

An Assessment of Public Procurement Process of Enron Nigeria Power Holdings Electrification Project

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Abstract: Though, public procurement process is one of the main strategic pillars of good governance and service delivery, it is also one of the most vulnerable activities of government as the number of litigations against Nigeria both locally and internationally of which Enron and Enron Nigeria Power Holdings are typical example. Earlier assessment of Enron electrification activities around the world shows that most of researches and stakeholders focused on the legal aspect and implication, corporate governance, and on audit and financial fraud. This study examined the causes of the project failure from the procurement angle. This study adopted qualitative analytical technique, using an exploratory research design. Secondary data were extracted from case file in courts, researches and articles on stakeholders' website. This study deduced among others that, Single Source or Sole Sourcing was used without following the condition required for its used. It also observed that, none of the procurement process was considered before the power purchase agreement was signed. The study thus recommended among others that, core principles of sole sourcing should be use if it should be adopted or adapted in any procurement process to improve the negotiating power of the project owner and the review of the 2007 procurement act by procurement expert to address the lapses that could cause further litigations

Keywords: Public Procurement Process, Enron, Electrification Project, Sole Sourcing, Procurement Act

I. Background to the Study

The rapid rate of transformation the world economy is experiencing is unprecedented. This can be exemplified with noticeable breakthroughs in Renewable Energy Growth-solar and wind electrification (Olabode, 2018). Olabode further noted that, a nation's electricity capability has been proven in history of having an enormous influence on the economic growth.

However, Nigeria has experienced more epileptic supply of electricity for major part of her existence despite been the fifth country in the world after USA, UK, Germany and Italy to installed electric generators in 1896 (Nnamani, 2023; Olabode, 2018). Though, Momodu (2010) believed Nigeria is the third nation after USA and the UK.

Series of policies at different levels of government had been implemented to improve the electric power supply with none given a desirable solution. At federal level, the notable differs reformation begin in 1896 with the Public Works Department (PWD). This was changed to the Nigeria Electricity Supply Company (NESCO) in 1929 and then to Electricity Cooperation of Nigeria (ECN) in 1951 and the Niger Dam Authority (NDA) in 1962. Then the merger of ECN and NDA to form the Nigerian Electric Power Authority (NEPA) whose nomenclature later changed to Power Holding Company of Nigeria (PHCN) in 2005 (Edomah, Foulds, & Jones, 2016; Folorunso & Olowu, 2014; Olabode, 2018). And the present policy implementation of unbundling PHCN into generation, transmission and distribution companies in 2013, which only resulted in change of nomenclature comparing the investment to the output gives little or no services improvement.

Few state governments in Nigeria especially Lagos State, also made attempt to engaged the service of Independent Power Generators. This initiative of the then Bola Ahmed Tinubu led administration in Lagos State raised an initial hope but was short live by both the collapse of Enron due to bankruptcy and the comment of the World Bank on the procurement process (Olukoju, 2003; Ikem, 2022).

Though, public procurement process is one of the main strategic pillars of good governance and service delivery, it is also one of the most vulnerable activities of government that is exposed to waste, fraud corrupt practices etc. due to the financial volume involved (Organisation for Economic Co-operation and Development-OECD, 2021). One major reason for The World Bank suspension of the initiative was procurement processes. . Based on this, there is a need to carefully examine the processes that are observable based on available literatures to investigate the Enron project in Nigeria. This will show how public administrators and other authorised managers could have used public procurement processes to saved Nigeria of the subsequent embarrassment and financial waste of eleven million dollars that have risen to twenty-two million dollars as at 2020. This was the amount awarded against the nation by International Criminal Court (ICC) in favour of Enron Nigeria Power Holding, Ltd. (ENPH) for negligence in the procurement processes (Owolabi, 2020).

Statement of the Problem

According to (Bassey, 2018), Nigeria could have been plagued into the worst recession with the two arbitration awards against the nation in the sum of \$8.9bn (about N2.7 trillion at CBN's N305.4 as of May 2022). These are in favour of Process &

Industrial Development Limited (P&ID) and ENPH. The cause of the litigation is the procurement Nigeria seek from the two organisation that needs to be revoked due to anomalies observed in the processes of acquisition.

This study focused on the ENPH project because of its peculiarity to the Nigeria political and social environment. Many accusing fingers had been raised in the media, especially in the political environment in Nigeria on the failure of the Enron project considering the initial hope it raised among Lagosian (Olawale, 2004). Despite the array of available legal documents-Enron v. Nigeria and others (2012); Enron Nigeria Power Holding LTD Appellee V. Federal Republic of Nigeria Appellant (2016) etc. that shows some of the activities that transpired among the parties involved in the project in Nigeria and few researches on failed Enron projects around the world, researchers, technocrats and other stakeholders have relatively not shed enough light to identified the abundant knowledge and public managerial lessons from the failed project.

