SOLE SOURCING PROCUREMENT: THE GHANAIAN PROCUREMENT EXPERIENCE

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ABSTRACT
The application of single or sole source procurement system remains a huge challenge to stakeholders. Thus, the aim of the study is to bring clear understanding to the extent of single-sourcing or sole-source application in the public sector. Based on available data it was revealed that there is abuse of the method and very often proper processes are not followed. There is also a public perception that this method is being misused and the need to have a comprehensive data base of core price items that will serve as a guide to it usage. Furthermore, politicisation of the method should be avoided and need to be critically assessed. The study recommends among others notice of intent of usage in the national dailies and contract notification to widen transparency index.

INTRODUCTION
Public procurement is the process by which governments and other publicly-funded entities acquire goods, works, and services needed to implement public projects. It remains one of the effective medium for achieving public aspirations for infrastructure development. For instance, OECD Trade Committee covering 130 countries estimates that the size of all levels of government procurement markets expressed as a percentage GDP data is 18.42% (OECD 2002). Government procurement of goods and services represents more than 18% of the world GDP (Alkardy, 2004). In addition, it accounts for 15% of the world’s gross domestic product (GDP, World Bank, 2013). In Sub-Saharan Africa at 14.9% of GDP. World Trade Organization estimates the share of public procurement in GDP globally to be between 10 and 15%, implying that public procurement is as used in middle-income and poor countries as in high-income ones (World Bank,2015). Public procurement represents about 24% of total imports and apart from personal emoluments in Ghana (Adjei 2005), and represents about 50 -70% of the national budget and 14% of Gross Domestic Product (GDP, World,2003). It is therefore, important to note that public procurement cannot be underestimated in any sphere of public administration.

In Ghana, the struggle to achieve an effective and efficient procurement system stem from challenges with expenditure in the public sector. These challenges include lack of comprehensive public procurement policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities for procurement entities, absence of comprehensive legal regime to safeguard public procurement, lack of rules and regulations to guide, direct, train and monitor public procurement. Thus, in order to solve these challenges, there have been a number of efforts initiated by successive governments spanning over decade. However, practitioners and researchers believe these initiatives are still evolving and tied to a number of foreseen and unforeseen economic and technological issues. History have it that, the effective regulation of the expenditure in the public sector started through the enactment of the Contracts Act, 1960 (Act 25) and Ghana Supply Commission Act which was reviewed later in 1990 by PNDC law 245. In addition, the Ghana National Procurement Agency Decree, 1976 (SMCD 55) was passed by the Supreme Military Council. In 1979, another law, the Financial Administration Decree (SMCD 221) was also passed. All these laws, decrees and instruments were enacted to provide a comprehensive procurement framework and regulate expending activities in the public sector.
Notwithstanding, the enactment of these instruments, a review of it revealed a lot of considerable challenges such as inefficiencies, corruption, lack of transparency, unclear legal framework, lack of harmonized procedures and regulations and unclear institutional and organizational arrangement required in the management of the public procurement process. In addition, inadequate capacity of procurement practitioners in terms of practices of their job duties and career path. These challenges have led to non-achievement for value for money in government and donor financed procurements which these instruments were meant for. It became clear therefore that, there was the need to critically examine the processes and procedures of public sector procurement to ensure operational efficiency and institutional capacity to address procurement issues. Based on these challenges and total overhauling of the above-mentioned instruments, government in 1993 decided to establish a comprehensive public financial reform programme designed to strengthen its Public Financial Management System. Furthermore, in order to still toughen the procurement regime, government in 1996, embarked upon an exercise to reform the public procurement system which was an integral part of a Financial Management Reform Program - PUFMARP (Ministry of Finance, 2001). This exercise was intended to improve and bring sanity to the overall public financial management in the country. In 1999, the Government of Ghana established the Public Procurement Oversight Group to steer the development of a comprehensive procurement reform program (World Bank, 2003). This led to drafting of the Public Procurement Bill in 2002 and was passed into law on 31st December, 2003 as the Public Procurement Act of 2003, Act 663 (Ministry of Finance, 2004). Any improvement in the public procurement system will therefore have a direct and substantial impact on the overall economic situation of the country and result in budgetary savings and efficiency in Government expenditures (Anvuur and Kumaraswamy, 2006).

