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**CORRUPTION RISK FACTORS: AN
ANALYSIS OF PUBLIC PROCUREMENT
IN NIGERIA**

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DBA

April 2013

**CORRUPTION RISK FACTORS: AN ANALYSIS
OF PUBLIC PROCUREMENT IN NIGERIA**

Grace Ada Unite Ekwo

**A thesis submitted in partial fulfilment
of the requirements of the
University of Northumbria at Newcastle
for the Degree of
Doctor of Business Administration**

April 2013

**Research undertaken in
Newcastle Business School
Faculty of Business and Law**

Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Name: Grace Ada Unite Ekwo

Signature:

Date: 24: 04: 2013

Abstract

Nigeria has consistently ranked 6th amongst oil-producing nations of the world but despite the enormous revenues from the sale of petroleum resources in the past five decades, the country has made little advance in terms of infrastructure, quality of life and the human development index. This has been attributed to endemic levels of corruption through misappropriation of public funds for private use, most of which have been associated with public procurement.

The public procurement process in Nigeria has long been associated with corruption which involves misappropriation of public funds for private use. For example, the Transparency International (TI) Corruption Perception Index reports for 2009, 2010, 2011 and 2012 indicate that much of public sector corruption in Nigeria is associated with the public procurement process. Between 2010 and 2012, Nigeria's position on the corruption perception index of 183 countries surveyed by the TI, declined by 9 places to 143, an indication that current initiatives aimed at solving the problem have not been effective.

Efforts at improving the practice of public procurement in Nigeria and developing it into a reputable profession cannot be successful without considering the more fundamental question of the factors that may have made corruption in the process resistant to efforts aimed at curbing it. It is this gap that this study hopes to address in order to promote transparency in the process of public procurement in Nigeria. A total of 20 semi-structured interviews were conducted across four organisations. Findings from the interviews were further subjected to verification discussions at two other organisations.

Drawing from the case study analysis; greed, lack of inbuilt checks and wide discretionary powers of procurement officers under the direction of management emerged as possible risk factors motivating corruption in the public procurement process thus offering an explanation of the vulnerability of the process to corruption. Building upon the theoretical debates, public procurement-related corruption in Nigeria is contextualised in a framework which proposes a corruption risk-factor vulnerability check-list for the management of public procurement in Nigeria to achieve verifiable transparency and accountability.

Key Words: Corruption, Corruption Risk Factors, Public Procurement, Nigeria

Dedication

I dedicate this thesis to the blessed memory of my beloved mother in-law Mrs Onyemowo Inalegwu Ekwo of blessed memory. She encouraged my doctoral studies but passed unto glory before its completion.

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Abbreviations and definitions

ACRO	Anti-Corruption Reform Organisation
Asaba,	capital city of Delta State in Nigeria
Business Unit	The operational units of the power company closest to the customer base
Corruption	partiality and/or abuse of power to profit in exercise of public procurement related discretion
Corruption risk factors	The factors that predispose the PPP to corruption
CSR	Corporate Social Responsibility
DFID,	Department for International development
EFCC	Economic and Financial Crimes Commission
Extant rules	Existing rules guiding public procurement.
ICPC	Independent Corrupt Practices and other Related Offences Commission
Impartiality Principle	The notion of partiality (abuse of discretion)
Instruction To Tenderers	Details of how tenders should be prepared.
NNPC	Nigerian National Petroleum Corporation
NPA	Nigerian Ports Authority
PHCN	Power Holding Company of Nigeria
PPC	Public Power Company
PPP	Public Procurement Process
Pre-qualified companies	A short list of companies following Expression of Interest
PRIU	Procurement Reform Implementation Unit
Procuring Entity	Department of Government involved in n public procurement
Public Procurement Act 2007	The law regulating public procurement in Nigeria
REO	Rural Electrification Organisation
State	A sub-national unit governed by a governor in Nigeria

TI	Transparency International
UBEC	Universal Basic Education Commission
UNCITRAL	United Nations Commission for International Trade Law
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

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Chapter 1

Introduction

Chapter 1

Introduction

1.1 Background

Corruption – which is defined as the abuse of public power for private use and benefit (Tanzi, 1998) – has long been associated with Nigeria (Transparency International, 2012), the most populous country in Africa with a population of over 150 million people, 250 languages and over 100 ethnic tribes with abundant natural resources such as oil and gas (Ajayi, 1996; Akinyele, 2001; Lalasz, 2006). The country has consistently ranked 6th amongst the oil-producing nations of the world (World Bank, 2004; Olters, 2007; Olarinmoye, 2010). Despite the enormous revenues from the sale of petroleum resources in the past five decades, Nigeria has made few advances in terms of infrastructure, quality of life and the human development index (World Bank, 2004; DFID, 2010; Transparency International, 2011). This has been attributed to endemic levels of corruption perpetrated through misappropriation of public funds for private use, most of which have been associated with public procurement – a motivating and significant factor for this current research (Adeniran, 2007; Okonjo-Iweala and Osafo-Kwaako, 2007; Transparency International, 2011).

Manifestations of corruption, particularly in the public procurement process (PPP), which is the series of distinct processes through which a buyer acquires products, services or works (Carpinetti *et al.*, 2001), have become so quick to mutate that they have been able to defy initiatives and strategies aimed at curbing them. Part of their continued success is due to a lack of understanding of the associated underlying risk

factors, hence the need for this research, which aims to identify the risk factors of corruption in the public procurement process in Nigeria in order to inform policy frameworks that promote transparency in public contract administration (Salisu, 2000a; Dike, 2005; Ribadu, 2006a; Transparency International, 2011).

The problem of corruption is reputed to have caused misappropriation in the Nigerian national economy to the point of political, social and economic standstill in the 1980s and 1990s, when the dictatorial regimes of the military cadres ruled Nigeria (Ajayi, 1996; De Graaf, 2007). About \$380 billion is said to have been looted from the Nigerian public treasury and sequestered in private bank accounts both within and outside the country during this period and also over the first decade of the return to democratic governance in Nigeria (1999-2009) (Transparency International, 2009; Bakre, 2010). The effect of this has been that over 75% of the country's population live on less than \$1 a day and the government is unable to fund many of its fiscal budgetary commitments (World Bank, 2004; Fagbadebo, 2007; Transparency International, 2009).

The problem of corruption still featured prominently in the national agenda of post-military rule in Nigeria, politically, socially and economically, 14 years into the country's adoption of representative democratic governance (Fagbadebo, 2007). Because corruption was not properly confronted by way of specific studies to examine the factors that may have acted in support of its growth, particularly in the public procurement process, the risk factors that perhaps always beset the conduct of government business have emboldened the corrupt few to the extent that they have flaunted their corruptly-acquired wealth unchallenged – to the consternation of the majority who suffer the effects of their corruption (Ajayi, 1996; Fagbadebo, 2007).

By 2002, corruption and its perpetrators had become so powerful that some of its notable beneficiaries started using their corrupt wealth to acquire political power and influence, with the sole aim of further safeguarding and protecting their corruptly-acquired estate. The implication of this is that corruption became endemic in the public procurement process (Boehm and Olaya, 2006; Ribadu, 2006a). Because of the widespread level and consequences of corruption in Nigeria which has its root in the public procurement process (Olowu, 2001; Makinde, 2003), there is a need for applying effort to research and understand the risk factors that underpin its growth and spread, as a way of providing informed policy remedies aimed at curtailing it. Because the problem is widespread (Ribadu, 2006), studying it would require in-depth study through case study analysis to provide explanations for corruption across the public procurement process in Nigeria and how to curb it.

The selection of respondents within the case studies was guided by the case studies screening process in a multi-case design as advocated by Yin (1993) and Bryman (2008). In so doing, three factors were considered, namely: representativeness, comparability and the relative knowledge of the respondents on the subject of public procurement. Representativeness takes into account whether the case studies are truly representative of the problem of corruption in the public procurement process in the country in terms of its cross-cutting manifestations in the polity. Comparability considers the representativeness of the problem in the case studies relative to other cases, while the third factor, requisite knowledge of the respondents on the subject of public procurement, looks at the relationship of the respondents to the procurement process of the case studies (See table 6).

Drawing on the stance of the Impartiality Principle (Kurer, 2005), the research adopts an interpretivist ontology, with the assumption that the problem of corruption and the meanings it accrues in different social contexts, are continually being created through social processes (Bryman, 2009, p. 692). As explained in sections 2., wrongdoing (partiality) in relation to the public procurement process in Nigeria is adopted as the operative definition of corruption. The role of the researcher is to access individuals' viewpoints and constructions regarding the reality of the content of corruption in a given social context (Xin and Rudel, 2004a; Moore, 2008).

1.2 Corruption and public procurement in Nigeria

A review of the relevant literature in chapter 2 has shown growing academic interest in various aspects of the subject of public procurement-related corruption. This reveals the need to define and further develop a holistic understanding and explanation of the concept of corruption in relation to public procurement. The concept of corruption has been variously defined as: the use of power to profit self (Van Roy, 1970); the abuse of discretionary public power for private benefit (Tanzi, 1998; Tanzi and Davoodi, 1998); and the exercise of lawful authority to influence the allocation of rights and privileges in favour of predetermined individuals at the expense of others (Colombatto, 2003; Asada, 2010). In relation to public procurement, corruption is the appropriation of public goods for private use, in violation of extant rules (Søreide, 2002).

In Nigeria, corruption is '*an act which results in any right, interest, title or privilege being illegitimately conferred on any person*' (National Assembly Nigeria, 2000) and in the context of public procurement, corruption means:

“offering, giving, or promising to give, directly or indirectly, to any officer or employee of any Procuring Entity or other governmental/private authority or any individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method following by, a procuring Entity in connection with the procurement proceeding.”

(Bureau of Public Procurement, 2008e)

Common to both of these definitions of corruption presented above is the notion of misappropriation (abuse of discretion); therefore, the term corruption for this study is defined as **‘partiality and/or abuse of power and/or discretion for profit in the exercise of public procurement-related discretion’**.

The problem of corruption is a major problem with global ramifications that manifests itself throughout the development process (Tanzi, 1998; Transparency International, 2010). In Nigeria, corruption has been linked to public office holders who misappropriate public funds for private use through the public procurement process (PPP) (Ajayi and Abdulkareem, 2010). The return of Nigeria to democratic governance in 1999 raised national consciousness about the problem of public procurement-related corruption (Fagbadebo, 2007). As a result, two executive commissions, namely the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) were formed by acts of the Nigerian National Assembly and given a clear mandate to fight corruption in the country in all its ramifications (National Assembly Nigeria, 2000; 2004).

Many of the reported corruption cases in Nigeria are said to have been perpetrated through the public procurement process (Watts and Bassett, 1985; Malgwi, 2004; Okogbule, 2006). In three of such cases involving the Nigerian Ports Authority (NPA), the Rural Electrification Organisation (REO) of Nigeria and the Universal Basic Education Commission (UBEC) of Nigeria, about \$1 billion in public funds was misappropriated through the public procurement process (Sowunmi *et al.*, 2009; Awolusi, 2010; Bakre, 2010). Over the years, corruption has generated a large spectrum of negative effects in society and most of the corruption cases reported have been perpetrated through the public procurement process (Shehu, 2004; Bakre, 2010).

1.2.1 Corruption and the electricity sector in Nigeria

The electric power sector in Nigeria is divided into rural and urban sub-sectors following the passage into law of the Electric Power Sector Reform Act 2005 (National Assembly Nigeria, 2005). This was in response to the acute deficiency in electricity supply in rural Nigeria where less than 20% of people have access to electricity (Akarakiri, 2002). Specifically, implementation of the Electric Power Sector Reform Act 2005 (National Assembly Nigeria, 2005) was intended to achieve the objectives of rural electrification in Nigeria. This is done through the management of the Rural Electrification Fund it created and for which a sizeable sum is required to be set aside annually through budgetary allocations approved by the Nigerian national parliament, for implementation of the Rural Electrification Strategy and Plan.

In addition to the pursuit of the implementation of the Rural Electrification Strategy and Plan, the Rural Electrification Organisation (REO) also has a mandate to

promote and support rural electrification in Nigeria through public and private sector participation, with the dual aims of increasing access to electricity and maximising economic and social development in the Rural Electrification sector of the Nigerian economy. To deliver on its mandate as stated in sections 1, 2 and 3 of the Act (National Assembly Nigeria, 2005), the REO has the task of providing rural electrification services to rural communities in all 774 local government areas¹ of the country, covering a total population of over 150 million people. The realisation of the REO's mandate was, however, adversely affected by the misappropriation of its funds in the course of the public procurement process in Nigeria in 2009 (Awolusi, 2010).

The federal character principle² requires that all strata of Nigerian society are represented in the administration of all federal agencies, the REO included, and that the work of the organisation achieves a national spread geographically (Abubakar, 1998). A case of corruption in the rural electricity sub-sector in Nigeria in 2009 (Awolusi, 2010) involved hundreds of separate procurement activities for rural electrification contracts intended for local government areas across the country. An overview shows that because of the importance of electricity to Nigeria, where only about 20% of the country's electric power needs are presently being met, the rural electrification initiative involved every area of the country (Awolusi, 2010). Thus, reported corruption cases at the Rural Electrification Organisation often involved misappropriation of public funds through the public procurement process. Therefore corruption cases in the electricity sector are not only representative of the procurement process in Nigeria, but also represent all strata of Nigerian society

¹The smallest unit of political administration in Nigeria.

² A Nigerian democratic principle that requires equal representation in all national development programmes.

including professionals and non-professionals. Unskilled, semi-skilled and professional people, such as accountants, lawyers, engineers and civil society representatives were involved; data generated is representative of the Nigerian society.

Based on the electric power sector procurement Audit Report in the Nigeria Economic and Power Sector reform Program Appraisal Report (AfDB, 2009), many procurement activities in the electricity sector were concluded without carrying out any tendering process, and evaluation, for any of the 40-plus companies (contractors) to whom contracts were awarded in 2009 (Awolusi, 2010). The procurement audit revealed that the management, acting in tandem with 20 members of the Nigerian parliament, senior officials of the Ministry of Power, and several other actors in the organised private sector – in particular, a number of banks – merely generated a list of contractors and awarded contracts to them, contrary to the dictates of the Public Procurement Act (2007) and other specific procurement regulations (Bureau of Public Procurement, 2007b; National Assembly Nigeria, 2007b; Bureau of Public Procurement, 2008d).

1.2.2 Transparency in the Public Power Company (PPC)

Upon the return of Nigeria to democratic governance in 1999, the government initiated a privatization policy in the electric power sector (Uwatt, 2004). The policy was in response to the problems of acute electric power shortage in Nigeria from the 1980s to 1990s, caused by the government monopoly and endemic corruption in the sector (Ayodele, 2004; Olukoju, 2004; Okafor, 2008). The policy aimed to transform the sector from a public monopoly to a private sector-led business that could operate profitably without government funding. The government's ownership of the sector

had become unsustainable with the result that the country suffered acute electric power shortage which affected both individual and business customers alike (Cubbin and Stern, 2006).

The new national power company was then given the mandate to make available to customers electricity of adequate quality for at least 15 hours daily. It was hoped that the privatization reform would deliver credible electricity tariffs that would not be contested by customers within the billing month (Hall, 2006). As revealed from the fieldwork, however, because of corruption, electricity bills in Nigeria can include charges for electric power units not consumed. This situation is caused by corruption on the part of the electric power company, who can deliberately tamper with records of households' electric power consumption to justify inaccurate billing for their service. The reform, which aimed to provide uninterrupted electricity to consumers, also had the objective of ensuring accurate readings of all customer meters at least once every three months to determine the actual usage of electricity by every household (Adenikinju, 2003; Smith, 2007).

Furthermore, the reform aimed at preparing the Nigerian energy company for privatization outlined a process prescribing that all new applications for power supply, from the metering to the billing stages, must be completed within four weeks from receipt of payment from the customer. This was against the usual practice where applications received could take an indefinite period of time to be processed (Adenikinju, 2003). The reform also required further measures to prevent abuse of the electricity tariff system, namely that an official tariff table for the information of all customers was to be published periodically in the national dailies, and customer

care centres were to be established in all Business Units and Service Centres.³ The provision of a minimum of one Customer Care Centre in every Business Unit of the PPC was aimed at providing dedicated outlets through which the customers could reach the company with complaints and enquiries.

The power reform policy also mandated the power company to publish contact telephone numbers for Customer Care Centre Service Staff, Local Management and Headquarters Management, so that aggrieved customers who may be dissatisfied services due to corruption in the electric power industry in Nigeria could reach relevant staff members with their complaints, in addition to ensuring continuous improvement in customer service delivery through periodic reviews of customer service benchmarks. The policy, as well-crafted as it sounded, however, did not explain what the benchmarks for the reviews were, nor did it state whether the customers were entitled to participate in the reviews, providing a potential opportunity for corruption. The reality that emerged from the 2011 fieldwork was that there has been a failure to implement the policy of providing more customer service points to deal with the complaints of customers dissatisfied with quality of service and with service tariffs that did not reflect their electricity consumption. The PPC had still left its unsatisfied customers without any point of contact where they could ventilate their grievances.

Another important mandate imposed on the PPC for the benefit of the country's consumers of electric power is the compulsory provision of suggestion boxes at all service locations for feedback from customers on the company's service quality. The fieldwork of 2011 revealed that these suggestion boxes were provided, as mandated by the power reform policy, but none of the feedback boxes were opened throughout

³The operational units of the power company closest to the customer base.

the four weeks of the fieldwork. The power reform policy which led to the creation of the PPC also requires that it treat every issue raised by a customer with diligence and respect by ensuring that a response is given to all customer service-related issues brought to its attention. This aimed at improving communication between the Nigerian electric power company and its customers nationally, with a view to making the workings of the company more transparent and accountable to customers and by extension, the Nigerian public. However, this research revealed that the policy has still not taken effect, as customers continued to receive electricity bills for periods of time when no electricity was available to them.

The Public Procurement Process (PPP) has long been associated with corruption in the electricity sector in Nigeria. In the on-going case of Federal Government of Nigeria v. Nicholas Ugbane and others, contracts totalling over \$0.5 billion awarded in public funds were misappropriated through public procurement-related corruption in the electric power sector in 2009 (Sowunmi *et al.*, 2009; Awolusi, 2010; Bakre, 2010). Awolusi (2010) added that none of the companies awarded the contracts were on the list of pre-qualified companies forwarded by the Ministry, nor were the projects advertised in any of the national daily newspapers, as required by the 2007 Public Procurement Act. Benefiting companies were selected through a selective tendering process that led to the award of contracts of a type that is prohibited in the Procurement Act. The specifics of the cases indicate that though companies were pre-qualified based on the country's six geo-political zones to give an appearance of federal even-handedness, the management failed to provide the criteria and scores of the pre-qualification exercise, as required by the Procurement Act 2007, to prove compliance with PPP.

The procurement audit also revealed that contractors were paid 100% of the contract sum in two instalments of 15% and 85% respectively, in complete contravention of the public procurement guidelines (National Assembly, 2007). Furthermore, another indication of abuse of the procurement process was indicated when a person identified in the audit as a single individual signed the contract documents and also collected cheques on behalf of nine companies which were the beneficiaries of the award of contracts. The records also show that the nine companies not only have the majority of their offices in Asaba, the capital city of Delta State in Nigeria, they also duplicate an identical telephone number on their company letterheads. Another important issue raised was that the nine companies in question also won 21 out of the 40 contracts awarded, to a value of \$1 billion out of the total contract sum of \$1.5 billion. Finally, although the contracts had not yet been executed, the final costs requested were paid already in full.

As it turned out, the companies were fraudulently awarded contracts through the procurement process for projects that were unexecuted, suggesting that they used the procurement process as a conduit for siphoning public funds for projects that were never intended to be realised (Awolusi, 2010).

An important point in these cases is that even before the contracts were awarded, 100% of the contract value was paid to some of the companies, in complete disregard of the provision of the 2007 Public Procurement Act. The contract sums were paid into accounts maintained and operated by the companies in reputable Nigerian banks – an indication that this public procurement-related corruption case not only involved the public organisations, the national parliament and the Ministry of Power, but that the organised private sector, and in particular the banks, were also implicated. This realisation reinforces the argument for a strengthening of the

process whereby the risk factors exploited for corruption can be identified and managed.

1.3 Research aim

The aim of this research is to identify risk factors that promote corruption in the public procurement process in Nigeria through case studies analysis, with the aim of contributing to evidence-based policy frameworks that promote transparency in public contract administration.

1.3.1 Research objectives

The research aim will be achieved through three objectives, which are to:

- Review the context and conceptual framework of the PPP in Nigeria
- Review the practice of PPP with a view to identifying a set of risk factors that may explain the vulnerability of the public procurement process to corruption;
- To propose a corruption risk-factor vulnerability check-list for the management of public procurement in Nigeria.

1.3.2 Research question

What are the risk factors that promote corruption in public procurement in Nigeria?

1.3.3 The scope of the research

The subject of this research is the PPP which is an important process for the business of government in Nigeria. The research focuses on the PPP because there it has, for many years, been a significant base for corruption in the country (Transparency International, 2011; Ribadu, 2006a).

Even though the problem of corruption is a major problem with global ramifications and manifest throughout the development process (Tanzi, 1998; Transparency International, 2010), in Nigeria, corruption has been linked to public office holders who misappropriate public funds for private use through the use of the public procurement process (Ajayi and Abdulkareem, 2010). The return of Nigeria to democratic governance in 1999 raised national consciousness about the problem of public procurement-related corruption (Fagbadebo, 2007a). This post 1999 national consciousness led to specific legislative anti-corruption actions in Nigeria that established two commissions, namely the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) by Act of the Nigerian National Assembly and with clear mandate to fight corruption in all its ramifications in the country (National Assembly Nigeria, 2000; National Assembly Nigeria, 2004).

This research focuses on the issues of corruption and its associated risk factors in Nigerian and has not considered issues of any international comparisons with other countries approaches to procurement-related corruption. The findings and recommendations have also not been benchmarked against those of international agencies working in the area of procurement-related corruption. This study, therefore, examines the problems of corruption only within the country of Nigeria and particularly within the public procurement process, in order to isolate the factors that may have made it resistant to past efforts to curtail it, so as to propose a new framework that aims at promoting transparency in the process.

1.4 The case studies and corruption

The case studies were selected based on the need to generate a broad mix of data on public procurement-related corruption in Nigeria. In all, while three of the case studies were selected from public institutions that are tasked with disbursing public funds through the public procurement process, two were selected from agencies with a mandate to fight public procurement-related corruption in Nigeria – one a civil society agency interested in preventing public procurement-related corruption and one representing the legal prosecutors of public procurement-related corruption in Nigeria.

Selection of case studies for this study was predicated on the preliminary readings on the subject of corruption of public procurement in Nigeria, which indicated a significant incidence of reported corruption in relation to public procurement in the electric power sector in Nigeria; indeed, this was the sector that ranked highest in reported cases of public procurement related corruption (Awolusi, 2010). The preliminary readings also indicate weak corresponding efforts, guided by regulators and legal prosecutors, at fighting corruption proactively by way of review of policy and reactively by way of vigorous prosecution of public procurement-related corruption cases. This is indicative of a national resolve to fight public procurement-related corruption in particular, which is reputed to be the medium through which funds meant for the execution of public projects intended to benefit the public is diverted by the few in positions of public trust for personal gain (Obayelu, 2007; Obuah, 2010a), hence the need to study the risk factors that may have left the process vulnerable to corruption.

The Rural Electricity Organisation was selected as one of the case studies because of its wide mandate for rural electrification-related public procurement using allocated public funds. Similarly, the Public Power Company, and indeed, the electric power sector in Nigeria which this represents, was selected based on findings from the preliminary readings which indicated endemic public procurement-related corruption in the sector alongside an immense investment of public funds allocated to improve the deplorable electric power situation in Nigeria (Adenikinju, 2003; Olu-Olu, 2006).

Furthermore, two anti-corruption agencies, namely the Anti-Corruption Commission and the Public Procurement Organisation, were selected to feature among the case studies in order to generate data on current and past efforts aimed at fighting corruption in public expenditure in Nigeria. In addition to the four case studies visited during the substantive fieldwork, a supplementary phase of fieldwork was also conducted for the purpose of verifying and validating the findings from the substantive fieldwork. The supplementary fieldwork involved interviews with members of the Governance and Anti-Corruption Reform Organisation, with a Central Government procurement department and with a number of prosecutors of public procurement-related corruption cases in Nigeria.

This research has shown that because of the importance of electricity to rural development in Nigeria, where less than 20% of electric power needs are presently being met, the rural electrification initiative has been planned to involve every rural area of the country. To remedy this (more than 80%) deficit in the ability of the infrastructure to supply the nation's electric power needs, the government has allocated funds through annual budgetary provisions, the spending of which has been the leading source of various cases of public procurement-related corruption over the years (Nanka-Bruce, 2010). This enormous budgetary provision, which has been

dispensed through the public procurement process, is reputed to have continually increased in response to the desperate need for electric power to cope with the expanding developmental needs of the country (Ikeme and Ebohon, 2005; Okoro and Chikuni, 2007; National Assembly Nigeria, 2007.-b). This has given rise to a corresponding expansion in procurement activities in the rural electrification subsector but without any relative increase in provision of electricity to rural Nigeria.

1.4.1 Structure of the thesis

This thesis is divided into six chapters. An indicative overview of the research is presented in this introductory chapter. Drawing on the background of the study and an initial review of the literature, the research aim and objectives were formulated and the research question was identified. Also in this introductory chapter, the research problem was articulated and the overarching philosophy of the study was presented. The research methodology employed for the study was outlined and its contribution to knowledge presented in addition to the summary of findings and contribution to practice.

In order to ground the research within a sound theoretical foundation, chapter two provides a detailed review of relevant literature on the current state of the debate, ranging across issues of definition of corruption, the various strands of arguments on the subject of corruption and their common nexus in the Principle of Impartiality to the dynamics of corruption in the PPP. By critically examining the literature, the research problem, philosophy and methodology are further embedded in theory and refined to highlight the revealed gap in knowledge which this research has aimed to fill.

Chapter three presents a detailed discussion of the choice of the research methodology and the rationale through which the adopted research strategy, approach, data collection techniques and instruments of analysis are justified. The process of designing the research and a presentation on the criteria and process of selecting the case studies are also discussed in this chapter, along with the limitations of the research method and data collection techniques.

In chapter four, the context of public procurement in Nigeria is examined. Specific issues relating to the stated research objectives and questions are identified and presented within the overarching purview of the legal and institutional frameworks of public procurement in Nigeria with regard to the Nigerian Public Procurement Act 2007 and other regulations enacted to simplify or elaborate on specific sections of the 2007 Procurement Law.

Chapter five presents the research findings and also contextualises these theoretically to elucidate their implications for the research aim, objectives and question. Furthermore, in chapter five, the findings of the research are summarised in order to bring out the salient issues regarding the study's overall contribution to practice and knowledge and its implications for public policy. The findings of the research are discussed in chapter six.

Chapter seven concludes the research. Distinctive policy measures and their implications for strengthening the PPP against the risk factors for corruption in the Nigerian context are also advocated. This concluding chapter to the research also draws from the theoretical contributions and practical applications to propose a corruption risk-factor vulnerability check-list for the management of public procurement in Nigeria.

Chapter 2

Literature review

Chapter 2

Literature review

2.1. Introduction

There is growing academic interest in various aspects of the topic of corruption in relation to public procurement, with various schools of thought putting forward different perspectives to the argument. This chapter interrogates the various arguments with a view to identifying a gap in knowledge about the concept of corruption to be filled by this research; it also lends itself to defining and developing a holistic explanation of the current debates on corruption in relation to public procurement.

2.1.1 Chapter outline

This chapter is designed to provide a detailed review of theoretical arguments on the concept and meanings of corruption, starting with an exploration of the definition of the concept of corruption which reveals that the notion of wrong (partiality) is a common factor underpinning any definition of corruption (Kurer, 2005). The notion of wrong (corruption) in the context of public procurement is then explained in terms of the Principle of Impartiality (sections 2.2). This is followed by a review of the argument on corruption from the perspectives of various schools of thought. These provided a holistic understanding of the meaning and concept of corruption, which was then used to explore issues of corruption in public procurement, and is followed with a succinct summary in tabular form of the key themes of each section of the chapter, the outline content and the key references.

2.2 The conceptual framework

In order to articulate the conceptual framework for the study, this chapter begins with the definition of the concept of corruption before exploring the concept through the framework of the Impartiality Principle (see section 2.2). Applying the Impartiality Principle, the debate on the concept of corruption is explored to highlight the deficiencies in the current body of literature and clearly demonstrate the gap in existing knowledge by explaining the concept and meaning of corruption in the context of the Impartiality Principle. The Impartiality Principle has been found to offer the potential to explain corruption from the perspectives of various academic debates and to use these to explain the associated risk factors that may have made the process of public procurement so vulnerable.

It has been argued that the Impartiality Principle is the lens through which the weaknesses (risk factors) in the social contract of public trust vested in the public office – in this study, the public procurement process in Nigeria – can be studied to advance anti-corruption policy initiatives (Kurer, 2005). The latter will ensure that the process operates with greater transparency to deliver value for the public money allocated for the provision of public goods through the PPP.

2.3 Corruption and Impartiality Principle

As Jain (2001) stated, given that corruption is a social problem, the most challenging aspect for those studying it lies in the difficulty of articulating a working definition that captures its meanings. This difficulty has meant that corruption has been defined from various perspectives – through national laws (Van Roy, 1970; Jain, 2001); public perception (opinion) in the contexts of dishonesty (Colombatto, 2003), fraudulent or inequitable behaviours by those in power, typically involving the

bribery of public officers (Gardiner, 2002; Heidenheimer, 2002); and in terms of the impairment of integrity, virtue, or moral principles in society (Philp, 1997; Gardiner, 2002; Kurer, 2005). From the perspective of Van Roy (1970), it is the use of power, whether legitimate or illegitimate, to obtain profit, prestige or confer benefit on a person, class or group of people contrary to the applicable laws or standards of moral conduct expected of people in leadership positions. According to Tanzi (1998), corruption is the abuse of discretionary public power for private use, gain and benefit. In the public sector, corruption is said to have occurred when, in the course of exercising lawful authority, a government officer manipulates the allocation of rights and privileges in favour of some individuals and at the expense of others (Colombatto, 2003). In this regard, corruption is construed as encompassing transactions where persons constrained by a formal principal-agent relationship take advantage of the discretionary power incumbent on them to knowingly confer undue advantage to either themselves or to any third party.

Furthermore, corruption has been explained by Heidenheimer (2002) to exist where public officers, in exercising public power or authority, reduce the cost of procurement of public services for some customers or contractors or inflate the cost at which services are procured by the state, albeit for compensation. What can be inferred from this example is the giving and taking of bribes in order to compromise extant rules that govern the procurement of specified public goods and services. In the context of the political process of nations, corruption involves violations of oaths of office which commit the officer to upholding the specific non-discriminatory norms governing access to the political process and the allocation of rights, privileges and resources within a given socio-political and economic system (Gardiner, 2002; Miller *et al.*, 2005).

Furthermore, the public officer in receipt of a bribe typically accepts to undertake or forego certain official actions in return for compensatory consideration outside the remit of the prevailing contractual terms of employment (Rose-Ackerman, 1999). Similarly, Compte *et al.* (2005) have argued that corruption is not the monopoly of the public sector. The private sector employee who violates the terms of their employment contract or the duties imposed by a fiduciary relationship is as culpable of corruption as is the power-abusing public sector employee (Argandoña, 2003; Colombatto, 2003). This shows that corruption, defined in its holistic sense, permeates society at large although manifesting differently across the public-private sector divide – a state of affairs with implications for the common good of society (Kurer, 2005). As a result, any research on the subject of corruption must define the concept in relation to the particular framework within which the research question is contextualised, and logically any research on corruption will thus depend heavily on the contextual definition it ascribes to the subject (Lambsdorff and Lambsdorff, 2007).

2.3.1 Types of Corruption

Riley (1998), Doig (1999) and Doig *et al.* (2005) categorised corruption into petty or bureaucratic, grand or political, and systemic or endemic corruption. Explaining further, they said that while petty corruption alters the implementation of policies, as where civil servants circumvent the strict implementation of extant rules – for this study, procurement rules – in exchange for illicit petty financial rewards, by contrast grand corruption involves influencing the formulation of laws, regulation and policies by politicians and other high-profile officers such as permanent secretaries and directors, through such means as revoking licenses and permits or privatising public enterprises so as to favour their own interests in gaining economic monopoly

for illicit substantial financial rewards (Napal, 2006; Heston and Kumar, 2008; Kayrak, 2008).

Systemic corruption, which is essentially the combination of petty and grand corruption and thereby characteristic of the corruption in the public procurement process in Nigeria, is said to exist when corruption is an integrated and essential aspect of the economic, social and political system (Ensor and Duran-Moreno, 2002; Stefes, 2007; Kenny and Søreide, 2008). It is the situation whereby the major institutions and processes, such as the procurement process of the state, are routinely dominated and used by corrupt civil servants and politicians to create a scenario in which most people have no alternative but to deal with corrupt officials (Doig and Riley, 1998; Doig, 1999; Doig *et al.*, 2005).

2.3.2 Impartiality Principle

The notion of partiality (abuse of discretion) (Tanzi, 1998; Tanzi and Davoodi, 1998), which is identified as central to public procurement-related corruption can be explained in terms of the Principle of Impartiality – a strong principle against any form of discrimination in the allocation of procurement opportunities made available to deserving individuals by the state (Keeley, 1995; Kurer, 2005). The principle hinges on the prescription that in allocating public opportunities, the existing rules must be followed strictly as laid down, so that none of the parties competing for public contract is given undue advantage over the others (Colombatto, 2003; Rothstein and Stolle, 2003). Furthermore, the principle has been seen to relate to the subject of corruption, in the context of deviation from defined norms for the administration of public resources within a given system (Kurer, 2005; Rothstein and Teorell, 2008; Rothstein and Eek, 2009).

Furthermore, the state, in allocating public contract opportunities through the public procurement process, should treat equally those who deserve equal treatment so as not to create inequity (Kurer, 2005). This has brought to the fore the realisation that to promote transparency in the process of public procurement, none of the companies that qualify to bid through the Public Procurement Process (PPP) should be discriminated against through a PPP that is inequitable (Rothstein and Stolle, 2003). Because the Impartiality Principle is founded in opposition to the idea of partiality and wrongdoing (Kurer, 2005), it has become a fairly universal concept for explaining corruption in relation to accountability, equity and transparency in the context of government business – for this research, the PPP (Colombatto, 2003; Rothstein and Stolle, 2003; Kurer, 2005). Application of the Impartiality Principle to the study of corruption in the PPP in Nigeria therefore aims at identifying its risk factors in order to develop a corruption risk-factor vulnerability check-list for the management of the public contract process to promote transparency, equity and accountability in the practice of public procurement in Nigeria.

2.4 The debates on corruption

The definitions of corruption explored in section 2.3 suggest that the debates on the concepts are multifarious, as opposed to being single and/or uniform. As Gillespie and Okruhlik (1991) argued, the difficulty in articulating the debate about corruption hinges on the variety of social conceptual frameworks within which corruption can be situated. Corruption is a social problem and so in articulating its conceptual underpinnings, two social research requirements must be satisfied (Bryman, 2009). These requirements, according to Gillespie and Okruhlik (1991), are the capacity to be cross-culturally generaliseable and to be sufficiently precise to make the concept

empirically useful. Over the years, the attempt to articulate a debate on corruption that meets these dual requirements of social research has proved controversial because different schools of thought have provided different perspective debates to the definitions (Elliott, 1997; Gatti, 2004).

What constitutes corruption can be wide-ranging and also varies in different contexts (Keeley, 1995; Kurer, 2005). It is therefore important to explore the concept in terms of the Principle of Impartiality (see section 2.3.2) and its composites of wrongdoing and abuse of trust in order to determine activities that can be regarded as constituting corruption, notwithstanding the social, political or cultural context in which they may be situated (Kurer, 2005). In this regard, the historical work of Heidenheimer (1978), which variously explained corruption from the perspectives of public opinion, public office and public interest, and in which deviation from the norm is used as a determining principle, cannot be overemphasised. Furthermore, there seems to be a general consensus among researchers that corruption involves the misuse of public authority to derive private benefits (Gillespie and Okruhlik, 1991). However, because the question as to the criteria to be applied in determining when and how public authority is misused is still hotly contested, there is the need to conceptualise corruption in terms of a common denominator, such as the Impartiality Principle, that can characterise corruption however it is defined, and from the perspective of whatever school of thought (Kurer, 2005).

Aidt *et al.* (2008) opined that many scholars have construed the meaning of corruption from the perspective of a violation of the legal codes through which the actions of public officers are regulated. The legal code criterion of this explanation makes it a fairly straightforward way to identify corruption. However, its public

sector bias means that it is inadequate to explain private sector corruption, and thus limited in exploring corruption in the public procurement process which encompasses both public and private sectors. Other scholars have also premised their explanation of corruption on broadly public grounds, basing it on either popular public opinion as to what constitutes a corrupt act, or on acts that breach the public interest (Otáhal, 2010). This leads the debate on corruption to hinge on an apparent breach of open market principles regarding the allocation of scarce resources. In articulating the debate on corruption, arguments of the various schools of thought are explored.

The next sections explore analyses of the explanations of corruption provided by various schools of thought through the lens of the Impartiality Principle, with the aim of discovering their common features and their implications for the public procurement process. Ultimately the function of this review is to identify gaps in the existing body of literature that lead to the research question (‘What are the risk factors of corruption in the PPP?’) following which, the analysis of data from case studies can be synthesised for appropriate policy recommendations to justify the research aim and objectives and also to answer research question for the promotion of a regime of transparency, and obviate the negative externalities of public procurement-related corruption for the Nigerian people.

2.4.1 The normative debate

The normative debate according to Li *et al.* (2008) views corruption from the perspective of deviations from acceptable social norms. Norms are (often implicit) standards set for members of a society to conform to and deviations from them will attract informal sanctions from other members of society (Kirsch, 2003). Even

though such deviations may not attract formal sanctions from the state, informal sanctions serve to make violations of moral codes of behaviour repugnant in society (Ocampo, 2000; Everett *et al.*, 2006). It is important to understand the normative nature of corruption and how efforts to resist it can evolve to become part of the norms in the society and this can in turn develop into legal codes that can be enforced against offending individuals. As Luo (2005) further emphasised, even though violations of social norms do not attract state sanctions, they form societal mores that can be coded into law and enforced against erring members.

It is important to consider the impact of constantly changing political environments and to consider this in relation to the normative construction of corruption in society and the implications of this for the fight against official corruption – as seen in the public procurement process (Marong, 2001). Furthermore, the political landscape in a country determines not only the emphasis that a particular normative definition of corruption will impose, but also has implications for the possibility of its being encrypted into official or legal codes, violation of which can attract state sanctions (Khan, 1996; Marong, 2001). The above analysis shows that normative connotations play an overarching role in determining what behaviours can evolve to become a coded corrupt act capable of attracting state sanctions (Windsor and Getz, 2000).

The normative connotations of corruption can be viewed either as deviations from expected behaviour in a manner that is contrary to societal morality or actions that harm the public interest (Khan, 1996; Rose-Ackerman, 1999). While behaviours constituting deviations from ethical codes are regarded as contrary to accepted mores and frowned upon by society, those that harm societal interests are seen as highly improper and attract legitimate criticism (Granovetter, 2005). Both kinds of

deviations from ethical norms, whose consequence is harm to the public interest, are lacking in strict definitions and so cannot be clearly identified in every case for the purpose of prescribing punitive measures (Windsor and Getz, 2000; Warren, 2001). As Granovetter (2005) further posited, ethical norms given statutory codifications take on the status of legal prescriptions, the violation of which attracts state sanctions.

2.4.2 The cognitive debate

According to Granovetter (2005), societal institutions have cognitive characteristics which symbolise their business ethics. These characteristics are rules, gestures, cultural values and operational frameworks that underpin the way transactions are conducted (Li *et al.*, 2008; Webb *et al.*, 2009). The cognitive values that define acceptable behaviours for the conduct of organisational business could be framed in such a way as to discourage corruption (Messick and Tenbrunsel, 1996; Fisher and Lovell, 2008). However, research has shown that organisational rules may also be framed in such a way that corruption is inherently permitted as a matter of organisational ethics (Grieger, 2005; Webb *et al.*, 2009). Institutional rules can also be framed in a way that imposes inordinate obligations on employees who become bound to them through their employment (Jain, 2001). In this regard, individuals within organisations could engage in acts of corruption not only for their personal benefit, but also for the benefit of the organisation (Rose-Ackerman, 2002).

