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Governance Reform and the Challenge of Implementing Public Procurement Law Regime across Nigerian State and Local Governments

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ABSTRACT
The study examines governance institutional reform efforts and the challenge of implementing public procurement law regime across all the three tiers of governments for sustainable national development in Nigeria. It observes that the apparent successes attained at the federal level as a consequence of Public Procurement Law 2007 is taking too long for replication by the entire 36 states and 774 local governments across Nigeria. The paper posits that if Nigeria nation must achieve the objectives of openness, transparency, probity, accountability and reduced corruption in line with global best governance institutional reform agenda, efforts should be intensified to deepen public procurement practices across all the states and local governments in addition to federal government. The paper concludes by highlighting key problems that militates against effective replications of public procurement law regime across other tiers of Nigerian government.
Keywords: Governance Reform, Procurement Law, Nigerian government.

Introduction

The need to fast-track development horizon in Africa and other underdeveloped countries of the world is never an easy task. It requires taking some hard choices, punching and jettisoning old methods of doing things that have contributed to underdevelopment Ray, (1998); and stagnations Peter etal, (2007). Faster growth and development requires critical governance reforms and some measures of openness, transparency and accountability as against the old opaque methods and secrecy in public transactions. Governance institutional reform is seen as the most essential aspects of development facilitation mechanisms in order to achieve desired sustainable growth and development. In Africa and Nigeria in particular, governance reform is expected to introduce acceptable benchmarks for legitimacy in public affairs while promoting economic choices among people and institutions. Part of the major benefits of governance reform is that it helps entrench transparency, accountability, openness and appropriate value for money in all matters that concerns public procurements.

Apart from the fact that the old pre-governance reform era in Nigeria gives rooms for impurity, it was also extremely difficult to get best value for money in public procurement practices. There is absolute lack of strong regulatory framework. Government contracts and public procurements became easy avenues for rip offs by various shades of contractors with collaborative support of Nigerian public officials. Onyekpere,, (2009).

Specifically, the federal government of Nigeria under President Olusegun Obasanjo alerted the nation on the serious and catastrophic danger that characterized public contract processes. He also alerted on the World Bank Country Procurement Assessment Report (CPAR)

which revealed that Nigeria was losing average of $10 Billion (Ten Billion United states dollars) annually due to various abuses associated with public procurement and contract awards. A major initiative initially designed to respond to this challenge was setting up of Budget Monitoring and Price Intelligent Unit (BMPIU) at the presidency. The BMPIU was a stop-gap due process measure aimed at due diligence in government procurements and awards so as to facilitate fair deals for government through price monitoring. However, the challenge with the Budget Monitoring and Price Intelligence Unit (BMPIU) stop-gap measure include absence of legal framework; inability to reduce corrupt practices as a result of collusion by public officials and the lack of clear role definitions and delineation for proper public procurement practices in line with global best practices so as to adequately ensure transparency, probity, accountability and openness.

The public procurement bill was eventually sent to the National Assembly in 2003 and by 4th June, 2007, the Public Procurement Act was passed in Nigeria and it becomes a watershed in Nigeria attempt at key governance reform. The Public Procurement Act 2007 seeks to introduce the application of accountable, fair, competitive, cost-effective, professional, transparent, value for money and standards for procurement/disposals of public assets. Onyekpere, (2009). The Act also seek to introduce timeliness, sustainability of process, fitness of purpose, better risk management, auditing, strict oversight and benchmarking into the public procurement process. All these are in line with governance institutional reforms that ensure appropriate structure in order to achieve national growth and development Redcliff, (1987), Brown et'al (1992), Diamond, (2005).

Public Procurement Act 2007 and Its Approach to Previous Structural Defects in Nigeria Public Procurement System

The Nigerian Public Procurement Law 2007 is one of the most radical and commendable institutional reform agenda that the country embarked upon in recent years. Basically, the law is a pro-active response to Nigerian weak institution in order to achieve good governance in public procurement sub-sector. This is against the backdrops of the fact that the problems of weak and strong institution in addition to corruption are widely accepted impediment to Nigerian sustainable growth and development. The public procurement law in the main is divided into twelve major parts. Each of the parts deals with specific previous structural defect that have plagued the Nigerian public procurement system over time.

