

# Emergency Procurement in Nigeria: Mitigating the Corruption Risks

Dare Joseph Ayinde\*

## Abstract

*This article unpacks the concept of emergency procurement and why it is highly susceptible to corruption. It examines the grounds upon which procuring entities may carry out emergency procurement as stipulated in the Public Procurement Act of 2007 (the PPA), which is the primary legal framework governing public procurement at the federal level of government in Nigeria. The author suggests that the provisions of the PPA should be amended to allow procuring entities to apply competitive negotiation and framework agreements in the award of emergency procurement where appropriate, in addition to the direct procurement method. Furthermore, the author recommends that in line with the provisions of the PPA, all procuring entities that carry out emergency procurement should be mandated to submit comprehensive reports of their procurements to the Bureau of Public Procurement (the Bureau). Similarly, the Bureau should carry out post-emergency audits on such procurement to ascertain the justification for emergency procurement, and whether due process was followed. The Bureau should also take appropriate punitive action against those culpable, where it finds any evidence of corruption.*

**Keywords:** Emergency Procurement, Public Procurement, Corruption Risks, Procurement Oversight, Nigeria Public Procurement Act, Accountability and Transparency, Procurement Reform

\* PhD, Lecturer in the Faculty of Law, Ajayi Crowther University, Faculty of Law (Oyo, Nigeria.)  
ayindedamilare72@yahoo.com

## I. Introduction

The COVID-19 pandemic (the pandemic) brought to the fore the risks associated with emergency procurement,<sup>1</sup> especially in Nigeria.<sup>2</sup> Allegations arose that some public officials colluded with contractors to facilitate corruption in awarding contracts for the purchase of medical supplies.<sup>3</sup> For example, one Federal Medical Centre purportedly inflated the price of face masks by six hundred and eighty per cent, and that of medical gloves by twelve per cent.<sup>4</sup> Before the outbreak of the pandemic in Nigeria, emergency procurement was one of the main channels through which public officials committed corruption in the award of contracts.<sup>5</sup> Unscrupulous public officials exploited these so-called ‘emergency contracts’ to bypass due process that such contracts should have been subjected to if they had used the open competitive bidding method—which is the preferred procurement method in Nigeria.<sup>6</sup> Corruption in emergency contracts undermines the efforts of the government to tackle emergencies,<sup>7</sup> leads to wastage of public funds,<sup>8</sup> and undermines public confidence in government interventions during emergencies.<sup>9</sup>

This article examines how to mitigate the risk of corruption in emergency contracts in Nigeria. The article is divided into five parts. The first part is this introduction. The second part examines the nature of emergency procurement

---

<sup>1</sup> Rossi V, *Mitigating Corruption Risks in Emergency Spending: Lessons Learned from the IMF’s Experience during the COVID-19 Pandemic* International Monetary Fund, 2023, 14.

<sup>2</sup> See “ICPC to probe MDAs over Covid-19 Intervention Funds”, available at <https://punchng.com/icpc-to-probe-mdas-over-covid-19-intervention-funds/> (accessed on 2 November 2022).

<sup>3</sup> See “ICPC to probe MDAs over Covid-19 Intervention Funds”, available at <https://punchng.com/icpc-to-probe-mdas-over-covid-19-intervention-funds/> (accessed on 2 November 2022).

<sup>4</sup> See “Covid-19 Investigation: How MDAs Spent 4.2m on facemasks & 48.5m on laptops”(Dataphyte, 7 November 2020) *COVID-19 investigation: How MDAs spent ₦4.2m on facemasks & ₦48.5m on laptops* | *Dataphyte* accessed on 3 September 2021.

<sup>5</sup> The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), *Money Laundering Related to Fraud in Public Procurement in West Africa: A Case Study of Nigeria*, 2014, 24.

<sup>6</sup> GIABA ‘*Money Laundering Related to Fraud in Public Procurement in West Africa*’, 24.

<sup>7</sup> Ezeibe C *et al*, ‘Political distrust and the Spread of Covid-19 in Nigeria’ *Global Public Health*, 2020, 1754; Saharan V, ‘Disaster Management and Corruption: Issues, Interventions and Strategies’ in Huang H *et al* (eds) *Strategic Disaster Risk Management in Asia*, 2015, 194.

<sup>8</sup> Duri J, *Corruption in times of crisis*, 2021, 3; Mathiba G, ‘Corruption, Public Sector Procurement and Covid-19 in South Africa: Negotiating the New Normal’ *Journal of Public Administration*, 2020, 648.

<sup>9</sup> Ezeibe *et al*, ‘Political distrust and the Spread of Covid-19 in Nigeria’ *Global Public Health*, 1755. Because of the lack of trust in government, a number of Nigerians believed the confirmed cases of Covid-19 were being exaggerated by government officials as justification for outrageous contracts. See also Dupuy K and Divjak B *Ebola and Corruption: Overcoming critical governance challenges in a crisis situation*, 2015, 2.

and the different schemes through which corruption is perpetrated in this type of procurement. The third part explores the procurement methods that are used in the award of emergency contracts and why they are susceptible to corruption. The fourth part analyses the grounds upon which procuring entities may make use of emergency procurement in the award of contracts. It also examines the anti-corruption measures that the PPA provides in relation to emergency procurement. Furthermore, it identifies the factors responsible for the prevalence of corruption in emergency procurement in Nigeria. The last part concludes the paper and recommends measures that could be taken to mitigate corruption in emergency procurement in Nigeria.

## II. Emergency Procurement in Context

Although the PPA, being the main legal framework for procurement at the federal level in Nigeria,<sup>10</sup> contains the phrase ‘emergency procurement’,<sup>11</sup> it does not define it.<sup>12</sup> However, the PPA does state the grounds upon which procuring entities may carry out emergency procurement.<sup>13</sup> Interestingly, the 2011 United Nations Commission on International Trade Law Model Law on Public Procurement (the UNCITRAL Model Law), which is a global standard on public procurement,<sup>14</sup> does not contain the phrase ‘emergency procurement’, unlike the PPA.<sup>15</sup>

---

<sup>10</sup> Nigeria operates a federal system of government, and legislative powers are shared between the federal and the thirty-six state governments. Each level of government (federal and state) has the power to make law on its expenditure, and since procurement is an integral public expenditure, both federal and state governments have exclusive powers to enact their respective procurement laws. The federal government through the National Assembly enacted the Public Procurement Act of 2007 (the PPA), which was amended by the Finance Act of 2020. The PPA is the main legal framework that regulates the procurement of goods at the federal level in Nigeria. See section 15 of the PPA.

<sup>11</sup> Section 43 (1), *Public Procurement Act* (2007).

<sup>12</sup> Unlike the PPA, the Tanzanian Public Procurement Act of 2011 defines emergency procurement, and it defines it as “procurement of goods, works or services essentially to meet an emergency situation which cannot be done through normal process”. See section 3 of the Tanzanian Public Procurement Act of 2011.

