



# Gender-Responsive Public Procurement

Review and Assessment of Procurement  
Laws, Policies, Regulations in Federal, Lagos  
and Kaduna States and Gender Audit of  
Institutions and Practices of Lagos and  
Kaduna States



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# ABBREVIATIONS

<b>AGPO</b>	Access to Government Procurement Opportunities
<b>B-BBEEA</b>	Broad-based Black Economic Empowerment Act
<b>BPP</b>	Bureau of Public Procurement
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>EARA</b>	Exchequer and Audit (Public Procurement) Regulations Act
<b>EDWOSBs</b>	Economically Disadvantaged Women-Owned Small Businesses
<b>EU</b>	European Union
<b>GDAP</b>	Gender Diversity Action Plan
<b>GRPP</b>	Gender-Responsive Public Procurement
<b>GDP</b>	Gross Domestic Product
<b>ITC</b>	International Trade Centre
<b>KADEDA</b>	Kaduna State Enterprise Development Agency
<b>KASPPA</b>	Kaduna State Public Procurement Authority
<b>KADSWEF</b>	Kaduna State Women Empowerment Funds
<b>LSPPA</b>	Lagos State Public Procurement Agency
<b>LSETF</b>	Lagos State Employment Trust Fund
<b>MBE</b>	Minority Business Enterprise
<b>NCPP</b>	National Council on Public Procurement
<b>NAICS</b>	North America Industry Classification System
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PPA</b>	Public Procurement Act
<b>PPADA</b>	Public Procurement and Asset Disposal Act
<b>PPDR</b>	Public Procurement and Disposal (Preference and Reservations) Regulations
<b>PPPFA</b>	Preferential Procurement Policy Framework Act
<b>PPL</b>	Public Procurement Law
<b>PPP</b>	Public-Private Partnerships
<b>SBA</b>	Small Business Administration
<b>SDGs</b>	Sustainable Development Goals
<b>SMEs</b>	Small and Medium-sized Enterprises
<b>UN</b>	United Nations
<b>US</b>	United States
<b>WECONA</b>	Women's Economic Assembly
<b>WLSMEs</b>	Women-led Small and Medium-sized Enterprises
<b>WOSBs</b>	Women-Owned Small Business
<b>WSME</b>	Women-owned Small and Medium Enterprises

# 1. BACKGROUND

Women-owned and women-led businesses are increasingly becoming a significant portion of all enterprises in Nigeria. These businesses<sup>1</sup> play a crucial role in fostering greater inclusion in the economy by encouraging the participation of the “other half” of the population. Moreover, they contribute to strengthening women’s economic empowerment, which in turn has a positive impact on the total global economy.

Public procurement opportunities has long been acknowledged as a catalyst for the growth of small and medium enterprises (SMEs), creating market opportunities that are essential for their development<sup>2</sup>. In Nigeria, public procurement accounts for approximately \$5.5 billion annually, a substantial sum that represents a significant portion of the economy. This expenditure presents an appealing market for entrepreneurs, considering that public procurement spending is estimated to range from 10 per cent to 25 per cent of Nigeria’s Gross Domestic Product (GDP)<sup>3</sup>.

Despite the benefits of participation in public procurement, as discussed in the following section, women-led businesses’ involvement in many countries is dismal. While women-owned businesses make up more than 40 per cent of the world’s micro, small, and medium-sized enterprises, only 1 per cent of government procurement tenders are won by women.<sup>4</sup> As noted by the ITU, “the percentage of public tenders awarded to women-owned businesses does not reflect the percentage of businesses owned by women.”<sup>5</sup>

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1. These are typically defined as: “a legal entity, that, at a minimum is at least 51 per-cent owned by one or more women, is unconditionally controlled by one or more women over both long-term decision-making and the day-to-day management and administration, of the business operations, and is independent from non-women-owned businesses.” See UN Women, Empowering Women through Public Procurement and Enabling Inclusive Growth, 2021, online: <’Empowering-women-through-public-procurement-and-enabling-inclusive-growth-en.pdf (unwomen.org)>

2. Mastercard Index of Women Entrepreneurs 2019.

3. Sunday Esene Osoba, Nigeria Introduces e-Procurement to its Public Procurement System | World Bank - New Procurement Framework (procurementinet.org)

4. UN WOMEN; 2017

5. International Trade Centre, Making Public Procurement Work for Women, 2020.

A 2011 study indicates that up to one-third (34.5 per cent) of Sub-Saharan Africa (SSA) firms report women's ownership participation, showing a historically strong inclination towards women-led businesses. A 2019 study found that women engage in entrepreneurship at slightly higher rates than men, but mostly in start-ups. This finding suggests that women are interested in entrepreneurship and would likely engage at different levels, not only with start-ups, should there be incentives, irrespective of the lack of a positive, enabling environment for them to thrive in business.

In Nigeria, women-owned small and medium enterprises (SMEs) are acutely under-represented as suppliers accessing public procurement opportunities. They secure only an estimated 1 per cent of procurement contracts. Generally, women entrepreneurs benefit significantly less than their male counterparts and face significant barriers to participation in public procurement.<sup>6</sup>

The legal and policy framework for public procurement provides the foundation for public procurement and is a critical consideration in addressing the gaps in gender-responsive public procurement. Inadequate national legislation and policies hinder women-owned or led businesses from participating in public procurement. Incorporating gender equality into public procurement contracts is an effective tool that governments can use to promote social change and equality, but that is not the case in most legislation worldwide. Remedying national legislation and policy gaps is critical to ensuring more gender-respon-

sive public procurement.

This report focuses on a review of national laws, regulations, and policies on public procurement. It employs a gender lens to understand the impact of existing laws, regulations, and policies on gender-responsive procurement. The scope of the study detailed herein covers the legal and policy framework at the national level and in two states: Kaduna and Lagos.

Given the challenges to women's participation in public procurement and the fundamental importance of the legal framework in organizing public procurement processes and practices, this desk review considers the evidence-based findings from the literature on gender-responsive procurement, examining the barriers and how different jurisdictions have addressed these barriers within their legal and policy frameworks. It examines approaches adopted by several jurisdictions in and outside Africa. These include Kenya, South Africa, the United States, Tanzania, the Dominican Republic and several countries in the European Union, such as Spain. Extrapolating from good practices from the examined jurisdictions and analyses in different literature and research, it identifies indicators for assessing gender responsiveness in Nigeria's legislation. It then analyses the legal and policy framework for public procurement in Nigeria and at the sub-national levels, namely in Kaduna and Lagos states.

In addition to reviewing the legal and policy framework, the report also undertakes a gender assessment of critical institutions in Kaduna and Lagos states and their implementation of gender-responsive public procurement. It provides findings from qualitative research on the processes, procedures, and practices in public procurement in Kaduna and Lagos states.

It concludes by proffering recommendations on improving gender responsiveness in the legal and policy framework and in institutions and practices in Kaduna and Lagos states.

6. International Trade Centre, Making Public Procurement Work for Women, 2020.

## 2. METHODOLOGY

The methodology adopted in line with the assignment included:

**Gender audit:** This audit focused on organizations. The process checks/assesses the institutionalization of gender equality in organizational policies, programmes, implementation, and structures. A gender audit, in this case, therefore, will require a consideration of the procurement agencies as institutions in Kaduna and Lagos states.

**Gender assessment/analysis:** Gender analysis aims to review the implementation of set programmes or policies, and the impact on the population from a gender perspective. This required a review of the impacts on the WSME and men-led SMEs of current public procurement laws, policies, and regulations at national and state (Lagos and Kaduna) levels.

**Gender policy review:** This refers to the available policies, systems, and practices that promote gender equality across national and state (Lagos and Kaduna) levels.

The methodology took a primarily qualitative approach, as set out below. The consultant conducted an extensive review of the legal and policy aspects of gender-responsive public procurement legislation at the national level, the Public Procurement Act, 2007, the procurement laws of Lagos (2021) and Kaduna (2016) and other relevant legislation, including the public-private partnership laws, and other key public procurement policies. The desk review covered gender assessment as well as helping to identify institutions involved in public procurement in both states. The desk review also included an extensive review of academic and grey literature on procurement, women and procurement, gender-sensitive procurement, women's economic empowerment, and law and gender-responsive procurement.

The consultant developed a gender-monitoring indicator matrix drawing from gender analysis templates and literature on gender responsive procurement and related areas. These were used to analyse the Public Procurement Act, the procurement laws of Kaduna and Lagos states, and the existing laws, policies, and regulations in place at all three levels.

To undertake a gender audit of the institutions, that is, an analysis of gender sensitivity, responsiveness, and inclusion in the identified relevant institutions in Kaduna and Lagos states, the desk review was followed by an institutional assessment of the recognized institutions using the gender indicators and information gathered through key informant interviews.





### **3. GENDER- RESPONSIVE PUBLIC PROCUREMENT: A JUSTIFICATION**

In recent years, there has been a resurgence in examining how procurement opportunities can contribute to creating a more inclusive growth process while upholding the core principles of competitiveness, transparency, and value for money and also an increase in accessing public procurement opportunities. There is increasing recognition that women-owned businesses are left behind in procurement (with only 1 per cent of women-owned businesses able to participate in public procurement).<sup>1</sup> In contrast, male-owned businesses are well represented in successful bids. Gender responsiveness encapsulates the concept of understanding, recognition of, and reaction to gender inequality in implementing activities, policies and programmes.<sup>2</sup> Gender responsiveness, therefore, entails tackling gender-based barriers by ensuring equal treatment of women and men across all areas of endeavour. Gender-responsive procurement is defined variously as “the selection of services, goods and civil works that considers their impact on gender equality and women’s empowerment,”<sup>3</sup> “the integration of gender equality and diversity considerations throughout the procurement cycle,”<sup>4</sup> and “procurement that promotes gender equality through the purchase of works, supplies or services by public sector bodies.”<sup>5</sup> In essence, public procurement takes into account the impact of agencies, processes, activities and procedures on women’s and men’s interests and concerns. It addresses these in a way that not only achieves transparency, value for money and the usual concerns of procurement, but also in a manner that is intentional in reducing gender inequalities.

Thus, gender-responsive public procurement is generally recognised as “a gender mainstreaming tool for promoting gender equality through public procurement.”<sup>6</sup>

Gender mainstreaming has become a global norm for most countries worldwide in the efforts to promote sustainable human development since the UN Fourth World Conference on Women held in Beijing (1995).

It is a process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and levels. It is a strategy for making women’s and men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.<sup>7</sup>

Gender mainstreaming involves integrating a gender perspective into every stage of policy interventions, including public procurement. It is widely accepted as a strategy to assess the impacts on both women and men of any institution or framework, including those related to public procurement. The goal is to address historical inequalities and discrimination based on gender, particularly affecting women. Gender equality forms the underlying foundation for women’s empowerment, and gender mainstreaming helps identify gender-related barriers to public procurement.

As noted earlier, public procurement is an important avenue to make and increase business profits. Government procures or buys a significant portion of country or state’s needs. Sectors such as energy, transport, waste management, social protection, health provision and

1. International Trade Centre, Making Public Procurement Work for Women, 2020.

2. Inter-agency Network for Education in Emergencies (INEE), “Gender Responsiveness” <https://inee.org/eie-glossary/gender-responsive> accessed December 5, 2022

3. UN Women, WEPS\_GUIDANCE\_Gender\_responsive\_procurement.pdf, 2020.

4. Guidance: Gender in the MAPS framework Guidance (Methodology for Assessing Procurement Systems), 2022, online: < Guidance: Gender in the MAPS framework (mapsinitiative.org)>

5. EIGE, What is gender-responsive public procurement? | European Institute for Gender Equality (europa.eu)

6. Ibid.

7. Gender Mainstreaming: Report of the Economic and Social Council for 1997 (A/52/3, 18 September 1997) GMS.doc (un.org)

education are often significantly administered by the government in Nigeria, as it is in other countries. Public procurement for services in these sectors provides considerable business opportunities and revenues for private businesses. Beyond that, public procurement is a source of economic growth and investments, creating jobs and improving the economy in general, and could help address inequality, particularly gender inequality.<sup>8</sup>

Public procurement systems, however, typically focus on specific objectives<sup>9</sup>:

- ▶ Achieving value for money (cost-effectiveness, efficiency) in public purchasing
- ▶ Sustainability
- ▶ Non-discrimination, equality and integration of marginalised or disadvantaged groups, and
- ▶ Transparency and open competition

Specifically, gender mainstreaming is a valuable approach to assess and ensure that the impacts of public procurement policy and practices do not exacerbate gender inequality but advance gender equality. Non-discrimination and integration of marginalised groups as an approach will help to strengthen the case for mainstreaming gender-responsive procurement and plausible amendments to policies, practices, regulations and institutions. It also helps to counter arguments that providing preferential treatment is discriminatory, by making the case that such preferential treatment is correcting already existing discrimination.

While the benefits of gender mainstreaming in public procurement are evident, it is important to provide solid and sustainable justification for gender responsive procurement. Therefore, the following section considers the gender-related barriers to public procurement and the justification for removing these barriers from a business perspective and a human rights angle.

### 3.1 GENDER-RELATED BARRIERS TO PUBLIC PROCUREMENT

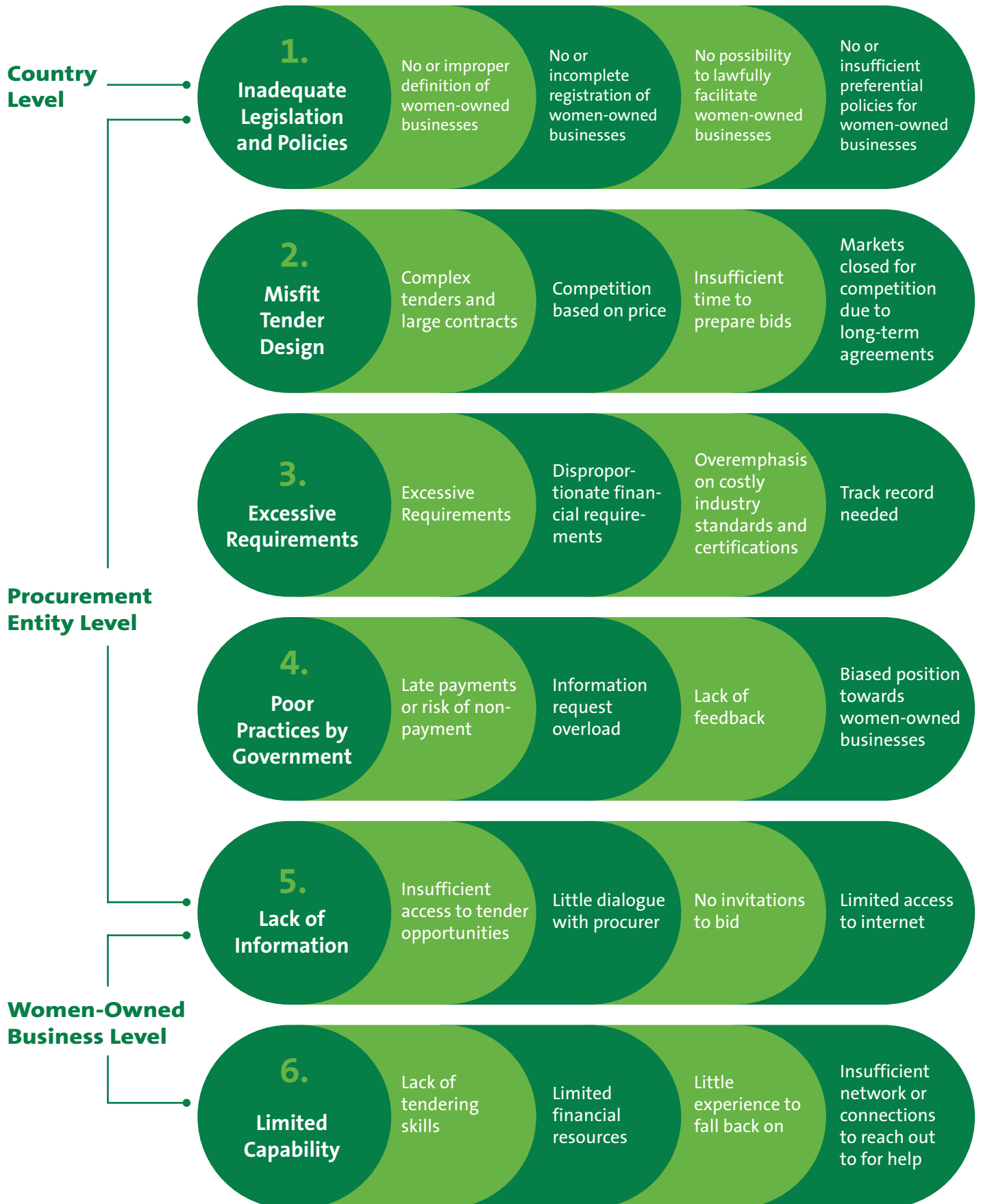
While it is increasingly recognised that public procurement presents ample opportunity to improve women's economic empowerment and inclusion, mainstreaming gender-responsive public procurement remains challenging. Globally, a few countries have implemented effective changes to their legal framework to ensure gender-responsive procurement. However, significant barriers remain, creating a substantial imbalance between male-led and female-led businesses regarding participation in public procurement opportunities.<sup>10</sup> The barriers to gender-responsive procurement are numerous, external and internal, and a result of direct discrimination and mostly indirect discrimination. Considering these barriers provides the foundation for making the case for solutions and, therefore, an understanding of how to address these challenges in law and policy effectively.

8. Gender procurement | EIGE (europa.eu)

9. International Learning Lab, Public Procurement and Human Rights: A Survey of Twenty Jurisdictions (July 2016), online: <Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf (oecd.org)>

10. Sanja Popović, Pantí, Dušica Semenčenko, and Nikola Vasilijević, Gender Based Analysis of the Access to Public Procurement in Western Balkan by SMEs (2020) 53: 2 Economic Analysis 51-67.