As Moore (2008) explained, the hiring of foreign sales agents to pay bribes to potential institutional customers has been a very productive corrupt practice for many companies seeking to gain and maintain large market shares internationally to further their global expansion drive. This tendency is seen in the Siemens and Halliburton bribery case in Nigeria and illustrates how international companies are

able to engage a global syndicate of agents to bribe potential customers across national borders (Kim and Molleda, 2005; George and Lacey, 2006b). It was revealed that the company, through its international agents, secured very profitable oil and gas contracts in Nigeria in return for bribing willing Nigerian officials (Geojala and Mangum, 2000; Schubert and Miller, 2008b). One of the senior executives is reported as saying:

“... from 2002 to 2006 I oversaw an annual bribery budget of about \$40 million to \$50 million at Siemens. Company managers and sales staff used the slush fund to cosy up to corrupt government officials worldwide. The payments, he says, were vital to maintaining the competitiveness of Siemens overseas, particularly in his subsidiary, which sold telecommunications equipment. It was about keeping the business unit alive and not jeopardizing thousands of jobs overnight.”

(Schubert and Miller, 2008, p.3).

From this perspective, the cognitive debate sees corruption as unethical actions undertaken or endorsed to advance organisational interests, which may or may not directly advance the interests of the individuals undertaking them – hence the need for overt institutional policies that promote transparency (Ayres *et al.*, 2007; Moore, 2008).

2.4.3 Institutional debate

From the perspective of the institutional debate, the interactive influence of cultural and organisational institutions in society has been shown to have effects on the prevalence of corruption (Li *et al.*, 2008; Aidt, 2009). According to this debate, corruption is a normative concept construed in terms of a qualitative departure from

the state of being pristine to the state of being bad or corrupted in relation to the cultural parameters of the society in question (Robbins, 2000; Lambsdorff and Lambsdorff, 2007).

In this regard, the term corruption is associated with decay in societal norms which when applied to social institutions such as states, companies and schools or to processes such as procurement and electioneering processes, connotes dissonance with folkways of central importance accepted without question and embodying the fundamental moral views of a group which serve as compelling guides for individual and corporate conduct (Theobald, 2002; Aidt *et al.*, 2008). Based on this, the institutional debate has maintained that the term corruption describes any transaction that is normatively viewed as bad or falling short of society's moral expectations – making their standpoint congruent with the Impartiality Principle (wrongdoing/abuse of trust) explanation of corruption (Robbins, 2000; Kurer, 2005).

The thrust of the argument of this debate is that concepts do not exist independent of social systems such as public or private organisations, the family and religious institutions (Li *et al.*, 2008). By this reasoning, corruption is the result of inequitable institutional interactions within or across social systems (Johnston, 1998; Heidenheimer, 2002), the result of which is inequity in the manner in which opportunities are distributed amongst equally deserving members. The crux of the institutional theory arguments relate to the processes through which social institutions influence the activities of organisations in society and the effects these may have on the possible effects on corruption at the societal level (Collier, 2002).

The rule-based regulatory framework, and normative and cognitive process aspects of social institutions, depicted by the institutional theorists as overarching in the study of institutional corruption, have been variously argued as distinctively evolving while at the same time interacting to produce a chain of activities that explain varying scales of corruption in various institutional settings (Li *et al.*, 2008).

2.4.4 Regulatory framework debate

The regulatory framework debate is an offshoot of the institutional construction of the explanation of corruption that derives from the fact that there is a regulatory framework, based on legal rules that govern the way in which the business of particular institutions is conducted (Damania *et al.*, 2004; Li *et al.*, 2008). While the framework prescribes behaviours expected of people vested with the responsibility of administering the resources of an organisation through defined processes like the public procurement process, it also outlines punishments for behaviours that fall short of the framework which are enforced by coercive sanctions of government (Cameron *et al.*, 2009). In general, public procurement activities in social institutions around the world are designed to operate within defined regulatory frameworks meant to check organisational corruption (Li *et al.*, 2008).

To promote equity, the government prescribes various legal frameworks for regulating various different aspects of institutions and in particular, the means through which they procure goods and services and vice versa (Méon and Weill, 2010). In order to avoid sanctions, organisations that operate within this framework must conform to its stipulations in the conduct of their business. This approach advances the breach of a recognised regulatory framework as the defining feature of corruption.

2.4.5 The organisational corruption debate

The organisational debate on corruption argues that at the societal level, the prevalence of organisational corruption depends on the adequacy of the regulatory frameworks and the strictness with which they are observed by the organisations operating within them (Luo, 2005). Luo (2005) further argued that corruption is driven by organisations that set out to compromise public officials so that they can operate outside set regulatory frameworks. Luo (2005)'s explanation hinges on the strict observance of anti-corruption framework prescriptions for organisations as the panacea for corruption in the face of the competition that arises from the distribution of public opportunities through the public procurement process (Findlay and Stewart, 1991; Gregory, 1995b; Fijnaut *et al.*, 2002). According to Ashforth *et al.* (2008), organisational corruption exists mostly due to profit-driven private and public organisations that offer inducements to public officers in order to obtain illicit advantage. The authors further explained that organisations in search of illicit advantages can be motivated to compromise public officers by offering bribes to secure illicit advantages in specific procurement-related transactions – a major propensity in the growth and spread of institutional corruption which is becoming difficult to eradicate.

Furthermore, the prevalence of corruption within organisations in a society can be a reflection of the extent of corruption (Sanyal and Samanta, 2002; Schmidt, 2007), especially in third world countries where institutional corruption has been said to be partly the result of a cumbersome regulatory bureaucratic system that makes it difficult to do business transparently (Transparency International, 2011). It is stated that a regulatory environment that imposes unnecessary barriers to business

development makes it possible for officials to actively engage in rent-seeking based on the corruption opportunities generated. Similarly, Luo (2005) explained that uncertainties in national regulatory environments, making it difficult or impossible for businesses to obtain the permits and other necessary approvals to enable them to operate legally, are an incentive for firms to engage in corruption.

According to Rodriguez *et al.* (2005), by making laws and regulations for the establishment of appropriate institutional frameworks, governments not only influence but also dictate the pace of anti-corruption activities in the economy. Governments, through appropriate agencies, set the rules that govern their procurement process (Erridge and Greer, 2002). Similarly, Kaufmann (1998) has said that government rules and institutional frameworks such as the procurement process are intended solely for the public benefit, but their implementation has often been beset by the underhand presence of corruption which has operated to undermine the essence of policy and made it open to abuse for private gain at the expense of wider society.

Furthermore, institutional corruption weakens the capacity of institutional frameworks to reward merit by awarding public contracts to the most competent bidders through the public procurement process (Søreide, 2002). The implications of this are that the merit and competence envisaged in the public procurement process (Sanchez Graells, 2013; Molina, 2010) are set aside so that the rights and privileges emanating from the procurement process are channelled to unmerited organisations in exchange for bribes. The proponents of this debate on corruption, who pivot the reason for corruption on the compromise of public institutions and/or public officers, submit that where these exist, efficient and innovative individuals and organisations

are left without any alternative to corruption in seeking contracts and other forms of patronage that the state can offer (Tanzi, 1998).

Similarly, Luo (2005) has also argued that a weak organisational environment is an incentive to corruption. He further explained that weak institutional environments for public procurement, coupled with loose procedural and administrative control structures, make the business environment prone to corrupt exploitation. Therefore strengthening institutions and providing an operational environment that makes abuse of discretion difficult, as Li *et al.* (2008) stated, can provide a preventative to corruption in the context of the regulatory framework of public procurement. Ensuring this would make it difficult for public procurement-related discretion to be abused in exchange for bribes and other acts of patronage (Wei-dong, 2006).

Political and administrative leadership synergy is needed so that institutional structures can constantly evolve in response to dynamics in the procurement process that predispose it to corruption (Vann, 2011). As proposed by Xin and Rudel (2004b), strengthening institutional environments within which the task of public procurement is conducted is a prerequisite for ensuring transparency and maintaining integrity, so that the processes are strengthened against partiality.

2.4.6 The threshold effects debate

It has been asserted that strengthening state institutions by instilling transparency in the processes by which government regulates the economy can be an effective means of combating corruption (Lindstedt and Naurin, 2006). This assertion, which has been widely researched, has been helpful in articulating the problem in terms of risk factors that may have predisposed the public procurement process to corruption

(Pellegrini and Gerlagh, 2005). Similarly, an absence of uniformity (impartiality) in the application of the concept of transparency across social, economic and political space has been suggested to have implications for the public procurement process that it begets (Bobonis and CÃ, 2011). This is because a socio-political system that may have emerged from an electoral process that is not free and fair cannot be seen to guarantee equality of the opportunities existing in the political space, which are often distributed through the process of public procurement (Freille *et al.*, 2007).

It has been argued that transparency signifies the absence of corruption, while the lack of it is synonymous with corruption (Yehoue, 2007). This theory has, however, been criticised as very misleading, because as Lindstedt and Naurin (2006) explained, just making information available or making people aware of the processes involved in the conduct of government business cannot in itself prevent corruption if inherent risk factors that may result in advantages being conferred upon persons inequitably are not identified and dealt with.

In addition to the popular concept of transparency as a prerequisite for all efforts at combating systemic corruption (Lambsdorff and Lambsdorff, 2007), identifying the risk factors that may make the public procurement process lack impartiality can ensure that corruption, however construed, can be identified and dealt with (Marquette, 2003; Langseth, 2006). Lindstedt and Naurin (2006) further explain that the availability of information about government business cannot be of value in any effort towards fighting corruption unless specific risk factors, which can be exploited to confer improper advantages on predetermined bidders for government contracts administered through the procurement process, are identified and eliminated. It therefore follows that the importance of risk factors that predispose the procurement

process to corrupt exploitation are as important as the need to make the conduct of government business transparent.

Furthermore, Ribadu (2006a) has argued that not identifying and dealing with corruption risk factors can provide an explanation of why, in Nigeria, the implementation of the transparency agenda alone has not mitigated the growing problem of corruption, especially in the public procurement process. Expanding his argument further, he states that even though elaborate measures aimed at achieving transparency have been implemented for the procurement process in Nigeria, corruption still features prominently meaning that the effectiveness of transparency as a stand-alone device for fighting corruption has been overstated, hence the need to ensure that the Principle of Impartiality is also embedded in the process.

2.4.7 The Principal-Agent debate

The Principal-Agency debate on corruption is a general concept of social relations involving the delegation of authority in such a way that generally results in problems of control (Kiser, 1999). The theory has been applied to a broad range of substantive contexts where the concept of delegated authority can lead to the abuse of discretion (Shapiro, 2005b). In the classical social contract context typical of the public procurement process, the theory explains the social contract imposed by the fiduciary relationship between the procurement officer (agent) and the principal (Gregory, 1995a; Shapiro, 2005a). The agent in a fiduciary relationship has a certain role and responsibilities, going beyond which would mean engaging in partiality (Damania *et al.*, 2003b). It therefore follows that setting procedural guidelines transparently in terms that instil impartiality is a necessary check on the agent in the agency relationship (Archer, 1996; Gutner, 2005).

A key responsibility of the agent in a process such as public procurement is the need to maintain confidentiality so that none of the bidders is conferred any advantage over the others (Pierce Jr, 1989; Shapiro, 2005b). Management of all the stakeholders in the delegated authority has become an ethically-based principle for approaching issues of agency contracts between the agent and the principal or the stakeholders who delegated authority (Miller, 2002; Miller *et al.*, 2005). The impartial agent, in fulfilling their fiduciary duties, will in addition to not taking personal profit, also ensure that the weak and vulnerable as well as the strong and mighty are treated equally in the procurement process (Kiser, 1999; Marens and Wicks, 1999).

As Hill and Jones (1992) also argued, an important point in agency debate is seen to be its focus on the ways principals try to ensure that their agents are not inequitable in the exercise of the power delegated to them. From these analyses, the key issue of agency relations is how to ensure that after delegating authority, which can be used to administer public procurement; it is not used in a way that promotes inequity-partiality.

2.4.8 The state capture debate

State capture is defined as the propensity of firms to shape the underlying rules that govern the processes leading up to the award of government contracts (Søreide, 2002). According to Makkai and Braithwaite (1992), this debate explores the relationship between regulatory agencies and the business environment in which they conduct their regulatory functions and looks at why they have persistently been beset by corruption (Hellman *et al.*, 2000; Damania *et al.*, 2003a).

A new element to the long-held view of the agency debate explained in section 2.4.7. is the notion that the activities of agents who abuse delegated authority for personal profit can be exposed by identifying the vulnerabilities (risk factors) in the agency relationship and by involving vocal advocacy groups through aggressive investigative journalism to monitor and report abuse (Boehm and Olaya, 2006). This, Boehm and Olaya (2006) argued, will expose the inherent corrupt activities towards which they may have deployed the authority delegated to them (Priest, 1993; Boehm, 2007a).

Furthermore, there are circumstances in which organisations may resort to desperate measures to evade economic policy aimed at ensuring that undue advantage is not conferred on one organisation over others (Sherman, 1980; Boehm, 2007b). Taking this argument further, Boehm (2007a) has suggested that under cumbersome and ambiguous administrative procedures, business organisations will seek to evade regulations through a number of means. They may do this by resorting to offering bribes to local inspectors, and other officers vested with the responsibility of enforcing relevant regulations to ensure that they do their business in accordance with established rules and regulations (Yakovlev and Zhuravskaya, 2006; Pesic, 2007). Some very influential businesses have also actively resorted to lobbying high-level government officials in order to resist or frustrate policies aimed at identifying the risk factors that will ensure that through transparency, corruption becomes difficult to perpetrate (Yakovlev and Zhuravskaya, 2006).

The tendency of businesses to engage in desperate efforts to compromise officers of government and by extension wriggle out of state regulations, such as tax regimes aimed at promoting accountability and social justice, is greater in contexts of

administrative, political and social instability (Steves *et al.*, 2003; Haarhuis and Torenvlied, 2006). Similarly, Boehm (2007a) has said that in politically unstable regimes, the institutions necessary to monitor and enforce compliance with relevant regulations aimed at promoting transparency are weak. Taking his argument further, he said that in such countries, including Nigeria and Mexico, corruption is more pervasive because compliance with regulations is more difficult to accomplish and as a result, companies go the extra mile to evade the official procedures through corruption.

Corruption caused by 'state capture'⁴-style influence has been shown to produce the consequence that some companies are conferred undue advantages over others (Hellman *et al.*, 2000). In this way, companies that have established inordinately close relationships with the state acquire a legacy of influence which enables them to enjoy more privileges of access to public space – the consequence of which is improper competitive advantage over other companies that have limited access and influence (Rose-Ackerman, 2004; Lambsdorff and Lambsdorff, 2007).

2.4.9 Implications for this study

Following the definitions and explanation of the types of corruption presented in section 2.3 and the detailed exploration of the debates in 2.4, the concepts of corruption as a social problem have been variously explained to mean: the use of power for personal gain (Van Roy, 1970); abuse of discretionary public power for private benefit (Tanzi, 1998; Tanzi and Davoodi, 1998); and the exercise of lawful

⁴ Corruption being so endemic as to influence state/government policies (Hellman, J.S., Jones, G. and Kaufmann, D. (2000) 'Seize the state, seize the day: State capture, corruption and influence in transition', *World*.)

authority to influence the allocation of rights and privileges in favour of some predetermined individuals at the expense of others (Colombatto, 2003).

In relation to public procurement as defined in sections 1.1 and 1.2, corruption is the appropriation of public goods for private use, in violation of the extant rules⁵ (Søreide, 2002). In Nigeria, ‘*corruption is an act which results in any right, interest, title or privilege being illegitimately conferred on any person*’ (National Assembly Nigeria, 2000) and in the context of public procurement, corruption means:

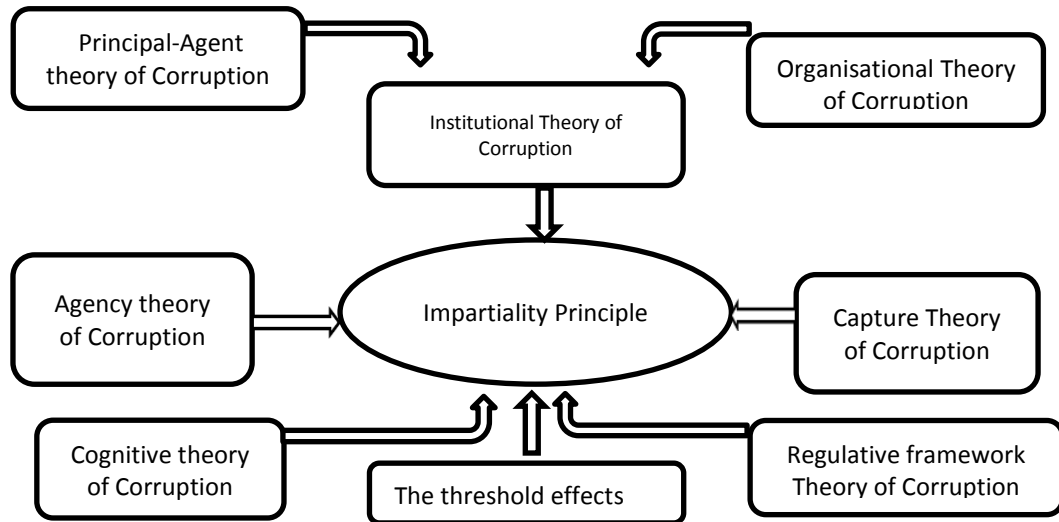
“offering, giving, or promising to give, directly or indirectly, to any officer or employee of an Procuring Entity or other governmental/private authority or any individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method following by, a procuring Entity in connection with the procurement proceeding.”

(Bureau of Public Procurement, 2008e).

Common to all the definitions of corruption presented above is the notion of misappropriation (abuse of discretion) (Kurer, 2005); therefore, **the term corruption for this study is defined as ‘partiality and/or abuse of power to profit in exercise of public procurement-related discretion’** as encapsulated in the Impartiality Principle (Tanzi, 1998; Tanzi and Davoodi, 1998) (see Section 2.3.2). The relationship between the various schools of thought on corruption has been presented in diagrammatic format in figure 1.

⁵ Existing rules guiding public procurement.

Figure 1: Corruption debates and Impartiality Principle



As shown in Figure 1 above, central to all the theories of corruption reviewed is the notion of discrimination and distributive justice upon which the Principle of Impartiality (explained in section 2.3.3) is based. The perceived and actual advantages derived by companies which enjoy a state capture-style of influence means that they would as a matter of policy want to entrench it in the processes through which public contracts are awarded (Lenhoff, 1954). This would mean that if left unchecked, it would become an acceptable informal practice that other companies and new entrants would resort to as a survival strategy in order to gain access to the opportunities inherent in public procurement (Huther and Shah, 2000; Kpundeh, 2004; Kaufmann, 2005).

2.5 Corruption and public procurement

Public procurement has been described as being particularly susceptible to corruption involving abuse of power for personal profit due to the high amounts of money involved (Keeley, 1995; Søreide, 2002; Glenn *et al.*, 2007). According to

Thai (2001), in spite of efforts by governments and development agencies around the world towards improving the practice of public procurement, there has nevertheless been a dearth of academic research in this field. Existing studies show that corruption in public procurement has been mainly through abuses of the prescribed procurement processes, perpetrated by procurement officers themselves, for personal profit or for the benefit of other predetermined individuals (Konstantin *et al.*, 2006). For example, Glenn *et al.* (2007) posited that given the amount of money involved, public procurement is characterised by extreme competition between bidding companies – a situation that leads them resort to corruption to win the contract.

In relation to the public procurement process, a number of risk factors have been identified as capable of leading it to fail the test of impartiality (Doig, 1995; Kurer, 2005). These risk factors, according to Kurer (2005), Aidt (2003), Gentzkow and Shapiro (2008), and Rothstein and Eek (2009), range from government involvement in the open market; weak institutional capacity and absence of competition; over-regulation of private activity; expanded public procurement and poor remuneration of civil servants; to compromise of confidential information.

2.5.1 Government and the open market

Certain forms of government involvement in transactions in open or private sector markets are regarded as capable of generating corruption (Lambsdorff, 1999; Rose-Ackerman, 1999). In many developing countries, corruption in the form of bribery for public contract assignment thrives because the practice is so entrenched and endemic that it seems to be the normal thing to do in order to get a contract from the public sector (Besley and Burgess, 2002). As argued by Aidt (2003), it is a widely held view in these countries that losing a contract because another company bribed

the officials to get the contract is frustrating, and leads to the fear that a company which continues to lose out in the competition leading up to the award of contracts in this way will face the prospect of being driven out of business in the long run. As a result, many companies are prepared to resort to paying bribes to officials charged with the responsibility of administering the public contract process.

The situation where many companies are prepared to resort to bribing officials in a bid to win a contract that probably only one of them might win means that the respective companies come to pay bribes as a matter of company policy. The net effect of this is that all companies involved in the bidding, except the one that eventually wins the contract, make a financial loss (Bardhan, 1997). Furthermore, this creates a situation where even though all the companies would be better off not paying bribes, they still pay, because of the assumption that if they do not pay or do not pay enough, others' bribes, or the amount that others are prepared to bribe, will mean they do not get the contract (Van Rijckeghem and Weder, 2001). The implications of this for both the companies and the public contract administration process are negative.

The majority of companies that get involved in bribery campaigns for contracts do not win the contract and inevitably lose the bribe money (Gentzkow and Shapiro, 2008). Similarly, the contract price is inflated because the companies that pay bribes in order to achieve the award of public contracts will inevitably set their price so as to recoup the bribe money in addition to making a profit from the contract sum, in order to remain in business. The result is a worsening economic environment and social pressure on otherwise non-corrupt companies to succumb to corruption.

2.5.2 Weak institutions

Political commitment and strong institutional capacity are central to the success of anti-corruption reforms (Morrissey, 1995). Where institutional capacity is weak, corruption can be perpetrated by circumventing the stated process of allocating public goods and services in favour of a select few, at the expense of the interest of the greater majority of the people (Hellman *et al.*, 2000). The effect of weak regulatory institutions has always been that the bigger companies, in particular, are able to engage in wholesale bribery of the bureaucracy, as was the case in the Siemens and Halliburton bribe-for-contract cases (Sidhu, 2009; Lewis, 2010). In these two cases of corruption, multinational companies were able to take advantage of weak institutional capacity in the public procurement process to engage in elaborate schemes of bribery for contracts in a way that gave them a spiralling competitive advantage over other companies that bid against them for the contracts (George and Lacey, 2006a).

2.5.3 Excessive control of private activity

According to Collier (2000), the main reason for the increase in cases of corruption in many African countries is the rise in opportunities for engaging in corruption. He further argued that over-regulation of private activity by the public authority is one of the main sources of official corruption in Africa. When private activities are subjected to lengthy bureaucratic procedures that make it very difficult to obtain the necessary government authorisation needed to operate legally, the tendency will be for private businesses to seek to bribe their way through (Collier and Gunning, 1999).

In some instances the processes are not only cumbersome, they are also unclear and it could take genuine private sector organisations an unnecessarily long period of time to obtain permits and licences which they need in order to engage in business (Collier, 2000; Collier and Gunning, 1999). As Ikejiofor (2009) illustrated, the processes for obtaining building plan approval in Nigeria are not only cumbersome, they are designed in such a way that it is almost impossible to advance through them without giving some kind of inducement to officials. The author further observed that just like the processes for obtaining other government permits, all the stages from the initial inquiry to the main application are designed in such a way that without bribing officials, it could take up to a decade for a single approval to be obtained. On the other hand he said that companies that bribe their way through obtain the necessary approvals within weeks of commencing the process; the implication being that organisations that want to avoid bureaucratic delay in the approval process are pressurised into bribery and corruption in a bid to obtain approval quickly and by extension remain in business.

It has been argued that in an over-regulated business environment, corruption may positively contribute to growth and development (Méon and Sekkat, 2005). This is because it avoids the consequences in terms of delays in an over-regulated business environment, characterised by a defective bureaucracy that tends to freeze up processes for businesses that operate a corruption-free policy. However, corruption entered into in order to get through the very difficult administrative realities in a bureaucracy inevitably creates and reinforces further inefficiencies, which can only make an already bad regulatory framework worse. Furthermore, although bribery in a difficult and unpredictable regulatory environment may have the apparent benefit of enabling businesses to obtain the necessary permits and licences, it may also

impose additional costs, which have an impact on the final cost of providing services (Méon and Sekkat, 2005). The explanation above shows that the business environment that is burdened with over-regulation and an unpredictable bureaucracy has the potential to drive business firms into bribery as a coping strategy.

2.5.4 Expansion in procurement activities

Public sector corruption has been associated with the relative growth in public sector procurement activities in the past four decades in Africa (Collier, 2000; Basheka, 2008). Corruption in the public procurement process spans the pre- and post-tender stages of public procurement (Stapenhurst and Kpundeh, 1999; Iossa and Martimort, 2011). Corruption at the pre-tender and tender stages in public procurement consists of a deliberate act of compromise of the guidelines and rules governing the tendering process, with the aim of securing a predetermined result. It has the effect of eliciting various reactive measures aimed at combating it (Kenny *et al.*, 2007; Osei-Tutu *et al.*, 2010).

Post-tender corruption – which involves the payment of bribe money variously as a ‘kick back’ (bribe for award of contract), either directly to the officials involved in the administration of the procurement process or through proxies in fulfilment of illicit promises made in the run-up to the award of the relevant procurement contracts – is an issue that has remained almost unexplored (Martin, 1997; Anti-Corruption Initiative for Asia-Pacific, 2006; Larmour, 2007). It is therefore important for this research to study the relationship between the pre-tender, tender and post-tender stages in the public procurement process so as to isolate the inherent risk factors that can predispose the process to corrupt exploitation.

2.5.5 Violation of procurement rules

The manipulation of set guidelines for public procurement in favour of a specific bidder over other bidders is a major problem of accountability in the public procurement process (Søreide, 2002). The violation of the rules guiding the administration of the procurement process can be crafted in such a way that the impropriety will be concealed and the bidding process will seem to have been genuinely conducted in accordance with extant rules (Yukins, 2006). Exercise of discretionary powers to invite tenders from the pool of would-be bidders must be subjected to oversight checks and balances to avoid abuse by those mandated to discharge such powers.

According to Basheka (2008), in order to ensure that the companies that offered bribes win the contract, the officers in charge of the procurement process are in the habit of limiting the number of bids they invite. In addition, they also ensure that the complete body of information relevant to a successful bid is only made available to the favoured company, to the disadvantage of the other bidders. Furthermore, restrictions placed on the time allowed for potential bidders to submit bids also provide a potential opportunity for the process to be compromised (Søreide, 2002). For example, information might be given to the preferred company well before it is made officially available to other bidders, who are constrained in the quality of their submission by the short time given to respond with a bid (Ekpenkhio, 2003). In scenarios like this, it would appear to all extents and purposes that the bidding process has provided a level playing ground for the bidding companies (Caroli, 2006). This may not be the case, because implicitly those companies that have compromised the officers in charge through the payment of bribes or other

inducements could have apparently been given the information long before it became officially available to other bidders.

2.5.6 Compromise of confidential information

Public officials in possession of information which, if made available to private business concerns, could enhance their competitive advantage over other companies, are a potential source of corruption, especially if the information is relevant to procurement activities that have not been made public. The person in whose hands confidential information is vested could also be given discretionary powers regarding how that information is used in relation to processes such as the public procurement process (Golden and Chang, 2001; Della Porta and Vannucci, 2007). Scenarios like this, according to Søreide (2002), expose the affected officials to the temptation of using their special knowledge as a source of rent-seeking activities. If appropriate checks and balances are not in place, confidential information could be offered for a fee to firms who seek to acquire improper competitive advantage over would-be competitors in the run-up to a competitive bidding process.

2.6 Corruption and Nigeria

As explained in section 2.3, corruption is the misuse of a position of authority whether legitimate or not, for personal gain (Doh *et al.*, 2003; Shleifer and Vishny, 1993; Tanzi, 1998; Kurer, 2005). In Nigeria, corruption is an act which results in any right, interest, title or privilege being illegitimately conferred on any person (National Assembly Nigeria, 2000) and in the context of public procurement in Nigeria, corruption is any action or behaviour calculated to vitiate the public procurement process to influence the selection of beneficiaries of public contracts for the supply of goods and services (Bureau of Public Procurement, 2008e).

Ufere (2005) argued that the problem of corruption is not only endemic in public procurement in Nigeria, but that it is mainly perpetrated by two set of actors – the procurement officers and their private sector collaborators who benefit from contracts granted through the procurement process. Explaining further, he stated that narratives of corruption in the Nigerian procurement process demonstrate how private companies that survive only or mostly on government contracts deliberately create the enabling environment for corruption. They do this by subverting the formal procurement process, offering bribes in either cash or kind to public officials in exchange for the award of contracts, with the sole aim of making inequitable private gains from public procurement.

Arguing further, Ufere (2010) stated that corruption in the Nigerian public procurement process has two sides to it. The demand-side, which is represented by the government officials that have procurement responsibilities, and the supply-side represented by the private sector contractors who would offer money, gifts or other inducements in order to influence the decisions of the procurement officer. Furthermore, the demand-side of corruption in the public procurement process is exemplified in two stages: firstly, petty, low-level corruption where junior officers demand money from contractors before doing their various duties such as giving out of information pertaining to a particular procurement activity, and secondly, at the strategic level where senior government officials demand bribes in order to influence the award of contract administered through the public procurement process to the contractor or even out-rightly causing appropriated public funds to the contractor, in which case they would share according to an agreed percentage (Adewunmi, 2011; Ufere, 2010).

Furthermore, Dike (2008), after examining data on procurement related corruption in Nigeria, concluded that corruption in the process is the product of a complex and recursive interplay between skilled agents of private firms and the hierarchy of the public procurement process, with the aim of manipulating the process in favour of a pre-determined firm from among the firms competing for a particular contract administered through the procurement process.

Corruption is a major problem with global ramifications and is manifest throughout the development process (Tanzi, 1998; Transparency International, 2010). In Nigeria, corruption has been linked to public office holders who misappropriate public funds for private use through the conduit of the public procurement process (Ajayi and Abdulkareem, 2010). The return of Nigeria to democratic governance in 1999 raised national consciousness about the problem of public procurement-related corruption (Fagbadebo, 2007). As a result, two commissions, namely the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC), were formed by act of the Nigerian National Assembly and given clear mandate to fight corruption in all its ramifications in the country (National Assembly Nigeria, 2000; National Assembly Nigeria, 2004).

According to Harvey (2009), in Europe the scale of corruption has been generally reported with a sensationally zealous underpinning. However, in Nigeria, reporting corruption has focused mainly on the large amount of money involved, greed as its motivation and the methods adopted for hiding its proceeds but failing to examine the source of it, which is traceable to the public procurement process (Tanzi, 1998; Ajayi and Abdulkareem, 2010; Transparency International, 2010).

2.7 Research question and gap highlighted

This review of the literature highlighted the research question – what are the risk factors of corruption in the Nigerian PPP? – by examining a range of debates on corruption. These debates lead to an attempt at an explanation for the corruption which arises in the process of public procurement between government officials (procurement officers) and organised private sector operators. It also reveals the propensity of procurement officers for corruption by way of deliberate compromise of extant procurement rules for private gain. Contractors, in their desperate bid to outplay one another to achieve lucrative government contracts, have also deliberately created the demand (opportunity) for corruption, an opportunity which the procurement officers have always taken advantage of by stage-managing the procurement process so that the contractor pre-determined by them is eventually awarded the contract.

Another notable outcome of the review of literature is the identification of Ufere's (2010) and Adewunmi's (2001) findings that numerous managers in private companies seeking government contracts in Nigeria had designed corruption strategies and made the decisions to pay bribes. Developing their findings further, the authors identified three behaviours which they argue can be seen to be responsible for the deliberate drive by private companies and their managers to corruptly induce procurement officers to award their companies contracts administered through the procurement process.

Firstly, they identified choice behaviour, which describes the actions of private company executives as they relate to deliberate bribery decisions and the choice of a

delivery mechanism through which they deliver bribes to government officials. The second is the capture behaviour. This relates to a proactive and deliberate initiation of bribery by the private company management, who generates corruption opportunities which they use as bait to compromise those government officials who make procurement decisions. The third reason is that of consent by private companies to devise corruption strategies to compromise the procurement officers and by extension, the public procurement process, because they depend solely on government contracts to remain in business.

From the analysis above, it is clear that corruption, contextualised from the perspectives of the institution, the threshold effect or agency captures debates, is explained in terms of the abuse of process, discretion or partiality. The result of this is that even though the public interest effect is essentially the result of the public morality concept of corruption translated into law, its violation nonetheless still attracts sanctions (Carse, 1998). Furthermore, discussions involving public opinion and public interest debates necessarily describe different phenomena, having different causes and effects. While the debates on the violation of the public morality concept could be in the context of legitimate criticisms on the part of the violators, the debates on the violation of the legal codes will be seen in the context of state sanctions.

The review has also shown that, notwithstanding the social indices upon which it is based, the notion of deviations from established procedure in dispensing public goods, or violation of certain societal rules of impartiality that govern the conduct of public or private business, have always featured prominently in debates on the subject of corruption. As Kurer (2005) noted, the Principle of Impartiality is a

common index that underpins the definition of corruption, regardless of the perspective from which it is posited. The Impartiality Principle explores the subject of corruption within the context of deviations from defined norms for the allocation of public resources within a given system.

Existing studies have focused on different aspects of the causes of public procurement-related corruption. While some have shown that the causes vary from one country to another (Konstantin *et al.*, 2006), others have revealed that they vary across levels of government, depending on the amount of public funds available (Thai, 2001; Auriol, 2006). Similarly, aggressive competition for government contracts by companies, owing to their level of dependence on public contracts for survival, has been identified as the reason why they resort to corrupt means of winning government contracts at all costs (Matechak, 2002; Arrowsmith and Trybus, 2003). Furthermore, other studies by Svensson (2005), Burguet and Che (2004), and Celentani and Ganuza (2002) have reported a general consensus among procurement experts, to the effect that the lower the capacity of a country to detect and deal with corruption through appropriate checks and balances, control systems and law enforcement, the greater the susceptibility of its public procurement process to corruption.

Büchner *et al.* (2008) explained that procurement officers who exercise discretion in determining which company is awarded government contracts are prone to demanding or accepting proffered bribes that compromise the bidding process. Furthermore, corruption in the public procurement process has also been reported as consisting of fraudulent behaviour by officers who collude with prospective contractor(s) to compromise the process in the latter's favour and to the disadvantage

of the others, sometimes in exchange for favours (Andrews, 1989; Jain, 2001; Obanda Wanyama, 2010). However, favours offered by a contractor to the procurement officer, although they are illegitimate and could vitiate his sense of impartiality, may not necessarily amount to a crime that can be punished (Arrowsmith and Wallace, 2000). This view is complemented by Murray's (2009) assertion that the absence of effective control mechanisms means that procurement officials are open to making procurement decisions based on personal preferences, derived from their primary interests, career prospects, social contacts or monetary rewards, as opposed to being guided by principles of transparency, equity and fairness to all competing companies. In Nigeria, corruption in public procurement has been widely reported as being one of the reasons for Nigeria's underdevelopment (Ribadu, 2006b; Adeniran, 2007; Adewunmi, 2011); however studies aimed at isolating the reasons why public procurement in Nigeria is easily beset by corruption have not been conducted to date.

This review has shown that research on corruption in the public procurement process remains scant, and that which exists is mainly focused on the causes behind corruption of the procurement process, such as greed, unrestricted discretion by procurement officers and lack of inbuilt check and balance mechanisms. Others have focused on the effects of corruption in public procurement on citizens (Erridge and Greer, 2002); and there has also been some examination of reform efforts aimed at improving the practice of public procurement and developing it into a reputable profession (Trionfetti, 2000).

Despite the widespread level and consequences of corruption in Nigeria, which mainly has its root in the public procurement process (Makinde, 2003; Olowu, 2001;

Transparency International, 2009), there has been no effort at researching and understanding the variables that underpin its growth and spread and this explains why it has withstood remedies aimed at curtailing it. This shows an absence of research, particularly in Nigeria, which is specifically aimed at studying the underlying risk factors in the process of public procurement that might be able to explain why it is susceptible to corruption in order to develop a corruption risk-factor vulnerability check-list for management of public procurement in Nigeria – hence the need for this study which is premised upon the research question: **what are the risk factors that promote corruption in public procurement in Nigeria?**

2.8 Chapter summary

This review has articulated corruption within the purview of the Principle of Impartiality to explain the meanings and categories of the concept of corruption in relation to the public procurement process. The review indicates that the tripartite manifestations of corruption in terms of petty, grand and systemic corruption in the process of public procurement are found in the notion of partiality encapsulated in the Principle of Impartiality. This is a strong principle against any form of discrimination in the allocation of state goods and contractual opportunities through the process of public procurement (Colombatto, 2003; Doig *et al.*, 2005; Kurer, 2005). This principle provides an all-encompassing means through which any wrongdoing and abuse of discretion for private gain can assume the meaning of corruption for the purpose of anti-corruption policy frameworks that promote transparency in public contract administration (Doig, 1995; Kurer, 2005; Rothstein and Eek, 2009).

The review of literature for this research has also been summarised in a tabular format below. Table 1 explores the concept, meaning and types of corruption in relation to the Impartiality Principle. Table 2 presents some key debates on the concept of corruption and table 3 presents the key elements of the risk factors that contextualise the concept of corruption within the process of public procurement.

