

An Investigation of the Performance of Due Process Mechanism in the Execution of Construction Projects in Nigeria

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Abstract: Various procurement methods are in use in the award of public contract in Nigeria. The traditional method, which is widely used, has been criticized for its non-performance in projects execution and delivery. To avoid the adverse effects of the current contract procurement methods, Due Process mechanism was introduced. This study, therefore investigated the level of importance of due process by parties involved in the award of public contracts, the performance of Due Process and factors that may affect its functions. The survey was carried out by administering structured questionnaires and interviews on the practitioners in the construction industry that were in the private and public sectors. The data collected were analysed with the use of both descriptive and inferential statistics. The study showed that Due Process has become a new initiative being widely embraced by parties in public contract and has helped in saving public fund by corrupt practices that usually characterize award of contracts. The study also showed that the absence of legal and other institutional frameworks were among the factors that affect the performance of due process in the country.

Keywords: Construction projects, competitiveness, performance.

Introduction

The population of Nigeria has increased tremendously in the past few decades from a figure of about 88.5 million in 1991 by growing at rate of about 3.00% per annum. Also, the national population is now estimated to be about 140 million [1, 2]. This growth in population inevitably has been accompanied by increased demand for services in health, education and other areas. The provision of these services and other infrastructures demands the inputs of various practitioners in the construction industry. The team for each project is assembled from a disparate collection of professionals, sub-contractors, craftsmen, artisans, labourers and suppliers within the industry.

The construction industry of any nation straddles all human endeavours. Its activities include the procurement of goods and services as well as the execution of a variety of physical structures and infrastructures. It has helped in contributing to Gross Domestic Product (GDP), Gross fixed capital formation and creation of high level of employment to

the changing professionals [3]. In industrialized countries, the building industry is responsible for up to 22.00% of the GDP and employs up to 12.00% of the total labour force, but in Nigeria, it is responsible for 16.00% of the GDP and employs up to 20.00% of the labour force [4]. The construction industry has many features which set it apart from other process industries and which accentuate the need for professional engagement. Various methods have been used for procuring buildings and other infrastructural facilities in the country. One of the changes and new trends, which now influence the procurement system in the country is the increasing fragmentation of the stages involved in construction process [5].

Over the years in the country, the public procurement system has been described to be characterized by non-compliance with the principles of tendering process in the selection of contractors that have the financial, technical and managerial know-how to execute projects to time, cost and quality ends. The increasing reports on the abuse of public procurement system in the three tiers of government in Nigeria have led to huge losses of resources in various public projects [6]. Oboirien [7] showed that the country might have lost billions of money over the years as a result of abuse of procedures, inflation of contract costs, lack of transparency, competence-based competition and merit as the fundamental criteria for the award of public contracts. There was also the problem of influence peddling, sycophancy, and use of primordial considerations. These abuses led to abandonment of government projects, non-

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value for public treasury, high cost of procurement and others. In the light of this, the 2001 diagnostic study [6] into the state of the federal government public procurement in its recommendation gave birth to the Budget Monitoring and Public Intelligence Unit (BMPIU) popularly adopted as “Due Process”.

This study therefore was designed to investigate the contract Due Process put in place in the award of public contracts in Nigeria. It examined the level of understanding of Due Process, its impacts on the performance of construction industry and administration of contract in Nigeria.

Review of Literature

According to Obiegbu [8], procurement is the process that creates, manages and fulfils contracts. It forms an integral part of construction projects and occurs at any point in a project cycle where external resources are required to provide supplies and services in any combination or in the disposal of surplus plant, equipment and materials and demolition of redundant buildings and infrastructures. Contract procurement strategy covers the overall pattern of decisions made by the client in defining the organisation and procedure required for the execution of a project throughout the design, construction and commissioning periods. Consultants and contractors are the two major players in the construction industry and the services they provide are critical to the quality of the end product. The contractor provides goods and services under the conditions of contract as determined by the client while the consultant provides specialist skills in accordance with the ethics of his profession necessary for quality production.

Chalabi and Camp [9] noted that the method of organising and managing construction projects in developing countries is by traditional method with the ever-changing interest of stakeholders to other alternative systems. This was also supported by Ojo, et al. [10] who opined that for building sector to succeed, there was need to manage the construction process through any of the existing contract procurement methods. Prominent among the many contract procurement methods is the traditional contract procurement method which involves the appointment of an architect who recommends, sets up and leads the design team comprising the engineers and the quantity surveyors. It was the commonmost method all over the world but ascribed to have noticeable shortcomings. The major criticism of the traditional contract was that, construction works were getting more complex and hence the need to integrate design and construction being

treated as separated entities. The fragmentation of building projects into two mutually exclusive entities created room for ineffective communication and coordination. The limitations led to the emergence of alternative procurement systems such as the design and build, construction management, management contracting, project management and build-own-operate-transfer (BOOT).

