

# **THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY NIGERIA**

## **ARTICLE 9, PARAGRAPH 1 UNCAC**

### **PUBLIC PROCUREMENT**

#### **NIGERIA (SIXTH MEETING)**

##### **ARTICLE 9 - INTEGRITY IN PUBLIC PROCUREMENT**

The Nigerian Public Procurement Regimen is implemented by a dedicated Agency-the Bureau of Public Procurement (BPP) which implements its enabling Law, The Public Procurement Act (PPA) 2007. The Law and processes of the BPP provide for promotion of transparency and competitiveness; prior determination of criteria relating to opportunities for procurement; and access of citizens to unclassified records of procurement. The BPP in order to enhance transparency in the integrity of the process has widely circulated its enabling laws and other relevant documents including translation into local languages. It has also issued Standard Bidding Documents and a circular to ensure its implementation.

The Bureau monitors the spending by MDAs of monies appropriated and released but could not be spent because the financial year has come to an end to avoid diversion of funds which often run into billions of Naira. The monitoring activity of the Bureau prevents the falsification of accounting books, financial statements and other documents related to public expenditure and revenue.

Some Ministries, Agencies and Department (MDAs) invite the Bureau to supervise bidding processes. This enhances the integrity of the process.

Currently, the Bureau is prosecuting some companies and individuals for offences arising from bidding processes. These include use of fake tax receipts in the bidding processes, conferring of unfair advantages, and other violations of the Public Procurement Act.

The Bureau also has understanding with the Federal Inland Revenue Services (FIRS) to recover taxes from companies and individuals who evade taxes and prosecutes tax related offences on behalf of FIRS. Further details of BPP experience in implementing public procurement regimen is detailed in Annexure 1

The Code of Conduct Bureau (CCB) plays a complimentary role in the procurement process due to its mandate to establish and maintain a high level of morality in the conduct of Government business and to ensure that the actions and behavior of Public Officers conform to the highest standards of Public morality and accountability.

CCB through its Strategic Plan provides a roadmap that seeks to develop Agency-specific Code of Conduct. The activity also covers Code of Ethics and Integrity standards in the processes adopted by the Agencies with regard to Transparency and Accountability in Management of Public Finance. With special reference to high impact Agencies, CCB has classified them as high risk Organizations and focuses most of its attention on these organizations.

The already developed Agency-specific concept notes are being refined for trial run with identified organizations.

## ANNEXTURE 1

### Bureau of Public Procurement's (BPP) experience of implementing Article 9 (Public procurement) of United Nations Convention Against Corruption (UNCAC)

**Article 9(1): Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:**

<b>UNCAC Provisions</b>		<b>Description</b>	<b>Successes</b>
<i>(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent</i>	<i>Initiatives</i>	<i>1. Publication and wide circulation of the Public Procurement Act (PPA), 2007</i>	<i>• Increased awareness on public procurement</i>
		<i>2. Translation of the Public Procurement Act, 2007 into three major Nigerian languages – Hausa, Igbo and Yoruba</i>	<i>• Increased awareness of public procurement at the grass-root level</i>

UNCAC Provisions		Description	Successes
<p>information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;</p>		<p>3. Development of:</p> <ul style="list-style-type: none"> <li>• Procurement Procedures Manual;</li> <li>• Procurement Regulations for Goods, Works; and</li> <li>• Procurement Regulations for Services</li> </ul>	<ul style="list-style-type: none"> <li>• Enhanced understanding of public procurement practice</li> </ul>
		<p>4. Development of Standard Bidding Documents for Goods, Works and Services</p>	<ul style="list-style-type: none"> <li>• World Bank approved the adoption of Nigeria's Revised National Standard Bidding Documents and Request for Proposals to be used for National Competitive Bidding for procurement of goods, works and consultancy services for all World Bank funded projects in the country</li> </ul>
		<p>5. Establishment of an Internet Portal for all Public Procurement Information</p>	<ul style="list-style-type: none"> <li>• Provision of 24 hours x 365 days access to procurement information anywhere in the world</li> <li>• Information access to all stakeholders</li> </ul>
		<p>6. Weekly publication of FEC Approved Contracts on the BPP Website</p>	
		<p>7. Yearly serialization of all federal contract awards</p>	
		<p>8. Development of the following procurement document as supplemental to PPA, 2007:</p>	<ul style="list-style-type: none"> <li>• Enhanced understanding of public procurement practice</li> </ul>
		<p>9. Public Procurement Journal, a quarterly publication with a print-run of 2,000 copies</p>	<p>Creates a platform for sharing procurement information and scholarly articles with stakeholders</p>

