

**Public Procurement Act 2007 and the  
University System**

**By**

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**On Behalf of the BPP**

**At**

**THE FEDERAL UNIVERSITY OF AGRICULTURE  
ABEOKUTA MANAGEMENT RETREAT AT HERMITAGE  
GARDEN RESORT AKODO LEKKI 14<sup>TH</sup> MAY 2010**

# What shall we be discussing?

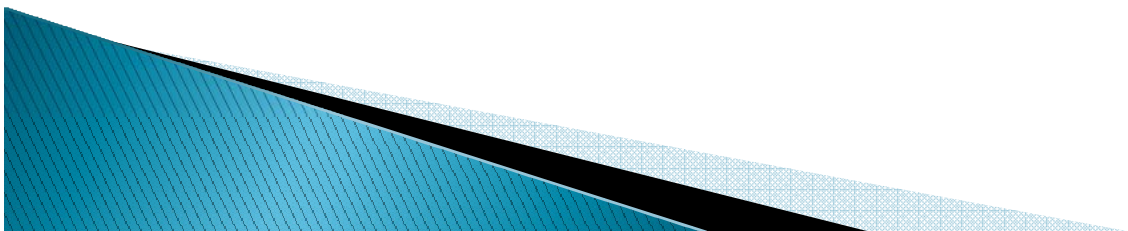
- ▶ Does the Public Procurement Act 2007 Apply to the Federal Universities ?
- ▶ Institutions and Structures for Regulating and Implementing Procurement
  - The Bureau.
  - Tenders Board
  - Accounting Officer
  - Procurement Planning Committee
  - Procurement Department
- ▶ Principles of Procurement and Summary Steps
- ▶ Access to information and Disposal of Assets
- ▶ Sanctions

# Does the PPA Apply to Federal Universities ?

- ▶ The Federal Government of Nigeria & all Procurement Entities.
- ▶ All Entities outside the foregoing which derive at least 35% of funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation Share of Consolidated Revenue Fund.
- ▶ Shall not apply to procurement of Special Goods, Works and Services involving national defense, or national security *unless the* President's express approval has been first sought and obtained.

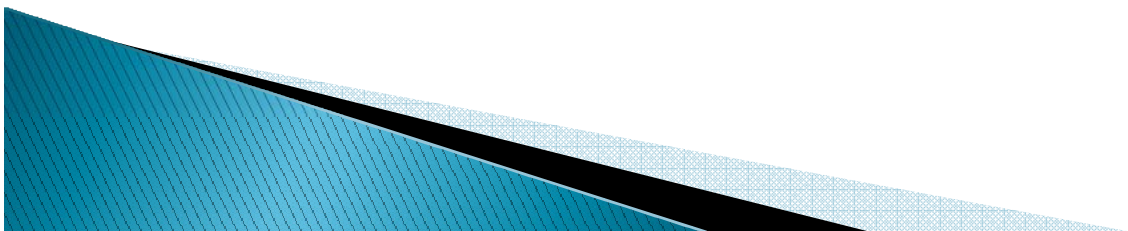
# Procuring Entity means ;

- ▶ Any public body engaged in procurement and includes a Ministry, Extra Ministerial Office, Government Agency, Parastatal and corporation.
- ▶ Public Procurement was also defined as acquisition by any means of goods, works or services by the government.



# What Institutional Structures will Regulate and Implement Procurement in Federal Universities?

- ▶ The National Council on Public Procurement
- ▶ The Bureau for Public Procurement(Industry Regulator for all PE's)
- ▶ Recognizes MDA's as PE's(Universities)
  - Accounting Officers
  - Procurement Planning Committee
  - Tender Board
  - Procurement Officers/cadre



# The Bureau's Functions; Policy Formulation and Oversight

- Formulate the general policies and guidelines/rules relating to public sector procurement for the approval of the Council.
- Supervise the implementation of established procurement policies.
- Monitor the prices of tendered items and keep a national database of standard prices.
- Subject to thresholds as may be set by the Council, certify federal procurement prior to the award of contract.
- Review the procurement and award of contract procedures of every entity to which this Act applies.