Fig. 1 Barriers to Gender-Responsive Public Procurement



Many gender-related barriers adversely affect women and women-led businesses in public procurement. These have been identified by much research conducted over the years by international development agencies, academia and others in different countries and contexts. The barriers mirror other obstacles faced by women in other areas of life. Societal and patriarchal norms and stereotypes also deny women opportunities to grow and expand their business potential and participate in public procurement.<sup>11</sup> These are considered in more detail in fig.1.

Women often run small and medium businesses. Data from Latin America, sub-Saharan Africa, and East Asia indicate that women lead, on average, 23 per cent of small businesses compared to 11 per cent of large businesses.<sup>12</sup> These women-led businesses are generally too small to win large government bids and often face other challenges such as bureaucratic bottlenecks in registration and licensing. They also typically operate in less profitable sectors like retail and services. This characteristic impacts their competitiveness, as evident in aggregated performance figures.<sup>23</sup>

Further, few WSMEs can access loans from formal financial institutions. Reports show that one of the reasons for loan rejections is an unattainable collateral requirement.<sup>13</sup> These businesses also make less money and are less profitable; they attract less external finance and thus do not have sufficient capital to compete for large bids. They also grow more slowly and have higher closure rates these affect their sustainability and prospects of becoming greater partakers of public procurement. Limited access to financial education and capacity-building opportunities often lead to women mixing personal and business finances, limiting their potential for upscaling their businesses and securing loans. Social norms that dictate that women manage family and other social commitments leave women time-poor, reducing their capacity to run large businesses.<sup>14</sup>

Other identified barriers faced by women-led businesses in public procurement include limited training opportunities in the public procurement process and on tendering opportunities, limited capacity in preparing competitive bids, a dearth of capacity to bid in joint ventures, high qualification requirements, and low managerial and entrepreneurial skills.<sup>15</sup>

Other barriers for WSMEs noted elsewhere include overly complex and burdensome tender procedures, unreasonable and technical qualification requirements, lack of familiarity with relevant regulations and public procurement processes, insufficient time to assemble tenders, price competition, lack of feedback from procuring agencies and entities, failure by procuring agencies to pay invoices promptly and already established collection of government suppliers.<sup>16</sup>

Similarly, WSMEs often encounter difficulties due to limited information about the drafting of bids and a lack of technical capacity to execute the contract. WSMEs also lack networks to respond to procurement calls. Long delays in payment from government procuring entities also discourage WSMEs from bidding.

Other barriers include poor governance practices, misfit tender design, lack of information and experience, excessive requirements, limited capability to undertake large contracts, an insufficient track record which makes them ineligible, limited finances, little or no interaction with procuring entities (including lack of feedback on unsuccessful bids) and poor net-

11. Ibid.

12. World Bank. World Bank Enterprise Survey Database. [www.enterprisesurveys.org](http://www.enterprisesurveys.org) <sup>23</sup>Source: International Trade Centre, Making Public Procurement Work for Women, 2020.

13. Larossi, Mousley and Radwan, An Assessment of the Investment Climate in Nigeria; 2016 at 63.

14. Njideka Harry, Women Entrepreneurs and Financial Inclusion in Nigeria, 2015, online: <Women Entrepreneurs and Financial Inclusion in Nigeria (mastercard.com)

15. B.C. Basheka and C.J. Auriacombe, "Barriers to Women's Participation in Public Procurement in Africa: Empirical Evidence from Uganda" *International Journal of Social Sciences and Humanity Studies* Vol. 12 No. 2 (2020): 222-306

16. USAID, Building the Evidence Base for Women's Public Procurement Timeline: 1970 TO 2021, <https://www.marketlinks.org/sites/default/files/media/file/2022->

works which limit collaboration that can make bids more successful.<sup>17</sup>

Several of these barriers also affect SMEs in general.<sup>18</sup> Because women-led businesses are overrepresented in SMEs, they are more likely to be impacted by them.<sup>19</sup> In addition, women also encounter other general obstacles that affect enterprises, whether big or small, and men-led businesses, such as corruption, bribery, and favouritism or nepotism in government structures, but which tend to be more exacerbated or experienced differently with gender biases,<sup>20</sup> implemented by male-dominated networks, and which are underlined by power relations that further perpetuate gender inequalities.<sup>21</sup>

Even where women possess financial capability, managerial and entrepreneurial skills, and professional and technical qualifications, societal and patriarchal barriers in the form of norms and stereotypes work against them. These barriers can apply during pre-procurement, procurement and post-procurement stages. They can also be internal and external. Internal barriers include personal preferences: for instance, compared to men, women often prefer smaller, less risky businesses (such as retail businesses, which are usually less profitable), a trait that may be rooted in socialisation but also in necessity entrepreneurship and informal enterprises.<sup>22</sup> Women also seek work-life balance far more than men, which may be traced to the need to balance domestic and work responsibilities, and are generally influenced by the stage they are in their life, career, and family.<sup>23</sup> Other external barriers include but are not limited to sexual harassment and demands for sexual favours and the inability to access financial assistance, particularly by women-led or owned businesses.<sup>24</sup> These barriers are fuelled by societal and patriarchal norms and stereotypes that pervade social and institutional life.<sup>25</sup> Thus, the lack of gender equality in society is reflected in public procurement.

While many existing barriers are related to processes, procedures and gender norms, the legal framework, which is the foundation of public procurement in all countries, is a critical obstacle, and legal barriers add to these constraints. As noted, “incorporating gender equality into public procurement contracts is an effective tool that governments can use to promote social change and equality, but that is not the case in the vast majority of legislation all around the world.”<sup>26</sup>

The legislation provides the primary foundation for public procurement processes and is often based on principles of non-discrimination.<sup>27</sup> This can hinder women’s participation if the law does not explicitly make provision for addressing historical gender imbalance through affirmative action or define women-led businesses to allow them to take advantage of affirmative processes.<sup>28</sup>

17. International Trade Centre, Making Public Procurement Work for Women, 2020.

18.

19. International Trade Centre, Making Public Procurement Work for Women, 2020.

20. Open Contracting and UN Women, Empowering Women through Public Procurement and Enabling Inclusive Growth (Open Contracting and UN Women, 2021), online: [Empowering-women-through-public-procurement-and-enabling-inclusive-growth-en.pdf](https://www.unwomen.org/en/stories/2021/05/empowering-women-through-public-procurement-and-enabling-inclusive-growth-en) (unwomen.org)

21. Transparency International, ‘Gender equality and corruption: What are the linkages?’ Policy Brief No. 01/2014, <[https://www.transparency.cz/wp-content/uploads/TI\\_Policy\\_Brief\\_GenderEqualityCorruption\\_EN.pdf](https://www.transparency.cz/wp-content/uploads/TI_Policy_Brief_GenderEqualityCorruption_EN.pdf)>. Manjola Malobe and Beatriz Navarro, “Corruption in Public Procurement is a Women’s Rights Issue Too” (2022), online: < [Corruption in public procurement is a women’s rights issue too](https://www.worldbank.org/en/news/press-release/2022/05/11/corruption-in-public-procurement-is-a-women-s-rights-issue-too) (worldbank.org)>

22. Ibid.

23. Female-Entrepreneurs-How-and-Why-are-They-Different.pdf (worldbank.org), 2018.

24. Open Government Partnership, “Overcoming Women’s Barriers to Participating in Entrepreneurship and Public Procurement in Africa,” <<https://www.opengovpartnership.org/stories/overcoming-womens-barriers-to-participating-in-entrepreneurship-and-public-procurement-in-africa/>> accessed December 9, 2022

25. Ibid.

26. International Trade Centre, Making Public Procurement Work for Women, 2020.

27. See for example, Katharina Sarter, “The Legal Framework of Contracting: Gender Equality, the Provision of Services and European Public Procurement Law” (2015) 13 *Wagadu* 55.

28. International Trade Centre, Making Public Procurement Work for Women, 2020.

### 3.1.1 Barriers to gender-responsive public procurement in Nigeria

The barriers described are drawn from studies of many countries worldwide and apply almost everywhere. These barriers are also experienced in Nigeria. A study of gender-responsive public procurement in Nigeria by the International Trade Centre in 2020 found that barriers include: excessive procurement requirements, poor internet access, insufficient preparation (including lack of audited accounts), not allowing joint bids and non-reliance on the track record of one party, misfit tender design, closing markets for competition due to long-term agreements, cumbersome tender documents and procedures, limited explanations of these procedures, late payment, limited communication by procurement agencies, limited access to information about upcoming tenders, no feedback on procurement results, gender bias, gendered language in tender documents (which is exclusionary of females), and poor practices, including sexual harassment.<sup>29</sup> A recent consultative meeting on gender-responsive public procurement identified also identified similar challenges for women-owned and women-led businesses in Nigeria: over-representation of women-owned and women-led businesses in micro, small, and medium enterprises (MSMEs) which exclude them from participation in large public procurement bids; lack of awareness and limited access to information on public contracting which hamper women participation in public contracting; challenges in accessing funds; caution and limited risk-taking; and cultural bias.

The Nigeria procurement system is quite rigid for startups as there are compulsory required documents which companies are expected to have before they can be fully certified to apply for bids. The major reason for the rigidity and problem associated with procurement documents can be streamlined to the uniform characteristic of the government agencies (Tax Authorities, ITF, NSITF, BPP & PENCOT).

The peculiar document needed for all this renewal is the Audited account, if there is a system where this document can be shared directly from the tax authority to the other agencies, the whole process of this would be curtailed to a minimum.

The Compliance documents needed are:

- **Tax Clearance Certificate**
- **Nigerian Social Insurance Trust Fund**
- **Industrial Training Funds**
- **National Pension Commission**
- **Bureau of Public Procurement**

From the last cohort, most women only had their CAC certificates, 15% had Tax clearance certificates and over 60% are yet to attain ITF, NSITF, PENCOT&BPP. According to them, the reasons to this is due to the complexity of the procurement system, and the unwelcoming nature of the representatives of each agencies. Penco and ITF were mentioned to be the most challenging documents to attain from the FGD held last year.

For the women to be fully compliant to apply for public procurement, they need all these documents. While for Private and NGO procurement, the requirement are basically CAC and Tax clearance.

Again, the inability to generate profits from past compliance efforts adds to the challenge. Women who previously obtained compliance documents struggle to renew them, because the lack of financial returns discourages their reinvestment.

Women's participation, particularly in economic decision-making, is similarly challenged by

29. International Trade Centre, Making Public Procurement Work for Women, 2020.

educational gaps and constrained by religious prescriptions. Hence, there is a general need for more knowledge of public procurement's legal framework.<sup>30</sup>

Concerning the legal framework, although the Constitution of the Federal Republic of Nigeria prohibits discrimination on the grounds of sex, it does not provide for affirmative action to address historic gender inequities and inequality. Extant laws, including business-related legislation, are gender-blind or gender-neutral, neither affirming nor negating gender. They are thus not gender-responsive. For instance, the Companies and Allied Matters Act does not define women-owned businesses nor provides any special protections or support for women in businesses. In recent years, attempts have been made to establish gender diversity in boards through legal instruments such as regulations to address the significant imbalance in the number of women and men on the boards of companies quoted on the stock exchange. For instance, the Central Bank of Nigeria (CBN) regulations require a minimum of 30 per cent female representation on the boards of Nigerian commercial banks.

Furthermore, Nigeria's national and state public procurement legislation is typically gender-blind. This implies that no specific attention is paid to gender matters and gender equality. Public procurement legislation typically lacks provisions to encourage 'leveling the playing field'.

These gender-related barriers have real-life impacts on women-led businesses, the country's economy, and, more broadly, gender equality. These impacts justify the increasing calls for gender-responsive public procurement to allow women to participate more substantially, thereby significantly eliminating the inequality in public procurement contracts. In addition, it is important to note that SMEs, in general, also face the barriers faced by WSMEs and that these barriers, if addressed, are likely to impact SMEs in general positively. This is discussed further in detail.

### 3.1.2 Making a business case for gender-responsive public procurement

As discussed above, the inequalities that permeate gender-responsive public procurement are attributable to barriers. While it is plausible that governments address these barriers through legal and policy revisions, emphasising the economic rationale for gender-responsive public procurement would help make the case with policymakers at the highest level of its necessity.

In general, there is a positive correlation between gender equality with GDP.<sup>31</sup> It seems intuitive, therefore, to argue that both the economy and WSMEs would benefit from gender responsive public procurement. The benefits include business expansion, volume building and innovation, and entry into new value chains.<sup>32</sup>

This relationship between gender equality and economic activity has been established in some studies. For instance, studies have shown that WSMEs experience growth and business expansion when they successfully obtain government contracts.<sup>33</sup> Gender-responsive public procurement also "enables more women's enterprises and gender-responsive enterprises to compete for sustainable business opportunities, contributing to business development and growth. When businesses thrive, their owners and workers earn income, making

30. COMMUNIQUE:WOMEN'S ECONOMIC EMPOWERMENT THROUGH AFFIRMATIVE PROCUREMENT IN NIGERIA TRAINING OF PUBLIC OFFICERS ON GENDER RESPONSIVE PROCUREMENT ON WEDNESDAY 15 – THURSDAY 16 MARCH 2023

31. International Trade Centre, Empowering Women through Public Procurement, 2021.

32. Sanja Popovi Pantić, Dušica Semen enko, and Nikola Vasilijević, Gender Based Analysis of the Access to Public Procurement in Western Balkan by SMEs (2020) 53: 2 Economic Analysis 51-67.

33. Ibid.



them attractive suppliers and potential customers.”<sup>34</sup>

It would also result in an improved female labour force participation rate.<sup>35</sup> Consequently, greater procurement by women-owned companies would help advance women’s economic inclusion and labour market participation.<sup>36</sup> It also improves employment opportunities for women who are likely to participate in women-owned or led businesses, improving the ability of women to participate in the economy even if they are not business owners. Women’s economic empowerment, a key indicator of gender equality, is thus intricately linked to participation in enterprise; therefore, women’s participation in public procurement is crucial.

WSMEs being able to grow through participating in public procurement would, in turn, ensure a more inclusive economy. The participation of women in business, including in public procurement, increases their purchasing power and ability to reinvest in the economy and positively impact their families and communities<sup>37</sup>—and potentially increase GDP.<sup>38</sup>

While women-led businesses will benefit from participation in public procurement, public procurement goals and processes would also significantly benefit from the increased involvement of women-owned or led businesses. A larger pool of businesses or an extensive supplier base, an innovative and broader range of products and services, and gender-responsive products and services would ensure greater competitiveness, transparency, and responsiveness to existing needs.<sup>39</sup> This is essential for a fair and sustainable procurement system that benefits the economy. It has also been shown that value for money often goes hand in hand with gender equality.<sup>40</sup>

Even more critically, gender-responsive procurement contributes actively to changing value systems and addressing gender equality more broadly. In this regard, gender-responsive public procurement allows public procurement agencies to change the working environment by promoting gender-equal practices and inclusive and transparent recruitment practices.<sup>41</sup>

Furthermore, the discussions on gender-responsive public procurement in the public sector can potentially increase gender-responsive procurement in the private sector, both through positive requirements in relevant policies and the processes implemented by public procurement agencies and through active engagements and conversations by public and private sector actors.

34. UN Women, Procurement’s Strategic Value: Why Gender-Responsive Procurement Makes Business Sense, Policy Brief (UN Women New York, 2022, online: [Procurements-strategic-value-en.pdf \(unwomen.org\)](#))

35. International Trade Centre (ITC), “Public Procurement, a Tool to Boost Women’s Economic Empowerment,” < <https://intracen.org/news-and-events/news/public-procurement-a-tool-to-boost-womens->

36. Ibid.

37. UN Women, Empowering Women through Public Procurement and Enabling Inclusive Growth, 2021, online: < [Empowering-women-through-public-procurement-and-enabling-inclusive-growth-en.pdf \(unwomen.org\)](#) >

38. Women Entrepreneurship Accelerator and UN Women, Procurement’s Strategic Value: Why Gender-Responsive Procurement Makes Business Sense, Policy Brief (UN Women New York, 2022, online: [Procurements-strategic-value-en.pdf \(unwomen.org\)](#))

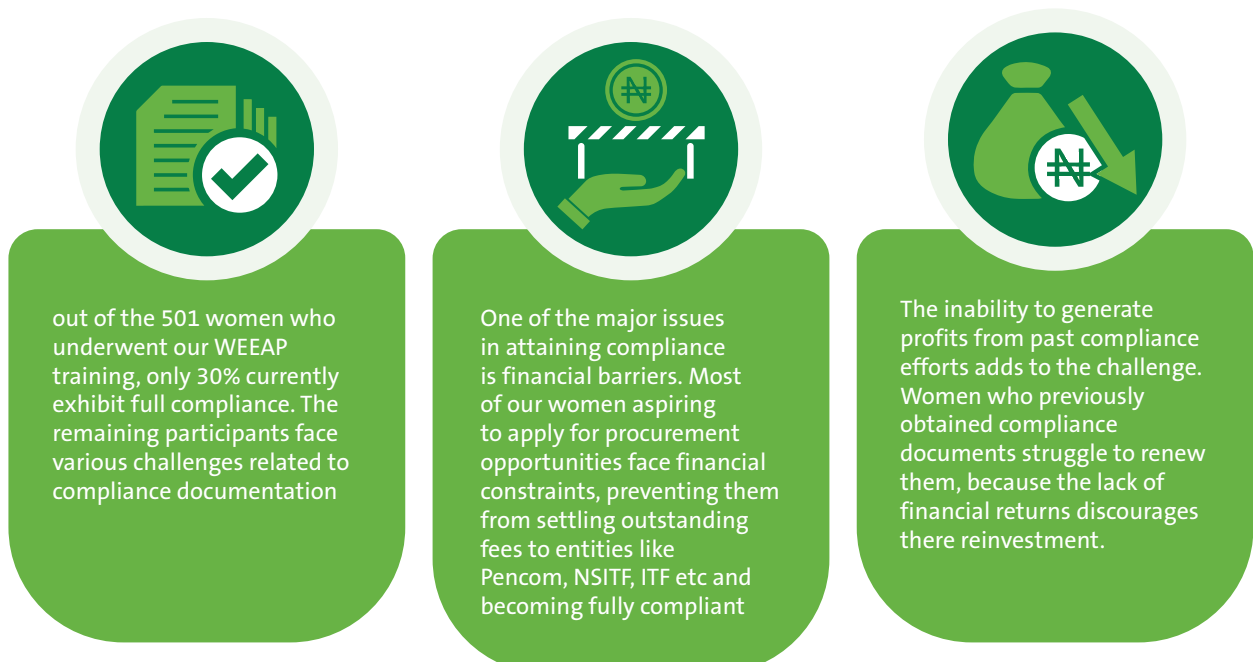
39. International Trade Centre, Making Public Procurement Work for Women, 2020.

