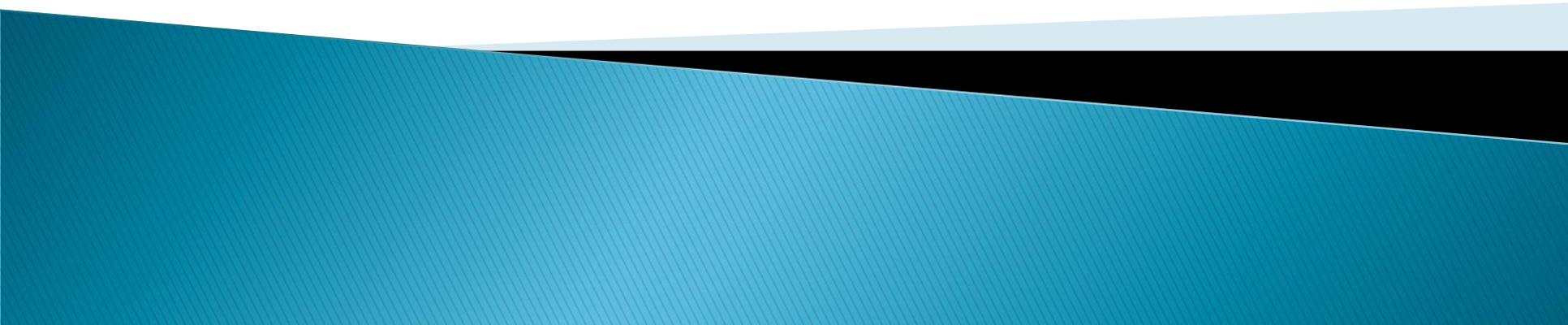


**Monitoring the use of scarce public resources and promoting transparent and accountable governance in Nigeria through the instrumentality of Two of Nigeria's Existing Transparency Legislation i.e. the Public Procurement and FOI Legislation respectively.**



# What shall we be discussing?

- ▶ Procurement Defined.
- ▶ Why is procurement important
- ▶ Value of FOI to procurement discerned from some of its basic principles.
- ▶ Value of FOI to stages of Procurement
- ▶ Access to information provisions of the PPA
- ▶ The FOI regime
- ▶ Conclusion

# Procurement Defined

- ▶ Procurement is defined as the acquisition of goods , Works and/or services at the **BEST POSSIBLE TOTAL** cost of ownership, in the Right **Quantity** and **QUALITY** at the **RIGHT TIME**, in the **RIGHT PLACE** for the direct **BENEFIT** or use of Government, Corporation or individuals, generally via a contract.
  - WIKIpedia Encyclopedia

# A process perspective

- ▶ The overall **process** of acquiring goods, works and services, from the identification of need to contract administration and through the end of a services' contract or the useful life of an asset.

*Procurement Manual, Bureau of Management,  
Office of Legal and Procurement Support, Jan 2005*

# Why is procurement Important ?

- ▶ The African Development Bank (AfDB) estimates, in a recent concept note, that public procurement accounts for as much as 70% of the budgets of Africa governments. The concept note states further that strengthening of procurement systems is crucial in minimizing the potential effects of financial/economic crisis and restoring of a level of economic growth and development sufficient to reduce poverty.

# Cont..

- ▶ A good size of National Budget expenditure is incurred through the public procurement process.
- ▶ State of National Infrastructure and standards of living are largely dependent on procurement effectiveness
- ▶ Federal Attorney General Aandokaa said 80% of corruption cases in Nigeria emanate from the procurement of goods, works and services

# Value of FOI as discerned from some of its basic principles

## Principle of Economy and Value for Money.

- the basic purpose of procurement is to purchase best value for your money.
- It is about optimal utilization of resources
- Implies quality , fitness for purpose, purchase that meet specifications, specification that match need or purpose, lowest prize over the operating life cycle of an asset.
- Without full disclosure of information it will be difficult in many cases for a buyer to discern when he has best value for his money or for a seller to offer exactly what meets a buyers need.

# Contn..

- ▶ Competition–effective competition;
  - *non–hindering of participation*
  - *preparation of the technical specifications enabling wider participation of competent bidders.*
  - *availability of alternatives/Choice .*
  - *advertisement of technical, professional, or financial conditions proportionate to the subject of the contract.*
  - *selection of appropriate procurement procedure.*
  - *Competition enables value for money and optimal resource utilization.*
  - *There cannot be fair and effective competition without equal and simultaneous distribution of information.*

# Contn....

- ▶ **Equal Treatment / Non Discrimination**
  - public procurement practicalizes the constitutional principles of equality of treatment.
  - the Nigerian federal character principle does not apply. The principle that applies is that all individuals are equal without any discrimination before the law.
  - Language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations have no relevance.
  - equal and simultaneous distribution of procurement information.

