# A COMPARATIVE ANALYSIS OF THE NIGERIAN PUBLIC PROCUREMENT ACT AGAINST INTERNATIONAL BEST PRACTICE

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**ABSTRACT.** Prior to 2007, Nigerian public procurement was not formally regulated in the sense that there was no law, which governed procurement at the federal or State level. This changed with the enactment in 2007 of the Public Procurement Act, which was passed on the recommendation of the World Bank, which conducted a Country Procurement Assessment Report (CPAR) on Nigeria in 1999. This paper seeks to determine whether the Public Procurement Act meets the requirement of international best practice and examine what are the factors limiting the adoption of such best practices in Nigerian public procurement.

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## INTRODUCTION

Like most developing countries, the World Bank was the driver behind public procurement reform in Nigeria. In 1999, the Bank conducted what is known as a Country Procurement Assessment (CPAR) of the Nigerian public procurement system and found a number of deficiencies with the system. It was found that Nigeria did not possess a public procurement law and there was no institution with the responsibility for issuing policy direction on public procurement as well as no defined standards for conducting procurement. Little wonder then that public procurement was characterised by irregularities, fraud, corruption and mismanagement.

In response to the recommendations in the CPAR, the Nigerian government enacted a Public Procurement Act (PPA) in 2007 to govern public procurement by federal agencies. This paper examines the PPA to determine whether it meets the requirements of international best practice.

This paper is structured in three parts. The first part examines the goals of public procurement regulation and determines what are the internationally accepted best practices that are used to meet these goals of procurement regulation. The second part of the paper focuses on the Nigerian PPA to determine whether the provisions of the PPA can be said to be in alignment with these international best practices. The paper concludes with an assessment of the challenges facing the Nigerian public procurement system, which are militating against the proper adoption and implementation of international best practices.

## INTERNATIONAL BEST PRACTICE IN PUBLIC PROCUREMENT REGULATION

Best practice often refers to widely-accepted, informally-standardized techniques, methods or processes that are regarded as effective to achieve certain goals in a sector or sphere of business. Best practices

may also be a substitute for formal standards in sectors in which formal standards do not exist. They are the techniques that have shown through experience to consistently lead to the desired result. The next question thus becomes what is best practice in public procurement regulation?

Unlike some spheres of endeavour such as manufacturing or agriculture, it is more difficult to identify best practices in public procurement partly because countries at different stages of development have different needs and as a result, different ideas that may be considered as 'best practices' within what they seek to achieve from public procurement regulation. However in spite of these difficulties, institutions such as the International Organisation for Standardisation (ISO) [2] and academics have attempted to distil the best practices in public procurement regulation. To identify a best practice, we have to first consider what it is that we are seeking to achieve, in other words, what is the desired result sought? Both the ISO and procurement scholars have identified similar goals that can be achieved through the adoption of best practice in public procurement regulation.

This section will discuss the goals of public procurement regulation and the procurement methods and techniques that are commonly used to achieve these goals, and as such may be regarded as best practices in public procurement.

The goals of public procurement regulation, which may be achieved from the adoption of specific best practices, may be listed as competition, transparency, integrity, best value and efficiency.[3] It should be noted that this list is not exhaustive and further that these goals are interrelated and interdependent and it is often not possible to achieve any of these goals without the achievement of the others. Further, in addition to these objectives of procurement regulation, which are often referred to as "primary" objectives, one could also

[2] See ISO 10845, which applies to construction procurement.
[3] ISO 10845 lists the primary objectives of a procurement system as fairness, equity, transparency, competition and const-effectiveness.

have "secondary" or "horizontal" objectives of procurement regulation which will include environmental, social or industrial objectives. This paper will however focus on the primary goals of procurement regulation.

The first listed goal of procurement regulation is competition. Competition in public procurement suggests that the procurement rules are designed in such a way as to encourage the maximum participation of the widest possible 'pool' of suppliers. By maximizing competition in public procurement regulation, the government obtains the best value in terms of price, quality, contract terms and conditions.[4] The widest form of competition will prevent barriers that deny contractors entry to the public procurement market where they have not undergone for instance onerous registration procedures. The best practices that are used to ensure competition in public procurement are eliminating onerous registration or qualification procedures to reduce the barriers to entry, wide advertising requirements, such as requirements for advertising in national or international media, and the use of the open bidding method of procurement. Promoting competition in public procurement may not be possible where there is no transparency but should be done subject to the requirements for efficiency.

