**Review**

**Public procurement and due process policy in Nigeria: Thrust, prospects and challenges**

**Fayomi, Ikeoluwapo Omolara**

Accepted 17 October, 2013

At independence in 1960, Nigeria had very high hopes and expectations for rapid and superlative socio-economic growth and development. Regrettably enough, Nigeria today can be described as a country of irony as the socio-economic performance over the years remained superficial and unimpressive. This inclement experience was largely attributed to high level of corruption or mismanagement of public resources closely linked up with the public sector procurement systems that has brought untold hardship on the economy, development and the citizens. To reverse this irony of ‘poverty in the midst of plenty’, the government introduced the universal “Best Principles”, the Due Process mechanism in the country’s public procurement systems in 2001. However, a lot of questions, misconceptions and criticisms have trailed its implementation which has made it increasingly difficult to secure maximum affection from the majority of the Nigerian populace. The foregoing has spurred this study. The study examined the thrust of the policy, the prospects and the attendant challenges. As laudable and lofty the policy is, findings showed that the policy has been adjudged to have performed below public expectations.

**Key words:** Due process policy, public procurement, best practices, due process certification, MDAs.

**INTRODUCTION**

The basic fundamental *raison d’etre*, for the existence of any government, in developed or developing world, is the pursuit of the happiness of the citizens. It is by so doing that the government adds value to the quality of life of its citizens in all strata of the society. Governments all over the world are known as the greatest provider of services or public goods to the civil society. However, this depends not only on the resources endowment of such country but on the efficient and effective utilization of such resources at its disposal to ensure that resources are deployed in the overall interest of the people. The imperative of prudence, transparency and accountability in government spending, particularly in the procurement of goods and services for development projects cannot be over-emphasized.

The country's optimism for rapid and superlative socio-economic growth and development were predicated on its substantial natural resources endowment, such as major oil and gas deposit, a variety of solid minerals, a well-developed industrial base, an extensive banking system, a large labour force, a vibrant private sector, favourable growth indices, and a competent civil service. Nigeria being the most populous country in the African continent and the eleventh in the world must have had resources which would have translated into a profitable market that would make it the envy of the international community. In the light of this revelation, Nigeria has all it takes to become the strongest economy in Africa, and one of the leading economics in the world. In spite of all these blessings, the poor performance of the Nigerian economy in many sectors of economy is very evident. The real sectors of manufacturing and agriculture are performing rather poorly. The country imports a lot of the agricultural produce that the citizens consume. The capacity utilization of industries is around 50% of installed capacity. The country’s per Capita Gross National Product which was as high as $1,218.4 in 1980, declared continuously to its lowest level of $240.0 in 1992;
standing at around $250 in 1995 and at $270 in 1997. The figure is still below $300.0 as at today (Obadan and Ayodele, 1999). They also observed that the poverty levels in Nigeria in spite of poverty alleviation programmes by successive governments remain high as population continues to increase.

In the light of the above, Nigeria can best be described as a country of a paradox of being rich while the citizens are poor and deprived. The World Bank (1996) reported the state of Nigeria’s dilemma, “That Nigeria’s poor economic performance overtime is largely attributable to lack of transparency and accountability as well as widespread corruption”. The State and its public bureaucracy are largely to blame for the phenomenon. Olowu (1993) corroborated this assertion that the two institutions have turned out to be not only highly centralized and unaccountable, but they have become opaque, corrupt, self-serving and insensitive to the economic misfortunes of their respective countries in Africa. This inclement situation is also confirmed by Geilerova (2001) when he opined that the main constraint to development in African countries is not lack of resources but unwillingness of their leaders to govern well. This development has thus justified the hypothesis that abundance of resources of all types is not a sufficient condition for all round development of any country (Obadan, 2003).