UNCAC Provisions		Description	Successes																								
		10. BPP initiated Federal Tenders Journal for publication of procurement opportunities	<ul style="list-style-type: none"> <li>• Known source of procurement opportunity with wide geographical spread</li> <li>• BPP is on the Editorial Board</li> </ul>																								
		11. BPP develops and broadcast jingles on electronic media (radio and television)	<ul style="list-style-type: none"> <li>• Increased awareness on new regulations and topical issues</li> </ul>																								
		12. Monitoring of published Advertisements to ensure sufficient tendering period are given	<ul style="list-style-type: none"> <li>• Reduction in cases of insufficient tendering period in monitored advertisement</li> </ul> <table border="1" data-bbox="824 709 1344 898"> <thead> <tr> <th colspan="3">Contraventions in advertisements</th> </tr> <tr> <th>Type</th> <th>2013</th> <th>2014</th> </tr> </thead> <tbody> <tr> <td>Inadequate tendering period</td> <td>30</td> <td>10</td> </tr> <tr> <td>Specific date and time for submission deadline not stated</td> <td>8</td> <td>7</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>• Reduction defective advertisements being a basis for petitions:</li> </ul> <table border="1" data-bbox="824 982 1344 1087"> <thead> <tr> <th colspan="4">Number of Petitions based on defective advertisement</th> </tr> <tr> <th>Year</th> <th>2012</th> <th>2013</th> <th>2014</th> </tr> </thead> <tbody> <tr> <td>Number</td> <td>33</td> <td>74</td> <td>22</td> </tr> </tbody> </table>	Contraventions in advertisements			Type	2013	2014	Inadequate tendering period	30	10	Specific date and time for submission deadline not stated	8	7	Number of Petitions based on defective advertisement				Year	2012	2013	2014	Number	33	74	22
	Contraventions in advertisements																										
Type	2013	2014																									
Inadequate tendering period	30	10																									
Specific date and time for submission deadline not stated	8	7																									
Number of Petitions based on defective advertisement																											
Year	2012	2013	2014																								
Number	33	74	22																								
	13. Number and types of Advertisement medium are captured in Procurement Records Template for the purpose of monitoring	<ul style="list-style-type: none"> <li>• Increased compliance with number and types of Advertisement medium as required by PPA, 2007</li> </ul>																									
Challenges		#3 production of Tenders Journal is currently domiciled at Federal Ministry of Information preventing vetting before publishing																									
Lessons learnt																											
Technical assistance needs																											
(b) The establishment,	Initiatives	1. Issuance of Federal	<ul style="list-style-type: none"> <li>• Provision of selection, award criteria and tendering rules to bidders in advance</li> </ul>																								

UNCAC Provisions		Description	Successes
<p>in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;</p>		<p>Government Circular to compel all procuring entities to use the Standard Bidding Documents and its Conditions of Contracts therein</p>	
		<p>2. Issuance of Federal Government Circular to prevent award of contract without the completion of final designs</p>	<ul style="list-style-type: none"> <li>• Reduction in variation arising from incomplete project design</li> </ul>
		<p>3. Monitoring of published Advertisements to ensure adequacy of selection criteria</p>	
	<p>Challenges</p>		
	<p>Lessons learnt</p>		
<p>Technical assistance needs</p>			
<p>(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;</p>	<p>Initiatives</p>	<p>1. Development and full deployment of proprietary Procurement Planning Software to facilitate review and analysis of submitted procurement plans which includes checking the predetermined criteria to be used</p>	<ul style="list-style-type: none"> <li>• Creation of a controlled regime on selection of predetermined criteria for public procurement decisions</li> </ul>
		<p>2. Monitoring of Bid Opening sessions. This gives opportunity for</p>	<ul style="list-style-type: none"> <li>• Creation of a controlled regime on selection of predetermined criteria for public procurement decisions</li> </ul>