In the EU for instance, competition is encouraged by advertising contracts publicly and holding a competition between firms that tender for a contract and by not excluding firms from tendering or participating in contract award procedures except for justified reasons specified in the law.[5]

This leads to the second goal of public procurement regulation, which is transparency. Transparency in public procurement is a mandatory requirement of most public procurement systems and suggests that the procurement procedure is conducted in an open and impartial

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[4] Steven L. Schooner, Desiderata: Objectives for a System of Government Contract Law (2002) 11 Public Procurement Law Review 104.
[5] Sue Arrowsmith, The Law of Public and Utilities Procurement, (London, Sweet & Maxwell), ch.3.9

manner. Arrowsmith has defined the requirement of transparency as requiring the presence of rules that require publicity for contract opportunities.[6] The publication of contract opportunities in publicly accessible medium and in a timely fashion will prevent discriminatory practices such as the award of unpublicized contract opportunities to cronies and will enhance competition.[7] This aspect of transparency creates an enabling environment for competition to thrive, and as discussed above, the best practice is the wide advertisement of contract opportunities.

The second requirement of transparency is the publicity of the rules governing each procedure.[8] In other words, government agencies must specify the criteria that will be used to award the contract, such as the whether the award will be made on the basis of price, or on the basis of functionality, life-cycle costs or for service contracts, whether the contract will be awarded on the basis of qualifications and or experience. The best practices for achieving this include the use of a points system, or other method of calculation which determines in advance, the number of points that will be awarded for the important aspects of the procurement in determining which bid will be considered the most favourable for the government, where lowest price is not used. Another best practice is the use of nationally or internationally accepted standards, which products must meet to be acceptable. These might include for instance EU standard classifications or ISO classifications where relevant.

The third requirement of transparency suggested by Arrowsmith is the presence of rules, which require rule-based decision-making.[9] In other words, government agencies must be required to follow rules during the procurement procedure such as in choosing the procurement procedure to be used, and will also follow the rules on publication etc. The best practice for ensuring that this occurs is for a

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[6] Arrowsmith n.5
[7] Rand L. Allen, "Integrity: Maintaining a Level Playing Field" (2002) 2 Public Procurement Law Review 111
[8] Arrowsmith n.4
[9] Arrowsmith ibid.

procurement regime to provide a binding complaints or review mechanism, where suppliers or other persons harmed by the derogation from the rules may obtain redress.[10]

Finally, transparency requires that interested parties be given opportunities for verification and enforcement.[11] This will mean that adequate and accessible records are kept which may be requested under, for instance, the relevant Freedom of Information legislation and that the results of procurement audits are available to verify procurement activity and spending. In developed countries, information on procurement spending is usually available to the public in accessible media. The best practice for achieving this is through the creation of Internet based databases which contain information on contract information such as type and value of contract, region, province or state in which contract was awarded, the names of the awadee and the awarder, as well as other information such as duration of contract and dates of completion. Verification also includes a situation where contractors are given information on why they were not selected for a contract award.[12] Enforcement means the presence of rules, which give aggrieved contractors the ability to challenge procurement decisions through judicial or administrative forum for redress.

Transparency in public procurement further encourages integrity in the system. Integrity suggests that there are rules of conduct, which govern the actions of public officials and government contractors in the procurement process.[13] To be specific, integrity requires that public officials will follow the rules and award contracts to the most deserving firm selected under the publicized contract evaluation criteria and that private firms will compete based on their capabilities[14] rather than on their ability to improperly influence the

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[10] Xinglin Zhang, "Supplier Review as a Mechanism for Securing Compliance with Public Procurement Rules: A Critical Perspective" (2007) 16 Public Procurement Law Review, 325.
[11] Arrowsmith n.4
[12] Arrowsmith, ibid.
[13] Schooner, n.4
[14] Schooner, n.4

public official decision-makers. Integrity in public procurement will assist in ensuring competition as private firms will only apply for government contracts where they feel that they will be subject to an honest and impartial process. Further, integrity is aided by transparency, which ensures that illegal and discriminatory practices cannot be concealed. Some of the best practices that may secure integrity are rules proscribing conflicts of interest in contract awards, the publication of contract opportunities which gives the impression that contracts are not awarded in a closed, discriminatory fashion, but in an open and honest manner.[15]

The next goal of public procurement regulation is often referred to as best value or 'value for money' and may be defined as a policy goal that desires to obtain the best bargain with the public's money.[16] Best value is not synonymous with lowest price as quality or total life-cycle considerations may mean that the cheapest products do not necessarily provide the best value. Best value can be achieved through the other goals discussed above. For instance, the requirement for competition supports best value as a competitive environment ensures that the government has a 'pool' of suppliers to chose from and will pay a competitive price and avoid monopolistic prices.[17] The requirements for transparency also support best value by promoting a competitive environment, and making it clear when the government has not obtained value for money. There are many best practices, which may be used to achieve best value. These include the use of lowest cost tenders where appropriate, the use of research and development contracts where government requirements cannot be met on the open market, the use of fixed cost contracts and contractual provisions that ensure that contract prices cannot be increased post-award and the use of competitive procurement methods.