Few researches and stakeholders have either partially or whole examined Nigeria Enron project scandal. But majority of them have focused on the legal aspect and implication- Clowes (2021); Jus Mundi (2022); Ukpe (2021) etc. or on corporate governance- Center for Ethical Organizational Cultures (2023); Muraina, Enyinna, & Stella (2010); Okoye & Gbegi (2013) etc. and on audit and financial fraud- Audu (2018); Moses (2019); Olusola (2022) etc. However, the scandal have rarely been examined from the procurment angle which is part of the main reason the World Bank seeks for the renegotiation of the procured service and subsequently leads to the cancellation of the project. This study seeks to feel this gap in the body of knowledge by examining the procurement process in the acquisition of the project.

Objective of the study

The main objective of this study is to compare the model in the acquisition of Enron Nigeria Power Holdings service with the standard procurement process. However, the specific objectives are to:

- i. Examine the procurement process used to acquire ENPH project in 1999.
- ii. Investigate the shortcomings of procurement act as compared to the standard procurement principles.
- iii. Determine effect of the result of the comparison of the process in ENPH project and the standard procurement processes impact on National development.

Research Questions

This study attempt to provide answers to the research questions stated below:

- i. What was procurement process used to acquire the ENPH project in 1999
- ii. What are the shortcomings of the procurement act as compared to the standard procurement principles
- iii. How can the result of the comparison of the process in ENPH project and the standard procurement processes impact on National development.

Significance of the Study

Management: The recommendations of this study could be of immerse value to the decision makers of both public and private enterprises that are presently experiencing similar decline in efficiency and litigation in their procurement activities. This is because, the study addressed some of the most critical factors relating to procurement process and expected function of a procurement officer.

Public Vendors: With the increased number of private participants interested in investing with the Nigerian government especially in the PPP model, the study is of important to investors to be able to understand the peculiar challenges and opportunities in Nigeria public procurement activities.

Policy makers: The study findings are of value to the government, stakeholders and other groups or individuals in position of authority, because, it brings into light the scope, advantage, detriment and limitation of the divers' procurement policies that could result on negative outcome or fraud. It thus provides a bases for development or redesigning of an improve procurement Act for the Nation.

Academicians: This study is of immerse value to scholars and academicians as they can benefit from the conceptual, theoretical and this study findings on factors that hinder the benefit of standard Procurement Process in Nigeria. In addition, it presents a bases for researches in the field of procurement and logistics for further research and consultancy.

Scope and Limitations of the Study

Though there are numerous fraudulent procurement that can be identify both in Nigeria and internationally, but this study is limited to the Enron project because of the controversies it has generated both in Nigeria and internationally. In Nigeria it has generated a lot of political and legal controversies. While among managers, researches and other stakeholders the focus had mostly been on corporate governance, fraud and accounting, thus this study will limit its view to the procurement activities that causes the World Bank to seek for renegotiation of the entire project. Also Project Management institute explained two scenarios of procurement process, the first is procurement planning, solicitation planning, solicitation, source selection, contract

administration, and contract close-out. The second is plan procurement management, conduct procurements, control/administering procurements and close procurements. This study will focus more on the first scenario because it is more explanatory and more elaborate.

II. Literature Review

Includes review of existing studies in line with the research study, theoretical review (models and theories underlying the research study) and empirical review (methodological review of studies pertaining to the topic under study).

Conceptual Review

Procurement

According to Jerkins (2024) process of acquiring goods or services is refers to as procurement, procurement teams' work together to obtain competitive price that gives best value. While Jacob (2022) explain it as the act of obtaining all the materials and services that are required for a project.

Julie (2023) defines Procurement as the method of obtaining or purchasing goods or services for business purposes. Furthermore, there is need for the authority to identified a need and decided on its procurement requirement. It also covers the ultimate disposal of property at the end of its useful life (Kalu et al, 2020).

According to The United Nations all methods of acquiring goods, professional works, and services, including all phases of procurement from needs identification to the end of the project is regarded as procurement (Kelvin et al, 2021)

Procurement includes all functions of purchasing which involves acquiring goods, works and services up till contract award (Jasline, 2018).

The steps in acquiring property or services, starting with the process for determining a need for property or services and ending with contract completion and closeout is called procurement (Robert & Clifford, 2004).

Based on the above this study adapted the conceptual view of Robert & Clifford (2004) and thus believed, Procurement includes all stages of the process in the acquisition of products and/or services from outside the performing organisation or project team, starting with the process for determining a need and ending with the completion of the desired output with an audited report of the process as a feed for future procurement process.

Public Procurement

Public funded project by the government is refers to as public procurement (Yusuff, 2023). A lot of reforms has been implemented by the government because of the huge amount of public funds involve for the main purpose of ascertaining efficiency and value for money (Odhiambo & Kamau, 2023). Government has adopted a more advance system which requires the use of electronic procurement system, development of procurement act and regular monitoring (Masoud et al., 2021: Torvatn & de Boer, 2017).

All goods and services procure for both the federal and states use with public fund is regarded as public procurement (Kelvin et al, 2021).

All process of procuring goods, services, works, state enterprises by the state is defined as Public procurement which must be in accordance with the principle of public procurement is refers to as public procurement (Saeed & Chunlin, 2019).