<sup>13</sup> Section 43 (1), *Public Procurement Act* (2007).

<sup>14</sup> Arrowsmith S ‘Public Procurement: An Appraisal of the UNCITRAL Model Law as a Global Standard’ *International Comparative Law Quarterly*, 2004, 18.

<sup>15</sup> The PPA is an adaptation of the 1994 UNCITRAL Model Law on Public Procurement Law. See Quinot G *et al* “Emergency Procurement and Responses to Covid-19 in Africa: The Contrasting Cases of South Africa and Nigeria” in Arrowsmith S *et al* (eds) *Public Procurement Regulation in (a) Crisis? Global Lessons from the COVID-19 Pandemic*, 2021, 703.

Generally, emergency procurement refers to procurement that is made in a time of urgency, that is not a result of the negligence of procuring entities, and procurement that is made during catastrophes.<sup>16</sup> Examples of what could be regarded as an emergency include natural and man-made disasters, disease outbreaks, international and internal armed conflicts, or humanitarian crises.<sup>17</sup> Natural disasters include floods, earthquakes, hurricanes, tsunamis, and volcanic eruptions, amongst others; man-made disasters include incidents such as fire accidents. In recent times, some of the health emergencies that Nigeria has witnessed include the outbreak of the Ebola virus, Lassa fever, Cholera, and the COVID-19 pandemic. Similarly, armed conflicts, such as a civil war or any other form of internal armed conflict between the government and non-state actors, or between non-state actors, or international armed conflict can also be described as an emergency. It is important to note that emergency procurement in relation to internal or international armed conflict is not limited to the procurement of military hardware. It also includes the procurement of goods, works, and services that are not related to combat. For example, contracts for the procurement of goods, works, and services that are needed to meet the needs of persons who are displaced by an armed conflict could also fall under emergency procurement.

#### A. *Corruption and Emergency Procurement*

Although corruption is generally defined as ‘abuse of entrusted power for private gain’,<sup>18</sup> in the context of procurement, corruption can be defined as the manipulation or circumvention of procurement rules and procedures by public officials and contractors with a view to obtaining illicit gains.<sup>19</sup> Certain rules and guidelines regulate the award of emergency contracts.<sup>20</sup> For example, the PPA stipulates the grounds upon which procuring entities can carry out emergency procurement.<sup>21</sup> The Bureau of Public Procurement (the Bureau), the main regulatory body for public procurement at the federal level, also issued guidelines on the award of emergency contracts in relation to the COVID-19 Pandemic.

---

<sup>16</sup> Drabkin D & Thai K ‘Emergency Contracting in the US Federal Government’ *Journal of Public Procurement*, 2007, 84 & 99; GIABA ‘Money Laundering Related to Fraud in Public Procurement in West Africa: A Case Study of Nigeria’, 23.

<sup>17</sup> Soreide T & Schultz J *Corruption in Emergency Procurement*, 2006, 3.

<sup>18</sup> See <https://www.transparency.org/en/what-is-corruption> (visited on 4 September 2022).

<sup>19</sup> Soreide T & Schultz J *Corruption in Emergency Procurement*, 9.

<sup>20</sup> See Bureau of Public Procurement *Guidelines on the conduct of public procurement activities by ministries, departments and Agencies as a result of the COVID-19 pandemic/lockdown* available at BPP-Guideline-on-COVID-19-Procurements-1.pdf accessed on 17 September 2021).

<sup>21</sup> Section 43, *Public Procurement Act* (2007).

However, to perpetrate corruption, unscrupulous public officials often disregard or manipulate these rules.

The risks of corruption in emergency procurement can be divided into three. First, procuring entities may falsely label contracts as emergency procurements to evade the anti-corruption measures in the open competitive bidding method, which is the default procurement method.<sup>22</sup> For example, almost all COVID-19-related emergency contracts awarded by the Federal Ministry of Women Affairs were, in the author's view, not related to COVID-19 or any emergency.<sup>23</sup> Some of the contracts include the construction of a women and youth sports centre in Esa-Oke, Ijebu-Jesa, the purchase installation and maintenance of office equipment, and an adult literacy and girl child education project.<sup>24</sup>

The case of the *Federal Republic of Nigeria v. Gekpe & 5ors*<sup>25</sup> illustrates how public officials abused emergency procurement in Nigeria. In this case, the defendants, who were members of the Tenders Board of the Rural Electricity Agency (the REA), awarded contracts for the procurement of grid extension and solar systems as emergency contracts because of the delay in the approval of the amended national budget by the National Assembly. The budget was approved on 16 November 2008, six weeks to the end of the financial year. By law, all government agencies must return unspent funds to the Treasury at the end of the year. Presumably, because six weeks was not sufficient to conduct open-competitive bidding and because the defendants did not want to return the funds to the Treasury, the defendants inappropriately labelled the contracts as emergency procurement. The Federal High Court overruled the defendants and held, *inter alia*, that the 'REA's justification for adopting this Emergency Procedure was alien to the law'.<sup>26</sup> Furthermore, the court noted that the reason the REA awarded the contracts was not because of any imminent catastrophe but because of the 'imminent end of the year'.<sup>27</sup>

Secondly, a procuring entity may create an 'artificial' emergency through dereliction of duty.<sup>28</sup> This may occur when a procuring entity fails to make a

<sup>22</sup> See "Transmission Company of Nigeria CEO, Abdulaziz, Enmeshed in Corruption Scandal over Alleged award of Multi-Billion-Naira Contracts to Cronies". Available at <<https://saharareporters.com/2023/11/14/transmission-company-nigeria-ceo-abdulaziz-enmeshed-corruption-scandal-over-alleged>> accessed on 10 December 2023.

<sup>23</sup> See <<http://nocopa.bpp.gov.ng/ContractReportCovid19.aspx>> accessed on 1 November 2022.

<sup>24</sup> See <<http://nocopa.bpp.gov.ng/ContractReportCovid19.aspx>> accessed on 1 November 2022.

<sup>25</sup> FCT/HC/CR/39/2009.

<sup>26</sup> *Federal Republic of Nigeria v. Gekpe & 5ors*, 209.

<sup>27</sup> *Federal Republic of Nigeria v. Gekpe & 5ors*, 209.

<sup>28</sup> Dorn *et al* (2008) 251; Williams-Elegbe (2018) 137.

proper plan for projects that it wants to execute.<sup>29</sup> The essence of contract planning is for a procuring entity to assess its needs and incorporate them into its procurement plan.<sup>30</sup> However, ineffective needs assessment may lead to unnecessary emergency procurement.<sup>31</sup>

Finally, in cases of a real emergency, different types of corruption schemes may be perpetrated in the award and execution of such contracts.<sup>32</sup> For example, contracts may be awarded to unqualified and incompetent firms,<sup>33</sup> contracts may be overpriced,<sup>34</sup> or may poorly be executed.<sup>35</sup>

One factor that makes emergency procurement highly vulnerable to corruption is the methods through which they are awarded. These methods are often less competitive and less transparent. The next part of this article examines the procurement method that the PPA prescribes for emergency contracts and why it is susceptible to corruption.

