

The role and responsibilities of civil society organizations in transparent public procurement process in a developing democracy

Dr. Nicholas Ngozi Igwe, JP, MNIM, MIMC

Dept. of Business Management

Godfrey Okoye University

Thinkers Corner Enugu

E-mail: ngozinick@yahoo.com

Phone: +234-08038726688

Abstract

An active civil society organization is the realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state and bound by the legal order or set of shared values. It serves to check the excesses of government and its officials in power, human rights violation and monitoring of the application of constitutional provisions like transparent public procurement procedures. This paper advocates that an active civil society organization should insist on transparent public procurement procedures with regular audits by external parties. It recommends that procurement rules should minimize secrecy, guarantee access to information, ensure that bidding documents, procedures, evaluations and awards are publicly and timely available. In that way, regulatory institutions are strengthened and emerging democracies evolve to yield rewarding and sustainable dividends.

Introduction

As one of the largest democracies, Nigeria's socio-economic development and political affairs have always been of special interest to the rest of the world. The country has fared very poorly in many indicators of economic and social development on just about any metric used since the 1980s, inspite of having earned over 200 billion US dollars from oil. Its income per capita of 955.0 dollars is below the 3,797 dollars for oil

producing countries and below the 2,076 dollars for all developing countries (World Bank, 2003). On all fronts, according to the World Bank reports, the coefficient indices for any modicum of development remain abysmal: life expectancy is in the decline, poverty rages on, death, despair and destruction haunt the nation from incessant terrorism as a result of political intolerance and religious violence. To make the matter worse, infrastructural

designs and development are in serious decay. The country has not done well in keeping her citizens out of poverty or in distributing income among its people equitably. Poor management of the entire national human capital and natural resources between 1966 and 2000 is largely to blame. Drucker (1979:12) very aptly remarks: "It can be said without too much oversimplification that there are no underdeveloped countries, there are only under-managed economies".

Compared with other African nations and Asian Tigers, especially Indonesia which is comparable to Nigeria in many respects, economic development in terms of development projects through transparent public procurement has not been very successful. Corruption, a cankerworm in the land has not spared the domain of public procurement, corruption in procurement affects the efficiency of public spending and development partners' resources, ultimately affecting the quality of goods and services arising from such contracts. With a Gross Domestic Product (GDP) of 45 billion dollars in 2001 and per capita income of about three hundred (300) dollars a year, Nigeria has become one of the poorest countries in the world (National Planning Commission, 2004: 7-9).

As at 2000, Nigeria had earned 300 billion dollars from crude oil exports since the mid-70s but its per capita now stands at twenty (20) percent lower than that in 1975. So inspite of the enviable natural resource endowments, the country has been unable to utilize the proceeds from oil successfully to reduce

poverty by initiating and executing development projects through transparent public procurement initiatives. Many development experts at different fora have fingered the high incidence of corruption in the system as our Achilles' heel. The heart-rending matter is that in spite of the efforts by the immediate past administration of Yar'dua and Goodluck (2007 – 2011) at rebranding Nigeria, the incontrovertible truth is that Nigeria's policy makers, development project planners and managers have done little to bring real development to the country. Little wonder then, Nigeria is today rated in the comity of nations as one of the poorest countries in the world. It is as if the country is still groping in the dark, which could be likened to a barber's seat: all motion yet no movement. Civil society is an ethical ideal of the social order that harmonizes the conflicting demands of individual interests and social good. Civil society refers to the arena of uncoerced collective action around shared interest, purposes and values. In theory, its institutional forms are quite distinct from those of the state and market. In practice the boundaries between state, civil society and market are often complex, blurred and even negotiated (www.cse.ac.uk). Civil society seeks to operate independently of the local, state and national governments where it operates and functions. It functions to check the excesses of government and its officials in power, human rights violations and monitoring of the application of constitutional provisions. Against the following backdrop this paper shall

attempt to explain what a contract, procurement, public procurement and the concept of civil society organizations are. The paper presents the benefits of civil society organizations. It also examines different stages of public procurement highlighting the existence of corruption in the process. Finally the paper presents the role and responsibilities of civil society in curbing such prevalence.