40. European Institute for Gender Equality, “Five Reasons Why Gender-Responsive Public Procurement is Crucial in the EU Context” online: < [Five reasons why gender-responsive public procurement is crucial in the EU context | European Institute for Gender Equality \(europa.eu\)](#) >

41. Ibid.



## CHALLENGES THAT COMPLIANCE PRESENTS



## 3.2 THE HUMAN RIGHTS CASE FOR GENDER-RESPONSIVE PUBLIC PROCUREMENT

While no specific international instrument explicitly addresses human rights in the context of public procurement,<sup>42</sup> states have obligations to ensure that they protect, respect, and fulfil all rights, including women and men. International and domestic laws require governments and agencies to respect human rights. These requirements also apply to public procurement. The unequal opportunities for women in public procurement and the gender-related barriers indicate the presence of inequalities and discrimination. The imbalance in public procurement between women and men is emblematic of discriminatory power structures.

Although the discrimination may not be overt, states (as discussed) have obligations to address barriers that affect a particular gender, and failure to address these amounts to a violation of the right to equality and non-discrimination. The right to freedom from non-discrimination is embedded in many international human rights instruments, including the Universal Declaration of Human Rights and the Convention on Elimination of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights, the Maputo Protocol, and the AU Solemn Declaration on Gender Equality in Africa. Although these instruments do not specifically emphasise the link between gender equality and procurement, they emphasise the need for all laws, policies, and actions of states to be reviewed to ensure the right to equality. This is captured in Sustainable Development Goal 5.

More directly, the intersections of human rights and public procurement are captured in the United Nations Guiding Principles on Business and Human Rights which draws from international human rights law and is endorsed by the Human Rights Council. The Guiding Principles assert the duty of states to protect human rights in the context of business and emphasise their responsibility to ensure that businesses respect human rights and that victims of abuses receive remedies. States are required to “promote respect for human rights by business enterprises with which they conduct commercial transactions.”<sup>43</sup> In addition, “States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”<sup>44</sup>

The Gender Guidance developed by the Office of the High Commissioner for Human Rights (OHCHR) notes that meeting the obligations in the Guiding Principles includes States integrating a gender perspective in their laws and policies regulating commercial transactions (including public procurement) with business enterprises. Illustrative actions include States sourcing a specified percentage of products and services from women-owned businesses.<sup>45</sup> Furthermore, ensuring that procurement agencies are aware of the State’s obligations regarding non-discrimination and gender equality is essential.

Women’s limited participation in public procurement contracts, whether due to structural inequities or negative or positive discrimination, not only compromises human rights but is itself a human rights violation because it takes away access to the pursuit of life and a level playing field with men. Countries, including Nigeria, must, therefore, take action to improve the state of gender-responsive procurement to meet their human rights obligations.

42. See Danish Institute of Human Rights, The International Corporate Accountability Roundtable, and Harrison Institute of Public Law, Public Procurement and Human Rights: A Survey of Twenty Jurisdictions (2016A), online: <Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf (oecd.org)>

43. Guideline 6

44. Guideline 8.

45. Gender guidance for the Guiding Principles on Business and Human Rights, online: Gender\_Booklet\_Final.pdf (ohchr.org)



**4. APPROACHES  
TO GENDER-  
RESPONSIVE  
PUBLIC  
PROCUREMENT:  
A CROSS-COUNTRY  
ANALYSIS**

Globally, countries have different legislation and policies which address gender responsiveness in public procurement to varying degrees. In many cases, countries still do not address gender-responsive procurement, utilising gender-blind legislation that does not make specific or general provisions for gender. Some countries have been selected for analysis to understand how gender-responsive procurement is undertaken and identify key indicators for measurement based on the analysis.

High-income countries in the selection include the United States, Spain, three other countries in the EU (where increasing attention is being devoted to gender responsive procurement). Others are Dominican Republic, South Africa, Kenya and Tanzania. The countries are selected based on the following: legislation on gender-responsive procurement, provisions that may be amenable to improving gender-responsive procurement, good practices, divergence in approaches, and countries in Africa that provide a relatable context.<sup>1</sup>

## 4.1 THE UNITED STATES OF AMERICA

To address discrimination and economic exclusion in public procurement, the United States government has developed procurement policies targeted at women-owned businesses to address gender inequities and opportunity structures that are systematically unfavourable to women and also to stimulate under-deployed resources.<sup>2</sup> The 5 per cent goal for women's public procurement was first adopted in 1994.<sup>3</sup> In this regard, the United States Federal Government established a spending goal for federal agencies to award 5 per cent of their contracts (by value) to small businesses owned by women.<sup>4</sup> Following the establishing of the Minority Business Enterprise (MBE) programme<sup>5</sup> and its noted benefits, the Women's Business Enterprise (WBE) programme was established using the same 51 per cent criterion used for MBEs but specifically for women's corporate procurement.<sup>6</sup>

In 2000, the term **women-owned small business (WOSB)** was established for public procurement. Although the 5 per cent goal was set in 1994, it was not achieved in 2015.<sup>7</sup> WOSBs are required to be small businesses; be at least 51 per cent owned and controlled by women who are U.S. citizens; and have women manage day-to-day operations and make long-term decisions.<sup>8</sup>

Another category of WOSBs is the economically disadvantaged women-owned small business (EDWOSB), which in addition to the above criteria, are also required to meet specified income, personal assets, and net worth requirements.<sup>9</sup> Federal agencies can set aside specific funds and contracts for these businesses,<sup>10</sup> and selected companies are empowered to

1. A selected table of African law on gender-responsive procurement, drawn from previous research in this area by researchers, is also added in the Annex for further understanding of the situation from a legal standpoint in Africa.

2. Ibid.

3. USAID, "The Time Is Now To Accelerate Women's Public Procurement: Case Study: United States," <[https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP\\_Case-Study\\_United-States.pdf](https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP_Case-Study_United-States.pdf)> accessed December 9, 2022

4. Ibid.

5. USAID, Building the Evidence Base for Women's Public Procurement: Timeline 1970 to 2021 (2022), online: <[https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP\\_Building-the-Evidence-Base-for-WPP\\_1.pdf](https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP_Building-the-Evidence-Base-for-WPP_1.pdf)>

6. Ibid.

7. Ibid.

8. See USAID, The Time is now to Accelerate Women's Public Procurement: Case Study: United States (MarketLinks, 2022), online: <[The Time is Now to Accelerate Women's Public Procurement: Case Study: United States \(marketlinks.org\)](https://www.marketlinks.org)>

9. USAID, Building the Evidence Base for Women's Public Procurement: Timeline 1970 to 2021 (2022), online: <[https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP\\_Building-the-Evidence-Base-for-WPP\\_1.pdf](https://www.marketlinks.org/sites/default/files/media/file/2022-03/WPP_Building-the-Evidence-Base-for-WPP_1.pdf)>

10. SBA Women-Owned Small Business Federal Contracting Program <[https://www.everycrsreport.com/files/20200423\\_46322\\_86f8a425d2f7a3cc458e833800cc5f41843de947.html#Content](https://www.everycrsreport.com/files/20200423_46322_86f8a425d2f7a3cc458e833800cc5f41843de947.html#Content)>

provide certification to qualified WOSBs.

A key lesson from the US experience is that the enactment of legislation can lead to improvements in gender-responsive procurement. In addition, clear designation and specification of criteria for women-led businesses (WOSBs in this case) is another key indicator, as this was the foundation for the implementation by the U.S. Federal Government of the 5 per cent goal of federal agencies awarding 5 per cent of their contracts to WOSBs.

However, the almost twenty-year gap between the enactment of the legislation and the attainment of the goal for the first time indicates the need for effective advocacy and other strategies to accompany the implementation of the legislation.<sup>70</sup> Furthermore, much of the progress made in gender-responsive procurement is in the private rather than the public sector.<sup>71</sup> In addition, 5 per cent, while better than nothing, is not substantial enough to make a significant gender difference in responsive public procurement in many countries, including Nigeria.

## 4.2 SPAIN

**Directives 2014/23/EU and 2014/24/EU of the European Parliament and of the Council of 26 February 2014 refer to gender equality as a contract performance condition. However, the directives and the financial rules applicable to procurement by EU institutions and the financial regulation do not specify gender equality as an objective.** Thus, several countries in the EU have approached the issue of gender-responsive public procurement in varying ways and, as noted elsewhere, in too restrictive ways.<sup>11</sup>

Spain has been observed to provide the best example of implementing gender-responsive procurement through progressive legislation.<sup>12</sup> Spain has enacted the Constitutional Act 3/2007 for Effective Equality between Women and Men. This law provides for substantive and comprehensive equality between women and men. It provides for gender mainstreaming in public contracting in Articles 33 and 34, making specific provisions for preferential treatment by governments at different levels in Spain to ensure that equality between women and men is considered in the award of public contracts.

### Article 33 states on government contracts:

Within their respective areas of competence and in connection with the contracts concluded, the central, regional and local governments may, through their contracting bodies, establish special conditions to further labour market equality between women and men in accordance with the provisions of the legislation on government contracts.

### Similarly, Article 34 states on central government contracts:

1. Every year, the Council of Ministers, on the grounds of the evolution and impact of equality policies on the labour market, will determine which of the contracts to be concluded by the Central Government and its public bodies will be required to include in their terms and conditions measures tending to further effective equality between women and men on the labour market, pursuant to the provisions of the legislation on government contracts. The decision referred to in the preceding paragraph may, as appropriate, establish the characteristics of the conditions that must be included in the respective specifications, account taken of the nature of the contracts and the industry involved.

11. European Institute for Gender Equality, Gender-responsive Public Procurement in the EU, 2022 at 22.

12. European Institute for Gender Equality, Gender Responsive Public Procurement: A Step-by-Step Toolkit (2022).

2. In the specific administrative clauses, the contracting bodies may provide for preference in the award of contracts for quotations submitted by companies that substantiate, along with their technical or professional solvency, that they follow the guidelines set out in the preceding item, provided that such quotations must match the most advantageous offers from the standpoint of the objectives on which award is based. Preference will likewise be subject in any event to respect for the order of priority laid down in additional provision eight, item one of the Consolidated Text of the Act on Government Contracts, enacted under Royal Legislative Decree 2/2000 of 16 June.

**In 2017, Spain enacted Law 9/2017 on public sector contracts, which makes extensive provisions for gender-responsive public procurement.** The provisions, to be read in conjunction with the Constitutional Act 3/2007, provide the following:

- Description of the subject matter of the contract concerning social criteria.<sup>13</sup>
- Mandatory inclusion of social criteria in all public contracts;<sup>14</sup> however, this does not explicitly relate to gender and may address criteria such as disability.
- Bidders' obligation to provide tender budget broken according to sex<sup>15</sup>—this allows the evaluation of the impacts of the budget on women and men.<sup>16</sup>
- Bidders' obligation to provide labels or certifications relating to gender equality. The procurement agency's authorities may request bidders to offer a third-party label or certificate.
- Bidders with over 250 employees are obliged to have a gender equality plan as required under extant law—failure to have such a plan may be grounds for exclusion from participation in public tenders.<sup>17</sup>
- Article 145 stipulates that contracts shall be awarded using economic and qualitative criteria based on the best value for money. Qualitative criteria may include environmental or social aspects. Social aspects include promoting the social integration of people with disabilities and gender matters, such as the gender equality plans to be applied in the execution of the contract and, in general, equality between women and men, promoting the recruitment of women.
- Tie-breaker provisions under Article 147, e.g., proposals submitted by companies that include measures of a social and labour nature that favour equal opportunities between women and men, will be preferred in a tie-breaking situation.
- Tie-breaking criteria that improve gender-responsive procurement include consideration of social criteria such as a higher percentage of women employed in the workforce of each enterprise, etc.

Spain's extensive provisions at the national level have been transposed into regional legislation, with almost the entire country, at national and regional levels, now having legislation on gender-responsive public procurement. Spain's example shows that governments can approach gender-responsive procurement from different legal models, including inclusion

13. Article 99 of the Law.

14. Article 1 (2).

15. Article 100 (2).

16. European Institute for Gender Equality, Gender Responsive Public Procurement: A Step-by-Step Toolkit (2022)

17. Article 71.

in gender equality legislation and procurement legislation. The choice must be made based on the constitutional arrangements and type of legislation likely to make the most impact.

### 4.3 OTHER EUROPEAN UNION COUNTRIES: AUSTRIA, PORTUGAL AND ITALY

**In applying the EU regulations, other EU members adopt a less direct approach than Spain, with laws and policies that provide only for consideration of gender equality within the performance of a contract.** This approach may include a gender balance requirement in the number of employees, gender training for procurement officers, and so on, but does not explicitly address the matter of women-led businesses securing bids.

**In Austria**, for example, the National Procurement Law enacted in 2018 provides for social considerations as one of the vital considerations. Women's employment is an example of a social concern that can be addressed in public procurement procedures. These provisions address the discrimination perpetuated against women in public procurement to achieve equality between women and men.

**In France**, Law No. 2014-873 for absolute equality between women and men requires local authorities to take action to promote gender equality within all of their policies. Even though the law is not explicit, it must apply to public procurement and procuring authorities.

**In Portugal**, the Public Contracts Code specifies the consideration of gender equality, social responsibility and the environment in the performance of the contract.

**In Italy**, social purchasing expressly provides for the fostering of gender balance among the social considerations in public procurement. The guidelines refer to gender balance in sectors where women and men are under-represented.

**Other EU countries, including Belgium, Czechia, Denmark, Germany, Estonia, Greece, Luxembourg, the Netherlands, Slovakia and Finland**, have strategies or national plans on procurement that encourage socially-responsive public procurement, which may include (but not explicit on) gender equality or gender responsiveness.

As noted elsewhere, "public procurement and the promotion of gender equality are often seen as two separate issues. General provisions on gender mainstreaming and gender budgeting make, at best, little or, at worst, no reference to GRPP." Thus, these may not provide the most satisfactory examples of gender-responsive public procurement for a country like Nigeria.

### 4.4 SOUTH AFRICA

**The Constitution of the Republic of South Africa, 1996 (as amended) provides for equality and protection from unfair discrimination on several grounds, including gender.**<sup>18</sup>

To realise gender equality and prevent unfair prejudice, the South African Constitution further provides that the state must enact national legislation to prevent or prohibit unfair discrimination.<sup>19</sup> The Constitution of South Africa, one of the most progressive constitutions in the world, makes specific provisions concerning procurement, indicating the standards for public procurement.

18. Constitution of South Africa, 1996 (as amended) section 9(1&2)

19. Ibid section 9(4).



**Section 217 states:**

1. When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
2. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for
  - a. Categories of preference in the allocation of contracts; and
  - b. The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
3. National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

**In addition to the Constitution, the Commission for Gender Equality Act 39 of 1996 (enacted to establish a commission to oversee all matters relating to gender equality) and the Women Empowerment and Gender Equality Act 2013 were enacted as part of the implementation of the provisions of the Constitution of the Republic of South Africa, 1996.**

To directly realise gender-responsive public procurement as provided in Subsection (3) of Section 217 of the South African Constitution, the Preferential Procurement Policy Framework Act (PPPFA), which provides a legal framework for preferential treatment in public procurement by state agencies and Broad-based Black Economic Empowerment Act (B-BBEE), which focuses on black economic empowerment, were enacted in 2005 and 2003 respectively to give effect to the constitutional provisions.

The PPPFA provides that a state organ is required to develop a preferential policy, including a point system.<sup>20</sup> The preferential policy should have a specific goal which may include unfair discrimination based on race, gender or disability.<sup>21</sup> The B-BBEE creates a legislative framework for the fostering of black economic empowerment. It emphasises the gender equality goal and provides a code of practice that distinguishes Black men and women to encourage Black women-owned businesses to benefit from preferential procurement of all state organs.<sup>89</sup> Thus within the legislative framework for procurement, gender is specifically recognised as a ground for affirmative action.

**South Africa has positively increased women's participation in public procurement.** Some of these actions have included assessments by the Commission for Gender Equality. The most recent assessment available was undertaken for the 2018-19 year. It noted the level of participation in public procurement by women-led businesses, identifying the number of contracts awarded and the number and categories (goods and services) secured by women.<sup>22</sup> It also identified the racial distribution and the gender of procurement officers. The report employed several gender indicators which provide a comprehensive gender assessment including:

20. Section 2.

21. Section 2 (d) (i).

22. Gender Transformation on Procurement gender-transformation-on-procurement-2018-2019.pdf (cge.org.za)

- Nature of contracts and implications for women and men
- Genders of the procurement officers
- Gender distribution of the officers at the management level and other levels
- Application of the law concerning gender parity in procurement
- Monetary value of contracts for women-led businesses and other businesses
- Gender requirements for suppliers such as the provision of their gender and diversity policies, etc.

**In 2020, President Cyril Ramaphosa announced that the government would commit to ensuring that 40 per cent of all government procurement is set aside for women-owned businesses.**<sup>23</sup> In November 2022, he announced that a significant portion of the R21 billion allocation set aside in February 2021 to implement the three-year National Strategic Plan had been committed to advancing women's empowerment through procurement, business support, and access to economic opportunities.<sup>24</sup>

Furthermore, the private sector, civil society and women's organisations, businesswomen and government partnered to form the **Women Economic Assembly (WECONA)**, an initiative forged to facilitate the participation of women-owned businesses in core areas of the economy. One of its aims is to establish a long-term monitoring framework and a measurement index to assess gender-responsive procurement.<sup>25</sup> In addition, there are plans to develop a gender collaborative fund to support women entrepreneurs to scale their businesses.<sup>26</sup>

**South Africa's example is worth noting for its comprehensive approach** – an emphasis on gender equality in the Constitution, in gender equality legislation as well as procurement legislation, and the attendant gender mainstreaming efforts across government agencies. Procurement legislation provides affirmative actions to level the playing field between women and men in public procurement.

