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Friday, August 4, 2023

His Excellency, Babajide Sanwoolu
Governor, Lagos State,
Secretariat,
Alausa, Lagos

Dear Sir,

OPEN LETTER ON CERTAIN OPERATIONS OF THE PUBLIC PROCUREMENT AGENCY (PPA)

May I draw your attention to the attached document which has been widely reported in the press and the subject of much discussion in the public domain recently. My views on the general subject matter of the proposed mass burial have been communicated in a separate message to Lagosians and accordingly, is not the focus of this communication. Rather, this letter addresses certain aspects of the operations of the PPA that are evident from the leaked letter which, in my opinion, reveal a fundamental weakness.

The letter in question, is from the PPA to a procuring entity, in this case, the Ministry of Health. In conveying its "no objection" ruling on the request by the procuring entity, the PPA makes a demand for an admin fee that is allegedly payable to it. This admin fee is set at a percentage of the value of the contract being reviewed and is to be deducted at source and paid over to it or, in the alternative, may be paid directly to the PPA by the contractor before any payments are made by the procuring entity to the contractor. Authority for this arrangement is cited as being drawn from a circular by the head of service of the State.

Mr. Governor, participation in such an arrangement by the PPA should be seen as wholly inappropriate and likely to undermine the very purpose for which the PPA was established. It is also not supported by the provisions of the Public Procurement Law that establishes the PPA and that guides its operations.

The following points are relevant in this regard:

1. The PPA, by statute and intent is, among other functions, expected to perform independent reviews of the procurement activities of organs of Government. A key purpose of these reviews is to provide assurance of propriety in the procurement process, ensuring value for money and the protection of public interest.

2. The PPA law makes provision for a Governing Board, organizational structure and funding arrangements for the PPA, which are intended to promote the objectivity that its mandate requires. In this regard, Funding of the PPA is expected to be by first line charge appropriation in the budget approved by the house of assembly. There is no provision in the enabling law for an admin fee to be paid to the PPA by procuring entities.

3. Good practice the world over requires that, to avoid unresolvable conflicts of interest, entities that render assurance, review or audit functions should not receive compensation, the amount of which is contingent on or determined by the outcome of their review work.

4. The purported admin fee arrangement contradicts this basic principle as it creates a self-interest incentive for the PPA that materially impairs its organizational objectivity. As a result of this admin fee arrangement, rather than being in a neutral position, the PPA is more incentivized to approve rather than question or disapprove requests, and perversely, the higher the contract sum, the greater the revenue that accrues to the PPA.

5. It is not clear what provides the legal basis for the referenced circular by the Head of Service that supposedly authorizes this arrangement.

6. It should be noted that some of the foregoing points may also relate to the Ministry of Justice, which according to the PPA's letter is also purportedly entitled to a share of the contract sum.

Mr. Governor, I hereby call on you to review and terminate this arrangement forthwith, as it is, in my view, inappropriate and inconsistent with the intent of the enabling law and the interest of the people of our great State.

Yours Faithfully,

Funso Doherty.

Cc: Rt. Hon Mudashiru Obasa, Speaker, Lagos State House of Assembly
Mr. Fatai Idowu Onafowote, Director – General, Lagos State Public Procurement Agency