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[15] Allen, n.7

[16] Schooner, n.4 at108

[17] Americo Beviglia-Zampetti, The UNCITRAL Model law on procurement of goods, construction, services in (Hoekman & Mavrodis (eds.)) *Law and Policy in Public Purchasing: The WTO Agreement on Government Procurement* (1997), Ch.15.

The next stated goal of public procurement regulation is efficiency. Efficiency in public procurement has two facets. One can talk of efficiency in terms of the use of resources in obtaining what the government needs, in other words, a procurement system is efficient when it spends the least amount of resources in the process of purchasing what it requires.[18] Thus administrative costs spent on public procurement should not be overly high or be higher than the costs of what is being procured. The second aspect of efficiency is procedural efficiency. In other words, procurement procedures should not be burdensome or take an inordinate amount of time to be completed. For instance, it should not take six months or a year to order routine items such as paper or pens etc. The best practices for achieving efficiency include adequate and mandatory procurement planning, and the presence of rules that ensure that officials do not unduly delay the procurement process, which can be achieved by having strict time lines for submission and consideration of tenders and strict time lines for notification of contract award decisions as well as for contract implementation, where appropriate. In addition, the procurement of routine items should be done in a manner that minimises the use of resources such by using framework contracts or dynamic purchasing systems.

It should be noted that in as much as these goals are interdependent on each other, they may also in some cases, conflict with each other. For instance, obtaining best value may require more resources devoted to market research and negotiation with suppliers, which may reduce efficiency.[19]

Apart from these five goals discussed, there are other goals that may be achieved through public procurement regulation. These include ensuring the satisfaction of the end user, risk avoidance in the sense that the government tries to minimise the risk of doing business with

[18] Schooner, n3.
[19] Schooner, ibid.

unreliable or unethical contractors and also minimises the risks of contract price increases.[20]

## THE NIGERIAN PUBLIC PROCUREMENT ACT AND INTERATIONAL BEST PRACTICE

As was discussed in the preceding section, the goals of public procurement regulation, which may be achieved from the adoption of specific best practices, are competition, transparency, integrity, best value and efficiency. This section will examine the Nigerian Public Procurement Act (PPA) to see if it incorporates the international best practices that may fulfil these goals in the Nigerian context.

In relation to the first listed goal of public procurement regulation, which is competition, the PPA requires the use of advertising methods to ensure a competitive selection of suppliers. Thus, section 19 (a) of the PPA provides that procuring entities shall "advertise and solicit for bids in adherence to this Act". Section 19 (c) further requires procuring entities to "receive, evaluate and make a selection of the bids received in adherence to this Act". Section 25 gives the details on bid advertisement by requiring publication in two national newspapers and in the "procurement journal" not less than six weeks before the deadline for the submission of bids. In Nigeria, federal tenders are also advertised on the Internet website of the Bureau of Public Procurement.[21]

As was discussed above, removing the barriers to entry to the public procurement market especially for new players is one of the ways to enhance competition. Before the passage of the PPA in Nigeria, the World Bank Country Procurement Assessment Report criticised the elaborate registration procedures that contractors were required to

[20] Schooner ibid.
[21] See www.bpp.gov.ng

undergo before being considered eligible for government contracts.[22] Although these registration criteria have disappeared from the public procurement law, there remains a requirement for contractors to pre-qualify for public contracts. The purpose of pre-qualification is to streamline the procurement process by eliminating the need for contractors to provide separate qualification information for each contract[23] and ensuring that procuring authorities are not required to assess the same information for each contract. However, pre-qualification may also limit competition where non pre-qualified suppliers are excluded from particular procurements. The PPA states that a procuring authority shall pre-qualify bidders based on the criteria and information set out in the pre-qualification documents.[24] Under the PPA, the requirements for pre-qualification now appear to have lost the secrecy and it is hoped that they will be conducted with transparency. On the face of it, therefore, the PPA adopts international best practice in relation to ensuring competition in public procurement, however, as will be discussed in the next section on the challenges faced by the Nigerian public procurement system, the proper application of the procurement rules by procuring entities means that in reality competitive practices are not always adopted in the procurement process.