The reason for public procurement and the development of public procurement Act 2007 was to make public procurement processes more professional, efficient, and effective (Mohammed et al. , 2022)

From the above this study adapted the conceptual view of Kelvin et al (2021) and thus believed, Public procurement is purchasing of goods and services for federal, states and local using public funds. This process is guided by roles and regulations which is to be in line with international standards.

Procurement Process

Marijn (2024) defines procurement process as the set of steps in acquiring goods and services and ensure cost optimization.

The process of identifying goods and services, sourcing of suppliers that meets the business objectives, negotiation of cost, purchases and delivery of the items are steps in procurement process. The researchers identify nine core steps, but further states that they are various procurement processes depending on each company's structure and needs, the nine core steps are Identification of company needs, Submission of purchase request, Assessing and selection of vendors, Negotiate price and terms, Creation of a purchase order, Receive and inspect the delivered goods, Conduct three-way matching, approve the invoice and arrange payment and Keeping of records (Jenkins, 2024).

Stages involves in procurement process starts with needs identification, evaluation and Selection, Negotiation of contract, Purchase Order Processing, Delivery and Inspection, Performance Assessment and Relationship Management, Invoice Processing and Payment, Reconciliation and Record Keeping (Karan, 2024).

There are series of steps used by an organization in order to obtain goods or services for their goals and objectives. The steps are as follows: identify goods or services needed, evaluate and select a supplier, negotiate the terms of the trading agreement with selected supplier, finalize the purchase order, receive invoice and process payment, delivery and audit of the order, maintain accurate record of invoices (Elizabeth, 2023)

This study observed from PMBOK (2017); Project Management Institute (2013) etc. procurement processes/steps/phrases may be divided into as many as possible, he further provides an overview of two researcher. The first researcher identifies the processes/steps/phrases of procurement to be six (6) and they are procurement planning, solicitation planning, solicitation, source selection, contract administration, and contract close-out. The second researcher identifies procurement processes as four (4) plan procurement management, conduct procurements, control procurements and close procurements.

The most widely used model for procurement process in project management are seen in figure 1 and 2. This study adapted Karan concept with the stages ranging from the inception of needs identification up till the last stage when reconciliation is done and record as data base for future use.

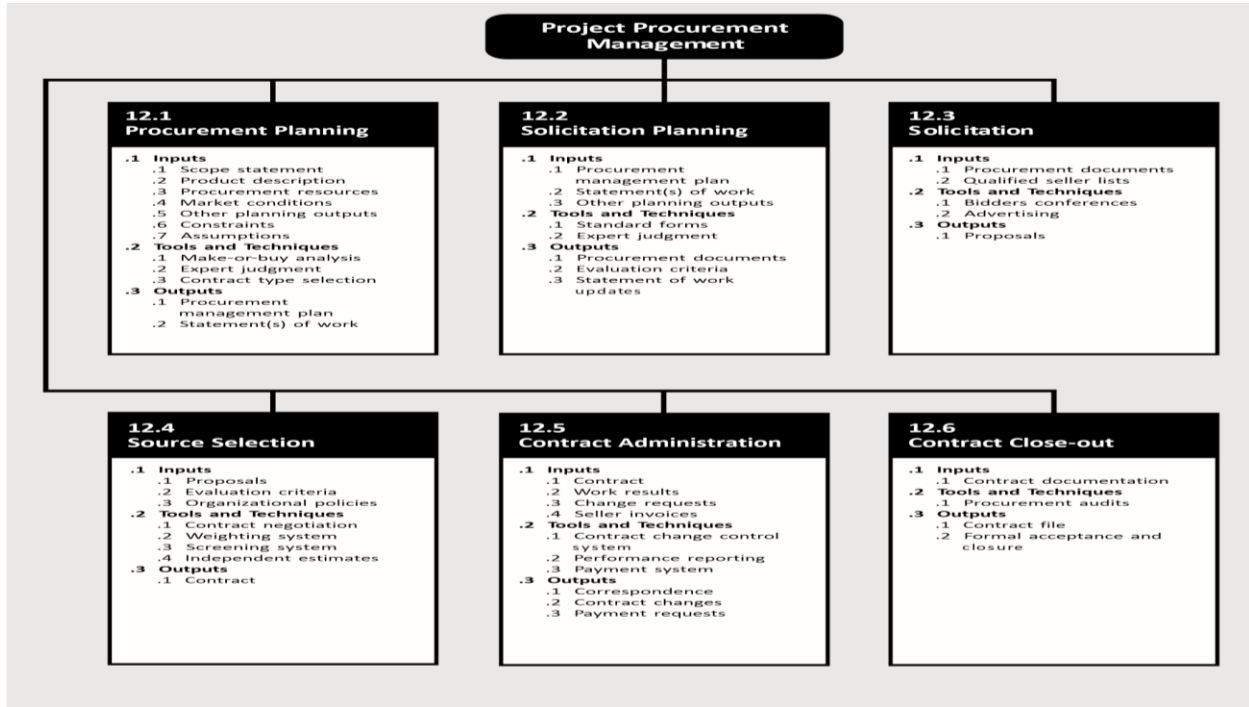


Figure 1: Procurement process

Source: Introduction to Project Procurement and Contract Management (Project Management Institute 2013 and PMBOK 2017) OR