Part 1 establishes the National Procurement Council (NPC). The aim is to address the problems of institutional framework, development of policies and the need to drive the entire procurement process in accordance with statutory extant regulation. Part 11 establishes the Bureau of Public Procurement (BPP) as a form of agency to coordinate, harmonize' and benchmark prices in Public Procurement processes. The part also makes it the functions of (BPP) to undertake research, coordinate institutional capacity, acts as supervisory platform and provides guideline to regulate Public Procurement practices. Essentially, the aim of the first two parts is to establish strong institutional framework for public procurement.

Part 111 of Public Procurement law 2007 deals with the scope of applications. This aspect of the law respect the federal nature of Nigeria nation, where states are expected to enact their own laws as they deemed fit, the public procurement act presumptively should covers only federal public procurements. Part IV of public procurement law establishes legal format with regard to thresholds, exigencies of procurement plans, the imperatives of open competitive

bidding, and proper definition of the status of contractors/suppliers/service providers in public procurement processes. It also specifies appropriate qualifications for bidders with regards to financial, equipment and technical competence. It provides alibi for benchmarking on the needs for evidences of taxes pensions and insurance payments; while it gives guidelines for issuance of certificate of no objection, conferment of responsibility on accounting officer in procurement entity and the conditions for award of contract.

Part V deals with establishments of procurement planning and the role of procurement planning committee. This is very significant. Before now, public procurement has suffered from anticipatory procurement even when procurement entity knows that there is no funding to back up such procurements. By so doing, most Ministries, Departments and Agencies (MDAs) have suffered undue pile up of debts even when such procurements are not priority. Projects Procurement planning as required by the new law regime ensure that there is proper procurement planning with regard to availability of funds; and it must be of priority, etc before such procurement plan can be approved by the statutory committee. It also set criteria for pre-qualification of bidders. Part IV of the law deals with procurement methods which includes invitation to bid, bid-opening and bid examination in a manner that ensures and promotes open transparent, competitive bidding exercise.

Part VII and VIII focus on conditions for Special and Restricted method of procurements and the procurements of consultants. This aspect is important in view of past experience where public officials hide under special or restricted procurements to perpetrate corrupt practices. These sections define new rule of engagement. Part IX deals with procurement surveillance, the reporting and review mechanisms by Bureau of Public Procurement (BPP) which were non-existence in the old order while Part X focuses on methods of disposing public property. Part XI of the Public Procurement Law specifies code of conduct to regulate activities of relevant stakeholders which include Bureau Officials, Tender Board, CSO's, Procurement Officers etc. The purpose is to make relevant stakeholders responsible and consequently liable in case of any infractions. Finally, Part XII of the Public Procurement law 2007 specifies offences for various categories of infraction in public procurement processes.

With its twelve parts, public procurement law 2007 provides desirable solutions to lingering problems of lack of regulatory frameworks, absence of thresholds and other related lacuna that have engender widespread corrupt practices in Nigerian public procurement systems. By so doing, it attempts to establish appropriate institutional frameworks so as to bring about regime of probity, transparency, competitiveness, value for money, cost effectiveness and professionalism in public procurement system. It also ensures that corruption is reduced significantly in Public Procurement practice.

Of course, the Public Procurement Law 2007 may not be perfect as it should have been; this is because there have been some agitations on the need to amend some sections of the law to make it more effective Ossai, (2014); Sabbath (2014). Nevertheless, has remained as it is essential governance reform package to help fast- track Nigerian sustainable development. The new Public Procurement Law regime has been able to institutionalize procurement practices. Notable citizens and corporate organizations have been penalized for one form of infraction or the other Eze (2013). Sanity is also being entrenched into the Nigeria Public Procurement processes. There atmosphere of secrecy in public procurements unlike years back. Certain is no longer degree of openness, accountability and responsibility have been appropriately entrenched in Nigeria public procurement practices particularly at the federal level

Unfortunately, the advantage derivable from governance reform through public procurement law regime is limited only to public procurement practices at the federal level of Nigerian government. The Federal Government, through (Ministries Department and Agencies (MDA's) has endeavored to comply with the provisions of PPA 2007 in their public procurement practices. Public procurements are now being vigorously advertised, and there are now regular invitations to bids. The Bureau of Public Procurements (BPP) had also been empowered to act as functional agency to coordinate, harmonize policies, benchmarks and provide the needed guidelines to assist procurement entities. To date, almost all procurements at the federal level have being subjected to the regulatory ambient of public procurement law regime. This is a plus for the much-needed governance institutional reform agenda. However due to federal nature of Nigerian political system, other tiers of government (states and local) are expected to key-in and pass their respective public procurement laws so as to strengthen governance reform agenda, promote effective service delivery and reduce corruption.