Table 1: The concept, meaning and types of corruption in relation to Impartiality Principle

Concept	Characteristics	Outline description	Key references
Definition, meaning and conceptual framework	Difficulty to ascribe or articulate a single definition. This difficulty has meant that corruption has been defined from various perspectives.	Corruption defined based on: <ul style="list-style-type: none"> • National laws; • Public perception (opinion) • In the contexts of dishonesty • Fraudulent or inequitable behaviours by those in power • Typically involving the bribery of public officers 	(Van Roy, 1970; Philp, 1997; Tanzi and Davoodi, 1998; Jain, 2001; Gardiner, 2002; Heidenheimer, 2002; Colombatto, 2003; Philp, 2006)
Types of corruption	Corruption is broadly categorised into three types	<ul style="list-style-type: none"> • Petty corruption alters the implementation of policies by civil servants, chiefly by circumventing the strict implementation of extant rules such as procurement rules in exchange for illicit petty financial rewards • Grand corruption involves influencing the formulation of laws, regulation and policies by politicians and other high-profile officers such as permanent secretaries and directors, such as revoking licenses, permits or privatising public enterprises in their favour to gain economic monopoly for illicit substantial financial rewards • Systemic corruption is essentially the combination of petty and grand corruption, and is thereby characteristic of the corruption in the public 	(Doig, 1995; Doig and Riley, 1998; Riley, 1998; Doig, 1999; Ensor and Duran-Moreno, 2002; Doig <i>et al.</i> , 2005; Nepal, 2006; Stefes, 2007; Heston and Kumar, 2008; Kayrak, 2008)

		procurement process in Nigeria. It is said to exist when corruption is an integrated and essential aspect of the economic, social and political systems	
Impartiality Principle	The notion of partiality (abuse of discretion).	<ul style="list-style-type: none"> • A strong principle against any form of discrimination in the allocation of procurement opportunities made available to deserving individuals by the state • The principle hinges on the prescription that in allocating public opportunities, the existing rules must be followed strictly as laid down, so that none of the parties is given undue advantage • The principle has been seen to relate to the subject of corruption, in the context of deviation from defined norms for the administration of public resources within a given system 	(Van Roy, 1970; Rothstein and Stolle, 2003; Kurer, 2005; Rothstein and Teorell, 2008)

Table 2: Some key debates concept of corruption

Types of debate	Characteristics	Outline description	Key references
Normative debate	This school of thought views corruption from the perspective of deviations from acceptable social norms	<ul style="list-style-type: none"> • Norms are (often implicit) standards with which members of a society are supposed to conform and deviations from them will attract informal sanctions from members of society • It is important to consider the impact of constantly changing political environments • Violations of social norms form societal mores that can be coded into law that can be enforced against erring members 	(Khan, 1996; Windsor and Getz, 2000; Marong, 2001; Bukovansky, 2002; Kirsch, 2003; Granovetter, 2005; Luo, 2005; Li <i>et al.</i> , 2008)
Cognitive debate	The cognitive values define acceptable behaviours for the conduct of organisational business and could be framed in such a way as to discourage corruption	<ul style="list-style-type: none"> • Organisational rules may also be framed in such a way that corruption is inherently permitted as a matter of organisational ethics • Institutional rules can also be framed in a way that imposes inordinate obligations on employees who become bound to them through their employment • Individuals within organisations could engage in acts of corruption not only for their personal benefit, but also for the benefit of the organisation 	(Messick and Tenbrunsel, 1996; Geojala and Mangum, 2000; Grieger, 2005; Kim and Molleda, 2005; George and Lacey, 2006b; Ayres <i>et al.</i> , 2007; Schubert and Miller, 2008a; Webb <i>et al.</i> , 2009)
Institutional debate	From the perspective of the institutional debate, the interactive influence of cultural	<ul style="list-style-type: none"> • Corruption is a normative concept construed in terms of a qualitative departure from the state of being pristine to the state of being bad or 	(Johnston, 1998; Robbins, 2000; Collier, 2002; Heidenheimer, 2002; Theobald,

	<p>and organisational institutions in society has been shown to have effects on the prevalence of corruption</p>	<p>corrupted in relation to the cultural parameters of the society in question</p> <ul style="list-style-type: none"> • The term corruption is associated with decay in societal norms when applied to social institutions such as states, companies and schools or to processes such as procurement and electioneering processes • Corruption connotes dissonance with folkways of central importance accepted without question and embodying the fundamental moral views of a group which serve as compelling guides for individual and corporate conduct 	<p>2002; Kurer, 2005; Lambsdorff and Lambsdorff, 2007; Aidt, 2009)</p>
<p>Regulatory framework</p>	<p>The regulatory framework debate is an offshoot of the institutional construction of the explanation of corruption that derives from the fact that there is a regulatory framework, based on legal rules that govern the way in which the business of particular institutions is conducted.</p>	<ul style="list-style-type: none"> • The framework prescribes behaviours expected of people vested with the responsibility for administering the resources of an organisation through defined processes like the public procurement process; it also outlines punishments for behaviours that fall short of the framework which are enforced by coercive sanctions of government 	<p>(Damania <i>et al.</i>, 2004; Xin and Rudel, 2004b; Wei-dong, 2006; Cameron <i>et al.</i>, 2009; Méon and Weill, 2010; Vann, 2011)</p>

Table 3: The key elements of the risk factors of corruption within the PPP

Risk activity	Characteristics	Outline description	Key references
Government and the open market	Certain forms of government involvement in transactions in open or private sector markets are regarded as capable of generating corruption	<ul style="list-style-type: none"> • In many developing countries, corruption in the form of bribery for public contract assignment thrives because the practice is so entrenched and endemic that it seems to be the right thing to do in order to get a contract from the public sector • As a result, many companies are prepared to resort to paying bribes to officials charged with the responsibility for administering the public contract process. 	(Keeley, 1995; Huther and Shah, 2000; Van Rijckeghem and Weder, 2001; Konstantin <i>et al.</i> , 2006; Glenn <i>et al.</i> , 2007; Gentzkow and Shapiro, 2008)
Weak institutions and excessive control of private activity	Political commitment and strong institutional capacity are central to the success of anti-corruption reforms. When private activities are subjected to lengthy bureaucratic procedures that make it very difficult to obtain the necessary government authorisation needed to operate legally, the tendency will be for private businesses to seek to bribe their way through	<ul style="list-style-type: none"> • Where institutional capacity is weak, corruption can be perpetrated by circumventing the stated process of allocating public goods and services in favour of a select few at the expense of the interest of the greater majority of the people • The effect of weak regulatory institutions has always been that the bigger companies, in particular, are able to engage in wholesale bribery of the bureaucracy, as was the case in the Siemens and Halliburton bribe-for- 	(Morrissey, 1995; Collier and Gunning, 1999; Méon and Sekkat, 2005; George and Lacey, 2006b; Ikejiofor, 2009; Sidhu, 2009; Lewis, 2010)

		<p>contract cases</p> <ul style="list-style-type: none"> • Over-regulation of private activity by the public authority is one of the main sources of official corruption in Africa 	
<p>Expansion in procurement activities, compromise of confidential information and violation of procurement rules</p>	<p>Public sector corruption has been associated with the relative growth in public sector procurement activities in the past four decades in Africa. Corruption in the public procurement process spans the pre- and post- tender stages of public procurement.</p>	<ul style="list-style-type: none"> • Public sector corruption has been associated with the relative growth in public sector procurement activities in the past four decades in Africa • Corruption in the public procurement process spans the pre- and post- tender stages of public procurement • The manipulation of set guidelines for public procurement in favour of a specific bidder over other bidders is a major problem of accountability in the public procurement process • Public officials in possession of information which if made available to private business concerns could enhance their competitive advantage over others companies are a potential source of corruption, especially if the information is relevant to procurement activities that have not been made public 	<p>(Martin, 1997; Stapenhurst and Kpundeh, 1999; Golden and Chang, 2001; Caroli Casavola, 2006; Yukins, 2006; Kenny et al., 2007; Basheka, 2008a; Vannucci, 2009; Iossa and Martimort, 2011)</p>

Table 1 displays in a single page the issues that emerged as salient in the review of literature relating to the concept, meaning and types of corruption in relation to the Impartiality Principle. It describes the key features of the Principle of Impartiality and gives an operational description of the meaning and definition of corruption. The table also lists the key references that shape academic arguments in this area of academic discourse, such that the research underpinnings for the concept of corruption are elucidated.

In table 2, debates around aspects of the concept of corruption are presented, clearly articulating in an outline format the key schools of thought that address the subject of corruption from various thematic perspectives. The table also describes the concept's key features and lists key references that shape the debates. Table 3 summarises the debate on key elements of the risk factors for corruption within the process of public procurement that predispose it to corruption. The table also explains key elements of the risk factors in outline and gives the key references that shape the debate in each of these domains.

Chapter 3

Research methodology

Chapter 3

Research methodology

3.1 Introduction

The preliminary readings presented in sections 1.1 and 1.2 culminated in articulation of the aim, objectives and question for this study (see section 1.3). Following this, a gap in knowledge was identified through the review of literature presented in chapter 2. The purpose of this chapter is to explain the research methodology and in particular, the appropriateness of the qualitative method adopted for this study (Powe, 2007; Bryman, 2008).

Within the qualitative research tradition, this study is based on the interpretivist ontological position that corruption (see section 3.2) – a social problem – can be the result of risk factors that can be exploited by social actors to divert public funds for private use (Bryman, 2008; Kurer, 2005). In response to this, this research applies the Impartiality Principle (Kurer, 2005), to answer the question ‘**what are the risk factors that promote corruption in the Nigerian PPP?**’. The Impartiality Principle, as explained in section 2.3, provides a theoretical explanation of corruption that supports the study of its associated risk factors within the public procurement process (Van Roy, 1970; Collier, 2002; Kurer, 2005; Li *et al.*, 2008; National Assembly Nigeria, 2011).

This chapter is organised into eight sections. The next section presents the advantages of the choice of the qualitative research method for this study and this is followed by an explanation of the study design and strategy. Thereafter, the research methodology, sources of data, and the case studies selection are discussed before the

interview process; data transcript and analysis are elaborated. The chapter ends with a review of the associated ethical issues encountered during the research process and a section providing an overall summary.

3.1.1 The research process

The research process started with the preliminary reading, leading on to the identification of the research problem pertaining to the risk factors for corruption in the Nigerian PPP. Following this, the research aim of strengthening the PPP in Nigeria by means of evidence-based policy frameworks that promote transparency in public contract administration was formulated. To further the achievement of the research aim, a number of distinct tasks were formulated. These included the examination of the existing public procurement framework in Nigeria, using the case study approach to explain the vulnerability of the Nigerian PPP to corruption and the formulation of a corruption risk-factor vulnerability check-list for the management of public procurement in Nigeria including the statement of the research problem. Following this, relevant literature was reviewed showing that existing studies on corruption in the PPP have reported in a sensational style in terms of the large sums of money involved and the means used to try to conceal it. From the review, it was revealed that the associated risk factors in the public procurement process that have made it susceptible to corruption have not been studied. It is to fill this gap in knowledge that this research method has been developed.

3.1.2 Case study as the research approach

Based on its interpretivist philosophical underpinning (see section 3.2), this research has adopted a case study strategy in exploring the problem of corruption risk factors within the public procurement process in Nigeria. The case study approach is useful

as a strategy to study a problem in-depth, to understand the interplay of socio-economic forces and the processes associated with a particular case study. It is also suitable to understand the ways a social phenomenon, in this case corruption manifests in a given social context (public procurement in Nigeria) (Hartley, 2004; Verschuren, 2003; Yin, 2008).

Investigations into complex social and behavioural phenomena such as corruption and its associated risk factors tend to choose the case study approach because it affords the researcher the opportunity to focus in-depth on a single or multiple case studies (Schneider, 1977; Stake, 1995). Since this study is an exploratory analysis of corruption risk-factors in the public procurement in Nigeria, the multiple case study approach was identified to be the most appropriate approach. This is because it provided the opportunity to study a number of different but related organisations in-depth (presented in chapter five) and thereafter, to produce a cross-case analysis of the findings from all the case studies (presented in chapter six).. In this regard, the aim of the approach was to understand the contextual dimensions such as the institutional, historical and cultural elements which may have acted together to create risk factors in the public procurement process, and to see if they can be associated with vulnerability to corrupt exploitation in Nigeria.

The modified case study (explained in section 3.1.4) is a research strategy is suitable for studies focusing on influencing factors (for this research corruption risk factors) from which a number of data variables can be generated. From examination of these can produce patterns of associations that to answer the research questions and justify the research objectives (Bryman, 2008). This enabled the researcher to explore the full extent of issues involved in corrupt exploitation of the public procurement process in Nigeria by collecting data from both primary and secondary sources. The

data collected were then treated and processed for quantitative template analyses (see section 3.5) (Bryman, 2008; Esrock and Leichty, 1998; Porter and Savigny, 2002; Tambunan, 2006; Tambunan and Thee, 2006).

3.1.3 Justification of case study as a research approach

Having discussed the justification for using a case study as the research approach within the overarching social science research strategy, there is a need to evaluate its validity for the type of social problem: corruption risk factors which form the crux of this research. According to Hartley (2004), a case study approach is useful as a strategy to study a problem in-depth, to understand the interplay of socio-economic forces and processes as exemplified in the selected organisations (See also, Yin, 2008; Verschuren, 2003). The case study strategy has always been favoured as a research approach by social science researchers. This can be traced back to the 1920s when Robert and Helen Lynd undertook the study of social problems in a medium-sized American city over a period of about two years (Zabel et al., 2003; Wakefield et al., 1998; Anderson et al., 1978). The research report presented the social life style of the Midwestern United States and covered six topics which included making a living and a home, training the young, using leisure; engaging in religious practices and engaging in community based developmental activities- the resulting work was very successful and is still in print even today, almost a Century later (Yin, 2008).

Other investigations into complex social contexts have also chosen the case study approach (Stake, 1995; Schneider, 1977). This research puts the issues of the risk factors of corruption in Nigeria into the specific context of how it manifests within the PPP. It aims to identify a corruption vulnerability checklist that can be used in the management of public procurement in Nigeria in a way that strengthens the process against corruption. It also aims to create evidence-based building blocks by

way of recommendations (see section 7.5) that informs public policy frameworks that promote transparency and accountability in the administration of public contracts through the PPP.

A single case study approach could not be used to study all of the problems of corruption and its associated risk factors in the PPP due to the diversity between the interested stakeholders- broadly classified into governmental (procuring entities and anti-corruption agencies), non-governmental/civil societies and private actors (contractors) – each of whom has distinctive features which are not mutually congruent. This implies that it is important to understand the contextual elements, such as the institutional, historical and cultural contexts which may have acted together to create the web of activities that currently manifest themselves in terms of corruption and its associated risk factors in the PPP in Nigeria.

3.1.4 The modified case studies and interviewees

Because of the sensitivities of the issues of corruption in Nigeria, data were generated from the Public Power Company (PPC), the Rural Electrification Organisation (REO), the Anticorruption Commission (ACC) and the Public Procurement Organisation (PPO), analyses of which are presented in sections 5.3, 5.4 and 5.5 respectively. The result of public procurement-related corruption in the Nigerian electric power sector (Adenikinju, 2003) has perpetuated the perennial problem of poor electricity supply, which is reported to be the greatest contemporary development challenge on all fronts in Nigeria (Ikeme and Ebohon, 2005; Okafor, 2008; Okafor and Joe-Uzuegbu, 2010).

The electricity sector in Nigeria is categorised into the rural and urban; hence data on corruption were collected from two case studies in the electricity sector based on the sector's rural-urban divide and from another two case studies, one each the anti-corruption sector and one from a public procurement checking organisation (see figure 3). Preliminary results from the initial data analyses were further subjected to verification interviews in three organisations namely: Anti-Corruption Reform Organisation, Public Prosecution Office Public Procurement Organisation where one, three and two verification Interviews (VI) respectively were conducted. Results from the verification interviews formed the basis for the cross-case analyses presented in chapter 6.

3.2 The philosophical stance

A good understanding of research philosophy is an important step towards the selection of an appropriate research methodology (Crossan, 2003). A review of philosophical literature has shown that the decision about the way a research study is conducted involves going beyond the practicality of the research methodology and methods – it requires a philosophical solution (explanation) to the question of ‘Why research?’ (Kramer and Tyler, 1996; Wacker, 1998). The philosophical perspective of a research study therefore relates to the core assumptions underpinning how it is conducted (Holden and Lynch, 2004; Easterby-Smith *et al.*, 2008).

Furthermore, Easterby-Smith *et al.* (2008) opined that engaging in philosophy will help the researcher to refine and specify the research methods to be used in a study and will clarify the overall research strategy to be used. It also enables the researcher to evaluate different methodologies and methods. This way, the researcher avoids using methods that are inappropriate by identifying the limitations of particular

approaches at an early stage (Crossan, 2003). Basing the choice of methods on a philosophical underpinning also has the benefit of helping the researcher to be creative and innovative in either the selection or adaptation of methods that have previously been outside his or her experience (Holden and Lynch, 2004).

According to Morgan (1990) there is a choice between the ‘regulatory’ or ‘radical change’ views of society – meaning that social evolution is seen as either arising from the status quo or from alternative visions. An explanation of this regulatory-radical change divide in views of social evolution can be seen in work of McGoldrick *et al.* (2004) and Burrell and Morgan (1979). According to them, from a regulatory perspective, the researcher assumes society evolves rationally, whereas from the perspective of radical change, society is viewed as riven with constant conflict as humans struggle to free themselves from the domination of social structures. This core division between the two positions in socio-philosophy has gained various labels in the literature. While Easterby-Smith *et al.* (1998) named them positivism and phenomenology, Hughes and Sharrock (1997) described them as positivism and interpretivism. Because this study is focused on the understanding of a particular problem – the risk factors for corruption in the public procurement process in Nigeria – the interpretivist philosophical approach is adopted.

Furthermore, the interpretivist epistemological underpinning of this research (see section 3.2) makes the adoption of a general social science research strategy more appropriate because corruption, as explained in section 2.3, is a social problem (Becker, 1991; Flyvbjerg, 2001; Bryman, 2008). Research is an attempt to derive knowledge that can be generalised by addressing clearly defined questions (see section 1.4 for this research) with systemic and rigorous methods (Bryman, 2008).

In social science, research is designed to provide evidence to support, justify or refute a stated research question and/or aim, which can be generalised (Eisenhardt, 1989b; Crotty, 1998; Cooper *et al.*, 2009). According to Johnson *et al.* (2007) and Bryman (2008), in deciding to conduct social research, the first step to be taken is the decision as to the strategy or strategies to be adopted in executing the study. This is because there are several ways of conducting social research and deciding which one is appropriate for a particular study can be a difficult step in the research process (Stake, 1995).

A number of pre-conditions have to be carefully considered before adopting the appropriate strategy for any research exercise. According to Pettigrew (1990), the necessary pre-conditions that should inform the choice of research strategy are:

1. The research aim and objectives
2. The level of control the researcher can exercise over actual behavioural events
3. The contemporary or historical focus of the research.

The research aim and objectives in social research are of primary importance in deciding which strategy is to be adapted for the inquiry. This is because the whole essence of the inquiry is to provide an explanation that corresponds to the research aim and objectives. The level of control the researcher can exercise over actual behavioural experiment also contributes to the choice of research strategy. According to Stake (1995) and Yin (2012), whether a research study is contemporary, future-oriented or historical also has implications for the choice of strategy to be adopted to address the study aim and objectives.

Furthermore, research questions categorised as open or closed can traditionally be asked in the form of ‘what’, ‘why’, ‘how’ and ‘which’ for the purpose of determining the appropriate strategy to be adopted (Johnson and Onwuegbuzie, 2004; Rounding and Ulcers, 2009). The nature of the inquiry focused on, and the explanation sought in a research study underpins the strategy to be used in achieving the objectives. As Bryman (2008) argued, the ‘what’ question is appropriate for research using case studies and experiments. Developing his argument further, he said that the ‘where’ and ‘who’ questions are most likely to be appropriate as a strategy for archival studies, while ‘how’ and ‘why’ questions are more explanatory in nature and would be likely to be used for conducting case studies, historical and experimental research (Eisenhardt, 1989b; Corner, 1991).

As Holden and Lynch (2004) further explained, these two philosophical approaches are delineated by core assumptions concerning ontology (reality), epistemology (knowledge), human nature and methodology. The sociological persuasions of the researcher notwithstanding, these assumptions are innately linked to one another – the researcher’s view of ontology affects his epistemological position and this in turn affects his view of human nature, with the consequence that the researcher’s choice of methodology logically follows the philosophical assumptions the researcher has already made regarding what should be the subject of his/her research (Willis, 1995; Ponterotto, 2005; Leitch *et al.*, 2010). Because this study is based on qualitative parameters such as attitudes and behaviours in relation to the public procurement process in Nigeria (Dawson, 2009), a qualitative methodology is used.

3.2.1 The choice of qualitative strategy

The decision about the choice of method for a research study, in addition to depending on upon the research aim and objectives and on the questions to be answered by the research (Bryman, 2009; Yin, 2008), also depends on whether the researcher is looking for meaning and explanation which would connote a qualitative orientation or for establishing or verifying frequencies and fundamental laws which would depict a quantitative orientation (Snape and Spencer, 2003; Bryman, 2009). This research seeks an explanation of the question about the risk factors of corruption (see section 1.3.2) – a social problem, which gives it a social research orientation (Bryman, 2009; Kurer, 2005).

As stated in section 1.3.2, the question for this research is: ‘**What are the risk factors that promote corruption in public procurement in Nigeria?**’ This points the goal of the research towards providing an explanation for corruption – a social problem in the procurement process in Nigeria for which a qualitative method is more appropriate.

The differences between the qualitative and quantitative methods and the characteristics that would dictate their application in different research contexts have been explained by Bryman (2004).

Table 4: Choice of research method

	Quantitative	Qualitative
Theoretical underpinning	Deductive based on testing of theory	Inductive based on generalisation of theory
Epistemological approach	Positivism	Interpretivism
Ontological approach	Objectivism	Constructionism

As shown in table 4, the qualitative approach is most suitable for this research which studies a social problem – the risk factors for corruption. The model, concepts, and the theories on which the research aim, objectives and question are based have an interpretivist and constructionist orientation (See Section 3.2). Also, the approach is inductive in that it seeks to allow research findings (risk factors for corruption) to emerge from the analysis of raw data based on the research themes using template analysis (King, 2004; Thomas, 2006; Waring and Wainwright, 2008; Ketokivi and Mantere, 2010) and also the research question, ‘what are the risk factors for corruption’, based on the ideas of Yin (2003) as discussed above, entails a qualitative strategy.

The qualitative method in the social sciences is associated with the use of words rather than quantification in the collection and analysis of data (Bryman, 2009; Creswell, 2012). Because it is based to a greater degree on verbal communications, the main steps in the design process for qualitative research exhibit a lesser degree of codification than is associated with quantitative research (Brunsdon *et al.*, 1999; Bryman, 2008).

As Bryman (2008) also stated, the potential for being too subjective is another possible shortcoming of qualitative research. He further noted that qualitative research has a tendency to be impressionistic, through over-reliance on the researcher's often unsystematic views about what is significant and needing emphasis in the interview process and in the coding of the transcribed interview data. The problem of generalisation is another criticism of the qualitative research method (Bryman, 2004; Hammersley, 2004; Bryman, 2008). It is suggested that the findings of qualitative research are limited in their scope of application, with regard to the extent of data collection, case studies selection and sampling considerations, making it impossible to know how findings can be generalised to other research settings. For this research, the qualitative research method has been strengthened by the use of modified multiple case studies and rigorous reliability and validity criteria applied through a verification interview method which was used to test the veracity of the findings with the civil society, prosecutors and other procurement officers (see table 5) (Bryman, 2008). Furthermore, in addition to the semi-structured interview schedule, the verification interviews provided the possibility of follow-up questions to the respondent where the data generated needs to be augmented – a feature that makes qualitative research more applicable for this research. Based on these considerations, it was deemed essential to explore the range of issues about corruption risk factors in the public procurement process in Nigeria with the advantages of in-depth probing offered by qualitative research, in order to examine the public procurement process in Nigeria, drawing on the case studies and other examples to identify a set of risk factors that can be associated with corruption.

In the social sciences, a research strategy refers to the framework for gathering and analysing data (Bryman, 2009). The choice of strategy for a particular study is a

reflection of the researcher's decisions about the nature of the data and the analytical approach envisaged in the research process. The strategy for this research is guided by the qualitative nature of the data to be collected (see section 3.2.1). Specifically, this shaped the way that data for the research has been collected and analysed in order to provide explanations that answer the research aim and objectives.

As shown in sections 1.2 and 1.3, preliminary readings for the study on the problem of corruption in the PPP in Nigeria helped the researcher to articulate the aim, objectives and question for the research. This and the literature reviewed in chapter 2 culminated in the identification of a research gap that informed this methodology and methods for data generation and analysis for answering the research question. That is: what are the risk factors for corruption that can be associated with the PPP in Nigeria?

As case study research, this study adopts the 'what' question to examine the existing public procurement framework in Nigeria. This is done in the hope that drawing from analysis of data from the case studies, a set of risk factors that can be associated with vulnerability to corruption is identified. The result of analysis of data from the modified case studies forms the basis upon which a corruption risk factor vulnerability check-list for the management of public procurement in Nigeria is developed for a corruption-free management of the process of public procurement in Nigeria.

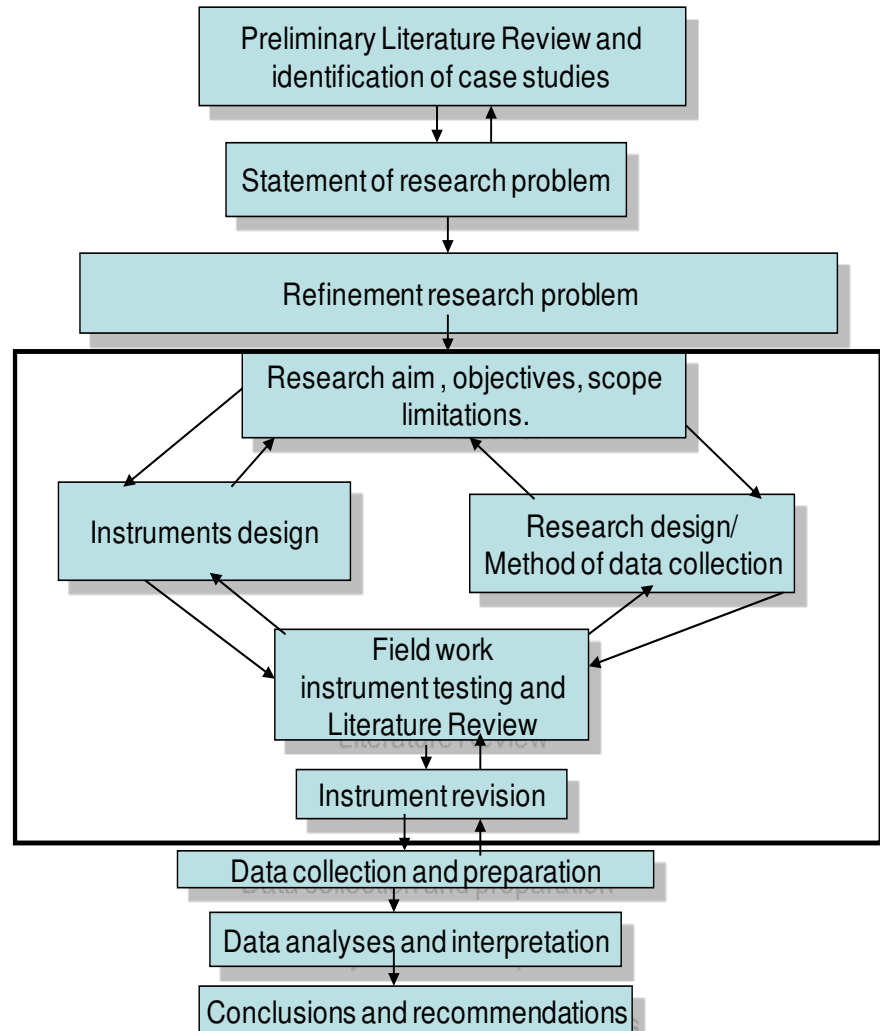
According to Bryman (2008) the case study is associated with a location, which may be a community or an organisation, such as the PPC or the Rural Electrification Organisation that were selected for the purpose of this research. He stated further that the emphasis in social research that connotes a case study approach is predicated

upon intensive examination of the setting of the cases selected and by implication a presumption associating case study research with qualitative research.

3.2.2 The research design

In social science, research design refers to the framework within which data is gathered and analysed (Bryman, 2009). The choice of design for a particular research study is a reflection of the researcher's decisions about priority being given to issues such as the nature of the data and the analytical approach in the research process. The research design for this study is guided by the selection of a research strategy, which has been based on its philosophical underpinnings as justified above, and flows through to the choice of research methodology and methods discussed in chapter three. This shapes the way that data for the research is to be collected and analysed in order to provide explanations in justification of the research aim and objectives. The research design is illustrated in figure2.

Figure 2: Research Design



The qualitative method in social science is associated with the use of words rather than quantification in the collection and analysis of data (Bryman, 2009). Because it is based to a greater degree on verbal communications, the main steps in the design process for qualitative research exhibit a lesser degree of codification than is associated with quantitative research (Brunsdon *et al.*, 1999; Bryman, 2008). One resulting shortcoming of this method is that it is difficult to replicate precisely,

because what the researcher hears or observes during the fieldwork will correspond very much with their personal perspective (Larsson, 1993; Bryman, 2008).

These perceived shortcomings of qualitative research, however, have been ameliorated according to Bryman (2008) through rigorous reliability and validity criteria informing the interview method. This includes the possibility of follow-up questions to the respondent where the data needs to be augmented; a feature that makes qualitative research more applicable where in-depth insight into the research subjects is required.

Based on the above discussion, it was deemed essential to explore the range of issues about corruption risk factors in the public procurement process in Nigeria with the advantage offered by qualitative research of in-depth probing to examine the public procurement process in Nigeria. This is done by drawing on the case studies and other samples to identify a set of risk factors that can be associated with corruption, in order to provide policy recommendations towards strengthening the PPP against corruption.

To achieve the aim of the study there was a need to gain in-depth understanding of the problem of corruption within the public procurement process. For this reason, the case study strategy (defined by Stake (1995) and Gerring (2004) as in-depth study of the particularity and complexity of a single case to understand its activity within important circumstances) is adopted instead of action research⁶ (Bryman, 2008). The reason behind this choice is that the Rural Electrification Organisation declined collaboration with the research, due to the sensitivity of the corruption issue in Nigeria, but consented to semi-structured interviews on the condition that staff

⁶ An approach in which a researcher and a client collaborate in the diagnosis of a problem to develop a solution

interviewed would remain anonymous in the resulting report (Bryman, 2008). Based on the explanations above, the use of the semi-structured interview is most appropriate given (a) the fact that it was investigated and linked to the details of the court case (b) the rules for procurement are the same across all government institutions in Nigeria.

Furthermore, as Yin (2003) noted, the case studies research strategy is amenable to the examination of influencing factors conceived from an interpretivist perspective. This entails the systematic collection of qualitative data in respect of different indicators (risk factors for corruption) which are then analysed to discern patterns of association in order to achieve the research aim and objectives (Bryman, 2009). This strategy enables the researcher to explore the full extent and variety of issues involved, in order to identify the risk factors that may explain the vulnerability of the public procurement process to corruption, as a first step towards building a corruption risk factor vulnerability check-list for the management of public procurement in Nigeria. It is also suitable for understanding the ways in which a social problem, in this case corruption, manifests in a given social context so that the findings can be extrapolated to other cases (of public procurement in Nigeria) (Verschuren, 2003; Hartley, 2004; Yin, 2009).

As Hartley (2004) stated further, the case study approach is useful as a strategy to study a problem in-depth; to understand the complex interplay of socio-economic forces and processes (in the case of the public procurement process in Nigeria, the risk factors); and to understand the variously manifesting scenarios and situations in the particular study context, so as to inform a pragmatic set of policy recommendations that aim to remedy the situation (Gerring, 2007; Yin, 2009).

3.2.3 Data collected for the research

The practice knowledge of the principal researcher gained over four years of employment in public procurement was useful in gaining initial appreciation of the study context. It provided the essential information for defining the context of public procurement in Nigeria, and the background knowledge for managing the process of data collection (van Teijlingen *et al.*, 2001). Research data is broadly classified into primary and secondary types (Bryman, 2009). Primary data, which forms the main data component for this research, is collected directly from respondents through the use of semi-structured interview questionnaires (example provided in Appendix 6).

Secondary data, defined as data collected by others for purposes other than the present research (Cowton, 1998; Houston, 2004), is used in qualitative studies to complement the data collected from the primary source(s) (Sandelowski, 1997; Blaxter *et al.*, 2006). In this research secondary data is used to cross-validate the data from the primary source, to confirm and/or modify the findings from the primary source (Blaxter *et al.*, 2006). For this study, secondary data include office documentations of procurement activities, court documents and published reports, which provides useful direct insights into the problem of corruption in public procurement and also provides a useful means for corroborating indirect insights drawn from the interviews (Yin, 2003; Yin, 2009). A diagrammatic illustration of the research design is presented in Figure 2.

In-depth interviews to cross-validate these preliminary findings were also conducted with senior management staff of the Anti-Corruption Reform Civil Society, the Police and the Procurement Department of a federal procuring entity.

As already mentioned in Sections 1.1 and 1.2, corruption in the public procurement process in Nigeria has defied initiatives aimed at curbing it. It is hoped that by gaining a better understanding of the factors that may have made it resistant to past initiatives, it may be possible to better manage the process and this may inform policy frameworks that promote transparency and ultimately tighten the process against corruption. This way, not only will there be value for money used for public procurement, but monies saved will be used on other projects and the nascent practice of public procurement in Nigeria will be improved through greater transparency in public contract administration.

3.2.4 Secondary data and its use for the research

In order to examine the existing framework of the PPP in Nigeria towards achieving the first objective of this research, as set out in section 1.3, there is need to examine existing information- secondary data that outline public procurement framework in Nigeria.

These secondary data were sourced from documents such as the Nigerian Public Procurement Act and Procurement Regulations upon which the institutional framework of the PPP in Nigeria is based (National Assembly Nigeria, 2007.-b). Furthermore, these statutory documents, which prescribe the institutional and administrative framework for the practice of public procurement in Nigeria, set key principles upon which PPP is based.

In addition to the Public Procurement Act of 2007, which sets out the general framework for the PPP in Nigeria, other statutory instruments provide specific details of how parts of the Act should be implemented. Some of these, the specific provisions of which are explained under the section entitled ‘secondary procurement

policies’, are the public procurement regulations for consultancy services, standard bidding documents for the procurement of goods, standard bidding documents for the procurement of services, standard requests for proposals for selection of firms (small, complex and time-based assignments and individual consultants) and public procurement regulations for goods and works. This chapter, which details the institutional framework for the PPP in Nigeria through in-depth analyses of extant rules, policy documents, guidelines and academic commentaries on the PPP in Nigeria, is geared towards achieving the first objective of this research (see section 1.3.1). Analyses of the secondary data were conducted using template analysis (see section 3.5).

3.2.5 Use of the semi-structured interview

As explained in section 2.4.9, corruption in relation to public procurement is defined in terms of inappropriate behaviours (wrongdoing) (Boynton and Greenhalgh, 2004; Kim *et al.*, 2009). The associated risk factors can be explained in terms of the Impartiality Principle as acts of wrongdoing (partiality) which undermine the integrity of the procurement process (Kurer, 2005; Rothstein and Eek, 2009). The result of this is that that public procurement-related corruption is difficult to measure (study) using quantitative methods (Auerbach and Silverstein, 2003), hence the use of qualitative methods for this study. Corruption involves secrecy and deceit, and the possibility of informants being punished when exposed (Kim *et al.*, 2009), and so is difficult to probe by asking respondents direct questions about their involvement or otherwise (Del Monte and Papagni, 2007).

The sensitivity of corruption in Nigeria means that it is difficult to directly probe individuals’ behaviour in relation to corruption. This was indicated by the

interviewees' wish to see the proposed questions before giving their consent to participate, and suggests the necessity of asking indirect questions about their knowledge of processes and practices. As Kim *et al.* (2009) also explained, a semi-structured approach is more likely to encourage people to disclose information than a structured interview format if the subject matter of the interview involves corruption. Because a semi-structured interview gives the interviewer the discretion to ask further questions in response to statements that seem significant (Drever, 2003; Bryman, 2009), this kind of interview was used to collect data, with the interviews proceeding on the basis of an interview schedule (see appendix 4).

3.3 The fieldwork

The fieldwork was undertaken in four public sector organisations namely; the Rural Electrification Organisation, the Public Power Organisation, the Public Procurement Organisation and the Anti-Corruption Commission. This was followed with a verification interview to verify the preliminary findings of the research with public legal prosecutors, public procurement officers and civil society organisations that make up the case studies for this research. Two of the organisations are major dispensers of public funds in the public electric power sector and the others have, respectively, overarching supervisory responsibility for public procurement, for investigating violations of public procurement rules, for legal prosecution of public procurement rule violations, and for anti-corruption reform goals.

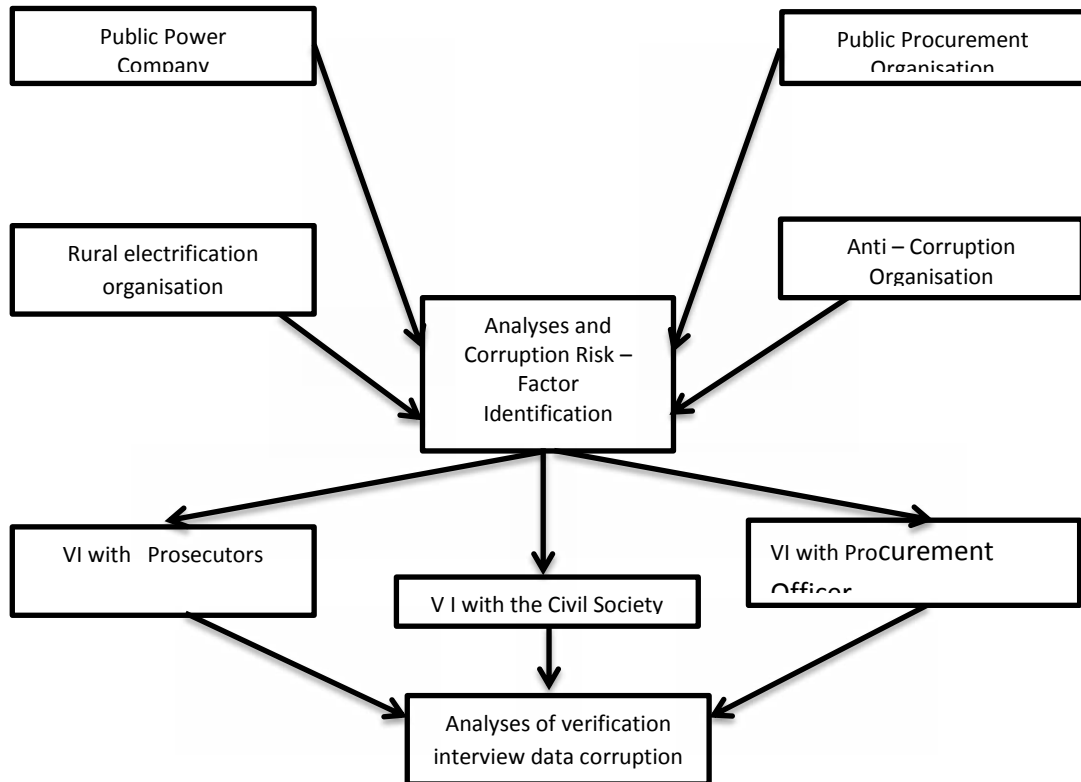
Table 5: Semi-structured interviews (SSI) and Verification Interviews

Job Designation	Organisation	Activity type and frequency
Procurement Officers	Rural Electrification Organisation	SS interview: 9 interviewees
Investigators	Anti-Corruption Commission	SS interview: 4 interviewee
Procurement Checking Officers	Public Procurement Organisation	SS interview:3 interviewees
Procurement Officers	Public Power Company	SS interview: 4 interviewees
Research Analyst	Anti-Corruption Reform Organisation	VI interview: 1 interviewee
Prosecutors	Public Prosecution Office	VI interview: 3 interviewees
Procurement Officers	Public Procurement Organisation	VI interview: 2 interviewees

Key: SSI: Semi-structured interview: VI: Verification interview. Source: Fieldwork: 2011 and 2012

Furthermore, the fieldwork was conducted in two phases. The first phase was the main fieldwork which was conducted in 2011 using the semi-structured interview schedule (see appendix 4). Each semi-structured interview lasted about three hours, because the researcher had to painstakingly record the interviews manually in longhand. After each day interview, the researcher transcribed the handwritten notes and sent them back to the interviewees to check that the transcripts reflected the interviews. Data were collected in two phases – the semi-structured interview and the verification interview.

Figure 3: Fieldwork and verification interview



As shown in figure 3, the fieldwork for this research was conducted in two phases. The first phase was the main fieldwork during which four case studies namely: the Rural Electrification Organisation, the Public Power Company, the Public procurement Organisation and the Anti-Corruption and the Commission were visited for semi-structured interviews. Once the interviewees had given their agreement for any interview day, the researcher then proceeded to schedule the next interview day. The findings from analyses of data from the main fieldwork were then used for the second phase of interview (verification interview).

The semi-structured interviews were particularly conducted to collect textual data on the following specific areas of the PPP:

- Working of the PPP in the organisation
- The most important aspect of PPP in the organisation
- Confidentiality of the PPP in the organisation
- Key risks of the PPP in the organisation.

The research themes, which are based on the research aim and objectives, and the corresponding questions, are presented in table 6.

Table 6: Research themes and SS interview questions

Themes	Corresponding interview question
To describe the public procurement process	Please tell me how the public procurement process works in your organisation
	What do you consider to be the most important aspect of public procurement in your organisation?
	Is the process confidential? If yes, how is this ensured?
Drawing from the case studies analysis, to identify a set of risk factors that may explain the vulnerability of the public procurement process to corruption	When making decisions how much discretion can procurement officers exercise in your organisation?
	Please comment on the clarity of the bidding processes in your organisation to those tendering for contracts. Are there any issues that you see arising from this?
	Please describe the role of civil society in the public procurement process in your organisation
	Do you think that the pricing regime in public procurement is comparable with open market pricing?
	Please tell me how price intelligence impacts on the procurement process in your organisation
To propose a corruption risk factor vulnerability check-list for the management of public procurement in Nigeria	Are there any areas of the procurement process that you feel could be improved? What are they and how can they be strengthened?
	What would you say are the existing public procurement challenges in relation to: <ul style="list-style-type: none"> I. The staff's technical knowledge II. Existing laws/government policies on procurement III. Is there anything else that you would like to add?

3.3.1 Sources of data

Various sources of data provide evidence for case studies research (Eisenhardt, 1989b; Stake, 1995). The most common sources, however, are structured, semi-structured and unstructured interviews, mapping, documentation and observations (Yin, 1999). Each of these sources has its own comparative advantages and disadvantages (Eisenhardt and Graebner, 2007). As Yin (1993) averred, documents are relevant for the data collection exercise in case studies research because they have stable, exact and broad-based content coverage. Notwithstanding this advantage, documents must be diligently authenticated and not treated as synonymous with literal recordings of events. This is because these recordings could be selective and biased in favour of the recorder or his views on the subject matter of the research (Bryman, 2009).

Furthermore, Yin (2003) argued that archival records of other documents must also be used with great care because records in this class of secondary data were produced for a specific purpose and audience, inevitably different from the purpose for which they are sought by the case study researcher. For this reason, archival records must be carefully compared with data from other sources in order to ascertain their veracity before they are incorporated into the case study research data.

