

Public Procurement Process: Global Practices and the Nigerian Experience

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Abstract

Public procurement has evolved as a powerful tool to deliver public goods and facilitate economic development. Sustained interest in public procurement gained momentum in the 1990s as governments at all levels came under increasing pressures to provide more public goods with less resources. Indeed, all governmental entities are struggling in the face of unrelenting budget constraints; increased demand for transparency in public procurement; and greater concerns about efficiency, fairness, and equity. A World Bank Country Procurement Assessment survey conducted in 1999 established a strong link between ineffective public procurement process and corruption. The survey also established the negative impact of defective procurement process on national development. Against this backdrop, governments world over are devising means of improving on their public procurement operations and processes.

The case of Nigeria is not an exception. In a bid to develop its procurement process, the Nigerian government enacted the Public Procurement Act (2007) [1] which provides legislative framework for operationalisation of public purchase. However, the procurement process remains ineffective, thus, impinging delivery of public goods. In this brief, we examined operation of public procurement in Nigeria within the context of some international guidelines, principles and best practices. Also, recommendations bordering on improving the efficiency of public procurement procedure were offered. In all, the urgent need to constitute the public procurement council and the imperative to strengthen Nigeria's budgeting system cannot be overemphasised.

Introduction

Public Procurement has undoubtedly become an increasingly important factor in economic and business spheres globally. According to the World Bank Report: Benchmarking Public Procurement 2017, [5] "public procurement market is vast, and the range of economic sectors it encompasses is as wide as the needs of governments to function properly and deliver value added services to their citizens." Therefore, the underlying objective of public procurement in most countries remains to promote healthy competition, create value for money and ensure economic growth and development. This indicates the strategic importance and role of public procurement.

In the European Union (EU), public procurement framework or guidelines are domesticated and embedded in national legislations. These provisions compel member nations to patronize indigenous companies or organisations within the EU, before considering options outside the region.

This is expected to foster healthy competition and ensure value-for-money in the public procurement process. United States with annual public expenditure of about US\$500 billion worth of products and services, practices procurement process that prioritises value delivery rather than budget centred. At both the federal and state levels,

acquisition processes undergo competitive bidding with preference to the local providers of the same or similar goods and services.

This brief, therefore, seeks to decipher the bottlenecks in operationalisation of public procurement in Nigeria by examining what is obtainable in other climes with the aim of articulating necessary lessons and practices. While accounting for country specifics, the brief also accentuated inferences that would enhance the Nigeria procurement process going forward.

Global Frameworks: Making Public Procurement Fit for Purpose

The overriding global procurement policy requirement attests to the need for all public procurement to be based on competition to ensure and promote value-for-money. Efficient public procurement rides on healthy competition. Public sector procurement is subject to a legal framework which encourages free and open competition and value for money in line with internationally and nationally agreed obligations and regulations. Globally, governments often align their procurement policies with globally acceptable legal frameworks, namely the Government Procurement Agreement (GPA) from the World Trade Organization (WTO) and the United Nations Commission on International Trade Law (UNCITRAL). Public procurement guidelines developed by the World Bank or development finance institutions, including multilateral regional development banks are also increasingly influential in achieving a sustainable public procurement process. In what follows, we review global experiences and best practices in public procurement.

European Union

The European Commission report on Sustainable Public Procurement (SPP) states that public procurement is governed by the EU Public Procurement Directives which are then transposed in legislations. These laws specifically ensure member nations patronize indigenous companies or organisations within the EU, especially in products where they have comparative advantages, before exploring other options outside the EU. This is to promote healthy competition and ensure value for money in the public procurement process. The Member States at the national government level are required to adhere to sector-specific EU laws and act upon mandatory requirements of the SPP. Definitions and verification techniques are also provided as a form of regulation to ensure strict adherence by member states. The EU SPP legislative framework is one of the most elaborate in the world. The extent to which SPP is integrated into the core public procurement, legal or regulatory structure affect the outcomes of practices. Many countries, regions or local governments in the EU took a first step towards adopting SPP policies through Agenda 21 that was adopted in Rio in 1992.

Afterward, SPP has been on the front burner of sustainable development discourse. At the World Summit on sustainable development in 2002, SPP was featured as one of the means to achieve sustainable economic development.