Conceptual Framework

A contract is a formal agreement between two parties wherein one party (the contractor) obligates itself to perform a service and the other party (the client) obligates itself to do something in return, usually in the form of a payment to the contractor (Gray and Larson, 2008:413). For instance, a microfinance bank in Nigeria contracted with a consulting firm to reprogram segments of their information system to conform to MS Vista. In the dictionary part of Business, the Ultimate Resource, 2006:1449, it defines contract as a mutually agreed, legally binding agreement between two or more parties. Contracting is the main way a government operates and public money is spent. Contracts are the vehicles for implementing public policy.

A significant portion of health, education, housing and urban development expenditure goes into procurement or contracts for goods and services. A contract is more than just an agreement between parties. A contract is a codification of the private law that governs the relationship between the parties to it. It defines the

responsibilities, spells out the conditions of its operations, defines the rights of the parties in relationship to each other and grants remedies to a party if the other party breaches obligations. A contract attempts to spell out in specific terms the transactional obligations of the parties involved as well as contingencies associated with the execution of the contract. It should be noted that an ambiguous or inconsistent contract is difficult to understand and enforce.

Public contracting occurs at different government levels: in local government areas, states and in national or federal government. While federal or national level contracting can be bigger in terms of value per contract, local government contracting is significant in terms of the number of processes and their impact because of their closeness to the people at the grassroots (Worthington and Goldsman, 1998). The term procurement is often used in the field of contract administration. Procurement refers to the acquisition of goods and services by an individual or organization, public/private organization (Fleming, 2003). Public procurement means the acquisition by any means of goods, works or services by the government. Procurement proceedings refer to the initiation of the process of effecting a procurement up to award to a procurement contractor (Public Procurement Act, 2009:55). Examples include privatizations, licenses, concessions and other types of contracts which also affect the national budget.

Just like the concept of democracy, the attempts at defining civil society have been very difficult and confusing.

Beyond the ubiquity and even the ambiguities surrounding the attempts, there are even further problems as to whether the concept itself can be applied to Nigeria (Kukah, 2007). Hall (1995:1) defines civil society as an opposite of despotism, a space in which social groups could exist and move, something which exemplifies and would ensure softer, more tolerable conditions of existence. Gold (1990) defines civil society as a whole range of social groups that seek to operate independently of the state such as private business, enterprises, labour unions, trade associations, religious bodies student organizations, and artistic associations. Diamond's definition of civil society needs to be restated here because it is more elastic. He says that civil society is

the realm of organized social life that is voluntary, self generating, self-supporting, autonomous from the state and bound by the legal order or set of shared values... it involves citizens acting collectively in a public sphere to express their interests, passions and exchange of ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials accountable. It is an intermediary entity, standing between the private sphere and the state (Diamond, 1995: 9-10).

The London School of Economics and Centre for Civil Society's working

definition is one illustrative example: civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state and market, though in practice, the boundaries between state, civil society and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power (www.lse.ac.uk). Civil societies are often populated by organizations such as registered charities, development of non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalition and advocacy groups.

Definitions often run into difficulty when they are applied universally across social and cultural divides. As part of their research on the state of civil society in over 50 countries around the world, World Alliance for citizen participation (civicus) has adopted the following definition as a means of dealing with this issue "the arena, outside of the family, the state and the market where people associate to advance common interests (www.civicus.org/new/media/csi).

The functions of civil society in a democratic set-up include providing the basis for the limitation of state power. It is supposed to supplement the role of political parties by stimulating political participation. It also promotes the

development of political attributes by creating channels other than political parties to articulate, aggregate and represent their interests. Oyovbare, (2000) conceptualizes civil society as consisting basically of non-state and non-governmental groups activity organized to pursue definitive issues and interests. Democracy is a political system providing for the popular participation of citizens in political decision making often by representatives of governing bodies (Giddens, 2001).