In relation to the issue of transparency, one of the main criticisms of the Nigerian public procurement system before the passage of the PPA was a lack of transparency. Public procurement was regulated by the financial regulations, which were issued by the Minister of Finance and were not accessible to the public or to contractors and could be changed by the Minister as and when he desired. Most of these criticisms have been met by the passage of the PPA. As was discussed above, transparency requires publicity of contract opportunities. This is now required by section 25 of the PPA. Section 25 provides that goods shall be procured using either national or international competitive bidding methods and that invitation for bids

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[22] Sope Williams-Elegbe, The Reform and Regulation of Public Procurement in Nigeria (2012) 41 (2) Public Contract Law Journal 339.
[23] Arrowsmith, n.5, ch.12.45
[24] Section 23 (1) PPA.

shall be advertised in national or international news papers as appropriate at least six weeks before the deadline for submission of bids.

As discussed above, transparency also requires publicity of the rules governing each procedure. In this respect the PPA unfortunately does not meet the requirements of international best practice. Whilst the PPA provides that all procurements of goods and works shall be conducted through open competitive bidding, in which the lowest price shall be the main evaluation criteria, the PPA is silent as to the thresholds that will require a bid security as required by section 26. The PPA merely provides that subject to the monetary thresholds as may be set by the Bureau of Public Procurement (BPP), all procurements valued in excess of a particular sum shall require a bid security from a reputable bank in an amount that does not exceed 2% of the bid price. It would have been preferable if the monetary thresholds were specified in the PPA as currently, suppliers will not be aware of whether a bid security will be required or not.

The third requirement for transparency is rules based decision-making. The PPA however grants procuring authorities a lot of discretion in making procurement decisions. For instance, in section 28, a procuring authority is permitted to reject all bids prior to the acceptance of a bid. The issue here is that a procuring authority may do this without it being in the public interest and without giving a reason. In a country like Nigeria where public officials often act in their own interest and not in the public interest, this provision essentially gives them a carte blanche to cancel the procurement process if the process is not going in a way that favours a personal interest.

The fourth requirement of transparency is opportunities for verification and enforcement. In relation to verification, this includes the opportunity for contractors to be given reasons why they were or were not selected for a contract award and verifiable information on procurement activity and spending.

In relation to giving contractors reasons why they were not selected, the PPA does not provide clear rules on this. The PPA merely requires procuring entities to give the successful bidder immediate notice of the acceptance of its bid.[25] In relation to the unsuccessful bidders, the PPA provides that information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall only be given to them after the successful bidder has been notified of its award.[26] Further, section 19 (e) requires the procuring entity to debrief bid losers on request. This approach goes against international best practice in two ways. First, there are no clear rules requiring the procuring entity to give unsuccessful bidders reasons why they were not successful. The giving of reasons is of crucial importance in the maintenance of a robust procurement dispute resolution system. Where bidders are not aware of the reasons why they were unsuccessful, they would also not be aware of irregularities in the procurement process, which may be grounds for review. Secondly, where unsuccessful bidders are only notified of the outcome of the procurement process after the successful bidder is notified and possibly after the conclusion of the contract, this denies them the possibility to institute a challenge that may lead to a review of the contract award decision.

In terms of keeping the records necessary for verification of procurement activity, the PPA states in section 16 (12) that every procuring entity shall maintain paper and electronic copies of the records of procurement proceedings for a period of ten years from the date of contract awards and that such records will be open to inspection by the members of the public. In addition, section 16 (14) provides that all unclassified procurement records shall be open for inspection by the public. The provisions of the PPA in this regard, therefore meet the minimum standards of transparency.

In relation to the enforcement of procurement decisions, however, the provisions of the PPA provide different forum and strict time lines for the resolution of procurement disputes. The PPA provides different

[25] Section 33 (3) PPA.
[26] Section 32 (8) PPA.

forum for dispute resolution depending on whether the dispute arises out of a concluded contract or out of the procurement process. Thus in relation to concluded procurement contracts; section 16 (26) provides that all procurement contracts shall contain provisions for arbitral proceedings as the primary forms of dispute resolution. This reference to arbitration is intended to ameliorate some of the inadequacies of the Nigerian judicial system, which have been described as the expensive and time consuming nature of the judicial process, the fact that some judges are corrupt and will manipulate the judicial process where they have been bribed and the fact the contractors will often avoid litigation to avoid future retaliation by a procuring entity.[27]