Notwithstanding, the four pillars of Public Procurement Act 663 of 2003 (transparency, fairness, accountability and economic) it challenges were enormous which included high cost of maintaining review board, inconsistent thresholds, inaccuracy and uncertainty in the act, lack of decentralization of metropolitan municipal and district assemblies, composition and functions tender committer, tender reviews board and central tender review and categorisation of entities. After a decade and compounded challenges of the Public Procurement Act 663 of 2003, the government in 2016 amended various sections. Thus, the new Act Public Procurement Amendment Act 914 of 2016 is to curb the challenges with Act 663 and reflect current trend of procurement practices e.g. sustainable procurement, framework contracting practices etc. Albeit, this amendment is yet to make a significant impact, but there remains an unsolved issue surrounding section 40 and 41 which is the Single source procurement method. This section has become a source of apprehension to major players in the industry e.g. donors, government, practitioners and academia. In addition, there is growing momentum of debate as to its application (benefit and challenges). There have been several commentaries to its proper meaning either it is single-sourcing or sole sourcing. Thus, the aim of this study is to bring clear understanding to the extent of single-sourcing or sole-source application in the public sector.

1.0. PHILOSOPHICAL STANDS ON SINGLE SOURCE AND SOLE-SOURCE PROCUREMENT

1.1. Single Source

Single Sourcing a particular supplier is purposefully chosen by the buying organizations, even when other suppliers are available (Larson and Kulchitsky, 1998, Vah Weele, 2010). Single Sourcing decisions are usually made at strategic and top management level where purchasing and supply manages need to determine whether and how much value single source relationships add (Leenders et.al, 2007). Lynch
(2013) defines Single-Source procurement method as a process of acquiring goods, services and construction works from only one source. It is often opted for with the purpose of reducing material costs, as placing all purchasing requirements with only one supplier often make it possible to negotiate for better purchasing conditions. Some prerequisites of a single source decision include prior commitments, successful past relationship, or on ongoing contract. Relationship with supplier, in addition to it can be justified when the supplier can offer unique on outstanding quality. Concentrating purchasing lead to price and cost reductions, on the use of just-in-time is easier with a single supplier. The downside of this strategy is the increased dependence of the buyer on supplier. In addition, it is very difficult to balance the pros and cons of Single Sourcing (Van Weele, 2010). Being dependent on a supplier can impose a number of risks for example, constant price increases, lowering level of quality or delivery among others (Leeders et. al, 2002).

1.1.1. Advantages of Single Sourcing
Better Pricing through Higher Volume: By following Single Sourcing Strategy one will be placing the entire order to one supplier. The Supplier will provide discount or provide the items at a lower cost because of the increased order size. Inventory and Scheduling: The ability of the Organizations to schedule the delivery purchase been increase as the number of suppliers reduces to one improvement is scheduling of deliveries helps the organizations to carry fewer of each item is the inventory. Quality Improvement: Managers recognize this as the main reason for moving towards single sourcing. Due to single sourcing quality is improved in various ways. Quality improves during the selection process and due to the stringent quality requirement of the vendee. Building long term relationship: As there is only one supplier the communication between the two will increase leading to better coordination. This will help in building long-term relationship. Thakur (2002) cited by Shana (2004) stated that single sourcing provides multiple benefits for an organization including reductions in product variation, training required and cost of quality. The organization is able to use a brand known for producing quality products, helps to optimize the company’s supply chain, lower production costs, possible streamlining of training, reduced downtime and inefficiencies caused by interoperability issues (Thakur, 2002; Shana, 2004).