Benefits of Civil Society

Diamond (1995) in defining civil society describes some of the characteristics and benefits of an organized civil society as follows:

- a. An organized civil society serves as a check against the excesses of government in power, human rights violation, abuse of the rule of law, monitoring of the application of constitutional provisions.
- b. Increases the participation and the skills of all the various segments of society and instills a sense of tolerance, thrift, hardwork, moderation and compromise among the various competing groups in the society.
- c. It serves as an alternative to political parties and can offer a refuge for those who are shut out from their rights due to non-membership of political parties.
- d. It enhances the bargaining power of interest groups and provides inclusive mechanisms for them.

- e. It provides alternatives for negotiation within a multifaceted society by mitigating the excesses of fundamentalists extremists and maximalists' who tend to have a narrow view of life.
- f. It serves as a recruiting ground for and training of prospective members of the political or economic class to enhance the quality of participation in governance.

Requirements for Public Procurement

According to Public Procurement Act (2009:12) the fundamental principles for public procurement shall be conducted based on the following:

- a. Based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the thresholds in the regulations made by the Bureau has obtained a "Certificate of No Objections to Contract Award" from the bureau.
- b. By open competitive bidding in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the act and regulations.
- c. With the aim of achieving value for money and fitness for purpose

- d. Be in a manner which promotes competition, economy and efficiency.
- e. Be in accordance with the procedures and timeline laid down in this Act as may be specified by the Bureau from time to time.

The Stages in Public Procurement

The stages in public procurement are listed and discussed as follows:

- **Identification of need:** Here the government takes decision to purchase or sell goods or services or to outsource the management of a unit of its establishments.
- **Identification/definition of contract characteristics:** At this stage, the government determines what it needs to buy or sell or privatize. At this stage, the technical requirements, specific characteristics are highlighted. Equally the contracting methods and agency responsible for defining these characteristics are discussed.
- **The contracting process:** At this stage, a contracting process gets underway. It should take place according to what method the law determines should be used to receive proposals or expression of interests. For instance, open bidding system or evaluation of contractors by the use of single source.
- **The award of contract:** At this stage, the contract process ends with a decision to select the winning bidder (in open bids) or

the contractor in case of single-source process.

- **Contract Implementation and Supervision:** Finally the contract is signed with the selected bidder or contractor as the case may be.

The Prevalence of Corruption in Public Procurement Process

Experts identify procurement as one of the areas most prone to corruption in the management of development projects in developing countries. Corruption in public procurement affects the efficiency of public spending and donors' resources, creates wastes and ultimately affects the quality of development projects constructed and managed in developing democracy. Corruption gives a great concern for the socio-economic and political issues that seem to threaten the survival of Nigeria as the most populous black country in the world. Most authorities/researchers and observers have variously defined corruption.

Otite (1982) cited by Imaga (2005) posits that corruption takes place: "when at least two parties have interacted to change the structure of processes by the society or the behaviour of functionaries in order to produce dishonest, unfaithful or defiled situation". Corruption involves the giving or taking of a bribe or illegal acquisition of wealth using the resources of a public office including the exercise of discretion. In this perspective, it is those who have business to do with government that are compelled somehow to provide inducement to public officials to make

favour to them. To drive home the import of corruption in Nigeria, (Imaga, 2005) describes the problem of Nigeria and her governance in the context of project management and feasibility analysis as the problem of dishonesty of purpose and ineffective management of her public sector especially in the domain of public contracts. He expresses concerns on the problem of poor conceptualization and management of development projects most of which have inbuilt deceitful mechanism meant to serve and sub serve selfish and self centred objectives other than that of national goal and improvement on the lot of the masses.