The procurement system has a significant impact on project quality management programmes. An inadequate procurement system creates adversarial relationships among the parties involved; increasing the number of claims and disputes and prevents the free-flow of information necessary for the successful completion of quality project. It serves as a pro-active and continuous process involvement to prevent defects rather than detecting them [11].

Today, it has become more imperative for the various participants in the construction industry to pay greater attention to the efficient use of all construction resources required in executing capital projects. The need for this can be traced to the dissatisfaction that the traditional procurement method has not allowed clients to benefit from the wealth of experience of building contractors [12] The construction industry in Nigeria today as confirmed by Mshelbwala [13] is characterized by a wide range of problems including high cost of procurement, substandard products, project collapse and abandonment. The problems could largely be attributed to non-adherence to processes and procedures involved in the procurement system especially in the building industry that are physical in nature and capital intensive.

It is seen that prominent among the many contract procurement methods used in construction process is the traditional contract procurement. The method involves the appointment of an architect who recommends, sets up and leads the design team [14]. But over the years, various methods have been used for procuring projects. Some of the procurement methods have been amended and updated to form standards for client who intends to construct. The selection of a procurement method by the client should be based on the experience and advice of relevant professionals.

Often professionals have performed dual roles on the same project and this should not be so. Hence, in view of the unique characteristics of the construction industry, there is a great need for the improvement of current procurement systems so as to assist in improving the products of the industry and the image of the professionals [5].

Due Process Mechanism

Over the years, the public procurement system in Nigeria has been grossly abused leading to high losses of resources. Past governments in the country had taken steps to address this problem but with no good result. With the emergence of the last civilian administration under President Olusegun Obasanjo, a diagnostic study was commissioned in 2001 to investigate the stage of affairs of public procurement in Nigeria. In a bid to sanitize the system, the Federal Government set up a Due Process Unit under the presidency to undertake the exercise.

Due Process rights in public contracting originated from 5th and 14th amendments of the United States of America constitution. They prohibit the government from depriving a person of “life, liberty or property without due process of cause”. This is substantiated in the procedural due process and substantive due process of America Law [15]. Due Process is defined as a mechanism for ensuring strict compliance with openness, competition and cost accuracy rules and procedures that should guide contract award [6]. According to Ezekwesilli [16], Due Process is geared towards infusing the needed fiscal discipline and sound economic principles to ensure transparency, accountability and rebuild public trust in governance by attacking the much-abused processes in the past.

The Due Process mechanism was conceived among other things to bring sanity to public procurement system in the country through the attainment of these performance targets: ensuring sustainable participation by reputable, competent and reliable contractors; settlement of contract price at near marginal cost; faith by tenders in the tendering mechanism and value for money in projects execution and delivery [6]. The mechanism is also meant to carry out functions like regulating and setting standards to enforce harmonized bidding and tender documents; formulation of general policies and guidelines on public sector procurement and upholding professional ethics and reporting erring personnel amongst other statutory functions.

Research Methodology

This study was carried out through administration of structured closed and open-ended questionnaires and use of interviews on respondents that had been involved in the use of Due Process mechanism during contract procurement system. The questionnaires helped to present data on the understanding of Due Process mechanism and its performance in companies tendering competitiveness.

A total of forty-seven questionnaires were retrieved out of sixty questionnaires that were administered on the respondents who were practitioners involved in public contract procurement system in Lagos State, Nigeria: It includes Clients; federal, state and local governments, Professionals; architects, builders, engineers and quantity surveyors and Contractors; small, medium and large-sized. The details of the questionnaires distributed and returned by the categories of respondents are shown in Table 1. The table shows that a total of forty-seven questionnaires were returned by the respondents indicating a return rate of 78.33%.

Table 1. Number of questionnaires administered on respondents

Type of Respondents	Number of Questionnaire Distributed	Number of Questionnaires Returned
Client	28	24
Professionals	17	12
Contractors	15	11
Total	60	47

The questionnaires were designed in a way to draw data on the scope of work of respondents, the number and type of projects executed so far under Due Process mechanism. Respondents were also asked to identify the factors affecting the performance of Due Process mechanism. The data were analysed using both descriptive and inferential statistical techniques. The descriptive statistics adopted included cross tabulation and frequency counts. Cross tabulation is the analysis of association of variables and frequency count provides statistics describing the occurrence of the variables. The Class Mark (X) of the number of projects so far handled by the respondents was determined. The percentages of the frequency counts of the class mark were also determined:

$$\text{Class mark (X)} = \frac{x_i + x_j}{2} \quad (1)$$

Inferential statistics used on the other hand included Importance Index technique to establish the level of understanding and importance of concepts of due process mechanisms by the contracting firms.