### III. Special Procurement Methods for Emergency Contracts

The methods through which contracts for the procurement of goods, works, and services are awarded are strategic to preventing corruption in the procurement process. This is because the level of transparency and competition in all procurement methods are not the same.<sup>36</sup> In the Nigerian procurement system, the default procurement method is open competitive bidding.<sup>37</sup> The PPA defines open competitive bidding as the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer

---

<sup>29</sup> De Mariz C *et al* *Public Procurement Reforms in Africa: Challenges in Institutions and Governance*, 2014, 34; GIABA 'Money Laundering Related to Fraud in Public Procurement in West Africa: A Case Study of Nigeria', 24.

<sup>30</sup> Section 18, *Public Procurement Act* (2007).

<sup>31</sup> De Mariz C *et al* *Public Procurement Reforms in Africa: Challenges in Institutions and Governance*, 34.

<sup>32</sup> Duri J *Corruption in Times of Crisis*, 5, 6.

<sup>33</sup> See "Rep Uncover 1.6 billion contract fraud at NEMA" available at <https://www.premiumtimesng.com/news/headlines/264743-reps-uncover-n1-6-billion-contracts-fraud-at-nema.html?tc=1> (accessed on 20 October 2023).

<sup>34</sup> GIABA 'Money Laundering Related to Fraud in Public Procurement in West Africa: A Case Study of Nigeria' 24.

<sup>35</sup> Dorn *et al* (2008) 251; Colesanti (2014) 577.

<sup>36</sup> Martini M *Public Procurement law and Corruption*, 2015, 3.

<sup>37</sup> Section 16(1)(c) & 24(1), *Public Procurement Act* (2007).

the goods and works needed'.<sup>38</sup> The key components of the open competitive bidding method, which makes it less vulnerable to corruption, are transparency and competition. These two concepts are parts of the pillars of a sound procurement system.<sup>39</sup> Procuring entities are required to advertise invitations to bid on platforms with national or international coverage,<sup>40</sup> to bring contract opportunities to every eligible bidder. Furthermore, the participation of many bidders promotes transparency and competition and reduces collusion. Apart from this, the bid opening exercise is held in public,<sup>41</sup> and at least two civil society organisations are usually present to observe the exercise.<sup>42</sup>

However, procuring entities are allowed to deviate from using the opening competitive bidding method and may use other procurement methods, such as direct procurement, in the limited instances that are outlined in the PPA.<sup>43</sup> One such instance is during an emergency.

### A. Direct Procurement

Direct procurement, also called single-source procurement or direct contracting,<sup>44</sup> is a method of procurement in which procuring entities unilaterally select a firm from which they want to procure their needs without any prior competition.<sup>45</sup> Of all the methods of procurement, this is the least transparent.<sup>46</sup> Unlike open competitive bidding, in which procuring entities are obligated to advertise invitations to bid for contracts in newspapers and other platforms, such public solicitation is waived in the award of contracts through direct procurement.<sup>47</sup> Similarly, there is virtually no competition because procuring entities procure the goods, works, or services they need from a particular entity

<sup>38</sup> Section 24(2), *Public Procurement Act* (2007).

<sup>39</sup> Section 16(1)(d) & (f), *Public Procurement Act* (2007).

<sup>40</sup> Section 25(2) *Public Procurement Act* (2007); See also Section 68, *Finance Act* (2020).

<sup>41</sup> Section 30 (b), *Public Procurement Act* (2007).

<sup>42</sup> Section 19(b), *Public Procurement Act* (2007).

<sup>43</sup> Section 24(1)(a), *Public Procurement Act* (2007).

<sup>44</sup> Arrowsmith *et al* *Public procurement regulation: An introduction* Asia Link, 2011, 44; De Mariz (2014) 31.

<sup>45</sup> Carborn E & Arrowsmith S "Procurement methods in the public procurement systems of Africa" in Quinot G & Arrowsmith S (Eds) *Public Procurement Regulation in Africa*, 2013, 284; Soreide T & Schultz J *Corruption in Emergency Procurement*, 17.

<sup>46</sup> Colesanti (2014) 578.

<sup>47</sup> Section 25(2), *Public Procurement Act* (2007); See also Section 68, *Finance Act* (2020); see also Butler L. 'Regulating Single-Source Procurement in Emergency Situations in Light of the COVID-19 Pandemic: Issues in Policy and Practice' in Arrowsmith S *et al* (eds) *Public Procurement Regulation in (a) Crisis? Global Lessons from the Covid-19 Pandemic*, 2021, 164.

without seeking alternatives in terms of price and quality from others.<sup>48</sup> Hence, this method of procurement is highly susceptible to corruption,<sup>49</sup> especially inflation of contract prices. Nonetheless, in the selection of the firm from whom it would procure its needs, a procuring entity must ensure such a firm meets the minimum eligibility requirements stipulated in the PPA.<sup>50</sup> For example, the firm must have the requisite professional and technical qualifications to execute the contract and must have the legal capacity to enter into the procurement agreement.<sup>51</sup>

One of the grounds upon which procuring entities can use direct procurement, and which is related to an emergency, is where:

‘there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to the unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity’.<sup>52</sup>

Before a procuring entity can use the direct procurement method on this ground, three conditions must be satisfied. First, there must be an urgent need for the goods, works, or services. Second, the procuring entity must establish that it is not feasible for it to use the open-competitive bidding method or any other procurement method, mainly by demonstrating that the circumstances that gave rise to the urgency could not have been anticipated. In furtherance of this, the procuring authority may need to establish that the time it would take to conduct another procurement method, particularly the open competitive bidding method, would undermine its effort to meet its urgent demands.<sup>53</sup> Third, such circumstances must not have been caused by the dilatory conduct or negligence of the procuring entity. One fact that can be deduced from this provision is that the use of a direct procurement method on this ground need not be connected to a catastrophe.

---

<sup>48</sup> Pyman M *et al* ‘The Extent of Single Sourcing in Defence Procurement and its Relevance as a Corruption Risk: A First Look’ *Defence and Peace Economic*, 2009, 215.

<sup>49</sup> Wilkinson K ‘More Effective Federal Procurement Response to Disasters Maximizing the Extraordinary Flexibilities of IDIQ Contracting’ *Air Force Law Review*, 2007, 59.

<sup>50</sup> See generally section 16 of the PPA; see also Butler L ‘Regulating Single-Source Procurement in Emergency Situations in Light of the COVID-19 Pandemic: Issues’ in Policy and Practice in Arrowsmith S *et al* (eds), *Public Procurement Regulation in (a) Crisis? Global Lessons from the COVID-19*, 2021, 175.

<sup>51</sup> Section 16(6)(a) & (b), *Public Procurement Act* (2007).

