each sector. The agricultural sector accounts for 34.74% and 36.46% of Nigeria’s GDP in 1997 and 1998 respectively and provides a living for almost two-thirds of the population. It is predominantly composed of small subsistence farmers with only a small number of commercial farms. The manufacturing sector is not substantial, contributing only 6.96% and 6.98% of the GDP in 1997 and 1998 respectively. Exploitation of solid minerals contribute only 0.3% of the GDP despite considerable abundance of deposits. The upstream oil industry is by far the most important sector of the Nigerian economy to such extent that the Nigerian economy can be regarded as mono-cultural. The sector accounts for about 95% of all Nigerian export and provides more than 80% of Federal Government revenue”.

Table 2 - GDP at 1984 Facto Cost: 1997 - 1998
(Percentage Distribution)

Sector	1997	1998
Agriculture	34.74	36.46
Livestock	5.74	5.89
Crude petrolrum and gas	14.17	13.10
Manufacturing	6.96	6.98
Wholesale and retail trade	12.90	13.16
Finance and Insurance	10.28	10.79
Others	15.21	13.63
Total	100.00	100.00

Source: Central Bank of Nigeria

Customs and Trade in Nigeria

9. Our observations on the proposals on Customs and Trade in Nigeria are as follows:

(i) Page 45, Paragraph 83:

One of the recommendations on Export Procedures in Nigeria at the ports is "the services for performing quality control should be procured on competitive basis. Two to four companies could be contracted for an initial period of 4 - 6 years to increase capacity and avoid current congestion as well as to give exporters a choice of more than one controller". This is not really very necessary

considering the level of our exports in comparison with our import trade. The quality control of our exports can be effectively handled by SON (for manufactured goods) NAFDAC (for food and drugs), and the Nigeria Produce Inspection Service (NPIS) (for other exports), given the necessary facilities instead of contracting it out. There has never been a time when we had any congestion in the ports on exports. It is Government's policy to ensure that only the Nigeria Customs Service handles clearance of goods in the ports and that other agencies remain in their offices from where they could be called out as and when their services are required.

- (ii) Paragraph 84: Indicates that individual importers have to be registered by the Corporate Affairs Commission (CAC) before engaging themselves in import trade. This is not entirely true. The fact is that all companies are registered by the CAC before they could commence any business. Clearing and forwarding companies, which are already incorporated at the CAC are

registered by the Nigeria Customs Service as Clearing and Forwarding Agents which are then assigned ASYCUDA numbers.

- (iii) Paragraph 85 of the same page: Indicates that all foreign exchange for imports has to be sourced through the Bank in the form of opening Letters of Credit. This is no more the case. Importers can source their foreign exchange through the bureaux de change and can import without L.Cs. Such importation is regarded as "Not Valid for Foreign Exchange". All that is required is an approved form "M" which is to be marked "Not Valid for Foreign Exchange".

- (iv) Paragraph 86: Indicates that an exporter of goods to Nigeria must have a pre-shipment inspection carried out at the port of embarkation on quantity, quality and Customs Tariff numbers and obtain a Pre-shipment Certificate. Actually, the inspection is carried out normally at the exporters warehouses by the Inspection Agents. In most cases what is inspected is just a fraction of what is actually imported. In some situation, different items are imported in place of what is inspected. Some of the

reforms envisaged for adoption by Pre-shipment agents should include the use of seals and labels to identify containers already inspected to avoid collusion and post-inspection alterations.

The same paragraph and abbreviation on page 4 of volume 1 described IDR as import duty "request". IDR means Import Duty Report. Paragraph 86 also indicates that IDR equals any international standard document called Customs Entry Declaration and single Administrative Document (SAD). This is not true. IDR used to be part of the required documents attached to the single goods declaration (SGD) for the clearance process of any import into Nigeria. The document (IDR) has now been replaced with Clean Report of Inspection (CRI) issued by the same appointed Pre-shipment Inspection Agents.

- (v) Pages 47 (paragraph 88) and 49 (paragraph 92) of the draft report recommended the engagement of a private operator to handle some aspects of Customs work specially as it involves transaction value and revenue collection. This recommendation was not accepted for several reasons. Nigeria is a contracting party to GATT Valuation System. The system emphasized

extensively on the use of transaction value method on dealing with imports and the effective date for implementation was 1st January, 2000. Being an active member of Technical Committee on Valuation, Nigeria has, in conjunction with the World Customs Organization (WCO) already worked out detailed action plans for the implementation of WTO Valuation Agreement. The Service has already set up an implementation Committee which has since produced a new valuation procedure in accordance with the WTO Valuation Agreement. The Service has also trained a lot officers both at local and international levels for the full implementation of the new Valuation System. These training are being organized in conjunction with the WCO Technical Committee on Valuation. In addition to this, the Valuation Unit of the Service has also built up a value file for use through the Federation and these value range are being constantly reviewed in line with fluctuation of prices world over. The Valuation Unit has made provisions for price data base through the use of:

- (i) Transaction Value Data Sheet
- (ii) Approved Test Value Certificate and
- (iii) Declaration Value Form.

All these indicate Customs Service readiness for the immediate take off of the new systems which would vitiate the involvement of any private operator. Appropriate law would be put in place to back up the reform in this regard. Revenue collection on Imports is one of the two major functions of the Nigeria Customs Service since its establishment in 1891. Efforts are always on to minimize leakages and maximize revenue collection. The recommendation to undertake a study to calculate possible loss on import duties and taxes is accepted. However, it should be emphasized that Pre-shipment Inspection Agency is equally a private operator involved in revenue assessment and collection along with the officers of the Nigeria Customs Service. The existing working relationship between the two organization has been very cordial and the weaknesses observe on the operation of the Pre-shipment Inspection Agency are being addressed by Government.

- (vi) Pages 47, paragraph 89 recommends that export certificate should be replaced with Landing Certificate. There is hardly any evidence to suggest that large amount of imported used cars and cigarettes found in the market were actually meant for Transit Trade. Most of these used cars being smuggled into the country from our neighbouring countries, come in not in accordance with the

international standard on Transit Trade. Hardly could you find any vehicle coming through Nigeria for our neighbouring countries. The reverse is always the case. If appropriate transit procedures can be implemented by our neighboring countries, smuggling of these used cars into Nigeria would greatly reduce.

- (vii) Page 50 paragraph 95 indicates that “the laboratories were formally located on the same premises as the Customs in Lagos”. This is not so. NAFDAC laboratories were never located at the same premises with the Customs. It was NAFDAC officers that were in the ports along with other Security Agencies. The current Government Policy on Port reform however reduced the number of Agencies that could have offices at the Ports. NAFDAC could be called back, after the establishment of its laboratories in the ports.
- (viii) Paragraph 99 indicates that excise duty is part of the charges on imports into Nigeria. This is not correct. No excise duty is charged on import. It is only charged on some locally

manufactured products. Apart from normal customs duty, other charges on imports are:

- (i) 7% surcharge
- (ii) 5% VAT
- (iii) 5% sugar levy for sugar import.
- (iv) 2% NAC level for import of Automobiles
- (v) 1% FOB CISS Administrative charges.

In order to further enhance the performance of the Customs Service, it is recommended that Government should purchase and install X-Ray inspection machine for the purpose of examining containerized cargoes. There already exist a pool of officers who are well trained both locally and internationally on the operations of X-Ray and scanning machines. This service could be privatized if need be. This, along with the targeted physical inspection through computerized Risk Management already embedded in the ASYCUDA system and the available Transaction Price Data Base and Data Bank developed by the Valuation Unit of the service, would ensure speedy and transparent clearance of imports into Nigeria.