The contractors were asked to assess the degree or level of importance of Due Process mechanism based on the establishment of due process unit or the use of Due Process mechanism by their clients (federal, state or local government) that award contracts to them. The level of importance of Due Process was measured by the use of Importance Index through the equation:

$$\text{Importance Index (II)} = \frac{3n_1 + 2n_2 + n_3 + n_4}{3(n_1 + n_2 + n_3 + n_4)} \quad (2)$$

where

- n_1 = number of respondents who indicated 'a' - very high
- n_2 = number of respondents who indicated 'b' - high
- n_3 = number of respondents who indicated 'c' - medium
- n_4 = number of respondents who indicated 'd' - low

Results and Discussions

General issues on Respondents

The respondents of the questionnaires were majorly from the public and private sectors with 55.00% and 45.00% respectively. The public sector respondents, the professionals, were in the establishments of federal, state and local governments. The respondents from the private sector comprised contracting firms (40.40%), consulting firms (34.60%) and firms operating contracting and consulting jobs (25.00%). The greater percentage of the respondents were engineers (57.70%) while architects, builders and quantity surveyors were 15.40%, 15.00% and 11.90% respectively. It was found that the federal government (34.62%) was the major type of client that the contracting firms had contractual agreement with as shown in Table 2. The reasons given for this was the fairly satisfactory disposition of the federal tier of government to meet contractual terms as the local government level was least preferred because of the shear influences of inability of the local governments to meet contractors/consultants financial obligations and other contractual terms.

Table 2. Type of client of projects executed by contracting firms

Nature of client	Frequency	Percentage
Local government only	1	1.92
State government only	10	19.20
Federal government only	18	34.62
Local, state and federal government	15	28.80
Private and corporate bodies	8	5.38
Total	52	100.00

Projects executed by contracting firms

The contractors as shown in Table 3 had been involved in handling construction projects with different tiers of government. It was discovered that 53.00%, 35.20%, and 11.80% of the respondents had handled 10-15, 5-10, and 0-5 number of construction projects respectively since the Due Process mechanism started. This shows that the contractors involved in projects execution would have had an appreciable level of understanding based on con-

tracts handled with due process principles. F represents the frequency counts for the corresponding number of projects handled by the respondents.

Table 3. Number of projects executed by the contracting firms.

No of construction projects. (Xi-Xj)	X	F	%
0-5	2.5	6	11.80
5-10	7.5	18	35.20
10-15	12.5	27	53.00
Total		61	100.00

Level of importance of Due Process mechanism

The rating of the importance of contract Due Process through the use of Importance Index (II) by the contracting firms is shown in Table 4.

Table 4. Assessment of Importance Index (II) of Due Process among contracting firms

Firms	a	b	c	d	Importance Index (II)
Small	2	4	20	2	0.42
Medium	10	12	7	1	0.69
Large	7	12	7	1	0.75

The importance index of large firms, 0.75, is more than importance index of small and medium firms 0.42 and 0.69 respectively. This shows that large firms agreed that Due Process mechanism has great importance and this was based on the fact that they got their projects mostly from federal and state governments that have established units saddled with contract Due Process. The small firms have lowest importance index value because they got their projects mostly from local governments and non-corporate clients that are yet to put on ground adequate contract due process unit.

Level of understanding of functions of Due Process

Table 5 shows that a sizeable number of the private sector respondents showed an appreciable understanding of the various functions of Due Process. It was further discovered from the interview method that they had to comply with the rules of the contracting game all the time: advertisement requirement; pre-qualification process and criteria; invitation to tender; bid evaluation process and determination of winning bid. The respondents noted that the frivolities that were the order of the day in the past in which contracts were awarded to non-competent contracting firms were decreasing because of the imposing functions of Due Process in public procurement scheme.

Due process functions are faced with the problem of inability of government through the Due Process Unit to sensitize, promote and educate the public on the processes involved in Due Process and organise trainings to promote capacity building for procurement personnel (Table 5). This is evident in the lower percentages of respondents 48.10% and 50.00% that indicated how ‘very well’ these two functions performed when compared with higher percentages of other functions. The interview conducted also showed that Due Process mechanism has helped to put checks on the huge loss of public fund that always characterized procurement system in the past. In view of this, it is now becoming an initiative widely embraced by parties involved in public contracts.

