

Annex II

Nigeria

1 Introduction

1.1 Purpose

This annex attempts to identify and analyse the potential trade and welfare effects that improvements in the Nigerian public procurement system would bring. It will do this by setting out:

- The current political and economic conditions that prevail in Nigeria
- The structure of the current public procurement system
- The results of the two assessments of this system that were carried out in 2001 and 2006
- The improvements that would result from increased competition, reduced corruption and transparency in public procurement
- Recommendations about what stance Nigeria should take in regional and international trade negotiations concerning procurement

1.2 Government context

Nigeria is a federal republic comprising 36 states and the federal capital territory of Abuja. It is the largest country in west Africa, with around 155 million people and a GDP of US\$335.4 billion. GDP per capita in 2005 had more than doubled from approximately US\$338 billion in 2000 to US\$752 billion, but around 70 per cent of the population were still living below the poverty line in 2007, compared to only 46 per cent in 1985. The government operates under a Constitution enacted in 1998 following the collapse of the military government that had ruled Nigeria for 16 years. The country is attempting to build a stable basis for governance, but it continues to face the daunting task of reforming a petroleum-based economy, whose revenues have been squandered through corruption and mismanagement, and institutionalising democracy.

1.3 Conflicts and instability

Nigeria continues to experience long-standing ethnic and religious tensions. Despite the wealth of oil extracted from the Niger delta region, poverty remains high (see above) and development indicators are very poor. Average life expectancy is 43, and

12 per cent of infants do not live to see their first birthday. The states receive large allocations from the Federal Government, but little is used to provide necessary services and benefits for the general population. Poor development efforts, increasing public concern over environmental damage and high levels of youth unemployment have led to the growth of both politically motivated and criminal groups that kidnap oil workers and damage oil pipelines for publicity, profit or both. The conflict, though contained in the Delta region, has a significant economic impact. The reduction in oil production as a result of conflict is estimated to have cost US\$58.3 billion between 1998 and 2007. The World Bank determined in 2008 that at the state level the needed institutional and legal framework for improved fiscal management had yet to be realised across the board. It noted some tangible improvements in Cross River, Kaduna, Kano and Lagos states, but institutional and capacity weaknesses in the civil service at federal, state and local levels were still visible, hobbling the government's ability to deliver services effectively.

1.4 Corruption

Progress was made in increasing transparency and tackling corruption between 2003 and 2007 by strengthening government institutions (e.g. setting up the Due Process Unit), prosecuting perpetrators of corruption (through the Economic and Financial Crimes Commission (EFCC)) and enacting governance reforms (e.g. bills relating to procurement and fiscal responsibility and the Nigeria Extractive Industries Transparency Initiative (NEITI)). But corruption remains a major problem. Nigeria was ranked 121 on the *Transparency International Corruption Perception Index* in 2008. This was up from 147 in 2007, which was mainly based on public confidence that the government elected in 2007 would enforce the recently enacted governance reforms, rather than on any proof that the level of corruption had actually abated.

2 Nigerian public procurement system assessments

2.1 World Bank CPAR, June 2000

Only two thorough assessments of the Nigerian public sector procurement system have been carried out since 1998, when after 16 years of military rule the current Constitution was enacted. The first was the World Bank *Country Procurement Assessment Report* published on 30 June 2000, based on work that was mostly carried out in 1999, shortly after the fall of the military government. The World Bank used the new methodology for rating country public procurement systems that it started developing in the late 1990s, which entailed a close examination of the following features, comparing each to recommended good practice and identifying strengths and weaknesses:

- i. The legal and regulatory framework
- ii. Procedures and practices

- iii. Organisation and resources
- iv. Performance of bank-financed projects
- v. Private sector performance
- vi. Trade practices and customs
- vii. Electronic commerce in public procurement

A holistic approach was taken on the assumption that all features need to be present for a system to function properly and for better competition and transparency to result. A summary of the results is provided in section 3 below.