1.1.2. Disadvantages of Single Sourcing
Price Escalations are the most common risk in single sourcing. Vendor increases price once it blames the single source of the vendee. Default Risk: The Vendee can default because of one of the following reasons, fire, strike, natural disaster, vendor prerogative, etc. This will cause disruptions in the vendee organizations. This may bring the operations in the vendee organizations to a half. Corruption: The single sourcing procurement may lead to corruptions. There is no competitive bidding process and hence the supplier chosen can be bias. It is very essential that the respective department like engineering manufacturing and procurement takes an anonymous decision on the selection of single source. Large purchase Volume: One of the underlying ideas behind the single source is to order large volume to get the price advantages that would have been there in case of competitive bidding. Skilled Supplier: The single source supplier should be of high skilled to undertake the manufacturing of complex items. The skill is to also require producing the desired quality required which is the right product at the right price. The supplier should be able to cut down the cost of the production over time. Time required for Vendor Development: Most of the time the companies had to undertake the Vendor development process to develop the single source. And is not suitable for companies who are not doing well financially. Total reliance on single source: The buyer has to rely on the single source for the supply of the items. Any setbacks to the supplier in terms of financial or
natural calamities like earthquakes, fire, flood etc. will have direct impact on the buyer which may result in loss of sales.

1.2. Sole-Source Procurement Method

Sole source is a non-competitive purchase or procurement process accomplished after soliciting and negotiating with only one source, so-called sole source, thus limiting Full and Open Competition (FOC). Sole Source is also known as sole source procurement, sole sourcing, sole-sourced contract, direct sourcing, sole supplier, direct source. It is also referred to as the practice of working with a single service provider to define, negotiate and purchase services (Samuel, 2015) No-bid contract is a popular term for what is officially known as a "sole source contract." A sole source contract implies that there is only one person or company that can provide the contractual services needed and that any attempt to obtain bids would only result in that one person or company being available to meet the need. It is awarded usually, but not always, by a government after soliciting and negotiating with only one firm. These contracts can be negotiated much more quickly than a typical competitive contract but they are often fraught with suspicion that the company used illegal or immoral means to exclude competitors (usually cronyism or bribery). Sole source purchasing can be appropriate or necessary when the following situations present themselves: the supplier has a patent on the device or them, the basic assembly demands tight tolerances and many parts must work together, the supplier has a good deal of previous experience in the manufacturing of a particular device, important time constraints exist, the supplier is willing to bear some of the development costs and the supplier quality is better than its competitors.

Some of the advantages of that comes with these type of includes reduced decision cycle i.e. time required to award contract, lowered administrative costs, i.e. procurement process reduced to a minimum, prices promoted small business participation, improved delivery of products and services, quality can be more consistent, the supply manager need only aprons and manages one supplier, the supply manages need only focus on one supplier for delivery and source and there might be both opportunities for design improvement. On the other hand, it disadvantages includes catastrophic event will stop production and shipments, supplier may become complacent and risks of financial problems, price increase demands, inability to meet shipment requirement and possible mergers or acquisition can cause different management focus.

2.0. INTERNATIONAL OUTLOOK

The World Bank considers single source procurement appropriate where there is a need for extension of an existing contract for additional goods or works of a similar nature, for reasons of standardization of equipment or spare parts, to be compatible with existing equipment, or the required equipment is proprietary and obtainable only from one source, to enable a contractor responsible for a process design to acquire critical items from a particular supplier as a condition of a performance guarantee and/or in unanticipated circumstances of needed response to natural disasters. In the United Kingdom, the government in 2014, December passed a law to the establishment of the Single Source Procurement Regime (Defence Reform Act 2014). This law was to regulates the UK government’s procurement of single source or non-competitive, military goods, works and service. The principal aim as indicated by the UK governments for this law was to ensure that value for money is obtained for the UK taxpayer in both expenditures for defence contracts and single suppliers (Government of United Kingdom, 2014). In another instance, the Danish government’s general rules and guidelines for procurement based on tied mixed credits to developing countries indicated the negotiated contracts (sole source procurement) are for small projects with a total

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amount less special drawing rights (SDR) 2millions (approx. EUR 2.3 million). They further stated that it should be based on case-by-case situation, however, the price should be competitive and contractors must open books allowing for internal price calculations and price verification (Ministry of Foreign Affairs, Denmark, 2007). Furthermore, the Japan International Cooperation Agency (JICA) also recognised single-source in the selection of the consultants and procurement of good and services in exceptional cases such as 'tasks that represent a natural continuation of previous work carried out by the consultant or contractor; in emergency cases, such as in responses to disasters; for very small assignments; or when only one consultant is qualified or has experience of exceptional worth for the assignment. Single-source selection (SSS) shall be used only in exceptional cases. The justification for SSS shall be examined in the context of the overall interests of the Borrower and the project, and JICA’s responsibility to ensure efficiency and transparency in the selection process and non-discrimination among eligible consultants or contractor for contracts (Guidelines for the Employment of Consultants and the Guidelines for Procurement, 2012). In addition, the United States Agency for International Development also consider single source procurement only under one of the following criteria, when the Contracting Agency can demonstrate the existence of an emergency situation in which the requirement for competition would result in unacceptable activity delay; when proprietary procurement is justified and the necessary equipment, materials, or spare parts are available from only one source, taking into account any special requirements such as the need for in-country service capability; and when adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States (Country Contracting Handbook, 2002).