The Challenge of Deepening Public Procurement Law Regime across all Tiers of Governments in Nigeria

Till date, the general expectation is that all tiers of government should have implemented public procurement laws by now. This is informed by strong conviction that implementing public procurement law is a surest way of institutionalizing public procurement system in order to achieve key objective of governance reform agenda. The federal share of public expenditure in Nigeria is 48% while the 36 states and 774 local governments across Nigeria take the lion share of 52% Ikeji, (2011). The implication of this is that substantial share of public expenditure (whopping 52%) is yet to be institutionalized or captured by standard public procurement law regime.

International Development partners and other multilateral agency have invested valuable time and resources in order to assist in deepening public procurement practices across all the 36 states and 774 local government in line with the federal nature of Nigeria nation. The World Bank through the Civil Society Organizations (CSOs') has embarked on advocacy initiatives in order to achieve this objective. State governors have been visited while key local government stakeholders were also encouraged to consider passage of public procurement laws in their respective jurisdiction. Working to convince the states and local governments in order to and make states and local governments adopt public procurement practices is a herculean tasks Awosemusi (2013). So much time and resources have been expended with low response from most state and local governments. Apart from the fact that there is low response from concerns states and local governments, there seems to be deliberate efforts by concerned states across Nigeria to whittle down their versions of public procurement laws in order to achieve certain agenda other than good governance in most states that have responded. (Adeyeye .A, 2012).

Although, about 24 states were confirmed to have passed public procurement laws in Nigeria while no single local government have enacted public procurement edict. Most of the concerned states actually passed the law reluctantly after undue pressure by World Bank and CSOs Adeyeye (2010), Awosemusi (2013). Besides, a comparative analysis of some of the law passed by the states indicate that the laws were substantially manipulated and reduced in veracity thereby defeating the fundamental objectives for which the laws were enacted in the first place. It is disheartening to note that no single local government in Nigeria deemed it fit to pass public procurement edict despite the volume of money that are expended Nigerian by local government

system. The study seeks to explore why other tiers of governments (states and local) out rightly unwilling; or have passed public procurement law reluctantly, and those that passed reluctantly prefer to reduce the veracity of the law. The study also examines some of the key challenges to deepening public procurement practices across the 36 states and 774 local governments of Nigeria after many years of implementation at the federal levels.

The need to deepen public procurement practices at all the tiers of government (states and local governments) in order to achieve governance institutional reform towards sustainable national development has become more important than ever. If the Nigeria nation is to savour benefits of governance structural reform with particular reference to public procurement laws regime, it must not limit public procurement law practices to federal government alone. Sizeable amount of public procurements are undertaken by the 36 states and the entire 774 local governments that has no public procurement laws or chose to pass weak or ineffective public procurement law regime.

Key Issues that Militate against Effective Adoption of Public Procurement law Regime across 36 States and 774 Local Government in Nigeria.

After almost a decade that the public procurement law 2007 becomes operational at the federal level of government in Nigeria, the degree and depth of adoption by 36 states and 774 local governments across the nation is far from being encouraging. Some states that manage to enact public procurement laws have been confirmed to have deliberately weakened the law for certain extraneous reasons thereby throwing up recurring challenge of law amendments Adeyeye, (2011). Most states and the entire 774 local governments have out-rightly refused to enact public procurement law. The efforts of World Bank, International Development Partners (IDP) and Civil Society Organizations (CSOs) have not achieved expected rapid changes in public procurement practices that can enhance Nigeria governance institutional reform profile. As the search for new initiatives to deepen public procurement law regimes across all tiers of Nigeria government continues, there are needs to understand some of the key issues that have militated against wholesale adoptions of public procurement laws by other tiers (state and local government) in Nigeria particularly the lackadaisical attitude towards this all-important development milestone. Some of the issues that have militated against effective adoption by other tier of governments are as follows:

The Challenge of Federal System of Government

The federal system of Nigeria government has militated against wholesale adoption of public procurement law by all the states and local government across Nigeria. Due to federal system of Nigerian government, most states and local government find it convenient to delay or out rightly refused to domesticate public procurement laws. They are never in hurry to enact public procurement law because they find the old order most convenient. States that eventually enact public procurement laws did it in a way that satisfies their selfish agenda. In essence, states and local governments have capitalized on their independence to law making as guaranteed by the Nigerian federal system of government to work against effective deployment of public procurement laws as veritable governance mechanism to fast track Nigerian sustainable development. The irony of this is that most of these states and local government are always in hurry to replicate laws that may not have such critical impact on development priority but laws

that satisfies selfish interest, example of this is the pension law for political office holder by Akwa Ibom state.