2.2 Baseline Indicator System Report, 2007

The second assessment is the Baseline Indicator System (BIS) assessment carried out in 2007 by a local Nigerian consulting company, commissioned by the government and published in June 2007. The local consultant used Version 4 of the *Baseline Indicators Tool for Assessment of a National Public Procurement System* developed by the joint OECD-World Bank Initiative, which was released for piloting in 2005. Version 4 is derived from the World Bank's CPAR procedure, but the World Bank donor-centric approach has been eliminated and the toolkit incorporates improvements developed by the OECD/World Bank Initiative, which involved more than 60 procurement experts from the multilateral and bilateral donor community and developing country procurement agencies.

The differences between the two methods will become clear in the presentation of the results of each assessment in section 3 below. The features listed above have been elaborated into a four-pillar framework, with 54 separate indicators that establish a baseline score for the system. In addition, several performance indicators have been suggested to enable future checks on system performance and compliance; a scoring methodology has also been provided.

3 Assessment results

3.1 World Bank CPAR, June 2000

Legal and regulatory framework

The legal framework in place in 2000 had serious flaws. There was no specific law or other Act of Parliament regarding public expenditure or procurement in Nigeria. The Ministry of Finance, with the authority vested in it by the Constitution, issued financial regulations which regulated the responsibilities for public procurement and financial management at federal level. The financial regulations were essentially an internal set of administrative rules for financial and economic control of the federal administration containing regulations concerning composition of tender boards and the limits

of their jurisdiction, and regulations concerning the actual procurement process. In addition, they were superficial in their statutory regulation of the actual procurement process. Insufficient clear detail was provided. The procurement regulations in the states consisted mainly of local financial regulations based on the federal regulations, supplemented by circulars and guidelines from within each branch of administration in the state governments.

This arrangement had the following weaknesses:

- The financial regulations are not a law or an act of similar authority, but an administrative document which can be amended by the Minister of Finance without regard to the fundamental rights of the suppliers, contractors or consultants;
- They contained no permanent measures for surveillance and control;
- There was no permanent body outside the purchasing entities themselves monitoring and controlling the procurement process;
- There was no central policy-making entity for public procurement. This was the responsibility of the Ministry of Finance, which issued ad hoc circulars on current topics of interest. Staff therefore had difficulty finding what rules applied when issues arose;
- No procedure for filing complaints about public procurement was provided;
- There was no permanent body independent of the procuring entity set up to process complaints fairly.

Procedures and practices

Several features of the Nigerian procurement system were of great concern:

Eligibility: To bid for procurement funded by the federal or state governments and state-owned enterprises, bidders must be registered. The registration system is decentralised, every state has its own registration list and form, and there are no binding countrywide guidelines describing how the registration system should be set up, much less how it should function. Bidders can be taken off the registration list for a number of reasons, which are not clearly specified. Once registration is cancelled there are no clear rules for how a bidder can get back on the list. This leaves procurement open to abuse and it is not transparent.

Procurement methods and procedures: The description in the financial regulations of what procurement methods should be used is very limited and there are no detailed rules on when or how they should be applied. The choice of method is left to the discretion of individuals. This is unacceptably opaque. The following outlines the major weaknesses in the system:

- How and when **advertisements** should be posted is not clearly spelled out in the financial regulations. In some states and federal ministries bidding opportunities are seldom posted. The official *Government Gazette* is not published on a regular basis.
- There is no requirement in the financial regulations for the use of **standard bidding documents** and different types of standard contracts are currently in use.
- The financial regulations do not require, nor do they give guidance on, **bid openings** in terms of timing, location and participation. In practice, bid opening is often performed in closed sessions.
- There is no requirement in the financial regulations to include **evaluation criteria** in the bidding documents. Non-transparent criteria such as ‘reference price’ and ‘profit margins’ are often part of the evaluation.
- There are no specific instructions on how **bid evaluations** should be organised and carried out. The secretary to the Tender Board, a sub-committee of the Tender Board, technical experts or the implementing ministry or department evaluations can conduct evaluations. No provisions are in place to guard against conflicts of interest by evaluation committee members.
- **Award criteria** are excessively rigid.
- **Negotiation of contract conditions** is the standard. Consistent conditions for payment, advance payment and guarantee for advance payment, bid security and penalty for late payments are not provided in these contracts.