Recommended Action Plan

10. The recommendation seeking the constitution of a Steering Committee

to be drawn from the Government and other Stakeholders to implement the proposed reforms pending the establishment of Public Procurement Commission (PPC) is recommended for Government approval.

Task Force on CPAR,
c/o Federal Ministry of Finance,
Multilateral Institutions Dept.,
Abuja.

29th May, 2000

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- Annex A: Legal Framework**
- Annex B: Trade Practices**
- Annex C: Financial Framework**
- Annex D: Public Sector Procurement of Goods/Works**
- Annex E: Public Sector Selection of Consultants**
- Annex F: Procurement Performance**
- Annex G: Private Sector Procurement**
- Annex H: Checklist Comparing National Competitive Bidding Procedures and World Bank Policy**
- Annex J: Laws and Regulations Governing Procurement in Nigeria**

Country Procurement Assessment Report

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Annex A - Legal Framework

GENERAL FEATURES

1. Legal System (i.e. Common/Civil Law; Socialist; Sharia; other)

Common/Civil Law

2. Form of government (i.e. federal or centralized)

Nigeria has a federal structure of government comprising of the Federal Government and Thirty six autonomous states vested with powers of self administration under the 1999 Constitution.

3. Does the Constitution contain any provision directly bearing on public sector procurement?
(If so, describe)

None

4. Is the country a signatory to the Agreement on Government Procurement of the World Trade Organization?

Nigeria is a signatory to the World Trade Organization Agreement but is not a signatory to the Agreement on Government Procurement.

5. Does the basic contract law contain any provision directly bearing on public sector procurement? (If so, describe)

The only law bearing on Public Procurement is the Financial Legislation made pursuant to Finance (Control & Management) Act. There are however principles of the common law applicable to procurement whether private or public. The Sale of Goods Act 1993 is also applicable to Public and Private Sectors Procurement.

6. Is there a separate body of law which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?

At the Federal level, Public Procurement is governed by Financial Regulations made by the Minister of Finance pursuant to Finance (Control & Management) Act. The formalities for government contracts are governed by the ordinary law of the contract. The States have their own regulations under the Commissioner of Finance.

7. Do other bodies of law regulating associated aspects of procurement contain provisions which are directly related to problems identified within the local system? (e.g. Labor, tax, customs, insurance, and banking laws, foreign exchange controls or laws defining national standards - If so, describe)

Not all the laws in the areas itemized have bearing on procurement. However, some of the laws require compliance with certain laid down procedures before business can be undertaken or goods and services can be brought into the country. For instance under Customs & Excise Management Act, import duties are payable on goods imported into Nigeria.

8. Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well coordinated legal framework?

The existing legal framework does not follow the generally accepted principles and norms prescribed in UNCITRAL Model Law on Procurement of goods, construction and services or other recognized public procurement system.

9. Is the hierarchy of the sources of procurement rules well established?

No

10. Do the same rules apply to central and local governments?

Generally yes. The States have their own financial guidelines which are based on the Federal financial guidelines.

Annex A - Legal Framework

11. Are there procurement rules established for parastatals? Describe.

The parastatals are subject to the same financial guidelines operated by the Federal and State governments.

12. Is the procurement function decentralized? If so, describe basic structure, name the main decentralized procuring entities and indicate whether their role, rights and responsibilities are clearly delegated in writing.

At the Federal and State levels, there are three tiers of Tenders Board namely: Departmental Tenders Board (DTB), Ministerial Tenders Board (MTB) and the Federal or State Tenders Board (FTB). The Tender Boards are differentiated by composition and financial limits. Although the FTB considers all tenders above N20 million, those above N50 million have to be approved by the Federal Executive Council. The hierarchy at the State level is the same as Federal level but the thresholds are different. These thresholds vary from State to State. For instance, the Kaduna State Tenders Board considers all tenders above N2 million but the State Executive Council has the power to approve those above N5 million.

13. Is there an entity(ies) with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure. Is it operationally involved in procurement? Is it the Central Tender Board?

There is no entity that regulates procurement functions in the country.

14. Is there a Central Tender Board or a similar institution? What are its duties and responsibilities? Do the procuring entities or the Central Tender Board issue the award recommendation?

There are no other Tender Boards besides those mentioned in question 12. Above.

15. Does the system allow/facilitate the introduction of new and innovative techniques and contracting practices without compromising basic principles?

The financial Regulations are rigid and the procurement entities cannot introduce innovations not specifically provided for in the Regulations.

16. Are there rules/procedures regarding bidder suspension and debarment?

There are no Rules for bidder suspension and debarment in the F.R. In practice however, bidders may be suspended or debarred if they flout bidding rules and regulations.

17. Is the country a member of regional trade/customs agreements? (If so, specify)

Nigeria is a member of Economic Community of West African States (ECOWAS)

18. Are there primary/secondary boycotts? (Specify)

None presently, primary and secondary boycotts were held towards South Africa during the apartheid era.

19. Are there provisions regarding preferences for particular categories of suppliers of goods and services? (Specify) Is the purchasing entity compensated by the government for awarding contracts to higher cost national or local firms?

Preferences for domestically manufactured goods and for domestic contractors are provided in the bidding documents issued under the international competitive bidding procedure

20. Are provisions on domestic/international arbitration codified? (If so, specify in which statute) Are the arbitration rules applicable to procurement contracts? Do they incorporate international rules?

Arbitration in Nigeria is governed by the Arbitration and Conciliation Act which includes a set of Arbitration Rules which are based on the 1976 UNICITRAL International Commercial Arbitration Rules. Nigeria applies the New York Convention on the recognition and Enforcement of Arbitral Awards.

Annex A - Legal Framework

21. If domestic arbitration rules are in force, are they generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences)

See 20 above

22. Is the country a member of the New York Convention on the Recognition of Foreign Arbitral Awards?

Nigeria is a member of the New York Convention on the Recognition of Foreign Arbitral Awards.

23. Are there laws or regulations governing policies and procedures for awarding concessions/contracts for private sector provision/operation of power, water or other infrastructure facilities? (BOO, BOT, etc.) Do any general conditions of contract apply as a matter of law or regulation?

At present government institutions have monopoly in power generation and water supply. There are no laws at present that allow private sector participation in these areas but these are being formulated under the ongoing privatization program.

BASIS OF TRANSPARENCY

1. Is there a legal or regulatory requirement for public disclosure of procurement legal texts?

Yes, the Financial Regulations having been published in official gazette is available to the general public.

2. Are there mandatory requirements for maintaining written records of procurement? Are they available to the general public?

There is a mandatory requirement for maintaining written records of procurement (See FR 3422) but they are not available to the general public.

3. Are requirements for advertisement of contracting opportunities adequate? Is the country's national gazette published in a timely fashion? Is it available to the general public?

Financial Regulations 3406 states that the media and publicity for tenders notice shall be the gazette and/or the local press. In addition, notice shall be exhibited at the offices of the Ministry/Department concerned and such other public offices. Advertisement is however done for major contracts. Although, the National Gazette is available to the general public, it is not published in timely fashion and this makes it impracticable to use it to advertise tenders.

4. Are requirements regarding public bid opening, if any, appropriate?

The Financial Regulations do not give any guidelines in relation to this issue. In practice bid opening is performed in different variations, mostly at closed sessions.

5. Are negotiations after bid opening or award selection generally forbidden?

There is no provision in the FR forbidding negotiation after bid opening or selection award. In fact the common practice is to hold negotiations.

Annex A - Legal Framework

6. Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process? Detail.

The Accounting Officer of a Ministry is the sole person responsible for selection of any method of procurement other than competitive bidding. He also formulates the rules for negotiations. This procedure could lead to abuse.

7. Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method?

Yes, FR 3302 provides that a contract should be awarded as a result of competition by tender unless there are specific reasons to the contrary. However, post-award negotiations are practiced extensively.

The decision is the sole responsibility of the Accounting Officer. According to FRS 3401, procurement above N500,000 must be made by public competitive bidding. Contracts for less amounts may be arranged by the Permanent Secretary/Head of Extra-Ministerial Department after obtaining quotations. FR 3408 also provide for selective tenders where the implementation of a project is to be accelerated.

8. Is there a requirement for public notice of contract awards?

Yes, FR 3419 provides that the name of successful tender and the nature of the service should be published in the official gazette.

9. Are requirements for bid and contract securities clear and appropriate? Are they required of all bidders?

Although FR 3417 mentions security and bond but types of securities and bonds are not specified. Therefore, the practice of requesting a bid security or bond vary among ministries, departments and parastatals. Bid security is generally not required in small contracts. Some agencies such as Federal Ministry of Agriculture requires for a large contracts a bid bond in an amount of 5% of the quoted price for a period of 60 days from a bank acceptable to the ministry. For large civil work contracts a bid bond is occasionally required for a period varying between 3 – 6 months. Performance bond are required for all Federal Government Civil works contracts. The bond are normally ten (10%) of the contract value. It is issued by a Nigerian Bank or a locally based insurance company acceptable to the Ministry/Department.

There is the need to specify the rules concerning bond and securities and the type of contracts to which they apply in the Procurement Rules or Financial Regulations.

10. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?

The qualification requirements are not fair. Only registered contractors are qualified to bid.

11. Do requirements for bid examination and evaluation provide the basis for a rational and fair process?

According to FR the Tender Board has the function to recommend to the Minister the acceptance of any tender and or rejection of bidders. The tender boards have no approval powers. The evaluation criteria are not published.

12. Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so, describe scope and frequency.

No

Annex A - Legal Framework	
13. Does government hold regular meetings with the business community to discuss public procurement issues?	<i>No</i>
14. Is there a conflict of interest policy in effect? (If so, describe its essential features)	<i>Code of conduct for public officers is contained in the 5th Schedule to the 1999 Constitution. The Code provides that every public officer must not allow his private interest to affect or influence his official duties. A Code of Conduct Bureau is also established to ensure compliance with the Code of Conduct</i>
15. Are the laws on bribery of government officials enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?	<i>The laws are not judiciously enforced. No such conditions are specified in the bidding documents. An Anti-corruption bill has just been passed by the National Assembly.</i>
<i>BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS</i>	
1. Are government employees expected to follow a published code of ethics? If so, describe its basic features.	<i>Code of conduct for public officers is contained in the 5th Schedule to the 1999 Constitution. The codes provides that every public officer must not allow his private interest to affect or influence his official duties. A Code of Conduct Bureau is also established to ensure compliance with the provisions of the Code of Conduct.</i>
2. How easy is it for bidders to report bribes by others and solicitation/extortion of bribes by government officials?	<i>It is not easy for bidders to report bribes by others and or solicitation/extortion of bribes by government officials. The Financial Regulations governing public procurements has no provisions on how an aggrieved bidder can table his grievances. Generally, bidders hardly complain because of the fear of being blacklisted.</i>
3. Do bidders have adequate access to administrative or judicial review/appeal ?	<i>Although bidders may seek redress in court or take their complaints to the Public Complaints Commission but they hardly do so because court process is generally slow and the Public Complaint Commission is not effective.</i>
4. Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle- blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc.? (If so, describe)	<i>The criminal legislation such as the Criminal Code, Penal code, Advance Fee Fraud Decree etc. contain provisions aimed at curbing corruption. However, the greatest effort in the attempt to curb corruption was initiated by the newly installed civilian democratic regime when it presented an Anti-corruption Bill to the National Assembly. The bill is very comprehensive in that it addresses all areas of corrupt practice in the public and private sectors.</i>

Annex B - Trade Practices

<p>1. Are foreign firms engaged in trade with the country required to use a national agent? <i>Foreign firms engaged in the country are not required to use a National Agent.</i></p>
<p>2. Are there indications that over-invoicing and/or under-invoicing are common practices? For which purposes? <i>There are ample evidence of under-invoicing. The sole purpose of under-invoicing is to avoid payment of the proper duty.</i></p>
<p>3. Are goods frequently described incorrectly on the invoices? <i>Yes, there are many cases of incorrect and inaccurate description of goods on the invoices. This is mainly due to the fact that import duties are too high - - these are based on the invoice value and description of the goods.</i></p>
<p>4. Are there indications that import documents are falsely labeled? <i>Yes, there are cases where import documents are falsely labeled.</i></p>
<p>5. Is there evidence of any other trade malpractice affecting public sector procurement? <i>Yes – Declaration of goods as in transit to the neighboring countries when in fact they are for the Nigeria market</i></p>
<p>6. Is there a pre-shipment verification program? Who conducts the inspections? What goods are included? <i>Yes, there is a pre-shipment inspection program conducted by appointed foreign inspection agents viz Cotecna International, Swede Control/Intertek, Societe du General due Surveillance (SGS) and Bureau Veritas. All goods excluding Diplomatic Imports, Personal effects, Used Motor vehicles, Human Remains, Human Organ (e.g. eye), vaccines, yeast, periodicals/magazines.</i></p>
<p>7. Is there a threshold for pre-shipment inspection? What is the amount? <i>No</i></p>
<p>8. If pre-shipment inspection is conducted by a private company, what is the duration of the contract with the company? Was the contract awarded following a competitive process? <i>No information is supplied on the conditions of the contract nor the process of selection.</i></p>
<p>9. Is pre-shipment inspection, if any, conducted according to generally established procedures? Are there indications that the inspection is not effective? <i>To a large extent pre-shipment inspections are conducted according to generally established procedures but to a large extent there are indications that the inspections are not effective principally because:</i></p> <ul style="list-style-type: none"> <i>i) The inspection agents may know what they inspect but they do not control what is loaded for export into Nigeria and as such the main objective for pre-shipment is defeated.</i> <i>ii) There is the belief among maritime operators that the inspection agents rely more on import documents like invoices, packing list etc. presented by exporters than physical inspection required of them. Hence:</i> <ul style="list-style-type: none"> <i>a) There are importation of substandard goods;</i> <i>b) There are cases of contraband goods being found in containers covered by pre-shipment inspection reports.</i> <i>c) There are cases of receipt of pre-shipment inspection reports for goods that never landed in the country.</i> <i>d) There are cases of incorrect description and wrong classification of goods covered by the pre-shipment inspection report leading to huge amount of underpaid duties.</i> <i>e) There are cases of trade malpractices arising from false declaration, under invoicing and concealment.</i>
<p>10. Are goods also normally inspected upon arrival? <i>Yes. This is done by Nigeria Customs Service.</i></p>

Annex B - Trade Practices

11. Are inspection procedures in conformance with established practice?

Yes

12. Do pre-shipment/post-shipment inspection, if any, unduly increase the procurement lead time?

The delay caused by pre-shipment inspection of the goods overseas and late arrival of pre-shipment inspection reports invariably delays the post shipment inspection resulting in increased cost of importation arising from demurrage.

13. Is counter-trade used? Barter agreements? In which percentage of the country's total trade? For which commodities?

No

14. Are the ICC's INCOTERMS generally understood and commonly used in the Country? Are other trade terms used? What are the most commonly used INOCTERMS used? FOB? CIP? CFR? DDP?

These terms are not commonly understood in the country. But such terms as FOB, CIF, C & F, etc. are frequently used

15. Are there indications suggesting price-fixing in open bidding?

No

16. Are licensing and customs procedures generally transparent and efficient?

Licensing and Custom procedures are clumsy and inefficient.