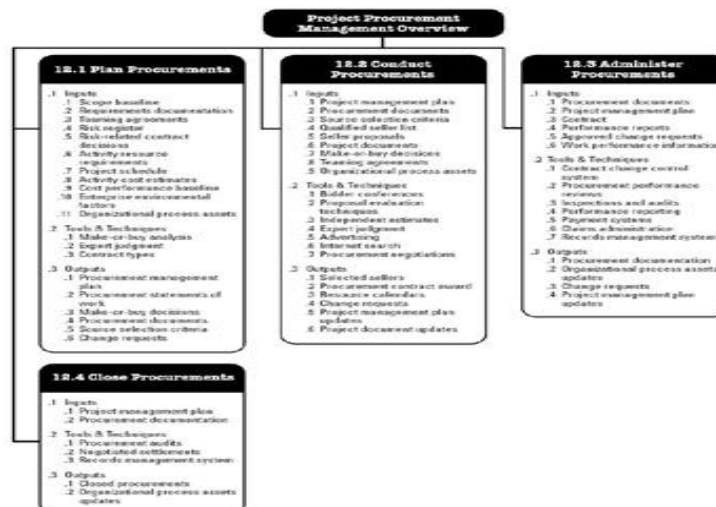


Figure 2: Procurement process

Source: Introduction to Project Procurement and Contract Management (Project Management Institute 2013 and PMBOK 2017)

Brief History of Enron Corporation

The merger of Houston Natural Gas of Houston, Texas and InterNorth, Omaha, two of the major gas pipeline companies in USA in 1985 led to the creation of Enron Corporation with an initial name InterNorth-Houston Natural Gas (Watkins, 2006). The name Enron was adopted in 1986 (Bondarenko, 2024). Watkins (2006) also noted that, the headquarters was first at Omaha, it was later moved to Houston due business reasons. Houston is seen as the center of the energy industry for natural gas firms. This movement occurred after the first head of the merger Sam Segnar was replaced with Kenneth Lay.

The organisation is a vendor in natural gas, electricity (as a generator, transmitter and distributor of electricity), communications and market & transports of natural gas to consumers in the United States and do other commodities servicing globally (Center for Ethical Organizational Cultures, 2023). Enron involvement in electricity is vast, as it develops, constructs and operates power plants, pipelines, and other energy-related projects globally.

In the 1990s, Ken Lay-chairman, Jeffrey Skilling-Chief Executive Officer, and Andrew Fastow- Chief Financial Officer reorganised the organisation into a \$150 billion energy entity recognised by Wall Street as an investor in energy contracts and markets (Center for Ethical Organizational Cultures, 2023).

Enron become the seventh largest publicly traded corporation in the United States by 2001, and it is regarded as the most Innovative Company in America for six consecutive years. Enron’s collapse was alleged to be characterised by fraudulent practices. The collapse resulted in an average 25,000 jobs, \$2 billion in pension savings and \$1.2 billion retirement funds lost. Arthur Andersen LLP, Enron’s auditor and one of the largest accounting firms in the world, was so marred by its role in the scandal (Levin Center, 2021).

Procurement Process used for ENPH project in 1999

Procurement(s) by government and its agencies before the 2007 procurement act was enacted were governed by the Finance (Control and Management) Act, 1958, together with the Financial Regulations which (Ekpeniho, 2003). However, Adewoyin (2023) explained the lapses in the procurement which is conducted by financial regulations instead of Statute (a law set by legislative, act of corporation, or an international instrument setting up an agency and regulating its scope or authority) or process of acquisition (a guided procurement process which already includes a contract expert for the statute). The financial regulations were used by finance ministry in the award of a contract, and it was guarded in secrecy. Thus, Shwarka & Natalia (2012) believed the 1958 model of procurement exposed the nation to significant level of irregularities and delay in project delivery before the re-emergence of democratic governance in 1999.

To Shwarka & Natalia, this is as a result of lack of fiscal transparency, public accountability, poor project planning, adoption of inappropriate procurement methods, contract allocation as against competitive tender, poor project documentation, lack of transparency in the tendering process.

Thus, as at when ENPH signed Memorandum of Understanding (MOU) with Lagos state, there was no public procurement act. the only act for public procurement was guided by the Finance(Control and Management) Act, 1958, together with the Financial Regulations, with its objectives clearly focus on financial regulations. However, as observed in figure 1 & 2, financial regulation is just a subset of procurement process. This can also be observed in the activities among the major stakeholders as state in the case file in court which all parties did not object to in court as shown in Table 1. The financial regulation is not what was contested in court but the procurement management lapses that were not considered before the Power Purchase Agreement (PPA).