3.0. EXPOSITION OF THE GHANAIAN PROCUREMENT ACT ON SOLE AND SINGLE SOURCING

The Ghanaian Public Procurement Act, Act, 663 of 2003 and Amendment Act, 914 of 2016 in section 40 and 41 recognised the single source procurement but delineate some aspects of sole source procurement. It is considered to be a non-competitive procurement method dealing with both section 40 (Description) and 41(Procedure) respectively. For this reason, its usage is subject to the approval to the Public Procurement Authority so as to prevent abuse of the system by various entities. The usage of this section in further subject to the situation at hand for example the emergency situation: where there is disease outbreak and the need for vaccines, where goods or service required can only be supplied by one source, national security concerned are involved and where there is urgent need for goods and services that any other method or procurement is impracticable to obtain the goods or service at the appropriate time, then single source can be used. Most often these types of procurement end up in very precarious situation due to its dependence on one seller and the seller is also dependent upon only one buyer. In a situation where, relationship between the buyer and seller becomes difficult, or either company experiences financial difficulties, then both parties are affected and continuing the trade becomes problematic. In Ghana, this procurement type does not have any element of competition as well as transparency making the procurement processes shredded in secrecy. It is of common knowledge that single or sole procurement method promote undesirable practices such as corruption and kickbacks in the public sector. This form of procurement become the surety for political capitalisation as well as medium for disbursement of public fund to political affiliates.
3.1. Challenges to Its Usage in Ghana

The challenge with these procurement methods are enormous, for instance, Danquah Institute (2010) argued that it is source of corruption, revealing that Ghana could have made an estimated 65% savings on contract if those deals were subjected to competitive tendering. That translates into GHS7.8 billion savings in public funds, equivalent to US$1.93 billion, nominally. Recently, Deputy Majority leader and Minister for Public Procurement has called for another amendment of the public procurement act to give the Procurement Authority, the powers to conduct value for money auditing on sole-sourced (single-source) projects. The CEO of the Public Procurement Authority (PPA) in 2016, emphasised that sole-sourcing in public procurement cannot be made the norm and should not be entertained. Adofo (2016) also posited that it is a medium for politician to enrich themselves and friends or cronies who simply inflate the cost of the item(s) to be purchased and later given as kickbacks. However, former Chairman of Finance Committee of Parliament has also caution that decision to totally forgo the use of sole-sourcing in the award of government contracts may delay critical developmental since sole-sourcing has its own benefits. The Senior Minister is on record at his vetting to have said that sole-source (single-sourcing) is not bad however proper requirement for its application must be adhered to.

Furthermore, the OECD (2007) indicated that non-competitive procurement of contract can have tendency of low level of transparency, less democratic oversite, inadequate value for money audit and corruption risks. There is also the general concern about the use of this method as it has been abused by the authorities, and a such there is a daily outcry of corrupt practices associated with it. Millions of dollars are stolen by procurement officers who connive with the bidder to inflate prices of items and cost of contracts and that drains taxpayers’ funds which could be used other good cause. The most disturbing of these challenges is the possible corruption which has militated against the procurement system in Ghana. It is quite obvious that, public procurement seeks to drive out corruption, but finds it difficult to thrive in a very corrupt environment. Ghana is rated amongst the corrupt countries in Africa, with most governments losing the battle against corruption. Transparency International (2012) affirms this by judging the rise in Corruption Perception Index for Ghana. This corrupt environment has resulted in shady deals such as by-passing purpose procurement procedures and processes. Not using the often-preferred competitive bidding and sometimes issues of bribery and political interest amongst tenders and bidders and thus leading to favouritism. Corruption is indeed the bane of public procurement and would restrict achievement of objectives such as transparency and value for money. The World Bank (2004) noted that some politicians are of the view that their power wields them the right to interfere in procurement procedures especially when they do not feel decisions favour their political vision. This has led to recent judgement debts and abuse of public funds as a result of abusing public procurement processes. Quiet recently, the vice president was amazed to have expressed shock after finding out that the official residence under construction for the country’s Vice Presidents, would cost the country a whopping $13.9 million dollars, this contract was also procured through the non-competitive system.