The Entry Points of Corruption in Public Procurement

Corruption in public procurement can take many forms including bribery, fraud or simply abuse of personal integrity. The incidence of corruption in procurement can be understood in different stages of contract awards. It is generally believed that the incidence of inducement to procurement officers tends to be high during the evaluation stage of a contracting process, when offers are studied in order to select the best contractor. It has been revealed that corruption can take place even before the procurement process commences, that is when decisions are taken about what to contract. For instance, some projects start off ear-marked for award to a particular individual or organization (Imaga, 2005). Under-performance, contract negotiation, change orders, over-billing and non-compliance are some of the different forms of contract

abuse in a developing democracy where institutions hardly thrive. The following are the main entry points of corruption in public procurement/contracts.

- In the identification of a need or service, the decision does not follow a rational policy but rather decisions are based to channel resources/ benefits to an individual or an organization.
- In defining the characteristics of the contract (technical or not) for instance in the proposal for expression of interests the technical descriptions are made to favour a special supplier or contractor and not based on the need described abinitio. For instance, participation of relevant stakeholders is limited, making it difficult to assess properly the rational and relevance characteristics of the contract.
- In the contracting stage, invitation to tender – an open bid is not advertised thereby restricting the number of bidders. Again when short – lists format are used, organizations bribe their way to be included or to gain access to essential criteria. Even when invitation to tender/bid is advertised, very little time is given to present offers making it extremely difficult for bidders without experience to present bids.
- In the contract award phase evaluation criteria are not clearly spelt out in tender documents leaving no grounds to justify the decision reached. Often times evaluation of bids is subjective

leaving room for manipulation, and unobjective assessment. Again contract awards are not publicized and the grounds for decision making are not made open for organization to learn lessons.

- During the stage of contract implementation, supervision and monitoring, the main risks are that contract changes and renegotiations after the award do take place and shrouded in a nature that affect the original contract document. Sometimes supervising agencies/ monitoring individuals are induced to alter the contents of their report to allow changes in quality performance and specifications. More often than not contractor's claims are inaccurate and as such are overlooked by those who have the power to reverse or revoke the contracts after palms are greased.
- In some cases donor and credit agencies insist that their procurement document procedures are used instead of the host countries procurement procedure or due process. Some times this insistence helps but in most cases transparency are higher under national procurement legislation especially where there are active civil society organizations.

The Role of Civil Society in Fighting Corruption in Procurement

The Public Procurement Act, 2007 requires for the establishment of a national council on Public Procurement and the council shall consist of six (6)

part-time members to include representatives of the following:

- Nigeria Institute of Purchasing and Supply Management.
- Nigeria Bar Association (NBA).
- Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA).
- Nigeria Society of Engineers (NSE).
- Civil Society Organization.
- The media; and the Director General of the Bureau who shall be the secretary to the council (Public Procurement Act, 2009:3).

The foregoing gives an insight into the relevance of the role of civil society in transparent Public Procurement management to check the excesses and abuse of integrity in the award of public contracts, consequent upon the above the essential role and responsibilities of civil society are discussed as follows:

- ***A mediatory and regulatory role:*** Civil society is that realm where the concrete person, that particular individual subject to his or her own wants, caprices and physical necessities seeks the attainment of these 'selfish' aims. It is the arena where free, self-determining individuality sets forth its claims for satisfaction of its wants and personal autonomy. Thus the management of these ambiguities, sometimes conflictual sometimes hostile and antagonistic is the preoccupation of the project of achieving a lasting and effective civil society. In this wise civil society has a

regulatory and mediatory duty to balance the individual with the communal needs of the state with special emphasis on transparent public procurement of contracts management. This is because their approval or disapproval of what goes on in government contributes to accountability. A country that is well endowed in this respect is well positioned to develop democratic institutions and ensure good governance.

