

## Role of civil society organisations on the enforcement of public procurement law in Nigeria – A case study of Sokoto State

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### Abstract

It is trite that governments everywhere in the world are involved in four major economic activities – providing the legal framework for all economic activities; redistributing income through taxation and spending; providing public goods and services freely available to the public such as national defence, public safety, education, and infrastructure (bridges and roads); and purchasing goods, services and capital assets otherwise referred to as public procurement. However, public procurement has widely been perceived as the most vulnerable arena of waste and corruption. Therefore, there is the need for collective effort in ensuring that the rules and procedures regulating public procurement are strictly observed. The paper discussed the role of civil society organisations (CSOs) on the effective enforcement of public procurement Law in Sokoto State – Nigeria as a measure of ensuring good governance.

**Keywords:** civil society organisations, enforcement, public procurement law

### 1. Introduction

The focus of this paper is on the role of Civil Society Organisations (CSOs) otherwise known as Non-Governmental Organisations (NGOs) on the effective enforcement of public procurement Law in Sokoto State - Nigeria. The paper discusses nature of public procurement; civil society organisations (CSOs); role of CSOs on the enforcement of public procurement Law; as well as the associated challenges and prospects.

It is trite that governments everywhere in the world are involved in four major economic activities – providing the legal framework for all economic activities; redistributing income through taxation and spending; providing public goods and services freely available to the public such as national defence, public safety, education, and infrastructure (bridges and roads); and purchasing goods, services and capital assets otherwise referred to as public procurement.<sup>[1]</sup> However, public procurement has widely been perceived as the most vulnerable arena of waste and corruption.<sup>[2]</sup> Therefore, there is the need for collective effort in ensuring that the rules and procedures regulating public procurement are strictly observed. In essence, CSOs as a pressure group and an integral part of the society should consider this as one of their great roles for good governance. Having outlined the above, the paper proceeds to discuss the nature of public procurement.

### 2. Nature of Public Procurement

In order to appreciate public procurement as a concept, there is need to define each of the two words separately. The word public means “provided, especially by the government, for the use of people in general”.<sup>[3]</sup> It may also mean “connected with the government and the services it provides”<sup>[4]</sup> On the other hand, the word procurement is defined as “the process of obtaining supplies of something, especially for a government or an organisation”.<sup>[5]</sup>

The concept of “public procurement” is not defined in the Public Procurement Act and Bureau of Public Procurement and Price Intelligence Law of Sokoto State respectively. However, the Public Procurement Act 2007 states that “procurement” means acquisition.<sup>[6]</sup> It is therefore discernible from the above meanings of public and procurement as provided in the dictionary and by the Act that the term “public procurement” means the acquisition of goods and services for the use of people in general.

In other words, public procurement is concerned with orders or purchases for goods or services made by the state or an approved government agency sourced from private commercial entities.<sup>[7]</sup> Therefore, the use of the term public procurement applies to all kinds of acquisition of public goods and services. Public procurement is an important function of government. It has to satisfy requirements for goods, works, systems, and services in a timely manner. Furthermore, it has to meet the basic principles of good governance – transparency, accountability and integrity. This is so because the main principle of governments is to achieve value for money in procurement.<sup>[8]</sup> It is in pursuant to this that the Sokoto State House of Assembly has enacted Law regulating the conduct of public procurement in the State. The Law established a Bureau to regulate public procurement and price intelligence in the State.

The Bureau is saddled with the responsibility of among others:<sup>[9]</sup>

1. Formulating the general policies and guidelines as regards public procurement;
2. Monitoring prices of tendered items and keeping database of standard prices;
3. Maintaining a database of the particulars and categorisation of contractors and service providers in the State;
4. Preventing fraudulent and unfair procurement;

5. Debarring supplier, contractor or service provider that contravenes the Law; and
6. Stipulating code of conduct for all public officers, suppliers, contractors and service providers.

The Law further states among others that: <sup>[10]</sup>

1. The conduct of all persons in respect of public procurement shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity;
2. All public officers involved in public procurement shall maintain high standard of ethics in their relationship with bidders, suppliers, contractors or service providers by developing transparent, honest and professional relationship;
3. Every public officer involved in public procurement whether directly or indirectly, shall divest himself of any interest or relationships actually or potentially inimical or detrimental to the interest of government; and
4. No public officer shall engage or participate in any commercial transaction involving the State government or its agencies where his capacity as public officer may confer any unfair advantage on him or any person related to him.