In relation to disputes arising out of the procurement process, the PPA designates the procuring entity as the first line of review of disputed procurement decisions. The PPA provides that a bidder may seek administrative review of any omission or breach of the provisions of the PPA, the regulations made under the PPA, and the provisions of the bidding documents.[28] Under these provisions, a complaint should be submitted first to the accounting officer of the procuring authority.[29] In federal ministries, the accounting officer is the permanent secretary, who is next in hierarchy to the minister. Under the PPA, the bidder must submit his or her complaint "within 15 days of when the bidder first became aware of the circumstances giving rise to the complaint, or when he or she should have been aware, whichever is earlier."[30] The accounting officer "on reviewing a complaint . . . shall make a decision within 15 working days" of the corrective measures to be taken, if any.[31]

By virtue of section 54 (3), where the accounting officer does not make a decision within the required timeframe, or the bidder is not satisfied with the decision of the accounting officer, the bidder may

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[27] Sope Williams-Elegbe, The Reform and Regulation of Public Procurement in Nigeria (2012), 339 at 358.
[28] Section 54 (1) PPA.
[29] Section 54 (2) PPA
[30] Section 54 (1) (a)PPA
[31] Section 54 (1) (b) PPA.

further complain to the BPP within ten days of the receipt of the accounting officer's decision. The BPP must render a decision within twenty-one working days of receiving the complaint.[32] If the bidder is not satisfied with the BPP's decision, the bidder may, within thirty days of receiving the BPP's decision, or after the expiration of time for the BPP to render a decision, file a complaint at the Federal High Court.[33]

In spite of these extensive rules on dispute resolution, the dispute resolution system is not being used for a variety of reasons. Some are the fear of retaliation in the form of the loss of future business and others include the fact that Nigeria does not possess a strong culture of complaining or litigation generally, and contractors instead prefer to accept their losses in the hope that the next time the procurement process would turn out in their favour.

As discussed above, integrity in public procurement refers to the existence of rules that govern the conduct of public officials and suppliers in the procurement process. These include prohibitions against conflicts of interest in relation to officials and suppliers as well as prohibitions against the giving or the receipt of bribes or other forms of inducement or other kinds of discriminatory practices. The PPA contains extensive provisions on this. Thus in relation to conflicts of interest, the PPA provides in section 16 (6) (f) that all bidders are required to provide an affidavit disclosing whether any relevant officer in the procuring entity has any interest in the bidder. The PPA further provides for the exclusion of a bidder who has promised or offered any bribe to a former or current employee of the procuring authority, including offers of employment, in order to influence the decision making of the procuring authority. The PPA further provides in section 57 that the BPP shall specify a code of conduct for persons involved in public procurement including suppliers and further that the conduct of all persons involved in public procurement shall be governed by the principles of honesty, accountability, transparency,

[32] Section 54 (6) PPA.
[33] Section 54 (7) PPA.

fairness and equity. Section 57 further defines and prohibits conflicts of interest among procurement personnel.

Although the PPA contains extensive rules designed to maintain integrity in the procurement system, which appear on their face to be in accordance with the requirements of international best practice, it appears from interviews conducted with Nigerian procurement officials in July 2011, that the enforcement of these integrity related provisions is sadly lacking and that conflicts of interest pervade the procurement process, under which contracts are awarded to persons in which the decision-makers have an interest.

In relation to the next area in which best practices are utilised, which is the goal of best value, the PPA does not directly address best value as a policy goal, however, the requirement in section 24 which provides that all procurement for goods and works shall be by open competitive bidding in which every interested bidder shall be given the opportunity to bid and the lowest evaluated tender shall be selected may promote best value in public procurement. However as discussed above, best value may not always be achieved through the use of the lowest tender as other considerations like maintenance concessions or life-cycle costs may mean that the lowest tender does not provide the best value in the long run. The PPA in section 33 thus provides that the lowest tender need not be selected where there are good grounds for doing so, without specifying what these good grounds may be. This provision thus leaves itself open to abuse. The PPA also provides for other procurement methods where lowest cost is not appropriate. These are modelled on the UNCITRAL Model law and include two-stage tendering, provided for in section 39, restricted tendering provided for in section 40 and request for quotations in section 41.