United States of America

Public procurement in the United States is estimated at US\$500 billion worth of products and services annually. It is, thus, regarded as the largest public expenditure in the world as contained in the U.S. Federal Government

Procurement and Innovation [4]. Public procurement is carried out at two levels, namely the federal level and state levels. Strong relationship has been established between competition and value-for-money in the United States to the extent that procurement process and the regulation binding on all federal agencies is the Federal Acquisition Regulation (FAR). FAR clearly stipulates that the acquisition process must undergo competitive bidding with preference to the local providers of the same or similar goods and services. In most situation, state governments, though not under compulsion, operate procurement process that mirrors FAR. Besides FAR, the other important controlling documents are the Office of Management and Budget (OMB) Circulars and Memorandum issued from time to time with the aim of promoting economic effectiveness and efficiency. More so, US budgetary system supports efficiency in public procurement in creating and delivering public value. To this end, public expenditure, in particular capital spending, is usually implemented substantially in each fiscal year.

South Africa

Public procurement in South Africa rests on five core principles/pillars, namely value for money, open and effective competition, ethics and fair dealing, accountability and reporting, and equity. This is contained in the Institutional Legal Structure for Regulating Public Procurement [2] guidelines issued by the government. The guideline represents not only a prescription of standards of behaviour, ethics and accountability, but a statement of the government's commitment to a procurement system which enables the emergence of sustainable micro, small and medium enterprises promote common wealth of the country and social well-being. This guideline is an essential test against which procurement outcomes are justified as price alone is often not a reliable indicator. The

guideline states that procurement organisations, whether centrally located or devolved to individual departments, must always avoid any unnecessary costs and delays for themselves or suppliers; monitor the supply arrangements and reconsider them if they cease to provide the expected benefits; and ensure continuous improvement in the efficiency of internal processes and systems. The Office of the Chief Procurement Officer in South Africa oversees the procurement process. This effective coordination has improved procurement process and increased capex spending significantly.

Ghana

In Ghana, the government has made great strides to reform its public procurement system holistically by tackling underlying issues affecting performance, such as patchwork legal framework, weak civil service system, and lack of access to information for civil society partners and the public. This led to the enactment of the Public Procurement Act in 2003, laying the foundation for a standardized procurement system that takes into account the country's decentralization and creating value for money as well as local industry development policies.

The Act recognises the Public Procurement Board as the central entity charged with harmonizing policy and ensuring efficient and transparent procurement carried out by the Public Procurement Authority (PPA).

Ghanaian procurement process has gained global recognition. The West African country is an active member of international procurement networks such as the Task Force on Procurement and the Marrakech Task Force on Sustainable Procurement. The Ghanaian government recently partnered with the government of Switzerland to develop sustainable public procurement policies and practices and also sits on the

advisory committee to the World Bank on procurement reforms. More so, public procurement is not government's sole business in Ghana, the civil society also provides essential input and oversight to national procurement functions. In 2003, the World Bank expressed strong optimism that public procurement reforms in Ghana will culminate in annual savings of about US\$150 million through better management of government-financed procurement.

India

In India, it is mandatory for government procurement policy to obtain best value-for-money by promoting effective competition among suppliers and providing incentives for integrity in the procurement chains. The rationale is that procurement activities and operations have a direct effect on market behaviour. In this view, procurement and distribution activities could be used to stimulate and promote local manufacturing and production capacities, set benchmark prices in essential goods and services, prevent artificial scarcities arising from hoarding, and provide support to priority sectors for becoming more competitive and export oriented. The importance of public procurement in India is becoming increasingly vital as these measures are not only undertaken to serve the purpose of immediate interests but also keep the long-term objectives of boosting India's economy.

Factors Affecting Public Procurement in Nigeria

The Nigerian public procurement system is still in its relative development stage given that the legislation regulating government contracts is still not fully utilized to achieve its overarching objective. Despite the passage of the Public Procurement Act (2007) and the establishment of a procurement cadre in government ministries, departments and

agencies (MDAs), the procurement system is still characterised by inefficiency, official misconduct, indecent behaviour, irregularities, corruption, red tape among others. The Public Procurement Act has, however, assisted in creating a system in which international best practice in procurement may thrive. The Act provides for the use of competitive procurement methods, allows formation of new institutions to monitor and direct public procurement, supports transparency and offers a system of supplier remedies through administrative review of procurement decisions. Despite these provisions, multi-dimensional challenges subsist in true practice. Few of these are highlighted.