Table 1: Activities Among the Major Stakeholders as Stated in the Case File in Court

| | |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | In 1999, Lagos State, a regional government in Nigeria, was "in desperate need of energy |
| June 19, 1999 | By letter of June 19, 1999, Enron International expressed interest in working with Lagos State, stating that “Enron is the highest-ranking power and gas company and is the leading company worldwide in such industry. |
| July, 1999 | Enron formed ENPH as a special-purpose vehicle to construct and operate power plants in Lagos State |
| August 13, 1999 | A Memorandum of Understanding (MOU) was signed by the Lagos State Government, on the one hand, and ENRON Power Nigeria Ltd. and Yinka Folawiyo Power Limited (a Nigerian power company), on the other. The MOU was on the construction of a 560 megawatts gas turbine power plant in two phases at a cost of about \$800 million |
| November 17, 1999 | ENPH representatives and an employee of Enron International met with representatives of Nigeria, including President Obasanjo of Nigeria and the Governor of Lagos State. At the meeting, ENPH gave a PowerPoint presentation touting Enron’s vast financial and technical capability and describing Enron as the company with which ENPH was “affiliated.” |

| | |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| December 6, 1999 | Nigeria, Lagos State, the National Electric Power Authority of Nigeria (“NEPAN”), and ENPH executed the (Power Purchase Agreement) PPA, with ENPH as “Owner” of the energy facilities, Lagos State as “Purchaser” of the energy, NEPAN as regulator of the facilities it would connect to Nigeria’s power grid, and Nigeria as “Guarantor.” Note: Enron was not a party to the PPA, nor was its participation in the construction project mentioned in the PPA. |
| December 7, 1999 | <i>El-Rufai the first Director General, Bureau of Public Enterprises (BPE) examined the project</i> |
| December 10, 1999 | World Bank report on the ENPH project was delivered to the office of the presidency, Lagos state government and NEPAN to express economic criticisms of a draft of the PPA. |
| December 10, 1999 | <i>El-Rufai Report shows that the PPA agreement was not in line with the electric sector reform and privatisation and it would have a massive negative effect on NEPA-possibly make the organisation bankrupt</i> |
| December 15, 1999 | <i>NEPAN wrote to ENPH that implementation of the PPA was "stayed until further notice.</i> |
| January 2000 | <i>Nigeria's President informed Lagos State that, the Attorney General of Nigeria had concluded the PPA was invalid under Nigerian law and suggested that the PPA be renegotiated.</i> |
| June 2000 | The parties agreed to an amended PPA regarding Phases I and III — along with Enron Nigeria Barge Ltd., to which ENPH had transferred its rights and obligations with respect to those phases. Thereafter, AES Nigeria Holdings Ltd. (“AES”) acquired the rights to Phases I and III, along with an option to purchase Phase II, provided agreement was reached with Nigeria on amending the PPA |
| December 31, 2000 | As regards Phase II, ENPH's obligations were contingent upon satisfaction of certain conditions by December 31, 2000, including possession of a plant site, all necessary easements from Lagos State and Nigeria, and a security letter of credit. |
| November 2001 | Enron’s collapse became public knowledge, and it filed for Chapter 11 bankruptcy protection on December 2, 2001. The same day, ENPH wrote to the Nigerian parties that ENPH would be unaffected by the bankruptcy and remained free to perform its obligations under Phase II. Nigeria apparently did not respond. AES contacted ENPH to express interest in extending its Phase II option; ENPH did not respond and the option expired |

Source: Extract from Case 15-7121 Activities on Enron Project in Nigeria as filed in the appeal in 1999

World Bank review on ENPH

The following were World Bank review on ENPH

1. The lack of transparent and competitive bidding, the deal should have been competitively bid
2. That the final contract was overly favorable to Enron.

There is concerns about terms which was viewed to be too favorable for Enron due to the following:

1. The type of fuel to be used. There was no separate fuel supply agreement; instead, fuel was to be provided by NEPA (subsequently PHCN), which would contract it directly from the Nigerian Gas Company
2. The fact that the plant would not be penalized for poor performance;
3. Excessive contract termination payments payable in U.S. dollars with no deduction of taxes
4. That capacity payments were deemed too high.

Capacity payments were to be US \$ 19.91/KW-month, multiplied by the tested capacity of the Power Plant.

Theoretical Framework

Public Interest Theory of Regulation

This was initially established by Arthur Cecil Pigou in 1932, and he stated that in response to public demand, regulation should be used in correcting any irregularities in the market practices. According to Hawkins (2020) to properly manage resources regulations guiding the distribution need to be drafted for optimization.

Regulations by government plays a major role in process development by eliminating imperfect competition from the market (Thairu & Chirchir, 2016). Regulation is a tool used by the state in achieving productive distribution of resources (Shubik, 1970). Procurement policies should be put into action and this may involve implementation methods. It gives room for all a sundry to compete for contracts without receiving any special consideration during the procurement process (Simayi, 2005).

Public Value Theory

Moore (1995) states that the importance of public value theory is to create something that is of beneficial to the public which is the primary objective of the government. Williams and Shearer (2011), confirm that the managers working in the public sector are beneficiary to the theory despite obstructions and heavily tasked in making procurement decisions for improving the lives of the general public.

The idea is that value is created or generated because of the activities carried out by public institutions and the managers of those institutions (Benington & Moore, 2011). Quality and services are affected by bidding which is a function performed by Procurement managers. However, procurement managers and employees are expected to focus on public values and avoid political influence (Silas & Sammy, 2022).