<sup>52</sup> Section 42(1)(b), *Public Procurement Act* (2007).

<sup>53</sup> Arrowsmith S ‘The Approach to Emergency Procurement in the UNCITRAL Model Law: A Critical Appraisal in the Light of the COVID-19 Pandemic’ in Arrowsmith S *et al* (eds) *Public Procurement Regulation in (a) Crisis? Global Lessons from the COVID-19 Pandemic*, 2021, 70.

Another ground on which a procuring entity may use direct procurement, which is also related to an emergency, is where ‘owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods’.<sup>54</sup> However, before a procuring entity can make use of the direct procurement method on this ground, it must establish three things. First, there must be a catastrophic event. Second, there must be an urgent need for what it wants to procure. Third, it must be impracticable to make use of other procurement methods because of the time that would be spent as a result of the procedures involved in these other methods. In other words, the fact that there is a catastrophic event does not automatically mean that all procurement must be deemed to be emergency procurement; the other two conditions must also be satisfied.

## B. *Alternative Procurement Methods for Emergency Contracts*

Apart from direct procurement, other procurement methods are used for emergency procurement. These procurement methods include competitive negotiation and framework agreements. They are provided for in the UNCITRAL Model Law<sup>55</sup> and the procurement laws of some countries, such as Kenya<sup>56</sup> and Ghana.<sup>57</sup> However, these procurement methods are absent in the PPA. The next sub-section of this article examines these procurement methods to identify their advantages over direct procurement in the award of emergency contracts.

### i. *Competitive Negotiation*

Competitive negotiation is a procurement method in which a procuring entity selects bidders or firms that could meet its needs, negotiates with them, and then selects and awards the contract to the firm that makes the best offer.<sup>58</sup> One of the grounds upon which a procuring entity may use this procurement method is where there is an urgent need for what it wants to procure and using the open-tendering method or any other method is not feasible due to the urgency.<sup>59</sup> However, the circumstances that give rise to the urgency must neither

<sup>54</sup> Section 42(1) (c), *Public Procurement Act* (2007).

<sup>55</sup> Articles 27, 32 & 51 of the UNCITRAL Model Law. However, a framework agreement is not listed as a procurement method in the Model Law. Rather, the Model Law calls it procurement procedure.

<sup>56</sup> Section 92 (j) & (i), 114 of the Kenyan *Public Procurement and Assets Disposal Act* (Act No. 33 of 2015).

<sup>57</sup> Section 34A (I) (d) of the Ghanaian *Public Procurement Act*, 2003. However, this Act does not provide for the use of competitive negotiation.

<sup>58</sup> Arrowsmith *et al* (2010) 41 & 42.

<sup>59</sup> Article 30(4) (a) of the UNCITRAL Model Law; Arrowsmith *et al* (2021) 69.

have been foreseeable by the procuring entity nor attributable to its negligence.<sup>60</sup> A procuring entity may also use this procurement method where the urgency is due to a catastrophe that makes it impossible for it to explore the open tendering method or any competitive procurement method because of the exigency of time.<sup>61</sup>

Unlike direct procurement, competitive negotiation involves some form of competition, even though in using this procurement method procuring entities are not required to advertise invitations to bid.<sup>62</sup> However, procuring entities must negotiate with a reasonable number of firms that can supply the items they need. Therefore, this method is more competitive and transparent than direct procurement.<sup>63</sup>

Apart from competitive negotiation, another procurement method that may reduce the risk of corruption in an emergency contract is a framework agreement.

ii. *Framework Agreement*

According to Elinor Carborn and Sue Arrowsmith:

‘A framework agreement is simply a list of suppliers able to perform specific contracts which also establishes some or all of the terms on which the contracts in question will be made allowing for orders to be placed swiftly and without repeating all the stages of a competition every time the need for a specific item arises’.<sup>64</sup>

A framework agreement is essentially a procedure through which procuring entities procure goods and services from shortlisted or prospective firms on an ongoing basis without a need to start the procurement process from the beginning.<sup>65</sup> It is often preceded by procedures that are followed in

---

<sup>60</sup> Article 30(4) (a) of the UNCITRAL Model Law; Arrowsmith *et al* (2021) 58.

<sup>61</sup> Article 30(4) (b) of the UNCITRAL Model Law.

<sup>62</sup> Arrowsmith S ‘The Approach to Emergency Procurement in the UNCITRAL Model Law: A Critical Appraisal in the Light of the Covid-19 Pandemic’ in Arrowsmith S *et al* (eds) *Public Procurement Regulation in (a) Crisis? Global Lessons from the COVID-19 Pandemic*, 2021, 67. However, the UNCITRAL Model states that it involves “a public advance notice of procurement”. See Glossary of Procurement-related terms used in the 2011 UNCITRAL Model Law on Procurement at 4.

<sup>63</sup> Arrowsmith S ‘The Approach to Emergency Procurement in the UNCITRAL Model Law: A Critical Appraisal in the Light of the Covid-19 Pandemic’, 78.

<sup>64</sup> Carborn E & Arrowsmith S ‘Procurement methods in the public procurement systems of Africa’ in Quinot G & Arrowsmith S (Eds) *Public Procurement Regulation in Africa*, 2013, 297.

<sup>65</sup> Yukins & Nicholas, 2022, 6.

open competitive bidding.<sup>66</sup> Accordingly, the method promotes competition and transparency and reduces the incidence of price inflation of contracts.<sup>67</sup> Unlike direct contracting, procuring entities invite interested bidders through the advertisement of framework agreements and select bidders that would be part of the framework agreement based on competition. Thus, some of the risks of corruption that are associated with direct contracting can be mitigated.<sup>68</sup> One main advantage of framework agreement over other procurement methods which makes it suitable for emergency procurement is that it allows procuring entities to procure items that they need continuously or repeatedly at an agreed price over a period of time.<sup>69</sup> Whenever a procuring entity needs goods or services that are the objects of the agreement, it just invites any of the bidders on the list to supply the goods or service or may conduct a mini-competition among such prequalified bidders.<sup>70</sup>

A number of goods that are procured during medical or humanitarian emergencies can be anticipated and can be provided for in framework agreements.<sup>71</sup> Medical items such as gloves, personal protective equipment, and in case of a humanitarian crisis, items such as blankets, clothing, and food are often needed.<sup>72</sup>

Having considered the different procurement methods through which emergency contracts are awarded, the next part of the article examines the grounds upon which a procuring entity may carry out emergency procurement in Nigeria.

#### IV. Grounds for Emergency Procurement in Nigeria

Sec 43(1) of the PPA provides that:

---

<sup>66</sup> World Bank, 2018, 7.

<sup>67</sup> See Arrowsmith (2021) 59; World Bank *Guidebook for Setting-up and Operating Framework Agreements*, 2021, 2.

<sup>68</sup> World Bank, 2021, 2.