Finally, the last goal of public procurement as discussed above is efficiency. As discussed above, efficiency means that the procurement function should not consume an inordinate amount of resources and that procurement procedures are designed to be timely. Efficiency in relation to the use of resources is addressed in the provisions for alternative procurement methods. Thus, by section

40, a procuring authority may rely on restricted tendering where the time and cost of evaluating a large number of bids is disproportionate to the value of goods etc to be procured. Similarly, efficiency in relation to the timeliness of procurement procedures is not addressed by any of the provisions of the act on time limits. Thus as was discussed above, advertising requirements under the PPA for both national and international competitive bidding should take six weeks. However, it must be noted that apart from time limits for adverts and for responding to queries for information on pre-qualification, and in relation to the procurement of consultant services, the PPA does not generally legislate time limits for submission and consideration of tenders. Although the PPA states that the time limits should be stated in the bidding documents, it would have been preferable if time limits were included in the PPA as the current approach may lead to the inconsistent application of time limits by procuring entities and further, without clear guidelines, entities may set limits that may be inappropriate and designed to implement discriminatory practices.

## THE CHALLENGES TO THE NIGERIAN PUBLIC PROCUREMENT SYTEM

The Nigerian public procurement system is still in its relative infancy, given that the legislation regulating government contracts is still less than five years old. However, in spite of the passage of the PPA and the establishment of a procurement cadre in government ministries, departments and agencies, the procurement system is not functioning as it ought to and public procurement in Nigeria is still riddled with corruption, fraud and irregularities.

Whilst the PPA has aided in creating a system in which international best practice in procurement may thrive, by providing for the use of competitive procurement methods except in limited situations; creating new institutions to monitor and direct public procurement; and has increased transparency in procurement and has provided for a system of supplier remedies through administrative review of procurement decisions, in spite of all these gains, several challenges remain in practice.

In interviews conducted with procurement officials, in July 2011, it was clear that the issue of the capacity of procurement officials remains a challenge. There was a clear difference in levels of understanding of the procurement function between procurement officials in high profile and low profile ministries, with high profile ministries possessing staff with a higher degree of understanding. In addition, there are vast differences in the resources made available to staff to carry out the procurement function depending on the ministry concerned. This lack of capacity affects in many cases the ability of the procuring authority to properly follow the procurement rules and thus obtain the required outcome from a procurement procedure.

Further, the involvement of politicians in the procurement process as is a serious problem, which needs to be given urgent attention to prevent forestalling the growth of Nigeria's nascent procurement system.[34] At present, high-ranking politicians are able to influence the outcome of the procurement process by putting undue pressure on civil servants who feel unable to refuse to bend to this pressure. This means that in practice, the procurement process is manipulated at the instance of the interested politician and contracts awarded to the person or firm in which the politician has an interest.

This has led to several uncompleted high profile projects, in which contractors were paid up-front and absconded with federal funds or which were completed at prices high in excess of the original contract price. These irregular and fraudulent contracts have been documented in the reports of the Auditor-General.[35]

Another issue that came to light during the interviews is the problems

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[34] The World Bank has reiterated in the follow up to the CPAR, its recommendation for politicians to be removed from the procurement process. See WORLD BANK, NIGERIA: A FISCAL AGENDA FOR CHANGE- PUBLIC EXPENDITURE MANAGEMENT AND FINANCIAL ACCOUNTABILITY REVIEW (PEMFAR) VOL. I (MAIN REPORT) May 25, 2007, 140.

[35] See Auditor-Generals Report for the Federation of Nigeria, 2007 and 2009.

caused by the mismatch between budgetary appropriations and the actual release of funds, which often prevents procuring authorities from meeting financial obligations to contractors.[36] This mismatch meant that in some cases, procuring authorities had to cancel awarded contracts or divert funds from other sources when it became clear that the government was not going to release appropriated funds.

Although at the highest level of government, i.e. the Presidency there is a commitment to sound procurement principles and to the development of a procurement system that meets the requirements of international best practice, the lack of commitment on the part of other politicians is severely constraining the procurement system.

## CONCLUSION

This article has examined what may be referred to as international best practices in the public procurement context, and further examined whether the Nigerian procurement system meets the requirements of international best practice.

It was seen that although the Nigerian public procurement act has included some of the requirements of international best practice as defined in this article, in practice, several challenges remain especially in relation to the outcome of the procurement process, even where the procurement process follows the requirements of the PPA.

It is clear that there needs to be a reassessment of the Nigerian procurement system, to determine how to build the capacity necessary to properly manage and conduct the procurement process and also to determine how to insulate procurement officials from interference by high-ranking politicians.

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[36] On Nigeria's budgeting problems see World Bank, ibid., 33-37.