Table 5. Level of understanding of functions of Due Process

Functions	Frequencies/Percentages		
	Very Well	Average	Not Understood
Regulating and setting Standards to enforce Harmonized bidding and Tender documents	41/78.85	7/13.46	4/7.69
Formulation of general policies and guidelines on public sector procuremen	41/78.85	6/11.54	5/9.61
Upholding professional ethics and reporting erring personnel	43/82.69	5/9.62	4/7.69
Monitoring prices of tendered items and provides database advisors	42/80.77	6/11.54	4/7.69
Documenting and monitoring government projects to completion	45/86.54	4/7.69	3/5.77
Coordinating trainings to promote capacity building of procurement personnel and systems	25/48.08	8/15.38	19/36.54
Sensitizing, promoting and educating the public	26/50.00	5/9.62	21/40.38
Providing relevant budget performance	36/69.23	9/17.31	7/13.46

Assessment of achievements of Due Process mechanism

Table 6 shows the assessment of the respondents on the achievements that Due Process has brought into public procurement system in Nigeria. The ranking method indicating the selection of 1, 2, 3, 4 corresponding to the achievements of Due Process; 1-4 being very significant, moderately significant, slightly significant and not significant respectively. It

is shown that Due Process has to a large extent weeded off incompetent contractors and restored fair degree of sanity to the award of public projects in Nigeria. The interviewing method conducted among respondents in the public sector showed that federal tier of government has been able to save huge sum of public fund. This is evident in the declaration that federal government had saved up to N200billion by the immediate past civilian administration under President Olusegun Obasanjo following its insistence on due process in handling public projects [17].

Table 6. Assessment of due process mechanism

Performance	Frequencies/Percentages			
	Very Significant	Moderately Significant	Slightly Significant	Not Significant
Participation by reputable, competent and reliable contractors	13/25.00	8/15.40	26/50.00	5/9.60
Settlement of contract price at near marginal cost	38/73.10	6/11.50	20/3.80	6/11.50
Downward trends (after adjusting for inflation) with quoted contract price	21/40.40	11/21.20	16/30.80	4/7.70
Faith by tenders in the tendering mechanism	33/63.50	10/19.20	7/13.50	2/3.80
Value for money in projects execution and delivery	20/38.50	6/11.50	17/32.70	9/17.30

Factors undermining the effectiveness of Due Process

The various factors that are undermining the realization of objectives of Due Process are shown in Table 7. It is shown that 41.56% of the respondents believed that lack of legal framework supporting the introduction of Due Process into public procurement system is affecting the process. Also, 28.57% believed that the misleading nature of the lowest tender of bidding contractors affect the selection of competent contractors.

Table 7. Factors affecting due process

Factors	Frequency	Percentages (%)
1. Lack of legal framework	32	41.56
2. Selection of lowest tender	22	28.57
3. Political will of government	8	10.39
4. Low capacity building for procurement personnel	5	6.49
5. None operation at local government level	10	2.99
Total	77	100.00

Conclusion

The study has investigated the level of understanding and performance of Due Process mechanism and has shown factors that stand as stumbling blocks in achieving its objectives as set up by Budget, Monitoring and Price Intelligence Unit (BMPIU), Abuja, Nigeria. It is shown that a large proportion of the respondents are significantly aware of Due Process being a similar policy initiative and watchdog scheme to foster public transparency, acceptability and probity in public procurement system. Also, it is revealed that large and medium sized firms have better understanding of mechanisms of Due Process than small-sized firms. This might be due to the fact that they get their projects mostly from federal and state governments that have organised structures and units to coordinate Due Process mechanism. This is unlike small-sized firms that get their projects from local tier of government and other non-corporate clients that are unorganised and yet to have Due Process unit. In addition, it is shown that the process has helped to put checks on the huge loss of public fund. The Due Process office is lacking in the area of sensitizing, promoting and educating the public on public procurement issues and in area of organizing training and workshops to promote capacity building of public procurement personnel. Absence of adequate legal framework and other institutional supports were discovered to largely affect the sustainability of convocation of Due Process mechanism into procurement system in Nigeria.

Recommendations

As a result of the foregoing, it is believed that there is need to give the mechanism appropriate legal backing by an act of the parliament so as to make it a generally acceptable policy. It should be adequately strengthened in local government level where it is not enjoying the required acceptance.

Besides, Due Process office should improve on the sensitization, promotion and education of the public especially among the construction professionals in the public sector. There is need not only to consider the tender figures, but the due process office should endeavour to include evaluation of pre-qualified bidders on the technical competence of the bidding contracting firms. The coming regimes in Nigeria should endeavour to re-strengthen Due Process through necessary framework mechanisms that would repose confidence of the public in award of public contracts so as not to bring colossal waste to public treasury.

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