Interviews, whether structured, semi-structured or unstructured, can provide insightful and originally targeted information for the purpose of case study research (Larsson, 1993; Yin, 2003). As Yin (1999) further contended, information obtained from interviews can also be biased for a variety of reasons. These may include the type of questions, the interviewer's bias and the atmosphere at the time of

conducting the interview, as well as the level of knowledge of the interviewee. Direct observation is among the first-hand methods that provide contextual and real factual information which can seemingly be error-free, although it is very expensive to undertake (Bryman, 1999).

3.3.2 Research methods

The research makes use of data from primary and secondary sources. The primary data is generated through the administration of semi-structured interview questionnaires with respondents from the case studies. Secondary data to inform a review of the framework for and practice of the PPP were acquired from published information about cases of corruption in Nigeria, newspaper and other reports about the Nigerian ports and the Universal Basic Education Commission corruption cases. Court judgements from public procurement-related corruption cases also form part of the secondary data for analysis. These documents are public documents available on application by the operation of the Freedom of Information Act 2011, and have been obtained as part of the secondary data for the research (National Assembly Nigeria, 1999; Modell, 2010; National Assembly Nigeria, 2011). Before proceeding with the fieldwork, the researcher applied for and received ethical approval. Details of ethical issues that arose in the course of this research and how they were addressed are discussed in section 3.4.

3.3.3 The case studies and interviewees

The primary case studies for the research were selected from the electricity sector in Nigeria. The immense deficiencies in the electric power infrastructure in Nigeria since it gained independence from the United Kingdom in 1960 has resulted in a situation where less than 20% of the nation's electricity needs are currently being

met (Adenikinju, 2003). To remedy this situation, the government has consistently made massive budgetary provisions which are dispensed through the public procurement process (Adenikinju, 2005; National Assembly Nigeria, 2007b). The enormous capital expenditure in the electric power sector through the public procurement process has resulted in endemic cases of corruption, with the outcome that while considerable money has been spent, there has been no real impact on the electric power situation in the country (Iwayemi, 2008; Akinlo, 2009).

The result of public procurement-related corruption in the Nigerian electric power sector (Adenikinju, 2003) has perpetuated the perennial problem of poor electricity supply, which is reported to be the greatest contemporary development challenge on all fronts in Nigeria (Ikeme and Ebohon, 2005; Okafor, 2008; Okafor and Joe-Uzuegbu, 2010). The electricity sector in Nigeria is categorised into the rural and urban; hence data on corruption was collected from two case studies based on the sector's rural-urban divide.

Data was also collected from the two secondary case studies. While one of the secondary case studies is a public anti-corruption agency with a mandate to detect and eliminate corruption in the PPP, the second secondary case study is a public agency with oversight responsibility for the PPP. The researcher's years of work both in the private sector as a public sector credit and marketing officer and in the public sector as an accountant, coupled with initial readings, were invaluable in the choice of both the primary and secondary case studies. The researcher's work experience in the public sector was useful as a guide in screening the pool of respondents put forward by the case studies' organisations to ensure that those interviewed had the requisite experience to comment on the PPP in Nigeria. A total of 20 interviews were conducted across the four case studies during the fieldwork.

As explained in section 3.5, particularly the illustration in figure 5, the face-to-face interview format was adopted for all interviews.

3.4 Ethical issues

Careful observation of ethical issues is considered critical in social research to ensure that respondents and others directly connected with the research are not adversely affected by it in any way (Broom, 2006; Lutabingwa and Nethonzhe, 2006). As a first step towards the fieldwork, the researcher contacted those at a managerial level in the case studies organisations visited during the fieldwork and the verification interviews strictly within the purview of the Newcastle Business School's ethical requirements, approval for which was sought and obtained from the School Ethics Sub Committee.

In articulating ethical considerations for this research, the research considered the prescriptions of Saunders, Lewis and Thornhill (2003), a summary of which is that participants in any research must have the right to:

- Personal privacy
- Participate in the research voluntarily
- Withdraw their participation at will either partially or completely
- To give genuine consent that is not based on any deception
- To confidentiality and anonymity in the research report
- To air opinions on the procedure for data collection.

In addition to observing the codes prescribed above, the researcher also strictly followed the terms of the ethical approval granted by the Newcastle Business School's ethical committee. Ethical issues anticipated for this research focused on

the protocol for the semi-structured interviews and the verification interviews, both of which involved face-to-face interviews with the respondents.

Because of the sensitivity of the subject matter of the research, there was a need to exhibit a high degree of ethical decorum so as not to expose the researcher to legal challenges consequent upon the research and its outcomes. During the fieldwork and the verification interviews, the researcher also interviewed prosecutors, procurement officers and the civil society involved in matters that are being litigated upon before Nigerian courts for their opinions on the cases since court rules demand that facts of the cases before the courts are not be reported in academic research. In addition, the decided case of Federal Government of Nigeria versus Bode George and others, which centred on an elaborate PPP-related corruption, was obtained as part of the secondary data for this research. The case in which Bode George –a high-ranking Nigerian politician – and nine other public office holders were convicted of public procurement-related corruption. They were found guilty of circumventing the public procurement rules (see sections 4.3, 4.4 and 4.5) in the first ever conviction by the courts in Nigeria for PPP-related corruption because of the absence of an independent corruption vulnerability checklist, which this research has sought to develop for detecting corruption in the PPP (see table 11).

The researcher took time to explain the purpose of the research and particularly the semi-structured interview to every interviewee. The interview protocol for the research is based on the prescription of Ekwo (2011), which requires that consent obtained from interviewees during the interview process must be genuine consent. This means that the purpose of the research, in addition to any risks and disadvantages that it may entail, must be fully disclosed to the respondents and any concerns expressed thereafter must be fully resolved to their satisfaction before the

consent can be said to be genuine. As part of the adopted interview schedule (see appendix 4), the researcher explained fully to all respondents the purpose, possible risks and disadvantages, as well as benefits, that the research study may entail for Nigeria and Nigerians in general (the respondents inclusive), plus its potential contribution to practice and literature. Upon this basis, the consent of all respondents was obtained before each semi-structured interview was conducted.

Court judgements on cases that touch upon public procurement-related violation of the 2007 Nigerian Public Procurement Act, particularly the judgement convicting the Board and Management of the Nigeria Ports Authority (Federal Government of Nigeria v Bode George and others), were sourced as part of the secondary data. Official statistics such as those presented in the Nigerian National Appropriation Bills were also procured in order to explore the statistics regarding statutory appropriations of public funds for public procurement.

3.4.1 Pre-fieldwork activities

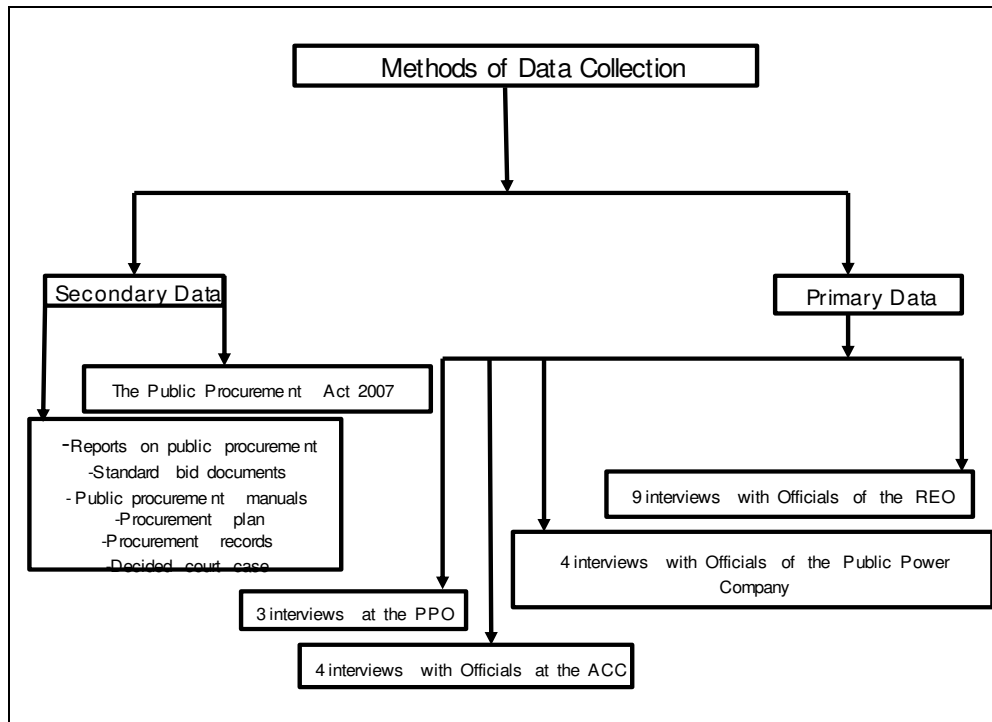
As a first step towards the main fieldwork, the researcher contacted the managers of the case studies organisations which were identified through the initial readings about the problem of corruption in the procurement process in the electric power industry in Nigeria, with a request to visit them during the fieldwork. Assurances of authorisation from the supervisory team and the university hosting the doctoral research were also conveyed to the organisations and the respondents. The researcher was identified by means of a student identification card and assurances by her of the purpose of the fieldwork and the potential benefits to Nigeria and in particular, the management of public procurement. Assurances that information supplied by

interviewees would be treated with utmost confidentiality were also given, with the researcher pledging that data were being sought solely for academic purposes.

3.4.2 Data collection and analysis techniques

Following the classification of the data for this research into primary and secondary types (Bryman, 2009), the primary data, which forms the main data component for this research, was collected directly from respondents through the use of semi-structured interview questionnaires (example provided in Appendix 6). Secondary data defined as data collected by others for purposes other than the present research (Cowton, 1998; Houston, 2004), for this research consists of the Public Procurement Act, 2007 and the Public Procurement Manuals (National Assembly Nigeria, 2007), analyses of which is presented in the institutional framework of public procurement in chapter 4. These data are used in this research, as is the case with other qualitative studies, to complement the data collected from the primary source(s) (Sandelowski, 1997; Blaxter *et al.*, 2006). In specific terms, secondary data is used to cross-validate the data from the primary source and to confirm and/or modify the findings from the primary source (Blaxter *et al.*, 2006). A diagrammatic illustration of the processes of data collection is presented in Figure 4 below.

Figure 4: Data Collection Processes



As illustrated in Figure 4, primary data for this research have been generated from the administration of semi-structured interview questionnaires with nine respondents in the Rural Electrification Organisation. Three interviews were also held with respondents in the Public Procurement Organisation while four interviews each were conducted at the Anti-Corruption Commission and the Public Power Company of Nigeria.

The secondary data component is sourced from published official documents, statistics, and corporate disclosures by companies. Furthermore, other secondary sources of data include the Public Procurement Act, official reports on public procurement, standard bid documents and court papers on the case of corruption at the Rural Electrification Organisation. The resulting data are collated and variously prepared and synchronised for qualitative analysis in order to provide explanations to

achieve the research aim and objectives (Esrock and Leichty, 1998; Tambunan, 2006; Bryman, 2008).

Analysis of documents from secondary sources is widely used for various kinds of social science research (Bourgeois Iii, 1980; Hentschel *et al.*, 2000). According to Yin (2008), documented secondary data can be in the form of communiqués, archival records, administrative documents and computer files and records. This research, however, also used procurement policy documents, corporate websites, published official documents and journal articles as secondary data.

3.4.3 The semi-structured interview

An open ended interview method was adopted for the conduct of the semi-structured interviews, in order to give the interviewees the opportunity to talk freely about the issues raised during the interview. However, this technique has been criticised as very complex and difficult to control (Bryman, 2009). Developing his argument, Bryman (2009) said that it is risky to adopt a technique that leaves the researcher without any element of control over the interview process as the sole means of primary data collection. This view loosely fits the philosophy behind the research strategy which hinges on an interpretivist ontological principle, premised on the assumption that with social phenomena such as corruption, the associated risk factors and their meanings are continually being brought into existence by social actors (Bryman, 2008). The interpretivist ontological underpinning of the study meant that the researcher generates data that truly represent the views of the respondents, without the introduction of artificiality in the form of exertion of undue influence and interference in generating data that may not represent the true views of the respondents. For this research, the social problem is the issue of corruption and its

associated risk factors in the public procurement process in Nigeria; while the social actors are the officers and other professionals with covert and overt responsibilities for the management of the public procurement process in Nigeria.

Although the researcher pursued a consistent line of inquiry in the interview process, the stream of questions to be used was fluid and open ended and pre-agreed by the respondents as opposed to being rigid, as can be contemplated in a structured fieldwork design (Simpson and Humphrey, 2010). The interview process remained open-ended and at times assumed a conversational manner, due to the sensitivity of the issue of corruption in Nigeria, but strictly followed the underlying research ethical protocol, built around the researcher refraining from giving any direction to the respondents as to what to say and what not to say (Seidler, 1974; Lederman, 1990; Sim, 1998).

As explained in section 2.2, corruption in relation to public procurement is defined in terms of inappropriate behaviours (wrongdoing) (Boynton and Greenhalgh, 2004; Kim *et al.*, 2009). The associated risk factors are explained in terms of the Impartiality Principle – acts of wrongdoing (partiality) which undermine the integrity of the procurement process (Kurer, 2005; Rothstein and Eek, 2009). The result is that public procurement-related corruption is difficult to measure (study) using quantitative methods (Auerbach and Silverstein, 2003), hence the use of qualitative methods for this study. Corruption involves secrecy and deceit, and the possibility of informants being punished when exposed (Kim *et al.*, 2009).

The sensitivity of corruption in Nigeria means that it is difficult to directly probe individuals' behaviour in relation to corruption. This was indicated by the interviewees' wish to see the proposed questions before giving their consent to be

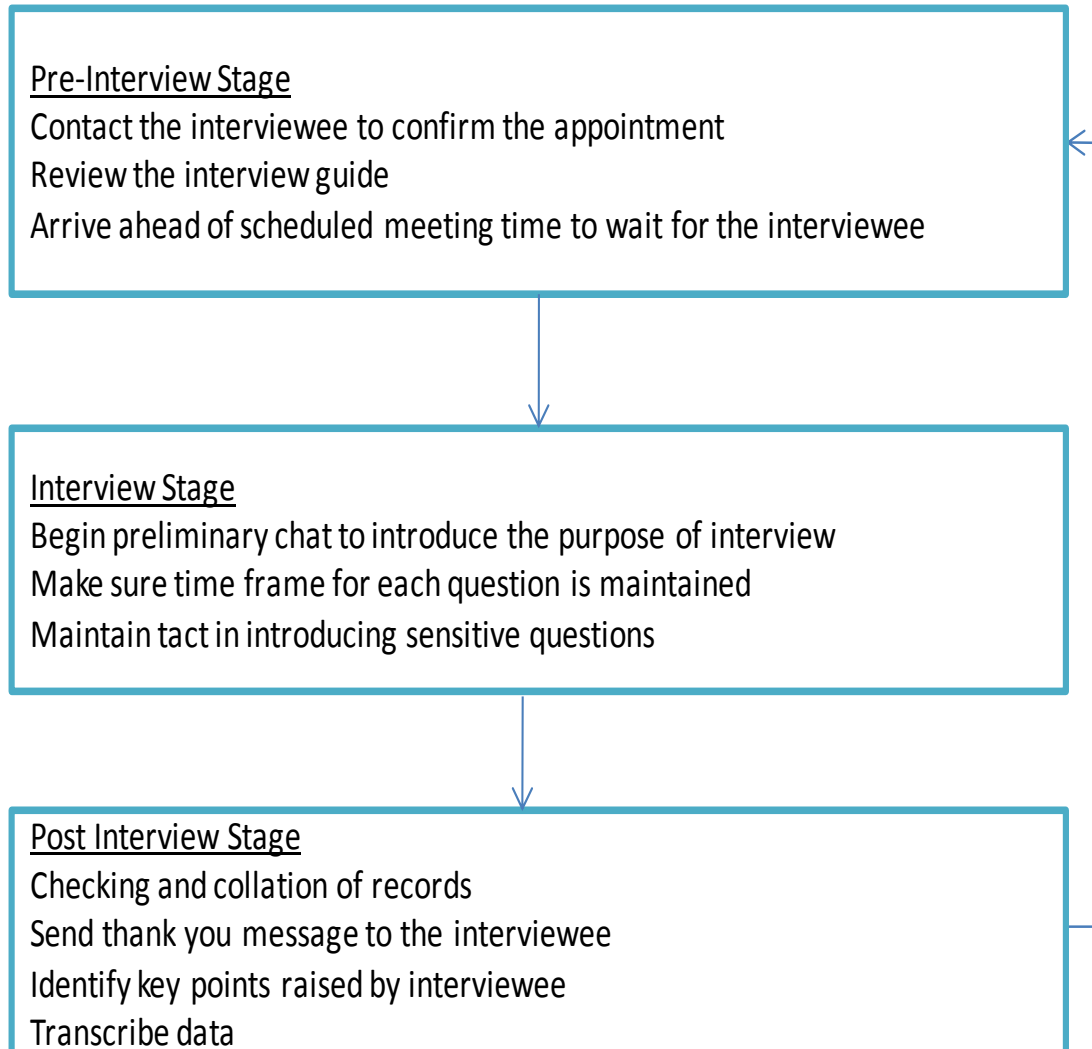
interviewed, and meant that it was necessary to pose questions about their knowledge of processes and practices in an indirect manner. As Kim *et al.* (2009) also explained, a semi-structured approach is more likely to encourage people to disclose information than a structured interview format if the subject matter of the interview involves corruption, as a semi-structured interview gives the interviewer the discretion to ask further questions about responses that seem significant. Twenty one semi-structured interviews were planned for the fieldwork. However, the researcher conducted 20 which constituted over 95% of the planned semi-structured interviews during the course of the fieldwork.

The first nine semi-structured interviews were conducted with procurement officers in the procurement unit of the case studies' organisation in this research, the Rural Electrification Organisation. As shown in figure 5, the researcher administered the semi-structured interview according to a schedule which served to guard the interview process against any distractions. The semi-structured interview employed a technique based on Bryman's (2008) prescription for the interview framework. While the interviews at the Rural Electrification Organisation and the PPC dealt with the issue of corruption in public procurement from the point of view of the procurement officers, focusing on their views about the possible risk factors in the Nigerian public procurement process, the interview at the Anti-Corruption Commission and the Public Procurement Organisation focused on the subject of the risk factors for corruption in the procurement process from the perspective of anti-corruption agencies.

The semi-structured interview framework provides the opportunity for the researcher and the interviewee to interact personally with each other. To avoid linguistic

misunderstandings, the interviews for this study were all conducted in English (Mandel, 2003).

Figure 5: The semi-structured interview schedule



Source: Adapted from Ekwo, 2011

Furthermore, following the semi-structured interview procedure outlined in figure 5, each interview began slowly with a preliminary interchange as an icebreaker, to introduce the topic. The conversation started gradually thereafter, in such a manner as to gain the confidence of the interviewee prior to the confidentiality declaration. The researcher followed this up by introducing the subject matter of the interview

and delivering the questions one after the other. By following this procedure, the interview process ran its course successfully. At the end of each interview, the interviewer asked the permission of the interviewee to have recourse to follow-up by email or phone if the need arose and all the interviewees agreed to this. The elaborate preparations made before going into the field impacted positively on the whole process of the interview.

The supervisory team gave unstinting support to the researcher. The researcher had contacted the organisations visited during the fieldwork in advance and secured the acceptance of their management for the interviews ahead of the fieldwork. This gave the degree of credibility to the exercise that is required due to the bureaucratic nature of Nigerian society. The processes leading up to the interviews created some degree of trust between the interviewer and the interviewees. The trust built during the interview process led to a few of the interviewees calling the researcher after the interview to volunteer further information that became available to them after the interview process was completed. This helped the researcher to update the data collected.

3.4.4 Approaching the interviewees

Because of formal requirements and the peculiar safety risks of research on the subject of corruption, steps were taken to ensure the safety of the researcher. The process of conducting interviews is set out in four successive steps: identifying the interviewees, approaching the interviewees, conducting the interviews and transcription.

The identification of subjects to be interviewed is vital for collecting the required quality of data from the case studies organisation and each of the other four organisations visited during the main and supplementary fieldwork. Given the complexities of the issues of corruption in public procurement and its incessant manifestations in Nigeria, finding out which organisation and category of officers should be visited during the conduct of the fieldwork became essential in order to identify credible interviewees for the study.

Having access to key informants is very difficult, especially in a society that is highly fragmented along ethnic and religious lines like Nigeria. As is the case with most fieldwork in developing countries, some of the interviewees exhibited high levels of scepticism as to the identity and motives of the researcher (Ilesanmi, 2001; Okediji, 2005; Osaghae and Suberu, 2005). Although prior to going into the field, the researcher had attempted to make contact with most of the organisations and communities visited, using her network of contacts developed over a long period, and this did not mean gaining access to participants was an easy task. Many of the interviewees asked the researcher to come back again and again before finally granting an audience.

3.4.5 Data transcription and analysis

In social research, data obtained through interviews is only useable if it is transcribed. As already mentioned above, transcription of the interview data and coding it into codes for template analysis was one of the important post-fieldwork activities carried out by the researcher (Hycner, 1985; McLellan *et al.*, 2003). The researcher transcribed the semi-structured interview data immediately after the day's scheduled interviews had been completed. This was so that all the information

gained from the day's interview could be properly recorded and transcribed while the memory of the day's interview engagements was still fresh. According to Yin (1993), adopting an appropriate strategy for analysing data from case study evidence has always been difficult because the strategy is still evolving. He nevertheless prescribed three analytical strategies for data generated from case study research. These are:

1. Relying on the theoretical propositions that led to the research questions, aim and objectives
2. Examining rival explanations about the research theme and
3. Developing a case explanation.

Furthermore, Yin (1999) advanced the idea of theoretical propositions, which are most commonly used for analysing evidential data in case study research. This strategy of analysis has been considered for adoption in this study, based on the theoretical underpinnings explained in chapter 2. It provides a guide for recognising data that have direct relevance to the purpose of the research. It is a strategy that helps the researcher to sieve and discard irrelevant data as a quality check for data integrity and general quality assurance in the case study research process. This strategy has been found to be especially useful in answering the 'how', 'what' and 'why' questions in case study research (Darke *et al.*, 1998).

Furthermore, this strategy is very useful for analysing the qualitative data envisaged to be collected in this research because it is amenable to template analysis processes that underpin this study. The strategy of thinking about rival explanations is useful for qualitative research (Bryman, 2008). This is because it can only be applied to textual data analyses through the instrument of template analysis (Yin, 1993).

Because of its exclusively qualitative attribute, it is suitable for the textual data generated for this research.

Developing a case study description is usually adopted as an alternative strategy when the case studies does not fit into the other two methods of data analysis described above, and the research seeks to develop a descriptive framework for analysing and presenting the case studies evidence (Mays and Pope, 1995). In practice however, this method of data analysis is less preferable than the first two. It is mostly used in situations where it has not been possible to apply the first two methods; hence it is not applicable for this research.

3.5 Template analysis

According to King (2004) template analysis is an approach to data analysis that involves developing a 'template' of themes from mostly raw data – for this study, data from semi-structured interviews – and organising them in a meaningful way into codes which can then be subjected to further analysis to form themes that relate to the research aim. The themes emerging from the initial data will be further generated into information codes that reflect the whole data set and by implication, the overall aim and objectives of the study. Specifically, the approach of template analysis involves looking at a small section of the data set and identifying the themes that are emerging from the data, before further organising them into meaningful codes that form a 'template', which is then used to analyse the whole data set (Plumecoq and Lefranc, 2000; Heeks and Bailur, 2007).

The codes created derived from the researcher's reading of the literature and the government approved procurement manual, as set out in the Public Procurement Act (National Assembly Nigeria, 2007.-b). The raw data generated from the fieldwork

were coded separately for each individual respondent. Responses to each question (code) across all respondents were then sorted so that all similar texts were arranged together in one place. Next, through a careful reading across the segments of all similar texts from the case study organisation, these were compared with those from the PPC of Nigeria; the Bureau for Public Enterprises and the Anti-Corruption Commission, and in this way, an initial set of templates was generated (see Appendix 3). These initial templates were cross-validated and further integrated with templates from the primary source and with those from the secondary data to generate a new set of themes. This process continued until a final template was defined and the whole data set coded in fulfilment of the research aim and objectives (King, 2004; Hsieh and Shannon, 2005).

3.5.1 The process of template analysis

Analysis of the data collected using the semi-structured interviews from the case studies was carried out by applying template analysis using the process outlined in figure 6 and the research design outlined in figure 1. As Al-Mijrab (2010) reported, template analysis has become the most popular analytic technique used by qualitative researchers. He went on to say that template analysis can be used to create templates from qualitative data templates which are then used to build the research argument in furtherance of the aim and objectives of the study. A template has been defined by King (2004) as the product of the application of the technique of template analysis to qualitative data transcribed from qualitative interviews. Particularly, a template has been described thus:

‘...essentially as a list of the codes or categories that represents the themes revealed from the data that have been collected. Template analysis combines

a deductive and an inductive approach to qualitative analysis in the sense that codes can be predetermined and then amended or added to as data are collected and analysed?

(Saunders, Lewis and Thornhill, 2009, p. 505 cited in Al-Mijrab (2010)).

Template analysis can therefore be used for organising transcribed textual data and collating them to reflect a set of priori codes that are essentially pre-formulated research themes, which for this research are set-out in the semi-structured interview questionnaire (See appendix 6). As explained by King (2004), the choice of template analysis for this research stems from its amenability in application and development of codes from textual data towards answering research questions and achieving research aim and objectives. Furthermore, King (2004) and Al-Mijrab (2010) described template analysis as a very effective and flexible technique for developing patterns from semi-structured interviews into a clear hierarchy of themes, concepts that encapsulate meanings which allow the researcher to compare and interrogate perspectives from different groups, such as the different case studies for this study.

Template analysis was applied to the textual data transcribed from the semi-structured interviews, which were conducted across six public organisations over the course of two years, during the main fieldwork in 2011 and the verification fieldwork in 2012 (see table 5), in order to gain an understanding of the risk factors that may have made the public procurement process in Nigeria vulnerable to corruption. In particular, the interviewees were asked what the risk factors of corruption were from the purview of the public procurement officers, the contractors seeking public contracts through the public procurement process and civil society

with responsibility for oversight of the public procurement process to combat corruption.

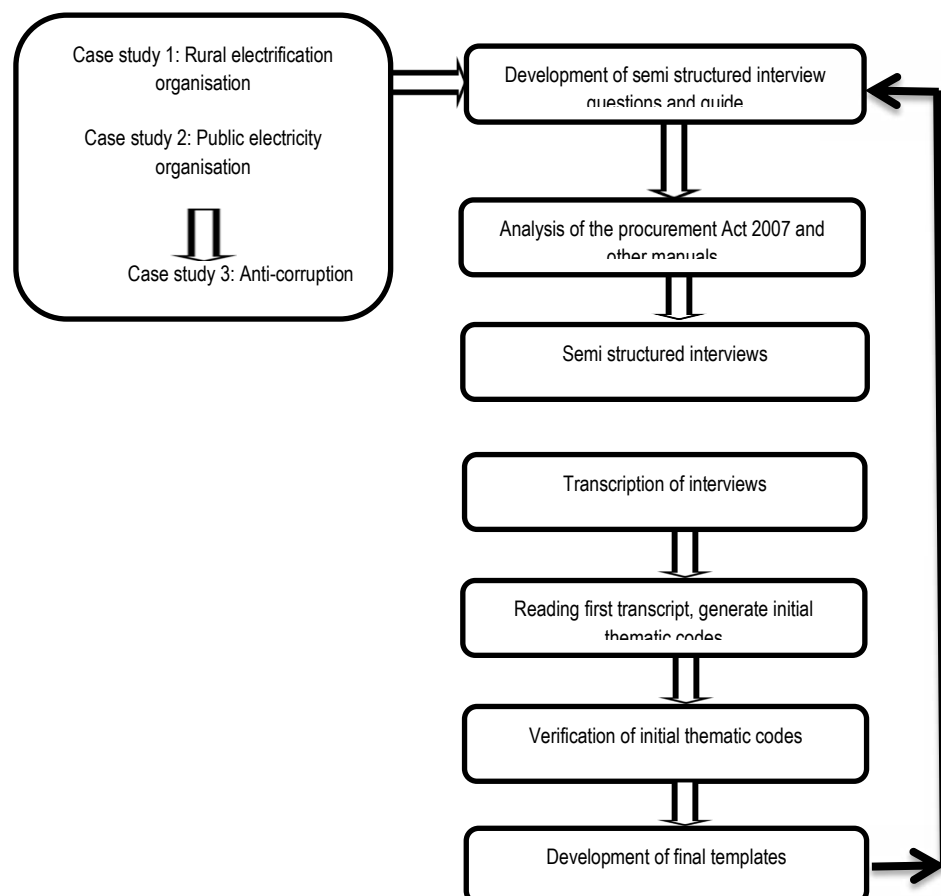
Though its use in organisational research is still a recent development, having only begun in the 1990s (Waring and Wainwright, 2010, Miller and Crabtree, 1999), the application of template analysis to unstructured or semi-structured qualitative data has become an accepted technique for qualitative data analysis. For this study, it is applied to textual data transcribed from semi-structured interviews to illustrate the case studies, relating to risk factors for corruption with reference to the current framework for public procurement in Nigeria (see chapter 4). In the first case study visited during the main fieldwork, the researcher conducted nine interviews with the procurement officers of a rural electrification organisation. Four interviews each were conducted at the public electricity company in Nigeria and the anti-corruption organisation while three interviews were conducted at the supervisory public organisation for public procurement in Nigeria. The transcribed data from the fieldwork was analysed and the findings thereof formed the basis for the verification fieldwork which was conducted in 2012. During the verification fieldwork, findings from the main fieldwork were discussed with interviewees from an anti-corruption reform civil society with an interest in public procurement-related corruption, public prosecutors and procurement officers from a procurement entity outside the electric power sector in Nigeria.

The purpose of the application of template analysis is to provide an indicative overview of the key themes and sub-themes that emerge from the transcription of the interview data from the semi-structured interviews. As defined by King (2004), themes and codes are relevant features that emerge from analysis of the transcribed data of the interviews – be they unstructured, semi-structured or structured – which

can then be used as building blocks with which to construct conclusions that respond to the research questions and justify the research aim and objectives.

According to Waring and Wainwright (2010), the approach of template analysis involves coding a large volume of text so that segments about an identified topic (the codes) can be assembled in one place to complete the interpretative process. The original themes for this research are identified from the research aim, objectives and question (see section 1.3), and they have to do with the risk factors for corruption in the public procurement process in Nigeria. These main themes were further developed, through the review of related literature, into semi-structured interview questions used for the conduct of interviews, and into preliminary templates were generated typifying thematic codes. The preliminary templates were then subjected to verification and corroboration by way of a verification phase of fieldwork, the analysis of which led to the generation of the final templates, depicting the possible risk factors for corruption in the Nigerian public procurement process.

Figure 6: The process of template analysis



The process of template analysis for this research involved organising, connecting and corroborating thematic codes involving:

- Creating a code manual/coding scheme
- Hand or computer coding the text
- Sorting segments to get all similar text into one place
- Reading the segments and making the connections that are subsequently corroborated to answer the research question and justify the research aim and objectives.

As shown in figure 6, the researcher developed the initial template from pre-defined codes which were derived from the literature review and the Nigerian Public Procurement Law of 2007. The pre-defined codes are:

1. Examination of the public procurement process
2. Identification of a set of risk factors in the PPP
3. Corruption vulnerability check-list.

The pre-defined codes were rigorously subjected to review by the researcher and the supervisory team before being used by the researcher as the basis for the semi-structured interview process, the transcripts of which were subjected to template analysis. The initial templates that emerged from the analysis of transcripts for the semi-structured interviews conducted during the main fieldwork in 2011 give indicative thematic codes depicting possible risk factors for corruption in the Nigerian public procurement process.

3.5.2 Coding the raw data

Coding of the raw data, according to Corbin 1990 and King 2004, is an important and sometimes most difficult part of the qualitative data analysis. Furthermore, Corbin 1990 categorised coding into open and axial coding. While axial coding creates categories by grouping codes or labels given to words and phrases, open coding involves the coding of labelling of words and phrases found in the transcript or text. In doing open coding, which is adopted for this research, the researcher reads through the data transcript and marks as appropriate by circling or highlighting sections of the text selected codes or labels. For this study, this could be texts or phrases depicting corruption risk factors. The circled or highlighted codes are then collated to form themes towards creating templates.

As Charmaz (2003) opined, typically when coding, the researcher usually has some codes already in mind and is also looking for other ideas that seem to emerge out of the data. Explaining further, Charmaz (2003) prescribed a set of questions the researcher must consider about the data being coded:

- What is going on?
- What are people doing?
- What is the person saying?
- What do these actions and statements take for granted?
- How do structure and context serve to support, maintain, impede or change these actions and statements?

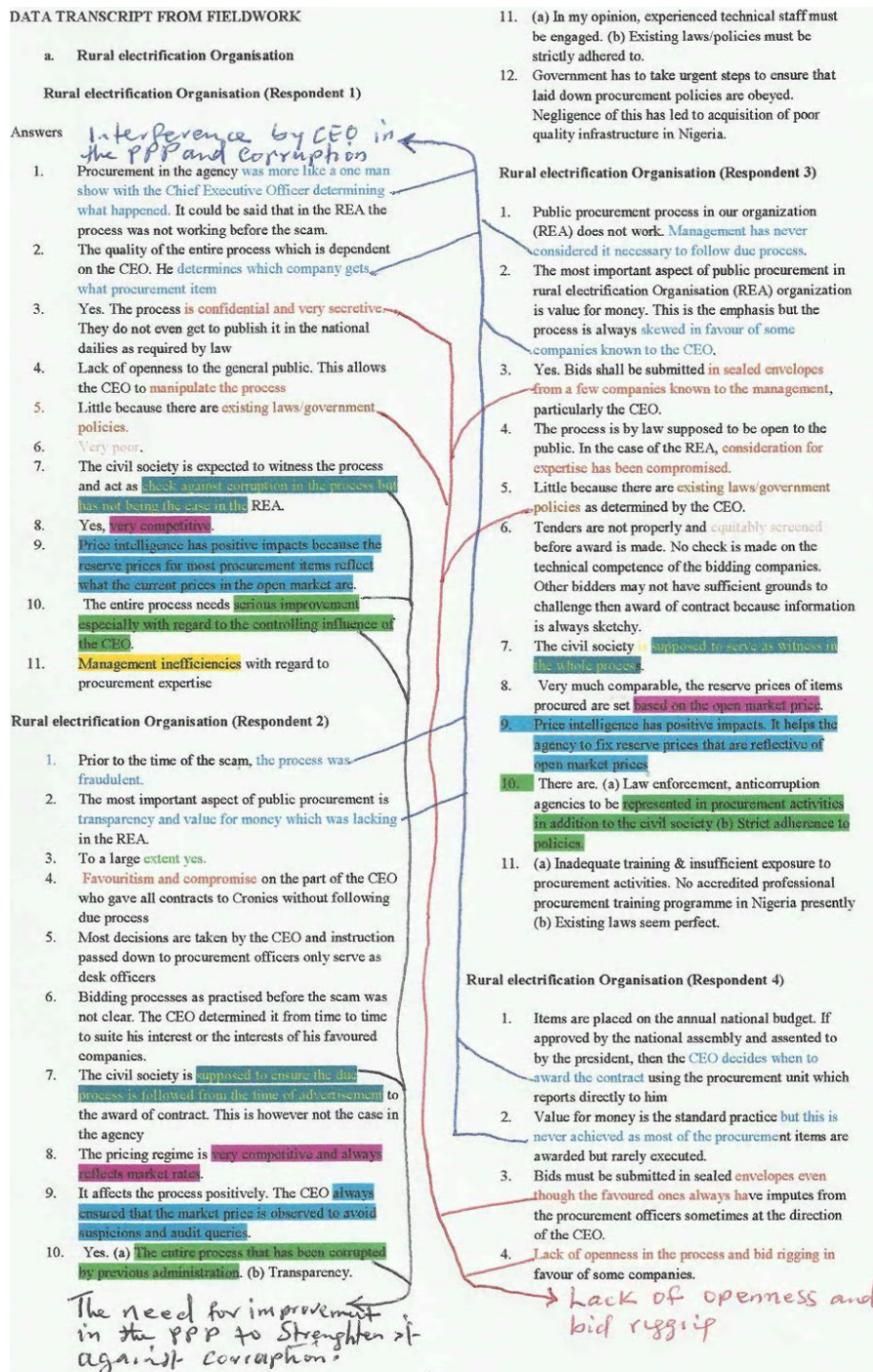
Lewins, Taylor and Gibbs, (2005) provide a more detailed list of the kinds of things that can be coded (see Table 8). The examples of each kind tend to be descriptive

because it makes it is easier to explain the phenomena. However, when you are coding it is advisable to move from descriptive codes to more analytic ones as quickly as possible.

Qualitative attributes and behaviours such as corruption, practices or strategies, like the PPP and participation in a system such as the system of work in the public service, are the key indices of the of the semi-structured interviews and are the attributes that can be coded in the process of template analysis.

Applying the open coding technique, which involves reading through the raw transcript of the data from the semi-structured interview, thematic codes depicting the risk factors of corruption in the PPP in Nigeria were generated.

Figure 7: Coding sample



Source: Semi-structured interview transcript

Applying the technique of open coding to data on the theme of examination of the PPP produced the following sub-themes:

1. Examination of the PPP
 - 1.1 Administration of the PPP
 - 1.1.2 Fundamental principles of the PPP
 - 1.1.3 Competition and value for money
 - 1.1.4 Setting of procurement price thresholds
 - 1.1.5 Standardising the PPP

Applying template analysis to the data from the case studies to identify a set of risk factors that may explain the vulnerability of the public procurement process to corruption produced the following sub-themes:

2. Identify a set of risk factors in the PPP
 - 1.2.1 Interference in the PPP
 - 1.2.2 Absence of confidentiality in the PPP
 - 1.2.3 Contract splitting
 - 1.2.4 Abuse of discretion
 - 1.2.5 Independence of civil society
 - 1.2.6 Use of price intelligence (Market Fieldwork)
 - 1.2.7 Need to strengthen anti-corruption initiatives in PPP

3.5.3 Drawing conclusions

Drawing conclusions is an important aspect of data analysis (Bryman, 2008). Much of social research, and in particular that using qualitative research methods, has

considerable difficulties in drawing conclusions (McKendrick, 1999; Wood *et al.*, 1999). This is particularly the case when conducting social research that employs the case study strategy (Yin, 2003). According to Bennett (2002), the combination of new themes of research, the broadening scope of methodologies, and greater specialisation within sub-fields (such as the emerging field of corruption research) has overshadowed the common methodological concerns of researchers in many social fields. Bennett further opined that when conducting interviews (be they structured or semi-structured) on different subjects within the case study context, one or more of which might be more familiar to the researcher, care must be taken to avoid bias towards the more familiar subjects within the case study or case studies; as such a position may end up being the basis for the interpretation of other subjects within the case studies. According to him, this might affect the validity of the conclusions drawn from the study.

As argued by Bryman (2008), drawing conclusions in case study research entails looking for patterns in activities, meanings and forms of participation, relationships and settings in order to answer research questions or justify the research aim and objectives. The search for meaning in the form of valid conclusions that reflect the research aim and objectives is often carried out through a chain of activities involving a search for patterns. In order to draw reliable conclusions, a distinct analysis technique should be used to strategically interpret the research results in line with the research aim and objectives (Bhattacharya, 2008).

The researcher in this study adopted different approaches which imply selecting categories or dimensions through which to seek within-group similarities coupled with inter-group differences to interpret the evidence derived from the data analysis. Before any final conclusions were drawn, the researcher looked through all forms of

documents and other original data acquired and their transformations through the template analysis process. If differences were noticed, the places where these new insights emerged were traced and re-read. This was also followed by revisiting and updating the research aim and objectives. By doing this, the researcher tried to ensure that the conclusion reflected the flow of argument through the whole research process.

3.6 Limitations of the research method

Despite the details presented in the design process for this research, some limitations were still perceived in the course of the study. These limitations are highlighted below.