# Bureau Functions; Research and Publication

- ▶ Periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly.
- ▶ Undertake procurement research and surveys
- ▶ Publicize and explain the provisions of this Act
- ▶ Publish the details of major contracts in the procurement journal.
- ▶ Publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement

# Bureau Functions ; Establishment and Enforcement of Procurement Standards

- Stipulate Conditions for No objection
- Prepare and update standard bidding and contract documents.
- Issue Code of Conduct for Procurement Officers and Monitors
- Set thresholds with Council Approval
- Issue format for reporting all procurement Information
- Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions.
- Perform procurement audits and submit such report to the National Assembly bi-annually.





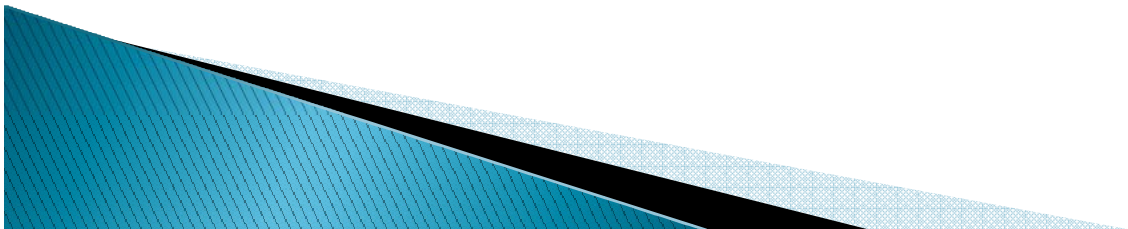
# Bureau Functions; Information Management and Dissemination

- ▶ Collate and maintain in an archival system, all federal procurement plans and information.
- ▶ Maintain a national database of the particulars and classification and categorization of federal contractors and service providers.
- ▶ Introduce, develop, update and maintain related database and technology;(Standard Prices)
- ▶ Collate and store in a retrievable way all procurement information received from MDA's
- ▶ Establish a single internet portal that shall serve as a primary and definitive source of all information on government procurement.



# Bureau Functions; Capacity Building

- ▶ Organize and Co-ordinate relevant training programs to build institutional capacity and develop skills of procurement professionals.
- ▶ Skill Improvements in;
  - Procurement Implementation
  - System Oversight
  - System Review and Analysis
  - Innovation and System Improvement



# Powers of the Bureau

- ▶ To enforce the monetary and review thresholds approved by council.
- ▶ Issue certificate of no objection subject to the thresholds and guidelines
- ▶ Stipulate to PE the procedures and documentation for no objection within the approved threshold.
- ▶ Inspect and review a procurement process to ensure compliance.
- ▶ Determine whether there has been contravention of the act

# Cont...

- ▶ Debar supplier or service provider in contravention of the act.
- ▶ Maintain a national data base of contractors and to the exclusion of PE prescribe categorization and classification for the companies in the register
- ▶ Apply sanctions

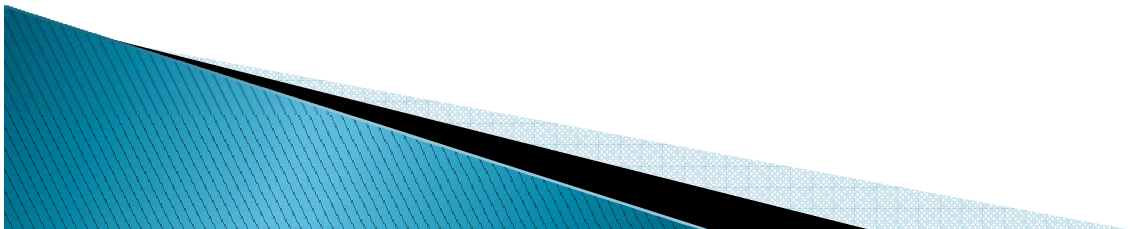
# Cont...