4.0. EVIDENCE OF SOLE OR SINGLE SOURCE IN THE PUBLIC SECTOR

The use of sole or single source procurement system as already reiterated has become one of the most grounded approached in the public of the infrastructure in Ghana. Several studies and public knowledge on the procurement indicates that this type of procurement system remain the most frequently used method in procuring good and service in recent times. The abuse of this system is enormous as politicians use this system as a medium to generate income for their own benefits. This is seen in the recent exposé of various institutions such as Social Security and National Investment Trust (SSNIT) on the procurement of software,
Cocoa board on cocoa road procurement and Jospong company (single-sourced for GH₵98m fumigation contract and $74 million contract to five subsidiaries of the Jospong Group to supply one million waste bins and 90,000 bin liners). Although, there are conditions associated with its usage, it has been generally overlooked. The following section take critical look at its usage and comparing to others forms of procurement methods. From critical analysis of the Annual Report from the Public Procurement Authority from 2011 to 2014 in the value of goods and services. From Figure 1 there was a rise in the usage of single source in the 2013 and 2014 as compared to the 2012 and 2011. In 2013, single source procurement recorded the highest percentage in terms of value as compare to the other forms of procurement methods. The annual report of PPA attributed this occurrence to the procurement of the airports maintenance projects and importation of light crude oil. However, the percentage of such increases was not indicated or separated from the normal form of single source procurement system. On the other hand, there was decrease of 19.97% from 2013 to 2014, but it does not represent a minimal increase of 2011 and 2012. It worth also to note that at the time of presenting this paper the 2015, 2016 report were not out. However, it is envisaged that there will be an increase due to the government’s attitude to procuring more through single source when election period is approaching.

**Figure 1: Procurement in terms of value**

In addition, Figure 2 represents various procurement systems in terms of the numbers from the 2006 to 2014. From the analysis in terms of the numbers there is a generally decline on the usage single source of procurement system in procuring of goods and services. However, 2010(8.85%) recorded the highest followed by 2007 (8.58) while 2012 (1.01%) recorded the least followed by 2013 (1.71). It must be noted that the year 2007 was approaching an election year therefore procurement good and services for political expediency was high and other goods toward election, for example electorate materials. Which might delay using the other approaches for the procurement systems. It is also interesting to note that 2013 was the highest in terms of value of the procuring using single source based on the available data, but was the second least in terms of number of procurement using the various systems. The question therefore will be
that is it the number of contracts which should be of interest to policy makers or the scrutinizing of the value of the of the goods and service to be procure. From the analysis the obvious answer will be the value.

**Figure 2:** Procurement in terms of number

### 4.1. CONCLUSION

There is the need to critically assess options that will help reduce the use of Sole Sourcing and curb this malice. One of these options is to publicly publish all sole source procurement of goods and services for a given period of time. This will enable bidders who can bid for such jobs contact the agency involved and hence there will be the need to cancel the use of sole source method and opt for competitive tendering.

In addition, there is the need for technical and detail review of the submission, thus there must be national data base of core rate price items, which can be assessed by all and must be updated from time to time with new items. Furthermore, ministry of procurement should set up parallel review board which will be cloth with powers to review sole or single source contract as the new amended Act 914 render the central review decisions non- enforceable.

Moreover, there is the need to constantly educate all professionals in the procurement industry about the importance to bring to a stop unnecessary reliance on non-competitive contracts. One major way forward is also to limit the time for sole source procurement. It will help determine after the time limit, if sole source contract is warranted or competition is available for that form of procurement or whether there have been changes in requirement and calls for different procurement method.
Lastly politicisation of single or sole contract must be put to end. Politician are advised not to use sole or singles procurement as the only way of procurement to their gains since it prevents the country from obtaining value for money.

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