It would have been helpful if the researcher had been able to interview the non-Nigerians involved in acts of corruption in Nigeria, some of whom had already pleaded guilty to this crime and were serving prison sentences in the country. This would have given insight into the international dimensions to the problems of public procurement-related corruption in Nigeria. However, the researcher was not able to secure approval to talk to the foreign cohort of perpetrators in order to unravel the motives behind their involvement and their modes of operation. Another limitation is the inability of the researcher to conduct a complete census of all the relevant stakeholders in the research context. This would undoubtedly have revealed more information, going beyond the revelations of the case studies and the other organisations investigated (Schlesselman and Stolley, 1982). The case studies are, however, still justified, because it is impossible to conduct a census fieldwork for a doctoral research project due to time and resource constraints.

Secondly, the participants were mostly stakeholders in the public procurement sub-sector of the Nigerian economy and those involved in investigation, prosecution and reform efforts at checking corruption in public procurement in Nigeria. Information from non-stakeholders would have given insight into the thinking of those who could not be classified as public procurement stakeholders with regard to the problem studied. This deficiency was hopefully reduced by the integration of documentary evidence. Thirdly, due to the case study research design, the data acquired strongly reflected the uniqueness of the character of the case studies selected.

Finally, because of the sensitivity of the subject of corruption in Nigeria, the researcher encountered difficulty in accessing the respondents for the semi-structured interviews. In addition to the letter of introduction from the University, the researcher also had to make several follow-up phone calls to the respondents to gain their trust for the interviews.

3.7 Chapter summary

This chapter has explained why the case studies were chosen as the research strategy for this research. The reason for selection of a qualitative case study design – particularly the semi-structured interview as the appropriate method for data acquisition – has also been explained in this chapter, along with the reason for the adoption of the instrument of template analysis for the data analysis process. Drawing on the methodological literature, the chapter discussed why the single case study design is best suited to the research aim and objectives, in conjunction with data from the other related organisations visited during the fieldwork. Building on the methodological assumptions of the qualitative approach in conducting case study research, this chapter gave a comprehensive description of how multiple data

collection methods (interviews, court papers and reports) as employed in the study fit well with its research aim and objectives.

Details of the approach to data collection and analysis were presented in comprehensive detail in order to give the reader a clear understanding of how the research was carried out. Furthermore, the discussion of data collection and analysis is focused on the problem of corruption in the public procurement process, with implications for its risk factors and its social and economic impact on the Nigerian people and economy. This provides a critical awareness of the problems of accountability and transparency in the public procurement process in the Nigerian context for national and international readers. The chapter ends with a reflection on the methodological limitations of the research. This is of particular use in supporting the researcher in dealing with methodological issues in future research. It will also help other researchers who may want to adopt the methodological approach taken in this research with a view to avoiding the limitations that have been highlighted.

Chapter 4

The framework for PPP in Nigeria

Chapter 4

The framework for PPP in Nigeria

4.1 Introduction

In this chapter, the existing framework of the PPP in Nigeria is examined through analysis of secondary data to achieve the first objective of this research, as set out in section 1.3. To achieve this, the purpose of the PPP is contextualised by examination of the existing public procurement framework in Nigeria. In this chapter, documents such as the Nigerian Public Procurement Act and Procurement Regulations upon which the institutional framework of the PPP in Nigeria is based are analysed (National Assembly Nigeria, 2007.-b). These statutory documents, which prescribe the institutional and administrative framework for the practice of public procurement in Nigeria, set key principles upon which PPP is based. In part IV of the Public Procurement Act 2007 (National Assembly Nigeria, 2007.-b), a set of fundamental principles upon which all public procurement activities must be based are itemised and part V provides the schedule that details the organisation of procurement activities.

In addition to the Public Procurement Act of 2007, which sets out the general framework for the PPP in Nigeria, other statutory instruments provide specific details of how parts of the Act should be implemented. Some of these, the specific provisions of which are explained under the section entitled ‘secondary procurement policies’, are the public procurement regulations for consultancy services, standard bidding documents for the procurement of goods, standard bidding documents for the procurement of services, standard requests for proposals for selection of firms

(small, complex and time-based assignments and individual consultants) and public procurement regulations for goods and works. This chapter, which details the institutional framework for the PPP in Nigeria through in-depth analyses of extant rules, policy documents, guidelines and academic commentaries on the PPP in Nigeria, is geared towards achieving the first objective of this research (see section 1.3.1).

4.2 A background and review of PPP framework

Upon the return of Nigeria to a system of constitutional democracy on the 29th May 1999 (National Assembly Nigeria, 1999), it was observed that that the time-tested approach to conducting government business had degenerated to such an extent that the Public Service Rules, Financial Regulations and Ethics and Norms of the Service had all been jettisoned, either due to sheer ignorance or for selfish reasons, and in particular for motives of personal gain (Ekpenkhio, 2003). The level of non-adherence to the applicable rules and procedures and the attendant costs in real and financial terms to the country can be seen from the outcry by the government, as reported in Ekpenkhio (2003. p.1):

[...] all the elements that enhance efficiency, reliability and continuity of the system have been tampered with. This resulted in major and severe setbacks for the conduct of Government business...’ It was further emphasized that transparency in Government procedures was necessary to usher in ‘a great and dynamic economy’ to ensure ‘a just and egalitarian society.’

As a result, the Nigerian government commissioned a team of procurement experts to study its Financial Systems and general procurement-related activities with a view to proposing policy measures that would assist the Nigerian Government with a process of embedding efficiency, accountability, integrity and transparency into Government Procurement and Financial Management Systems (Ekpenkhio, 2003; Owolabi, 2004; Akenroye *et al.*, 2013). It therefore follows that a clear objective of the Nigerian government, which is also reflected in the aim of this research, is to reduce the scope of corruption in the public procurement process and so improve efficiency in the management of the country's public expenditure (Evenett and Hoekman, 2005a). The review process identified that weaknesses in the pre-1999 public procurement process in Nigeria itemised in Ekpenkhio (2003) are namely:

- i) that Nigeria lacks a modern law on Public Procurement and a permanent oversight body to provide guidance and monitor purchasing entities;
- ii) that the Finance (Control and Management) Act, 1958, together with the Financial Regulations – which set basic rules for managing public expenditure – have gaps and deficiencies. Furthermore, faulty implementation of existing regulations on procurement, such as a lack of permanent arrangements for control and surveillance, have created opportunities for bribery and corruption;
- iii) that due to inflation and lack of regular adjustments to the thresholds for the approving limits of the Tender Boards, their authorization was constantly being eroded, resulting in abuses, among which the practice of splitting contracts is prominent;

- iv) that there was proliferation of Tender Boards, which were perceived by the private sector as sources of delay and non-transparency. In addition, these Tender Boards appeared to have a restricted mandate, with de facto powers to decide contracts resting with the Permanent Secretary and Minister/ Commissioner;
- v) that Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption; and
- vi) that procurement is often carried out by staff who are largely lacking in relevant public procurement training.

Furthermore, the committee proffered recommendations which were aimed at correcting the identified weaknesses in the procurement process. These were:

- (a) the need to integrate the United Nations Commission for International Trade Law (UNCITRAL) model into a law to regulate the practice of public procurement in Nigeria;
- (b) the need to establish a Public Procurement Commission (PPC) to serve as the regulatory and oversight body on Public Sector Procurements in Nigeria;
- (c) the revision of key areas of the Financial Regulations to make them more transparent;
- (d) the streamlining of Tender Boards and strengthening their functional authority, including powers to award contracts;
- (e) a critical need to rebuild procurement and financial management capacity in the public sector through training.

4.2.1 Towards the 2007 policy for public procurement

Upon submission of the review committee on public procurement in Nigeria, the government issued the New Policy Guidelines for Procurement and Award of Contracts in Government Ministries via Circular No. F. 15775 of 27th June, 2000, wherein it accepted the review committee's recommendations (see section above), but added a proviso for the Registration of Contractors and the involvement of Political Office holders such as Ministers and Commissioners in the award of contracts in excess of two hundred and fifty thousand pounds sterling (£250,000). The main provisions of the Circular, which aimed to elevate public procurement in Nigeria up to the levels of international best practice according to Ekpenkhio (2003) were:

- a) Establishment of a Steering Committee and Procurement Reform Implementation Unit (PRIU) to prepare the ground for the establishment and proper delivery of a Public Procurement Commission (PPC), which it envisaged would be the lead policy-making body on all procurements and award of contract matters in public service;
- b) Permanent Secretary to approve contracts of works, services and purchases up to fifty thousand pounds sterling (£50,000);
- c) Establishment and strengthening of the Ministerial Tender Boards;
- d) Strict prohibition of contract splitting;
- e) Open competitive tendering procedures;
- f) Advertisement of tenders in at least two national daily newspapers, and/or government gazettes and at least six weeks before the deadline for submitting tenders;

- g) Opening of tenders in public with or without press coverage;
- h) Clearly defined bid criteria;
- i) Committee of professionals to evaluate bids;
- j) Officials involved in the tendering process to declare conflict of interest and exclude themselves;
- k) All contracts valued at two hundred and fifty thousand pounds (£250,000) and above to be approved by the Federal Executive Council.

Following the publication of this Government Circular (Ekpenkhio, 2003), initiating a reform process towards greater transparency and accountability in Nigeria in the year 2000, a Steering Committee was formed to drive implementation of the public procurement reforms.

4.2.2 The reform and the 2007 PPP

The establishment of the Steering Committee in the year 2000 marked the final departure from the pre-1999 military rule era, when public procurement in Nigeria was carried out without a defined framework to direct public expenditure towards transparency and accountability (Eze, 2011). The work of the Steering Committee was to later produce the basis for a formal framework for public procurement in Nigeria, based on the following parameters:

- (i) Administrative and Legal parameters;
- (ii) Rules and procedures for a Procurement Manual for the Public Sector;

- (iii) Price Intelligence and Monitoring to gather and collate the prices of items with a view to having a data bank on open market prices to provide an evidence base on which to monitor contracts.

The activities of the Steering Committee, after extensive reviews of practices in other public procurement jurisdictions, culminated in the drafting of a Bill which was legislated upon by the Nigerian National Parliament to enact the Public Procurement Act of 2007 (National Assembly Nigeria, 2007). The Public Procurement Act of 2007, which gave statutory effect to public procurement in Nigeria, is explored in detail in this chapter to establish the existing framework of the PPP in Nigeria.

Procurement is an important process in the running of the business of government in Nigeria and commands the spending of an enormous percentage of the Federal government annual budget. It has equally been a significant site of corruption in the country over many years (Ribadu, 2006a; Transparency International, 2013).

In Nigeria, procurement is defined as the act of acquiring goods and services, and public procurement is the acquisition of goods, services or works through any means, by a public authority or entity (National Assembly Nigeria, 2007.-b). As a statutory requirement:

'a public procuring entity'⁷ shall plan its procurement (a) preparing the needs assessment and evaluation; (b) identifying the goods, works or services required; (c) conducting appropriate market and statistical fieldwork and on

⁷Government department engaging procurement activities.

that basis prepare analysis of the cost implications of the proposed procurement.'

(National Assembly Nigeria, 2007.-b, p. 14)

Furthermore:

'Where a procuring entity has made a decision with respect to the goods and/or services to be procured, it must set minimum qualifications of suppliers, contractors or service providers and request interested bidders to submit applications for pre-qualification, and thereafter set out precise criteria upon which it seeks to give consideration to the applications in reaching a decision as to which supplier, contractor or service provider qualifies, applying only the criteria set out in the prequalification documents and no more.'

(National Assembly Nigeria, 2007. p.16).

Notwithstanding the foregoing and other requirements governing public procurement in Nigeria that aim at ensuring only qualified contractors are selected to execute a contract, corruption continues to happen (Arrowsmith and Trybus, 2003; Caldwell *et al.*, 2005; Dike, 2005; Nicholls *et al.*, 2011).

This study examines the problems of corruption in Nigeria, particularly within the public procurement process, with a view to isolating the factors that may have made it resistant to past efforts to curtail it, and aims to propose a new framework that aims at promoting transparency in the process.

4.3 Administration of public procurement

The administration of public procurement in Nigeria is provided for in the Act of 2007 (National Assembly Nigeria, 2007-b). Part I of the Act established the National Council on Public Procurement under the chairmanship of the Minister of Finance, with members drawn from the public and private sectors of the Nigerian economy, civil society and a secretary who is also the director general and manager of the Public Procurement Organisation charged with the responsibility for overseeing public procurement in Nigeria. The Council is vested with the overall management of public procurement in Nigeria. Specifically, it is empowered in part I of the Act to consider, approve and amend the monetary thresholds and prior review thresholds to guide the application of the provisions of the Act by procuring entities.⁸ The council has responsibility for other policy matters viz. to consider and approve policies on public procurement; approve changes in the procurement process in response to improvements in modern technology and socio-economic challenges; and to give such other directives and perform such other functions as may be necessary to achieve the objectives of the Public Procurement Act, 2007.

4.3.1 Fundamental principles

A set of fundamental principles aimed at ensuring that public procurement became a regulated practice in Nigeria in 2007 are set out in part 4 of the Act. The principles enumerate a fundamental set of rules meant to ensure that in addition to being transparent, the practice of public procurement in Nigeria meets the requirements of accountability as it involves the spending of appropriated public money. Before a procuring entity embarks on any procurement activity, funds must have been

⁸Government ministries, departments and agencies that engage in public procurement.

allocated for that purpose. This means that for every procurement commitment entered into, there is a corresponding fund allocated to meet the financial obligations to be created. Specifically, the Act in section 7(1) states that:

‘...based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau, has obtained a Certificate of No Objection⁹ to Contract Award from the Bureau¹⁰ by open competitive bidding’

This principle is meant to ensure that the public treasury is not committed to a procurement contract that is not provided for in the budget. As Olatunji (2008) explains, before the Public Procurement law was implemented in 2007, government departments and agencies at were at liberty to set rules for each contracted item they procured. According to the author, at the time, procuring entities could covertly implement procurement guidelines that would lead to a predetermined contractor being awarded the contract.

Furthermore, until they were restrained by the Procurement Act 2007, government appointees were in the habit of committing government to contractual obligations for which monies were not allocated (So and Opawole, 2010). This resulted in an ever-growing debt owed by government to contractors both within and outside the country, but with the implementation of the Act, it was considered as serious misconduct for any official of government to award a contract for which funds have not been specifically allocated. In addition, many government projects could not be

⁹An approval in writing stating that the procurement activity under consideration meets extant rules.

¹⁰The Public Procurement Organisation.

completed, because funds were not allocated for them. This led to a string of abandoned projects¹¹ across the country.

4.3.2 Competition and value for money

Because of the problems manifest in public award and administration in the years before 2007 (Ojo *et al.*, 2006; So and Opawole, 2010), contracts for the procurement of public goods and services were awarded to predetermined beneficiaries in covert circumstances dictated by the political and administrative heads of government departments. Another problem that was manifest in the award of government contracts in the pre-2007 era lay the award of fake contracts to non-existent companies¹² (Eddy and Akpan, 2008). This way government officials provided simulated documentation for funds directly diverted from the public coffers for personal use (Nnabuike, 2010). In response to these problems, part 4, section 1, clause c-g of the Act provided that every public procurement activity leading up to the award of contract must be:

‘...by open competitive bidding; in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving there from; with the aim of achieving value for money and fitness for purpose; in a manner which promotes competition, economy and efficiency; and in accordance with the procedures and time-line laid down in this Act and as may be specified by the Bureau from time to time...’

Not only did the Act outlaw wasteful pre-2007 practice, it introduced a new regime of public contract administration with clear cut parameters to ensure value for any

¹¹ Projects started which could not be completed due to lack of allocated funds.

¹² Companies that are not registered and so cannot sue and be sued in their corporate names.

money spent on public procurement. A competitive bidding process is required, under the condition that for a contract to be awarded it must be advertised to the public and made open to every interested contractor's bid. This ensures that the process is transparent and can be scrutinised against the published criteria and extant regulations pursuant to the Act that now govern the administration of public procurement in Nigeria. It is also a requirement that the competence of the contractor is taken into account in the procurement process, with the result (at least in appearance) that only companies which have the wherewithal to carry out a project will be awarded the contract (Olayiwola and Oyegoke, 2010). Another of this Act's innovations to advance transparency is the empowerment of the Public Procurement Organisation to make new regulations in response to feedback on the implementation of the new public procurement regime in the country.

4.3.3 Setting a threshold for public procurement

Against the practice where contracts were awarded by fiat of the political and/or administrative leadership in government agencies (Aliyu and Elijah, 2011), the new regime is not only prospective in its drive to achieve transparency, it is also reactive, requiring the Bureau¹³ to set and as appropriate, review thresholds¹⁴ in the procurement regulations to reflect changing social and economic realities. Specifically, part 4 section 2 of the Act states:

'Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Federation Account or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payments or other form of

¹³Public Procurement Organisation.

¹⁴Monetary limits requiring different levels of approvals in public procurement in Nigeria.

request for payments is accompanied by a certificate of 'No Objection' to an award of contract duly issued by the Bureau.'

In addition to setting and reviewing the thresholds for ensuring that there is transparency in the process of public procurement, the bureau also imposes the issuing of a certificate of 'No Objection' before payments for contracts that have been awarded and executed can be paid for from the public treasury. In this way, accountability and transparency are monitored at all stages of the procurement process.

Another problem associated with the administration of public contract awards in the years preceding 2007, as explained by Olayiwola and Oyegoke (2010), is that many of the companies benefited from government contracts which they did not have capacity, in terms of personnel and equipment, to execute. As a result, many of the companies that were awarded contracts could only deliver shoddy work, while others could not deliver any work at all due to lack of capacity and the government having little or no remedy. Many of the contractors that benefited from contracts at that time were neither natural persons nor legal persons nor a combination of the two, meaning they could not be held individually or jointly liable for obligations and/or responsibility arising from the non-performance or improper performance of any contract awarded. Consequently, it is provided in section 6 of part 4 of the 2007 Act that in addition to requirements contained in any solicitation documents, bidders shall:

'...possess the necessary: professional and technical qualifications to carry out particular procurements; financial capability; equipment and other relevant infrastructure; shall have adequate personnel to perform the

obligations of the procurement contracts. Possess the legal capacity to enter into the procurement contract; not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings; have fulfilled all its obligations to pay taxes, pensions and social security contributions not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of acts relating to any matter; accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars. '

To ensure that contracts awarded are not abandoned by the contractors, leaving the government at a loss in terms of remedies, the Procurement Act specifically provides that a contract can only be awarded to a person, either legal or natural. Even though the Public Procurement Act has not eliminated corruption from the procurement circle in Nigeria (Jacob, 2010), the implication of its implementation has been that only persons against whom proceedings for damages can be sustained in the case of a breach can be awarded contracts. Furthermore, a process of due diligence for checking the would-be contractor's capacities in terms of professional, technical and financial capacities, and possession of the necessary equipment to execute the scale of project being contracted, is also elaborated. This is to ensure that the contractor(s) who pass the rigorous evaluation process and eventually get awarded the contract(s) are less likely to be agents of potential corruption.

In the pre-2007 era of public contract administration in Nigeria, procurement officers were often confronted by certain contractors who would stop at nothing to coerce them through bribery into influencing contract awards in their favour (Nwaobi, 2004; Nell, 2009). By contrast with the old order, where the giver of a bribe committed no crime, under the new dispensation of public contract administration in Nigeria, the giver is as guilty as the recipient of the bribe (National Assembly Nigeria, 2000). Not only could the bidder who engages in acts of bribery be guilty of corruption, but section 8 of the Procurement Act specifically states that:

‘Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if: there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau, in an attempt to influence any action, or decision making of any procurement activity; a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide.’

The quotation above shows that procurement officers now enjoy some level of protection from desperate contractors who hitherto would go to extreme lengths to bribe family members, friends and other associates of the procurement officer in a desperate scheme to conscript the officer into tempering extant rules in their favour (Ebbe, 1997; Schubert and Miller, 2008a). Furthermore, explicit responsibility now

rests with the accounting officer¹⁵ of any procuring entity in the event that the corruption safeguards of the act are compromised. This is seen in part 4 of the Act, and in particular, sections 22-25, which state that:

‘The accounting officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Act. The accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Act and the regulations laid down by the Bureau are complied with, and concurrent approval by any Tenders Board shall not absolve the accounting officer from accountability for anything done in contravention of this Act or the regulations laid down hereunder. Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Act and any regulations as may from time to time be laid down by the Bureau. Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they cooperate in any manner with bidders in the course of preparing their tenders.’

This compels the accounting officer to ensure full implementation of the Act against corruption, failing which he could be liable both at law and in equity for the resultant corruption and any financial and other losses thereof that government may suffer (Awolusi, 2010). In addition to the Act, secondary regulations detailing how specific sections of the Act must be implemented have been produced to promote the

¹⁵The administrative head of a procuring entity with responsibility for supervising public procurement activities.

transparency, accountability and integrity of the process of public procurement in Nigeria.

4.3.4 Transparency in selecting consultants

In the post-2007 public procurement regime in Nigeria, attempts have been made to reduce the cumbersome bureaucracy, which has been the bane of the process of public procurement in many countries (Arrowsmith and Wallace, 2000; Arrowsmith and Trybus, 2003). A number of implementation guidelines that simplify the specific provisions of the 2007 Act with regard to the standard request for proposals, standard bidding documents and other documents explaining various articles of the Act have been produced for application to procurement of different works and services in Nigeria. These documents, which aim to simplify parts 4-8 of the Act, seek the objectives of openness and transparency to reduce the risk of corruption in the process of procuring contractors for different categories of contracts (National Assembly Nigeria, 2007.-b; Bureau of Public Procurement, 2008e).

The regulations, which are in accordance with the Nigerian Public Procurement Act 2007, are also crafted to reflect internationally accepted best practice with regard to procurement (Bureau of Public Procurement, 2008e p.iii). Furthermore, the Request of Proposal gives all the information needed for all pre-qualified¹⁶ bidders so that none of the bidders are given more information about the procurement process than others. To promote integrity and openness of the process, would-be contractors are required to submit their bids in two separate parts: the technical proposal and the financial proposal (Bureau of Public Procurement, 2008d). It is a requirement of the regulations that the technical proposal component of the bid be stated in a:

¹⁶A short list of consultants following Request for Expression of Interest through advertising in the media.

'...standard format that permits the requested technical information to be presented in a clear, precise and readily available manner and allows that client to readily understand and evaluate the technical proposals in accordance with the established selection criteria. The completed form to indicate details of the consultant's organisation and experience, methodology, work plan, work schedule, team composition and task assignments, and staffing schedule.'

(Public Procurement Organisation, 2008a: p.v).

From this statement it is clear that implementation of the post-2007 procurement agenda in Nigeria is designed so that the procuring entity is supplied with all the required technical information about the contractors bidding for its contracts, following which the resulting procurement decisions are based on the available data. Thus, the bidder is required to supply all the information needed by the procuring entity on which to ground an objective decision about which provider is technically best suited to fulfil the contract on offer.

Furthermore, not only does the new regime ensure that all relevant information is supplied by the bidding contractors to enable the procuring entity to make an objective decision, but the possibility that contractors that have not disclosed relevant information can be excluded from the process, meaning that the responsibility to ensure the supply of all necessary information now rests on the contractors. In addition to the technical proposal, which is evaluated either by in-house experts or by appointed consultants of the procuring entity to determine the technical capability of the bids submitted, financial bids are also required to be submitted by the contractors (Bureau of Public Procurement, 2008e). In particular,

section 4b of the notes to users provides a standard request for the presentation of the proposal, 2008 which states, inter alia:

'...the use of standard format that permits the requested financial information to be presented in a clear, precise and readily available manner that allows the client (procuring entity) to easily understand and evaluate the financial proposals in accordance with the established selection criteria.'

As against the former practice where some contractors used misleading information about their financial capacities to secure the contract and then struggle with the project at the expense of the client (Olusegun *et al.*, 2011), the procuring entity must now be given all the required financial information in the manner it determines as best suited to support its decision as to which of the companies is best suited for the contract. Furthermore, there is a strict stipulation that evaluations of the financial bids are carried out by financial experts, completely independent of the evaluation of the technical bids as a measure to check the integrity of the evaluation process. The implication of the double blind process in the evaluation of the proposals means that for any proposal to be adjudged successful, it must achieve successful evaluation in both the technical and financial evaluation processes.

Having both the technical and financial bids placed at the disposal of the procuring entity has contributed immensely to the quality of procurement decisions made in the post-2007 era of public contract administration in Nigeria (Jacob, 2010; Lindskog *et al.*, 2010). However, although the double evaluation process for bids submitted has made it difficult for the procuring entity to be deceived into taking inappropriate procurement decisions – hence eliminating corruption that may emanate from the contractor's side of the procurement chain – the same cannot be said to be the case

with corruption that has an origin in the procuring entity (Organisation for Economic Co-operation and Development, 2010; Ufere, 2010).

A consultant who knowingly supplies incorrect information in support of their technical or financial bids could also be declared ineligible, either indefinitely or for a stated period of time, from participating in procurement proceedings funded from the public treasury. Consultants or service providers bidding for contracts funded from the public purse are required to exhibit the highest level of ethical standards, failing which they could be punished by outright exclusion from the procurement process and/or be referred to the appropriate professional bodies for disciplinary action on one or more public procurement-related offences, that is, any of the corrupt, fraudulent, collusive and coercive practices enumerated in section 3.4 of the Contract Agreement Instrument of Nigerian (see section 4.2) (Bureau of Public Procurement, 2008e, p. 39). In addition to the general anti-corruption measures embedded in the post-2007 procurement process in Nigeria, specific measures have also been detailed to strengthen the processes for particular categories of procurement activity.

4.3.5 Small complex and time-based assignments

Specific corruption prevention mechanisms have been developed to complement the general provision that has been made to strengthen the post-2007 procurement process against corruption (National Assembly Nigeria, 2007-b; Bureau of Public Procurement, 2008e). The procurement regulations for small contractual service assignments impose specific obligations which contractors must fulfil before payments for services rendered can be remunerated (Bureau of Public Procurement, 2008e, p. 40-43). Consequently, only the claim for actual hours spent and verified by

the procuring entity can be remunerated. This way, besides executing the work, the contractor is saddled with the task of proving by way of documentary evidence specifics of the work done on the days and hours indicated.

For reimbursable allowances to be claimed by the service consultant, actual costs and expenses evidenced by verifiable invoices must be presented and checked to avoid fraudulent claims on the public coffers. Payments for items of expenditure such as Per Diem and Travel Costs under this arrangement can only be made upon full proof demonstrated by the service provider that the expenditure was actually incurred, making it particularly difficult for fraudulent claims to succeed without the concurrence of the procurement officers.

Furthermore, payment for small service contract assignments executed in the new public procurement era can only be made if evidenced by an invoice and supported by necessary documentation at the end of every month or other periodic duration of time agreed. If this in order the due payment can be made within the 30 days immediately after the invoice has been submitted. Other mechanisms to check corruption by service providers also exist. In part C of section 4 of the small assignment regulation, it is particularly stated that:

‘The final payment shall be made only after the final report shall have been submitted and approved as satisfactory by the procuring entity. If any deficiencies are noticed in the service delivered or in the final report, the consultant shall promptly make any necessary corrections to the satisfaction of the procuring entity.’

(Bureau of Public Procurement, 2008e).

The requirement that a final report must be submitted and approved by way of verification by the procuring entity before total payment for small service contract assignments is fully remunerated almost certainly precludes the tendency towards contractor-driven corruption for this category of service.

Furthermore, besides the elaborate mechanisms in the framework for small service assignment contracts explained above, further anti-corruption safeguards have been articulated in the regulations for complex assignments (Bureau of Public Procurement, 2008d). The latter presents complex technical challenges with regard to whether payment of a lump-sum should be made either before the project or when part of it has been completed. The conditions for such tenders include a proviso that only contractors or a consortium of consultants who have already been evaluated and listed by the Public Procurement Organisation as competent for the type of complex service in the view of the procuring entity can be engaged. And in addition, the contractor is required to conduct their activities with the highest level of diligence and prudence, so as not to incur any supplementary expenditure for the procuring entity outside the contract. In particular, section 36.2 states that:

‘The consultant shall indemnify the procuring entity from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgements, suits, proceedings, demands, costs, expenses and disbursement of whatsoever nature that may be imposed on, incurred by or asserted against the procuring entity during or in connection with the performance of the contract.’

(Bureau of Public Procurement, 2008d. p. 35).

Because of the higher amount of money involved and the technical complexity of the lump-sum project type, the contractor is required, in addition to ensuring that it conducts itself with probity in relation to the contract, to also go the extra mile to ensure that it protects the client from any form of expenses that are not covered by the contract. From the quotation above, it can be seen that measures that border on the inequitable are employed by the post-2007 public procurement regime in Nigeria to safeguard the process against corruption instigated by the contractor.

As stated in the fundamental principles of public procurement (National Assembly Nigeria, 2007.-b), there is a need to achieve procedural transparency in soliciting procurement proposals from eligible contractors and consultants. This has been provided for by way of a standard request template for procurement proposals which has been developed for uniform application in Nigeria (Bureau of Public Procurement, 2008f. p.5). Contractors are particularly required to declare any information that exposes them to the dilemma of conflict of interest and potentially impairs their ability to transparently discharge their contractual responsibilities. Following this declaration, which is placed on the contractor as a duty, the procurement entity is empowered to exercise discretion to disqualify the contractor if, in its opinion, the declared conflict of interest is considered potentially damaging.

The requirement that all contractors are required to disclose information about their company history and particularly, any criminal records held by the directors and other employees if applicable, as well as providing a comprehensive work methodology (Bureau of Public Procurement, 2008f. p 11), means that not only is it easier to achieve transparency in the processes leading up to the award of the procurement contract, but use of the process to commit fraud on the public treasury will be rendered more difficult.

4.4 Anti-corruption and the bidding process

As part of the post-2007 procurement process, a number of measures have been taken to ensure that transparency is achieved in the bidding process leading up to the award of contracts in Nigeria. Those which have been itemised in the standard bidding process for the procurement of small works and goods are explained below.

In accordance with the Public Procurement Act (National Assembly Nigeria, 2007b), a Standard Bidding Document (Standard Tender Document) (Bureau of Public Procurement, 2008b) has been prepared as a guideline for the procurement of small and other related services by competitive tendering.¹⁷ The standard bidding process aims for probity in government spending and to enable the Procuring Entity to select the bid evaluated as best value for money. The importance of the introduction of the standard bidding document in the procurement process for small works and services is that once requests for bids are made, the procuring entity is bound to accept the lowest evaluated bid, provided it meets the published requirements of the specific works or services to be procured.

In addition to the tendering process for this category of works and services, the specifics of which have been enumerated in section 5, sub-sections on the notice to users (Bureau of Public Procurement, 2008b) state that although it is open to all eligible bidders, pre-qualification¹⁸ is required. Another anti-corruption point in the procedure outlined for the procurement of small works is the requirement that all bids submitted must be opened in the presence of contractors. Also, as part of the evaluation process following the opening of the bids, the procuring entity is required to consider only those tenders opened and recorded during the tender opening

¹⁷ A tendering process open to all eligible contractors in which the bid evaluated as best succeeds.

¹⁸ A process by which a short list of eligible contractors is compiled prior to the bidding process.

exercise. This way, the process is put under the scrutiny of the contractors involved and civil society and others with an interest in the process are also able to track the records of the evaluation, as against the pre-2007 procurement practice of awarding contracts to contractors who did not even participate in the bidding process (Smith, 2001).

In addition to the inbuilt transparency mechanisms in the standard bidding process for the procurement of small works, a pre-tender meeting is required to clarify concerns that the tenderers may have about the bidding process being proposed for the procurement of any major public work (Bureau of Public Procurement, 2008c. p. 5). To make the tendering process for major works even more transparent, all questions raised and addressed during the pre-tender meeting are adopted as an integral part of the tender document, which must then be made available to all contractors who acquired the tender document.

As in the requirements in the bidding process for the procurement of small works, prequalification is not usually required in the bidding process for the procurement of goods (Bureau of Public Procurement, 2008a. p. i). To ensure fairness to all potential bidders for goods to be procured, the mandatory Instruction to Tenderers (ITT)¹⁹ is made available to all bidders. This way, all the bidders have access to the same amount and quality of information for the preparation of their tender documents and the tenderers are also made aware of the criteria upon which their tender submissions will be evaluated.

¹⁹ Details of how tenders should be prepared.

4.4.1 Standardising procurement process

As against the practice where every agency of government varied the procurement rules to suit their preferred contractor(s) (Falvey *et al.*, 2008; Oyewobi *et al.*, 2011), implementation of the 2007 Procurement Act in Nigeria has introduced uniform rules in the administration of contracts funded by the public purse (Bureau of Public Procurement, 2007b). In particular, it is stated in section 92 of the regulation that:

'The Procuring Entity shall use, or ensure the use of, the Public Procurement Organisation Standard Bid Evaluation Report for the Evaluation of Goods and Works to detail the specific reasons on which the determinations for the recommendation for the award of contract is made. If the procurement is subject to the prior review of the Public Procurement Organisation, the Procuring Entity shall send this Report to the Public Procurement Organisation with the Procuring Entity's contract award recommendation for the Public Procurement Organisation's comment and 'no objection' before the award of contract to the successful bidder is announced. The report to the Public Procurement Organisation on the evaluation and comparison of bids shall be accompanied by the three lowest evaluated cost bids'.

(Bureau of Public Procurement, 2007b, p.27).

As shown above, transparency of the procurement process in Nigeria is further strengthened by the overarching oversight function of the Public Procurement Organisation (BPP). In addition to the requirement of the law that all Procuring Entities apply the BPP's Standard Bid Evaluation Report format for the Evaluation of Goods and Works and make the report available to it for scrutiny, the BPP is also

empowered by law to review the procurement exercise if, in its opinion, the exercise is substantially non-compliant with the Public Procurement Act, 2007 (National Assembly Nigeria, 2007b). Compared with the problem of ambiguity that was the bane of the pre-2007 public procurement process in Nigeria (Evenett and Hoekman, 2005b), the advent of a unified process that can be applied across the public sector for procurement of goods and services is a major achievement in the battle against corruption.

The post-2007 uniformity of the public procurement process (National Assembly Nigeria, 2007b) has meant that reported cases of corruption are able to be tracked and data generated enabling regular review that will further strengthen the process against corruption (Awolusi, 2010). That a process now exists in Nigeria (National Assembly Nigeria, 2007.-b), and that this process must be followed and strictly adhered to in the award and administration of contracts funded from the public purse, makes it more open to wider participation. This has now imposed a measure of checks and balances in the process, hence reducing the susceptibility of the process to the wanton abuse common in the pre-2007 era when contract award was by fiat of the management of the Procuring Entity (Robinson, 1998; Salisu, 2000b; Madichie, 2005).

The new regime of public procurement in Nigeria has also extended its drive for transparency and accountability to public procurement exercises that involve international competitive bidding (Bureau of Public Procurement, 2007a). International companies wishing to participate in competitive bidding for contracts in Nigeria now have the benefit of a public procurement process where the rights and obligations arising from the process are clearly stated and can be enforced in Nigerian courts in the event of breach (Obayelu, 2007; Okafor, 2009).

Beyond standardisation of the public procurement process for easy participation of international firms, the Regulations for Procurement of Consultancy Services (Bureau of Public Procurement, 2007a) are explicit in section one about Joint Venture,²⁰ providing clear frameworks that ensure that all companies in a joint venture are jointly liable for the entire contract. This allows obligations arising from a joint venture arrangement to the parties as well as their client (Procuring Entity) to be stated unambiguously, so that breach and any other irregularities before, during and after the award of the contract are transparently dealt with, by contrast with the pre-2007 era when joint ventures featured prominently in unresolved fraud against the public treasury in Nigeria (Adeniran, 2008).

4.5 Post-2007 procurement process and corruption

In spite of the promising nature of the measures described above, they are not without their critics. Ezeani (2005) has nevertheless contended in the run-up to the 2007 Act that the anti-corruption measures in the post-2007 public procurement process, like other anti-corruption measures in Nigeria, are superficial and cosmetic, and as a result, have been ineffective in combating corruption in the procurement process. They have targeted the contractor-side risk factors and failed to identify and eliminate the risk factors that may be internal to the process, which remains the main instrument of private wealth accumulation (Osoba, 1996; Eddy and Akpan, 2008).

4.6 Summary of chapter

That large scale corruption incidents still dogged the post-2007 procurement era in Nigeria has shown that efforts to stamp out corruption from the public procurement

²⁰Association of firms bidding for and executing a contract in such a way that they share both profits and liability.

process, in addition to targeting corruption tendencies that are external to the procurement process, must also look inwards and effectively tackle risk factors within the procuring entities that can be exploited for corruption (Awolusi, 2010). The 2009 conviction of top management staff of the Nigerian Port Authority (Azeez, 2011; Joseph A *et al.*, 2011) and several on-going corruption cases in Nigeria for abuse of the procurement process has shown that the 2007 Public Procurement Act and the new regime of public procurement it has created in Nigeria are still susceptible to corruption (Yekini, 2008; Asada, 2010; Williams, 2010).

Furthermore, the comprehensive anti-corruption mechanisms built into the Public Procurement Act of 2007 in Nigeria have not been able to eradicate corruption from the procurement process in Nigeria. Furthermore, they have shown that a systemic knowledge about factors that may have exposed the procurement process to corruption needs to be gleaned from analyses of case studies, such as the Public Power Organisation, the Rural Electrification Organisation, the Anti-Corruption Commission and the Public Procurement Organisation, in addition to other secondary facts and figures of the authorities identifying a set of risk factors that provide explanations for the post-Public Procurement 2007 Act perpetuation of corruption in the procurement process in Nigeria.

The key anti-corruption provisions in the institutional framework of PPP in Nigeria based on the Public Procurement Law of 2007 and other statutory instruments are presented in summary format in table 7 below.

Table 7: Institutional framework of PPP based Public Procurement Act 2007

Key theme	Purpose
Administration of public procurement	Provision for centralised management of public procurement in Nigeria
	Provision for office with responsibility for PPP policy matters – consideration and approval policies on the PPP
	Reviewing and updating the PPP in response to improvements in technology and development
	Central office with responsibility to give such directives and perform such other functions as may be necessary to achieve the objectives of the Public Procurement Act, 2007
Fundamental principles	Ensures that for every procurement commitment there is a corresponding fund appropriated
	It became a serious act of misconduct to award a contract for which funds have not been specifically appropriated
	Managements' powers to unilaterally award a contract were restricted
Competition and value for money	PPP must be conducted with the aim of achieving value for money and fitness for purpose
	PPP must be conducted in a manner which promotes competition, economy and efficiency
	PPP must be conducted in accordance with the procedures and time-line laid down
Setting of threshold for public procurement	Setting and appropriate review of thresholds in the procurement regulations to reflect current realities
	Imposition of issuance of a certificate of 'No Objection' before payments as a check on diligent adherence to PPP

	Provision for competence of contractors – professional and technical qualification to carry out projects under the PPP
Transparency in selecting consultants	Provision for openness and transparency in the PPP
	Provision to request all information needed to ensure that pre-qualified consultants are competent
	Integrity of the PPP ensured through submission of bids in two parts; the technical and the financial proposal
	Provision that a contractor who knowingly supplies incorrect information in support of their technical or financial bids could also be declared ineligible, either indefinitely or for a stated period of time
	Provision that consultants or service providers bidding for contracts funded from the public purse are required to exhibit the highest level of ethical standards, failing which they could be punished by outright exclusion
	Introduction of uniformity to the public procurement process

As summarised in table 7, there are extensive provisions for transparency and accountability in the institutional framework for the PPP in Nigeria. However, in spite of the implementation of these elaborate frameworks for the PPP over the past five years, corruption has persisted. Hence there is a need to generate and analyse primary data from those involved in the practice of public procurement in Nigeria in order to discover those factors that may have accounted for the vulnerability of the PPP to corruption, notwithstanding the provisions against corruption in the institutional framework.

One area where this has been implemented is in the electricity sector in Nigeria; hence the fieldwork for this research has focused on two agencies in the sector where corruption cases are known to have occurred in spite of the Procurement Law, in addition to the Anticorruption Commission and the Public Procurement Checking Organisation where corruption cases have not been reported.

Furthermore, it has been shown that even though there is new legislation against corruption in public procurement, a national strategy and a number of Anti-Corruption Agencies, corruption has still persisted in the procurement process because there is an absence of any basic systemic knowledge about the risk factors in the process on which anti-corruption efforts in public procurement should be built.

Having constructed institution framework of the post-2007 PPP that guides the practice of public procurement in Nigeria, it is important, through semi-structured interviews in selected case studies, to generate and analyse data on the actual practice of the PPP in Nigeria in chapter 5 (next chapter) in order to identify those risk factors that may have still made the PPP vulnerable to corruption.