Lack of Political will to Initiate Development Change.

Another critical issue that militates against effective domestication of public procurement law is the lack of political will among leaders towards meaningful and radical changes that could assist Nigeria to climb up development ladder. Nigerian crop of present leaders pay lip service to development transformation. They lack political will, sufficient knowledge and ethics of leadership practices for pushing forth and achieve sustaining structural governance reform particularly at the state and local government levels.

Absence of Strong and Compelling Institutions

There is absence of strong and compelling institutions to make state and local government enact public procurement laws in order to enhance governance practices in Nigeria. Apart from support through subtle means by World Bank and other international development partners, there is no strong institution to compel states and local governments. The efforts by Civil Society groups are not compelling enough. Although, the World Bank and CSO's are unrelenting despite little result achieved over a long period, it must be stated that such efforts are still on-going. Most of the successes achieved up to date are as a result of personal convictions of relevant executive governors in affected state. Most often, concerned state executives pass public procurement law because there is perceived threat to their political survival. Some State governors passed the law as landmines in the way of their successors after they have lost political power. Public procurement law has become mere political weapon instead of deliberate governance reform mechanism to institutionalize fairness, openness, accountability and anti-corruption.

Pervading Corruption that has become Nigeria Socio-Cultural Value

The pervasive corruption in Nigeria is a major disincentive to any effort at institutionalizing public procurement laws that would eventually reduce or confront corrupt practices. In Nigeria, corruption is wide spread. It is overwhelming and spreading fast despite efforts by government. It has been observed that corruption has defy efforts by successive governments because it has infiltrated entire Nigeria socio-cultural fabric Ekanem, (2013). For this reason, any initiatives either directly or indirectly through public procurement law initiative is bound to record slow success.

Citizen's Refusal to Demand Accountability and fully Participate in Political Process

In Nigeria, there is a wide-gap between citizens and constituted authority. Due to factor such as illiteracy, poverty and reduced standard of living, most citizens in Nigeria are not conscious of their rights in the political relationship with constituted authority. They are gullible, credulous and easily manipulated. They do not get involved in political process and never bother to demand accountability and transparency in public governance. This is a major challenge that has repeatedly militated against effort at governance reform particularly public procurement law regimes.

High Level Corrupt Tendencies and Low Level Commitments to Corruption War in Nigeria by Political Class

Another major issue that has militated against effective adoption of public procurement law regime across the 36 states and 774 local governments is the overwhelming corrupt tendencies among political class in Nigeria. The Nigeria leaders and political class are downright self – centered. They placed their personal interest above the interest of people they claimed to serve. The average Nigerian leader or member of political class do not go into governance with the intention of serving the people, rather their interest is to enhance individual personal political and economic aggrandizement. Experience and statistics have shown overtime that the political class is quick at passing laws that further their selfish interest while playing very slow game when it comes to laws that have capacity to fast-track national development horizon. Above all, there is low level of commitment to corruption war by the political class. The Nigerian political class has strong apathy and disinterest in any reform that could change the status quo. The reasons for this are obvious. First, the status quo has continued to sustain their corrupt tendencies. Secondly, any attempt to succumb to cheap and radical governance reform like public procurements reform will be tantamount to committing political economic and class hara-kiri.

Conclusion

The domestication of public procurement law by all the 36 states and the entire 774 local governments in Nigeria promises to be a major boost to governance institutional reform agenda towards fast-tracking Nigerian sustainable development. It is disheartening that the domestication is taking too long. It is also sad that states that have adopted public procurement laws have not pass proper laws that are capable of achieving desired objectives. The reasons for this appalling situation despite obvious benefits of public procurement law regime to national sustainable development have been identified, thereby providing inkling as to what strategies to adopt in order strengthen future approaches to strengthen adoption of public procurement law regime across all tiers of government in Nigeria.

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