Monitoring and contract management: The financial regulations are silent on what monitoring practices should be followed. Locally developed routines are followed which vary by type of contract and are not in line with best practice. Feedback from the private sector and from staff in the civil service indicates that monitoring is weak and ridden with corruption.

3.2 BIS assessment, 2007

Methodology

As mentioned above, the BIS methodology closely follows that used in the CPAR and we will use the framework in the BIS when summarising the results showing the nature of the Nigerian public procurement system in 2007. The BIS bases its analysis on four different aspects (pillars) of a public procurement system. Pillars I, II and III are very similar to the approach in the World Bank’s CPAR assessment. Pillar IV is new, combining elements relating to corruption and transparency that were previously examined in the precursors to pillars I, II and III. The pillars are now supported by a number of indicators, each of which is broken down into sub-indicators and scoring

criteria, allowing a more precise diagnosis of where serious areas of weakness exist, so that targeted and realistic remedies can be developed.

Pillar I Legal and regulatory framework

Pillar II Institutional framework and management capacity

Pillar III Procurement operations and market performance

Pillar IV Integrity and transparency in public procurement

The intention of the OECD Initiative was that this framework, which consists of internationally recognised good practice solutions for all features of a public procurement system, should be used as the basis for an initial assessment to establish a quality benchmark or baseline. Subsequently, the actual performance of procurement operations in that system would be measured periodically: (i) to see if corrective measures had been taken following the initial assessment to remedy areas of weakness; (ii) to measure the extent of compliance with the legal and regulatory framework; and (iii) to assess how well the system is producing value for money. The BIS assessment conducted in Nigeria used the Version 4 draft, which is still being piloted in Africa, Asia and Latin America; the companion set of indicators to measure compliance and performance is still under development. As a result, the final BIS report only covers actual compliance and performance superficially.

Results

The BIS assessment shows that some progress has been made in raising the level of procurement system quality since 2000. The improvements are listed below using the morphology in Version 4 of the OECD/World Bank BIS.

Pillar I: The issues covered by Pillar I are divided into the legal and regulatory framework (Indicator 1) and the implementing regulations that are needed to support this framework during day-to-day procurement operations (Indicator 2). Both Indicators 1 and 2 continued to be rated low in 2007. Although a comprehensive new Public Procurement Act and the supporting documentation had been drafted and submitted to Parliament not long after the World Bank CPAR was completed and discussed with the government, they were only enacted into law shortly after the BIS assessment was released in June 2007. The Public Procurement Act is a significant improvement; when it is fully implemented it should provide a much more solid basis for Nigeria's public procurement. Areas of particular concern relating to Indicator 1 were: (i) the mandatory requirement that all bidders must be registered and the lack of guidelines about how this registration process should be carried out; and (ii) the threshold for prior review, which was considered excessively high. The main reason for Nigeria's low score for Indicator 2 was that no standard bidding documents had been made available to procuring entities.

Pillar II: Pillar II addresses three issues: how well procurement operations are integrated into the government's public budgeting and financial management system (Indicator 3); whether a procurement oversight body has been set up and given the appropriate authority, independence and funding (Indicator 4); and the quality of the government's strategy for developing the capacity of institutions that carry out and regulate procurement operations (Indicator 5). After 2000 some steps were taken to improve performance relating to various aspects of Pillar II, but before the Public Procurement Act was enacted they lacked enforceability. Remaining concerns relating to each indicator include:

Indicator 3: Multi-year budgeting, which is necessary to sustain the performance of larger contracts, was not possible; payment of invoices was often delayed unnecessarily.