Chapter 5

Evidence from case studies

Chapter 5

Evidence from case studies

5.1 Introduction

Drawing on the research aim, objectives and the research question presented in section 1.4, relevant bodies of literature were reviewed. The review identified a gap in knowledge which revealed an absence of investigations into the risk factors defined in terms of the Impartiality Principle as underpinning corruption in the Nigerian PPP. Following this, a qualitative methodological perspective, using a case study strategy, was articulated in chapter 3. The study's understanding of the institutional framework of PPP in Nigeria is based on secondary data sourced for this research (Public Procurement Act 2007 and the Procurement Regulations), which is examined in chapter four to contextualise the existing framework of the PPP in Nigeria. Following this, primary data generated from case studies was analysed to identify the factors that may have made PPP resistant to the objective of transparency and value for money in the institutional framework as explained in chapter four. While two of the case studies are primary dispensers of significant public funds through the public procurement process in the public electricity industry, the other two have the mandate of eliminating corruption in the public procurement process in Nigeria. Furthermore, findings from the analysis of data generated through the main phase of fieldwork were discussed during a follow-up phase of verification fieldwork with the following three groups: officials from the civil society group for 'Anti-Corruption Reform'; procurement officers from another agency of the Nigerian government; and Barristers engaged in the prosecution of cases involving the abuse of the public procurement process in Nigeria.

In chapter 4, the institutional and legal framework for public procurement in Nigeria was explored within the purview of the primary legislation on public procurement (National Assembly Nigeria, 2007b). This presented the institutional and legal frameworks within which public procurement is administered in Nigeria, with an explanation of the anti-corruption provisions inherent to these. Building upon the analysis of the framework for PPP presented in chapter 4, this chapter now presents evidence of public procurement practice by way of analysis of the interviews conducted in the four case studies in 2011 and the verification fieldwork conducted in 2012.

Analysis of data from each case study is organised around three themes. These are the transparency and confidentiality of the process, the level of discretionary powers available to procurement officers and the extent to which management staff and civil society can play a role in strengthening the public procurement process in Nigeria against vulnerability to corruption. In all, the fieldwork for this study involved semi-structured interviews with interviewees in four organisations and verification interviews with two other organisations and a number of prosecutors.

5.1.1 Content of chapter five

Chapter five is organised into eight sections. Section one is the introductory section of the chapter, outlining its purpose and content. The second section explains the fieldwork and the follow-up verification interviews that were conducted in 2011 and 2012. In section three, the results of analysis of data from the Public Power Company (PPC) are presented. Similarly, the results of analyses of data from the

Rural Electrification Organisation (REO), the Anticorruption Commission (ACC) and the Public Procurement Organisation (PPO) are presented in sections 5.3, 5.4 and 5.5 respectively.

Analysis of the qualitative data transcribed from the semi-structured interview followed the prescription of coding section 3.5.2 (see sample of coding in figure 7).

The summary of the chapter is presented in section 5.6.

5.2 Results from the Public Power Company (PPC)

Analysis of transcribed data from the PPC shows that the company is aware of the need to conduct its procurement activities in line with the requirements of the Nigerian Public Procurement Act of 2007, specifically in conformity to the fundamental principles outlined in section 4.2. Furthermore, this study also revealed that most procurement activities in the PPC are termed unique procurement activities.²¹ This enables the company to resort to special guidance on a case-by-case basis, as explained in chapter 4. Under the guidelines for unique procurement, the existing PPC is only required to structure its procurement activities around a circle of activities that will now be described.

5.2.1 Theme 1: Framework and purpose of the PPP

Based on the research objectives of articulating the purpose of the PPP through examination of the framework for public procurement in Nigeria and the corresponding analysis presented in chapter four, the following sub-themes have been developed in the format of questions depicting the purpose of the PPP.

²¹Procurement activities for which the Procurement Act 2007 can be varied.

Findings from the analysis of data transcribed from the semi-structured interviews at the PPC on theme 1 are presented in table 8 below.

Table 8: Purpose of the PPP at PPC

Theme	Sub-themes/parent codes	Sub-themes/child codes
1. Purpose of the PPP	1.1 Organisation of the PPP	1.1.1 Request to commence PPP 1.1.2 Obtain approval from approving authority 1.1.3 Maintain procurement Records
	1.2 Important aspects of the PPP	1.2.1 Provision for competitive bidding and transparency 1.2.2 Use of PPP to obtain the best value for money
	1.3 Confidentiality in the PPP	1.3.1 The process is confidential 1.3.2 Confidentiality ensured by experienced staff

Source: Fieldwork and verification interview 2011 and 2012

The child codes above depict the opinion of the interviewees at the PPC on the purpose of the PPP. According to these codes, the purposes ranges from the need to have the process conducted under approved guidelines and the need for competition and transparency in the process, to the requirement that the process must be confidentially conducted.

One of the interviewees in the PPC said that:

‘The procurement process in the PPC is supposed to be carried out in accordance with the Public Procurement Act, 2007. In cases of unique procurement activities, the company resorts to the Public Procurement Organisation for guidance.

(Procurement Officer A, Abuja, 23rd February 2012).

This shows a procurement officer in the PPC with a good understanding of the purpose of PPP as envisaged by the Public Procurement Act 2007. However, despite this knowledge of the purpose of the PPP, cases of corruption still dog procurement activities in the power sector in Nigeria, with the most recent example entailing the resignation of the country's Minister of Power on account of public procurement corruption in 2012 (Reporter, 2012).

Furthermore, the same interviewee stated:

'The most important aspect of the process is the provision for competitive bidding and transparency so that scarce resources are used to obtain the best possible quality of service for government. The process is confidential. Confidentiality is ensured by the appointment of experienced staff to the procurement committees.'

(Procurement Officer A, Abuja, 23rd February 2012).

This shows the intention to consider the issues of competition, transparency, value for money and confidentiality in the management of public contracts in the PPC, as part of the purpose of the PPP.

For procurement activities to be categorized as unique, the PPC must make a formal request to the Public Procurement Organisation to secure their approval. It was particularly noted that having been sought, approvals are rarely refused, thereby making the process more of a formality. After receipt of the approval, an advertisement to invite bids from competent contractors is then placed in the national

daily papers, setting specific criteria and date deadlines which must be met by interested bidders.

Upon receipt of bids from interested contractors, the PPC pre-qualifies bids using the criteria already outlined in its advertisement, to determine bids that qualify for the tendering phase of the procurement exercise. The tendering phase invites the preferred bidders to make a presentation to the approving authority, which in many instances has been found to have an interest in the bidding companies (Omoleke, 2011; Reporter, 2012). The circle of activities outlined for the procurement of items categorised as unique is concluded by the PPC by obtaining a certificate of 'No Objection' from the Public Procurement Organisation. Once this is done, the contract is awarded and executed and records on the project are maintained for future reference only.

In line with the dictates of the Public Procurement Act 2007, which aims to achieve best value for public funds spent, this research finds that the PPC has as its declared policy the objective of achieving the best quality and quantity of work obtainable for the public money disbursed. Officers were observed to be very knowledgeable about the various provisions of the Public Procurement Act 2007 and the general need to exercise prudence in the spending of often scarce government resources. One interviewee stated that:

'[...] the most important aspect of the process is the provision for competitive bidding and transparency so that scarce resources are used to obtain the best possible quality of service for government.'

(Procurement Officer, 03 April, 2011).

However, a decision of the Nigerian High Court in the case of the Federal Government of Nigeria v. Bode George and others shows that many procurement activities in the PPC have resulted in deliberate efforts on the part of the officers and management to use the procurement process to siphon public funds for private use. The situation is indicated by the sudden resignation of the Minister responsible for monitoring public procurement-related corruption involving the PPC (Reporter, 2012); and the arrest and subsequent prosecution of most of the management staff of the Power Regulatory Commission for incidents of procurement-related corruption (Onwuemenyi, 2011; Reporter, 2012). The apparent problem of high level corruption is further entrenched by the strict adherence of management to the 2007 Procurement Act's requirement for confidentiality, which can be interpreted in such a way as to exclude civil society and other anti-corruption whistle blowers.

5.2.2 Theme 2: The PPP risk factors at PPC

Nigeria, as a developing country, has immense infrastructure deficits generally: in particular, only about 20% of the country's electric power needs are presently being met (see section 1.1). The government appropriates enormous sums of public money to fund infrastructure projects, in particular power infrastructure, and this has resulted in negative impacts on the production costs.

Table 9: Corruption risk factors at the PPC

Theme	Sub-themes/high codes	Sub-themes/low codes
2. Risk factors	2.1 Exercise of discretion	2.1.1 Desperation by contractors 2.1.2 Special procurement outside the 2007 Act 2.1.3 Interference by management
	2.2 Civil society	2.2.1 Participation of civil society is not mandatory 2.2.2 The PPC can discourage their participation
	2.3 Price intelligence	2.3.1 Price intelligence is used to fix prices only to escape audit queries

Source: Fieldwork and verification interview 2011 and 2012

Because production costs are high, there is a general economic development slowdown in relation to private sector activities in the country (Adenikinju, 2003). As a result, the government funds most infrastructure development projects, with the implication that most companies depend on a small number of public sector projects for their survival.

According to quote 4 from the transcript 2:

‘...the major risk is the desperation on the part of the bidding contractors who want to win the contract at all costs and in the process would want to compromise the procurement committee members through corrupt inducement. The issue of capacity to handle urgent procurement activities without jeopardising best practices and accountability is another area that contractors use to put pressure on both the management and procurement

officers to either make mistakes or compromise the process to their advantage.'

(Procurement Officer, 03 April, 2011).

One of the risk factors in the PPP at the PPC is desperation on the part of contractors. This is because the PPP was only formalised in 2007 (National Assembly Nigeria, 2007b), which may have an impact on the PPC's technical capacity to apply the prescriptions of the 2007 Nigerian Public Procurement Act to the PPP in a way that achieves the objectives of best practice, transparency and accountability.

As another interviewee at the PPC said:

'There is no room for discretion as the whole process is guided by the procurement manual and it must conform to the Public Procurement Act, 2007. The discretion that could be exercised by the officers is only to the extent that it does not contravene the Procurement Act and the 2007 Act.'

(Procurement Officer A, Abuja, 24 February 2012).

In contrast to the foregoing assertion, the exercise of discretion and the abuse of it has been a primary reason for corruption in the electricity sector in Nigeria, as demonstrated in the resignation on the country's Minister in charge of power, after being indicted of abuse of statutory power of discretion in favour of his company (Reporter, 2007). Another possible of risk factor in the PPP was raised in another interviewer who stated that:

‘The bidding process in PPC is sufficiently clear. It is such that the evaluation committee must adhere to nine steps which are in the public domain and deviation from them would attract genuine criticisms and protests from the bidders.’

(Procurement Officer B, Abuja, 26 February 2012).

Furthermore, the application of the template analysis technique to the interview transcript from the PPC also produced a template of nine essential steps in public procurement to be applied in their procurement activities. These steps are:

- Efficient procurement plan driven by needs assessment
- Appropriation
- Advertisement
- Transparent pre-qualification
- Bid Submission
- Bid Opening
- Bid Evaluation –Technical and Financial
- Tender Board Approval
- Contract Execution.

The list of steps above suggests a conscious effort at transparency on the part of the management of the PPC, hence the following description that the process of PPP at the PPC is straightforward:

‘The bidding process is very straightforward and there is no ambiguity. There is a problem with the clarity of the bidding process except some bidders tend to take things for granted. They may even get the impression a

pivotal item is not important and lose out completely. Some of the bidders at times deliberately take some of the requirements for granted even if they understand what it says.'

(Procurement Officer A at PPC, 04 April, 2011).

A careful reading of the transcript above shows that in spite of breaking down the PPP at the PPC into nine steps for ease of reference and compliance, not all of the contractors bidding for contracts have been able to comply fully, with the result that they are disqualified. Another quote from transcript 2 states that:

'It is a requirement that civil society is encouraged to attend the bid opening exercise but more often than not, they do not attend due to the excuse that they need to be assisted with the logistics to attend. If they are unable to attend, the process goes on in absence. If they attend, they can raise objections if they think any of the guidelines is not being adhered to. The role of civil society in the public procurement process in our organization is a requirement pursuant to Part v section 19 (b) of the Public Procurement Act 2007 in order to promote accountability in public procurement.'

(Procurement Checking Officer A, Abuja, 25rd February 2012).

The involvement of civil society, as required by the Nigerian Procurement Act 2007, is a means of ensuring that PPP is carried out transparently. However, from the transcript above, the involvement of civil society at the PPC seems to be optional, as while they are encouraged to get involved in the process, they are not required to be present. This means that the PPP can be concluded even without the involvement of civil society.

The fierce competition from so many private sector companies for a relatively small number of public sector contracts is another risk factor for corruption in the process of public procurement in this organisation. Since the supply of contracts from the private sector is relatively small compared to those arising from the public sector, to stay in business contractors must resort to measures aimed at winning public sector contracts at all costs, another factor which compromises the process of public procurement.

As shown in table 9 and its subsequent analysis, the risk of corruption in the procurement process at the PPC does not lay only with the procurement officers and management cadre. The contractors, in desperate bids to win contracts at all costs, also resort to means beyond those prescribed in the procurement process.

5.2.3 Theme 3: Improving the PPP

The issue of the procurement officers' technical capacity through training is a major area of improvement that features in the transcript of the semi-structured interviews. Because the operation of public procurement in Nigeria is still in its infancy, having only been formed since the implementation of the Public Procurement Act of 2007, the technical capacity of officers pooled from other cadres of the civil service²² to a procurement role is still at low ebb. When put under pressure by desperate contractors, such officers could be led to compromise the process.

Even though most of the interviewees in the PPC have submitted the opinion that the procurement process they operate is sufficiently clear, the analysis of the data transcribed from the semi-structured interviews suggests that corruption still persists

²²The branches of public service concerned with all governmental administrative functions outside the armed services.

in the PPP. As a result, the interviewees have suggested possible improvements to the PPP. They said that the work of the procurement department in their organisation is centred on an evaluation committee which considers all bids in strict adherence to the procurement law of the country. One of the interviewees said:

'...the bidding process in the PPC is sufficiently clear. It is such that the evaluation committee must adhere to nine steps which are in the public domain and deviation from them would attract genuine criticisms and protests from the bidders. The nine essential steps in public procurement which must be adhered to very strictly are efficient procurement plan driven by needs assessment, appropriation, advertisement and transparent pre-qualification exercise which is followed by bid submission by interested contractors. Once the bids are received then a date is set by the procurement office with approval of the management for bid opening, bid evaluation (technical financial) for recommendation of the preferred bid to be made for tender board approval following which the contract is awarded and executed.'

(Procurement Officer at PPC, 04 April, 2011).

As seen in the statement above, public procurement in the PPC consists of a very elaborate process. The process has no categorical provision for oversight either from civil society, the bidding contractors or other stakeholders outside the organisation. Procurement activities in this organisation are centred on the procurement committee which is appointed by the management to design the process and implement the process from the beginning to the point where the contract is awarded. This means that the management that appointed the committee in the first place is also the body

tasked with responsibility for its oversight, with the result that corruption is frequently reported (Lawal and Tobi, 2006).

Furthermore, even though the procurement process in the PPC has been reported to be clear by the procurement officers who designed it in the first place, they also conceded that bidders (contractors) have been complacent about what is required in the process – a development that they say has resulted in many contractors losing out on the bidding (procurement) process completely.

As shown in the statement by Procurement Officer A at PPC above, non-adherence to the framework for public procurement laid down by the procurement committee in the PPC has been used as a valid ground for excluding the defaulting contractors. But as explained in section 4.4.1, the Request of Proposal requires that all information is needed for all pre-qualified consultants, so that no bidders are given privileged information about the procurement process. This also serves to promote the integrity and openness of the process which requires would-be contractors to submit their bids in two separate parts: the technical proposal and the financial proposal. To ensure that requests for proposals are presented to the public in the form of advertisements, it is required that civil society and the media are represented (National Assembly Nigeria, 2007b, section 1.).

Even though the involvement of civil society and the media are key requirements for the Procurement Act of 2007 for the purpose of public education and particularly for information about the procurement process to be made sufficiently clear and available to the interested parties of which the contractor is one, this is not strictly

encouraged. As a result, most procurement activities in the PPC have been conducted without the participation of the media and civil society. An interviewee said that:

'...it is a requirement that the civil society is encouraged to attend bid opening exercise but more often than not, they do not attend due to the excuses that they need to be assisted with the logistics to attend. If they are unable to attend, the process goes on in their absence. If they attend, they can raise objection if they think any of the guidelines is not being adhered to. The role of civil society in the public procurement process in our organization is a requirement pursuant to Part v section 19 (b) of Public Procurement Act 2007, in order to promote accountability in public procurement.'

(Procurement Officer B at PPC, 05 April, 2011).

As seen above, the procurement officers are aware that the procurement law in Part V of the Act mandates that civil society be encouraged to participate at all stages of public procurement, but they have not been able to achieve this solely through encouraging the attendance of civil society representatives. Their defence has been that they require assistance to attend or participate in the process. A situation where the representatives of civil society and the media who are supposed to oversee the procurement process will have to be assisted by the organisation concerned makes questionable their ability to carry out the oversight function uncompromised by this dependence.

The pricing regime in the PPC is adjusted to reflect open market pricing in order to conform to the expectation of the Public Procurement Organisation that the

prevailing pricing regime in any public organisation must not be unjustifiably higher than that which is obtainable in the open market. To ensure that they conform to this requirement, the PCC conducts price intelligence periodically to avail themselves of the necessary market data, which is then used to benchmark prices for items to be procured through competitive bidding. An interviewee, who averred that price intelligence is mandatory as a way of complying with the requirement to keep set prices for public procurement within the open market range, said that:

‘...the pricing regime in the PPC is comparable with the open market pricing. The PPC do not have any option as the Bureau of Public Enterprises is empowered to check that the prices at which public contracts are awarded are in tandem with prevailing open market prices. Where this is not the case, they have the power to issue queries.’

(Procurement Officer C at PPC, 06 April, 2011).

Difficult bureaucratic arrangements in the procurement process have caused delays which some of the interviewees say have resulted in funds allocated for electric power projects being returned to the Federal Treasury. This is because the Fiscal Responsibility Act 2007 (National Assembly Nigeria, 2007a), requires that all allocated government funds not spent during the fiscal year be returned to the National Treasury. This measure, which is aimed at ensuring that allocated funds are spent during the fiscal year, also serves as incentive for procuring agencies of government to work hard to ensure that they are not required to return to the Treasury funds allocated to them to execute projects. This is because when government agencies return allocated funds due to non-implementation of projects it

is interpreted to imply a lack of capacity on the part of the agency concerned to implement the projects assigned to them. As some procurement officers noted:

[...]...the procurement process in the PPC needs improvement in the implementation circle to eliminate delays that sometimes stall the award of contract. There could be improvement in the process, especially in the pre-qualification process that must ensure that only very competent/ capable companies are given the opportunity to bid. Care is also taken in the area of specification of the items in the bill of quantities such that they are not ambiguous.

(Procurement Officer at PPC, 06 April, 2011).

From the foregoing, it is apparent that the public procurement process in the PPC is not sufficiently clear to be understood by bidders, whom the procurement officers say tend to deliberately fail to observe the guidelines laid down for bid submission – hence their bids are rejected for non-compliance with the procurement notices.²³ In Nigeria, more than in other countries, contractors depend on contract awards through the procurement process to remain in business and so may not deliberately indulge in acts (contravening the procurement process) that will ultimately disqualify them from participating in the process. This research has shown that the procurement process needs improvement in its implementation life cycle to avoid the scenario of a rush to award contracts at the end of the fiscal year, a development that has, over time, caused large scale corruption in the power industry in Nigeria (Ayanruoh, 2012; Ogbe, 2012).

²³ Notices issued periodically detailing the requirements for submission of bids.

This research also finds that because public procurement only started as a professional practice in Nigeria upon the implementation of the 2007 Procurement Act (National Assembly Nigeria, 2007b) and the opportunity to take a distinct course of study in procurement has not yet been offered in Nigeria, there is inadequate technical expertise to match the enormous public procurement-related technical challenges in the country. Under current conditions, officers of all educational backgrounds and without any basic capacity or training in the issues are either routinely, or on an ad-hoc basis, drafted to carry out procurement duties with the result that aspects of procurement activities in Nigeria are still executed based on considerations other than sound knowledge of public procurement. In the course of the substantive fieldwork for this project, some procurement officers complained that, in the words of one interviewee:

'...there is dearth of technical knowledge about public procurement generally. This is because the procurement cadre in the Nigerian public service is still at a nascent state seeing that it was created by the Public Procurement Act only in 2007. Existing laws and guidelines seem adequate but those charged with the responsibility to implement it are not yet sufficiently equipped.'

(Procurement Officers at PPC, 07 April, 2011).

In addition to the nascent state of the practice of procurement, and public procurement in particular, in Nigeria, there are also no generally applicable professional codes of practice that are applicable across the public service. This gives wide discretion to the procurement committee in the PPC to invent, apply and change their guidelines as often as they deem fit.

5.3 Rural Electrification Organisation (REO)

As is the case with the PPC, the purpose of the PPP in the REO is to promote accountability in the application of public funds in rural electrification projects in Nigeria in order that corruption will be eliminated or reduced to the barest minimum. Template analysis of the semi-structured interview transcripts has produced indications of the risk factors that may explain the vulnerability of the PPP at the REO to corruption.

5.3.1 Risk factors of corruption and the REO

The process of public procurement in the Rural Electrification Organisation (REO) of Nigeria is required by statute to conform to the fundamental principles outlined in section 4.3 of the Public Procurement Act 2007, which aims to promote accountability in the Nigerian public procurement process.

Evidence from the REO has shown that the PPP is interfered with by the management. Commenting on the issue of transparency in the PPP at the REO, a respondent said that:

‘The process of public procurement is interfered with by the Management.’

‘The management pre-determines the companies that get awarded contracts.’

Most of the contracts are awarded but rarely get executed.’

(Procurement Officer at REO, 08 April, 2011).

Receipt of bids at the REO in sealed envelopes has been used to create an impression of transparency in the process while in practice, the companies that get awarded the contracts are known to the management. One of the respondents interviewed said:

'Bids are received in sealed envelopes but the companies are known to the management. Lack of openness and manipulation of the process by the management (a. bid rigging b. receipt of bids from a few selected companies and c. general compromise of the process by the management).'

(Procurement Officer at REO, 08 April, 2011).

Another indication of a risk factor of corruption in the PPP at the REO has been attributed to the exercise of discretion by the procurement officers and a bidding process that is not only clear but changes from time to time at the direction of management. As one of the respondents at the REO asserted:

'Procurement officers exercise their discretion only to implement the instruction of the management by ensuring that [the latter's] preferred companies gets contract items on the procurement list.' *'The bidding process is not very clear. The management changes it from time to time and so it is difficult to predict what the process will be for any particular procurement activity.'*

(Procurement Officer at REO, 08 April, 2011)

Involvement of the civil society in the PPP, which has been provided for as a way of subjecting the process to scrutiny of the non-formal sector so that any deviation from extant rules can be spotted and reported, has not produced the desired effect at the REO. A procurement officer interviewed reported that:

'The civil society is supposed to act as check against unethical and corrupt practices in the procurement process but in the REO, they are rarely invited to participate in the process.'

(Procurement Officer at REO, 08 April, 2011)

The civil society has not been able to achieve its anti-corruption role in the PPP because its participation in the process, in addition to being at the instance of the procuring entity, is also funded by the procuring entity. The prices fixed by the management of the REO for its procurement activities have been found to be consistent with those in the open market. This has been attributed to deliberate efforts by the management of the REO to avoid audit queries that result in the event of notable disparities in their reserved price and those in the open market. Commenting on the issue of pricing at the REO, an officer stated that:

'The pricing regime is comparative with open market prices. Price intelligence ensures that open market prices are used as bases for fixing reserve prices for procurement items. The management make use of price intelligence to make sure that the prices at which items are procured are comparable to open market prices in order to avoid audit queries.'

(Procurement Officer at REO, 09 April, 2011).

In addition to the involvement of the civil society in the PPP as an anti-corruption initiative, involvement of anti-corruption agencies in the process can ensure that extant rules are strictly adhered to stifle tendencies of corruption in the PPP. This was alluded to by one of the interviewees who stated that:

'Existing procurement guidelines based on the 2007 Nigerian Public Procurement Act [are] to be strictly adhered to. In addition to the civil society, anti-corruption agencies should be involved in the procurement circle to detect and punish abuse of the process.'

(Procurement Officer at REO, 09 April, 2011).

As seen from the analyses above, interviewees at the Rural Electrification Organisation were almost unanimous in asserting that the management, from its inception to 2010, has interfered with procurement activities. This research also finds that the magnitude of public procurement-related corruption in the REO was the reason that the government suspended its operations for three years and also relieved all management staff of their appointments, in addition to pursuing them through criminal prosecution.

This research finds that most contracts awarded through the public procurement process in the agency, from its inception to 2010, are rarely executed because the reason for the award of the contracts in the first place is to enable the Chief Executive and other managerial staff to misappropriate funds allocated to the agency to implement energy projects in order to avoid the sanction of having to return the funds to the National Treasury. A procurement officer revealed that:

'...the process of public procurement can be interfered with by Management Officers. Contracts have been awarded to companies known to the management officers .There is need to strengthen anti-corruption initiatives in the public procurement process – provide free access to information to the public and civil societies for independent monitoring of the procurement process'

(Procurement Officer at REO, 11 April, 2011).

The transcripts further show that the management, in collaboration with other management staff at the agency in the period from 2005 to 2010, altered the procurement effected through the agency to a mere simulacrum of the real process, which was used solely to give legitimacy to the misappropriation of public funds that was taking place at the agency for over three years. The influence of one manager at the REO was so pronounced that the exercise of discretion by procurement officers was entirely under his direction.

This research also finds that the procurement process used at the agency from its inception up to the present day is not clear.

'...the civil society is supposed to act as check against unethical and corrupt practices in the procurement process but in the Rural Electrification Organisation, they are rarely invited to participate in the process. The pricing regime is comparative with open market prices. Price intelligence ensures that open market prices are used as bases for fixing reserve prices for procurement items. The management make use of price intelligence to make sure that the prices at which items are procured are comparable to open market prices in order to avoid audit queries.'

(Procurement Officer at Rural Electrification Organisation, 08 April, 2011).

The study shows that the operation of price intelligence has been important for rural electrification, in setting reserve prices for items to be procured using the public procurement process. The officers in this case study posited that once the reserve price for a particular item to be procured is fixed through price intelligence, questions of inflation of contracts may not be raised against them by contractors who

may have lost out to other contractors in the bidding process. They acknowledge that civil society has a role to play as an independent monitor to ensure that public procurement activities are conducted in line with the Nigerian Procurement Act of 2007, but concede that they rarely get invited into the process as envisaged by law.

The statement also highlights the need not only to make the involvement of civil society mandatory but also to see that civil society representatives who are to be involved in public procurement-related oversight activities are given periodical training in the procurement process and the laws and regulations that apply to it, so that they are properly equipped to advocate a course of probity, accountability and transparency in the procurement process. The non-involvement of civil society in the procurement process has also been attributed to the problem of funding. Funding for civil society activities in Nigeria is a problem that goes to the heart of the issue of the independence of civil society organisations and their freedom to report cases of abuse of the public procurement process (Sabet, 2005; Mercy, 2012).

Civil society organisations that receive funding from another organisation, be it private or public, may be bogged down by the issue of neutrality and impartiality in reporting issues that may impinge on the assumed transparency of the organisation that funds their activities (Mercy, 2012). It is therefore important that a statutory stream of funding is provided for civil society organisations to draw from, to enable them to participate in the procurement process to ensure that existing guidelines are adhered to by procuring entities. Because the Rural Electrification Organisation has been able to conduct its procurement activities without the involvement of civil society from inception to date, existing guidelines have not been strictly adhered to. As a procurement officer observed:

'...it is important that existing procurement guidelines as stipulated in the relevant section of the 2007 Procurement Act be strictly adhered to. In addition to the civil society, anti-corruption agencies should be involved in the procurement circle to detect and punish abuse of the process. Lack of trained manpower to administer the process is also a major problem in the Agency. The procurement cadre is only four years old and the issue of manpower to execute the process as required by the procurement act is a major problem.'

(Procurement Officer at the Rural Electrification Organisation, 15 April, 2011).

In addition to the involvement of civil society in the procurement process, anti-corruption agencies can also be given a role. As opined by the interviewee cited above, this will serve the purpose of deterrence and in a case of abuse it will avail them an inside position from which to deal with cases of abuse of the procurement process if and when it takes place. The operation of the present regime of public procurement at the Rural Electrification Organisation has involved the alleged misappropriation of public funds over the past seven years (Awolusi, 2010), hence the need to review and make recommendations that will strengthen the process against misconduct.

5.4 Procurement and Anti-Corruption Commission (ACC)

Unlike the other case study organisations, the Anti-Corruption Commission is an agency of the Nigerian government created by law (National Assembly Nigeria, 2004) to investigate and prosecute cases of corruption in both the private and public

sectors of the Nigerian economy. As an agency of government, the commission also engages in procurement in order to take care of its operational and other administrative needs, hence the need to explore how its procurement activities are conducted. The PPP at the ACC is illustrated through the following templates from template analysis of transcripts of the semi-structured interviews at the commission.

In the ACC, the PPP is initiated in accordance with the fundamental principles of public procurement in Nigeria (see section 4.3.1). This is illustrated in the comment of one of the procurement officers who stated that:

'The process is initiated through provision for particular item in the national budget. If the proposal in the budget is approved, the procurement unit then advertises and receive and process bids before the contract is awarded. The most important aspect of the process in the economic and financial crimes commission is the stage of bid evaluation. Collusion between procurement officers and contractors to undermine the confidentiality of procurement rules.' (Procurement Officer at ACC, 10 April, 2011).

As seen above, collusion between the procurement officers and contractors has been noted a risk factor of corruption even though the process at the ACC is initiated based on the fundamental principles of public procurement. Explaining further, another interviewee said that compromise of procurement officers to influence its outcome in favour of certain contractors is another problem of corruption that can beset the PPP. He particularly stated that:

'Compromise of procurement officers to influence outcome of bidding in favour of a preferred contractor is a risk factor in the PPP. The discretion that can be exercised is limited to the Public Procurement Act, 2007. The bidding process is sufficiently clear to contractors that have the necessary competence related to the item being procured. The requirements such as closing dates for submission of bids and dates and venue for opening of bids are clearly stated on the advertisements. The civil society is to ensure that the process meets the requirement of transparency and conformity to the Public Procurement Act of 2007.'

(Procurement Officer at REO, 09 April, 2011).

As stated above, involvement of the civil society in the PPP even though a condition which procuring entities are encouraged to fulfil, because it is not a requirement, the procuring entities have been able to avoid it. The result of this has been that the process can be denied the objective of a third party scrutiny which the civil society is meant to serve. Commenting on the issue of price intelligence and its impact on benchmarking of prices for the PPP at the ACC, the procurement officer explained that:

'The pricing regime is comparable to open market price because benchmark prices are fixed with regards to open market prices and profit margin. Price intelligence is done by the Public Procurement Organisation that is empowered by the act to check that the price so fixed is within open market threshold.'

(Procurement Officer at REO, 09 April, 2011).

Procurement activities at the Anti-Corruption Commission are governed by the Nigeria Public Procurement Act 2007 and other procurement guidelines as explained in sections 4.2, 4.3 and 4.4 of the Act. The process of public procurement in the Commission is initiated by the identification of the need to procure a particular item from its allocated public funds and by making budgetary provision in annual National Appropriation Act.²⁴

This is followed by the placing of an advertisement in the national daily newspapers which sets out the procurement requirements and invites interested contractors to submit bids. Upon receipt of bids in response to the advertisement by the Commission's procurement unit, the procurement officers proceed to evaluate the bids in line with the guidelines advertised before considering the bids one after the other in order to determine a preferred bidder to whom the contract will be eventually awarded to after the necessary approvals are obtained.

Because the *raison d'être* of the Commission is to work as an anti-corruption agency, the procurement process in the commission is implemented in strict compliance with Nigeria's 2007 Public Procurement Act. This research reveals that the most important aspect of the procurement process at the Anti-Corruption Commission is the stage where bids are evaluated. This is carried out in a rigorous manner to ensure that only companies that meet the minimum requirements outlined in the procurement advertisement are considered for contract award. The activities of the procurement unit are checked on a regular basis to see that staff members do not enter into collusion with desperate contractors who may try to offer inducements,

²⁴ A law stipulating the streams of national revenue and expenditure for a fiscal year passed by the Nigerian parliament annually to guide government spending.

with the intention of getting officers to exercise discretion in favour of their bids and to the disadvantage of other bidders. The focus of the implementation of the public procurement law at the Commission hinges on the need to keep the process basic, simple and unambiguous, so that it can be read and understood by all bidders for the Commission's contracts – a development reported to have made public procurement in the Commission less vulnerable to abuse.

Unlike the other case studies where major cases of corruption involving the abuse of the public procurement process have been recorded (Okogbule, 2006; Ribadu, 2006a; Awolusi, 2010), since its inception in 2003, the Commission has recorded no major incidents of corruption perpetrated through the public procurement process. Officers at the Commission are allowed to exercise discretion in the administration of the procurement process within the purview of the Public Procurement Act of 2007 and to the extent that this does not introduce ambiguity into the process. As a procurement officer stated:

'...the discretion that can be exercised is limited to the Public Procurement Act 2007. The bidding process is sufficiently clear to contractors that have the necessary competence relating to the item being procured. The requirements such as closing dates for submission of bids and dates and venue for opening of bids are clearly stated on the advertisements.'

(Procurement Officer at Anti-Corruption Commission, 19 April, 2011).

As shown above, the need to keep the procurement process simple for easy comprehension by all bidders and the general public so as to achieve transparency in the process has invariably led the Commission to give a clear statement in its

procurement advertisements and notices of the basic information needed by the bidder, such as the closing date for submission of bids, the venue for the opening of bids and the relevant documents to be submitted along with the bids.

The Commission has also ensured the involvement of civil society in procurement activities that reach a threshold that requires their participation. Furthermore, this research found that observations made by representatives of civil society on aspects of the process are considered and any issues arising there from are resolved prior to any contracts being awarded, to ensure that the process meets the requirement for transparency and conformity to the Public Procurement Act of 2007.

Price intelligence is conducted from time to time to enable the Commission to set a reserve price threshold that is reflective of the open market price, with the aim of a procurement process that delivers the best value for the public funds allocated to it.

As stated by another officer in the unit:

The pricing regime is comparable to open market price because benchmark prices are fixed with regards to open market prices and profit margin. Price intelligence is done by the Public Procurement Organisation that is empowered by the Act to check that the price so fixed is within open market threshold.

(Procurement Officer at Anti-Corruption Commission, 20 April, 2011).

Because the pricing regime for public works administered through the procurement process and all basic information needed by contractors is made available at the Commission, this obviates the problems of persistent lobbying under the guise of

seeking clarification on procurement notices issued, thereby putting pressure on the procurement officers.

The need for improvement in the PPP of the Commission as canvassed from the interviewees centred on training and capacity building as ways to make the procurement process in Nigeria more resistant to corruption. As an interviewee averred:

‘Procurement officers [need] to undergo capacity training in order to acquaint themselves with current global trends in public procurement and to also get them familiarised with the content of the Procurement Act of 2007 and other relevant manuals.’

(Procurement Officer at Anti-Corruption Commission, 20 April, 2011)

The procurement officers at the commission were observed to be accountants and other allied professionals deployed to form the procurement unit. This is due to the lack of officers trained in the practice of procurement, thus the need to train officers in the practice of public procurement in order to acquaint them with current global trends in public procurement and to also get them familiarised with the contents of the Procurement Act of 2007 and the relevant manuals relating to the process.

5.5 Procurement in the Public Procurement Organisation (PPO)

The Public Procurement Organisation (PPO) formulates general policies and guidelines for public procurement as well as reviewing the procedures for procurement and award of contract for every public procurement entity. It is charged

with responsibility for certifying public procurement above certain thresholds prior to the award of contracts, and performs procurement audits in order to produce reports on a biannual basis to the National Assembly in conformity with the Public Procurement Act, 2007.

Under the Procurement Act of 2007, the PPO has powers to call for information, documents, records and reports in respect of any aspect of all procurement proceedings as it deems necessary in order to certify that public funds have been spent to achieve best value for money. Because of its oversight responsibility for procurement activities in all procuring entities in the country, it is important to explore the conduct of its public procurement activities for their conformity with the Public Procurement Act 2007.

Public procurement activities started in the PPO with the establishment of its administrative structure, in line with part 2 of the Public Procurement Act 2007 corresponding to extant rules applicable in Nigeria. The process starts mostly with the PPO making proposals for funds regarding specific items of expenditure in the National Appropriation Bill, which is then presented before the Nigerian parliament for consideration and approval (Wehner, 2002; Aiyede, 2012). Template analyses of transcripts of semi-structured interviews from the PPO show how the PPP at the PPO is practiced with suggested improvements to the process to make it more resistant to corruption. Technical assessments to ensure that would consultant bidding for contracts through the PPP are qualified is one of the most important aspect of the procurement exercise at the PPO. This was alluded to by one of the interviewees who said that:

'The most important aspect is the assessment of the technical proposal to ensure the expertise of the company matches the required capacity for undertaking the project. The assessment of the technical proposal should be more opened and not left completely to the procurement officers. There should be an open, transparent and objective verification [of] the technical bid assessment. A way out may be to subcontract the procurement process to a more objective or qualified expert. The process is confidential and this is ensured by specifying that bids are submitted sealed. The procurement law also forbids staff members' privy to the documents submitted from disclosing any information on a submitted bid'

(Procurement Officer at PPO, 22 April, 2011).

As indicated above, issues of confidentiality and restriction of contacts between the contractors bidding for contracts and the staff of the PPO are entrenched in the PPP as is corporate organisational policy aimed at reducing exposures of the staff members to corruption. Analyses of the transcripts from the PPO also gave an indication to the possible risk factors of the PPP which the PPO has always guarded against. On this topic, an interviewee noted that:

'The key risk is in selecting a company that fulfils the documentation requirements yet lack the appropriate capacity for executing the project. This leads to poor execution or failure in the execution of project. There is no room for discretion, except if there is no clear cut winner in a bid process or the requirements are not within the specified law'

(Procurement Officer at PPO, 20 April, 2011).

The process of the PPP as practiced in most of the procuring entities in Nigeria has been observed to have some ambiguities. Some of the ambiguities have been attributed to the many rules governing the process which are known to change very often. Commenting on this, an interviewee posited that:

‘The process can be rather ambiguous, particularly as it related to the myriads of rules relating to different types of contracts. This may create a lapse in the understanding of the potential bidder. The civil society role in the public procurement is to monitor the process to ensure fairness and transparency of the entire process. They participate mainly at the financial bid opening stage.’

(Procurement Officer at PPO, 22 April, 2011)

As noted above, the role of the civil society has also been recognised as important in the efforts at fighting corruption in the PPP in Nigeria. Conduct of market surveys on a regular basis guides the pricing regime for items procured through the PPP in Nigeria. This is used by the PPO to generate the oversight template with which they conduct audit queries on public procurement in Nigeria. The importance of market surveys as regularly conducted by the PPO is highlighted by of one of its interviewees who stated that:

‘Market survey is done [to] ensure that the reserve price for any contract item is not way above the open market price. This is one of the ways they enforce the provisions of the 2007 Act. Price intelligence is used as a

mechanism to ensure that prices at which public contracts are awarded are comparable with open market rates.'

(Procurement Officer at PPO, 25 April, 2011)

Paucity of requisite expertise in the practice of public procurement in Nigeria has also resonated in the PPO as an opportunity for corruption in the Nigerian PPP. Due to its nascent nature, within the practice of public procurement in Nigeria issues of professional training, code of conduct and ethics are still at the lowest state. Furthermore, defined standards for professional certification against which to measure the conducts of the procurement officers have not been clearly formulated with the implication that the practice of public procurement in Nigeria has still not been organised so that professionals could be monitored. Explaining the extent of paucity of professional expertise in public procurement in Nigeria, an interviewee contended that:

'Most time[s] the procurement staff lack the requisite knowledge on the project for which procurement is being done. Even constituting a procurement board may not also solve the problem of the qualification of the assessors within the organization to make an objective assessment. The existing laws need simplifications where there are so many ambiguities.'

(Procurement Officer at PPO, 20 April, 2011)

The 2007 Public Procurement Law in Nigeria has been described by the PPO as good for public procurement in Nigeria even though its implementation has not

produced the desired effect of stopping corruption in the PPP. Describing the essence of the 2007 Procurement Law in Nigeria, an interviewee commented that:

The introduction [of] the procurement law is good, but it has failed to nip in the bud the root cause of fraud in the procurement process. There is need for true value reorientation in the public service. There is also the need to strengthen the anti-corruption initiatives as well as provide free access to information to the public and civil societies for independent monitoring of the procurement process.'