17. Are "facilitation" payments normally necessary to clear goods through customs, obtain work permits for expatriate labor, process monthly payment certificates/invoices?

Generally honest traders need not resort to "facilitation" payments but fraudulent traders make use of "facilitation" payments to get their way through dishonest officers. Wide spread corruption in customs and public service generally have been attributed to low wages.

18. Are local staff familiar with shipping and other trade documents? With documentary credits?

A sizeable number of local staff are familiar with shipping and other trade documents. The delay in processing trade documents have been attributed to the ignorance of officials of the procedure for processing these documents.

19. Are local staff experienced in import planning and importation procedures?

To a greater extend, local staff are experienced in import planning and importation procedure. However, many officials are not familiar with recent developments in these areas.

Annex C - Financial Framework

1. Are banks capable of issuing Letters of Credit?

Yes – However, payment procedures through L/Cs require a number of formalities such as (i) prior application for foreign exchange; (ii) Insurance has to be taken with a Nigerian Company; and (iii) a month-long deposit of 50 per cent of the value of to the CBN. All these formalities tend to defeat the very purpose of L/Cs.

2. Are banks generally creditworthy?

Yes. There is stability in the banking sector presently.

3. Can bid, performance and advance payment securities be obtained easily locally? What formats are permitted? Bank guarantees? Bonds? Other? Provide details on cost, if available.

Yes. The usual formats are bank guarantees and performance bonds.

4. Are the requirements for issuance of bid, performance and other securities to local suppliers/contractors reasonable?

Yes. The applicant will however provide collateral security.

5. Do local suppliers/contractors have reasonable access to credit?

Local contractors have problem in getting access to credit. Much depends on the collateral provided by the suppliers/contractors and their personal relationship with the bankers.

6. Do implementing agencies obtain budgetary authorizations for contract payments falling due beyond the current financial year?

Yes

7. Are major projects or programs clearly identified in government budget estimates?

Yes

8. What procedures are followed to ensure the procuring entity obtains budget authorization prior to inviting bids?

The practice is that budgetary requirements of the various Ministries and government departments are prepared and then collated. Each Ministry of Department is given the opportunity to defend its estimates. Once the estimates are approved, the President will present the budget to the National Assembly for approval. The National Assembly can invite any Ministry or Department to come and clarify its estimates. The Final approval lies with the National Assembly.

9. Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system?

In the past, government used to disburse funds on quarterly basis. Presently the disbursement is on monthly basis. The Implication is that the procurement entity cannot receive the whole sum meant for a particular project at once. Late payment of contractors is also attributable to this system of disbursement. This is also major cause of delay in project implementation as the contractors and suppliers tend to slow down the progress of the projects until pending invoices have been paid. Many contractors resort to bribery in order to be paid in time.

Annex D - Public Sector Procurement of Goods/Works

GENERAL RISK ASSESSMENT

1. Is the public sector procurement profession held in high regard?
No. In fact, there is no law regulating the profession
2. Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists? Give current range of monthly salaries.
No. procurement professionals are not treated differently from other civil servants. Their salaries are generally low. Salary and Emoluments depend on the grade level in the civil service.
3. Is the procurement profession generally staffed with honest and capable individuals?
Many of them are capable, having undergone professional training, but low wages make dishonest practices very common.
4. Does a code of ethics exist that procurement professionals are expected to follow?
Yes. Procurement professionals in the Civil Service are expected to abide by the Code of conduct contained in Fifth Schedule to the 1999 Constitution.
5. Are the authorities relating to procurement clearly delegated to the entities carrying out the process? Are the applicable procedures clearly defined?
Yes. The procedures are defined in the Financial Regulations. The provisions are however, not comprehensive enough.
6. Are procurement decisions ever overridden by higher governmental agencies? If so, by whom? To what degree is the procurement decision-making process independent from politics?
It is not independent. In most cases the final approving authorities are politicians i.e. Minister and President at Federal Level and Governor and Commissioners at State level.
7. Does the highest level of government encourage/support/enforce compliance with existing procurement regulations? Are violations investigated and procurement/other responsible officials held accountable?
During the long period of military rule, procurement regulations were flouted with impunity. Things are however changing with the advent of the new civilian government.

ORGANIZATION

1. Is appropriate information on procurement adequately disseminated (i.e. procurement staff are aware of updated rules and thresholds, and other issues relevant to their assigned responsibilities)?
No. The Financial Guidelines are not readily available. Even some officials whose employment relate to procurement do not have copies of Regulations.
2. Are the procurement and supply management functions clearly distinguished?
No

ORGANIZATION	
3. Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)?	<i>No. Approvals for practically all the Tenders Board except Department Tender Board rest with politicians.</i>
4. Are thresholds for contracting powers regularly updated?	<i>Yes. They are regularly updated. The recent Circular dated 11th October, 1999 issued by the Presidency updated the existing thresholds and the Financial Regulations were revised in 1998.</i>
5. Do procuring entities have internal quality control mechanisms? Are they regularly audited?	<i>Presently, no internal quality control mechanism exists in regard to procurement process and there is no audit of procurement process in all public bodies and the parastatals visited. However, many organization have internal audit mechanisms which are of a financial nature and the goods and works procured are subject to quality control mechanisms on arrival at the project site with regard to the physical, technical and performance characteristics.</i>
6. Are procurement staff experienced in international procurement?	<i>Many of the procurement staff are not familiar with international procurement guidelines.</i>
7. Is career advancement primarily based on job-related accomplishments and factors?	<i>No. Advancement is normally based on seniority.</i>
8. Do adequate formal and on-the-job training programs exist for entry- and higher-level procurement staff that contribute to proper professional career development?	<i>No. Although some higher institutions offer courses in procurement but generally the profession is not regulated in Nigeria due to paucity of funds. The existing training programs are not adequate.</i>
9. Are there additional training resources in the country which are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. universities and private institutions)?	<i>Yes. There is the Nigerian Institute of purchasing and Supply Management. The courses offered by this Institute are patronized by both public and the private sectors.</i>
10. Did previous training programs lead to an obvious improvement in the quality/productivity of procurement work?	<i>Yes. Those who have formal education in procurement are known to perform better than their other colleagues in the procurement department.</i>
11. Do procurement staff have adequate project/contract management capabilities?	<i>Those of the procurement staff who have formal training in the discipline have adequate project/contract management capabilities. Unfortunately, the Tender Boards of the various public establishments are staffed by non professionals many of whom are not familiar with the requirements of the job.</i>
12. Are procurement agents used? Under what circumstances? How are they selected? Describe normal basis for compensation and contract duration	<i>No</i>
13. Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?	<i>Procurement monitoring and administration is not computerized. There are also no E-mail and Internet facilities. Information are gathered and kept manually. Generally, record keeping is very poor.</i>

PROCESS - PLANNING

1. Are project implementation units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel?

Consultants are employed in some organizations to provide assistance in the preparation of the project schedules and costs estimates. Project implementation units are however not adequately staffed.

2. Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules and accurate cost estimates?

The public bodies and parastatals use the assistance of consultants for accomplishing their activities where appropriate. Project definitions are arrived at on the basis of economic, technical and socio-economic criteria as appropriate. However, projects are not realistically defined in many instances thereby leaving room for re-negotiation.

3. Is the early technical and financial planning well coordinated so that projects are fully funded when work needs to begin, based on accurate cost estimates?

No.

4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large projects (e.g. the critical path method)?

No.

5. Are project components appropriately packaged for procurement purposes?

No. this explains why many projects are re-negotiated during implementation.

6. Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage? Is sufficient time generally allowed for external reviews/clearances?

Completion schedules are hardly met due to delay in paying contractors and lack of effective monitoring.

7. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works?

The practice of conducting market survey is rarely used. In regard to works contracts they mostly rely on the engineering Estimates prepared by their Engineering Department and/or Consultants.

8. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management, and delivery systems) adequate?

The procedures are not adequate.

PROCESS - DOCUMENT PREPARATION

1. Do standard documents exist for goods, works and other types of contract? List. Are other international contract formats used? If so, identify

No. International contract formats are rarely used except in project financed by Donors such as World Bank.

2. Are these documents, if any, readily adaptable to specific contract situations (i.e. by modifications made through a Bid Data Sheet, Special Conditions of Contract or similar)?

No

3. Are there separate documents for international and national competitive bidding not financed by the Bank?

No

4. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application?

No. the ITBs are not comprehensive enough especially the evaluation criteria.

5. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.? Are sample forms and other appropriate sections of the documents provided?

Some of the necessary information such as eligibility requirements are contained in the ITBs but the other requirements are not.

6. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid?

Yes, only for contract values above a given threshold.

7. Is pre- or post-qualification provided for?

No. The only pre-qualification used is previous registration with the procurement entity.

8. Are qualification criteria appropriate and clearly described?

No

9. Are conditions of contract equitable?

Yes. In many cases the conditions of contract are equitable.

10. Are conditions of contract generally equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders?

To some extent most important legal issues are addressed in the contract and protection are offered to both sides.

In some cases, contractors dictate the terms and some of the terms may be unfair to the government.

11. Are standard purchase orders used for shopping?

Yes

PROCESS - PRE-QUALIFICATION

1. Is pre-qualification carried out when appropriate? What types of contracts is it used for? Works? Goods? Other?

The pre-qualification commonly used is registration. Prospective bidders are expected to register and renew their registration yearly with the procurement entity concerned.

2. Is the pre-qualification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply?

The pre-qualification process of registration is not fair as it tend to exclude those who are not registered from the bidding process even though they are qualified to undertake the project.

3. Are standard pre-qualification documents used? Do they clearly and completely describe all the prerequisites for submitting responsive applications for pre-qualification? Is financial information routinely requested and critically evaluated to assess an applicant's financial capacity to perform?

No

4. Do pre-qualification documents clearly and completely describe all requisites for submitting responsive applications and the qualification requirements? Is financial information required and critically analyzed to assess financial capabilities to perform contracts?

Generally not. However in a few cases, the information is critically analyzed.

5. Do procuring entities verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?

Yes, in some cases, the procuring entities make verifications before finally approving the contract.

6. Are suppliers required to have a local agent in order to qualify to bid for goods or services?

No

7. Do procuring entities maintain updated lists of qualified suppliers and contractors and updated market information on commonly procured goods, including spares and consumables? Is supplier and contractor performance routinely evaluated and are any standing lists of pre-qualified suppliers and contractors updated and modified based on this information. Can newcomers readily apply and be qualified?

Yes. But a qualified new-comer who has not been registered with the procuring entity may not be able to participate in bidding.

PROCESS - ADVERTISEMENT

1. Are contracts to be awarded by competitive bidding publicly advertised?

Yes. But during the military era especially 1984 – June 1999, the process did not go beyond a restricted list of contractors and suppliers who are invited to bid. The system has improved in the last one year.

2. Is sufficient time allowed to obtain documents and prepare bids?

Many bidders complain of insufficient time to prepare their bids.

**PROCESS - COMMUNICATIONS BETWEEN
BIDDERS AND THE PROCURING AGENCY**

1. Are requests for clarifications answered promptly and completely in a written form?
Due to bureaucratic nature of the public service, most requests for clarification are neither answered on time nor properly answered.
2. Are clarifications, minutes of the pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?
No. the system is generally slow.
3. Are bidders afforded sufficient time to revise their bids following a modification of the documents?
Yes
4. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)?
Generally, yes
5. Are there communications between the procuring entities and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee?
No, as far as the current practice is concerned.

PROCESS - RECEIPT OF BIDS AND OPENING

1. Are bids received prior to the deadline securely stored?
No. We have situations where the bids of certain contractors are leaked to other favored contractors.
2. Are public bid openings conducted?
No
3. If so, are they conducted at a specified place closely following the deadline for submission? Generally how long after are they scheduled?
In many cases, bid are opened several days or weeks after the close of deadline for submission.
4. Do bid opening procedures generally follow those specified in the Guidelines? What information is read out at the opening ceremony? Are minutes kept?
No. In many cases, bid opening is done in secret.
5. Do bid opening procedures differ for goods, works or other types of contracts? If so, how?
No

PROCESS - BID EXAMINATION AND EVALUATION

1. Are evaluations conducted by qualified evaluating committees?
Yes
2. Are evaluating committees appointed ad hoc for each evaluation?
Yes. However, in some public bodies and parastatals there are separate evaluation committees for procurement of goods and works. For special cases where they need additional expertise, the technical/evaluation committee co-opt the services of outside experts as needed.

PROCESS - BID EXAMINATION AND EVALUATION	
3. Is responsiveness determined on the basis of the documentary requirements described in the documents and according to established practice?	No.
4. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the documents?	<i>The criteria for evaluating bids are not prescribed in the bidding documents.</i>
5. Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the documents? (See above) If not, what other criteria are considered?	<i>No, as in 4. above.</i>
6. Are evaluations normally completed within the original bid validity period?	<i>Experience is varied. In most cases, contracts are not awarded within the original bid validity period.</i>
7. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified)?	<i>Although the Financial Regulations require these reports to be prepared with all essential information, but in practice this is not usually the case.</i>
8. Describe any significant differences between goods and works procurement relating to the above	<i>None</i>
PROCESS - CONTRACT AWARD AND EFFECTIVENESS	
1. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily?	<i>Yes, but the qualifications criteria are not transparent.</i>
2. Are negotiations conducted with bidders, before or after selection?	<i>Negotiations are conducted before the selection in most cases, and this is one of the weakest aspects of the current procurement system.</i>
3. Are additional Government approvals required before contracts can be made effective?	<i>Yes. For large contracts the final approval rests with the Minister/Commissioner at Federal/State levels</i>
4. Is performance security required in an appropriate amount and in an appropriate format?	<i>Yes but performance security from insurance companies have been difficult to collect.</i>
5. Describe any differences between goods and works relating to the above	<i>None</i>

PROCESS - CONTRACT ADMINISTRATION

1. Are there manual or computerized procurement and/or contract monitoring systems?

The monitoring systems are manual and ineffective

2. Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment?

Generally speaking, suppliers and contractors are not paid on time.

3. Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness?

No. Poor quality of delivered goods is one of the most serious procurement problems.

4. Are contract changes or variations handled promptly in accordance with the contract conditions and established practice (i.e. change/variation orders are given and/or confirmed in writing, constructive change orders are avoided, unit rates in the contract are honored but the supplier or contractor is allowed to agree to any new unit rates introduced and the completion schedule for each change or variation, etc.)?

No. This is one of the major source of complaints by contractors.

5. Do procuring entities normally make a good faith attempt to resolve disagreements through informal negotiations?

Yes.

6. If this fails, are the resulting disputes handled in accordance with the contract conditions?

Yes.

7. Are supplier and contractor claims handled fairly based on a clear recognition of both parties' obligations under the contract?

Yes, to a great extent.

8. Are works contracts supervised by independent engineers? Does an employee of employer act as engineer in some cases?

Yes, both cases are applicable.

9. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract? Do they adequately document all actions of contractual import taken by the purchase/employer during implementation?