However, it does not specify affirmative quotas of contracts, allowing its agency to develop its approach based on the legislation. Each government agency is involved in procurement, which requires a review of how this is accomplished and the gender implications. The establishment of a Commission on Gender Equality provides technical expertise on gender matters and ensures that legislation is implemented across a number of areas.

While the Commission's most recent report suggests that there is still work to do, there is evidence of movement in the right direction. Beyond legislation, the government's political will and active engagement at the highest levels is also notable, resulting in coalition building, funding and training to support women-led businesses.

## 4.5 KENYA

**The Constitution of Kenya, 2010, provides for equality of all persons and non-discrimination.**<sup>27</sup> In addition to a clear protection against discrimination on the grounds of sex, it provides that women and men have the right to equal treatment, including equal opportuni-

23. Ramaphosa: Govt to set aside 40% of public procurement to women-owned businesses (ewn.co.za)

24. Thabi Madiba, "Ramaphosa says govt putting in place supporting architecture in fight against GBVF," CREAMER MEDIA, November 1, 2022 < <https://www.polity.org.za/article/ramaphosa-says-govt-has-put-in-place-supporting-architecture-in-fight-against-gbv-2022-11-01> > accessed December 12, 2022

25. Presidency on Women Economic Assembly | South African Government (www.gov.za)

26. Work under way to establish fund for women entrepreneurs | Freight News

27. Constitution of Kenya, 2010, section 27(1)(2)(3)(4)(5)

### ties in economic (and other) spheres.<sup>28</sup>

The Constitution and the Public Procurement and Disposal Act, 2005, and their regulations govern procurement in Kenya. The Constitution states that the Kenyan State must take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage individuals or groups suffer from past discrimination.<sup>29</sup> The State (along with its organs and public officers) is also under an obligation to address the needs of society's vulnerable groups—including women, older members of society, persons with disabilities, children, youth members of minority or marginalised communities and members of particular ethnic, religious or cultural communities.<sup>30</sup>

On gender-responsive public procurement, the Constitution of Kenya states that “When a State organ or any other public entity contracts for goods or services, it shall do so following a fair, equitable, transparent system, competitive and cost-effective.”<sup>31</sup>

To realise this provisions, the Constitution of Kenya further provides that “An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following:

- Categories of preference in the allocation of contracts
- Protection or advancement of persons, classes of persons or groups previously disadvantaged by unfair competition or discrimination
- Sanctions against contractors that have not performed according to professionally regulated procedures, contractual agreements or legislation, and
- Sanctions against persons who have defaulted on their tax obligations or have been guilty of corrupt practices or severe violations of fair employment laws and practices.”<sup>32</sup>

**To give effect to Section 227 of the Constitution of Kenya, the Public Procurement and Asset Disposal Act (PPADA) was enacted in 2015,<sup>33</sup>** and it enshrined the affirmative quotas first introduced in the 2013 Kenyan Public Procurement and Disposal (Preference and Reservations) Regulations of 30 per cent government procurement of goods, services and civil works for enterprises owned by women, youth, and persons with disabilities (including women).

The PPADA states thus: **“All procurement and asset disposal planning shall reserve a minimum of thirty percent of the budgetary allocation for enterprises owned by women, youth, persons with disabilities, and other disadvantaged groups.”<sup>34</sup>**

Amending the act to move the provisions from the regulations made the affirmative requirements more forceful, moving them from subsidiary to primary legislation.

As part of its efforts to implement the provisions, the Kenyan government established the Access to Government Procurement Opportunities (AGPO) programme in 2013. The function of AGPO is to facilitate the implementation of the affirmative quota for preferential access to public procurement opportunities. It provides a general public report of expenditure on procurement by women and other groups.

28. Section 27 (4).

29. Ibid., Section 27(6)

30. Ibid., section 21(3)

31. Section 227(1)

32. Section 227(2) (a-d)

33. See Preamble.

34. Section 53 (6).

- **Step 1** – Register a business enterprise at the Attorney General’s Office as a sole proprietorship business, partnership business, or a limited company. The enterprise owned by youth, women or persons with disabilities shall be a legal entity that:
  - a. is registered with the relevant government body; and
  - b. has at least seventy per cent membership of youth, women or persons with disabilities and the leadership shall be one hundred per cent youth, women and persons with disabilities, respectively.
- **Step 2** – If business is a partnership, get a partnership deed from a lawyer, if it is a limited company, a CR12 from the registrar of of Companies (system-generated soft copy).
- **Step 3** – Acquire a PIN and tax compliance/tax exemption certificate from the Kenya Revenue Authority website.
- **Step 4** – Acquire all required certifications from professional bodies and authorities such as National Construction Authority, Insurance Regulatory Authority, ICPAK, LSK, National Council for Persons with Disabilities, NEMA, ERC and all other authorized bodies.
- **Step 5** – Open a bank account for the business and acquire a bank reference from the bank.
- **Step 6** – Access the website [www.agpo.go.ke](http://www.agpo.go.ke) and register online or visit your nearest Huduma Center for assistance.<sup>35</sup>

Only businesses that meet the criteria set out above can be considered for preferential treatment by AGPO.

**Kenya has experienced a gradual increase in gender-responsive public procurement since implementing the affirmative quotas**, with significant amounts devoted to procurement by women and other vulnerable groups. Findings from the Kenya Economic Survey 2020 indicate that tenders reserved and awarded to women under AGPO increased from KSh7.4 billion (approximately US\$ 66.9 million) in 2015-16 to KSh15.5 billion (about US\$ 140.2 million) in 2018/19.<sup>36</sup>

**According to the Kenya Economic Survey 2022, the total value of public procurement reserved for youth, women and persons with disabilities (PWD) is expected to increase by 25.0 per cent from KSh65.3 billion in 2020-21 to KSh81.6 billion in 2021-22.**<sup>37</sup> The value of procurement to women specifically is expected to increase by 27.5 per cent to KSh24.4 billion. Women-led businesses are expected to receive over half of the tenders under the AGPO in 2021-22. The national and county governments dedicate significant sums to gender responsive procurements, and the value of contracts awarded to women-led businesses continues to increase yearly.<sup>38</sup>

**Kenya** has also developed the National Government Affirmative Action Fund (NGAAF), a semi-autonomous agency that disburses loans to women-led enterprises and other enterprises led by vulnerable persons. The fund, established under the Public Finance Management Act 2012, is governed by the Public Finance Management Act (National Government Affirmative Action Fund) Regulations 2016. According to the Kenya Economic Survey 2022, grants disbursed by NGAAF are expected to increase by KSh19.4 percent to KSh1.1 billion in

35. Access to Government Procurement Opportunities ([agpo.go.ke](http://agpo.go.ke))

36. See Kenya Bureau of Statistics, Kenya Economic Survey 2020.

37. Kenya Bureau of Statistics, Kenya Economic Survey 2022.

38. Ibid.

2021-21.<sup>39</sup> This enables women to access credit to fund the contracts they get.

Kenya's approach to gender-responsive public procurement is direct and strongly affirmative, with a specific reservation for disadvantaged groups. It is founded on a robust legal framework, supported by a strong institutional framework and collection of data. It is not, however without its challenges. For example, research shows that there is a need for improvement to the knowledge of procurement language and practices, transparency and reduction of corrupt practices,<sup>40</sup> general lack of awareness of the AGPO opportunities by women-led businesses, insufficient funds for capacity building for both WOBs and the procurement officers, and so on.<sup>41</sup>

## 4.6 TANZANIA

**In Tanzania, the government has recognised gender-responsive public procurement as a potent tool for enhancing women's economic empowerment and fostering gender equality.** The 2016 Public Procurement Act, an amendment to the Public Procurement Act of 2011, has established public procurement systems and regulations for equal opportunities and fair treatment by allocating 30 per cent of government procurement to women, youth, and persons with disabilities.<sup>42</sup>

The amended Section 64 states that **"the procurement entity shall set aside a specific percentage of the procurement volume following the procedures set out in the regulations for special groups."** These special groups include women, youth, older people, and persons with disability.

**Regulation 24.2**<sup>43</sup> provides that out of the 30 per cent set aside for women, elders, youth, and persons with disability, the procurement entities shall set aside one-third (i.e., 10 per cent of its procurement volume) to people with disability, and the remaining two thirds (20 per cent) to women, youth and elders.

**Regulation 24.3** further provides that the remaining two thirds (20 per cent) of the procurement entities' procurement volume shall be distributed as follows: 10 per cent for youth, 5 per cent for women, and the remaining 5 per cent for elders.

**Regulation 24.4** further provides that the Authority will revise the distribution from time to time based on the statistical data obtained from the National Bureau of Statistics. This ensures that nobody is unfairly treated in the percentage allocation, thereby achieving equality at all times.

## 4.7 DOMINICAN REPUBLIC

**In the Dominican Republic, Law No. 340 on Public Procurement and Contracting Goods, Services, Works and Concession, 2006, provides for public institutions to purchase locally**

39. Kenya Economic Survey 2022.

40. A A Wazir and J Achuora, Factors Affecting Access to Government Procurement Opportunities (AGPO) by Preference and Reserved Groups in Nairobi City County, Kenya (2020) 7 Strategic Journal of Business and Change Management 240.

41. Tabitha Kiriti-Nganga. Kenya: Assessment Report to Government Public Procurement Opportunities for Women, Youth and People with Disabilities, (2017) online: <http://wtochairs.org/sites/default/files/KENYA%20ASSESSMENT%20OF%20ACCESS%20TO%20GOVERNMENT%20PUBLIC%20PROCUREMENT%20OPPORTUNITIES%20FOR%20WOMEN%2C%20YOUTH%20AND%20PERSONS%20WITH%20DISABILITIES.pdf>

42. International Development Research Centre, "Empowering women-owned business through public procurement in Tanzania," < <https://www.idrc.ca/en/project/empowering-women-owned-businesses-through-public-procurement-tanzania> > accessed December 11, 2022

43. Public Procurement Regulatory Authority, Guidelines for Participation of Special Groups in Public Procurement , 2020

**manufactured goods and requires procurement entities to favour SMEs, particularly those owned by women.**<sup>44</sup>

Decree No. 543 of 2012 establishes gender-responsive public procurement through the earmarking of 20 per cent of public purchases as contracts for micro, small and medium-sized businesses, as long as small businesses can effectively deliver the goods or services to be purchased.<sup>45</sup> Notwithstanding the 20 per cent set aside for the public procurement process, Decree No. 543-12 also establishes the possibility of presenting partial offers within the remaining 80 per cent.

Studies have noted that within a decade, **the Dominican Republic's new public procurement strategy resulted in a 16 per cent increase in contracts awarded to smaller businesses led by women, up from 10 per cent of these deals in 2012 to 26 per cent in 2019.**<sup>46</sup> The country opened public procurement opportunities, developed an evidence base by measuring the participation of women-led businesses, conducted surveys of women to understand their needs, and addressed the challenges identified by the research. It implemented open contracting reforms and capacity building on successful bidding and addressed the size of contracts to make it easier for SMEs to deliver the contracts.<sup>47</sup> In addition, it developed a public database of women-owned and women-led businesses and a gender monitoring tool or marker in the state supplier registry to measure and monitor the participation of women-owned and women-led businesses and monitor compliance with affirmative action.<sup>48</sup>

## 4.8 SUMMATION OF GOOD PRACTICES

In summary, different countries have taken different approaches with varying results. The good practices identified from the countries above include the following:

- A solid legal framework that gives the force of law to gender equality
- A comprehensive legal framework that addresses gender in procurement, sometimes alongside other social considerations and historically under-represented groups such as persons living with disability
- The need for an institutional framework to implement the legal framework
- Affirmative action and preferential treatment, especially in the form of quotas
- Addressing issues that go beyond legislation, such as providing easier access to credit for women-led businesses, capacity building, and so on
- Developing an evidence base with gender markers and data to understand the gaps and the improvements made over time in gender-responsive public procurement
- Requirements of gender balance from companies seeking to participate in public procurement
- The importance of political will and the advocacy that is required to ensure such political will.

44. THE WORLD BANK, "TOWARDS GENDER RESPONSIVE PROCUREMENT," January 2022 <https://www.nottingham.ac.uk/pprg/documentsarchive/0218-gender-report-0318.pdf> accessed December 12, 2022

45. Luis Ernesto Jimenez, "DOMINICAN REPUBLIC," in "THE GOVERNMENT PROCUREMENT REVIEW" 8<sup>th</sup> edn Law Business Research Ltd, 2020, pp 66-73

46. Open Contracting and UN Women, Empowering Women through Public Procurement and Enabling Inclusive Growth (2021) at 15.

47. Open Contracting and UN Women, Empowering Women through Public Procurement and Enabling Inclusive Growth (2021) at 29.

48. Ibid.



**5. GENDER-  
RESPONSIVE  
PUBLIC  
PROCUREMENT  
IN THE LEGAL  
FRAMEWORK**

**While Section 3 considers the broad approaches of different countries and the good practices that may be gleaned from these countries, this section focuses on the legal framework and what should ideally be contained within the legal framework.** The enactment, formulation and creation of gender-responsive legislation, policies, activities, and programmes are to address *“gender-based barriers, respect gender differences, enable structures, systems, and methodologies to be sensitive to gender, ensures gender parity is a wider strategy to advance gender equality and evolves to close gaps and eradicate gender-based discrimination.”*

**The main question is: Does the legal framework address gender responsive public procurement, and in what way?** The legal framework here comprises legislation, and regulations and any policies developed as part of implementing the legal framework.

While it is clear from the preceding discussion that the legal framework is only one piece of the puzzle, as the country case studies show, the legal framework is foundational and crucial to achieving gender-responsive public procurement. This is especially important because, as noted elsewhere “public procurement and the promotion of gender equality are often seen as two separate issues.”<sup>1</sup>

**Many laws—including the constitution, which provides the foundation for non-discrimination and equality before the law—**typically do not refer to gender-responsive procurement. In some cases, such as in Nigerian law (unlike the countries discussed as case studies), procurement laws do not typically refer to gender considerations, despite the need to ensure equality and provide legal certainty and clarity on matters relating to gender and public procurement, as well as provide the much-needed visibility to the issue of gender-responsive public procurement.<sup>2</sup> Hence, the enactment, formulation and creation of gender-responsive legislation, policies, activities, and programmes are essential to address “gender-based barriers, respect gender differences, enable structures, systems, and methodologies to be sensitive to gender, ensures gender parity is a wider strategy to advance gender equality and evolves to close gaps and eradicate gender-based discrimination”<sup>3</sup> in public procurement.

The report provides some identified indicators to help assess the effectiveness and comprehensiveness of the legal framework in ensuring gender-responsive procurement. These are drawn from good practices identified in the case studies cited as well as gender markers to assess the gender responsiveness of the law. The goal is to employ these indicators to assess the Nigerian, Kaduna and Lagos legal framework and to make recommendations for its improvement.

## 5.1 IDENTIFIED INDICATORS

**The indicators for assessing how gender-responsive the legal framework is are drawn from good practices across countries, research and analysis.**<sup>4</sup> They will enable an understanding of whether or not the legislation is gender-blind or gender-responsive. They include the following:

1. UN Women, Tools for Public Procurement, Step by Step Kit

2. Ibid.

3. Ibid.

4. See for example, Guidance: Gender in the MAPS Framework, 2022, online: Guidance: Gender in the MAPS framework (mapsinitiative.org)



- Gender equality or recognition and protection of the rights of all, women and men
- Definition of women-owned and women-led businesses
- Affirmative or preferential actions or reservations for women-owned and women-led businesses
- Threshold removal for selection of tender procedures
- Procurement documentation and specifications<sup>5</sup> any gender/SME related considerations
- Evaluation and award criteria – gender/SME related considerations
- Contract management – gender/SME related considerations
- Use of inclusive language
- Gender balance in the composition of governing structures of procurement agencies
- Database for women-owned and women-led businesses
- Provisions on targeted assistance strategies
- Requirements to address gender responsiveness in suppliers
- Gender inclusion in the boards of procurement agencies
- Gender responsiveness assessment or monitoring tool

Several of these are discussed in detail below.

### 5.1.1 Provision for Gender Equality

**To be gender-responsive, the legal framework must provide for gender equality.** This may be contained in the law on public procurement, as in SPA or other laws, including the constitution in Kenya and South Africa. Providing for gender equality in law allows for broader attention to issues of equality in labour participation, gender norms transformation, maternity protection and enabling environment for gender-responsive procurement. However, more specific provisions are required, as set out in the following section.

### 5.1.2 Definition of Women-owned/Led Businesses

**Gender-responsive procurement must of necessity promote women-owned and women-led businesses.** To support women-owned and women-led businesses (WSMEs), it is essential to understand what “women-led/women-owned businesses” means as there continues to be debate over its meaning.

An overly restrictive definition of “women-owned” (e.g., a minimum percentage of 51 per cent female ownership) could limit market access to women-owned or women-led businesses<sup>6</sup> because we may not have sufficient women-owned businesses or capture all the forms in which women participate or lead businesses, such as businesses led by women who may then seek angel or venture capital investment which may dilute their shareholding but in which they retain leadership positions.<sup>7</sup>

Women-led businesses allow us to escape this restriction to some degree because women-led allow for women in leadership, but that does not mean they must own. Women leadership in business also includes board leadership, an area in which there is a significant gap for women. Furthermore, the day-to-day running of the business is a consideration: who

5. Ibid.

6. For limitations of the ‘51 or over per cent’ definition, please see International Trade Centre, Technical Note: Definitions for Women’s Businesses, 2020 at 11.

7. International Trade Centre, Technical Note: Definitions for Women’s Businesses, 2020.

runs the business? On the other hand, an overly broad definition could also dilute the impact sought by implementing gender-responsive procurement. In the US, for example, the term has been defined in law as “a small business which a woman or a group of women (a) control and operate; and (b) own not less than 51 per cent of the business.”<sup>8</sup> Defining women-led business in this way implies that one or more women must have absolute control of the business and its day-to-day management and operations.<sup>9</sup>

The definition is also similar in **Canada**: A women’s business enterprise is a business controlled by one or more women, with a woman in charge of the day-to-day operations and in which the woman or women’s nationality is Canadian.