(Procurement PPO, 20 April, 2011)

Once approval is given by the Nigerian parliament, the procurement arm of the PPO then proceeds to apply the relevant provisions of the Nigerian Public Procurement Act 2007 and other procurement regulations and manuals in order to transparently procure the goods, public works or services. The specifics of the process to be adopted for any particular item to be procured at the PPO are dictated by the Procurement Act and take factors such as the amount of money involved, the technical specification of the goods, services or works to be procured and the proposed life span of the project. Describing the procurement process at the PPO, a senior procurement officer said:

'Depending on the threshold, advertisement is placed in the national dailies calling for prospective bidders to submit bids for the item to be procured. The public procurement follows the procurement law that specifies open, transparent and credible procurement in the public institutions. The

procurement process includes three major steps starting with public announcement, submission of bids, and assessment and selection of the best bid. The process includes the public announcement and call for bids or technical proposals, the opening of bids, ranking of bids based on specified criteria and selection of the best submission. The best three submissions are selected to go through the next stage which is submission of financial proposal, where the least feasible proposal is awarded the project following a transparent opening of final bids.'

(Senior Procurement Officer, PPO, 4 May, 2011)

Once the amount of money involved in the proposed procurement of an item reaches a certain threshold, the Bureau places an advertisement in the national dailies to announce its intention to engage competent contractors to procure the items. The advertisements, which must state in clear terms the list of requirements, both technical and financial, that interested contractors must possess, must also state the time limit beyond which submissions may not be received.

5.5.1 Financial threshold and the PPP

Where the amount of money involved is below the threshold that requires 'calls to tender' announcements in the newspapers, the Bureau then resorts to the placement of procurement notices on its notice boards and in some cases extends an invitation to tender to companies on its data base of contractors. In either of the procurement methods (those below or those above certain financial thresholds), upon receipt of bids from interested contractors, the Bureau would proceed to open and document the bids preparatory to bid evaluation.

Opening the bids at the Bureau, as this study shows, is done according to the prescription of the Public Procurement Act and specifically – as outlined in the adverts or procurement notices as the case may be – in the presence of the companies that responded, civil society and in some cases representatives of anti-corruption agencies. Asked about the important aspects of the procurement process at the PPO, one interviewee said:

‘The most important aspect is the assessment of the technical proposal to ensure the expertise of the company matches the required capacity for undertaking the project. The process is confidential and this is ensured by specifying that bids are submitted sealed. The procurement law also forbid staff members privy to the documents submitted from disclosing any information on a submitted bid. The key risk is in selecting a company that fulfilled the documentation requirements yet lack[s] the appropriate capacity for executing the project. This leads to poor execution or failure in the execution of project.’ (Senior Procurement Officer, PPO, 4 May, 2011).

From the statement above, it can be seen that because the Bureau is the agency of the Nigerian government with the responsibility for ensuring compliance with the provisions of the Procurement Act by all other agencies of government, it strives to conduct all its procurement activities strictly in line with the dictates of the Act.

5.5.2 The process of public procurement at the PPO

The PPO forbids its staff members either covertly or overtly to enter into relations with any company involved in a bid for procuring any item of expenditure, as a

measure to shield them from the possibility of over-familiarity that could result in pressure being placed on them to tamper with the process of public procurement in favour of a contractor. The exercise of discretion by procurement officers working in the Bureau's employment is kept at a minimum, so that even when an officer would wish to intervene in the process for the benefit of a contractor, this is made difficult for lack of discretionary powers that could be abused to achieve such objectives. As one interviewee in the Bureau said:

‘There is no room for discretion, except if there is no clear cut winner in a bid process or the requirements are not within the specified law. The process can be rather ambiguous, particularly as it related to the myriads of rules relating to different types of contracts. This may create a gap in the understanding of the potential bidder. The civil society role in the public procurement is to monitor the process to ensure fairness and transparency of the entire process. They participate mainly at the financial bid opening stage.

(Senior Procurement Officer, Bureau for Public Procurement, 4 May, 2011)

Officers at the Bureau, in addition to adhering to the provisions of parts 5, 6 and 7 of the Public Procurement Act, 2007, are also required to exhaustively apply all other ancillary provisions in the Public Procurement Regulations for Goods and Works, 2007, Public Procurement Regulations for Consultancy Services, 2007, Standard Request for Proposals – Selection of Consulting Firms, 2008 and the Standard Request for Proposals for the Selection of Consulting Firms, 2008, all of which, though creating a process that is both ambiguous and cumbersome, have also contributed to making the occurrence of corruption in the procurement process rare

(Bureau of Public Procurement, 2007b; Bureau of Public Procurement, 2007a; Bureau of Public Procurement, 2008g).

This research also finds that the conduct of periodic market fieldwork is another of the PPO's accountability and transparency initiatives, in its goal towards achieving best value for money in the application of public funds for the procurement of goods and services, for which it had sought the approval of the Nigerian parliament. Furthermore, the procurement process at the Bureau benefits from an elaborate programme of training on the subject of public procurement, especially as it relates to the legal and institutional framework for public procurement in Nigeria. Being highly knowledgeable about the trends in the practice of public procurement, the PPO's officers are able to apply the procurement process in such a way that abuse is minimised.

Periodic market fieldwork is also an important means through which the integrity of the procurement process at the Bureau is assured. This research finds that market fieldwork is practiced at the Bureau particularly to ensure that the pricing of items or services it procures are neither under-priced to the disadvantage of the contractors nor overpriced to the disadvantage of tax payers. Asked to comment on the market fieldwork and price intelligence regimes at the Bureau, a group of procurement officers at the bureau said:

'...market fieldwork is being done [to] ensure that the reserve price for any contract item is not way above the open market price. This is one of the ways the Bureau for Public Enterprises enforce the provisions of the 2007 Act. Price intelligence is used as mechanism to ensure that prices at which public

contracts are awarded are comparable with open market rates. The assessment of the technical proposal should be more opened and not left completely to the procurement officers. There should be an open, transparent and objective verification [of] the technical bid assessment. A way out may be to sub-contract the procurement process to a more objective or qualified experts.'

(Senior Procurement Officers, Bureau for Public Procurement, 5 May, 2011)

This research has also shown that in the assessment of technical specifications in proposals submitted to the PPO, officers in its procurement unit are open to collaboration with officers of other Departments of the Bureau or external stakeholders with particular expertise. This way, officers in the procurement unit of the PPO have been able to elicit accurate insights into technical issues from the contractors' submitted reports from appropriate experts prior to advising government on the award of contracts.

The undeveloped nature of the practice of procurement in Nigeria also affects the issue of the professionalism and technical skills of the procurement officers at the Bureau. Regardless of having operated the procurement process since the inception of the Bureau from 2007 to date without incidences of corruption and abuse, the officers were still of the view that procurement activities involving technical specifications should be sub-contracted to consultants with particular special expertise. As in the other case studies, the officers handling procurement activities in the PPO are mainly accountants and other allied professionals who do not have the necessary procurement training, having been recruited to the procurement unit of the

Bureau upon the implementation of the Public Procurement Act in 2007. A senior procurement officer in the Bureau said that:

'...most time the procurement officers lack the requisite knowledge on the project for which procurement is being done. Even constituting a procurement board may not also solve the problem of the qualification of the assessors within the organization to make an objective assessment. The existing laws need simplifications where there are so many ambiguities. The introduction of the procurement law is good, but it has failed to nip in the bud the root cause of fraud in the procurement process. There is need for true value reorientation in the public service. There is also the need to strengthen the anti-corruption initiatives as well as provide free access to information to the public and civil societies for independent monitoring of the procurement process.'

(Senior Procurement Officer, Bureau for Public Procurement, 6 May, 2011).

The introduction of the public procurement law, and by extension the creation of the Bureau for Public Procurement, with its drive for transparency, accountability and best value for public funds spent in Nigeria, have reduced the rate of corruption in the public service (Ribadu, 2006a; Salisu M, 2006; Emma *et al.*, 2011). Growth in government expenditure, particularly as it relates to the procurement of public works, goods and services, has made it more imperative for a holistic process of public procurement in order to strengthen the process against corruption, with the result that better value will be achieved for public funds spent through the process of public procurement.

5.6 Chapter Summary

As a follow-up to the institutional framework of the PPP in Nigeria explained in chapter 4, this chapter presents evidence from the modified case studies namely; Public Power Company, the Rural Electrification Organisation, the Public Procurement Organisation and the Anti-Corruption Commission. Analysis of the qualitative data which were generated by the use of semi-structured interviews was done using the open coding method of template analysis. The analysis was carried out around three themes: the framework and purpose of the PPP, the PPP risk factors at PPC and improving the PPP and strengthening it against corruption.

Template analysis of data from the semi-structured interviews produced a set of preliminary findings which were further subjected to verification through verification interviews conducted with prosecutors engaged in PPP-related corruption cases, other procurement officers and civil society members involved in anti-corruption reform for the PPP in Nigeria. This chapter has thus set the stage for a cross-case analysis chapter for a discussion of the findings, towards a conclusion chapter which includes a corruption risk-factor vulnerability check-list amongst other recommendations for an accountable and transparent management of public procurement in Nigeria.

Chapter six

Cross-case analysis

Chapter six

Cross-case analysis

6.1 Introduction

Having examined the existing public procurement framework in Nigeria in chapter 4 and drawing from case study analysis to highlight risk factors that may have been associated with abuse of the procurement process to provide an explanation for the vulnerability of the public procurement process in Nigeria to corruption, this chapter now turns to a discussion of the findings with the aim of discerning possible policy implications and recommendations in conclusion to the research.

Furthermore, drawing from the analysis in chapter 4 and the analysis of fieldwork results in sections 5.0 to 5.5, this section contextualises the research findings within the purview of the Impartiality Principle as a background to the concluding chapter.

Following application of template analysis to the data generated for this research, the thematic findings listed above, which depict the risk factors in the PPP, are discussed below.

- Interference by the management
- Use of ‘shell’ companies by management
- Lack of confidentiality in the process
- Lack of openness in the bidding process
- Contract-splitting, which is practiced to avoid the requirement of seeking approval from higher authorities

- Procurement officers doing the bidding of the Management
- Unclear bidding/procurement process
- Civil society rarely invited in; a way of keeping the process from public scrutiny
- Open market prices maintained to avoid sanction by anti-corruption agencies
- Price intelligence used by the management to keep contract prices within the open market range to make the process look transparent.

6.2 The argument highlighted

Because the Impartiality Principle is founded on the idea of partiality and wrongdoing (Kurer, 2005), it has become a fairly universal concept for explaining corruption in relation to accountability, equity and transparency in the context of government business. Application of the Impartiality Principle to the study of corruption in the process of public procurement in Nigeria therefore aims at identifying the risk factors that predispose the process to corruption in order to make policy recommendations that promote transparency, equity and accountability in the practice of public procurement. In the context of this study, the Principle of Impartiality is interpreted to mean the various provisions of the Public Procurement Act of 2007 and other statutory instruments made pursuant thereto which aim for equity in the public procurement process (see sections 4.2 -4.5).

6.2.1 The PPP and the Act of 2007

This study has shown that it is a requirement that standard documents and procedures be applied in all public procurement processes in order to provide a level

playing field for all companies engaged in the contest (bid) for public contracts through the procurement process. The Public Procurement Act provides that:

‘[the] Procuring Entity shall use, or ensure the use of, the Public Procurement Organisation Standard Bid Evaluation Report for the Evaluation of Goods and Works to detail the specific reasons on which the determinations for the recommendation for the award of contract is made.’

(Bureau of Public Procurement, 2007b. p.27).

This research however has shown that the process of public procurement has been interfered with by the Management and officers in some of the case studies organisations, leading to contracts been awarded to companies against the Principle of Impartiality as stated above. As noted earlier, as well explained theoretically in section 2.2, the evaluation of all bids received towards the award of contract through the procurement process is required to be conducted according to pre-existing rules that ensure that equity and transparency are achieved in the award of contract. Analysis of data from the case studies has shown that some evaluation of bids for contracts by contractors has been carried out on the basis of a pre-conceived intention of favouring (a) particular company(ies).

Based on the theoretical argument in chapter 2, the institutional explanation in chapter 4 and the evidence from the case studies presented in chapter 5, the research proposes the concept of conducting the evaluation process blindly,²⁵ which when applied in the analysis of the bids towards the award of contract through the

²⁵ A process whereby the names and other information relating to the identity of the bidding companies are removed from the bids before evaluation process is commenced.

procurement process, could produce an equitable outcome to inform an impartial decision on the eventual award of contract. Blinding the evaluation process is therefore potentially the best option for eradicating corruption risk resulting from subjective or partial evaluation, since the companies involved in the contest for the contract would not be known to the evaluators. In cases where collusion among many members of the evaluating panel can be perceived as likely to take place, using third parties as evaluators, which could be civil society organisations with requisite technical knowledge in the particular context, may be a good option. In this case, the role of the civil society in the procurement process can be ensured without compromising standards and ethics.

6.2.2 Transparency and confidentiality

This research has shown that the Nigerian Public Procurement Act 2007 is strict in its stipulation that: *Public procurement shall be conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom; with the aim of achieving value for money and fitness for purpose* (Bureau of Public Procurement, 2007b. p.27). However, this research has shown that bids are mostly received in sealed envelopes as a formality to create an impression of confidentiality and transparency in the public procurement process.

Furthermore, it is a requirement of the Procurement Act 2007 (see section 4.4.1), and by extension of the Impartiality Principle (2.2), to submit bids in sealed envelopes, however those with favoured companies always provide opened copies of their bid to

their cronies in the institutions. The cronies,²⁶ as this research has discovered, even though they are in the employment of the procuring entities, are in effect also recruited informally into skewing the evaluation process in favour of their companies in exchange for rewards in kind or in cash (Awolusi, 2010). Furthermore, the research shows that this also goes for other steps put in place to ensure transparency and accountability in the bidding process. The complex and cumbersome nature of the process has introduced ambiguity which the cronies of desperate bidding companies have exploited to manipulate the procurement process in favour of their preferred companies.

6.2.3 Splitting of tenders to evade monetary thresholds

This research also finds that where an item of public procurement is such that the evaluation process will involve evaluation and scrutiny by approving authorities outside the procuring entity, officers and management have engaged in splitting of tenders.²⁷ This study has shown in section 5.2 that contract splitting is done to enable officers and management to initiate and conclude the procurement process without recourse to approving authorities outside of the organisation, so that perceived abuse of the Procurement Act, and by implication the Principle of Impartiality, will not be questioned (Fabayo Joseph and Obisanya Adesile, 2011; Ogbe, 2012). In the words of a prosecution witness (PW) in a public procurement-related corruption case of Federal Government of Nigeria V Bode George and others in Nigeria:

²⁶ In general parlance a crony is a long-term associate or friend; in this case it refers to officers who compromise the procurement process in favour of companies known to them.

²⁷ Dividing the contracts into several units so that the amount of money involved in each unit will be less than the threshold that will require evaluation and scrutiny outside the organisation

'...contract splitting simply means in government parlance an intention or deliberate intention to bring the approval limit within the threshold of the approving authority instead of taking it to the higher approving authority. ... It is a situation where for instance, a single procurement item such as a building is divided into three components that if added up would exceed the approving limit of the board. So, in order for the board to achieve the award, it had to split it into three, so that the sum total of each individual contract would fall below the approval limit of the board. So, it enables the board to award the contract instead of a higher authority, the Ministerial Tender Board or the Federal Executive Council...'

(Prosecution Witness, 20/10/2009).

The splitting of tenders to enable the evasion of set monetary thresholds and bid-rigging is prohibited by the 2007 Act (Bureau of Public Procurement, 2007b. p.27). Specifically, this study has shown that tender splitting is done when contracts are divided into smaller units to avoid the requirement to seek approval from higher authorities. The aim of achieving value for money through the procurement process has not been achieved. The problem of contract splitting as a risk factor in the public procurement process was restated during the supplementary fieldwork, for this research conducted from June to July 2012, for verification of the findings presented in chapter 5. An analyst from the civil society organisation during the verification interview said:

'...ordinarily the process of approving selected companies in a procurement process go[es] through a body of authority, say a board, this way, the committee authority to approve limits an individual executive power of

approval, but this is circumvented by splitting the tenders or projects into small tranches that fall within the threshold that can be approved by an executive with a special interest and without going through larger authority. When and where this is done without the intention of expediency, there is hardly value for money in the procurement process, as the personal interest would dominate.'

(Civil Society Officer, 26/06/12).

6.2.4 Exercise of discretionary powers

The Public Procurement Act of 2007, in parts 6 and 7, empowers the procurement officers in the procuring units to exercise reasonable discretion on issues that are explicitly provided for in the procurement law. The research reveals that it is a requirement that a standard format is used that permits the requested technical information for public procurement to be presented in a clear, precise and readily available manner and allows the client (procurement officers) to readily understand and evaluate the technical proposals in accordance with the established selection criteria, so that discretion can be exercised properly (Public Procurement Organisation, 2008). The guiding principle for the exercise of discretion by procurement officers is reasonable and best professional judgement taken independently, without coercion from management of the organisation or inducement from any of the contractors that may have interest in the contract being awarded through the bidding process.

6.2.5 Integrity of the process

Furthermore, this research finds that the exercise of discretion by procurement officers in the procurement process cannot largely be viewed as genuine. The procurement officers exercise discretion mainly to achieve a predetermined goal of manipulating the procurement process in favour of companies preferred by themselves or their superiors. From the foregoing, it can be seen that while exercise of discretion by the procurement officers may provide important leeway for dealing with issues that may not have been explicitly provided for in the Nigerian public procurement law in its present state, it has been abused to confer corrupt advantages on some companies at the expense of others. As a civil society activist conversant with the implementation of the procurement law in Nigeria argued:

‘...for every procurement process, the ideal thing is for the members of the procurement committee who will vet and evaluate the bids to have some level of technical expertise on the project or item to be procured so that their discretion is guided by technical objectivity, but most times, the special interest of the Management overrides every other technical consideration starting with the appointment of the members of the procurement committee who will be malleable and bend to the interest of the Management.’

(Civil Society Officer, 26/06/12).

The inherent benefits pertaining to the exercise of discretion in good faith have been undermined because this research has shown that discretion is exercised only as may be necessary to implement the management’s preference so that their preferred companies win contracts. Furthermore, the exercise of discretion by procurement

officers is necessary as, even if and when the existing procurement law in Nigeria is reviewed, it can never provide a perfect framework that can be implemented to the letter as that would mean that situations not envisaged, or provided for, in the law no matter how trivial or minute, would necessitate a review of the law – a process that is not only expensive but notable for its complexities and cumbersomeness.

6.2.6 The bidding process: clarity and transparency

The bidding processes in all the case studies are designed by the procurement officers subject to management approval. Once designed, the endorsement of the bidding process by management is rarely refused because the management would have had input in the process leading up to the draft design presented to it. It is a requirement of the procurement law that instructions contained in the bidding brief²⁸ be clear, simple and unambiguous in order that completed bidding forms by bidding contractors clearly set out details of the consultant's organisation and experience, methodology, work plan, work schedule, team composition and task assignments, and staffing schedule (Public Procurement Organisation, 2008). In practice, however, designing the bidding process has been used to manipulate the procurement process towards predetermined ends.

This research finds that the bidding process in the case studies is not clear and can be changed at the direction of the management staff to suit the profile of the company favoured by them for a particular contract. In response to a request on the bidding process, a prosecutor knowledgeable in procurement-related cases said that:

²⁸Documents given by the procuring entity to guide bidding companies in the preparation of bids.

‘...the listed required organizational qualifications for participating in a bid process can be left opened and ambiguous to give room for a preferred company. In some other instances, the terms of reference (TOR) may be pre-drafted with a company in mind, in which case it is easy for the preferred company to lead in the evaluation considering these requirements.’

(Civil Society Officer, 27/06/12).

It therefore follows that independent participation of civil society in the PPP has not been given effect. Procuring entities have developed a system whereby they only invite civil society organisations they can influence to give a ‘yes’ verdict on their PPP activities.

6.2.7 Role of civil society

Bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof. As part of the requirements of the process, a register is taken of the names and addresses of all those present at the bid opening and the organisations they represent, which is recorded by the Secretary of the Tenders Board in the presence of (a) representative(s) of civil society (Public Procurement Organisation, 2008).

The process of public procurement in Nigeria is envisaged by the Public Procurement Act 2007 to involve a third party, in addition to the public institution (procuring entity) calling for bids and the bidding companies (contractors). The third party is civil society. This research however finds that involvement of civil society in the processes of public procurement has not been consistent across the case study

organisations, despite their remit to act as unbiased umpires in detecting unethical and corrupt practices in the procurement process.

Although the participation of civil society in the Nigerian public procurement process is promoted by the Public Procurement Act 2007, a source of finance for this is not provided to fund the expenses which civil society organisations would incur through their involvement. As a result, this provision of the Public Procurement Act (participation of civil society) has not been implemented. Regarding the imperative of civil society participation in the procurement process, a civil society activist conversant with the Nigerian public procurement process said that:

'...the third party participation in the form of the civil society witnessing of the bid opening process, as well as observing the evaluation process, is a way to ensure transparency and credibility of the bid process. Many government institutions always flout this requirement even when they have a list of civil society organization[s] as part of their stakeholders in their operational area. Many reasons informing this include exigency when available time for procurement is short, the inability of the civil society organisation to fund their participation such as transport for representatives. Even the process of involving a third party civil society organisation provide corruption risk factor where an agency of government already has a coterie of civil society organisation[s] who are readily called upon to rubberstamp the organizations' activities without providing any critical voice for ensuring compliance to ethics and standards. Another is where interested companies sponsored civil society organisation[s] to bid opening and evaluation process

to tilt the process to their favour or cause the process to be disrupted if not to their favour.'

(Civil Society Officer, 27/06/12).

In addition to the excuse of lack of funds for civil society participation in the procurement process, many procuring entities also attributed the non-participation of the civil society to exigencies of time, where the item or service to be procured is needed urgently. Furthermore, this research has also shown that some procuring entities are also in the habit of maintaining a coterie of friendly civil society organisations that they call upon occasionally to give a favourable verdict on their procurement activities – an indication that the concept of civil society participation could be abused if not properly implemented with guidelines that prevent its abuse.

6.2.8 Adhering to set monetary thresholds

The Public Procurement Organisation sets monetary thresholds of contracts above which the procuring entity must seek approval from either the supervising Minister or the Federal Executive Council.²⁹ Adhering to set monetary thresholds would mean that contracts above a certain financial limit are subjected to further scrutiny outside the procuring entity, so that the process in the procuring entity can be subjected to further transparency. The law particularly states that:

'Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Federation Account or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payments or other form of

²⁹ Council of Ministers of the Federal Republic of Nigeria, which is the highest decision making body of the country.

request for payments is accompanied by a certificate of 'No Objection' to an award of contract duly issued by the Bureau (Public Procurement Organisation, 2008).'

(Procurement Officer C, 28/06/12).

Once set, the monetary threshold must be strictly adhered to in all procuring entities, as doing otherwise will result in the commission of an offence contrary to Part XII, section 58 of the Nigerian Public Procurement Act 2007. As a way enforcing adherence to the monetary threshold provision in the procurement law, the national treasury is mandated to request evidence of compliance before disbursing payments for contracts above the threshold requirements. The setting of monetary thresholds for procurement is hinged upon the periodic conduct of price intelligence by the Public Procurement Organisation in Nigeria. Asked to comment about the imperative of price intelligence in the Nigerian public procurement process, a procurement officer in one of the case studies stated that:

'...price intelligence (Market Survey) is conducted to ensure that open market prices are used as basis for fixing reserve prices for public procurement. The Management now make use of price intelligence to make sure that prices at which items are procured are comparable to open market prices in order to avoid procurement queries.'

(Procurement Officer, 28/06/12).

From the foregoing, price intelligence, in addition to providing the necessary market data needed by the Public Procurement Organisation to set and periodically review

the monetary thresholds for approvals of contract awards, is also used by the managers of procuring entities as a guide to compliance with the set monetary thresholds.

6.2.9 Submission opening and evaluation of bids

This research finds that non-specification of times between submission of bids, opening of bids and evaluation of bids or having such times specified at unreasonably widely-spaced points, can be used to manipulate the process to achieve the pre-determined aim of conferring favour on a particular company. As a prosecutor involved in cases relating to the procurement process said:

‘...the time lag between the bid opening and evaluation process gives room for exigencies and factoring in inflation which most Management could take advantage of. The other risk factor is that many goods and services procured through the public procurement process do not have fixed standard comparable prices in the market to use as a benchmark for procurement, particularly in cases of specialized consultancy services or procurement of goods not already available in the market or procured from outside the country.’

(Prosecutor 20/06/12)

As shown above, there may be cases of public procurement where the goods or services involved are not directly available in the market. In such cases, the procuring entity is enabled to fix a price and then argue its justification through the approval processes, taking into account the code of conduct for public procurement which states that ‘... the Bureau shall, with the approval of the Council, stipulate a

Code of Conduct for all public officers' (Public Procurement Organisation, 2008 p. 35). Abuse of the code of conduct has attracted various sanctions, ranging from cancelation of the procurement process itself and blacklisting of the companies involved, to imprisonment of the officers involved (Obuah, 2010b; Otusanya, 2012).

6.2.10 Strengthening the process of public procurement

This research also finds that involvement of civil society in all processes of public procurement in Nigeria could be useful in ensuring that besides the contractors and the procuring entities participating in the process, a neutral third party whose only interest is the public interest is also involved. This would be even more meaningful if the selection process for a civil society representative were conducted outside the purview of the procuring entity, to ensure that they are not known by the procuring entity and so cannot easily be influenced by either the procuring entity or the contractors. The need to strengthen the Nigerian public procurement process against abuse through the involvement of civil society organisations that are truly independent was reiterated by a prosecutor (interviewed during the verification interview) who is also knowledgeable in the investigation of public procurement related cases in Nigeria. He stated that:

'...there is need to strengthen anti-corruption initiatives in the public procurement process – provide free access to information to the public and civil societies for independent monitoring of the procurement process. The mass enlightenment on the procurement laws and what constitute a violation and penalty is a necessity for all stakeholders. Beyond this, the enlightenment on the aspect of sustainability in complying with the existing rules is also necessary. Most organizations do not fully inform their immediate

stakeholders of the procurement process, laws and activities relating to their organization. Regular training of the procurement officers will to a great extent account for the existing lack of interest and low participation of stakeholders in the procurement process.'

(Prosecutor 20/06/12).

Vigorous public enlightenment is another worthy tool that can be used to generate public interest in the Nigerian procurement process. As shown above, most members of the Nigerian public are not aware of the provisions of the Public Procurement Act 2007, especially as these relate to the transparency of the process, as well as the accountability of the process and those who operate it towards the Nigerian people. If the people are adequately informed about the process, more stakeholders in Nigeria will be empowered with the necessary information needed to engender their participation in the process and by so doing demand accountability and transparency from the managers of the process.

6.3 Chapter summary

In this chapter, findings from the case studies have been brought to bear upon issues relating to the second objective of this research, which is to identify a set of risk factors that can be associated with corruption in the Nigerian PPP. Further, the research question, which asks: 'What are the risk factors for corruption in the Nigerian PPP?' has been interrogated by applying concepts developed in chapters 2 through to 4 to the selected case studies in Nigeria. For each case study, semi-structured interviews were conducted and the resulting data were analysed under the three central themes of the research. These are the institutional frameworks of the

PPP in Nigeria, as encapsulated in the first objective of the research, using case study analysis to identify a set of risk factors that can be associated with corruption in the PPP in Nigeria and to put forward a corruption vulnerability check-list for management of the PPP to achieve accountability, transparency and value for money in the spending of public funds through the PPP in Nigeria.

6.3.1 Organisation of the PPP

As shown in sections 5.2, 5.3, 5.4 and 5.5, across the four case studies the organisation of the PPP is based on distinct working principles. The process commences with the procuring entity requesting approval to procure the item or services for which funds have been provided by way of budgetary provision for the year. Upon receipt of approval from the approving authority, the procuring entity then proceeds to call for interested qualified contractors to submit proposals for consideration for the award of the contract within transparent competitive bidding criteria. The process, which by the dictates of the Public Procurement Act 2007 and its attendant Regulations (see section 4.11), has as one of its guiding principles the goal of achieving best value for public funds spent through the PPP to procure goods and services while maintaining confidentiality.

6.3.2 The most important aspect of PPP

This research has shown in sections 5.3, 5.4 and 5.5 that the most important aspect of the PPP is the bid analysis and the discretion that may be exercised towards the award of contract to achieve the goal of competitive bidding and transparency, so that scarce resources are used to obtain the best possible quality of goods and services for the Nigerian people through the government. Furthermore, the

involvement of the civil society is another important aspect of the process, identified as critical to any effort at strengthening it against corruption.

6.3.3 Key risks-factors for the PPP: a summary

Following the case studies analyses in sections 5.2, 5.3, 5.4 and 5.5 and the cross-case analysis in this chapter, a number of risk factors in the Nigerian PPP that can be associated with corruption have been identified. The provision of the 2007 Public Procurement Act that the PPP should be confidentially conducted has been abused. Contract splitting is another risk-factor of corruption in the PPP. To avoid the requirement that contract items above certain financial thresholds must be subject to further scrutiny by higher approving authorities, procurement officers and their management, as shown by this research, split the contract into two or several units so that they can initiate and conclude the awards without seeking approval from their supervisory authority. Exercise of discretion by procurement officers and their approving authorities was also revealed to be a risk-factor in the PPP; hence the need to develop a deliberate oversight mechanism that would ensure that the procurement officers exercise their discretion in a responsible manner.

The study also revealed that because the involvement of civil society in the PPP is not made mandatory by the Public Procurement Act of 2007, procurement officers and their management have opted not to invite civil society to contribute oversight to the process. Another hindrance to the involvement of the civil society in the PPP is the provision that they be sponsored by the very procuring entity they are meant to oversee. A dearth of qualified procurement expertise in the country means that strict observance of codes of practice is unlikely without definite compliance mechanisms against which to measure the conduct of procurement officers. Across the case

studies, the interviewees reported that the PPP as currently implemented is not clear enough for contractors and other stakeholders in the PPP to comprehend easily. Furthermore, this research has shown a need to strengthen the PPP in Nigeria by proposing a corruption risk-factor vulnerability check-list in order to achieve accountability and transparency in the management of public procurement in Nigeria.

Chapter 7

Conclusion

Chapter 7

Conclusion

7.1 Introduction

In the first chapter, the motivation for this study was articulated and the research aim and objectives stated. In chapter 2, the motivation for the research, which centred on the issue of corruption risk factors in public procurement, was the subject of theoretical reflection and contextualised through a critique of existing literature, with the result that the knowledge gap to which this study responds was identified. In chapter 3, a research methodology and the appropriate methods that fit the character of corruption as it relates to public procurement and in particular, the procurement process in Nigeria within the context of the research aim and objectives, was articulated to guide the research process.

Following an outline of the research methodology and the data subsequently collected, chapter 4 analysed and presented findings from the secondary data to shed light on the existing public procurement framework in Nigeria. In this way, the institutional and legal framework for public procurement in Nigeria was articulated. In chapter 5, the data collected from the case studies were analysed and the resulting findings presented with the aim of identifying a set of risk factors that may explain the vulnerability of the public procurement process in Nigeria to corruption. The present chapter is based on chapter 6, which discussed the salient findings from the analysis of secondary and primary data presented in chapters 4 and 5 as a basis for drawing conclusions from the research. In particular, the outcome of the research in

generating a proposal for a corruption risk factor vulnerability check-list for the management of public procurement in Nigeria is presented in this chapter.

7.2 The existing framework and the way forward

This study has shown that the existing institutional framework for public procurement in Nigeria, as encapsulated in the Public Procurement Law 2007 and other statutory instruments (see sections 4.2–4.6), is vulnerable to corruption. As a result, public funds allocated for specific capital and recurrent expenditures in the country have been diverted for the personal use of individuals (see sections 5.2, 5.3 and 5.4). Across the case studies, the implementation of the existing public procurement framework, which is based on the Public Procurement Act of 2007, has revealed specific weaknesses in the process which have been exploited for corruption.

It was also revealed that the award of contracts to shell companies is a widespread practice across the electricity sector in Nigeria, which is used to perpetrate corruption in the public procurement process. Where shell companies are involved, the costs of executing the contracts awarded are either deliberately inflated such that inordinate profits are made, or where the prices are proportionate to the services or works being procured, the work is poorly done or the service poorly delivered. This way works completed fail earlier than expected and services are often rendered unfit for purpose, with the result that more funds must be further allocated to correct defects in services rendered and works completed by shell companies at the expense of the tax payers and for the private advantage of the owners of the shell companies.

7.2.1 The need to strengthen the process

Partly because of their multifarious nature, manifestations of corruption in the public procurement process have been able to defy the initiatives and strategies set in the current institutional and legal framework aimed at curbing them. This is because the associated underlying risk factors, revealed in chapter 5 and discussed in chapter 6, have continued to make the public procurement process in Nigeria vulnerable to corruption. Corruption has occurred persistently in the public procurement process since the coming into effect of the new public procurement framework, which is based on the Public Procurement Law of 2007, with the result that about \$1 billion was misappropriated through the public procurement process in electric power-related procurement activities alone. Because of this, there is a need for the authorities to begin to design and implement measures that will not only strengthen the procurement process to make it more transparent and accountable to deliver value for public funds spent to procure public goods and services, but also to ensure that the process is made resistant to new mutations of corruption in the process of public procurement in the future.

This research therefore advocates the adoption of a corruption risk factor vulnerability check-list for the management of public procurement in Nigeria. This encapsulates a synergic collaboration involving the relevant procuring entities, the anti-corruption agencies, civil society stakeholders and the contractors that bid for contracts administered through the public procurement process. This new procurement management framework would drive prevention and proactive strategies, and forge a common synergy that would run through the system of

stakeholders to ensure a consistent exchange of information, ideas and learning towards a corruption-free operation of the public procurement process in Nigeria.

Strengthening the public procurement framework by introducing the corruption vulnerability check-list test will produce an enduring, sustainable and proactive public contract management approach that will not only enhance the transparency and accountability of the process and hence, further the effective utilisation of public funds through the public procurement process, but will also empower civil society and non-governmental stakeholders (contractors) with options to seek review of contracts awarded, through which they can make verifiable claims of abuse of the process. This will reduce the rate at which public funds meant for the provision of public goods and services are diverted for private use.

Having identified some set of risk factors that can be associated with corruption in the public procurement process in Nigeria, there is therefore a need to articulate a corruption risk factor vulnerability check-list for corruption-free management of public procurement in Nigeria.

7.2.2 A new framework for the PPP

It has been shown through this research that a framework for achieving corruption-free management of the public procurement process in Nigeria must necessarily be based on a public contract management instrument that implements and sustains a corruption risk factor vulnerability check-list test. The latter should not only prevent existing corrupt practices but should capture new mutations of corrupt practices to further a sound institutional framework that ensures that the process of public procurement in Nigeria meets the requirements of transparency and accountability

and ultimately delivers value for public funds spent to procure public goods, works and services.

A proactive public procurement policy should mobilise all stakeholders (government, contractors and civil society) in a management framework for effective participation and utilisation of the corruption vulnerability check-list and the combined administrative and procedural effects of the Public Procurement Law 2007, to achieve a robust process of public procurement aimed at responding to any signs wrongdoing and developing appropriate response strategies. While procuring entities and the contractors that bid for contracts advertised through the public procurement process will engage on the basis of equity and transparency within the purview of the corruption vulnerability check-list, civil society will undertake independent review of the process as applied in every public procurement exercise so as to report any abuse, either actual or suspected, to the anticorruption agencies.

The findings of this research have shown that there are both risk factors for corruption and indeed actual corruption in the PPP in Nigeria, in addition to the many corruption cases already in the public arena in Nigeria that have been reported to have been perpetrated through the public procurement process (Watts and Bassett, 1985; Malgwi, 2004; Okogbule, 2006). Taking together three such cases, involving the Nigerian Ports Authority (NPO), the Rural Electrification Organisation (REO) of Nigeria and the Universal Basic Education Organisation (UBEO) of Nigeria, a total of around \$1 billion is said to have been misappropriated through the public procurement process (Sowunmi *et al.*, 2009; Awolusi, 2010; Bakre, 2010).

The cost of corruption over the past decades, as revealed by this research, has been exhibited in a large spectrum of negative effects on society. Most of the corruption cases reported have been perpetrated through the PPP in Nigeria (Shehu, 2004), hence the need for a new framework that can strengthen the PPP based on the risk factors identified, to achieve transparency and accountability in the management of the public contracting process in Nigeria to obtain value for public funds spent through the PPP.

This research therefore advocates the adoption of a corruption risk factor vulnerability check-list for the management of public procurement. This encapsulates a synergic collaboration involving the relevant stakeholders of the PPP namely: the procuring entity, the contractors bidding for contracts, anticorruption organisations and civil society. This corruption risk factor vulnerability check-list will provide the framework for checks and balances for the PPP that would drive prevention and proactive strategies, and forge a common synergy that runs through the system of stakeholders to ensure a consistent exchange of information, ideas and learning for a corruption-free management of the PPP in Nigeria.

7.3 Key findings and the corruption check-list

The research as explained in detail in chapter six has produced a number of key findings, which are here summarised as a basis for predicating the corruption vulnerability check-list for a corruption-free management of the public procurement process in Nigeria.

7.3.1 The key findings and recommendations

The research revealed that there are situations where the evaluation of bids submitted by contractors competing for contracts administered through the public procurement process is done with a pre-conceived intention of favouring (a) particular company (ies) that are known to the procurement officers or their superiors. Blinding the evaluation process is recommended as the option for eradicating corruption risks resulting from subjective or partial evaluation. In cases where collusion between many members of the evaluating panel could take place, using third parties as evaluators may be a better option. In this case, the role of civil society in the procurement process can be elevated from being only observational to an evaluator one. To do this, at the point where bids are evaluated, the bid tenders must all be anonymised so that the civil society partner invited to take charge of the process to evaluate all submissions against the set criteria is able to choose the winning bidder in an impartial and transparent way.

Another key finding of the research is that despite the requirement to submit bids in sealed envelopes, some contractors with companies that are known to the management of the procuring entities are in the habit of providing open copies of their bid to their contact person in the procurement institutions, who can then skew the evaluation process in their company's favour. Once recruited, the contractors' contacts in the procuring entities would also work to compromise the steps put in place to ensure transparency and accountability in the bidding process. As reported in section 6.2.7, because of ineffective oversight by civil society and a dearth of research exposing the risk factors for corruption in the public procurement process, the process of public procurement in the Rural Electrification Organisation was

repeatedly used as a conduit through which budgeted public funds were mismanaged for private gains.

To make the process of public procurement transparent, the Public Procurement Law 2007 (see sections 4.2 and 4.3) lays out an ordinary process to be used in approving or selecting companies that meet the set requirements for screening. The results of the screening process are then considered by another body in the ratification process, leading to a recommendation for the final approval of the approving authority once a certain financial threshold is reached. However, it has been shown through this research that these elaborate transparency provisions put in place to prevent abuse in the preliminary stages in the public procurement process are circumvented by splitting the tenders or projects into small tranches that fall within the threshold that can be approved by an executive with a special interest and without going through the process that will involve the scrutiny of a higher authority. Where and when this is happens, the goal of achieving best value for public funds is compromised as personal interest would then take precedence over public interest.

Another key finding across the case studies is that the majority of the officers involved in the procurement process came into post without the requisite training. This runs against the ideal situation, where members of the procurement committee charged with the responsibility for vetting and evaluating bids are expected to have some level of technical expertise relating to the project or item to be procured, so that their discretion is guided by technical objectivity. Furthermore, it was revealed that in most cases, the special interest of the Chief Executive Officer would override every other technical consideration, starting with the appointment of the members of

the procurement committee who are chosen to be malleable and pliant to the interests of the Chief Executive Officer.

As explained in section 4.5, every relevant piece of information needed by the companies bidding for the project through the procurement process must be compiled and made available as a requirement for organisational qualification, which participating companies must meet. In reality, however, this process can be deliberately left open and/or ambiguous to give room for a preferred company to wriggle into winning the bid and by extension, the contract. This research finds that an extreme example of grand manipulation of the process of public procurement occurs when the actual terms of reference (TOR) to be used to administer the process for the award of a contract are pre-drafted with a particular company in mind, in which case it is easy for the preferred company to outshine the others on every indicator used in the evaluation process.