This study will be based on public interest theory of regulation and public value theory, because in general the priority of the public sector agencies is to gives room for all a sundry to compete for contracts without receiving any special consideration during the procurement process as stated by Simayi (2005) and also the public values should be of greatest priority according to Moore (1995) who stated that the primary objective of the government is to create something that the general populace views as beneficial to them.

Empirical Review

Sope (2015) research is on a Comparative Analysis of the Nigerian Public Procurement Act against International Best Practice, to determining whether the Public Procurement Act meets the requirements of international best practice. The study was also carried out to examine what may be regarded as international best practice in the public procurement context and analyses whether the Nigerian Public Procurement Act contains provisions which accord with this practice. Factors limiting the adoption of international best practice in the Nigerian context were analyses. The finding shows that the Nigerian Public Procurement Act has included some of the requirements of international best practice, but several challenges of procurement process still remain even when it follows the requirements of Public Procurement Act. The researchers recommended the reassessment of Nigerian procurement system in capacity building for effective management of procurement process, Procurement officials should also be protected from interference by politicians. Sope (2015) view looked at the Nigerian Public Procurement Act in line with the core principles of international practice and not at the processes of procurement which this study tends to address.

Shwarka and Anigbogu (2012) research on impact of the public procurement reform on public building projects delivery in Nigeria. To analyse the impact of the public procurement reform on public building projects delivery in Nigeria. The finding shows that there is no significant difference between the mean responses of stakeholders with regards to the reforms impact on irregularities associated with public building projects delivery in Nigeria. Constraint observed to have impact on public project delivery were inadequate project/budgeting plans by the client and the project team. The researchers recommended the use of competent staff in carrying out procurement steps ranging from needs identification, realistic estimates, methods of tendering to solve the problem of delays in projects execution. Public Procurement Act provision is to sanctioning corrupt practices at all levels. The study dwell more on implementation of Public Procurement Act and how to prevent project delay due to processes and the use of incompetent staff but not on process of procurement.

Stuart and John (2011) carried out a research on Corporate Governance Post-Enron: Effective Reforms, or Closing the Stable Door, to provide insights as to the efficacy of recent governance reforms in Enron collapse. The finding shows that Enron failure is due to governance. Internal controls and reduction in conflicts of interest could play a major role reduction of fraudulent behavior. The study viewed Enron's collapse from governance perspectives but this study looks at Enron project from procurement process perspective as the major reasons why Nigeria is trapped in debt from ongoing arbitration as seen in different case studies.

III. Research Methods

This study adopted an exploratory research design. This is because the possibility of getting real fact from people and stakeholders to make it quantitative is slim, due to the political terrain involved. As there are accusation and counter accusation from political parties and supporters within the political terrain thereby creating a high possibility of a bias extraction of survey through questionnaire. The data is thus extracted from case file in courts, researches and articles on stakeholders' website. This means the study used an inductive qualitative approach. This enabled the study to investigate and understand the issues and identify opportunities for additional investigation as noted by Azungah (2018)

Though there are few publications related to the study examined, this study used convenience sampling and thus focused more on ten (10) publications (books, Article, case file and Information from international body's website) as reflected in table 2 to draw its observations. This means secondary data from these publications were used to answer the research questions. Papers were reviewed in line with the study area and this includes case file in courts, journals, conference proceedings and articles

Table 2: Sampled Case File in Courts, Journals, Conference Proceedings and Articles

| S/N | Authors | Extracted Information |
|-----|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | United States Court of Appeals for the district of Columbia circuit | Extracted case: Enron Nigeria Power Holding, Ltd.V.Fed. Republic Of Nigeria 844 F.3d 281 (D.C. Cir. 2016) Decided Dec 27, 2016 |
| 2 | Stuart Gillan & John D. Martin (2007) | Journal of Corporate Finance 13(5):929-958 DOI:10.2139/ssrn.977585, Corporate Governance Post-Enron: Effective Reforms, or Closing the Stable Door? (2007) The study findings revealed that corporate governance failed at Enron the firm's viability ultimately rested on an inherently risky business strategy, a strategy that the board and others apparently failed to understand |
| 3 | International commercial arbitration analyses (2006) | Extracted case : ICC Case No. 14417/EBS/VRO/AGF, Enron Nigeria Power Holding Ltd v. (1) Lagos State Government (2) Federal Republic of Nigeria (3) Power Holding Company of Nigeria (2006) |
| 4 | Casetext: Smarter Legal Research (2016) | Enron Nigeria Power Holding, Ltd., Appellee v. Federal Republic of Nigeria, Appellant (2016). The Court finds that permitting ENPH additional time to effect service by alternative means will not prejudice Nigeria, which appears to be using this action to re-litigate and delay the payment of claims already resolved by the agreed upon arbitration procedure |
| 5 | Negotiation experts (2021) | Extracted case: A Negotiation Case Study: Exploring the Enron Case in India |
| 6 | www.forbes.com | Enron's Nigeria Barge: The Real Deal (2004) |
| 7 | Project Management Institute (2013) | Procurement process extraction |
| 8 | PMBOK (2017) | Procurement process extraction |
| 9 | Rajesh Kumar & Verner Worm (2011) | Extracted case: Negotiating in India: Some Case Studies |
| 10 | World Bank (2020) | Extraction of procurement principles |

Source: Field Survey

IV. Discussion of Findings

Though, this study is limited to procurement processes, an observation of the then corporate culture of Nigeria as a system played a major role on ethical practices that characterised the ENPH project in Nigeria.