The provisions of the Law are applicable to all procurement of goods, works and services carried out by the state government and all procurement entities in the State deriving at least 35% of the funds appropriated or proposed to be appropriated from the revenue of State. <sup>[11]</sup> However, the provisions of the Law do not apply to the procurement of special goods, works and services involving emergency relief materials for disaster victims and special works specified by the Governor. <sup>[12]</sup>

There are certain procedures for public procurement as enunciated by the Law such as prequalification proceedings and procurement methods. The paper goes further to discuss the procedures beginning with prequalification proceedings.

### 2.1 Prequalification Proceedings

Prequalification is the process of selecting potentially eligible contractors who are in a position to perform assigned tasks according to the terms of the contract award. <sup>[13]</sup> Generally speaking, the aims of prequalification proceedings include amongst others: to verify the professional and technical eligibility of the suppliers, contractors or service providers; to ascertain their legal capacity to enter into the procurement contract if they eventually succeed; to ensure that they have fulfilled their basic civic responsibilities to the state in terms of payment of taxes and social security contributions; and to determine that their records are clean in terms of conviction on offences relating to their professional responsibilities. In evaluating the prequalification status of a supplier, contractor or service provider, a procuring entity must adhere to the standards of fairness. It must be bound by the criteria set out in the prequalification documents. The Law provides thus:

Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications, to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more. <sup>[14]</sup>

Potential suppliers, contractors or service providers are, as a matter of right, entitled to be supplied with a set of prequalification documents on request; they shall also be responded to by the procuring entity within reasonable time, in event they make any request for clarification of the prequalification documents ten days before the deadline for the submission of applications to pre-qualify; they shall equally be promptly notified if they submitted application to pre-qualify, as to whether or not they pre-qualify. The procuring shall make available to any member of the general public upon request, the names of those pre-qualified; and shall upon request, communicate the grounds for disqualification to those who have not been pre-qualified. <sup>[15]</sup>

### 2.2 Procurement Methods

The Law lays emphasis on open competitive bidding in all procurement of goods and works by all procuring entities except otherwise provided. This is to give every interested bidder equal simultaneous information and opportunity to offer the goods and works needed. Invitation to bid may be either by way of national competitive bidding which shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two national newspapers, and in the procurement journal; or international competitive bidding which shall be advertised in at least two national newspapers and one relevant internationally recognised publication, any official websites of the procuring entity and the Bureau as well as the procurement journal. In either cases above not less than six weeks before the deadline for submission of the bids for the goods or works. <sup>[16]</sup>

All bids shall be submitted in English language in writing signed by an official authorised to bind the bidder to a contract and placed in a sealed envelope which may be accepted or rejected prior to acceptance by the procuring entity without incurring any liability to the bidders. The procuring entity may also cancel the procurement proceedings in the public interest without incurring any liability to the bidders. <sup>[17]</sup>

Having examined the nature of public procurement, the paper further discusses the term civil society organisations (CSOs).

### 3. Civil Society Organisations

The term “Civil Society Organisation (CSO)” refers to the wide range of citizens’ associations that exist in virtually all countries to provide benefits, services or political influence to specific groups within society. CSOs include among others, business forums, faith-based associations, labour unions, local community groups, non-governmental organizations (NGOs), philanthropic foundations, and think tank. Usually, not only the branches of government (government agencies and legislators) are excluded from been considered CSOs, but also individual businesses, political parties and the media. <sup>[18]</sup> In other words, civil society is the field outside of the family, the state and the market where people associate to advance common interests. <sup>[19]</sup> CSOs are sometimes considered to include the family and the private sphere and then referred to as the “third sector” of society, distinct from government and business. <sup>[20]</sup>

CSOs are critical actors in the development of universal values around human rights, the environment, labour standards and anti-corruption. <sup>[21]</sup> It is the more proactive involvement of CSOs in global problems which has transcended the national level in recent decades. In the areas of development, the environment or human rights, CSOs have added a new

dimension to traditional politics and have helped mankind to find new forms of addressing global problems. There is no denying the fact that today without the active involvement of CSOs, the world would have been ridden with much more corruption, violence and human rights abuses, burdened with greater social injustice and equipped with less sensitivity to current ecological problems and corruption. <sup>[22]</sup> In line with the above stated facts, the importance of CSOs especially in our society today cannot be over emphasized.