**The International Finance Corporation** also defines women-owned/led businesses as enterprises in which a woman or women own 51 per cent or in which women own 20 percent of the shares, the CEO/COO is female, and 30 per cent of the board is female.<sup>10</sup> In addition, in some cases, the business may be required to be small to benefit from incentives for small businesses. In that case, to qualify as a women-owned business for procurement an enterprise must also be small.<sup>11</sup>

In **Kenya**, the AGPO programme available to women-owned business which is a company, association, or body of persons, corporate or unincorporated, in which at least seventy per cent of the shareholders, members or persons and a majority of its directors are of the female gender.

In **South Africa**, under the **Broad-Based Black Economic Empowerment (BBBEE)** initiative:

- **“51 per cent Black women-owned”** means an entity in which (a) Black women hold at least 51 per cent of the exercisable voting rights as determined under Code Series 100; (b) Black women hold at least 51 per cent of the economic interest as determined under Code series 100; and (c) has earned all the points for net value under-statement 100.
- **“30 per cent Black women owned”** means an entity in which (a) Black women hold at least 30 per cent of the exercisable voting rights as determined under Code Series 100; (b) Black women hold at least 30 per cent of the economic interest as determined under Code Series 100; and (c) has earned all the points for net value under-statement 100.<sup>12</sup>

According to the **UN system’s standard definition**, a Women-owned business: A legal entity, that at a minimum:

- is at least 51 per cent owned by one or more women;
- is unconditionally controlled by one or more women over both long-term decision-making and the day-to-day management and administration of the business operations; and
- is independent from non-women-owned businesses.

**Women-led business:** A legal entity in any field that has a minimum of 50 per cent women-identified representation in management with senior-level, strategic decision-making abilities.

8. 15 USC s 7108(8)

9. WBENC, “Certification” < <https://www.wbenc.org/certification/> > accessed December 14, 2022

10. IFC’s Definitions of Targeted Sectors

11. ACCION OPPORTUNITY FUND, “Women-owned Business Certification,” < <https://aofund.org/resource/women-owned-business-certification/> > accessed December 14, 2022

12. International Trade Centre, Technical Note: Definitions for Women’s Businesses, 2020 at 13.

It is thus necessary to elaborate on the definition of women-owned and women-led businesses in the legal framework to understand the kinds of businesses that receive support or are accorded incentives to ensure gender-responsive procurement. In Nigeria, it will be essential to define what ‘women-owned and women-led businesses’ means in the legal framework.

### 5.1.3 Affirmative or preferential actions or reservations for women-owned/led businesses

Affirmative action concerning gender equality involves using policies, legislation, programmes, and procedures to improve the opportunities of women and girls to remedy the effects of historical, long-standing and continuing discrimination.<sup>13</sup> It allows special treatment in different ways. Affirmative action for women-owned businesses involves giving preferential treatment to businesses, especially SMEs run by women entrepreneurs in public procurement contracts. This can be achieved by setting aside a percentage of contracts to women-owned firms using legislation, policies, programmes, etc. The aim is to strengthen women-owned businesses by ensuring a level playing field for women-owned businesses in public procurement contracts.<sup>14</sup>

The legal framework must identify affirmative actions or reservations (such as quotas) for women-owned and women-led businesses. The legal framework will provide for developing specific policies reserving contracts or specifying quotas for women, or concerning gender considerations. For instance, quotas are awarded in Kenya, with 30 per cent of all public procurement reserved for women.

### 5.1.4 Use of inclusive language

Inclusive language provides an affirmation that a law or policy is not gender-blind. It is essential because inclusive language acknowledges the existence and equality of women and men.

### 5.1.5 Provisions on targeted assistance strategies

Targeted assistance strategies empower women-owned/led businesses to participate in public procurement. They could be in the form of training and technical assistance, financial assistance through the provision of low-interest loans, grants and interest-free loans as the case is in the US, Kenya and other countries.<sup>15</sup> Another form of assistance that would boost women-owned and women-led businesses is to unbundle large contracts, a barrier to their participation in public procurement, into smaller lots.<sup>16</sup>

### 5.1.6 Database for women-owned/led businesses

The critical consideration is whether the law provides a database or registration process for women-owned and women-led businesses. Such consideration will make it easy to identify businesses to which affirmative actions will apply.

13. Merriam-Webster Dictionary, “affirmative action,” <<https://www.merriamwebster.com/dictionary/affirmative%20action>> accessed December 14, 2022

14. Robert Fairlie and Justin Marion, “Affirmative Action Programs and Business Ownership among Minorities and Women, UCSC Working Paper,” *Small Business Economy*, Vol. 39(2) (2012): 1-21

15. DECD, “Technical Report: Policies that Promote SME Participation in Public Procurement” September, 2017

16. Ibid.

## 5.2 Options for a legal framework

The options for the legal framework are reasonably clear. In most countries, including the countries reviewed, legislation is employed. The reason is not far-fetched: legislation is the most potent source of law. However, some countries already have procurement legislation, and amendment may prove difficult.


An alternative would be regulations. Regulations are subsidiary legislation made under powers conferred by the primary legislation. In this case, regulations may be made under the primary legislation. Regulations allows the executive arm to address policy matters within legislation and provide flexibility in the amendment. However, regulations must operate within the scope of the primary law, and cannot purport to go outside the power conferred by the primary law, otherwise, they would be void.

Another potential alternative employed is executive orders. In Nigeria, this has been employed in various instances, most recently, at the height of the COVID-19 pandemic, executive orders were issued by some states and the President on several issues. However, their legal validity under a democratic dispensation in Nigeria is questionable<sup>17</sup> when the law provides the power to make regulations. At the minimum, executive orders operate under the same conditions as regulations as subsidiary laws as noted in a recent Supreme Court decision.<sup>18</sup>

There are advantages and disadvantages to each option. Public procurement legislation can be amended to address gender-responsive public procurement good practices such as establishing a database for women-owned and women-led businesses and affirmative provisions for quotas. It has the most potent power of any law. However, enacting legislation is often a lengthy, tortuous process. The executive can make regulations which take less time to establish. The same advantages also apply to executive orders. Still, as noted, when the power to make regulations is provided in the law, it is difficult to see the place of an executive order. Nonetheless, there has been a precedent for employing executive orders: the President issued Executive Order No. 001 of 2017 on public procurement.

17. See for example, Sam Amadi, Executive Orders and Presidential Power in Nigeria: Comparative Lessons from the United States of America

18. AG Abia v A G Federation



## **6. OVERVIEW OF PUBLIC PROCUREMENT**

LEGAL AND POLICY  
FRAMEWORK

**The Government of Nigeria has committed to gender equality and women's empowerment by ratifying various international instruments, including the Convention on the Elimination of Discrimination Against Women (CEDAW). Nigeria is also a signatory to the Protocol to the African Charter on Human and Peoples' Rights on Women's Rights in Africa (the Maputo Protocol). The Protocol provides for gender equality and eliminating all forms of discrimination against women, including economic activity.**

The Sustainable Development Goals (SDGs), to which the country has committed itself, underscores the core principle of 'leaving no one behind'. Achieving gender equality and empowering women and girls is central to realising all the SDGs. In particular, SDG 5 sets out the goal of gender equality and elimination of discrimination against women and girls in all facets. The Constitution of Nigeria, 1999, also prohibits discrimination based on sex. More recently, the government has established the National Gender Policy, which states, as one of the targets of Gender and Employment in the policy, the "promotion of women's access to trade, procurement, and opportunities in the extractive industries, especially oil and gas," clearly recognising the importance of gender-responsive procurement.

Despite these legal and policy commitments, as noted earlier, women face barriers in participating in public procurement. Given the challenges of barriers and obstructions leading to women's minimal participation in public procurement, a gender-responsive approach is essential.

Public procurement laws and policies provide the basic foundations for public procurement, articulating key requirements and processes, including provisions ensuring that public procurement procedures are competitive, efficient and transparent. The legal and policy framework provides not only the government's commitments to gender equality, the fundamental rights to freedom from non-discrimination and the parameters within which businesses are registered and operate but should also consider the attainment of socio-economic objectives while ensuring transparency and an equal playing field. Therefore, the legal and policy framework is a key starting point for understanding public procurement in the country and querying the degree of entrenchment of gender-responsive procurement procedures and practices.

The Public Procurement Act, 2007 was enacted at the federal level in Nigeria, establishing the Public Procurement (Goods and Works) Regulations 2007. Many states also enacted public procurement laws. This assessment focuses on the legal framework of the Lagos State Procurement Law, 2021 (which repealed and replaced the previous procurement law of 2016) and the Kaduna State Procurement Law, 2016. These pieces of legislation aim to ensure a transparent and competitive process.

The rest of the report considers the level of gender responsiveness of the procurement legislation and other relevant legislation and policies at federal and (Kaduna and Lagos) state levels, employing the identified indicators.

## FEDERAL

**The Public Procurement Act establishes the Bureau of Public Procurement, whose main objective is to harmonise existing policies and practices and to ensure integrity, accountability, transparency, fair and competitive standards.<sup>1</sup>**

The PPA was signed into law in 2007 to regulate all public procurement concerning all Federal Government ministries, agencies, departments, etc. The PPA regulates all public procurement in the Federal Capital Territory (FCT), Abuja. The PPA was amended in 2016, and further amended in 2019.

The PPA has 61 sections. Its Section 1 establishes the National Council on Public Procurement (NCPP) and its memberships, which consists of Minister of Finance (as the Chair), Attorney General and Minister of Justice of the Federation, Secretary to the Government of the Federation, Head of Service of the Federation, Economic Adviser to the President, six part-time members (representing Nigerian Institute of Purchasing and Supply Management, Nigerian Bar Association, Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture, Nigerian Society of Engineers, Civil Society, the media) and Director-General of Bureau of Public Procurement who shall be the Secretary of the Council.

The NCPP has the mandate to: consider, approve and amend the monetary and prior review thresholds for applying the act by procuring entities; consider and approve the policies on public procurement; approve the appointment of the directors of the Bureau of Public Procurement; receive and consider, for approval, the audited account of the Bureau of Public Procurement; and approve changes in the procurement process to adapt to improvements in modern technology.<sup>2</sup>

**Section 3 of the PPA** establishes the Bureau of Public Procurement (BPP). The BPP is a legal personality with all the characteristics of legal personality vested in it. Its core objectives are to harmonise existing government policies and practices on public procurement, ensure integrity, accountability, and transparency in public procurement, and ensure the application of fair, competitive, transparent standards and practices and disposal of public assets and services, amongst others.<sup>3</sup>

The function of the BPP is to formulate the general policies and guidelines relating to public sector procurement for the approval of the NCPP; publicise and explain the provisions of the PPA; supervise the implementation of established procurement policies; publish the details of major contracts in the procurement journal; and so on.<sup>4</sup>

The BPP has the power to enforce monetary and prior review thresholds set by the NCPP for the application of PPA provisions by the procuring entities, from time to time; stipulates to all procuring entities, the procedure and documentation pre-requisite on the issuance of Certificate of “**No Objection**” under the PPA; cause to be inspected or reviewed, any procurement transaction to ensure compliance with the provision of the PPA; review and determine whether any procuring entity has violated any provision of the PPA and so on.<sup>5</sup>

The BPP is directly in charge of public procurement in Nigeria. Part III of the PPA has one section – Section 15 which shows the scope of the application. Part IV also has one section – Section 16 which provides the fundamental principles for procurement. Part V, made up of sections 17–24, provides for the organisation of procurements. Part VI, comprising sections 25–38, provides for procurement methods for goods and services. Part VII is concerned with the special and restricted procurement methods from sections 39–43. Part VIII focuses on the procurement of consultancy services. Part IX provides for procurement surveillance and review in sections 53 and 54. Part X talks about the proper disposal of public property in

1. Section 4 of the Public Procurement Act.

2. Public Procurement Act, 2007, section 2. Since the inception of the PPA, the NCPP has never been inaugurated. See James Kwen, “Reps ask FG to set up National Council on Public Procurement.” (n17)

3. Public Procurement Act, 2007 section 4

4. Ibid. Section 5.

5. Ibid. Section 6.

sections 55 and 56. Part XI outlines the code of conduct for public procurement in Section 57. Part XII outlines the offences relating to public procurement in Section 58 and Part XIII contains miscellaneous provisions in sections 59–61.

**In Section 4 of the PPA, the BPP has, as its core objectives, fairness, competitiveness, transparency, etc.,** in the treatment of applications and the attainment of transparency, competitiveness, cost-effectiveness, and professionalism in the public sector procurement system. The PPA in Section 24 provides that all bids shall be open competitive bidding wherein every interested bidder is offered **“equal simultaneous information and opportunity to offer the goods and works needed.”** In the area of finance, the PPA provides that a bidder must possess the financial capability to bid for contracts<sup>6</sup>. This suggests that a bidder must provide the following:

- Bank statements as evidence to show the enterprise has the financial capability to perform the contract
- Evidence of payment of VAT, withholding tax and corporate tax, etc., with the Federal Inland Revenue Service (FIRS)
- Evidence from Pension Commission (PENCOM) indicating payment of pension to a minimum of three staff for a period not less than three years and fulfilling other social security obligations.

In addition, the prospective bidder must have technical and professional qualifications to qualify for the contract.

**Section 34 (1) of the PPA** provides for domestic preference. It provides that: **“[A] procurement entity may grant a margin of preference in the evaluation of tender, when comparing tenders from domestic bidders with foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.”** However, subsection (3) provides that the margin of preference shall apply to tenders under international competitive bidding. In 2016, the Senate passed an amendment that amended some provisions of the PPA. Notable amongst the amendments was Section 34 (1) (2), where the Senate substituted ‘shall’ for ‘may’ and in subsection 2 substituted ‘has allowed’ for ‘intends to allow,’ thus making that provision on domestic preference mandatory. Notably, none of the amendments made to the PPA since its enactment in 2007 are related to gender-responsive public procurement. The revision of Section 34 of the PPA makes it mandatory for procurement entities to grant a margin of preference **“when comparing tenders from domestic bidders from those of foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.”** This provision boosts local bidders and suppliers of goods and services manufactured in Nigeria. This provision is also designed to improve and enforce local content in public procurement<sup>7</sup> with the objectives of strengthening and growing the Nigerian economy.

To further underscore the importance of preference to local bidders and suppliers as well as locally manufactured goods in public procurement in development of the economy, President Muhammadu Buhari in 2018 signed the Presidential Executive Order 005 to improve local content in science, engineering and technology public procurement to boost the economy. The EO005 mandates procuring entities to give preference to Nigerian companies and firms in the award of contract in accordance with the Public Procurement Act, 2007. It also mandates the Federal Inland Revenue Service (FIRS) and the Ministry of Finance to ensure that existing machine tools companies – foundry, machine shop, forge shop, and indigenous artisans are granted tax incentive in order to boost local production of their products. It further provides that tax incentive may be granted to Small and Medium Scale Enterprises and foreign firms for the use of local raw materials after their authentication by the Raw Ma-

6. Ibid section 16(6)(a)(ii) and 6(c)



terials Research and Development Council (RMRDC). The EO 005 amongst other provisions further introduced margin of preference in national competitive bidding, when evaluating tenders from indigenous suppliers in respect of goods manufactured locally over foreign goods and mandated the MDAs to maintain 15% of margin of preference for international competitive bidding for goods, 7.5% for works for domestic contractors, and 15% margin of preference for domestic contractors for national competitive bidding for goods as well as 7.5% for works.

**Section 16 of the PPA** provides for the fundamental principles for procurement. The section provides that there shall be open competitive bidding, (a) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with the Act and regulations, (b) with the aim of achieving value for money and fitness for purpose, (c) in a manner which promotes competition, economy and efficiency and (d) in accordance with the procedure and timeline laid down in the act and as may be specified by the BPP from time to time.<sup>8</sup>

Generally, the PPA provides that bidding processes shall be transparent, timely, fair, equitable and non-discriminatory. However, in practice, there is gender disparity. It is instructive to note that in invitation to bid,<sup>9</sup> submission of bids,<sup>10</sup> bid opening,<sup>11</sup> examination of bid,<sup>12</sup> evaluation of bids<sup>13</sup> and acceptance of bid,<sup>14</sup> women and women-owned businesses are not accorded a level playing field. Section 23 of the PPA provides for pre-qualification of bidders. This provision is resorted to when a procurement entity wants to pre-qualify bidders to select only credible bidders. This provision does not consider women-owned or women-led businesses. It implies that any small and medium scale enterprise, especially women-owned and women-led businesses that do not meet the minimum pre-qualification set by a procuring entity, would not pre-qualify. Usually, the pre-qualification terms and conditions are so stringent that the women (owned or led) businesses cannot meet them. Thus, from the outset, there is no inclusiveness in the public procurement process regarding women-businesses. The marginalisation begins even before the invitation for bids.

**Section 24(1)(2) of the PPA** provides that bidding shall be open and transparent and interested bidders shall have access to equal simultaneous information and opportunities for them to supply the goods required. However, the fact remains that there is unequal access to information and opportunities, including finance in public procurement, due to gender imbalance despite the progress that has been made globally in recent years.<sup>15</sup> This unequal access to information and opportunities necessary to boost women and the businesses they own or lead in public procurement put them at a disadvantage.

**Section 32** provides for the evaluation of bids. This evaluation process is of prime importance as it is here that the bidder with the lowest responsive bid is determined and selected. It is at this stage that the tenders board checks for deviation, checks for omission as regards quantification of the bid, ascertains the lowest calculated prices in order of rank, and post-qualification of bidders, amongst others. The PPA does not provide for the granting of preference to SMEs (which are mainly women-owned and women-led businesses) in the evaluation process that would ensure that the general criteria are not used for them.