Since independence of Nigeria in 1960, the country has been experiencing a high degree of mismanagement of resources particularly in the area of public procurement. There have been existing open abuses to rules and standards in the award and execution of public contracts in Nigeria. These were evident in over-invoicing, inflation of contract costs, and proliferation of white-elephant projects and diversion of public funds through all kinds of manipulation of contract system. The regulatory bodies that were set up to ensure compliance with laid down rules and regulations on procurement and award of contracts in the public sector appeared ineffective. This resulted in a high level of corruption and enormous wastage of public resources, lack of transparency, accountability, fairness and openness. The situation made foreign and even local investors to lose confidence in the Nigerian economy. It must be noted that the prevailing high level of corruption was closely linked up with the public sector procurement systems, and considering that about ten percent of the gross domestic product (GDP) must pass through the procurement systems. It then became imperative that the public procurement systems must be reformed if Nigeria must achieve economic growth and developmental strides in this new millennium.

It was in the light of the above that President Olusegun Obasanjo on assumption of office, in 1999, sought for and obtained the World Bank assistance to undertake a study of the existing procurement and financial systems in Nigeria. The outcome was the proposal submitted by the World Bank to Mr. President in 1999 that was tagged the “Country Procurement Assessment Report” (CPAR) which indicated the need for reform of the procurement law based on the United Nations Commission on International Trade Law (UNCITRAL) which has proven effective in a number of countries in the developed world, even in Lithuania, Estonia and Tanzania.

The findings of the Study (CPAR), which covered institutional as well as organizational structures relating to the existing procurement regime, are (World Bank, 1999):

i. Proliferation and ineffectiveness of Tender Boards.
ii. Lack of professionalism in the execution of the procurement functions.
iii. Weaknesses in bank financed projects
iv. Excessive deposit for opening of letters of credit.
v. Lack of communication strategy.
vi. Weaknesses in the export, import and tariff procedures.
vii. Lack of streamlined quality control practices.
viii. Lack of knowledge in electronic procurement in the public sector.

It is on the background above that Obasanjo administration reformed the public procurement system in Nigeria. He introduced new procurement system called “Due Process” Policy in 2001, that is transparent, efficient, and effective and which delivers value for money in public finance budgeting and expenditure. This reform constitutes a major landmark in the contemporary Nigeria, which is a deliberate departure from the previous administrations in the country.

The “Due Process Policy” was introduced into the nation’s procurement system via Treasury Circular by the Federal Ministry of Finance No, TRY/F15775 of 27th June, 2001 Federal Republic of Nigeria, (2002). It was passed into an Act under the President Umaru Musa Yar’Adua administration which is now called “Public Procurement Act” 2007. It is this Parliamentary Act that puts Nigeria in the league of countries with legislation on how public funds would be expended or disbursed. Prior to 2007, Nigeria was among the few African countries without legislation on Public Procurement.

The Public Procurement Act highlights the guidelines for the award of contracts and services, but a lot of questions, misconceptions, doubts, criticisms and cynicism have been trailing its implementation. Arising from this, it has become increasingly difficult for the policy to secure maximum affection from the Nigerian populace since its introduction in 2001. The study employed primary and secondary sources of data. The secondary data were primarily government publications, Treasury Circulars, Daily Newspapers, Public Procurement Act and Manual. The primary data were sourced through informal random opinion survey targeted mostly at the stakeholders, using the opportunity of the Tenders Days in the selected Government MDAs.
LITERATURE REVIEW

All nations all over the world are always besets with various political and socio-economic problems at one time or the other. Constant efforts are often being made by the various governments to find solutions to such problems. This is usually through administrative reforms, whereby a policy option is made to halt a named political, educational or socio-economical problem. The Due Process Policy is a package of policy measures, and like any other policy, it has set goals which it aimed at achieving. The institution of the reform measures presupposes the existence of some administrative deficiencies. The rectification of the flaws in the administrative machinery depends on the satisfactory implementation of the reform goals.

It becomes apt at this juncture to discuss the rationale for the introduction of the Due Process Policy in the public procurement in Nigeria. That is, what are the major differences or defects of the previous procurement system that the Due Process Policy is addressing? According to the highlights of the Budget Monitoring and Price Intelligence Unit (BMPIU) which is the Office in charge of the Due Process, though now changed to the Bureau of Public Procurement (BPP). According to the BMPIU Manual, (2005), some of the defects are:

1. Lack of competition and transparency in project procurement leading to high cost of project.
2. Budget proposal submitted by the MDAs not being related to justifiable needs.
3. Improper project packaging and definition, compounding ineffectiveness.
4. Projects not prioritized, recorded and synchronized among the MDAs such that many Ministries, Departments and Agencies (MDAs) are pursuing the same or similar need simultaneously with resultant lack of economy efficiency and effectiveness while creating overlapping and waste.
5. Preference for new projects thereby encouraging regular midstream abandonment of projects in progress and this also fuels the cultural disdain for maintenance, rehabilitation and refurbishment of existing facilities and infrastructure.