<b>UNCAC Provisions</b>		<b>Description</b>	<b>Successes</b>
		spot checks on solicitation documents before evaluation and award take place	
	Challenges		
	Lessons learnt		
	Technical assistance needs		
<i>(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;</i>	Initiatives	1. Established an effective Right-of-Reply Meeting involving all bidders & procuring entities	<ul style="list-style-type: none"> <li>Increased number of petitions due to increased awareness of the fairness and transparency of the system</li> </ul>
		2. Establishment of Feedback Platform on BPP web portal	
		3. Publicized the use and acceptance of BPP e-mail (info@bpp.gov.ng) for sending anonymous petition/complaint	
		4. Development and deployment of the first ever Public Procurement Review Software (goPRS) for online submission of request for reviews	<ul style="list-style-type: none"> <li>Enhanced effectiveness in prior reviews process for pilot procuring entities</li> </ul>
	Challenges	#4 Limited internet infrastructure in procuring entities	
	Lessons learnt		
	Technical assistance needs	Increased funding for the on-going development of remaining modules of the Public Procurement Review Software:	
<i>(e) Where appropriate, measures to</i>	Initiatives	1. Establishment of Public Procurement	<ul style="list-style-type: none"> <li>Provision of resources personnel for the Centre since 2012</li> <li>Feedback from procuring entities revealed</li> </ul>

<b>UNCAC Provisions</b>		<b>Description</b>	<b>Successes</b>
<p>regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.</p>		<p>Research Centre (PPRC) at FUTO, Owerri</p>	<p>that there is an improvement in capacity of previous attendees on key procurement practices</p>
		<p>2. BPP has been organizing Annual Retreat for Permanent Secretaries since 2008 to create platform for enhancing the procurement capacity of Accounting Officers in all Federal Ministries</p>	<ul style="list-style-type: none"> <li>• Increased procurement knowledge of Accounting Officers in all Federal Ministries</li> <li>• Increased support for the ongoing procurement reform</li> </ul>
		<p>3. Production of Code of Conduct booklet for procurement officers</p>	
		<p>4. Production of Code of Conduct booklet for Procurement Observers</p>	
		<p>5. Yearly subscription to individual Oath of Allegiance by members of the Tenders Board and procurement officers</p>	
		<p>6. Development and deployment of the first ever Public Procurement Review Software (goPRS) to limit physical contact between regulators and procuring entities</p>	<ul style="list-style-type: none"> <li>• Reduction in the need for procuring entities to physically visit the Bureau on their procurement under review</li> </ul>
		<p>7. Establishment and Management of the Procurement</p>	<ul style="list-style-type: none"> <li>• Improved recruitment process into procurement cadre</li> </ul>

UNCAC Provisions		Description	Successes
		Cadre within the Federal Public Service	
	Challenges		
	Lessons learnt		
	Technical assistance needs		
Other Initiatives			
		Description	Successes
		1. Deployment of the first National Data Centre on Public Procurement (with technical support from the UNODC-ITS)	<ul style="list-style-type: none"> <li>• Existence of IT Infrastructure to support other IT initiatives of the BPP</li> </ul>
		2. Development and deployment of the first ever Public Procurement Review Software (goPRS)	<ul style="list-style-type: none"> <li>• It has spurred request for similar deployment by other African countries</li> </ul>
		3. Development of National Database of Particulars, Classification and Categorization of Federal Contractors and Service Providers	<ul style="list-style-type: none"> <li>• Prevention of distorted competition</li> </ul>
		4. Development and full deployment of proprietary Procurement Planning Software	<ul style="list-style-type: none"> <li>• Simplified preparation have increased the culture of preparing procurement plans</li> </ul>
		5. Ongoing development of Procurement Management System Software (e-procurement)	