No. Contract management skills are generally deficient in the public sector.

10. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?

Generally, contract remedies are not applied.

PROCESS - CONTRACT ADMINISTRATION

11. Are contracts generally completed on schedule and within the originally approved contract price? Or are cost and time overruns frequent? If so, in which sectors and for which particular kinds of contracts? Are fair final acceptance procedures used and certificates issued in a timely fashion?

Generally, contracts are not completed on schedule and within the originally approved contract price. Cases of re-negotiation abound. Most construction engineering works are not completed on schedule and in some cases re-negotiated up to three or four times before completion. The main reason for re-negotiation of prices is the inflationary trend in the economy and delayed payment for the work already done.

12. Are contracts generally administered in a fair and equitable manner (e.g. the purchaser/employer grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.)

No. Payments are delayed and there are no provisions for interest payment on delayed payments.

13. Are under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works a common problem?

Under-inspection is quite common.

14. Are disruptions of the supplier's or contractor's orderly performance common?

This arises due to late payments or when there is a change of government and certain contracts are suspended or cancelled.

15. Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify

The main problem is corruption.

16. Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc.

No. Although the FR provides for Audit Inspection, there is no evidence of its being regularly carried out.

PROCESS - RECORD KEEPING

1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include e.g. copies of all public advertisements, pre-qualification documents (if used), the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bidding documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued, etc.

All the public bodies and parastatals are required to keep a complete record of the procurement process covering the above. FR 3422 (iii) provides that the above records shall be kept for a period of five years from the date of completion of the contract. However, recent Bank Procurement Audit revealed that record keeping is very poor for Bank financed projects.

PROCESS - RECORD KEEPING

2. Are adequate contract administration records maintained? (These would include contractual notices issued by the supplier, contractor, purchaser or employer; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; records of invoices and payments; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome; etc.)

No. The latest Bank Procurement Audit indicated that contract administration record keeping was poor for Bank financed projects.

3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?

Yes, but the data bases are not updated regularly.

4. Are periodic reports prepared on overall procurement activities? By and for whom?

All the public bodies and parastatals prepare periodical reports of their performance to the appropriate authorities or their management which touch on procurement activities in very general manner.

Annex E - Public Sector Selection of Consultants

1. Are procuring entities generally well staffed, experienced and capable of carrying out a professional selection process for consultant services? Do they administer consultant contracts effectively?

No. With regard to the administration of consultant contracts, many organizations take unduly long time (a) to approve contract variations and (b) to effect payment in a timely manner.

2. Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a short list of qualified firms? Where do implementing agencies obtain the information necessary to develop short lists? If not, specify what other methods are used and when they are used.

The consulting firm is normally chosen from a short list of qualified firms by the public bodies and parastatals. These organizations obtain the information on consultants from information system maintained by government agencies and international organization, such as the World Bank, and ADB. They also solicit expression of interest from eligible applicants through advertisement where appropriate.

3. Do requests for proposals clearly describe the selection process and evaluation criteria?

In regard to small projects (usually N1 Million or less) and medium project (usually less than N5 Million) only Terms of reference are provided by the organization and the request for proposals does not contain the selection process and or selection criteria. In regard to large projects, the request for proposal contains the Terms of reference, a letter of invitation, information to the consultants and the conditions of contract.

4. Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff-time, and government contributions

Yes, in most cases. In some small and medium involving small and consultancy services contracts which are funded locally, information on time frame has to be proposed by the consultant in his proposal.

5. Is selection based only on technical considerations or also on price?

Selection is based on technical consideration only.

6. Are technical criteria detailed and appropriate and their relative weights reasonable?

Yes, especially where funding is from external funding agencies.

7. If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals? Are the relative weights chosen for each factor appropriate?

N/A

Annex E - Public Sector Selection of Consultants

8. Are there standard conditions of contract? Are they fair and equitable to the consultant? Do they adequately protect the interests of the client?

The terms and conditions of the contracts are not always fair and equitable between the two parties.

9. What form of compensation is used? Unit rates? Lump sum based on milestones? Other?

If the work relates to Engineering services, construction supervision and management services, the form of compensation used is unit rate. Lump sum based on milestones is used in the case of contracts involving the preparation of studies.

10. Are consultants required to submit proposal, performance and/or advance payment securities?

They are not normally required to submit proposal, performance and/or advance payment securities.

11. Is there a conflict of interest policy provision included in the conditions of contract? (If so, describe)

Yes. The conflict of interest policy provisions followed are more or less identical to the presumption contained in the World Bank Guideline for selection and employment of consultants by World Bank Borrowers.

12. Are evaluations conducted by committees with appropriate expertise?

Not always.

13. Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?

Yes but there are no consistent procedures for evaluating proposals.

14. Are all criteria applied consistently, fairly and impartially by the evaluators? Are the individual score sheets kept as part of the procurement record?

No, as above.

15. Are evaluations conducted individually by each member of the committee and the results averaged?

No, as above.

16. Are new factors or weights added after the issuance of the request for proposals which are considered during the evaluation?

Yes. Normally the evaluation factors and weights are not included in the request for proposals and in many cases they are not determined until the proposals have been received.

17. Are evaluation reports prepared containing essential details of the process, results, and matters to be taken up during contract negotiations?

Generally, yes.

18. Are evaluations normally completed within the time originally requested for the validity of proposals?

Normally, yes. In some cases, some organizations ask the consultants to extend the validity of their proposals by between 30 to 60 days.

Annex F - Procurement Performance

VOLUMES

1. What are the approximate annual values of public procurement for goods, works, and consultant services, respectively? If possible, distinguish between procurement for projects and ongoing programs.

The approximate value of Public Procurement of goods, works and consultant services for the current fiscal year is N180 Billion. The break-down of the procurement into goods, works and consulting services is not available.

2. What are the approximate percentages of goods, works, and consultant services financed by external donors?

The record is not available. This will be part of the data to be collected by the oversight body that is being proposed.

3. What percentage of public procurement follows competitive bidding procedures? Other methods?

Not available. This will be part of the data to be collected by the oversight body that is being proposed.

4. What percentage of competitively bid procurement is donor financed?

Not available. This will be part of the data to be collected by the oversight body that is being proposed.

GENERAL EXPERIENCE

1. Are government organizations generally perceived by suppliers/contractors/consultants/the public as fair and efficient in their procurement practices?

Government organization are not perceived to be efficient. The suppliers/contractors/consultants all complained about the poor attitude of public bodies and their failure to make payments in a timely manner for services rendered.

2. Which of the following factors are considered to be problems by persons familiar with public procurement in the country?

	Yes	No
Inappropriate or outdated laws and regulations	X	
Poor compliance with and enforcement of existing laws	X	
Poor information about procurement needs	X	
Shortage of experienced professional staff	X	
Poor training of procurement staff	X	
Low pay for procurement staff	X	
Poor procurement training	X	
Weak procurement planning	X	
Poor procurement methods and procedures	X	
Lack of good standard procurement documents	X	
Poor technical specifications (Goods only? Works?)	X	
Cumbersome contract approval procedures	X	
Lack of clear delegation of contracting authority	X	
Interference by higher level officials	X	
Inadequate appeals mechanism	X	
Lack of anti-corruption measures and enforcement		X

EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS

1. How many Bank projects have been completed in the country? Are now underway? In which sectors?

The Bank has financed about 101 projects since it started lending to Nigeria in 1958. Of these 98 of them have been completed/cancelled and currently there are 7 projects under supervision of which 3 were approved on May 11, 2000.

2. Which organizations have been responsible for procurement on these projects?

The projects have been managed by Project Implementation Units in the various ministries/parastatals.

3. What thresholds for ICB, IS, NS, prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects? How long have they been in effect?