- ***As watch dog of Public Procurement abuses:*** The Public Procurement act provides that civil society organizations to nominate a member in the procurement act (Public Procurement Act, 2009:3) serves to underpin the role of civil society in the affairs of the council. They are there to check and curtail the excesses of government officials involved in issuance of contracts on public good and expose any violations of the procurement act or abuse of the constitution as it relates to public contracting. By this they exercise control over democratic economic institutions.
- ***Monitoring of public procurement contracts:*** Public Procurement rules are not enough guarantees for a transparent contract management. Civil society organizations have a mechanism for monitoring procurement especially where

law enforcement mechanisms are often weak. Transparency international has developed and implemented a number of monitoring tools to increase transparency and access to information that involve cooperation between governments companies, donors and civil society. This is because civil society is the means by which the community can force the state to respond to its end of the social contract. Unfortunately, the Nigeria state has not been able to do this. Given this obvious weakness of the state, civil society becomes an imperative if we are to restore this balance.

- ***Advocacy and public enlightenment:*** Civil society organizations as agents of good governance are involved in creating awareness on the ills and the corruption practices in public procurement contract management. They participate actively in the workshops and seminars organized by the bureau of public procurement.

Conclusion

It is important to realize that there is no single solution to the problem of transparency and accountability in public procurement contracting. Contracting processes need to be permanently monitored. Supervision and control play a key role since good rules are necessary but not always enough to

curb corruption. It is very important to have clear and transparent procedures and to have regular audits by external parties. This is where the civil society organizations as a group can play an effective role in Nigeria's developing democracy especially as it relates to good public procurement practices.

Recommendations

- Corrupt behaviour in public procurement can be prevented by giving those involved in public contracting the opportunity to avoid it and the pressure to do so.
- In case of absent rules or rules which can be manipulated to one's advantage, civil society organizations should assist governments in elaborating and enforcing procurement laws and procedural guidelines which comply with best practice globally. This can be achieved through workshop and seminars.
- Procurement rules should minimize confidentiality, state open bidding from pre-qualified suppliers, guarantee access to information; ensure that bidding documents, procedures, evaluations and awards are publicly and timely available.
- Procurement rules should ensure that different procurement functions are handled by different people among different offices with the requisite expertise and resources. This will reduce

incidence of corruption among such officers.

- It is suggested that training and team-building activities are designed to create healthy relationships between and among key stakeholders in public procurement contracts such as engineers, architects, lawyers and procurement specialists. This can be achieved through the use of experienced outside consultants.
- Procurement contracts should be enforced with deadlines. A deadline is a set completion date. To ensure that procurement contract is completed on time, it is necessary to add a penalty clause.
- Conflict is inevitable during procurement contracts and people are unaccustomed to working together and have different values and perspectives. It is recommended that procurement bureau invest significant time and energy in establishing the "rules of the engagement" so that disagreements are handled constructively.
- Finally frequent procurement reviews and status updates among key stakeholders are suggested to enable them assess performance. By so doing, team work, communication and timely problem resolutions are evaluated.

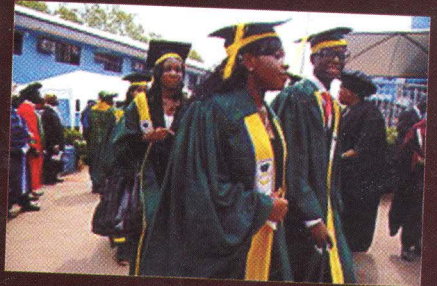
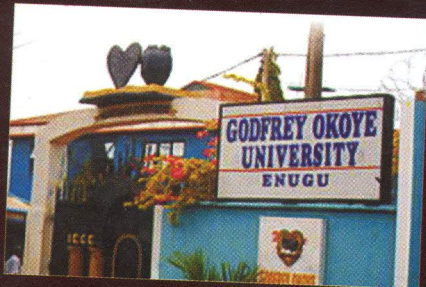
References