The goal of the BMPIU is to ensure full compliance with the laid down guidelines and procedures for the procurement of capital and minor capital projects as well as associated goods and services with the following objectives (Aduba, 2004):

1. To determine whether or not Due Process has been observed in the procurement of services and contracts throughout the initiation and execution of such projects.
2. To introduce more probity, accountability and transparency into the procurement process.
3. To establish and update pricing standards and benchmarks for all supplies to the government.
4. To monitor the implementation of projects during execution with a view to providing information on performance, output, compliance with specification and targets in the area of cost, quality and time.

Having highlighted some of the defects of the previous procurement system in Nigeria and the objectives of the Due Process Policy, it then becomes imperative here to define the Due Process and Public Procurement as cardinal concepts of this paper.

Due Process Policy is the mechanism for ensuring strict compliance with openness, competition, cost accuracy, rules and procedures that guide contract award by the government. Due Process Policy is an agenda to ensure and sustain an open, transparent and competitive Federal Procurement System. It is integrity-driven, uphold spending within Budget. It also ensures speedy implementation of projects in order to achieve value-for-money outcomes without sacrificing, quality and standards in the delivery of public goods or services. The policy is aimed at enforcing compliance with established guidelines in budgeting, procurement and expenditure by all Federal spending entities. It is not only based on open and competitive process but that contract costs are authentic, reasonable and comparative to national, regional or international costs. The ultimate goal is that all spending by Government should be appropriately geared to the realization of set priorities and targets that were generated from medium range strategic plans at the most cost effective and cost efficient basis (BMPIU Manual, 2005).

Arising from these various submissions by scholars in respect of the concept, it could be said that Due Process is all about transparency and accountability. In Due Process, funds are not to be recklessly used and applied based on the laid down rules. Accountability and Due Process are major features of good democratic governance. When we talk of good governance, the two concepts are in-built, crucial or major elements.

Ezekwesili (2004) pointed out that the vision or mission of the Due Process is to ensure good management of public money and assets to reduce corruption, improve system planning and project preparation work to achieve accuracy of costing, cost-benefit analysis and prioritization in deciding the spending pattern and plan for any given year. It is also to bring about improved fiscal management through more effective expenditure management, institutions, processes and control mechanisms. Apart from more optimal resource allocation are decisions to achieve clearly articulated public policy objectives through enhanced identification of the costs and benefits of alternative expenditure decisions. This study considers, “Public Procurement as the acquisition of goods and/or services at the best possible total cost of ownership, in the right quantity and quality at
the right time, in the right place for the direct benefit or use of Government, or Federal Government entities like the Ministries, Department and Agencies (MDAs), generally via a contract” (Emeka, 2009). In order words, Public Procurement is the process of acquisition of goods, services, works and projects from the third parties, including logistical aspects thereof from initial conception and definition of public sector needs through to the end of the useful life of a procured asset or service contract. Thus, public procurement system is the bridge between public requirements (roads, hospitals, schools, etc) and private sector providers. Government provides goods and services to meet a variety of needs of the citizens, while it uses its budget to decide and indicate what will be “made” in-house or what will be bought from others through the procurement system.

THRUSt OF THE PUBliC PROCUrMErENT ACT 2007

In its determined effort to harness, maximize and utilize the resources of the country for the improvement of life of its citizens, the Federal Government of Nigeria instituted a robust Public Procurement System (PRS) for the execution of all government projects, works and services.

Essential goal of the Act

The primary goal of the public procurement Act 2007 is the “Establishment of National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by the regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria, and for other related matters”.

Scope of application of the Act

The Federal Government of Nigeria and all Procurement Entities:
1. States that all Entities outside the foregoing which derive at least 35% of funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation Share of consolidated Revenue Fund.
2. Shall not apply to procurement of Special Goods, Works and Services involving national defense, or national security unless President’s express approval has been first sought and obtained.