<sup>69</sup> Arrowsmith S 'The Approach to Emergency Procurement in the UNCITRAL Model Law: A Critical Appraisal in the Light of the Covid-19 Pandemic' 61; World Bank (2021) 2.

<sup>70</sup> Eyo A "Framework agreements in public procurement in Africa: Progress and limitation" in Quinot G & Williams-Elegbe (eds) (2015) *Public Procurement in Africa: Development in Uncertain Times*, 2015, 319; Andrecka M "Framework Agreements: Transparency in the Call-off Award Process" *European Procurement & Public Private Partnership Law Review*, 2015, 231.

<sup>71</sup> World Bank *Framework Agreements: An overview of how to design, establish and operate a Framework Agreement in Investment Project Financing*, 2018, 5.

<sup>72</sup> World Bank *Framework Agreements: An overview of how to design, establish and operate a Framework Agreement in Investment Project Financing*, 6.

‘A procuring entity may for the purpose of this Act, carry out an emergency procurement where:

- (a) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- (c) a public project may be seriously delayed for want of an item of a minor value.<sup>73</sup>

From the above provision, there are only three grounds under which procuring entities can carry out emergency procurements. The first is where Nigeria is facing a serious risk of or is confronted with a real disaster, catastrophe, war, an insurrection, or Act of God, which could be classified under the phrase ‘disaster and other humanitarian crisis’.<sup>74</sup> The second is where a public good or infrastructure would be seriously damaged if urgent steps are not taken. The third is where items of minor value may delay the completion of projects. The use of the direct procurement method on the first ground is to prevent or mitigate a catastrophic event,<sup>75</sup> while the use of the direct procurement method on the second ground could be either based on urgency or prevention of a catastrophe,<sup>76</sup> and, the use of direct procurement on the third ground is based on urgency.<sup>77</sup>

The next part of this article examines these grounds in more detail.

*i. Procurement During Disaster or other Humanitarian Crisis*

As stated above, the first ground on which procuring entities can carry out emergency procurement is where Nigeria is seriously threatened with or actually confronted with a disaster, catastrophe, war, insurrection, or Act of God.

---

<sup>73</sup> This is similar to the grounds on which procuring entities can award emergency contract in Uganda. However, it is stated as “emergency situations” in the Ugandan Procurement law. See Section 3, *Public Procurement and Disposal of Public Assets* (Act 1 of 2003) as amended; The Nigeria constitution empowers the President, with the approval of the National Assembly, to issue a Proclamation of a state of emergency following the occurrence or likely occurrence of conflict and health emergencies, such proclamation is not a condition precedent to the award of emergency contract. However, if such a proclamation is issued, any procurement that is to be made in area covered by the proclamation could be deemed to be emergency procurement. See generally Section 305 of the Nigerian Constitution, as amended.

<sup>74</sup> Section 43(1)(a), *Public Procurement Act* (2007).

<sup>75</sup> Section 42(1)(c), *Public Procurement Act* (2007).

<sup>76</sup> Section 42(1)(b) & (c), *Public Procurement Act* (2007).

<sup>77</sup> Section 42(1)(b), *Public Procurement Act* (2007).

Emergency procurement on this ground can be classified into two. The first is where Nigeria is seriously threatened by a disaster, catastrophe, war, insurrection, or Act of God.<sup>78</sup> It is important to highlight that the law contemplates not just an ‘ordinary threat’ but rather a serious threat of a disaster—natural or man-made—or an armed conflict, as grounds for emergency procurement. The second is where Nigeria is actually confronted with a disaster or an armed conflict.<sup>79</sup> This article argues that while procuring entities may not have any difficulty in establishing when Nigeria is confronted with any actual disaster or other similar humanitarian crisis, a determination of whether Nigeria is confronted with a threat of a disaster and other similar humanitarian crises is to a large extent, subjective. To make a determination on this, a procuring entity must assess any seeming threat of disaster or conflict to ascertain that it is both real and serious.

This paper argues that the reason the PPA allows procuring entities to carry out emergency procurements in relation to the threat of disasters or other similar humanitarian crises is to allow them to take proactive steps to mitigate such disasters or crises. Besides, it might be more difficult and more expensive if procuring entities were to wait until a threat of a disaster materialise before they procure goods, works, and services that they might need to remedy such a disaster. For example, while the outbreak of a highly infectious disease in a small village and the infection of a few persons may not qualify as a real disaster, it would no doubt qualify as a threat of disaster. To prevent such a disease from spreading, health authorities such as the Nigeria Centre for Disease Control may have to urgently procure certain medical items. The pandemic is an example of a health disaster, and most of the emergency contracts that were awarded to curtail the spread of the disease in Nigeria were executed on this ground.<sup>80</sup>

ii. *Procurement for Maintenance of Public Goods and Facilities that may be Seriously Damaged if Urgent Steps are not Taken*

The second ground upon which procuring entities can carry out emergency procurements is where the condition or state of goods, equipment, buildings, or any capital goods owned by the government could be seriously damaged if urgent

<sup>78</sup> Section 43(1)(a), *Public Procurement Act* (2007).

<sup>79</sup> Section 43(1)(a), *Public Procurement Act* (2007).

<sup>80</sup> See ‘Nigeria confirms first case of coronavirus’ (The Guardian Newspaper, 28 February 2020) available at *Nigeria confirms first case of coronavirus — Nigeria — The Guardian Nigeria News – Nigeria and World News* (visited on 15 September 2021). See also <<http://nocopa.bpp.gov.ng/ContractReportCovid19.aspx>> accessed on 10 October 2023.

and necessary steps are not taken to maintain these goods in their current state.<sup>81</sup> Emergency contracts on this basis are meant to salvage public infrastructure from total collapse. Such contracts are timely and strategic interventions meant to save costs that could have been incurred in reconstructing an infrastructure from scratch or re-purchasing goods if they were allowed to completely deteriorate. Besides, if a procuring entity were to conduct open-competitive bidding in relation to the award of a contract for the repair of an infrastructure that is partly damaged, the infrastructure might be damaged beyond measure before the conclusion of the contracting process. As such, procuring entities are allowed to carry out emergency procurement in such instances.

However, before a procuring entity can award an emergency contract on this ground, two conditions must be met. First, there must be evidence that public facilities or goods could be seriously damaged if urgent steps are not taken. Although the PPA does not state the meaning of serious damage, it is argued that ‘serious damage’ means substantial damage. Minor damage to a public facility would not suffice. The second condition is that the purpose of the emergency contract must be to maintain such goods or facilities in their present state so that they are not damaged. A procuring entity cannot carry out an emergency procurement on this ground where the goods or public infrastructure is damaged already. In light of this, a procuring entity cannot award contracts for the ‘repair’ or ‘rehabilitation’ of a road that has already deteriorated to the extent that it has to be reconstructed all over again, as an emergency contract on this ground. Rather, the procuring entity should use the open competitive bidding method.