**Section 44 of the PPA** provides expressions of interest to provide services for ascertained goods. This section provides that where the value of the services to be procured is less than one million naira, or where the procuring entity has obtained the approval of the BPP of such a low value that only national consultants would indicate interest, the procuring entity with-

8. PPA section 16(1)

9. Ibid., section 25

10. Ibid., Section 27

11. Ibid., Section 30

12. Ibid., Section 31

13. Ibid., Section 32

14. Ibid., Section 33

15. Arancha Gonzalez, "Why do men win 99 percent of all procurement contracts?" <<https://apolitical.co/solution-articles/en/why-do-men-win-99-of-all-procurement-contracts>>

out any notice whatsoever, request at least three and not more than ten service providers to make proposals for the provision of the services. The PPA does make provision for women-owned or women-led businesses to be among the service providers to ensure gender equality in public procurement because the value of the services to be provided is small and falls within the purview of small and medium scale enterprises.

Section 45 deals with requests for proposals to provide services for unascertained needs. Section 46 provides for the content of requests for proposals. Section 48 dwells on the submission of proposals, while Section 49 provides criteria for evaluating proposals. Sections 50 and 51 have to do with the general selection procedure – selection of the lowest evaluated price or the best combined evaluation regarding the general criteria set out in the request for proposals and the price quoted; and procedure for the selection of proposals where the price is a factor. The foregoing provisions like sections 23, 24, and 32, do not equally provide for special treatment of women (owned or led) businesses, such as granting them preference to enable them to compete with firms in public procurement contracts.

Section 58 makes provision for offenses relating to the infringement of the PPA. Where a person not being a public officer contravenes the provisions of the PPA, he commits an offence and is liable on conviction to a term of imprisonment not less than five years but not exceeding ten years without an option of fine. In the case of an officer of the BPP or any procurement entity, the penalty is a cumulative punishment of **“a term of imprisonment not less than five calendar years without any option of fine, and summary dismissal from government service.”**<sup>16</sup> The section equally criminalises altering any procurement document with the intent to influence the outcome of a tender proceeding,<sup>17</sup> splitting of tender to enable the evasion of monetary thresholds set<sup>18</sup> and bid-rigging<sup>19</sup> among others.

## KADUNA

**The Kaduna State Government enacted the public procurement law in 2016 to repealed the Kaduna State Bureau of Budget Implementation, Monitoring and Price Intelligence Law (BBIM&PI), 2007.** Until its repeal, the BBIM&PI regulated public procurement contracts in Kaduna State to ensure transparency, competition, openness, cost-effectiveness, and value for money.<sup>20</sup>

The Kaduna State Public Procurement Law, 2016 has a total of 71 sections. It establishes the Kaduna State Public Procurement Authority<sup>21</sup> with core objectives that include:

Formulate and harmonise existing policies and practices on public procurement and ensuring probity, accountability and transparency in the public procurement process, regulate, monitor, evaluate and audit the public procurement process of Kaduna State, the Local Governments, their derivative units to ensure uniform procurement process.

According to the Kaduna State procurement law, the main objective of the Public Procurement Authority is to **“comprehensively formulate and harmonize existing policies and practices on public procurement and ensuring probity, accountability and transparency in the public procurement process.”**<sup>22</sup>

16. Section 58(5)(a)(b)

17. Section 58(4)(f)

18. Section 58(4)(d).

19. Section 58(4)(e)

20. KADDPA, “History” <<https://kadppa.kdsg.gov.ng/index.php/history/>>

21. Section 4 of the Kaduna State Public Procurement Law, 2016.

22. Section 5 of the Kaduna State Public Procurement Law 2016.

Section 6 provides for the governing board for the authority, while Section 9 provides the powers of the board. The power functions of the authority are provided in Section 13. Sections 14, 33, 35, 43, 44, and 45, respectively, provide for the power of the authority; power to make regulations for the implementation of and enforcement of the provisions of the PPL; governing principles on public procurement; open competitive bidding; invitation to bid; and pre-qualification of bidders.

Provisions of bid security, bid document, bid submission, validity of the period of bid, bid opening, examination of bids, evaluation of bids, disqualification of bids and confidentiality of bids are found in sections 46, 47, 48, 51, 52, 53, 54, 55, and 56 of the PPL.

The PPL also provides for “domestic preference when comparing bids from domestic bidders with foreign bidders, or when comparing bids from domestic suppliers offering goods manufactured locally with those offering goods manufactured in a foreign country.”<sup>23</sup>

The PPL in Section 58 provides for the acceptance of successful bids to the effect that the successful bidder shall be the lowest evaluated bid or the highest-rated evaluated bid from the bids responsive to the bid solicitation. Mobilisation fees and an advanced payment guarantee of no more than 20 per cent for local suppliers and contractors and 15 per cent for foreign suppliers and contractors are provided in Section 61.

Disposal of assets and complaints by bidders seeking administrative review concerning any omission or breach by a procuring or disposing of entity are provided for in sections 66 and 67. Offences ranging from making a false complaint against a contractor or a procuring entity,<sup>24</sup> contravention of any of the provisions of the PPL by a public officer,<sup>25</sup> opening and tampering with a sealed bid, “procurement fraud utilizing fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or other actions,” splitting of tender to evade set monetary thresholds, and bid rigging, among others, are mentioned in Section 68.

## LAGOS

**Lagos State enacted the Lagos State Public Procurement Law, 2021 to repeal and replace the previous procurement law of 2016.**

The Lagos State Public Procurement Law also clearly specifies that its objective is to ensure probity, accountability, and transparency in the public procurement process. All procuring entities (defined in the law as any public body in Lagos State engaged in procurement, including ministries, departments, bureaus, offices and agencies of the Lagos State Government, extra-ministerial offices, parastatals, corporations, state university and colleges, government institutions and local government councils, local council development areas and their derivative units)<sup>26</sup> are required to comply with the law in making a procurement— a provision that is lacking in the Kaduna State procurement law.

The Lagos State Public Procurement Law (PPL) was signed into law on 15 March 2021. However, the initial Lagos PPL was enacted on 21 October 2011, and prior to the enactment, there was no law in the state regulating public procurement.

The Lagos State PPL has a total of 92 sections. Section 1 of the Lagos State PPL makes provisions for the interpretation section. The core objective of the law as provided in Section 2,

23. Kaduna State PPL Section 57.

24. On conviction is liable to a fine of ₦20,000.00 or to imprisonment for one month or both (PPL Section 68)(1)

25. Attracts a term of imprisonment not less than one year or to a fine ₦500,000.00 or both when convicted (PPL Section 68)(2).

26. Section 1 of the Procurement Law, 2021.

among others, are to:

- Ensure probity, accountability and transparency in the procurement process
- Establish fair pricing standards and benchmarks
- Ensure the application of fair, competitive-value-for-money standards and practice for the procurement and disposal of public assets and services
- Create ample opportunities for the citizenry, particularly small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement
- Create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the state and its local government filed by procuring entities, bidders and the general public, and
- Attain transparency, competitiveness, professionalism and guarantee integrity and public trust in the public procurement procedure.

The foregoing provisions are meant to ensure that the public procurement process in Lagos State is conducted honestly, transparently and fairly. The mandate of the Lagos State PPL is to create ample opportunity for the citizens, especially those who own and run small and medium-scale enterprises, to participate in the public procurement of the state. Although the provision does not explicitly mention women or women-owned enterprises, neither does it allocate a certain percentage to small and medium scale enterprises. Nevertheless, the Lagos State PPL is commendable in that it establishes as one of its core objectives the creation of ample opportunities for citizens who owned small and medium enterprises to participate in public procurement contracts. It is noteworthy that none of the other two public procurement laws – PPA, 2007 and Kaduna State PPL, 2016 – under review have anything similar. There is no reference to small and medium-scale enterprises in both laws.

Section 3 establishes the Lagos State Procurement Agency while Section 4 establishes the Lagos State Public Procurement Agency Governing Board. Section 5 makes provision for the power of the board. A member of the board who is directly or indirectly interested in a transaction or project must disclose such interest to the board.<sup>27</sup>

**Section 17 provides for the functions of the agency. Some of these functions are:**

- Consider, review and recommend the monetary benchmark for the application of this Law subject to the approval of the board
- Approve the employment of staff of the agency other than the Director General
- Approve changes in the procurement process to adapt to changes in technology
- Formulate general policies and regulations relating to public sector procurement for the approval of the governor
- Publicise the provisions of this law
- Certify all state procurement prior to, during and after the award of any contract
- Supervise the implementation of established procurement policies
- Oversee and superintend compliance by all procuring entities with the procurement policies of the state.<sup>28</sup>

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27. Lagos State PPL section 16


28. Section 17

The power of the agency is provided in Section 18. The agency has the power to enforce the rules and review benchmarks set by the law; inspect and review any procurement transaction to ensure compliance with the provisions of the law; and blacklist or ban any supplier, contractor, or consultant that contravenes any provisions of the law, etc.

**Section 26** provides the governing rules on public procurement. This section provides that the bidding shall be opened and competitive, and every interested bidder shall be given equal information and opportunities to offer the works, goods and services needed. This implies that every interested bidder, regardless of race, sex, etc., shall have a level playing field in their bid for public procurement contracts and, as such would have access to equal information and opportunities required to compete favourably. The section also promotes competition, economy, efficiency and equal opportunities to all eligible and qualified parties to participate in public procurement under the same terms, conditions and criteria for bidders for the provisions of goods and services. It entails that all bidders are given sufficient time and are evaluated based on the terms and conditions stated on the bidding documents to ensure efficiency and curb corruption.<sup>29</sup>

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29. Robert Agwot Komakech, "Public Procurement in Developing Countries: Objectives, Principles and Required Professional Skills," *Public Policy and Administrative Research* Vol. 6, No. 8 (2016): 23



## **7. GENDER ASSESSMENT OF THE LEGAL FRAMEWORK AT THE FEDERAL LEVEL AND IN LAGOS AND KADUNA STATES**

## 7.1 Gender equality or recognition and protection of the rights of all women and men

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes provision for gender equality.<sup>1</sup>

Section 42 of the the Constitution states:

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-
  - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
  - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disabilities or deprivation merely by reason of the circumstances of his birth.

Section 15(2) also provides for national integration and prohibits discrimination based on sex, religion, status, ethnic or linguistic association or ties.<sup>2</sup> In essence, the equality of women and men is provided in the Constitution. All laws derive from the Constitution, and cannot be inconsistent, otherwise, they are void.<sup>3</sup> These include any public procurement laws.

Furthermore, the African Charter on Human and Peoples' Rights<sup>4</sup> in Article 2 also prohibits discrimination.

It states:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

Article 3 of the charter, which makes provision for gender equality, states that (a) every individual shall be equal before the law and (b) every individual shall be entitled to equal protection of the law.

1. Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Preamble.

2. Although this section falls under "Fundamental Objectives and Directive Principles of State Policy" which are not justiciable.

3. Constitution of Federal Republic of Nigeria, Section 1.

4. See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004

The preceding provisions, similar to that of the Constitution, enshrine equality of women and men before the law. Thus, women and men are entitled to equal protection of the law without any discrimination, including in public procurement contracts.

### Definition of Women-owned Businesses

The PPA and PPL of Kaduna and Lagos, and the regulations under them, do not define women-owned or women-led businesses.

### Affirmative or Preferential Actions or Reservations for Women-owned Businesses

Neither the PPA nor the Kaduna and Lagos PPLs provide for affirmative actions. There are no reservations or quotas either. Although the national law and the PPL of Lagos and Kaduna states make provisions for “**preferential treatment**,” these do not apply to women or gender. For instance, the laws provide a margin of preference for domestic and international bidders.<sup>5</sup> Restrictive tendering only applies to businesses with a proven track record, enabling the procurement agency to, suo motu, initiate procurement.<sup>6</sup>

The proposal selection is based on two main considerations: the lowest evaluated or the best-combined evaluation in terms of the general criteria set out in the proposal request and the price quoted.<sup>7</sup> There is no mention of social considerations, including gender equality considerations.

### Threshold Removal

The thresholds are the same for all businesses with no consideration for gender in the PPA, and the PPL of Kaduna and Lagos.

Section 16 of the PPA makes provisions for the procedure to adopt to conduct public procurement based on the prior review threshold as may be set by the BPP from time to time. Section 6 of the PPA provides that a bidder shall show as evidence that they have fulfilled all their obligations to pay taxes, pensions and social security contributions as requirements for eligibility to participate in public procurement contracts. Although the section does not specify, in the case of tax, the required years of evidence of payment. However, procurement entities always demand a minimum of three years of tax clearance certificate.<sup>8</sup> In addition to three years tax clearance certificate, the section further provides pensions and social security contributions.

Furthermore, the BPP introduced some guidelines to reduce the occurrence of unregistered and incompetent companies bidding for public procurement contracts.<sup>9</sup> These guidelines range from CAC certificate of firm registration, registration with the Federal Inland Revenue Service for VAT, withholding tax and corporate tax, and registration and payments with the Nigerian Social Insurance Trust Fund.<sup>10</sup>

The Lagos and the Kaduna states PPL in sections 26(5)(d) and 35(7)(d) are identical with the PPA.

5. Section 69 of the Lagos State Procurement Law, 2021 and the Section 57 Kaduna State Procurement Law.

6. Section 66.

7. Section 62 (1).

8. PREMIUM TIMES, “Border Communities Development Agency reacts to allegation of violating Nigeria’s procurement law,” December 20, 2018 < <https://www.premiumtimesng.com/promoted/302187-border-communities-development-agency-reacts-to-allegations-of-violating-nigerias-procurement-law.html> >

9. Chido Nwakanma, “The High Cost of Federal Procurement,” ThisDay 2021 < <https://www.thisdaylive.com/index.php/2021/02/28/the-high-cost-of-federal-procurement/> >

10. Ibid.



The threshold will likely adversely affect small companies, mainly women (owned or led) businesses assessing public procurement contracts. The thresholds are barriers against equality between women and men in procurement contracts. The threshold removal is essential to the competitive participation of women (owned or led) businesses in public procurement contracts. For instance, making tax clearance a minimum of one year for small and medium scale enterprises, particularly women businesses would result in inclusiveness.

### Procurement Documentation and Specification: Gender/SME Related Considerations

Procurement documentation are produced or referred to by the contracting authority to describe elements of the procurement or the procedure and is employed to call for bids.<sup>11</sup> These include information, obligations, etc., submitted by bidders.<sup>12</sup> Procurement documents often provide the specification, including a “statement of needs or requirements.”<sup>13</sup> Through procurement specification, a supplier of goods or services describes in detail the goods or services they are going to supply during the period of the procurement contract.<sup>14</sup> The PPA<sup>15</sup> and the Lagos<sup>16</sup> and Kaduna<sup>17</sup> states PPL are devoid of gender or SME-related consideration in procurement documentation and specification. The same documents and specifications apply to all businesses without specific considerations.

### Evaluation and Award Criteria: Gender/SME Related Considerations

There are no gender or SME-related considerations in the PPA<sup>18</sup>, Lagos<sup>19</sup> and Kaduna states PPL.<sup>20</sup> The provisions are gender-neutral.

The considerations for evaluation in Lagos PPL are:

1. The qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services
2. The effectiveness of the proposal submitted by the consultant or service provider and of the personnel to be involved in providing the services
3. The proposal price, including any ancillary or related cost
4. The extent of participation by local personnel; the economic development potential offered by the proposal, including domestic investment or other business activity; the development of managerial, scientific and operational skills and the counter-trade arrangements provided by consultants or service providers, and
5. Security considerations.<sup>21</sup>

The considerations for evaluation under the Kaduna PPL are:

1. Lowest Price: Lowest-priced tender wins. No other element of the tender may be

11. <https://www.local.gov.uk/national-procurement-strategy/pcr-toolkit-2015/how-should-we-use-technology/procurement-documents>

12. Ibid.

13. <https://www.crowncommercial.gov.uk/news/how-to-write-a-specification-procurement-essentials>

14. Ibid.

15. PPA sections 18, 19 and 25

16. Lagos State PPL sections 32, 33, and 40

17. Kaduna State PPL sections 40, 42 and 44

18. PPA Section 32

19. Lagos State PPL Section 50

20. Kaduna state PPL Section 54

21. Section 61.

- taken into account, or
2. The Most Economically Advantageous Tender (MEAT): Factors other than or in addition to price, like quality, technical merit and running costs, can be considered
  3. The contract criteria (e.g., price, quality of services, the risk to contracting authority, etc.) and sub-criteria must be set out in either an advert in the procurement journal, by notice, or in the tender documents, and
  4. The weighting of each criterion (and sub-criterion, if weighted) must also normally be given, either as an exact number or as a meaningful range (e.g., 30 to 40 per cent).<sup>22</sup>

The only considerations outside of price and qualifications are economic and security considerations. There are no social considerations (including gender, labour, environment or consideration for vulnerable persons) as noted in countries like South Africa, Kenya and Spain.

### Contract Management: Gender/SME-Related Considerations

Procurement contract management involves managing procurement contracts as part of legal documentation shared with partners, suppliers or customers.<sup>23</sup> It involves ensuring conformity with the terms and conditions of the procurement contracts.<sup>24</sup> The PPA and the Lagos and Kaduna states PPL have no provisions for contract management for gender/SME related considerations.

### Use of Inclusive Language

Most of the language of law in Nigeria (and much of colonized Africa) is not inclusive. Men and male pronouns are used to capture both women and men. Thus, while it purports to recognize everyone, women and men, it is not gender inclusive or responsive. Inclusive language is not used in the PPA, and in the Lagos and Kaduna states PPL. Words such as “he,” “Chairman,” “his” and other terms that are exclusively masculine are used instead.

Gender balance in the composition of governing structures procurement agencies  
By the provision of Section 1 of the PPA, the Council is the first regulatory authority. It is responsible for, among others, consideration, approval, and amendment of the monetary and prior review of the thresholds for the application of the PPA by procuring entities, and consideration and approval of policies on public procurement.<sup>25</sup> Since the enactment of the PPA, the Council has never been inaugurated.<sup>26</sup>

The Bureau of Public Procurement is the second regulatory body created by the PPA. Section 3 of the PPA established the BPP. As presently constituted, there is no gender balance in the BPP.