Just as observed by Rashid (2020) from his study on the “Collapse of Enron Corporation” the major players had major influence on the termination of the project contract and the subsequent litigation that followed. This study observed that, the Corporate Culture or what Khan & Panarina (2017); Ilona & Ęrika (2007) etc. referred to as National Culture (when it concerned national issues) and leadership played a major role in the unethical practices that characterised procurement of the ENPH project.

Enron financial instability and fraudulent practices was covered up by their reputable accounting firm “Arthur Anderson”-Rashid (2020)-as at the time of signifying their intention to generate electricity for Lagos state took advantage of the vulnerable national or corporate culture of the system. The study observation on the vulnerability of the Nigeria national culture was based on three facts.

Firstly, Lagos state does not have the constitutional right according to the 1999 constitution to generate, transmit and distribute electricity since the area the ENPH project was to cover has been covered by the national grid (Sipasi & Ofagbor, 2023). Memorandum of Understanding (MoU) was signed with ENPH as the owner of the project before notifying the federal government.

Secondly, the Finance (Control and Management) Act, 1958, together with the Financial Regulations used by both the state and the federal government as at 1999 for procurement and did not make provision for single source procurement process that can enable Lagos state government to choose ENPH alone as the only organisation that can execute the project.

Thirdly, the federal government overlooked the two observations above and signed the PPA as guarantor five days before the outcome of the expert opinion-World Bank report (Jus Mundi., 2022). This is a major deviation from standard project procurement process. A major tool/technique used in the first two process according to PMBOK (2017) as shown in figure 1 is

expert opinion. The litigation, and other financial loss would be avoided if the expert opinion on the procurement process was considered before the signing (Enron v. Nigeria and others, 2012; Forbes Media, 2004). About nine years before the ENPH project in Nigeria, the government of India waited for the world bank report in Enron electricity project that was executed and it gave them a better negotiating power compared with what Enron was proposing (Coburn, 2021). This shows that, there is a massive gain in the use of expert judgment - World Bank as expert in India Enron project – as stipulated by the procurement process in figure 1.

The study further compared the model used in ENPH project with procurement process as shown in figure 1 and 2 by Project Management Institute (2013) and PMBOK (2017)-see appendix 1.

Though, there could be several observations from this comparison, the study noted the following;

1. Procurement Planning: This is a point of decision making, where there is determination of what to procure and when to identify potential seller. The decision on whether to source from internal or external is determined at this stage. Proper procurement planning leads to the development of some documents such as risk register all the expected risk and how to respond to them, the impact to the business if the risk should occur which is monetary value, the probability of its occurrence, the risk owner(s), which would have helped to identify and analyze all the risk attached to the project and this would have spotted the risk in high cost planned to be charged by Enron. The development of Cost Estimates for each activity is to determine bid reasonableness from potential sellers. In ENPH project the essence of seeking external source is right according to Make-or-buy analysis as tools & techniques used in procurement planning, at this point Nigeria could not generate enough electricity for its consumer this is why ENPH became an option, though sourcing is important but the action to choose only ENPH negates the standard of procurement process. Effective procurement planning helps in the management of public resources. Expert judgment in this regard is the World Bank but the PPA has already been signed before the Expert judgment reports came, because of this very action the Nation experiences financial waste in millions of dollars for law suit on breach of agreement, on this note Expert judgment review should not be overruled.

2. Solicitation Planning: This section allows prospective sellers to compete for project, it was observed that ENPH project did not go through this route, sole sourcing was used which is against the standard. Procurement Standard Operating Procedures (SOP) by International Criminal Court explained the rules to sole sourcing some of them are: it is that the identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive. Within a reasonable prior period, a formal solicitation has not produced satisfactory results, The value of the procurement is below the monetary threshold established for formal methods of solicitation. Competitive bidding is to get quotation from other prospective sellers from which the best will be picked that will meet up with what is required technically, financially etc. and the project would have added to infrastructural development of the Nation.

3. Solicitation: Is the process of seeking information, proposals, and quotations from suppliers. ENPH project was not advertised neither was the company in existing list of potential sellers. They came in by showing interest to Lagos State Government through letter in June 19, 1999. Solicitation documents will vary greatly depending on the procurement method chosen. There is discrepancy as to how Enron came to Nigeria, two scenarios were analysed. In both versions, International standard of international competitive bidding (ICB) practices were overlooked and the deal was negotiated within months (Anton, 2012). This is the activities that is expected to be performed by Procurement Managers where they either select from the data base of available supplier or put out advert to enable interested bidder to bid for the project (Olabode, 2022).