Core objectives of the Act

Regulatory functions to achieve the following four (4) core objectives are:

1. Economy and Efficiency.
2. Competition providing level playing ground for all strata of bidders.
3. Value for money.
4. Transparency.

Approval thresholds by the Act

The BPP reviews and certifies the Federal Government contracts according to established and approved thresholds. By now, there are three (3) approval thresholds for the award of Federal Government Contracts in the public sector. The approval of contracts has been categorized into the following:

1. Contracts below N1 million.
2. Contracts above N1 million.
3. Contracts of N50 million and above.

Upon conclusion of the contract procedures, the Ministerial Tenders Board shall then forward their conclusions and all relevant supporting documentation to BPP for Due Process compliance Review and Certification. It is only after the Due Process Certificate is issued out the BPP that the contract be forwarded to the Federal Executive Council for final approval to award contract.

Specifically, the Due Process Policy covers two (2) major types of tenders. They are:

a. Open tendering: This type of tenders deal with contracts, purchases and services above N10 million which must be advertised in at least two (2) national dailies and or Government Gazette, and on the Notice Boards of the procuring institution. The essence is for pre-qualification purpose to provide bidders equal opportunity and access to information. This type of tendering is also known as competitive tenders.

b. Selective tendering: In this type of tenders, at least three (3) reputable contractors in specific areas of specialization are selected and invited to bid. This type of bids, are not open because of the technical nature of the job.

However, for efficient and effective procurement system, the following criteria are critical for consideration in the award of contracts, works and services in the Due Process (Ezekwesili, 2002):

i. Priority: Is the project of priority to Government especially in the sector for example, Agriculture, Solid Minerals, Sport, having a better chance/speed of completion and readiness than the other projects displaced? Can the solid or economic value be immediately felt?

ii. Benefits: What are the benefits of the projects? Can these be quantified? Will the benefits derivable directly
enhance the standard of living of the people?

iii. Technical: Was any feasibility study undertaken for the project? There must be confirmation that the design meets with legal safeguards obligations such as provision for compensation for displaced persons, that the engineering plans had been completed and subjected to independent review, that a procurement plan had been prepared.

iv. Contracting: There must be evidence that due process had been strictly adhered to in the selection of proposed contractors, such as open tendering, that arrangements are in place for technically competent, independent monitoring and supervision of contractors.

v. Costing: Evidence that the project had been adequately cost with anticipated price fluctuations already in built. This is to avoid the potential variation on contracts. Evidence that prices quoted are in accordance with prevailing price index and that projects were not unnecessarily loaded to ensure a bloated cost.

vi. Project management: Confirmation that a project cash flow forecast consistent with the procurement plan had been prepared and independently verified by a consultant, that the implementing Agency has the procurement and financial management capacity to manage the project funds.

vii. Payment: Where large assets are to be acquired, confirmation that there will be a physical verification by relevant authority has been made or conducted must be produced before such assets are paid for and that small assets will be subject to random verification. There must be confirmation that the implementing Agency has submitted required reports and audits on previous or ongoing Capital Projects, which a revised procurement plan would be presented each time a payment request is presented for a signed contract.

PROSPECTS AND CHALLENGES

The Public sector in Nigeria is a major source of business opportunities for nationals or foreign nationals that seek to do business with the government considering the capital budget and recurrent overhead budget that is in a trillion naira annually, which makes Nigerian government to be a major player in the market place.

The major procurement activities of government include road construction, building, defense, aviation, agriculture, water installation, education, technological equipment, information technology hardware and software. Other activities are health procurements, energy generation, transmission, and distribution procurements in the energy sector. It also include oil and gas sector procurements and the generalized recurrent expenditure items like stationary and other office consumables. The Bureau of Public Procurement (BPP) since the introduction of the Due Process Policy in the Public Procurement has reversed any contract award within its mandate threshold that fell short of the standard criteria of cost, and an open, transparent contract process based on Due Process compliance (DPC). Thus, companies or bidders have now realized that there are only two objective rationale for making a decision at the BPP; transparent, open and competitive process on the one hand and lowest competent cost on the other. Thus, the end of the monopolist and oligopolistic contractors that thrived in various sectors of the public sector business has now become the thing of the part.