Goods - US\$100,000; WORKS – US\$200,000; CONSULTANTS: FIRM – US\$100,000, INDIVIDUAL – US\$50,000. These are the same for all the projects and they have been in effect over the last two years.

4. Do project audits/completion reports/supervision reports indicate significant procurement problems? Have any cases of misprocurement occurred? Describe.

Yes. Recent procurement audit revealed serious problems in the Agriculture sector especially in the use of the shopping method. Misprocurement has just been declared following this audit and other investigations.

5. Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.

Yes. There are three main causes of delay: (a) lack of capacity in the PIUs to handle the ICB process; (b) inordinate delays in clearing goods at the port; and (c) delayed payments to suppliers/contractors.

6. Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?

No. Only a few complaints are received.

7. Are contracts generally awarded within the planned, usual time frame that would be required for similar operations by other experienced and efficient organizations?

No. ICB contracts normally take longer than expected, usually more than a year.

8. Are there serious problems or conflicts between national and/or local practices and World Bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?

i) The legal and regulatory framework is not in line with the generally accepted principles and norms prescribed in UNCITRAL model Law on procurement of goods, construction and services.

ii) Use of selective tendering and negotiated procurement method.

iii) Use of approved list of suppliers for goods.

iv) Negotiation with the proposed contract awardee with the objective of decreasing his/her bid price.

v) Lack of appropriate provision in the condition of contract for procurement of goods in regard to settlement of dispute.

vi) Lack of procedures for ventilation and negotiation of grievances and complaints from suppliers and contractors.

Annex G - Private Sector Procurement

1. Is there a reasonably well-developed private sector which freely trades goods and procures works and other services?

The informal sector – private by definition – is of immense significance in Nigeria accounting for about 70% of all economic activities and employing about 60% of the work force.

2. What is the approximate volume of such procurement? Are any private sector contracts comparable in size to those in the public sector? Are they for goods, works or other types of contracts?

Contracts for capital goods and very large supply contracts are often procured through international bidding. International head offices of the multinationals, based outside Nigeria usually do this and it rarely involves Nigerian based staff. The procedures of the head office are observed in these cases. Smaller contracts and contracts for supplies are handled locally and procured or purchased in Nigeria after standards and procedures for the Nigerian subsidiary.

3. Who are the main importers of raw materials and finished goods? Are they traded/imported on the basis of the INCOTERMS? Do they allow payment through documentary credits?

Manufacturers are the main importers of raw materials and Traders are the main importers of finished goods. In principle they are supposed to trade/import on the basis of INCOTERMS but these are flouted more often than not. Payment through documentary credits is allowed but the procedures for establishing the documentary credits are very cumbersome in Nigeria.

4. Do private sector companies purchase commodities through brokers and/or by competition linking price to the international commodity market?

Yes.

5. What kind of procurement practices do private sectors purchasers and employers generally follow? Do they differ for goods, works or services?

Procurement and purchasing procedures differ greatly as standards are developed in the specific companies and does not refer to a common standard. The main procurement methods are Selective tendering and Direct purchase. Open national competition is seldom practised as the size of contracts where this would be optimal generally is subject to international bidding. They differ for goods, works and services.

6. Is private sector procurement planning adequate? Do firms carry out market surveys and use other available information when they prepare their cost estimates? Is packaging done well? What level of technical, schedule and other detail goes into their procurement plans?

There was no evidence that the private sector in Nigeria carries out these procurement activities. Procurement capacity in the private sector is equally low compared to the public sector.

7. Do firms ever carry out open bidding preceded by advertising?

Normally they do not carry out open bidding but to the extent that this takes place, the competition is advertised in national newspapers and technical magazines..

8. Are bids invited from short lists (as for LIB)? If so, describe what criteria are used to develop the short lists. Are standing lists developed by use of periodic pre-qualifications? Are reasonable technical and financial criteria used? How often are standing lists updated?

Bids are normally invited from suppliers known to the company. Standing lists are updated through market surveys.

9. Under what circumstances is sole source/direct contracting permitted?

Permitted through repeat orders for goods and services.

Annex G - Private Sector Procurement

10. How detailed are the bidding documents used to invite bids for goods, works or services?

These were found to be detailed enough.

11. What criteria are used to determine the winning bidder? Cost, quality/compliance with specs?

Time of delivery or completion? Familiarity?

All criteria listed are applicable.

12. Do private sector procuring entities usually carry out price negotiations with the apparent winner after bids are submitted?

Most purchases are done through selective tendering and direct contracting and negotiations of price is common.

13. Do private sector companies monitor procurement and contract implementation efficiently?

Do they utilize modern computerized methods?

Yes. Most of them monitor contract implementation efficiently.

14. Are employees required to follow corporate ethics policies and procedures? Describe.

Yes. The ethics are usually embodied in the conditions of service prepared by the entity concerned.

15. Could some private sector procurement practices be adopted by the public sector? Indicate which.

Yes, market survey.

16. Has there been any experience with private sector contracts for the provision, operation, maintenance of infrastructure for various public services (BOO/BOT/BOOT/etc.)? Describe.

None.

Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy			
	Yes	No	Bank Policy
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed
2. Are there primary boycotts which are established by law?		X	Only primary boycotts are acceptable
3. Are bidding opportunities advertised in the local press? <i>Note: Not all the time.</i>	X		Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)? <i>Note: 14 days for local tender Major works 30-60 days.</i>		X	Required
5. Are contractors/suppliers pre-qualified for large/specialized contracts? <i>Note: Only in the case of contract of some major works otherwise pre-qualification for bidders is not done. Registration Lists are used instead</i>		X	Required
6. Are minimum experience, technical and financial requirements (for pre -or post-qualification) explicitly stated in the documents? <i>Note: This is being done only where pre-qualification of bidders procedure is followed.</i>		X	Required
7. Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts? <i>Yes, only for major works.</i>		X	Required
8. Are joint ventures with local firms required for foreign firms' eligibility?		X	Not allowed
9. Are joint venture partners jointly and severally liable?	X		Required

Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy			
10. Are there set limitations to the number of firms who can bid for a contract?		X	Not allowed
11. Are parastatals allowed to bid?	X		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law and (iii) are independent from borrower and its purchasing/contracting authority
12. Are bidders required to register with a local or federal authority as a prior condition for bidding?	X		Not Acceptable as an eligibility criterion.
13. Are extensions to bid validity allowed?	X		Acceptable only if justified by exceptional circumstances
14. Are there restrictions on the means of delivery of bids?		X	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
15. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?	X		Not allowed
16. Are there restrictions on sources of labor and material?	X		Not allowed, except for unskilled labor, if available locally
17. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?		X	Required

Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy			
18. Is a “two envelope” bid opening procedure permitted for procurement of goods or works? ¹		X	Not allowed
19. Is automatic rebidding required if too few bids are received?	X		Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result
20. Is “bracketing” used in bid evaluations? ²	X		Not allowed
21. Is award made to lowest evaluated qualified and responsive bidder?		X	Required
22. Are price negotiations conducted with “winning” bidders prior to contract signature? <i>Note: Yes. In case of negotiated procurement.</i>	X		Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60)

¹ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

² Rejection of bids outside a range or “bracket” of bid values.

Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy			
23. Are price adjustment provisions generally used?	X		Not required for short term contracts unless domestic inflation rate is high, but allowed for contracts of 18 months or more in duration. Formula method preferred to documentary evidence
24. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?		X	Required (to be acceptable they should be balanced, reasonable and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)
25. Are contract scope/conditions modified during implementation?	X		Acceptable, but advance Bank approval of changes subject to prior review needed if required under the Loan Agreement.