This is the main ground upon which emergency procurement is abused in Nigeria, especially in relation to procurement not related to catastrophes. The Niger Delta Development Commission (NDDC), a government agency that is notorious for the abuse of emergency procurement, purportedly awarded different contracts at different times, namely: two hundred and one; one thousand fifty-seven; and, one thousand nine hundred and twenty-one emergency contracts in 2017, 2018, and 2019 respectively.<sup>82</sup> The total value of the so-called emergency contracts is over one-point-two trillion Naira. To circumvent the open competitive bidding method, the NDDC falsely tagged contracts for the construction of new roads or reconstruction of existing ones as emergency road

---

<sup>81</sup> Section 42(1)(b), *Public Procurement Act* (2007).

<sup>82</sup> Report on special periodic checks on the activities and programmes of Niger Delta Development Commission (NDDC) for the period of 2008 to 2012 (2015) 24.

rehabilitation project contracts.<sup>83</sup> However, in reality, most of these contracts were for the reconstruction of existing roads that were badly damaged.

*iii. Procurement of Items of Minor Value that May Delay Completion of Projects*

The third ground upon which procuring entities may carry out emergency procurement is where the construction or completion of a government project would be seriously delayed because of an item that is of minor value.<sup>84</sup> For a procuring entity to carry out an emergency procurement on this ground, three conditions must be met. First, there must be an ongoing construction. Second, the completion of the construction must be at the threat of serious delay. In other words, the procuring entity need not be certain that there would be a delay; a reasonable suspicion that there could be a delay would suffice. However, it is not all types of delay that could be a ground for a procuring entity to rely on an emergency procurement method; only a delay that is deemed serious can lead to emergency procurement. Unfortunately, the PPA does not define a ‘serious delay’. In the author’s view, a ‘serious delay’ is a delay that may affect the completion of a project within the agreed timeframe, specifically in contracts where time is of the essence. In a contract where timelines are not strict, the issue of a ‘serious delay’ may not arise.

Third, the delay must be caused by an item of minor value. In other words, where the delay is caused by items of major value, a procuring entity cannot award an emergency contract on this ground. The PPA defines a ‘minor value’ as a monetary value that is not over monetary thresholds set for any approving authority.<sup>85</sup> The monetary threshold for each agency refers to ‘means the value limit in Naira set by the Bureau outside of which an approving authority may not award a procurement contract’.<sup>86</sup> This means that ‘items of minor value’ are items whose monetary values are within the monetary and approval threshold of procuring entities as set by the Secretary to the Government of the Federation.<sup>87</sup>

---

<sup>83</sup> Report on special periodic checks on the activities and programmes of Niger Delta Development Commission (NDDC) for the period of 2008 to 2012 (2015) 24.

<sup>84</sup> Section 42(1)(b), *Public Procurement Act* (2007).

<sup>85</sup> Section 60, *Public Procurement Act* (2007).

<sup>86</sup> Section 60, *Public Procurement Act* (2007); The Bureau of Public Procurement, which is the main regulatory body for public procurement at the federal level in Nigeria. See Section 3, *Public Procurement Act* (2007); This is the “person charged with the overall responsibility for the functioning of a ministry, extra-ministerial department or corporation”. See Section 60, *Public Procurement Act* (2007).

<sup>87</sup> It is the duty of the National Council on Public Procurement to be approving the monetary threshold for each of the approving authorities. See Section 2(a), *Public Procurement Act* (2007). However, since 2007 that the PPA has come into force, successive government has failed to inaugurate this

In a circular released by the Secretary to the Government of the Federation on 19 January 2022,<sup>88</sup> the monetary threshold for each approving authority was stated as follows:

<b>Approving Authority</b>	<b>Goods</b>	<b>Works</b>	<b>Non-Consultant/ Consultant Service</b>
Bureau of Public Procurement's Certificate of No objection to contract award	Three hundred million Naira and above	One-point-five billion Naira and above	Three hundred Naira and above
Ministerial Tenders Board	twenty million and above but less than Three hundred million Naira	thirty million and above but less than One-point-five billion Naira	twenty million Naira and above but less than three hundred million Naira
Parastatal Tenders Board	ten million Naira and above but less than a hundred million Naira	twenty million Naira and above but less than five hundred million	ten million Naira and above but less than a hundred million Naira
Accounting Officer/ Permanent Secretary	Less than twenty million Naira	Less than thirty million	Less than twenty million Naira
Accounting Officer/ Director General/ CEO	Less than ten million Naira	Less than twenty million Naira	Less than ten million Naira

Table 1: Monetary threshold for approving authorities.

---

body. In its absence, the Secretary to the Government of the Federation of each successive administration has been usurping it powers.

<sup>88</sup> See “Approval for the revision of subsisting service-wide prior review threshold and monetary threshold”. Available at <<https://www.bpp.gov.ng/wp-content/uploads/2022/01/Approval-Threshold.pdf>>, accessed on 5 August 2022.

From the above table 1, one can observe that, for example, the monetary approval threshold for a Chief Executive Officer (CEO) or director-general of a procuring entity for a contract for the procurement of goods and non-consultancy service is less than ten million Naira. For a contract for procurement of works, the monetary threshold is less than twenty million Naira. The implication of this is that a CEO of a government agency is authorised to approve the award of a contract that is not more than twenty million, without seeking approval from any other entity. In light of this, the definition of ‘minor value’ as items that are within the monetary threshold of an approving authority means that, in relation to a CEO of a procuring entity, for example, an item of minor value could be any item that is not more than twenty million Naira. If the maximum amount in a contract that a CEO can approve is twenty million Naira, it means that in the execution of such a contract, the CEO could still approve up to twenty million Naira for the procurement of an ‘item of minor value’ that could cause a serious delay to the completion of a contract. This inadvertently increases his monetary threshold beyond the limit stipulated by law.

The definition of items of minor value is too broad and makes it prone to abuse. The use of the phrase, ‘item of minor value’, seems to suggest that the monetary value of such an item should be significantly less than the total cost of the contract.<sup>89</sup> If what constitutes an ‘item of minor value’ could be equivalent to the maximum monetary threshold of a procuring entity, then, arguably, such an item ought not to be deemed as an item of ‘minor value’.

#### A. *Safeguards against Corruption in Emergency Procurement in Nigeria*

The drafters of the PPA appear to be cognisant of the fact that emergency procurements are vulnerable to corruption. Accordingly, they provided for a few anti-corruption measures to promote probity and accountability in emergency procurements, within the PPA. First, the PPA provides that all emergency procurements must be carried out in accordance with the principle of accountability, considering the nature of the emergency.<sup>90</sup> In other words, the fact that the purpose of procurement is to address an urgent situation or a catastrophe is not an excuse for procuring entities to disregard the principle of accountability. Hence, the PPA’s requirement that procuring entities must keep records of their

---

<sup>89</sup> A similar provision in the Ugandan *Public Procurement and Disposal of Public Assets Act* (Act 1 of 2003) uses the phrase “minor item”. See Section 3 of the Ugandan *Public Procurement and Disposal of Public Assets Act*.