#### **4. Role of CSOs on the Enforcement of Public Procurement Law**

It is certain that the legitimacy of CSOs also rest, among others, with people although differently structured. Most CSOs represent those interests unrepresented in the traditional political process and are not accountable to direct democratic control. What legitimises CSOs is a concern about issues that are not being dealt with adequately in the public circle. Often many issues are simply ignored and neglected by government or its agencies; or addressed in a way which does not take into consideration the legitimate interests of those affected by governmental actions. The legitimacy of CSOs is further fostered simply because their concerns do not arise out of self-interest or profit-orientation rather from public interest and the well-being of the society. <sup>[23]</sup>

It has been stated above that the Law on public procurement in the State has established a Bureau whose duty is among others, to ensure that the rules and procedures on public procurement are strictly observed. CSOs are therefore not to replace or take over the functions of the Bureau rather they complement the job of the Bureau.

CSOs play the roles of critic, catalyst and advocate of those interests unrepresented or underrepresented (the common man) in public procurement. They are watchdog and whistleblower and the vanguard to warrant that government and its agencies respect the rule of law in public procurement. They equally guarantee that the interest of those people government claim to represent are adequately represented and not neglected. <sup>[24]</sup>

In doing so, CSOs ensure that the Law on public procurement is adequate and government or its agencies abide by the Law on public procurement. Where it is observed that the Law is not adequate; or the Law though adequate, is not respected, they move a bill for amendment or raise observations to appropriate authority respectively. They also ensure that the Bureau discharges its functions efficiently and effectively.

They make sure that all stakeholders in public procurement such as public officers, bidders, suppliers, contractors and service providers observe the principles of honesty, professionalism, accountability, transparency, fairness and equity.

They also have to be conversant with the Law on public procurement because it is only when they know what the Law says that they can decipher whether the Law is adequate and strictly observed or not. Having discussed the roles of CSOs, the paper proceeds to analyse some of the perceived challenges and prospects associated with the roles of CSOs on public procurement.

#### **5. Associated Challenges and Prospects**

As it is with every aspect of human life, there are actual and potential drawbacks and chances for improvement and success in the role of CSOs on public procurement.

#### **5.1 Challenges**

One of the key challenges inherent in the role of CSOs on public procurement is access to information. This is so because where there is always calculated attempt to subvert the Law by those involved in public procurement. It is most of the times a collective arrangement between the public officer, the bidder/supplier/contractor/service provider (as the case may be) and the official of the regulatory agency (Bureau) in such a way that there is a cover up and information is not leaked. This then makes it difficult for the CSOs to unravel what actually takes place in a particular public procurement.

Another area of challenge is related to the fact that the members of the CSOs may not necessarily have the technical knowhow in the area of public procurement and therefore may not know the intricacies of public procurement.

CSOs may also be tempted to be drawn into the alleged compromise since they are not profit-oriented and equally need money, and may end up subjugating their primary responsibility.

#### **5.2 Prospects**

As much as there are challenges, the development in the information and communication technology (ICT) and the enactment of the Freedom of Information (FOI) Act 2011 imply that there are prospects for the effective and efficient discharge of the role of CSOs on public procurement. ICT is having a great influence on all aspects of human life in the world we live today. Procurement is one of the areas where ICT has made a strong entrant. This has given birth to what is commonly known as e-procurement.

E-procurement refers to the use of internet-based ICT to carry out individual or all stages of the procurement process including search, sourcing, negotiation, ordering, receipt and post-purchase review. <sup>[25]</sup>

In other words, e-procurement is the automation of many procurement processes via electronic systems, especially the internet. <sup>[26]</sup>

E-procurement promises a great prospect in the area of public procurement. This is so because most of the challenges bedeviling CSOs in their role on public procurement will be eradicated or alleviated. In e-procurement, information is readily available on-line 24 hours with the touch of a button. This will make the information on public procurement in the State accessible to the public (CSOs inclusive). Hence, the public is well-informed on what obtains in that respect.

Likewise, members of CSOs who care to be conversant with the intricacies on public procurement will readily have information online to study and enrich their knowledge.

The public will also be in the know of conduct of all the stakeholders on public procurement because the public can access information online 24 hours, thereby acting as watchdog on every stakeholder. The advantages of e-procurement in this regard cannot be over emphasised.

#### **6. Conclusion**

This paper discussed the role of CSOs on the enforcement of public procurement Law in Sokoto State. The paper gave brief analysis of the concept of CSOs. It also examined the nature of public procurement. It then expounded the role of CSOs in the State public procurement highlighting on the challenges posed to the CSOs and the much envisaged means of surmounting the challenges. It further discussed the potentialities of e-

procurement. It is noteworthy that e-public procurement has the capacity to bring about useful technological changes to the economic infrastructure of the State; as well as make the oversight functions of CSOs much easier than the conventional public procurement. It is therefore advised that the State Government should avail itself of the benefits e-public procurement promises through technological advancement of the economic infrastructure of the State.

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