## Recommend to the Council

- ▶ The suspension of officers concerned with procurement or disposal proceedings in issue
- ▶ The discipline of Accounting officer of any procuring entity.
- ▶ Temporary transfer of procuring and disposal functions of a PE to another entity or consultant.
- ▶ Reference to ICPC or EFCC for investigation and prosecution.
- ▶ Issuance of variation Orders
- ▶ Any other sanction that the Bureau may consider appropriate.

# The University Council

- ▶ Consider and Approve Major University Policies and Programs.....
- ▶ Approve Annual Proposals for Appropriation
- ▶ Receive Reports of Procurement Implementation.



# Tenders Board

- ▶ Subject to the approval of the National Council on Public Procurement, the Bureau of Public Procurement shall, from time to time, prescribe guidelines for the membership of the Tenders' Board( S 22(2) .
- ▶ However, best practice principle is to have the membership limited to five as follows (12.1.3 of the BPP Procedures Manual):

# The Tenders Board Membership

- ▶ Accounting Officer (Vice Chancellor )
- ▶ All Heads of Departments(DVC's).
- ▶ Bursar
- ▶ Registrar
- ▶ Director Physical Planning and Works
- ▶ Procurement Officer of the PE (Head Procurement Department) --Secretary in his absence an officer of not less than Asst Director rank shall Act as Secretary.
- ▶ Any other persons with relevant skills may be appointed a Non voting member to support the work of the Tenders Board



# The Accounting Officer

## RESPONSIBILITIES INCLUDE

- Line Supervision of procurement
- Constituting the Procurement Committee ;
- Integrating his entity's procurement expenditure into its yearly budget
- Ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method.
- Constituting the Tenders Board
- Constituting the Evaluation Committee
- Liaising with the Bureau (BPP) to ensure implementation of its regulation
- Ensuring full compliance with the law

# Cont....

- ▶ Ensure that the Procurement Department and PPC has qualified people with technical and Procurement expertise in relation to the mandate of the PE.
- ▶ Ensure that that they are allowed free hand to operate without undue directives that might affect the integrity of the procurement process.
- ▶ Initiate disciplinary action against any person who violates the provisions of the Act or regulations.
- ▶ Encourage all staff to disregard any directive that is not in consonance with the Regulations or the Act.
- ▶ Determine Complaints
- ▶ Refrain from influencing the outcome of the evaluation process

# Procurement Planning Committee

## ▶ Membership

- Accounting Officer or its representative to chair.
- Procurement Unit – to serve as Secretary
- Unit directly in requirement of procurement (Reps of Schools/Colleges requiring procurement)
- Financial Unit of the MDA
- PRS Department of MDA (or its equivalent)
- Technical personnel of MDA with expertise in the subject matter for each particular procurement.
- Legal Unit of the procuring entity

# Substance of Procurement Planning

- ▶ Preparing the needs assessment & evaluation
- ▶ Identifying the goods, works or services required,
- ▶ Carry out appropriate market and statistical survey and on that basis prepare cost implications of proposed procurement.
- ▶ Aggregating its requirement to obtain economy of scale & reduce procurement cost
- ▶ Specify standards of goods, works or service
- ▶ Specify qualifications of bidders
- ▶ Recommend appropriate method for procuring each item
- ▶ Prepare bidding documents

# Procurement Department

- ▶ Serving as Secretariat to the Procurement Planning Committee.
- ▶ Co-ordination of all procurement planning committee activities, including keeping its minutes and all documentation, and liaison with the Tenders Board
- ▶ Preparing bid solicitation documents eg; for prequalification, EOI, bidding and request for proposals for PPC approval and issuing them after approval.
- ▶ Supervising Bid Submission and opening.
- ▶ Keeping a Procurement Document Registry

# Principles for Public Procurement

Subject to set thresholds be based on;

- ▶ Prior procurement Plans, and prior budgetary appropriation
- ▶ Be not formalized until funds are available
- ▶ Be by open competitive bidding(exceptions)
- ▶ Be transparent, timely, ensure accountability
- ▶ Promote Competition Economy and efficiency
- ▶ Be in accordance with the law and rules issued therefrom

# GENERAL QUALIFICATION OF BIDDERS

- ▶ Professional & Technical qualifications to carry out particular procurement
- ▶ Financially capability
- ▶ Technical capability
- ▶ Qualified manpower
- ▶ Legal capacity to enter into contract
- ▶ Has no criminal records either directly or indirectly.