Annex J - LAWS & REGULATIONS GOVERNING PROCUREMENT IN NIGERIA

LAWS RELATED TO DOMESTIC AND INTERNATIONAL PROCUREMENT

1. Civil Services (Re-organization) Decree 1988
2. Sections 1A (Limits of Authority)
3. Civil Service Re-organization (Amendment) Decree 80 of 1993
4. Financial Regulations, Chapter 19, 39 and 40 as amended by
5. Ministry of Finance Circular No. F.10224/S.2/IV/274, July 1998.
6. Financial Regulations, 1998
7. Finance (Control and Management) Amendment to Decree 1987, No. 27
8. Revised Standard Procedures for Appraisal of Tenders and Award of Contracts, Circular No. PPB 18/1985 August 1985.
9. Formation of Standing Inter-Departmental Tenders Committee, Circular No. PPB. 24/1985 of October 1985.
10. Requirements for Registration, Lagos State Central Works Registration Board, March 1981.

SETTLEMENT OF DISPUTES

1. Arbitration and Conciliation Decree 1998, No. 11
2. International Center for Settlement of Investment Disputes (Enforcement of Awards) Decree 197, No. 49.
3. Regional Centre for International Commercial Arbitration Decree No. 40 1999

FOREIGN EXCHANGE CONTROL

1. Exchange Control Act 192, No. 1: Form M for imports
2. Central Bank of Nigeria (Amendment) Decree 1999
3. Securities and Exchange Commission Act 1979, No. 71
4. Investment and Securities Decree 1999
5. Second-Tier Foreign Exchange Market Decree 198, No. 23

PRE-SHIPMENT

1. Pre-shipment Inspection of Imports Decree 1978 No. 3
2. Pre-shipment of Imports (Amendment)
3. Pre-shipment Inspection of Exports Decree No. 10 of 1996
4. Pre-shipment Inspection of Imports Decree No. 11 1996

INSURANCE AND TRANSPORT

1. Insurance Decree 1991 No. 58
2. Nigerian Reinsurance Corporation Decree 1977
3. National Shipping Policy Decree 1987, No. 10

CUSTOMS DUTIES, EXCISES AND TAXES

1. Customs and Excise Management Act, 1958 No. 55
2. Customs (Drawback) Regulations Legal Notice, 1959 No. 70
3. Customs Duties (Dumped and Subsidized Goods) Act, 1958 No. 70
4. Excise Tariff (Consolidation) Act, 1973 No. 7
5. Customs Tariff (Consolidation) Act, 1973, No...
6. Customs Excise etc. (Consolidated) Decree 1988 No. 1
7. Customs, Excise Tariff (Consolidation) (Amendment) Decree 13 1996.
8. Income Tax Management Act. 194 No. 81
9. Companies Income Tax Act 1979 No. 28

IMPORT AND TRADE LAWS

1. Import Prohibition Order L. N. 10 of 1979
2. Nigerian Export Promotion Council Decree 197 No. 2
3. Trade Disputes Act 197 No. 23
4. Trade Markets Act 195 No. 29
5. Nigerian Export Promotion Council Act 197 No. 2
6. Nigerian Enterprises Promotion Act 1977 No. 3

LABOR SOURCES, MINIMUM WAGES

1. Workmen's Compensation Act, 191 Cap. 222
2. Workmen's Compensation Decree, 1987 No. 17
3. National Provident Fund Act, 191 No. 20
4. National Minimum Wage Act, 1981
5. Wages Boards and Industrial Councils Act, 1973 No. 1
6. Immigration Act, 193 No...
7. Trade Union Act, 1973 No. 31
8. Labor Act, 1974 No. 21

NATIONAL STANDARD SPECIFICATIONS AND/OR CODES OF PRACTICES FOR MATERIALS AND WORKMANSHIP

1. Nigerian Standards Organization Act, 1971 No. 5
2. Patents and Designs Act, 1970 No. 0
3. Industrial Inspectorate Act, 1970 No. 53
4. Copyright Amendment Decree No. 42 of 1999

PRICE INDICES

1. Consumer Price Index (Published by Ministry of Finance)
2. Consumer Price Index (Published by Central Bank)

CONSTRUCTION AND ENGINEERING PROFESSION

1. The Architects (Registration etc.) Decree No. 10
2. Nigeria Enterprises Promotion Decree 1989 No. 54

LAWS RELATED TO INDUSTRIAL DEVELOPMENT IN NIGERIA

1. Companies Act, 198 No. 51
2. Factories Act Cap....
3. Merchandise Marks Act Cap. 117
4. Drugs and Related Products Registration (etc) Decree No. 19 of 1993
5. National Agency for Food and Drugs Administration and Control Decree No. 15 of 1998
6. Registration Business Names Act, 191 No. 17
7. Industrial Development (Income Tax) Act 1971 No. 22
8. Industrial Training Fund Act, 1971 No. 47
9. National Bank for Commerce and Industry Act, 1973 No. 22
10. Legal practitioners Decree No. 8, 1992
11. Productivity, Prices and Income Board Act, 1977 No. 30
12. Industrial Promotion Act 1979 No. 40
13. Nigerian Ports Authority Decree 1999
14. National Office of Industrial Property Act 1979, No. 70
15. The Electricity (Private Licenses) Regulations, 195 L.N.7
16. Public Enterprises (Privatization & Commercialization) Decree No. 28 of 1999
17. Bankruptcy Act 1979 No. 1
18. Investment and Securities Decree 1999
19. Factories Decree 1987 No. 1
20. Foods Products Registration Regulations of 1996
21. Pharmacists Act, No. 2 194 (import license for drugs)
22. Industrial Development Coordinating Committee Decree 1988
23. Nigerian Investment Promotion Commission Decree 17, 1995
24. Nigerian Export Credit Guarantee and Insurance Corporation Decree (No. 15) 1988
25. National Agency for Food and Drugs Administration Control (Amendment) Decree 1999
26. Privatization and Commercialization Decree 1988 No. 25
27. Foods & Drugs (Amendment) Decree 1999

LAGOS STATE GOVERNMENT – RELEVANT PROCUREENT CIRCULARS

1. Circular No. PPB 5/1984 – Pre-Payment Inspection
2. Circular No. PPB 7/1984 – Submission of Financial Proposals.
3. Circular No. 9/1984 – Standard Procedures for Appraisal of Tenders and Award of contract (Form II)
4. Circular No. PPB 12/1984 – Standard Procedures for Appraisal of Tenders (Departmental Tenders Board)
5. Circular No. 1, 1995 on Government Contracts
6. Circular No. PPB 13/1994 – Timing and Deadlines
7. Circular No. PPB 1/1984 – Prepayment Inspection Matter
8. Circular No. PPB 17/1984 – Routine Procedure for the Handling of State Tender Board Matters.
9. Circular No. PPB 18/1984 – Contracts of Value 5, 000 – 20, 000 Nairas
10. Circular No. PPB 22/1984 – Inter-Departmental Tender Committee for State and Estate Road Construction
11. Circular No. PPB 23/1984 – Standard Procedures for Appraisal of Tenders and Award of contracts – Effect to Powers of Selected Governing Councils.
12. Circular No. PPB 1/1985 – Review of the Application of PPBD
13. Circular No. 9/1984 on Standard Procedures for Appraisal of Tenders (and amendments)
14. Circular No. PPB 12/1985 Inter-departmental Tenders Committee for Housing
15. Circular No. PPB/18/1985 Procurement Regulations (Amendment 8/21/85)
16. Circular No. PPB 24/1985 Procurement Regulations (Amendment 9/31/1985)
17. Circular No. PPB 24/245/1985 Formation of Standing Inter-departmental Tenders Committee