## NIGERIA (THIRD MEETING)

### Article 9 – PUBLIC PROCUREMENT AND MANAGEMENT OF PUBLIC FINANCES

Nigeria has since 2007 codified rules governing public procurement at the Federal level with the enactment of the Public Procurement Act 2007 (PPA). The PPA establishes the Bureau of Public Procurement (BPP) and invests it with powers to regulate and supervise procurement activities in the Ministries, Departments and Agencies. The PPA provides for wide distribution of information of opportunities for participation in the procurement process; criteria for participation; publication of pre-determined selection and award criteria; and a six week period for notification of bidders. The law also establishes a system of domestic review and appeal procedures. There are also provisions to regulate the conduct of personnel responsible for public procurement such as declaration of interest; screening; and training requirements. To ensure effectiveness, a procurement cadre has been established in the Public Service. *The Nigerian Public Procurement Regimen goes beyond the requirements of the UNCAC by requiring bidders to accompany bids with affidavits of disclosure on any interest of the officers of the procuring entity, in the bidding company.* The PPA also provides for a mandatory citizens observation of the procurement process and access to procurement information.

The major challenge in implementing Article 9 is the Country's fiscal federalist structure which gives legislative autonomy to the federating states in matters such as public procurement. As a result, the federal legislation cannot be implemented in the states and the states are required to pass their own public procurement laws.

However, due to intensive advocacy, we are happy to report that at present 18 states out of the 36 states of the Federation, have passed Public Procurement Laws and have

established Public Procurement Bureaus. The states are **Adamawa, Anambra, Bauchi, Bayelsa, Delta, Ebonyi, Ekiti, Enugu, Imo, Jigawa, Kaduna, Kebbi, Kwara, Lagos, Niger, Ondo, Osun, and Rivers.** *Corruption in Procurement:*

The BPP, the course of its activities identify cases of corruption in the procurement process and reports same to the anti-corruption enforcement agencies. A list of such cases reported to the EFCC from 2010 to 2012 is attached as **Annexure 4.**

#### **Article 12 –Preventing Corruption in the Private Sector-Enhancing Accounting and Auditing Standards**

The Companies and Allied Matters Act (CAMA) provides a statutory framework for the regulation of the operation of private companies and provides specific guidelines on their formation, registration, ownership, accounting, filing of annual returns and reporting of company affairs. The CAMA establishes the Corporate Affairs Commission (CAC) which is a depository for all company information and ensures compliance with regulations. It also enables access to information on legal and natural persons behind corporate entities.

Further, all professional bodies in Nigeria such as the Nigerian Bar Association, The Medical and Dental Council, etc. are established by statute and these enabling laws provide for issuance of Codes of Professional Conduct as a mechanism for complaint and sanctions. There are also several sector specific industry regulators such as the Central Bank of Nigeria (CBN) and the Nigerian Deposit Insurance Company (NDIC) in the banking and financial sector; The Special Control Unit Against Money Laundering (SCUML) dealing with designated non- financial institutions (DNFI); The Securities and Exchange Commission (SEC) regulating The Capital Market; and the Nigerian Extractive Industries Transparency Initiative (NEITI) for the Extractive sector. In respect of accounting and auditing standards in the private sector, The National Accounting Standards Board (NASB), a government regulatory body has the mandate to issue commercial accounting standards for the Country and monitor compliance.

There are several Public /Private Initiatives to curb corruption and ensure transparency and accountability such as the anti-money laundering initiatives between the CBN, ACAs and the Banking and Financial sector; The Code of Corporate Governance developed by the SEC, the CAC and private sector companies; The United Nations Global Compact and the Business Action Against Corruption (BAAC) which Nigeria has signed on to.

There are codified Conflict of Interest rules enshrined in the Code of Conduct for Public Officers and the Public Procurement Act.

The challenge in implementing this article stems from the fact that there is a huge informal sector with many businesses operating outside the CAC framework thereby making monitoring of compliance with regulations problematic. However, there are ongoing efforts to intensify the regulation of this informal sector. The CBN in collaboration with SCUML has just issued guidelines to Banks not to deal with DNFI who are not registered with SCUML. This will ensure a comprehensive mapping of this sector and improve compliance with Article 12.