# GENERAL QUALIFICATION OF BIDDERS (Cont'd)

- ▶ Possess legal capacity to enter a contract.
- ▶ Not be in receivership
- ▶ Have fulfilled all its obligations to pay taxes, pension contributions.
- ▶ Not have any director who has been “convicted in any country for any criminal offence relating to fraud or financial impropriety.” etc
- ▶ Accompany every bid with an affidavit of disclosure – whether any officer of relevant MDA or Bureau is a former or present Director, Shareholder or has any pecuniary interest in any bidder.
- ▶ Provide any documentary evidence or otherwise required by the MDA as proof of its qualification



# GROUNDS FOR DISQUALIFICATION OF BIDS AND OR BIDDER

- ▶ Established evidence of promise or gift of money, tangible item or other quantifiable benefit --- (former or current employee) of MDA or Bureau to influence procurement.
- ▶ A contractor failing to perform or exercise due care in performance of a procurement contract in the last proceeding three years
- ▶ Bidder whose name is in the list of Debarred contractors
- ▶ In receivership or insolvency
- ▶ Failed to Pay taxes or pension contributions

# Cont....

- ▶ Bidder is convicted and sentenced for a procurement crime or one relating to financial impropriety or
- ▶ Has in its board, management or is owned by a person so convicted.
- ▶ Bidder fails to submit a statement in respect to its dominating or subsidiary relationship with any other bidder
- ▶ Bidder exclusion should be in writing stating reasons

# Summary of Steps

- ▶ Procurement Planning and Preparation
- ▶ Advertisement for solicitation of bids in National Newspapers/Federal Tenders Journal.(Pre-qualification EOI's or Bids)
- ▶ Mandatory Invitation of TWO credible persons – representing a relevant private sector professional body and non-governmental anti-corruption organization to observe.
- ▶ Bid Submission
- ▶ Transparent Bid Opening Proceedings
- ▶ Transparent Examination &Evaluation Process

# Cont...

- ▶ Approval by the authority before award.
- ▶ Post Qualification where necessary
- ▶ DEBRIEF the bid losers on request!
- ▶ Publicize Award

# ACCESS to Information

- ▶ Grants public access to information, after a tender proposal, offer or bid has been accepted or proceeding has been terminated without resulting in procurement. S 38
- ▶ Provides for debriefing of Bid losers on request S (19e)
- ▶ All Communications must be in writing
- ▶ PE to submit records and information on procurement to the Bureau in a format determined by the Bureau.

# Access to Information Cont

- ▶ All unclassified records of procurement shall be open to inspection by the public at the cost of copying and certifying of the documents and an administrative fee.
- ▶ The Bureau is to establish a single internet portal which shall be a primary definitive source of procurement information in the country.
- ▶ The Bureau shall publish details of all Procurement contracts.
- ▶ Prior to selection of a winner, procurement information can only be disclosed by leave of court.

# Dispute Resolution

- ▶ All complaints about process of selection must first be addressed to the Accounting Officer.
- ▶ To be submitted within 15 days
- ▶ Accounting Officer to decide within 15 days
- ▶ Appeal to the Bureau within 10 working days of decision or failure to decide.
- ▶ Bureau has to decide the complaint in writing within 21 working days.
- ▶ Provides access to courts

# Disposal of Assets

- ▶ Every Procuring entity shall also be a disposing entity.
- ▶ Open Competitive Bidding shall be the primary source of receiving offers for the purchase of public property.
- ▶ Methods of disposal shall include; sale and rental, lease and hire purchase, licenses and tenancies, franchise and auction.
- ▶ Planning of disposal shall include valuation by independent professional.
- ▶ Disposal must be integrated into budget of procuring entity



# Offences

- ▶ Bid Rigging – Pre-arrangement of offers where winners have been predetermined
- ▶ Collusion
- ▶ Splitting of contracts
- ▶ Procurement Fraud using undue influence, favour, bribery,
- ▶ Altering procurement document
- ▶ Willful refusal to allow Bureau and its officers access to any procurement records
- ▶ Using fake documents like TCC, etc.