Nigeria's Budgeting Process is Inimical to Effective Public Procurement

One of the major challenges being encountered in Nigeria's procurement process is the late passage of the annual national budget. National budget is often passed at the end of first quarter or even more in some cases. Even when budget is passed, financial releases for capital expenditure, especially, foot drags. The implication is that MDAs are usually put under undue pressures to start and conclude their yearly procurements within a short period so as to avoid their budgetary allocation being mopped up. Also, the mismatch between budgetary appropriations and the actual release of funds inhibits procuring authorities from meeting financial obligations to contractors. In some cases, procuring authorities had to cancel awarded contracts or divert funds from other sources when it became clear that the government was not going to release sufficient funds. The current administration is seemingly committed to sound procurement principles and the development of a procurement system that meets the requirements of international best practice. However, absence of clear

ownership among implementing MDAs is negatively affecting the procurement ecosystem.

Bureaucracy in the Procurement Process

In the Public Procurement Act (2007), there is a clear distinction between statutory responsibilities of the Ministers and that of the Permanent Secretaries. Ministers are political heads while the Permanent Secretaries are considered as administrative head in the ministries.

Despite this clear provision which allows checks and balance among the rank and file, Nigeria's political landscape allows ministers dictate procurement procedures sometimes even awarding contract to companies directly owned by the ministers or their cronies thereby undermining the legitimacy and statutory responsibilities of the real accounting officers. The involvement of politicians in the procurement process is a serious problem that deserves urgent attention to prevent Nigeria's nascent procurement system from further executive abuse. The overbearing influence of politicians in the procurement process is responsible for the avalanche of uncompleted high profile projects scattered across the country. Even in cases where physical projects are completed, there is substantial cost and time overrun tied to it.

Lack of Harmonised Structure of the Public Procurement Cadre in the Federal Civil Service

The present inefficient and ineffective structure of the Public Procurement Cadre in the Civil Service poses a major challenge to the procurement process. Presently, some MDAs still conduct their procurement activities in the Department of Policy, Research and Statistics (PRS), contrary to the provisions of the Public Procurement Act. This is mostly because of lack of clarity from the

Office of the Head of the Civil Service of the Federation as to whether the public procurement cadre and officers should be transferred to the Bureau of Public Procurement (BPP). Though postings of procurement officers in the civil service has been transferred to the BPP, implementation is still challenged.

Non-Constitution of National Council on Public Procurement

Despite repeated calls and appeals by concerned stakeholders, the federal government is yet to inaugurate the National Council on Public Procurement, whose membership are statutory and obvious. In line with the provision of the Public Procurement Act (2007), the powers and responsibilities of the Council are critical to the activities of the BPP and practice of public procurement. In the absence of the Council, BPP has commendably tried to close the operational gap created by the absence of the Council, nevertheless inauguration and operationalisation of the council is sacrosanct to give effective procurement coordination. This obviously constitutes a hindrance in the effective implementation of public procurement process.

Policy Options for Enhancing Nigeria's Procurement Process

Perhaps the Public Procurement Act (2007) is excellent in letter, however, procurement process is not only a matter of sound legislative provision. The end game which is to deliver sustainable public goods in an efficient manner. This tangible dividend of good governance could only be achieved if there is a sincere political will rooted in efficiency in practices complemented by effective coordination. By way of illustration, allocating N2.2 trillion to capital spending in the 2017 budget can only attain substantial implementation if necessary steps are taken to reform the procurement process.

In the near-to-medium term, we offer following policy options

Harmonize Structure in the Civil Service Procurement Cadre

The lack of harmonized structure in the public procurement cadre in the civil service continues to pose as a challenge to achieving the core objectives of the procurement process in Nigeria. The current structure has proven ineffective and needs to be urgently addressed to promote transparency and accountability in the process.

Eliminate Bureaucracy and Fast Track Budget Process

To ensure that the public procurement process in Nigeria is more effective to deliver its mandate, there is need for the government to fast track the current budget process to enable procurement officers to make better procurement plans and also see to the implementation of the plan within timelines/budget cycles. This will also help to reduce and possibly eliminate the challenge of bureaucracy in the process as politicians currently take undue advantage of the ineffective process for selfish interest to the detriment of the good of all and sundry.

Constitute the National Council on Public Procurement

The non-constitution of the National Council on Public Procurement as provided by the Act of 2007 has remained a major hindrance in the procurement process in Nigeria. In fact, there is a widespread climate of mistrust among firms, contractors and the government. Unfortunately, firms are reluctant to file complaints of gross misconduct based on fear of being reprimanded. The Act provides for the establishment of the National Council on Public Procurement (NCPP) as regulatory authority responsible for the monitoring and oversight of public procurement, harmonizing existing government policies and practices. It is believed that if the Council is properly constituted, it will oversee the entire process and thus reduce corruption in the public procurement. Composition of the Council at this time of expansionary capital votes will be quite remarkable, it will instil confidence in the system and fast track the delivery of public goods.

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