Indicator 4: The Budget Monitoring and Procurement Implementation Unit (BMPIU) was established to act as Nigeria's procurement oversight body, but it lacks the necessary independence to manage ongoing procurement operations and it is not adequately staffed or funded. Among other things, the BMPIU does not collect, analyse and report meaningful national procurement statistics.

Indicator 5: In addition, the BMPIU has done nothing to develop a viable strategy to create better institutional capacity in public procurement. The procuring ministries have not created and sustained a professional cadre of procurement personnel capable of carrying out their anticipated procurement workload. Virtually no training programmes are available to close the skills gaps that exist in each ministry, and procurement personnel and recruiting never takes into account the specific skills needed for the annual procurement programme. The score for this aspect was 0, lower than for any other indicator.

Pillar III: Pillar III addresses three other important aspects of performance: how well the public sector procuring entities carry out their day-to-day procurement work (Indicator 6); performance by the private sector in response to government calls to bid (Indicator 7); and the quality of contract management and dispute resolution mechanisms (Indicator 8). The remaining weaknesses related to these indicators are described below:

Indicator 6: The BIS report is very critical of the institutional systems in place in the procuring entities, which negatively impact upon procurement. These include the lack of a recruiting strategy that focuses on skills requirements and is designed to fill skills gaps, inadequate salary levels for procurement staff, and poor internal governance and control systems. Governance issues are addressed in the civil service regulations, but they do not specifically address real procurement issues. Filing is not done properly, a fact that made it very difficult to complete the BIS assessment adequately.

Indicator 7: Indicator 7 has received the highest score of all 12 indicators. The private sector market is large and apparently well organised. In general, it responds well to

government opportunities to bid. Compliance tests conducted by the local consultant carrying out the BIS show that on average between 20 and 100 bidders respond to bid opportunities, depending on the nature of the contract. The difficulties bidders face include registration with the ministry before they can participate, payment of associated registration fees, payment for bid documents and access to bank credit, but they have learned how to cope with these obstacles.

Indicator 8: The consultant has given the second highest score to this aspect of the Nigerian system, citing only the existence of: (i) inspection clauses in contracts as evidence that proper contract management is being carried out; and (ii) arbitration clauses in contracts to prove that disputes are being handled properly. We would question whether these examples are sufficient. Clauses in contracts are often ignored, particularly in systems where staff skills are known to be weak. Some check should be made of actual contract management practices covering not only inspections, but also reporting, change processing and claims management. On dispute resolution procedures, it is now generally considered good practice to include a preliminary amicable dispute resolution step in contracts. These have been proven to save governments substantial amounts of money and time.

Pillar IV: The score for this pillar is very low. The weaknesses associated with each indicator include those listed below. Unlike Pillar I, this pillar will not be substantially improved by the enactment of the Public Procurement Act.

Indicator 9: Procurement audit capacity is dangerously missing in the procuring ministries and elsewhere in government. The only focus of the existing national audit organisations is on financial matters.

Indicator 10: There is no well-defined structure for handling complaints and appeals, much less an administrative body assigned to carry out this process that has proper authority and is properly staffed and funded.

Indicator 11: The system currently establishes ad hoc committees to review complaints. The score for this indicator, which judges the level of transparency in the system, i.e. how well the public and the market are able to access relevant procurement information, is also low. The fact that the government lacked adequate IT capacity in 2007 is cited as the major reason for this.