The use of advert creates room for Competitive bidding with set of procedures which is designed to ensure fair and healthy competition for World Bank-funded economic opportunities, which would have helped the economic growth or advancement which involves the generation of wealth that is found in the benefit and advancement of society. And also covers the opportunities such as economic development and job creation, and the wider social and environmental benefits.

4. Source Selection: Potential sellers are selected through application of the evaluation criteria. ENPH project involves submission of proposal to the Government but did not participate in other aspects such as evaluation criteria, screening system etc which are crucial to a project. The procuring organisation may prepare its own estimates as a check on proposed pricing. Independent estimates are often referred to as “should cost” estimates. Procurement is often carried out by staff who lack relevant training on Independent estimates (Shwarka & Anigbogu, 2012). Selection of appropriate potential seller among the proposal through competitive bid would have made the Nation get the best offer, the financial waste of resources used in settling debt would have been avoided.

5. Contract Administration: The seller must ensure that what is stated in the contract agreement is fully executed. ENPH's project performance did not meet their contractual requirement. By December 31, 2000, Phase II of the project should have been completed including possession of a plant site, all necessary easements from Lagos State and Nigeria, and a security letter of credit. ENPH was authorized to seek independent “financing for at least 70 percent of the full capital costs” of the onshore power plant, pipeline, and other Phase II facilities. The parties were bound to use all reasonable efforts to ensure that the conditions were timely satisfied. As at December 31, 2000 which is the deadline for satisfying Phase II conditions, it passed without any effort by Enron to meet those conditions. Enron could not perform its contractual obligation as a result of financial incapability, because of these issues, a knowledge of procurement is needed to identify who can deliver as at when due (Olabode, 2022). Under contract

administration seller's performance should meet contractual requirements and Enron failed in this aspect. Effective contract administration helps in getting value for money and ensure fit for purpose.

6. Contract Close-out: It is the final phase of project before handing over. A well-managed closeout is one of the biggest factors determining if a project finishes on time and on budget and how likely a client is to come back for repeat business. There were already issues with the contract so the project did not get to this point. It was observed that ENPH project remains abandoned project aside the huge debt it imposes on the Nation.

Specific Observation

i. Based on Objective One and Research Question One: A single Source or sole sourcing was used without following the condition required for its use. This reduced the negotiating power of the owner of the project-Lagos State Government and the input of the guarantor-Nigeria. This is a major lapse in procurement process.

ii. Based on Objective Two and Research Question Two: A comparison of what transpired as shown in figure 1 and table 1 shows that none of the procurement process was considered. This maybe because there was no procurement act as at the time of the ENPH PPA and/or the haste with which the actual process was done as shown in Table 1. Thus Expert judgment was not considered in the PPA signed

iii. Based on Objective Three and Research Question Three: Though the scope of this study did not cover the procurement Acts that have been enacted from the lessons from the ENPH project's procurement process, the subsequent cases like the P&ID case shows that there are still lapses in the procurement act of 2007 that required amendment. Thus, if the procurement act is not adequately review to address these lapses, the possibility of vendors taken advantage as done by P&ID, ENPH and so many other will not abate. The lapse in ENPH project caused the Nation's financial waste in millions of dollars for law suit on breach of agreement which would have been averted if there has been proper procurement planning, ENPH project would have enormously influence the economic growth as stated by Olabode 2018 (Nation's electricity capability is one of the instrument for measuring economic growth) and infrastructural development of the Nation

V. Conclusion

The findings shows that the procurement process in ENPH project is not in line with international standard as stated by World Bank, there are core principles of procurement ranging from Value for money, economy, Integrity, fit for purpose, efficiency, transparency and fairness, the contract negate all the core principles. ENPH project shows the use of sole sourcing but the rule and regulation to it were not observed according to Procurement Standard Operating Procedures (SOP) by International criminal court in the used of sole sourcing the following rule must apply offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive, within a reasonable prior period, a formal solicitation has not produced satisfactory results etc Prior to 1999, Procurement by government and its agencies were governed by Finance (Control and Management) Act, 1958, together with the Financial Regulations with basic rules for managing public spending with set objectives which negate ENPH project. The use of procurement processes could have saved Nigeria of the embarrassment and financial waste of eleven million dollars that have risen to twenty-two million dollars as at 2020, the project was expected to bring economic growth and infrastructural development to the Nation but failed due to poor procurement process.

Recommendations

Based on the above findings, the following recommendations were made and are as follows:

1. Core principles of sole sourcing should be use if it should be adopted or adapted in any procurement process to improve the negotiating power of the project owner.
2. Though delay in project delivery should be discouraged, decisions makers should not make hasty decision before seeking for Expert judgment or show to the vendor a desperate emotion even when a vendor service is seriously required. Enron took advantage of the desperation of Lagos State and came up with an agreement which was not properly studied until when it was late.
3. The 2007 procurement act should be adequately review by procurement expert to address the lapses that could cause further litigations

Contribution to Knowledge

In general, the study has been able to show that effective procurement can be used to reduce the number of litigations the country is exposed to.

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