<sup>90</sup> Section 43(3), *Public Procurement Act* (2007).

procurement activities is also applicable to emergency procurement.<sup>91</sup> The record must include the ground upon which the procuring entity carried out emergency procurement, the quantity of goods procured, or a description of service or works procured, as well as the total cost of such contracts. Furthermore, the PPA mandates procuring entities to make such records available to the Bureau, any investigator appointed by the Bureau, or the Auditor-General upon request.<sup>92</sup> Similarly, where donors' funds are used in procurement, upon request, procuring entities must also make the record available to officials of the donor agencies for audit and review.<sup>93</sup> This is meant to promote transparency.<sup>94</sup>

Another provision in the PPA that is geared towards the promotion of probity and accountability is the prohibition of conflict of interests in the award of contracts.<sup>95</sup> This provision equally applies to the award of emergency contracts. The fact that a procuring entity is at liberty to select an entity from whom it would procure its needs does not give it the liberty to disregard the prohibition on conflict of interests.<sup>96</sup> Accordingly, a procuring entity should not award emergency contracts to any firm in which any of its officials has a vested or controlling interest.<sup>97</sup> Similarly, the Code of Conduct that guides actors in the procurement process, as stipulated by the Bureau, must be complied with by all players involved in the award and execution of emergency contracts.<sup>98</sup>

The PPA also makes provisions for post-award review of emergency contracts. Specifically, it mandates procuring entities that carried emergency procurement to file comprehensive reports on such procurements with the Bureau as soon as circumstances that necessitated the emergency procurement cease.<sup>99</sup> However, the PPA is silent on what should be contained in such reports. In the author's view, procuring entities would be expected to state why they carried out the emergency procurement. In addition, the reports would contain details about emergency contracts that have been awarded, such as names of the contractors awarded the contract, and its value, among other vital information.

---

<sup>91</sup> Section 38(1), *Public Procurement Act* (2007).

<sup>92</sup> Section 38(5), *Public Procurement Act* (2007).

<sup>93</sup> Section 38(5), *Public Procurement Act* (2007).

<sup>94</sup> Arrowsmith S *et al* *Regulating Public Procurement*: The Netherlands: Kluwer, 2000, 74-75.

<sup>95</sup> Section 57(10), *Public Procurement Act* (2007).

<sup>96</sup> Butler (2021) at 175; Duri J *Corruption in times of crisis*, 7.

<sup>97</sup> Section 57(10) & (11), *Public Procurement Act* (2007); Butler (2021) at 175.

<sup>98</sup> Section 57(1) – (3), *Public Procurement Act* (2007); see also Duri J *Corruption in times of crisis*, 7.

<sup>99</sup> Section 43(4), *Public Procurement Act* (2007).

After procuring entities have submitted their reports on emergency procurement, the PPA mandates the Bureau to carry out a verification of the report, and if the Bureau is satisfied with the report, it must issue a ‘Certificate of No Objection’<sup>100</sup> to the procuring entity.<sup>101</sup> Procuring entities are mandated to apply to the Bureau for this certificate before they award contracts that are above a certain monetary threshold.<sup>102</sup> However, for emergency procurement, the PPA provides an exception; procuring entities are not required to apply for this certificate before they award emergency contracts. Nonetheless, after cessation of the condition that gave rise to the emergency procurement, and the procuring entities submitting their reports, the Bureau may issue a certificate of no-objection to the award of the contracts.<sup>103</sup> The issuance of such a certificate to a procuring entity means that the Bureau is satisfied that the emergency procurement complies with the provisions of the PPA.

Before issuing the certificate, the Bureau must verify the report of the emergency procurement submitted by procuring entities. Although the PPA does not state what the Bureau must do in verifying such reports, nonetheless, in the course of the verification, the Bureau is expected to confirm whether there was indeed an emergency to warrant the award of an emergency contract. Similarly, the Bureau is expected to investigate whether public funds were judiciously spent in the award and execution of the emergency contract. The verification of such reports by the Bureau is to check against the abuse of emergency procurement and to unearth any corrupt practices, such as over-invoicing, that might be perpetrated both in the award and execution of emergency contracts. If, in the course of the verification of the report, the Bureau discovers that any form of corruption was perpetrated in the award or execution of the contracts, it may refer the matter to any of the two main anti-corruption bodies in Nigeria (the Economic and Financial Crimes Commission (EFCC) and the Independent

---

<sup>100</sup> This is a ‘document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury’. See section 60 of the PPA.

<sup>101</sup> Section 43(4), *Public Procurement Act* (2007); *Federal Republic of Nigeria v. Gekpe & 5ors*, 170.

<sup>102</sup> Section 16(1)(b), *Public Procurement Act* (2007). According to the circular issued by the Secretary to the Government of the Federation, procuring entities are only mandated to seek and obtain this certificate in respect of contracts for the procurement of goods and service in which the contract sum is or more than 300 million Naira, and contracts for the procurement of works that cost 1.5 billion Naira or more.

<sup>103</sup> It appears this will only be applicable if the emergency contract is within the monetary threshold in which the issuance of the certificate is obligatory.

Corrupt Practices Commission (ICPC)),<sup>104</sup> for further investigation and prosecution of erring officials and persons.<sup>105</sup>

In addition to these measures, the Bureau has also taken certain steps to reduce the risks of corruption in procurement, including emergency procurement. One such step is the mandatory requirement that all procuring entities must publish details of their contracts, including emergency contracts, on the Open Contracting Portal.<sup>106</sup> The publication of COVID-19-related contracts on this portal by procuring entities is to promote transparency in the award and execution of contracts.<sup>107</sup> However, some government agencies did not publish their contracts on the portal as mandated. For example, according to the auditor-general of the federation, the Nigeria Centre for Disease Control (NCDC) awarded COVID-19-related contracts for procurement of goods and services worth over one billion Naira but did not publish the contracts on the Nigeria Open Contracting Portal.<sup>108</sup>

### B. High Rate of Corruption in Emergency Procurement in Nigeria

The high incidence of corruption in emergency procurement, which has resulted in the loss of public funds, underlines the fact that there are certain weaknesses in the provisions of the PPA on emergency procurement. Hence, this section of the paper examines the factors that have contributed to the high rate of corruption in emergency procurement in Nigeria, one of which is ineffective regulatory oversight. Effective monitoring and supervision of the award and execution of contracts are critical to preventing and combating corruption in procurement.<sup>109</sup> This is even more important in emergency procurement in light of its high vulnerability to corruption.<sup>110</sup> The PPA charged the Bureau with the duty of preventing fraudulent and unfair procurement.<sup>111</sup> Specifically, as discussed above, in order to ensure accountability in emergency procurement,

---

<sup>104</sup> These are the Economic and Financial Crimes Commission, and the Independent Corrupt Practice and Other Related Offences Commission. See section 60, *Public Procurement Act* (2007).