Indicator 12: This indicator is meant to score the overall system to ensure that government staff handling procurement follow a high code of ethics, and that proper measures are in place to manage conflicts of interest and combat fraud and corruption. The government has in place programmes to encourage ethical behaviour across the civil service, but the sensitive nature of procurement operations is not addressed specifically. Similarly, the existing anti-corruption agencies, the EFCC and Independent Corrupt Practices and Other Related Offences Commission (ICPC) were created without any specific attention being given to corruption during the procurement cycle. The consultant recommends that the acts setting up these two agencies be

amended to provide for better procurement oversight. The degree to which people comply with the existing anti-corruption legislation and how well it is enforced should play a major part in determining the score for this indicator. The BIS report indicates that the EFCC has yet to prosecute anyone for fraud or corruption.

4 Conclusions and recommendations

4.1 Scoring BIS assessments

How to score the result of a BIS assessment was a matter of great debate while the Initiative was active during 2003–2005. The position taken at the end, which is still maintained, is that even though there is a scoring mechanism in the Version 4 draft, each government that agrees to carry out an assessment is free to decide how to aggregate the results and whether to reveal them. Because the Nigerian Government has allowed the *BIS Report* results to be posted on the internet, the scores are repeated in Table 1.

It should be clear that a score of 30 per cent out of a possible 100, however imprecise the methodology, indicates that in 2007 the Nigerian public procurement system was extremely weak. It lacked an organisation capable of providing procurement oversight and leadership; the entities carrying out actual procurement did not seem to have staff with the skills needed to carry out the full range of procurement transactions competently; good filing practices were non-existent; and ongoing procurement activities were not routinely reported to the BMPIU, much less analysed by any other government organisation. The enactment of the 2007 Public Procurement Act will help, but it will take years to overcome the pervasive institutional weaknesses in the system.

4.2 System assessments and the trade agenda

The terms of reference for this report included an assessment of the impact that entering into trade agreement negotiations, specifically in relation to competition policy and transparency, might have on the performance of the procurement system. Reliable data about Nigerian public procurement are scarce, but those who participated in the Initiative generally agreed with the common rule of thumb that as much as 30 per cent savings or more can be achieved when a system is strengthened. However, as one can see by looking at the comprehensive reach of the BIS scoring mechanism, the Initiative concluded that savings of this magnitude could only be achieved by taking a system-wide perspective.

Those involved in the Initiative would say that improving competition policy or transparency alone will not have any sustainable impact on system performance, achievement of value for money, reduction of levels of corruption and the like unless careful attention is also paid to other aspects of procurement operations. Usually, improvements are also needed to enforce compliance even with good transparency requirements. Measures to manage conflicts of interest, capacity development measures

for procurement staff and similar measures to strengthen procurement audit capability are all needed to increase long-term market confidence, produce greater competition and generate increased government savings.

4.3 Recommendations

Based on this systemic approach to procurement systems, we recommend that Nigeria and other PCP members of the Commonwealth with systems at a similar of development should not be encouraged to engage in serious trade negotiations involving procurement matters until their systems have reached a higher level of stability and performance. Opening up their trade to more competition would of course be beneficial, but without a strong procurement oversight body with at least some solid knowledge about and understanding of their own system, they will not be able to adequately defend Nigeria’s best interests in any negotiations on the procurement issues debated in a proposed trade agreement.

It would be better therefore for the Commonwealth to differentiate its efforts first to support the ACP states with procurement systems that have reached a moderately advanced stage of development in pushing for greater involvement in regional and international trade pacts. Other countries, such as Nigeria, would derive greater benefit from targeted smaller programmes that support capacity and governance system improvements in the procurement oversight body and procuring entities, strengthening procurement audit capacity and developing better filing and reporting systems, so that more real-time information about current performance is available and analysed, and so that negative trends can be corrected in a timely fashion.

Table 1. Nigeria’s BIS assessment scores

Pillar no.	Indicator no.	Indicator score (%)	Pillar score (%)	Total score (%)
I	1	31	30	
	2	28		
II	3	33	25	
	4	41		
	5	0		
III	6	21	41	
	7	55		
	8	53		
IV	9	25	25	
	10	7		
	11	21		
	12	33		
Total				30