Section 3(1) established the Lagos State Public Procurement Agency while Section 4(1) established the Lagos State Public Procurement Agency Governing Board. The Board, as presently constituted, has two women and seven men.<sup>27</sup> The management team also has two

22. Section 35, Public Procurement Law, Kaduna State.

23. GEP, “WHAT IS PROCUREMENT CONTRACT MANAGEMENT?” < <https://www.gep.com/knowledge-bank/glossary/what-is-procurement-contract-management> >

24. <https://aavenir.com/glossary/procurement-contract-management/>

25. Ibid., section 2

26. Isa Isawade, “Institute seeks inauguration of procurement council for effective governance,” PM NEWS December 18, 2022 < <https://pmnewsnigeria.com/2022/12/18/institute-seeks-inauguration-of-procurement-council-for-effective-governance/> > accessed December 14, 2022

27. Dr Rabi Onaolapo Olowo, Commissioner for Finance, Chairman; Mr Moyosore Jibril Onigbanjo, Attorney General and Commissioner for Justice, Member; Mr Samuel Avwerosuo Egube, Commissioner for Economic Planning and Budget, Member; Mrs Foluso Olayinka Onabowale, Member; Mr Foluso Akeem Mustapha, Member; Mr Lanre Olusola, Member; and Mr Fatai Idowu Onafowote, Director General of the Lagos State Public Procurement Agency.

women and nine men.<sup>28</sup>

The board and the agency's composition show a lack of gender balance. Women are under-represented in both board and agency. Achieving gender-responsive public procurement in a situation like this is likely to be difficult, especially when the governing bodies are not gender-responsive.

Section 4 of the Kaduna State Public Procurement Law, 2016, created the Kaduna State Public Procurement Authority, whose core objectives, among others, include (a) formulate and harmonise existing policies and practices on public procurement and ensuring probity, accountability and transparency in the public procurement process, and (b) regulate, monitor, evaluate and audit the public procurement process of Kaduna State, the Local Governments, their derivative units to ensure uniform procurement process.

Section 6 of the law established the Governing Board for the Authority.

Kaduna State is different from Lagos because it mandates that a woman must be a member of the governing board, which is laudable, as neither the PPA, 2007 (as amended) nor the Lagos State Public Procurement Law, 2021 specifically provide for the appointment of a woman, respectively, into the National Council for Public Procurement or the Governing Board of the Lagos State Public Procurement.

However, that provision falls short of meeting gender equality requirements in public procurement. More so, the composition of the Kaduna State Public Procurement Authority is not remarkably different from that of the Federal Government and Lagos State. Women, having only one representation on the Governing Board, are equally under-represented in this body mandated to regulate, monitor, evaluate and audit the public procurement process in Kaduna State. The provisions of the procurement laws show there is no gender balance in the various procurement agencies and boards.

### Database for Women-owned/Led Businesses

There is no provisions for database for women-owned and women-led businesses in the PPA and Lagos and Kaduna states PPL.

### Provisions on Targeted Assistance Strategies

The PPA and the Lagos and Kaduna states PPL lack any provisions on targeted assistance strategies for women-owned and women-led businesses.

### Requirements to Address Gender Responsiveness in Suppliers

There is no provision in the PPA and the Lagos and Kaduna states PPL regarding requirements to address gender responsiveness in suppliers. The procurement laws are gender-neutral.

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28. Mr Fatai Idowu Onafowote, Director General of the Lagos State Public Procurement Agency; Mr Nurudeen Alade Anibaba, Director of Administration and Human Resources; Mr Gabriel Olawale Akinyemi, Director of Finance and Accounts; Mr Oladapo Olatunde, Head, Public Affairs Unit; Mr Akintunde Moruf Subair, Head, Monitoring, Enforcement and Compliance Department; Mr Wasiu Kayode Onawoga, Head, Procurement Department; Mrs Gbemisola Aderonke Oduwole, Internal Auditor; Mr Moruf Ademola Adegbite, Head, Planning and Budget Unit; Mr Kelechi Obijiaku, Acting Legal Adviser; Mr Johnson I. Agboola, Head, Internal Procurement Unit; and Ms Adeola Florence Sanwo, Acting Head, Contractor Registration Department.

**Figure 4:** Table on assessment of gender responsiveness in Federal, Kaduna and Lagos procurement laws

Indicator	Federal	Kaduna	Lagos
Gender equality	Yes	Yes	Yes
Definition of women-owned businesses	No	No	No
Threshold removal	No	No	No
Affirmative provisions on thresholds for selection of tender procedures	No	No	No
Procurement documentation and specifications	No	No	No
Evaluation and award criteria	No	No	No
Contract management	No	No	No
Use of inclusive language	No	No	No
Gender balance in the composition of governing structures of procurement agencies	No	No	No
Database for women-owned/led businesses	No	No	No
Provisions on targeted assistance strategies	No	No	No
Gender responsiveness assessment	No	No	No
Requirements to address gender responsiveness in suppliers	No	No	No

## 7.2 Gender responsiveness of relevant public procurement policies in Lagos and Kaduna states

Relevant public procurement policies in Lagos State include the Guidelines on the Conduct of Public Procurement Activities by Ministries, Departments, and Agencies as a Result of the COVID-19 Pandemic Lockdown and Other Emergencies (which focuses on emergency measures such as allowing electronic documents and submissions during lockdown when movement is prohibited) and the Lagos State Development Plan 2012–2025 (which sets out the economic plan for the state and provides support for SMEs). Evaluated against each of the criterion for gender-responsive procurement, neither of these policies is gender-responsive.

**The Kaduna State Government’s policies include the Kaduna State Development Plan 2016-2025, Social Protection Policy and Gender Equity and Social Inclusion (GESI) Policy.<sup>1</sup>**

The plan seeks to improve the economic empowerment of women, youths, and vulnerable groups through skills acquisition.<sup>2</sup> Although one of the strategies identified in the plan is the “development of a robust database for youths, women, and vulnerable groups,”<sup>3</sup> it does not include the database of women-owned and women-led businesses. However, its strategy on “identification and strengthening of legal systems around women, youths, and vulnerable groups”<sup>4</sup> can be argued to include a review of legislation such as the public procurement for gender responsiveness.

**The Kaduna State Women Empowerment Funds (KADSWEF), implemented in 2019, is another avenue that can be employed to support women entrepreneurs by providing them with the capital to participate in public procurement.**

Although the Kaduna State PPL is not gender-responsive, the Government of Kaduna State, over the years, ensured that a significant number of SMEs benefit from the public procurement contracts of the state. A report by the Kaduna State Public Procurement Authority (KADPPA) shows that 101 SMEs have benefited from the state public procurement process from 2020 to date in Zaria Local Government. **The total amount of the projects is N530,612,144.68.**<sup>5</sup>

The report further shows that another 95 SMEs have equally benefited from the state public procurement contracts in different local government areas.<sup>6</sup> The report did not state the number of women-owned and women-led businesses that benefited from these procurement contracts. However, considering that most SMEs are owned, managed and controlled by women, it is assumed that some may have benefited from procurement contracts.

The state has recently developed a draft Gender-Responsive Public Procurement Policy (2023). This is discussed in detail in section 9.

1. FinalSDP2021.pdf (kdsg.gov.ng)

2. Ibid.

3. Ibid., 70-71.

4. Ibid., 70-71.

5. Kaduna State Public Procurement Authority – Due Process, May 28, 2021, online: <https://kadppa.kdsg.gov.ng/>

6. Ibid.



**8. GENDER  
RESPONSIVENESS  
IN INSTITUTIONS:  
SOME  
INDICATORS FOR  
ASSESSMENT**

**To assess the gender responsiveness of the public procurement agency, it is crucial to develop a gender audit tool.** A gender audit is “a tool to assess and check the institutionalisation of gender equality in organisations, including in their policies, programmes, projects and provision of services, structures, proceedings and budgets.”<sup>1</sup> This audit will focus on organisations. The process checks and assesses the institutionalisation of gender equality in organisational policies, programmes, implementation, structures and even budget. A gender audit, in this case, therefore, will require a consideration of both the Lagos State Public Procurement Agency and the Kaduna State Public Procurement Authority as institutions.

Items	Indicators
<b>Gender mainstreaming</b>	<ul style="list-style-type: none"> <li>• Awareness by officials of the procurement agency of current gender issues in public procurement</li> <li>• Mainstreaming is a cross-cutting concern within the institution’s objectives, programmes and budget</li> <li>• Information and knowledge management on gender issues in general</li> <li>• Organisational culture and its effects on gender equality</li> <li>• Agency's explicit commitment to promoting or achieving gender equality in its vision, goals or principles of the policy</li> </ul>
<b>Policies</b>	<ul style="list-style-type: none"> <li>• Existence of policy on gender in the organisation</li> <li>• Existence of zero tolerance for gender-based discrimination</li> <li>• Existing gender expertise and competence</li> </ul>
<b>Work environment</b>	<ul style="list-style-type: none"> <li>• Gender ratio of employees</li> <li>• Staff awareness of policy on gender</li> <li>• Existing opportunities for staff to participate in activities or programmes of the organisation</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>• Gender distribution of management level staff</li> <li>• Gender distribution of other staff</li> </ul>

The Kaduna State Public Procurement Authority and Lagos State Public Procurement Agency were assessed using the indicators. Interviews were also conducted with MDAs that are relevant to gender-responsive public procurement, such as the Ministry of Women’s Affairs, to further understand the broader institutional context.

1. EIEG,

## 8.1 LAGOS

### Lagos State Public Procurement Agency

A qualitative approach was adopted for the gender audit of the Lagos State Procurement Agency (LSPPA). This involved interviewing relevant personnel in the Agency. Those interviewed include the Coordinating Director, Head of Procurement, Head of Internal Procurement, Head of Monitoring and Compliance, Head of the Legal Unit, and a staff of the Legal Unit, and Contract Registration. In addition, persons from other relevant institutions were interviewed.

The agency, established under the Lagos State Public Procurement Law, 2011 commenced operations in 2012. It works within the ambit of the law that established it. In line with the requirements of the law, the agency seeks to ensure value for money, transparency, efficiency, fairness, probity, accountability, professionalism and ensuring equal opportunities to access government business across goods, works and services.

LSPPA is primarily a regulatory agency, providing oversight over procurement processes by different procuring entities in the state. All MDAs and the local governments are procuring entities. **Currently, there are 145 MDAs, 28 hospitals, 6 higher institutions, and 57 LGAs and councils.** Every procuring entity is an autonomous procurement agent regulated by the agency. Procurement entities are also disposing entities, and to ensure that standard procurement requirements are complied with, the agency provides procuring officers to different MDAs.

The agency provides guidance and stepwise approvals to ensure compliance with requisite procedures (including reviewing invitations to bid, relevant documents, manuals, financial guidelines, procedures and practices). It provides approval to publish invitations to bid and also provides award instruments. And importantly, it ensures that all necessary procedures are followed in the right manner. In 2020, 1118 public contracts were awarded.<sup>2</sup>

Aside the review of the law, policies and guidelines, the agency also undertakes staff management for all procurement officers. The agency registers vendors and certify them before they could get a contract under goods, works and services. Registration is structured into 10 classes, A—J, according to contract value and threshold, which rises, from below N500, 000 to over N50 billion, while fees are also structured according to categories of contract.

The categories reflect the operational capacity of vendors. Registration, done via the website, requires uploading relevant documents, including a certificate of incorporation, tax compliance document, etc. Vendors complete their registration under their desired class, upload the relevant documents and may seek further clarification using the hotline provided.



#### No Definition of Women-owned & Women-led businesses

### Gender Responsiveness

The consultant conducted an assessment of gender responsiveness in the agency. At present, there is no definition of women-owned and women-led businesses. Thus, there is no means of identifying them among the businesses registered with the agency or those that are successful in their bids.

Several officials of LSPPA understood the current gender issues in public procurement. However, in the light of the provisions of the law, there is a reluctance to fully adopt a gender-responsive approach.

2. LAGOS STATE PUBLIC PROCUREMENT AGENCY REPORT COVER.cdr (lagosppa.gov.ng)



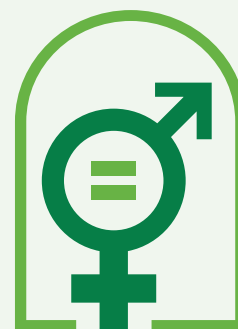
## Policies on Gender and Gender Mainstreaming

While there was an understanding of the need to improve the participation of women-owned and women-led businesses in public procurement in the state, there is no active approach towards gender mainstreaming. For instance, there is no internal policy on gender.

Lagos State has a positive approach to gender equality, reflected in the high number of senior officers across MDAs at the highest levels of permanent secretaries. However, it currently does not have a gender policy. However, related policies, such as maternity leave policies in the state, are applicable within the agency.

Gender mainstreaming is not a deliberate concern within the institution's objectives, programmes and budget. The agency focused strictly on complying with the law. It does not have an explicit commitment to promoting or achieving gender equality. However, officials opined that the state has a positive approach to gender equality, citing that many senior-ranking public officers are female.

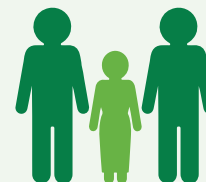
Despite this, the legal adviser emphasised the gender neutrality of the public procurement law and noted that the approach of the agency is also gender-neutral. The public procurement regulations are being reviewed, a development that presents an opportunity for addressing gender-responsiveness.



**No Active Approach**  
towards gender mainstreaming

## Gender Distribution

Regarding gender distribution, procurement officers were predominantly male, but there were a significant number of females. The challenge for gender balance lies at the level of governance of the agency, where there is no requirement for female board members, and there is only one female board member currently. The management level is also predominantly composed of men.



**Gender Distribution**  
predominantly male

## Other MDAs

In addition to engaging with the public procurement agency in Lagos State, the Consultant also interviewed respondents in key MDAs, namely the **Ministry of Women Affairs and Poverty Alleviation** and the **Lagos State Employment Trust Fund**.

### The Ministry of Women Affairs and Poverty Alleviation

The Ministry of Women Affairs and Poverty Alleviation acknowledged that affirmative procurement is crucial to its core mandate of women's economic empowerment. It has ensured affirmative procurement by engaging women-owned and women-led companies in business undertakings they can handle.

However, while making consistent efforts to engage women-owned and women-led businesses, there are no set guidelines that specify gender-responsive and affirmative policies in procurement.

The respondents noted that there are also supply-side challenges, such as women's limited risk-taking relative to men, poor representation in engineering and engineering businesses, limited financial capability preventing them from bidding at significant contracts events, and little knowledge of public procurement and its benefits. It must be noted that gender norms play a role in limiting women's public procurement.

### Lagos State Employment Trust Fund

**The Lagos State Employment Trust Fund (LSETF) was established by the Lagos State Employment Trust Fund Law, 2016, to tackle unemployment and promote entrepreneurship in Lagos State by empowering residents with job and wealth creation opportunities.** LSETF supports entrepreneurship by providing access to finance and markets, strengthening the institutional capacity of MSMEs and formulating policies designed to improve the business environment in Lagos State. It provides business support and business advisory support to non-tech business owners and access to markets for business owners. Market access also includes LSETF patronage and serving as its vendor, with nano, micro, small and medium-scale businesses as eligible beneficiaries. To promote visibility of products, LSETF sponsors booths at fairs and provides on-air slot opportunities, among others. It also offers digital literacy to beneficiaries, linking them to website developers, and promotes human capital development in the state through developing programmes on relevant skills for business.

**The Lagos Employability Support Desk at LSETF provides upskill for youth, aged 14-45, across sectors that demand particular skill sets such as hair making, fashion, etc.** It provides internships to support the technical know-how and work experience. It also promotes tech in Lagos through Lagos Innovates, which supports incubation, funding, development of networks and capacity building of tech start-ups, and access to infrastructures through the workspace provided.

Regarding gender equality, 66 per cent of LSETF successful loans and grant beneficiaries were females. Concerning gender-responsive public procurement, there is a deliberate drive to get LSETF beneficiaries to register with the Lagos Public Procurement Agency as vendors to participate in public procurement. The LSETF also supports beneficiaries with incorporation, and it aims to help 150 beneficiaries in that respect. It seeks to have at least equal representation of women applicants and supports them in completing their programmes. It also undertakes sensitisation to encourage the entrenchment of GESI within the organisation.

A draft inclusion policy for the LSETF is currently under review for approval.

### Conclusion

While Lagos State is notable for its empowerment of women across different spheres, there is, however, room for improvement in public procurement. Draft regulations are currently under consideration, which presents an excellent opportunity to consider addressing gender-responsive procurement. Some recommendations are outlined in the next section.

## 8.2 KADUNA

### Kaduna State Public Procurement Authority

The Kaduna State Public Procurement Authority (KADPPA) is established under the Kaduna State Public Procurement Agency Law. KADPPA is a regulatory body mandated to regulate all procurement activities in the state, including those of MDAs and local government authorities (LGAs). It reviews all the procurement processes: inception, needs assessment, development of procurement plan, no-objection certification, invitation to bid, award of contract, monitoring of implementation, and pre-payment certification.

In addition, the procurement authority handles capacity strengthening and provides advisory services in contract administration; sanctions erring contractors; undertakes administrative review and obtains feedback when there are complaints during the process; reviews property before MDAs' disposal; and conducts procurement audits.

Unlike in other states like Lagos, the procurement process in Kaduna State is centralised, with KADPPA participating through the Resident Due Process Committee meeting in every procurement process. It ensures that the process, costs, and award winner are suitable and appropriate, using key criteria that include accountability, transparency, value for money, fairness, and integrity.

The authority provides the requirements for vendor registration, including incorporation documents, three-year tax clearance and audited accounts for three years. MSME requirements are lower and include registration with the Corporate Affairs Commission (CAC) and SMEDAN. According to respondents, there are currently 800 registered vendors; however, while identifiable as SMEs, they are not categorised into women-owned or women-led businesses.

Prominent challenges in public procurement include gaps in the capacity of procurement officers and attrition, especially in the turnover of procurement officers in MDAs. Moreover, there are relatively few procurement officers to undertake all the work that KADPPA should do. However, the government is working towards increasing the number of procurement officers and institutions, such as the Kaduna State Polytechnic, provide procurement training that can help improve the number of procurement personnel.