The study revealed that Due Process Policy has helped to create new orientation in the conduct of government business when compared with the past procurement system. There have been growing commitments to the principles of competency based on open competition, value for money and the three universal “Best Principles” of Right Process, Right Winner and Right Cost in procurement of contracts. The study showed that under the policy, only projects that were budgeted for were admitted for Due Process Certification and execution by the BPP. Records in the BPP also revealed that within the four (4) years of the policy, about 160 billion naira was saved in the form of reductions from the inflated contract costs to implement developmental projects for the benefits of the Nigeria people. The study observed that the policy has also ensured public spending within budgetary limits, completion of projects as at when due. It reduced drastically the influence of quacks in the procurement sector. It was also assumed that the success of this aspect of the policy no doubt influenced the debt relief granted to Nigeria by the international debtors –World Bank and Paris Club of Creditors’ Nations, all of which have impacted positively on governance and developmental process.

The study revealed that the under listed are some of the achievements of the new public procurement system in Nigeria.

1. Cancellation of the process for the award of over 250 Federal contracts found to have fallen short of Due Process Compliance (PPC) and a fresh procurement process compliant with the principles of openness, transparency, competition and right cost.

2. Reinstatement of many Nigerians and companies who rightly won public contracts by merit but were overlooked at the Government MDAs level and so elevation of the principle of competition.

3. The rebuilding of the confidence of average Nigerians in government conduct of public financial activities.

4. Good governance of public money and assets resulting in the reduction of corruption.

5. More optimal resource allocation decisions to achieve clearly articulated public policy objectives through enhanced identification of the costs and benefits of alternative expenditure decisions.

6. Improved liquidity management of public funds.

7. Improved technical efficiency in managing and utilizing
resources through improved information flows more relevant to decision responsibilities of managers.
8. Enhanced transparency and accountability of government, providing better historic information as a guide to the future.
9. Since the introduction of the policy in 2001, any MDA that did not exhaust its capital vote must return it to the government Consolidated Accounts at the end of the fiscal year.

The above achievement was possible because of the efficient and effective project monitoring technique and the oversight function of the National Assembly and the anti-corruption Agencies. However, the findings of the study revealed that some Nigerians are lamenting the perceived lapses in the implementation.

The most obvious challenge of the policy was that, it was largely perceived by the service users (suppliers and contractors) and other stakeholders (the Media, Civil Society Organizations (CSOs), the National Assembly and most Nigerians) as an albatross which unnecessarily slow down the procurement process. This is as a result of the unduly long period of procurement process or cycle for contracts and payment certification. It was revealed by majority of the respondents that the annual budget has not been satisfactorily implemented by the Government MDAs as a result of the long cumbersome bureaucracies involved in the certification process of budgeted projects by the MDAs. This situation has made implementation of capital vote in the budget quite difficult every fiscal year. For example, in the year 2012, the National Assembly lamented that it was about 32% of the capital vote that was implemented while the executive arm responded to the allegation by asserting that it was about 52%. Specifically, according to records, out of the N140 billion of First Quarter Capital Funds released by Warrant to the MDAs in year 2001, only about N36 billion was drawn for use, while about N104 billion remained un-accessed as at the end of May 2001.

Thus, the question of releasing the Second Quarter Capital vote therefore did not arise as the First Quarter release has not been expended, which was returned to the Government Treasury. This has been the experience in every fiscal year since the inception of the policy which has been causing re-occurring running battle between the Executive and Legislature in which the executive Presidents to date have been threatened with impeachment by the National Assembly. The foregoing was alleged by the stakeholders to be creating room for diverse manipulations and subtle corrupt practices in the procurement system.

The findings revealed that Nigerians, especially stakeholders rated the initiative of the policy as very lofty and great. They however, alleged that it has failed to combat corruption effectively in the public procurement as corruption has now only taken a different dimension. The study showed that there was evidence of Presidential waivers on some projects, anticipatory approvals, contract splitting, cases of officials of the BPP and Residents Due Process in the MDAs leaking privileged tenders’ information to intending contractors or bidders. Thus some contractors have undue advantage over other bidders as well as cases of gratification from the service providers.