# PENALTY FOR VIOLATORS (Cont'd)

**AND**

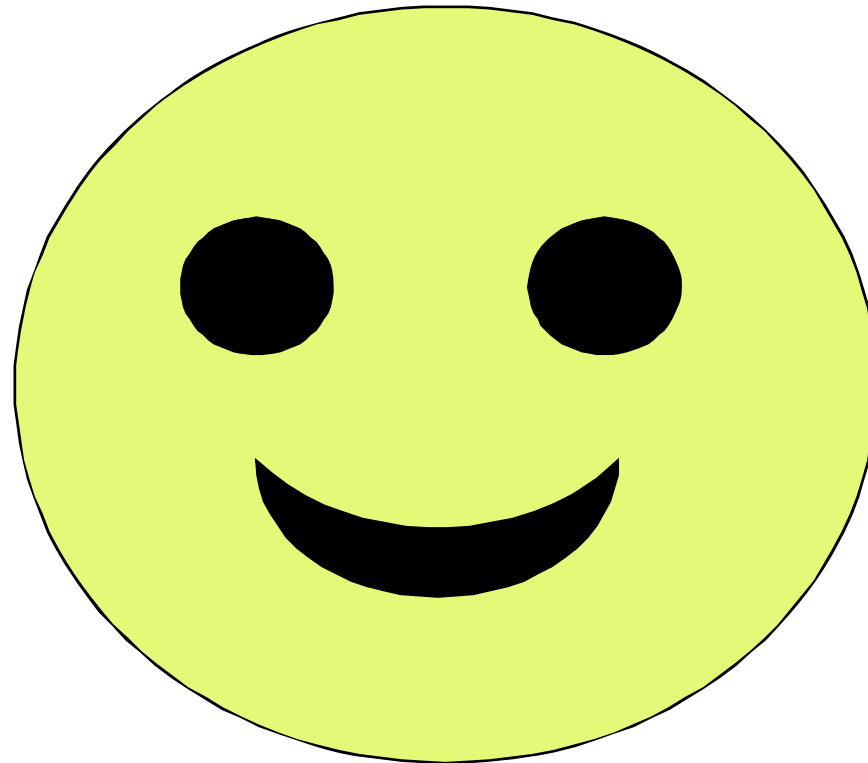
- ▶ **Contractors, Suppliers, Vendors**
  - Jail term of 5 Calendar years but not more than 10 years without option of fine.
  
- ▶ **For officers of the Bureau, MDAs**
  - Not less than 5 Calendar years but not more than 10 years without option of fine.
  - Summary Dismissal from Government Service,

# PENALTY FOR VIOLATORS (Cont'd)

- ▶ For Corporate Bodies
  - Debarment from all public procurement for a period of not less than 5 Calendar years; plus
  - Fine equivalent to 25% of the value of the procurement.
  - Directors of the company as listed in CAC shall be liable to a jail term of not less than 3 Calendar years but not exceeding 5 years without option of fine.

# CONCLUSION

- ▶ The New procurement system is intended to be less politically driven, more consultative within the system and should help Federal Universities chose and work better with competent contractors, complete more projects, allow reasonable profits, achieve value for money, improve infrastructure and our educational system.
- ▶ The excuse of instructions from above no longer holds water, the University Administrators have direct responsibility for any failures



**Some slides used in this presentation are standard slides used by the BPP for stakeholder consultations.**

**Thank You!**