<sup>105</sup> Section 53(1), *Public Procurement Act* (2007).

<sup>106</sup> See <<http://nocopo.bpp.gov.ng/ContractReportCovid19.aspx>> accessed on 10 October 2023.

<sup>107</sup> See <<http://nocopo.bpp.gov.ng/ContractReportCovid19.aspx>> accessed on 10 October 2023.

<sup>108</sup> See *The Interim Report: Special Audit of the Federal Government's Response to the Covid-19 Pandemic for the Period- 1st March to 30th June, 2020* at 26.

<sup>109</sup> Soreide T & Schultz J *Corruption in Emergency Procurement*, 32.

<sup>110</sup> Rose-Ackerman S 'Corruption and COVID-19' 20 *Eunomia Revista en Cultura de la legalidad*, 2021,19; Saharan V 'Disaster Management and Corruption: Issues, Interventions and Strategies' in Huang H *et al* (eds) *Strategic Disaster Risk Management in Asia*, 196.

<sup>111</sup> Section 5(n), *Public Procurement Act* (2007).

the PPA mandates the Bureau to carry out verification of reports on emergency procurement that are submitted by procuring entities.

Additionally, the PPA empowers the Bureau to review procurement proceedings and execution of contracts awarded by procuring entities, whether or not the contracts are related to an emergency.<sup>112</sup> Where there is *prima facie* evidence of corruption, the Bureau is empowered to refer such cases to any of the main anti-corruption agencies in Nigeria, the EFCC or the ICPC, for investigation.<sup>113</sup> Unfortunately, however, the Bureau does not seem to be effective in monitoring and supervising the activities of procuring entities, especially as it relates to emergency procurement.<sup>114</sup>

Moreover, by recognising direct procurement as the default method through which procuring entities can procure goods, works, and services that they require in relation to emergency procurement, the PPA partly contributes to the high level of corruption in this type of procurement.<sup>115</sup> As discussed in the earlier part of this article, direct procurement is highly susceptible to corruption because it is neither transparent nor competitive. Apart from the direct procurement method, other procurement methods that are used in the award of emergency contracts are competitive negotiation and framework agreement.<sup>116</sup> Unfortunately, these alternative procurement methods are not provided for in the PPA.

Another weakness in the provisions of the PPA on emergency procurement is that it does not make provision for civil society organisations and members of the public to monitor the award and execution of emergency contracts. Unlike the open competitive bidding method where the PPA stipulates that at least two civil society organisations must be present at the bid opening ceremony,<sup>117</sup> the PPA does not give any role to these other stakeholders in emergency procurement. Hence, there is a need to amend the PPA to allow civil society organisations to monitor the execution of emergency contracts. This would promote transparency and accountability in the award and execution of emergency contracts.

<sup>112</sup> Section 53(1), *Public Procurement Act* (2007).

<sup>113</sup> Section 53(1), *Public Procurement Act* (2007).

<sup>114</sup> Independent Corrupt Practices and Other Related Offence Commission *Guaranteeing Impactful Projects: Report of Constituency and Executive Projects Tracking Exercise-Phase V, 2023*, 25.

<sup>115</sup> Section 42(1) (c), *Public Procurement Act* (2007).

<sup>116</sup> See Article 30 (4) (a) & (b), & 32(1) of the UNCITRAL Model Law; Carborn & Arrowsmith (2013) 297; Andrecka M 'Framework Agreements: Transparency in the Call-off Award Process' *European Procurement & Public Private Partnership Law Review*, 2015, 231.

<sup>117</sup> Section 19(b) (i)(ii), *Public Procurement Act* (2007); Udeh K & Ahmadu M 'The Regulatory framework for public procurement in Nigeria' in Quinot G & Arrowsmith S (Eds) *Public Procurement Regulation in Africa*, 2013, 145.

Another factor that encourages corruption in procurement, including emergency procurement in Nigeria, is impunity. Even though accountability is one of the pillars of Nigeria's public procurement,<sup>118</sup> in practice, proactive steps are not taken to hold public officials and contractors who abuse emergency procurement accountable. The annual reports of the auditor-general of the federation contain numerous instances where several public officials and contractors have abused emergency procurement.<sup>119</sup> Yet, Nigeria's anti-corruption agencies rarely take active steps to prosecute persons who are indicted in these reports. Similarly, the Bureau has not imposed notable administrative sanctions, such as exclusion or debarment, on such erring contractors.

## V. Recommendations and Conclusion

This article unpacks the concept of emergency procurement and why it is highly susceptible to corruption. It identifies the three grounds upon which procuring entities can carry out emergency procurement in Nigeria. It also identifies the factors responsible for the high incidence of corruption in emergency procurement in Nigeria. In order to mitigate the risks of corruption in emergency procurement in Nigeria, this article makes the following suggestions. First, the National Assembly should amend the provisions of the PPA to include competitive negotiation and framework agreement as part of procurement methods that procuring entities may use in the award of emergency procurement. Additionally, the PPA should stipulate that procuring entities should use direct procurement in the award of emergency contracts only if competitive negotiation and a framework agreement are not applicable. Second, the meaning of 'item of minor value' should be limited to an item that is not more than forty per cent of the monetary threshold of an approving authority. Third, to promote transparency and effective monitoring of emergency contracts, the publication of all relevant information on contracts, including emergency procurement awarded by procuring entities on the open contracting portal, as currently applicable, should be mandatory.

Furthermore, the accounting officer of any procuring entity that fails to publicise on the portal the details of the contracts awarded, particularly emergency contracts, without any justifiable reason, should be punished. Civil society organisations should be allowed and encouraged to monitor the execution of

---

<sup>118</sup> Section 16(1)(d), *Public Procurement Act* (2007).

<sup>119</sup> See generally Report on special periodic checks on the activities and programmes of Niger Delta Development Commission (NDDC) for the period of 2008 to 2012 (2015).

emergency contracts. In line with provisions of the PPA, procuring entities that carry emergency procurement should be mandated to submit comprehensive reports of emergency contracts that they awarded upon the cessation of the circumstances that gave rise to the emergency. Furthermore, the Bureau should impose appropriate sanctions on accounting officers of any procuring authorities that fail to submit such reports.

In addition, the Bureau should ensure that Codes of Conduct for persons involved in the procurement process and the prohibition on conflicts of interest are enforced in the award and execution of emergency contracts. Similarly, in line with provisions of the PPA, the Bureau should carry out a detailed review and verification of all emergency procurements that are carried out by procuring entities. Where the Bureau establishes that there was indeed no situation to warrant the use of emergency procurement, officials of the procuring entities that approve such contract should be sanctioned in line with the PPA. Furthermore, public officials and every other culpable person should be investigated and prosecuted if it is established that public funds were misused or embezzled. Lastly, the Bureau should debar firms that are indicted for corruption from participating in public procurement proceedings for a specified duration.