The study noted that despite the enactment of the Act 6 years ago to safeguard public funds and guard against corrupt practices, the provisions of the Act are being selectively implemented by the government in power. The National Assembly in early 2012 moved a motion, for the government to establish the National Council on Public Procurement (NCPP) as demanded by the Procurement Act 2007. This was to checkmate the excesses of the Due Process Office (BPP) and other stakeholders in order to reduce mismanagement of public funds. The government is yet to set up the Council. In order to tackle problem of corruption in high places in Nigeria, the establishment of the Council is imperative.

The study also bemoaned the situation in which the non-professionals are saddled with the responsibility of managing the existing Bureau of Public Procurement (BPP). For good instance, the present Chief Executive Officer is a non-professional in the field of procurement and supply chain management, which portends a great danger to the universal “Best Practices” in Public Procurement and also against the spirit of the Public Procurement Act 2007.

In an attempt to implement the Due Process, the process has witnessed some teething problems such as unwillingness of officials to comply with the Due Process Compliance (DPC). Others are inadequate projects definitions by the procurement entities, shortfalls in professionalism in projects packaging and supervision; inadequate documents and documentation accompanying requests for certification, and improper pricing system among others.

CONCLUSION AND RECOMMENDATIONS

The Due Process Mechanism as a model application of “Best Practice” in procurement system has become a key reform agenda in the management of public finance. It ensures that requisite standards are maintained, while transparency, accountability and the elimination of wastes are guaranteed in contrast to the old procurement system that was not integrity-driven. By its introduction, appropriate level of respect for rules, regulations and procedures relating to the management of public funds are institutionalized. It was revealed that there were numerous benefits and dividends of the policy which had accrued to Nigeria over the years since its inception in 2001.

The feedback from the implementation process has generated diverse mixed reactions among Nigerians.
Even in government cycle, it has not really turned the way it professed by its vision and mission in practice. The system is still fraught with a gaping hole of public distrust. Nevertheless, this should not raise unnecessary alarms as per the beauty of the policy, considering a great deal of dividends it has achieved for Nigeria in developmental and governance processes. The truth its critics should know is that no system perfects the world-over. Time is the healer of wound, the perceived lapses and abuses in the policy today shall be overcome with time.

Arising from the challenges highlighted above, the following recommendations are offered:

1. The present and successive governments should do all things possible through sincere political will, not only to sustain it but to re-invigorate it by putting “biting razor teeth and a “hot iron knots” to cracks or leakages through which the policy is being abused or mocked.

2. There is need for the BPP to vigorously train and retrain the core procurement staff to acquire necessary procurement skills, competence and professionalism in order to update their knowledge in the contemporary procurement “Best Practices”. Adequate equipment should be provided to the staff to enable them effectively and efficiently discharge their responsibilities.

3. The Nigerian government should urgently address the unduly long bureaucracies to complete a procurement cycle. Thus, the BPP should fix time frame from the start to completion or certification with respect to project types. This could make the people to predict the expected time frame for projects and payment certification which would restore trust in the system or Bureau.

4. The National Assembly should sincerely exercise its constitutional power of oversight functions without political compromise and pecuniary benefits to hold the executive arm of government to standards of accountability, transparency and procurement “Best Practices”.

5. The Nigerian government should also ensure that relevant organs promptly approve and release funds to avoid undue stress on procurement processes, regular stock-taking, adequate, effective and efficient projects, programmes and monitoring and evaluation. There should be proper database for proper record keeping and documentation in the BPP and in all the Government MDAs in the country.

6. For the Due Process Policy to achieve its lofty goals for the country, the government should exercise sincere political will and sincerity of purpose to implement the provisions of the Public Procurement Act 2007 to the letter. The present selective implementation of the provision of the Act shows lack of sincerity on the part of the government, as what is worth doing at all is worth doing well.

In summary, the lapses presently being witnessed in the implementation of the Policy should not be completely misunderstood or misrepresented, in realization of the benefits it has impacted on governance and developmental processes in Nigeria. Thus, the critics should exercise caution and restraint with the government as the policy is one of the best reform initiated in Nigeria. With time, the transformation process in the Nigeria’s Procurement System would get its act together.

REFERENCES


Ezekwesili O (2004). Welcome Speech at the Public Procurement workshop, held at Abuja, Nigeria.