The research also shows that the lack of third party participation, in the form of civil society representatives acting as witnesses to the bid opening process, as well as being observers of the evaluation process, is a way to ensure that the transparency and credibility of the bid process, which is statutorily provided for in the 2007 Procurement Law, are rarely complied with. Across most of the case studies, these legal recommendations are not observed even when the procurement organisation maintains a list of civil society organisations as among their stakeholders in their operational area. Many reasons were given for this including exigencies of time, where available time for the procurement exercise is short and due to the inability of the civil society organisation to fund their involvement in the exercise.

The research also revealed that the process of involving a third party, such as the civil society organisation in itself, could be a corruption risk factor where a Chief Executive Officer maintains a ready coterie of civil society organisations whom he or she can call upon to endorse the procurement exercise of his or her organisation for a fee or favour. In such cases, the civil society organisation does not represent a critical voice that can ensure compliance with, and standards of, transparency and accountability as envisaged by the procurement law. Another instance where civil society may be compromised is where companies engaged in the procurement process, and by extension, whose activities are being monitored for compliance with the extant procurement law, also act as the sponsor of the civil society organisation. Sponsoring the participation of the civil society organisation would compromise its moral independence to question or report non-compliance with the principles laid down.

7.3.2 Corruption vulnerability check-list

Following the evidence from case studies presented in chapter 5 and the findings thereof, which are also discussed in the same chapter, a number of specific thematic risk factor themes have emerged. These can be used as an integrity check-list to strengthen the public procurement process in Nigeria against abuse. These risk factors have been stated in the form of questions in the checklist presented in Table 10 below.

Table 10: Corruption checklist

S/N	Public procurement corruption check-list questionnaire		
	Has the procurement process been interfered with by the management?	yes	no
	Do any of the bidding companies have connections with officers of the procuring entity?	yes	no
	Has the process maintained confidentiality?	yes	no
	Is there evidence of contract splitting in the process?	yes	no
	Have the procurement officers maintained independence?	yes	no
	Is the bidding process adopted clear and unambiguous?	yes	no
	Has civil society participated independently in the process and to its satisfaction?	yes	no
	Is the contract price within range of open market prices?	yes	no

Source: Data analysis

In addition to the recommendations for strengthening the process of public procurement in Nigeria, this set of risk factors restated in the form of questions can be asked to cross-validate the outcome of any public procurement exercise. Answers where relevant in the negative or the affirmative that suggest bias or potential bias will mean that the process has failed the corruption vulnerability check and progressively, the number of such answers will be reflective of the extent to which the process failed the corruption vulnerability test.

7.4 Policy recommendations

7.4.1 Forging inter-agency collaboration in the PPP

As Glenn *et al.* (2007) noted most research on corruption in public procurement and the policy directions elicited has focused on the amount of public money stolen and the methods adopted in efforts aimed at concealing them. This has meant that the

risk factors that pre-dispose the public procurement to corruption particularly in the Nigerian context has not been researched, hence the paucity of research-based policy directions. Following the findings of this research that corruption in the Nigerian public procurement process can be associated with identified risk factors, a corruption vulnerability check-list has been advocated to achieve transparency and accountability.

Implementation of the corruption vulnerability check-list entails the adoption of a deliberate policy that can engender a PPP management framework that is efficient, transparent and accountable, and also empowers the stakeholders to work collaboratively in achieving the goals of getting value for government money spent through the PPP. Adopting this approach will also promote inter-agency working and participation of all stakeholders both governmental, anti-corruption and civil society, so that changes in society and the PPP over time can be identified for policy review before they develop into a risk factor for corruption in the PPP in Nigeria.

7.4.2 Moral sanctions for corruption

This research has shown that the corrupt are not sanctioned morally by Nigerian society. As Ogbe (2012) said, most Nigerians seem to have become used to the menace of corruption in society. The moral proscription, which had existed against acts of corruption before Nigeria gained independence in 1960, gradually eroded with the advent of the military rule. There is therefore a need for a cultural change so that those who get convicted by the courts for corrupt practices are no longer celebrated as heroes. This way, societal vigilance against corruption will be awakened to serve as an informal deterrent to corruption and the corrupt will be vilified as opposed to being accommodated.

7.4.3 Review of anti-corruption strategies and the PPP

This research has shown that corruption in Nigeria and particularly in the PPP has been able to withstand successive efforts at combating it because past and present anti-corruption measures in Nigeria have been superficial and there has been research evidence base as to the pre-disposing factors. As a result, strategies aimed at addressing causes have been ineffective. Anti-corruption strategies in the past have targeted the commission of corruption instead of the underlying risk factors that provide the motivation for corruption in the first place. The PPP in Nigeria, as shown by this research, involves immense sums of money in annual turnover and because it has pre-disposing risk factors, the corrupt have continually exploited it for personal gain. Therefore, periodic review of public procurement anti-corruption strategies must both be proactive and reactive. While the reactive concentrates on discovering the risk factors and their changing mutations overtime so as to create policies that strengthen the PPP towards greater transparency and accountability, reactive review of policy implementation will aim to capture actual cases of corruption, studying them and using the findings to strengthen policies that make it difficult for those convicted of corruption to enjoy its proceeds.

7.4.4 Equity in distribution of public opportunities

Inequity in the distribution of the common wealth of the nation Nigeria through the opportunities created by access to the political process has been revealed by this research as a major motivation for corruption. It therefore necessary to review the nation's anti-corruption policy to provide initiatives that promote a fair and

equitable distribution of the wealth that is accessed through the political process of the country, which is often made available through the PPP.

As a first step towards achieving equity and fairness in the distribution of the opportunities that are opened up by access to the socio-political process and which can be dispensed through the PPP towards solution to the key risk factors noted in section 6.3.3, the following policy measures are recommended:

- i. The government, through the Anti-corruption Commission, to exhibit intolerance for corruption generally by ensuring that once a predisposing risk factor for corruption is identified, an appropriate policy review measure is activated against it.
- ii. Recommendations that follow the pronouncements and activities of stakeholders such as civil society are swiftly implemented to instil in the citizenry that the government is poised to identify and act against corruption. A situation where the government fails to implement the recommendations of innumerable panels of inquiry makes nonsense of the anti-corruption crusade (Ufere, 2010). It casts doubts in the minds of Nigerians on the sincerity of the government in embarking upon such measures.
- iii. Vigorous prosecution and enforcing appropriate sanctions in cases of corruption generally and in particular, those having to do with the PPP, will deter other Nigerian citizens from committing the same acts. A situation whereby those known to have looted the public treasury are walking about freely and some even still serve in government (see section 1.4) makes a mess of the anti-corruption crusade as far as Nigerians are concerned.

- iv. This research has revealed that the procuring entity can frustrate the participation of civil society in the PPP since it is saddled with the responsibility for providing funding to the civil society stakeholder. This restricts the fight against corruption in PPP in Nigeria through a broad-based participation of all stakeholders, with the result that inappropriate conduct during the process may go undetected. This also creates a situation that leaves the fight against corruption in the PPP effectively in the hands of the government at the federal level to the exclusion of other tiers of government in the country.
- v. Another policy initiative for the promotion of transparency in the Nigerian PPP is the creation of a stream of funding for the civil society and other external stakeholders that desire to participate in the PPP. This will engender the active involvement of civil society and other anti-corruption stakeholders to watch over the PPP generally and over the activities of civil and public servants and the political class.
- vi. There is also a need to guarantee freedom of access to information. This is because for any anti-corruption campaign to be effective, necessary information on all aspects of the PPP should be accessible to civil society and other anti-corruption agencies to support analysis for the detection and reporting of corrupt practices.

To achieve success in implementing the corruption vulnerability check-list proposal for the PPP in Nigeria in order to eliminate or reduce to the barest minimum their susceptibility to exploitation by the corrupt, a deliberate strategy must be prescribed.

7.5 The implementation strategy

To achieve sustainable and effective strengthening of the Nigerian PPP through implementation of the new corruption vulnerability check-list, the following implementation principles are necessary to promote consciousness of transparency among all the participant stakeholders, that is, the procuring entities and their contractors and the involvement of civil society as necessary stakeholders in the PPP as opposed to the current practice in which the participation of civil society is optional.

7.5.1 Complementarity of stakeholder actions

The complementarity of stakeholders' actions in the PPP is canvassed towards the implementation of the corruption vulnerability check-list for instilling transparency and accountability in the management of public contracts in Nigeria. A principle for achieving this is the empowerment of each stakeholder (procuring entity, contractors and civil society) for independent oversight over the other stakeholders and to report any perceived non-adherence to the corruption vulnerability check-list in the award of any contract through the PPP.

Empowering the stakeholders to act independently in reporting corruption, which is at the heart of the corruption vulnerability check-list, involves providing independent channels through which the three stakeholders, namely the procuring entity, contractors and civil society as well as other persons with information about corruption in the PPP, can anonymously report to the anti-corruption agencies.

7.5.2 Participation of the people as whistle-blowers

As shown by this study, corruption in the PPP has thrived because traditionally only the procuring entity, which represented the government and the contractors, has participated in the Nigerian Public procurement process (PPP). The participation of third parties in the PPP, which is restricted to civil society, is optional and the procuring entity has discretion as to which civil society organisation to invite. Furthermore, civil society is also dependent on the procuring entity for funding, thus putting its independence with regard to rising concerns about corruption in question. Therefore, empowering civil society and other people who come by information about corruption in the PPP will encourage their participation in the management of public funds set-aside for public goods and services, which has been the source of various corruption cases. Policy-making in respect of the management of the PPP should be participatory, so that all stakeholders affected by corruption in the PPP can have a right to demand information on the PPP and, therefore, have responsibility to report irregularities in the process and to do so anonymously.

7.5.3 Training the stakeholders

As revealed in sections 5.2, 5.3, 5.4, and 5.5 of this thesis, a dearth of technical skill on the part of the procurement officers and other stakeholders is a major risk-factor impeding transparency in the PPP. There is therefore a need to train the procurement officers, civil society representatives and other stakeholders on a regular basis to enable them to champion the cause of transparency in the procurement process. The deployment of appropriate training programmes will equip procurement officers and other stakeholders with the knowledge to detect and report perceived corruption in the PPP.

7.5.4 Responding to dynamics in the PPP through policy

In light of the above, therefore, the PPP, which is still in its nascent stage having commenced only five years ago with the coming into effect of the Public Procurement Act 2007, should be reviewed periodically to make it responsive to high priority issues and the need to achieve transparency, accountability and above all, value for money in the spending of public funds in Nigeria through the PPP. The priority for stakeholders in the Nigerian PPP, as revealed by this research, is the hope that public procurement-related corruption, which they expressed to be high and rampant, will be completely eliminated or at least reduced to the barest minimum. Their consensus is that a corruption risk factor vulnerability check-list for the management of public procurement that responds to issues around the procurement officers' technical capacity and that of other stakeholders and periodic update and review of the institutional framework for public procurement in Nigeria, are necessary to identify the mutations of corruption in the PPP and empower the stakeholders through education about what constitutes partiality and inappropriate behaviour in the PPP with guaranteed channels through which people with evidence on corruption can anonymously report the same to appropriate authorities.

7.5.5 Instilling accountability in the PPP

As revealed by this study, accountability and transparency in the administration of public funds meant developmental projects through the PPP have always been at the heart of the belief that there is corruption in the conduct of government business in Nigeria. To address this, the idea that is uppermost in the minds of all stakeholders and the Nigerian people is that the PPP should be open to scrutiny. This way, those

responsible for planning and overseeing the expenditure of public funds through the PPP will be accountable to the people.

7.5.6 Civil society as a stakeholder in the PPP

As shown by this study, civil society has often been excluded from the PPP because of the notion that external procurement officers working for the government know more about the PPP and its challenges. To achieve a situation where civil society will embrace the campaign against corruption in the Nigerian PPP and also to engage in efforts towards long-term regular review of the process, to respond to the changing character of corruption, the policies aimed at achieving civil society participation should be formulated with their active participation. The inclusion of civil society, which is currently marginalised in the PPP, should be recognised as a fundamental premise of any strategy for upholding transparency in the management of public funds in Nigeria. Thus, the Public Procurement Organisation (PPO) and indeed the government should adopt deliberate measures, such as statutory sources of payment to enable the participation of civil society.

7.5.7 Issues of effectiveness of implementation of the checklist: way forward

As explained in sections 1.1, 1.2 and i.4, previous attempts at curtailing corruption have failed even though a number of national agencies have been created for its implementation. This raises issues of synergy amongst agencies that must work together achieve the objectives of a public procurement process (PPP) in Nigeria that is transparent and resilient against corruption. This shows the need for collaboration of stakeholders to achieve the new framework for the PPP.

In order to achieve successful implementation of the recommendations outlined in 7.5- 7.5.6, the PPP stakeholders are to act independently in reporting corruption. This involves providing independent channels through which the three stakeholders, namely the procuring entity, contractors and civil society as well as other persons with information about corruption in the PPP and indeed the Public Procurement Organisation (PPO), can anonymously report to the anti-corruption agencies.

Anonymous reporting of corruption has been institutionalised in Nigeria following the Government's acceptance of the Independent Corrupt Practices and Other Related Offences Commission (ICPC)'s recommendation that an Anti-Corruption and Transparency Unit should be set up in all procuring entities of government in Nigeria (Independent Corrupt Practices and other Related Offences Commission, 2013), fifty eight such Units have already been set up as at July, 2013. The setting up of these anti-corruption units and the combined effect of the provisions of Sections 6-29 of the ICPC Act (National Assembly Nigeria, 2000), which places prosecution of corrupt practices by public officers (including those involving the PPP) within the purview of the ICPC, it also follows that the Independent Corrupt Practices and other Related Offences Commission (ICPC) takes the lead in the prosecutor implementation of PPP related corruption cases with the active cooperation of the Economic and Financial Crimes Commission where pure Economic Crimes³⁰ are disclosed (National Assembly Nigeria, 2004).

By virtues of the enabling law of Public Procurement in Nigeria (National Assembly Nigeria, 2007.-b) which places responsibility for formulation of the general policies and guidelines for public procurement as well as reviewing the procedures for

³⁰Crimes such as advance fee fraud (419 fraud) and money laundering

procurement and award of contract for every public procurement entity in the Public Procurement Organisation (PPO), the PPO should continue to collect and collate data on the PPP and any judicial pronouncements to feed into its performs in terms of policies and regulations and for its statutory procurement audits and other reports due on a biannual basis to the National Assembly in conformity with the Public Procurement Act, 2007 (National Assembly Nigeria, 2007.-b).

7.6 Contributions to theory and practice

Distinctive contributions to knowledge and limitations associated with this study have been noted. In doing this, the research aim and objectives articulated in chapter 1 were compared with the gap in knowledge discovered through the literature review and the findings from the case studies. Drawing on these findings suggests that this study contributes to knowledge from both a theoretical perspective and in relation to practical applications.

7.6.1 Theoretical contributions

Building upon the readings and the literature reviewed in chapter 2, this study examined the concept of corruption in terms of wrongdoing from perspectives of grand corruption and petty corruption. It explained grand corruption as that which takes place at the highest levels of political authority and decision making and which occurs at the formulation of public policies and may involve the appropriation or embezzlement of government funds, or the tailoring of public laws, codes and regulations for the benefit of particular ‘favoured’ groups in return for bribes, or simply to preserve political support and power.

It also explained petty corruption within the purview of administrative or bureaucratic corruption in terms of everyday corruption that takes place where bureaucrats meet the public directly through processes such as the public procurement process. Petty corruption was characterised as survival-corruption perpetrated by public officials who engage in corruption to meet needs that their legitimate income cannot take care of; as well as that which is pursued by junior or mid-level agents who depend on relatively small but illegal rents in the form of bribes in exchange confidential information to meet needs ranging from food and housing to the payment of fees for their children's education.

Wrongdoing, which means using the public procurement process to achieve private gains contrary to the intended public gains, is the defining and also common feature of both grand and petty corruption. This research defined public procurement-related corruption in terms of any partiality in the application of the defined rules that govern the process of public procurement. Based on the foregoing, this research addressed both grand and petty corruption which in the context of corruption in the Nigerian Public Procurement Process is explained as any partiality occurring in the procurement process, in order to capture its mutative character which has enabled it to withstand past attempts aimed at its curtailment (see section 1.1).

Furthermore, the notion of partiality (abuse of discretion) is explained as central to public procurement-related corruption (section 2.4.9) and can be explained in terms of the Principle of Impartiality – a strong principle against any form of discrimination in the allocation of procurement opportunities made available to deserving individuals by the state (Keeley, 1995; Kurer, 2005). The principle hinges on the prescription that in allocating public opportunities, the existing rules must be

followed strictly as laid down, so that none of the parties is given undue advantage over the others (Colombatto, 2003; Rothstein and Stolle, 2003). Furthermore, the principle has been seen to relate to the subject of corruption in the context of deviations from defined norms for the administration of public resources within a given system (Kurer, 2005; Rothstein and Teorell, 2008; Rothstein and Eek, 2009).

The state, in allocating public opportunities such as those allocated through the public procurement process, should treat equally those who deserve equal treatment (Kurer, 2005). This has brought to the fore the realisation that to promote transparency in the process of public procurement, none of the companies that qualify to bid through the public procurement process should be discriminated against (Rothstein and Stolle, 2003). Because the Impartiality Principle is founded on the idea of partiality and wrongdoing (Kurer, 2005), it has become a fairly universal concept for explaining corruption in relation to accountability, equity and transparency in the context of government business. Application of the Impartiality Principle to the study of corruption in the process of public procurement in Nigeria therefore aims at identifying its risk factors, which will then feed into policy recommendations that promote transparency, equity and accountability in the practice of public procurement.

7.6.2 Contribution to Practice

The research aim and objectives seek to identify risk factors for corruption in the public procurement process in Nigeria as a first step towards recommendations for policy frameworks that promote transparency in public contract administration. This is because, as explained in sections 1.1 and 1.2, corruption in the public procurement

process in Nigeria has defied initiatives aimed at curbing it. This research has provided explanations for better understanding the factors that may have made corruption in the procurement process in Nigeria resistant to past initiatives, so that it may be possible to improve the management of the process and this may inform policy frameworks that promote transparency and ultimately secure the process against corruption.

The research has also proposed a corruption risk factor vulnerability check-list for corruption-free management of public procurement in Nigeria. Applying this check-list and implementing the other policy recommendations proposed will not only ensure value for money in public procurement, but monies saved by preventing corruption in the process will be used on other projects and the nascent practice of public procurement in Nigeria will be improved for greater transparency in public contract administration.

The research was innovative in having conducted its fieldwork in two phases: the main fieldwork and a verification fieldwork phase. The main fieldwork was used to generate the primary data by way of semi-structured interviews with interviewees in the case study organisations selected. The verification phase of the fieldwork was used to test the validity of the preliminary findings from the main fieldwork.

7.7 Limitations and future research recommendations

However, the research is not without its limitations. This section starts by itemising the limitations that the researcher encountered during the course of the research from

the perspectives of both data collection and analysis, and ends with an account of possible directions for future research based on the limitations encountered.

7.7.1 Limitations

This research, like other case study research, has certain associated limitations. First, there are some methodological limitations associated with the research such as the representativeness of the case studies selected and of the sampling within these, and the potential impact of this on the research findings. Because the subject matter of the research is corruption in the public procurement process in Nigeria, this affects and/or involves a great mass of stakeholders across the country, and it would be impossible for a piece of doctoral research to collect data from all of them. Although efforts have been made to extrapolate the data and the findings to the general situation, the research cannot be said to be wholly representative in precise terms of the situation of corruption as it exists across the country.

In terms of generalising the research findings, since the case studies seek to reveal risk factors and processes through which these manifested in the siphoning of public funds through the public procurement process, it is necessarily constrained in drawing general conclusions from findings based on a few case studies in one sector.

Secondly, given the exigencies of the doctoral research, a substantial part of the data for the research was generated from secondary sources. This introduced the possibility of missing out the tacit knowledge first-hand data provides, because secondary data may have undergone transformation, with implications for its veracity.

7.7.2 Future research recommendations

This study has revealed that many risk factors and indeed, instances of corruption, exist in the nascent Nigerian PPP through which public funds set aside for the provision of public services are managed. This gives rise to other questions that can be researched further to advance knowledge on the subject of corruption in public procurement within the context of public contract administration generally. The possible research-specific questions consequent upon this research, which can be studied further, are as follows:

Firstly, what are the correlations, if any, between the risk factors for corruption in the Nigerian PPP and other national jurisdictions in Africa and indeed, globally? Secondly, are there risk factors for corruption in procurement activities that transcend national jurisdictions and if so, how do their manifestations across national jurisdictions differ? In this kind of international scenario of corruption, how can international jurisprudence be synergised to eliminate the factors that make corruption attractive to the corrupt and by so doing eliminate corruption in the PPP, or reduce it to the barest minimum?

Thirdly, case study analysis and analysis of secondary data revealed that the existence of corruption in the Nigerian PPP has given rise to the diversion of public funds in Nigeria for private use by individuals and that most of the misappropriated funds are laundered locally in Nigeria or internationally with a view to concealing their sources. This suggests that monies misappropriated through the PPP have been laundered through financial institutions locally in Nigeria and internationally and calls for research on the risk factors for corruption in the movement and/or laundering of the proceeds of corruption nationally or internationally. This calls for

cross-border research into the destinations of monies misappropriated through the Nigerian PPP and the framework of international financial institutions that may have overtly or covertly facilitated it.

Furthermore, beyond the possible research themes and questions that directly relate to the findings of this research, there are certain theoretical issues related to the literature of corruption reviewed in chapter 2 that can be further explored to broaden understanding of the philosophical underpinnings of corruption and the risk factors that predispose society to it. With regard to the theoretical underpinnings of corruption in general, the Principle of Impartiality has been revealed as common to all schools of thought on corruption, irrespective of national jurisdiction. The question, however, remains as to how to evolve an internationally acceptable anti-corruption template for evaluating the PPP irrespective of national jurisdictions against corruption. All these questions call for further research theoretically and empirically.

7.7.3 Personal reflections

This research has broadened my view that the concept of corruption can be variously defined to meet set objectives. Based on this, the term ‘corruption’ for this study has been defined as ‘partiality and/or abuse of power and/or discretion for profit in the exercise of public procurement-related discretion. In fact, this study reveals that it is difficult to conduct research on corruption in a country highly publicised for corruption like Nigeria. This made it an uphill task to gain the confidence and acceptance of people to participate in the study as interviewees, and the task of sourcing for other data both primary and secondary very challenging. This research has also shown that corruption in the PPP in Nigeria, especially in the electricity sub-

sector of the economy, has withstood past efforts at resolving it because the underlying risk factors were not studied.

Analyses of primary and secondary data generated for this research have revealed that even though there is new legislation against corruption in public procurement, a national strategy and a number of Anti-Corruption Agencies, corruption has still persisted in the procurement process because there is an absence of any basic systemic knowledge about the risk factors in the process on which anti-corruption efforts in public procurement should be built. The extreme sensitivity of the subject of corruption in Nigeria meant that the case studies had to be modified so that respondents and their associated organisations, namely the Public Power Company, the Rural Electrification Organisation, the Public Procurement Organisation and the Anti-Corruption Commission, are anonymously reported.

Through this research, I have gained a set of new skills and improved on previous skills I had. I have gained the ability to use template analysis to analyse qualitative data in support a particular line of argument consistently for the duration of the study. The research has also enabled me to develop my skills for presenting my work and critiquing other works in a succinct manner. I have also gained the ability to analyse large volumes of data and periodically take advice to improve my scholarly work. All of these led to the achievement of the goal of this research, which is to identify risk factors that promote corruption in the public procurement process in Nigeria through case studies analysis, with the aim of contributing to evidence-based policy frameworks that promote transparency in public contract administration.

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Appendixes

Appendix 1: First fieldwork questionnaire

CONFIDENTIAL OPINION SURVEY QUESTIONNAIRE FOR ACADEMIC RESEARCH USE ONLY	 northumbria UNIVERSITY Newcastle Business School UNITED KINGDOM
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This questionnaire is part of a survey on the topic: "**Corruption Risk Factors: an Analysis of Public Procurement in Nigeria**". Please answer each of the questions and provide information as accurately as possible. The study is part of a doctoral research project at the Newcastle Business School, Northumbria University, Newcastle upon Tyne, United Kingdom.

The data collected will be used for research purposes only. The information obtained will be treated strictly anonymously and confidentially. Your name will not be mentioned on any document related to this study.

Thank you

Grace Ada Unite Ekwo
Doctoral Research Candidate
Newcastle Business School
Northumbria University
United Kingdom

Questions

1. Please tell me how the public procurement process in your organisation works.
2. What do you consider to be the most important aspect of public procurement in your organisation?
3. Is the process confidential? How is this ensured?
4. What do you consider to be the key risks of the Public Procurement process? Why do you select these as being important?
5. When making decisions how much discretion can procurement officers exercise in your organisation
6. Please comment on the clarity of the bidding processes in your organisation to those tendering for contracts. Are there any issues that you see arising from this?
7. Please describe the role of the civil society in the public procurement process in your organisation
8. Do you think that the pricing regime in public procurement is comparable with open market pricing?
9. Please tell me how price intelligence impacts on the procurement process in your organisation
10. Are there any areas of the procurement process that you feel could be improved? What are they and how can they be strengthened?
11. What would you say are the existing public procurement challenges in relation to:
 - i. Technical knowledge of the staff
 - ii. Existing laws/government policies on procurement
12. Is there anything else that you would like to add?

.....
grace.onyilo@northumbria.ac.uk



POSTGRADUATE RESEARCH STUDENT SKILLS TRAINING PLAN

During your research degree programme you are expected to develop a range of skills to give breadth to your learning. This plan helps you evaluate your learning needs and develop a timetable for enhancing skills. You should work through the list and evaluate whether you already possess the skill, need to develop or enhance it. If you have achieved the skill mark this in the second column. Provide evidence for your achievement in the third column.

PGR Student's name: Grace U. Ekwo; **Principal Supervisor's name:** Prof Jackie Harvey; **Academic School:** Newcastle Business School

Start date: September 2010; **Full time / Part time:** Full time

Supervisors should confirm that you have completed your skills training at each stage.

Taught stage Supervisor Signature	MPP stage Supervisor Signature	Final stage Supervisor Signature
-----------------------------------------	--------------------------------------	----------------------------------------

Induction/ Taught stage	Achieved / Partly Achieved/ Not Achieved	Achievement / Enhancement programme
Research Skills and Techniques – to be able to demonstrate skill in:		
recognising and validating problems	Achieved	I have developed and improved upon my ability to take on research topic, identify problems and gaps and formulate research aim and objectives.
the techniques available for keeping up to date in the area of research	Achieved	Through the use of various academic/research databases, identification of the key journals relevant to my research topic and attendance and contributions at conferences including DBA teaching block1.
relevant research methodologies, techniques and their application	Achieved	This is achieved through exhaustive review of relevant literature leading up to awareness and review of different methodologies used in similar studies – Key activities evidencing this are DBA block 2 /Turkey summer school and the success at the MPP stage.
Research Environment – to be able to develop:	Achieved / Partly Achieved/Not Achieved	Achievement / Enhancement programme
awareness of issues relating to the rights of other researchers, research subjects, and those who may be affected by research, e.g. confidentiality, ethical issues, attribution, copyright, malpractice, ownership of data and the requirements of the Data Protection Act	Achieved	Ethical issues approval for the research was sought and approval granted.
an appreciation of standards of good research practice in their institution and/or discipline	Achieved	Achieved through DBA teaching blocks and series of NBS conferences attended till date. See list at end of this document

Appendix 3: Verification fieldwork questionnaire



Dear Sir,

This verification exercise is part of a survey on the topic: 'Corruption Risk Factors: an Analysis of Public Procurement in Nigeria'. It contains a set of themes depicting the risk-factors of corruption in the public procurement process in Nigeria. They have been generated from the semi-structured interviews conducted in April 2011 in Nigeria. It is part of a doctoral research project being conducted at the Newcastle Business School, Northumbria University, Newcastle upon Tyne, United Kingdom.

Data collected will be used for research purposes only. Information obtained will be treated strictly anonymously and confidentially. Your name will not be mentioned on any document related to this study.

Thank you

Grace Ada Unite Ekwo
 Doctoral Research Candidate
 Newcastle Business School, Northumbria University
 United Kingdom

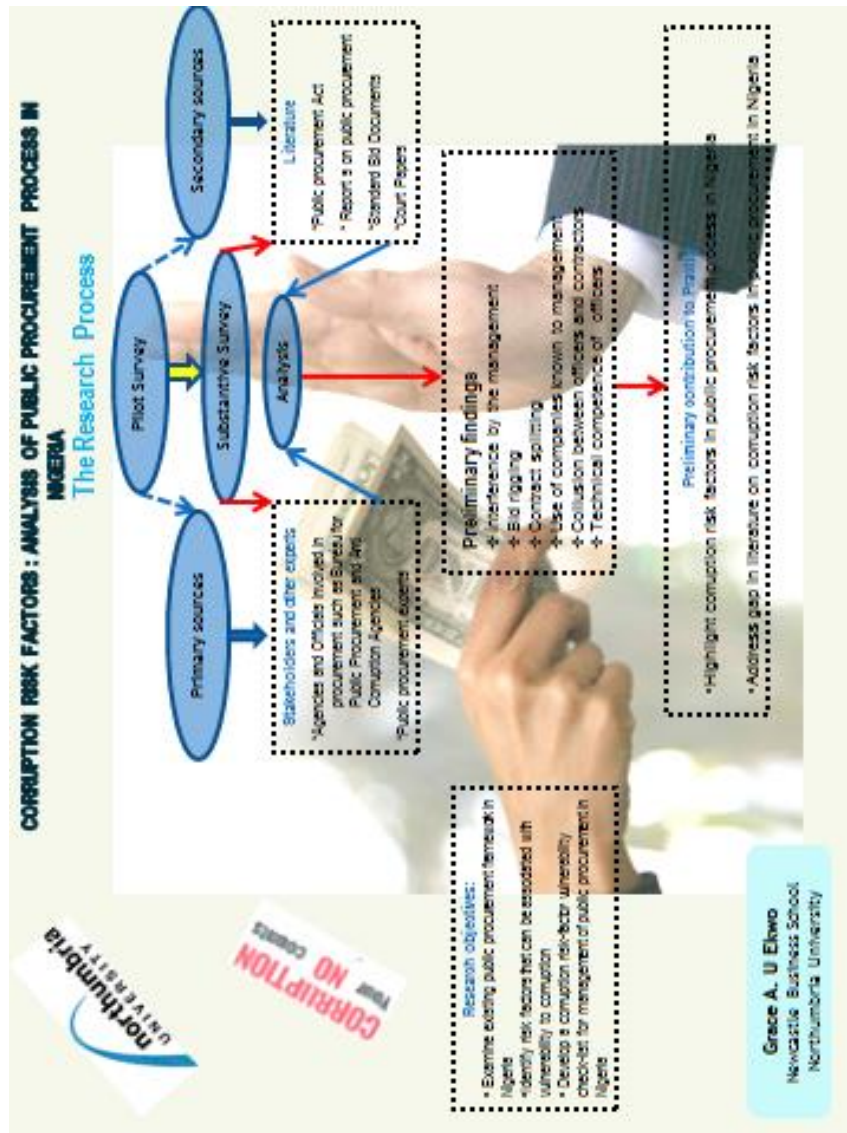
The verification questionnaire		
S/N	Transparency guidelines in the Nigerian Procurement Act, 2007	Themes depicting practices in public procurement in Nigeria that may be corruption risk-factors. They are formulated from a recent survey in Nigeria
1	The Procuring Entity shall use, or ensure the use of, the Bureau of Public Procurement Standard Bid Evaluation Report for the Evaluation of Goods and Works to detail the specific reasons on which the determinations for the recommendation for the award of contract is made. (Bureau of Public Procurement, 2007 p.27).	The process of public procurement can be interfered with by Management Officers. Contracts have been awarded to companies known to the management officers.
2	Public procurement shall be conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom; with the aim of achieving value for money and fitness for purpose (Bureau of Public Procurement, 2007 p.17).	Bids are received in sealed envelopes as a formality to create an impression of confidentiality and transparency in the public procurement process.

Appendix 4: Extract from template

S/N	Transparency guidelines in the Nigerian Procurement Act, 2007	Themes depicting practices in public procurement in Nigeria that may be corruption risk-factors. They are formulated from a recent survey in Nigeria	Themes corroborated from verification/ supplementary survey
1	The Procuring Entity shall use, or ensure the use of, the Bureau of Public Procurement Standard Bid Evaluation Report for the Evaluation of Goods and Works to detail the specific reasons on which the determinations for the recommendation for the award of contract is made. (Bureau of Public Procurement, 2007 p.27).	The process of public procurement can be interfered with by Management Officers. Contracts have been awarded to companies known to the management officers.	There are situations when the evaluation is done not based on objectivity but with a pre-conceived intention of favouring a particular company (ies). Blinding the evaluation process is the best option for eradicating corruption risk resulting from subjective or partial evaluation. In cases where collusion among many members of the evaluating panel does take place, using third parties as evaluator may be a good option. In this case, the role of the civil society in the procurement process can be increased without compromising standards and ethics.
2	Public procurement shall be conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom: with the aim of achieving value for money and fitness for purpose (Bureau of Public Procurement, 2007 p.17).	Bids are received in sealed envelopes as a formality to create an impression of confidentiality and transparency in the public procurement process.	Despite the need to submit bids in sealed envelopes, those with favoured companies always provide opened copies of their bid to their hatchet men in the institutions and unto those who have been recruited into tilting the evaluation process to their companies favour. This goes for other steps put in place to ensure transparency and accountability in the bidding process.
3	Splitting of tenders to enable the evasion of monetary thresholds set and bid-rigging is prohibited by the 2007 Act (Bureau of Public Procurement, 2007 p.38)	Contracts are divided into smaller units to avoid the requirement of seeking approval from higher authorities. The aim of achieving value for money through the procurement process has not been achieved.	Ordinarily the process of approving selected companies in a procurement process go through a body of authority, say a board, committee beyond an individual executive power of approval is limited, but this is circumvented by splitting the tenders or projects into small tranches that fall within the threshold that can be approved by an executive with a special interest and without going through larger authority. When and where this is done without the intention of expediency, there is hardly value for money in the procurement process as the personally interest dominates.
4	Standard format that permits the requested technical information for public procurement to be presented in a clear, precise and readily available manner and allows that client (procurement officers) to readily understand and evaluate the technical proposals in accordance with the established selection criteria for discretion to be exercised properly (Bureau of Public Procurement, 2008).	Exercise of discretion by procurement officers in the procurement process is not real. This is because exercise discretion only as may be necessary to implement the instruction of the Chief Executive Officer so that his preferred companies get awarded contracts.	For every procurement process, the ideal thing is for the members of the procurement committee who will vet and evaluate the bids to have some level of technical expertise on the project or item to be procured so that their discretion is guided by technical objectivity, but most times, the special interest of the CEO overrides every other technical consideration starting with the appointment of the members of the procurement committee who will be malleable and bend to the interest of the CEO.
5	The completed bidding forms to be clearly presented and must indicate details of the consultant's organisation and experience, methodology, work plan, work schedule, team composition and task assignments, and staffing schedule (Bureau of Public Procurement, 2008).	The bidding process is not clear and can be changed at the direction of the management staff to suite the profile of the company favoured by him for a particular contract.	The listed required organizational qualifications for participating in a bid process can be left opened and ambiguous to give room for a preferred company. In some other instances, the terms of reference (TOR) may be pre-drafted with a company in mind, in which case it is easy for the preferred company to lead in the evaluation considering these requirements.
6	Bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof, ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the tenders board in the presence of representative of the civil society (Bureau of Public Procurement, 2008).	Civil society organisations are supposed to act as check against unethical and corrupt practices in the procurement process. However, they are rarely invited to participate in the public procurement process even though this is provided by the Public Procurement Act 2007.	The third party participation in form of the civil society witnessing of the bid opening process, as well as observing the evaluation process is a way to ensure transparency and credibility of the bid process. Many government institutions always flout this requirement even when they have a list of civil society organization as party of their stakeholders in their operational area. Many reasons informing this include exigency when available time for procurement is short, the inability of the CSO to fund their participation such as transport for representatives.

Template depicting prescriptions of the Nigerian Public Procurement Act/Regulations and results from the main survey and the supplementary survey

Appendix 5: Poster for doctoral conference



Appendix 6: Extract from a PPP judgement

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT NO 33, CRIMINAL DIVISION IKEJA
BEFORE HON JUSTICE J.O.K. OYEWOLE
TODAY MONDAY THE 26TH DAY OF OCTOBER 2009.
SUIT NO: ID/71c/2008

BETWEEN
FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT
AND

1. CHIEF OLABODE GEORGE.....DEFENDANT
2. ARCHITECT AMINU DABO.....DEFENDANT
3. CAPTAIN O. ABIDOYE.....DEFENDANT
4. ALHAJI ABDULAH AMINU TAFIDA.....DEFENDANT
5. ALHAJI ZANNA MAIDARIBE.....DEFENDANT
6. ENGR SULE ALIYU.....DEFENDANT

JUDGMENT

The defendants were arraigned before this Court on the 8th of August, 2008 on a 163 count information to which they all pleaded not guilty.

Subsequently, the said information was amended via the amended information containing 68 counts dated 24th October, 2008 to which each of the defendants once again pleaded not guilty.

The said 68 counts are hereinafter set out in full as follows:

STATEMENT OF OFFENCE – 1ST COUNT

Inflation of contract prices contrary to Section 22 (3) of The Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Chief Olabode George, former Chairman Nigeria Ports Authority (NPA), Architect Aminu Dabo, former Managing Director Nigeria Port Authority (NPA), Captain O. Abidoye, Alhaji Abdulahi Aminu Tafida, Alhaji Zanna Maidaribe, Engr. Sule Aliyu, Prince Victor Agu, (now at large), Engr B.G. Yakassai (now at large), Emmanuel Omokhomion (now at large), and Mr. R.S. Anah (now at large) on or about 6th June, 2003 within the Ikeja Judicial division did inflate the price of the contract awarded to Kalmer West Africa Ltd for the rehabilitation of accidented Kalmar Container Handler from €215,555.52 (being the prevailing price at the time of the award of the contract) to €269,965.71.

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The defendants were never misled and conducted their defence in the full understanding of the allegations against them.

I accordingly agree with the prosecution that it is too late in the day to complain about formal defects in the charge. See *NDUKWE VS LPDC* (2007) 5 NWLR (PT 1026) 1, *FRN VS ADEWUNMI* (2007) 10 NWLR (PT 1042) 399 at 423-424 and *SHEKETE VS NAF* (2007) 14 NWLR (PT 1053) 159.

In totality therefore, I find each of the defendants not guilty on Counts 1, 2, 3, 4, 5, 6, 7, 13, 14, 17, 18, 30, 31, 45, 47, 48, 58, 62, 63, 66 and 68 respectively and I hereby discharge and acquit each of them on each of those Counts.

While I find each of the defendants guilty as charged on each of Counts

8,9,10,11,12,15,16,19,20,21,22,23,24,25,26,27,28,29,32,33,34,35,36,37,38,39,40,41,42, 43,44,46,49,50,51,52,53,54,55,56,57,59,60,61,64,65 and 67 respectively and I hereby convict each one of them on each of the said Counts respectively.

Hon. Justice J.O.K. Oyewole

Appearances:

Mr. Festus Keyamo with him Mr. A.T. Omaghomi, Mr. E. C. Ekpebe, Miss C.O. Metwou and Miss G. Okhajagu for prosecution.
Mr. Tunji Ayanlaja (SAN) with him Mr. Bambo Adesanya (SAN), Chief Bolaji Ayorinde (SAN), Otunba K.K. Kalejaye (SAN), Otunba A.A. Adegbesan, Mr. T. Olayinka, Miss O. Diya, Miss O. Ayanlaja, Miss J. Adebisi, Mr O. Rhodes- Vivor, Miss B.B. Alo and Mr. A.O. Ashas for the 1st defendant.

Mr. Dele Adesina (SAN) with him Mr. Bisi Ade-Ademuwagan, Mr. F. Afolayan, Mrs K. Bello, Mr. O. Olaiya and Mr. K. Otufale for the 2nd defendant.

Mr. Gbenga Ojo with him Mr. Segun Olaniyi, Mrs M.F. Tinubu, Mrs O. Kappo and Mr. M. Abdulkareem for the 3rd defendant.
Mr. Rotimi Sanni for the 4th defendant.

Chief J.K. Gadzama (SAN) with him Mr. U. Chikelue, Mr. O Ukoh, Mr. D. Famakin-Johnson and Mr. A. Akande for the 5th defendant.

Mr. Yinka Farounbi with him Miss B. Adegbokiki and Miss C. Aigbe for the 6th defendant.