There is also a challenge of low remuneration. KADPPA uses e-procurement to ensure transparency and, as a result, continuously improve its ICT facilities. Other MDAs may not have similarly improved internet access. Hence, payment for contracts is often slow—and delayed payments adversely impact small businesses.

### Gender Mainstreaming

It is recognised within KADPPA that the public procurement law needs to be more gender-responsive. For instance, while the law provides for affirmative procurement, it does not apply to historically marginalised groups such as women. At present, there is no definition of women-owned and women-led businesses. There is no way to identify these businesses among the ones registered with KADPPA or those that are successful in bids. The law does not provide affirmative action either.

However, officials of KADPPA, including its legal adviser, readily identified current gaps in the legal framework and expressed a positive attitude and intention to move towards gender-responsive public procurement. **This positive attitude has resulted in a fruitful effort: a draft policy.**



**No Definition**  
of Women-owned &  
Women-led businesses



**Gender Equality**  
is welcomed

### Policies on Gender and Gender Mainstreaming

KADPPA has no discernible gender policy. **But Kaduna State has a Gender Equity and Social Inclusion (GESI) policy (currently under review), and related policies, such as maternity leave policies, are applicable in the state.** Overall, the state welcomes the concept of gender equality. It has had female officers at the highest levels of public service, including the first female deputy governor in northern Nigeria and a significant number of female top government functionaries.

**KADPPA demonstrates a commitment to achieving gender equality in public procurement by developing the Draft Gender-Responsive Public Procurement Policy (2023).** The policy recognises the importance of gender-responsive public procurement. The policy applies to all entities procuring goods, works and services under the Kaduna State Government. The objectives of the Gender-Responsive Public Procurement Policy are to increase the percentage of public tenders won by women-owned businesses and women-led cooperatives and to reserve a portion of goods (10 per cent), services (10 per cent) and works (5 per cent) contracts for women-owned and women-led businesses across all government procurement activities.

The Policy identifies the barriers preventing women-owned and women-led businesses from participating in public procurement. It further sets out measures to address the obstacles. These include providing a definition of women-owned and women-led businesses, establishing preferential treatment for such women businesses and cooperatives, establishing a gender desk in KADPPA to address issues related to gender in the organisation and prioritising payments to women-owned and women-led businesses and SMEs, among others.

It also establishes an institutional framework for implementing the draft policy and provides a monitoring and evaluation mechanism to entrench gender-responsive public procurement.

The draft policy is a significant step in the right direction, entrenching these provisions in the state and supporting KADPPA's implementation of a gender-responsive approach to regulating procurement in Kaduna State. Finalisation of the draft policy is crucial and the full implementation after that is essential.



**9 Female Staff only**  
out of 54 KADPPA staff

### Gender Distribution

**KADPPA has 54 staff, of which only nine are women**—a severe imbalance that requires attention. The Kaduna State Public Procurement Law provides for at least one woman on the board, indicating some attention to gender at the governance level. At the management level, there is one woman. Ensuring more female representation at board and management levels is essential.

## Other MDAs

In addition to engaging with the public procurement agency in Kaduna State, the Consultant also interviewed respondents in key MDAs, namely the Kaduna State Enterprise Development Agency and the Kaduna State Ministry of Human Services and Social Development.

### Ministry of Human Services

The Kaduna State Ministry of Human Services and Social Development supports women's economic empowerment via various initiatives, including providing linkages between government agencies and women-owned and women-led businesses; gender-based violence (GBV) response (including counselling, changing economic abuse, prosecuting sexual violence, economically empowering women in the past); menstrual poverty programmes; and women economic empowerment initiatives (such as loan applications for business expansion with World Bank support). It has also hosted the Women's Economic Summit, a conference for women-owned and women-led businesses in previous years. The Department of Cooperatives is also domiciled in the ministry.

The ministry has a database of women's associations registered with the state government. The database provides an avenue to reach women-owned and women-led businesses regarding gender-responsive public procurement. Collaborating with the KADPPA and KADEDA, the Ministry of Human Services can help facilitate engagement with women-owned and women-led businesses. **Notably, the ministry supported the implementation of the Kaduna State Women Empowerment Funds (KADSWEF), an initiative backed by the state and with matching funds from the Bank of Industry, which provided loans to female beneficiaries engaged in small-scale enterprises.** The ministry engaged business development service providers to train the women on ideation and business plan development. It further supported women entrepreneurs with basic essential registration (including NIN and BVN) and getting sureties and guarantors.

The interview with respondents from the ministry identified the need to ensure that strategies for gender-responsive public procurement are more than merely superficial. In this regard, there is a need to ensure that bidding businesses also practice gender equality internally.

Furthermore, there is a need for demand creation, that is, to get women-owned and women-led businesses to start bidding, which requires addressing issues in gender norms and socialisation, such as risk-taking.

### Kaduna State Enterprise Development Agency

The Kaduna State Enterprise Development Agency Law, 2022 established the Kaduna State Enterprise Development Agency (KADEDA) with functions that include:

- Promoting MSME development by creating
- Stimulating and galvanizing an enabling environment for business
- Reviewing loan proposals and selecting winners
- Providing financial advisory services
- Connecting MSMEs with suitable partners and government agencies locally and internationally<sup>3</sup>

**KADEDA currently provides access to finance and business development services to MS-**

3. Section 11 (a) of the Kaduna State Enterprise Development Agency Law.



## 9. CONCLUSION

**Gender-responsive public procurement holds the promise of economic empowerment for women in Nigeria.** Nigeria has committed to gender equality in its constitution and international law. Moreover, more recently, the government has established the National Gender Policy, which recognises procurement as an issue of empowerment and calls for greater access for women.<sup>1</sup>

**As discussed earlier, there is a good case for gender-responsive public procurement from human rights and economic development perspectives. Yet from the assessment undertaken, employing the indicators identified, the legal and policy framework at the national level and in Kaduna and Lagos states must be revised.** They demonstrate a gender blindness that does not acknowledge that women-owned and women-led businesses have significant disadvantages in participating in public procurement.

Different jurisdictions have recognised the economic value and power of public procurement to level the playing field for women and men and accordingly established legal and policy frameworks that acknowledge this in different ways, as explored in the desk review. Nigeria would benefit from the good practices identified in the jurisdictions reviewed, particularly the African countries, Kenya and South Africa. Such practices include preferential treatment in the form of quotas and lower thresholds for participation and definition of women-owned and women-led businesses.

**To institutionalise these good practices, they must be accommodated in the legal framework at the national level and in Kaduna and Lagos states,** which requires amendments to the law to ensure affirmative action for women-owned and women-led businesses. There are various options for legal intervention. One of these is an amendment to the procurement act at the national level, and the public procurement law of Kaduna and Lagos states.

Another option would be the development of regulations under these laws through which the necessary changes would ensure gender-responsive public procurement. Executive orders are yet another option employed regarding public procurement provisions at the federal level. Another option explored in Kaduna State is the establishment of a policy on gender-responsive procurement. Since the Kaduna State Public Procurement Law empowers KADPPA to develop and institutionalise policies, any such policy would have the backing of the law.

Each of these options has advantages and disadvantages that must be considered before choosing what vehicle would best support the implementation of a gender-responsive approach to public procurement.

### Recommendations for the Public Procurement Agency (Federal)

It is recommended that regulations be established to support affirmative procurement. Alternatively, an executive order promulgated by the President may suffice. Whichever vehicle is chosen, key indicators for gender-responsive public procurement, as identified in this report, must be provided for, including:

- Utilising inclusive language in public procurement law
- Establishing a database for women-owned and women-led businesses
- A margin of preference for women-owned and women-led businesses
- Ensuring that gender-related considerations are provided in procurement documentation and specification
- Targeted assistance or strategies for women-owned and women-led businesses

1. Federal Republic of Nigeria, National Gender Policy, 2021-2026, p.37.

- The definition of women-owned and women-led businesses and reservation of a certain percentage for them to enable them compete favourably in the public procurement process
- Waiving difficult requirements and prequalification requirements such as providing for only one-year tax returns for women, women-owned and women-led businesses, and audit reports of one year only
- Establishing a quota for women-owned and women-led businesses
- Increasing the number of women in procurement boards and agencies (this will require an amendment of the law and cannot be provided for in regulations or executive orders)
- A bid declaration that allows women-owned and women-led businesses to participate without the condition of bid guarantee or bid bond
- Ensuring that the technical and professional qualification requirements of bidders or suppliers are gender-responsive. This requires ensuring that bidders' eligibility is based on their implementation of gender equality in their organisations
- Measures to monitor compliance with procurement laws among procuring entities and officers

Overall, these amendments will ensure the provisions of procurement laws are not gender-neutral but gender-responsive and gender-sensitive. The economic and socially desirable advantages of improving women's participation in public procurement will benefit not only women and other MSMEs but also Nigeria's economy.

### **Kaduna and Lagos States Public Procurement Laws**

Regulations, policies or executive orders signed by the Governor are recommended as to make procurement bodies in Kaduna and Lagos effective at implementing affirmative procurement. Whatever vehicle is chosen, key indicators for gender-responsive public procurement as identified in this report must be provided for, including:

- Utilising inclusive language in public procurement law
- Establishing a database for women-owned and women-led businesses
- A margin of preference for women-owned and women-led businesses
- Ensuring that gender-related considerations are provided in procurement documentation and specification
- Targeted assistance or strategies for women-owned and women-led businesses
- The definition of women-owned and women-led businesses and reservation of a certain percentage for them to enable them compete favourably in the public procurement process
- Waiving difficult requirements and prequalification requirements such as providing for only one-year tax returns for women, women-owned and women-led businesses, and audit reports of one year only
- Establishing a quota for women-owned and women-led businesses
- Increasing the number of women in procurement boards and agencies (this will require an amendment of the law and cannot be provided for in regulations or executive orders)



- A bid declaration that allows women-owned and women-led businesses to participate without the condition of bid guarantee or bid bond
- Ensuring that the technical and professional qualification requirements of bidders or suppliers are gender-responsive. This requires ensuring that bidders' eligibility is based on their implementation of gender equality in their organisations
- Measures to monitor compliance with procurement laws among procuring entities and officers

It is also crucial to support the public procurement agencies in Kaduna and Lagos states in gender mainstreaming at an institutional level. This support includes ongoing training on gender-responsive public procurement, a gender-responsive governance structure, more female procurement officers, including at the management level and a gender desk to address issues relating to gender within the organisation, amongst others. The institutional review provided information on other MDAs that can support the work of public procurement agencies. Collaboration and engagement with these MDAs, as well as ensuring that they also receive the necessary training in this area, will also be helpful.

### Recommendations: Kaduna State

The recommendations for Kaduna State are as follows:

- **Finalisation of the Draft Policy on Gender Responsive Public Procurement:** The draft policy is a significant step in the right direction. It must be finalised to guide the agency on gender-responsive public procurement. Key provisions prescribed in the draft policy, such as preferential treatment, development of gender desks in the agency, and prioritising payments to women-owned and women-led businesses and SMEs, amongst others, should be implemented.
- **Strategic plan development:** To put the policy into actionable framework, it is necessary to develop a strategic plan to support its implementation. The Consultant has developed a draft strategic plan for the review of the state.
- **Collaboration with relevant MDAs:** There are several relevant MDAs whose support will assist in realising gender-responsive public procurement. This includes the Ministry of Human Services, KADEDA, BTI and the Ministry of Finance. These MDAs can work collaboratively on sharing information and supporting KADEDA and KADPPA in developing a comprehensive database, capacity building, and access to financing for women-owned and women-led businesses.
- **Strengthening KADEDA:** KADEDA requires strengthening to understand the gender aspects of MSMEs.
- **Continued capacity building for the Agency:** Procurement officers of the agency will benefit from continued capacity-building on gender-responsive public procurement.
- **Capacity building for procuring entities:** For effective implementation of gender-responsive public procurement and the forthcoming policy, there is a need to build the capacity of procuring entities of other MDAs and LGAs on gender-responsive public procurement.
- **Gender balance in the agency:** The significant gender imbalance in KADPPA needs to be remedied by training more females in procurement, publicising opportunities widely, and offering scholarships to create a pool of qualified female procurement specialists. Scholarships can be established for females to study procurement and supply chain at Kaduna State University and Kaduna State Polytechnic to solve the challenge of recruiting qualified females.
- **Governance:** It is recommended that the law be amended to require more than one woman on the board. It is necessary to improve women's participation at the management level through deliberate efforts to engage women at that level.

- **Active network for women entrepreneurs:** There is a need to develop, revive or stimulate networks of women entrepreneurs and sensitise them on affirmative procurement. Respondents suggested that women entrepreneurs should be brought together to present a formidable advocacy front for matters concerning women-led businesses. The networks will serve as a platform for women's sensitisation and training on public procurement, its benefits and how to participate. Networks such as WIMBIZ can be utilised to support affirmative procurement.
- **Addressing broader gender barriers:** There is a need for broad macro approaches such as improving women's and girls' education (especially in STEM) and addressing language, socialisation and gender norms barriers. Addressing these barriers will help address supply-side issues in the long term.
- **Sensitisation and capacity-building:** There is a need to sensitise women-owned and women-led businesses on gender-responsive public procurement by training them on e-portal usage, computer appreciation skills, digital skills, registration requirements, regulatory compliance and other related matters.

### Recommendations: Lagos State

The recommendations for Lagos State are as follows:

- **Capacity-building:** Respondents noted the need for training on gender-responsive procurement and other aspects of procurement. MDAs and other procuring entities should also receive training on gender-responsive public procurement.
- **SME support:** Affirmative actions would reduce regulatory requirements for SMEs, especially those in Class A to C. It will also help LSPPA to capture contracts awarded to SMEs. There is a need to sensitise and educate SMEs in the state (especially those owned and managed by women) on the benefits of registration and the procedures for registration. MDAs and other procuring entities should also receive training on gender-responsive public procurement. LSPPA should also collaborate with LSETF to come into procurement.
- **Regulations:** Advocacy for gender-responsive and affirmative provisions is essential now that regulations are being developed.
- **Monitoring:** The monthly activity report template in the monitoring framework of LSPPA should be gender-sensitive.
- **Active network for women entrepreneurs:** There is a need to develop, revive or stimulate networks of women entrepreneurs and sensitise them on affirmative procurement. Respondents suggested that women entrepreneurs should unite to present a formidable advocacy front for matters concerning women-led businesses and network more effectively to serve as a platform for women's sensitisation and training on public procurement. Networks such as WIMBIZ can be utilised to support affirmative procurement.
- **Governance:** In addition to addressing the gaps in gender sensitivity and responsiveness within the law regarding women's participation on the board, it is necessary to improve women's involvement at the management level through deliberate efforts to engage women at that level.
- **Supply side:** On the supply side, much of government's procurement was infrastructural. Few women are involved in infrastructural development or construction businesses, indicating a need to improve women's involvement in such enterprises, starting with education and employment. Sensitisation of women-led and women-owned businesses is therefore essential. Engagement with the Ministry of Women's Affairs is

also important. It is also critical that businesses owned and managed by women are supported to ensure high-quality delivery of the projects.

- **Sensitisation:** Reorientation and sensitisation for women-owned and women-led businesses is necessary. Such reorientation may include training on gender norms, advocacy, empowerment in other ways, and skills acquisition.
- **Partnership between LSPPA and LSETF:** The partnership between both bodies will support SME registration with LSPPA, facilitate sensitisation of SMEs on public procurement, and provide access to the LSETF database of beneficiaries.
- **More chartered female procurement specialists needed:** Efforts should be made to support women going into procurement as a specialisation. Specialisation in STEM subjects in the state should be encouraged through scholarships and internship opportunities.

### Adoption of Gender Policy:

Lagos State needs to adopt a gender policy modelled on the National Gender Policy, 2021.

More broadly, it is critical to recognise the need to support businesses owned and managed by women to take advantage of opportunities. Lessons from other jurisdictions like Kenya suggest the development of a fund, preferably within a legal framework, to provide access to funds to support the financial capacity of women-owned and women-led businesses to bid.

In addition, it is crucial to adopt a strategy for gender-responsive public procurement. Such will detail strategic outcomes and actions that will enable and support the implementation of the revised laws, regulations or policies on public procurement. Recent consultations on such a strategy have yielded other recommendations, as outlined below:

- Support with incorporation processes, including support with payments at state level
- Federal, Kaduna and Lagos procurement agencies should provide discounts on registration fees for businesses owned and led by women
- Specific contracts (e.g., contracts less than N100 million) can be open only to women owned or women-led business
- Advocacy is necessary to address other requirements such as tax levies for women-owned and women-led businesses
- A high-advance payment should be made to women-owned and women-led businesses that succeeded in bids to carry out contracts. This should be considered in the amendment to the law or in the regulations
- Payments should be made in a timely fashion after the execution of contracts
- Women-owned businesses should be encouraged to undertake contracts that requires RFQ
- PPA adverts should be placed in areas that are not traditional and which have a heavy traffic of women.
- Giving priority through margin of preference to women-owned and women-led businesses during the evaluation stage
- Educating women on how to receive bank loans and APGs
- Training on soft digital skill on e-procurement

- Simplifying contracting process by amending the law and policy documents
- Giving priority to women in business during emergency procurements
- Encouraging big contractors to subcontract to women-owned and Women-led businesses via the annual stakeholders' forum
- Adverts should state emphatically that women-owned businesses can apply
- Giving women-owned businesses waivers for public procurement contracts
- PPA to do sensitisation and enlightenment to ensure that the procurement process is easy and doable
- Earmarking a percentage of contracts going to SMEs for women-owned and women-led businesses

Several of these recommendations require a review of the existing procurement laws to ensure their practical implementation and sustainability.

Finally, a combination of review of existing laws and policies, institutional strengthening and collaboration, and addressing the capacity of women-owned and women-led businesses to take advantage of public procurement opportunities is critical to implementing gender-responsive public procurement.

A gender marker and monitoring tool and an annual report on gender responsiveness are also identified as best practices supporting gender-responsive public procurement. These will provide an evidence base for advocacy and, hopefully, increase action towards gender-responsive public procurement.