# Contn....

- ▶ *Accountability and ethical standards*
  - Holds practitioners responsible for enforcing and obeying the rules
  - Makes them subject to challenge and sanction, if appropriate, for neglecting or bending rules
  - Inspires confidence and willingness of well-qualified vendors to compete.
  - Has an effective role sharing that ensures traceable responsibility for infractions
  - Directly and concretely benefits the purchasing entity and stakeholders, responsive contractors, and suppliers, financiers.

Without access to information it is difficult to hold any one to account.

# Contn..

- ▶ **Fairness**– a good procurement is fair.
  - *This means it is impartial, consistent, and therefore reliable.*
  - *It offers all interested contractors, suppliers and consultants a level playing field on which to compete.*
  - *Conditions, specifications and criteria should be fair and not discriminatory*
  - *It directly and consciously expands the purchaser's options and opportunities so as to obtain the fairest or best possible deal.*
  - *Fair specification*
  - *Debriefing procedures*

# Contn...

- ▶ *Transparency – means*
  - *It should visibly establish and maintain rules known to all*
  - *Its procedures should make procurement information accessible, unambiguous, and fair.*
  - *it should set out needs of contracting authority and conditions related to participation by deliberate notice.*
  - *It should grant unfettered accessibility to tender documents and proceedings, and notify tenderers and the public of the result of tender.*
  - *Debriefing.*
  - *Publication of contract terms*

# Value of FOI to Various Stages of procurement

## ▶ Procurement Planning;

- A process of attaining clarity of all project parameters, that leads to a listing and sequencing of all that is required to achieve a project or program.
- Procurement planning includes market surveys and analysis.
- Specifying technical standards of goods, works and services and qualifications of contractors
- Aggregating needs to achieve economy of scale
- Sequencing of activities
- Without adequate information the process of procurement planning becomes a nightmare and will not achieve its purpose ....Alaoji power plant.

# Cont...

- ▶ Selecting a Method of Procurement;
  - Information of numbers of producers or suppliers can lead to competitive or selective tendering or single source.
  - Information about whether there are local producers and suppliers may lead to an international competitive or national competitive bid.
  - Selection of procurement/contract package also depends on the amount of information available to a procurer

# Cont....

- ▶ **Preparing Tender Documentation.**
  - Identifying and describing requirements
  - Specifications of quality standards
  - Drafting of contractors qualifications
  - Drafting criteria for selection of a winning bid
  - Drafting of special conditions of contract

# Cont..

- ▶ Bid Submission
- ▶ Bid Opening Proceedings
- ▶ Examination & Evaluation Process
- ▶ Award Decision is taken and Notice of acceptance of winning bid issued immediately to the winner. (Subject To No Objection when above the threshold)
- ▶ DEBRIEF the bid losers on request!
- ▶ Settle disputes and complaints
- ▶ Obtain Certificate of No objection from BPP if above MDA approval threshold

# Contn...

- ▶ Execute Contract Agreements
- ▶ Obtain and Confirm Advance payment/Performance Guarantees
- ▶ Announce and publicize the award in the form stipulated by the Act and rules /guidelines as may be issued by the Bureau from time to time.
- ▶ Submit information in appropriate format to BPP not later than three months from the end of each fiscal year

# Cont...

- ▶ How can an agency fully plan and effectively carry out procurement without full information about its needs, products it seeks, information on prevailing market and product conditions and on the experiences of other agencies that have used the product?
- ▶ How can bidders prepare and put forward the proposal that best meets an agency need, if they do not have full disclosure and access to information relating to the Agency needs?

# Access to Information provisions of the PPA

- ▶ S 16(14 ) All **unclassified** procurement records shall be open to inspection by the public at the cost of copying and certifying the documents plus administrative charges as may be prescribed from time to time by BPP.
- ▶ S 38 (1) Every procurement entity shall maintain a record of comprehensive procurement proceedings. (2) The portion of the record referred to in this section shall on request be made available to a) any person after a tender or proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract

# Cont...

- ▶ Then Came the FOI Act
  - Which has broadly established the right of access to information beyond the confines of procurement
  - Imposed greater duties on agencies to maintain information in a retrievable manner
  - Obligated agencies to proactively disclose certain information without demand
  - Made exemptions that sustain requirements of confidentiality when justified under the law
  - Indeed no sector will benefit more from a regime of full access to information than the procurement sector .