- Business the Ultimate Resource (2006) in "Dictionary definition of Contract" Cambridge: A and C Black Publishers, pg. 144.
- Diamond, L. (1995) "Rethinking Civil Society Towards Democratic Consolidation" *Crossroads* Vol. 1 No. 3 (February) Lagos: United State Information Service. pp 9-10.
- Drucker, P. F. (1979) *People and Performance the Best of Peter Drucker on Management*. London: Heinemann Publishers.
- Fleming, R. W. (2003) *Project Procurement Management; Contracting, Sub-Contracting, Teaming, Tustin*, CA: FMC Press.
- Giddens, A (2001) *Sociology* Cambridge: Polity Press.
- Gold, M. (1990) "Civil Society and its role in a democratic state" *Journal of Democracy*, Vol. 4 No. 3.
- Gray, C. F. and Larson, E. W. (2008) *Project Management: the Managerial Process*, Boston: McGraw Hill Publishers. pp. 413 - 415.
- Hall, J. (1995) *Civil Society, History and Comparison*, London: Polity Press, p. 1.
- Imaga, E.U.L. (2005) *Groundwork of Project Management and Feasibility Analysis*, Enugu: Rhyce Kerex Publishers.
- Kukah, M. H. (2007) *Democracy and Civil Society in Nigeria*, Ibadan: Spectrum Books Limited.
- National Planning Commission (2004) "The Development Challenges Facing Nigeria" in *National Economic Empowerment and development Strategies*, Abuja: Central Bank of Nigeria.
- Otite, D. (1982) *Nigeria: Corruption in Development*. Ibadan: Spectrum Books Limited.
- Oyovbare, S. (2000) "Civil Society and Democracy in Nigeria, A Keynote Address" in Okom, E. U. (ed.) *Civil Society and the Consolidation of Democracy in Nigeria*. Calabar: Cats Publishers.
- Public Procurement Act, (2009) *Due Process Handbook*. Abuja; Bureau of Public Procurement (Publishers).
- World Bank (2003) "World Development Report" in *National Economic Empowerment and Development Strategies (NEEDS)* Abuja: Central Bank of Nigeria.
- Worthington, M. M. and Goldsman, L. P. (1958) *Contracting with the Federal Government*. New York: Wiley Publishers.
- www.civicus.org/new/media/csi
www.lse.ac.uk

GOU Journal of MANAGEMENT & SOCIAL SCIENCES

GOU

VOL 1 No. 1 2013



Contents

1. *A Review of Accounting Theories on Asset Valuation ...Sergius Udeh*
2. *A Critical Examination of the Relationship between the Concepts of National Security and the Doctrine of Necessity ... Samuel Ugwuozor*
3. *The Role and Responsibilities of Civil Society Organizations in the Transparent Public Procurement Process in a Developing Democracy ... Nicholas Igwe*
4. *Nigeria and the Challenges of Globalization: A Philosophical Perspective ... Dons Eze*
5. *Contemporary Management Approaches and Motivational Strategies Against Labour Turn over in Nigerian Organizations ... Augustine Mamah*
6. *Information and Communications Technology and Banks' Profitability in Nigeria: A study of selected Banks in Nigeria ... Obadiah Okwukwe Uchechi and John Ihe Ndubuisi*
7. *Determinants of Agricultural Credits, Disbursements and Repayments in Enugu State ... D.S. Ugwu, C.J.C. Akubuilu and C.U. Akwuwa*
8. *Effectiveness Variance of Job Improvement Factors on Nigerian Public Servants: The case study of South Eastern Nigeria State Universities, ... Victoria Chibuike*
9. *Managing Government Rural Information and Communication Technology (ICT) for Success and Sustainability ... C. Onugu and O. Onuoha*
10. *The UNDP and Development Aid in Rural Nigeria: The Anambra State Experience ... Cyril Ogbu*
11. *An Economic Concept of Severity of Illness ... Pius Eze*
12. *Management Government Rural Information and Communication Technology (ICT) for Success and Sustainability, ... Francis Alinno and Nicholas Igwe*
13. *A Review of Accounting Research and Accounting Theory ... Nwadiakor E.O.*