



Assessment of Application of Due-Process Policy in Public Procurement and Contracts Under Obasanjo Administration in Nigeria, 2003-2007

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Abstract

Many Nigerians identify corruption and poverty as the bane of the nation's development paralysis. The Obasanjo administration in the country was determined to enthrone the principle of transparency and accountability in public life in Nigeria. The government of President Olusegun Obasanjo believes that without probity in public life, the ultimate aim of providing for the happiness and welfare of the citizenry will be an illusion. It is in the light of the above that the government embarked on a number of public sector reform programmes aimed at blocking leakages of all sorts in public sector service delivery and transactions. The official instrument designed to achieve this much desired honesty, transparency and accountability in the conduct of government business especially in the award of contracts and procurement in the ministries, parastatals and departments in Nigeria is the introduction of the Due Process Policy.

Key words: Due process; Public procurement; Administration

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INTRODUCTION

One of the cardinal objectives of the Obasanjo administration was the enthronement of the principle of transparency and accountability in public life. The government of President Olusegun Obasanjo believes that, without probity in public life, the ultimate aim of providing for the happiness and welfare of the citizenry will be an illusion. It is in the light of the above that the government embarked on a number of public sector reform programmes aimed at blocking leakages of all sorts in public sectors services delivery and transactions. The Corrupt Practices and other related offences Act, 2000 was signed into law, to punish corruptible officers who regard government money as private treasury that can be operated to suit their whims and caprices. Another area of great concern is the way and manner public officers go about circumventing laid down procedures in award of contracts and other transactions; thereby contravening Due Processes laid down by the system (Chijioke, 2004). The question now is what is Due Process and what is it all about? This is what we intend to discuss in details next.

1. CONCEPTUAL EXPLICATION AND THE EPISTEMOLOGY OF DUE PROCESS AND THE APPLICABILITY AT THE THREE TIERS OF GOVERNMENT IN NIGERIA – FEDERAL, STATE AND LOCAL GOVERNMENTS

Many Nigerians identify corruption and poverty as the bane of the nation's development paralysis. The President Olusegun Obasanjo possesses the credentials of a corruption adverse leader, having been one of the pioneers of Transparency International, the international anti-corruption group that awoke the world on the grave consequences of corruption to development (Ezekwesili, 2002, p.2).

Hence, in practical demonstration of the president's anti-corruption activism as one time chairman of the International Advisory Council of Transparency International, and in fulfillment of the promise made to the Nigerian people to curb corruption in the public sector, the administration committed itself to fiscal transparency and accountability. It committed itself to using the budget to generate sustainable growth, reasonable investment and significantly reduce poverty. We required fresh and creative ideas on the instruments that could reasonably achieve these lofty goals and found this in the Due Process Compliance (DPC) instrument. It is an instrument designed to enforce compliance with due process in budgeting, procurement and expenditure by all federal spending units and, by extension, states and local governments. The instrument of the due process helps to ensure that budgets, procurement and spending are not only based on authentic, reasonable and fair costing, but are also appropriately geared to the realization of set priorities and targets that were generated from medium range strategic plans. The administration created the Budget Monitoring and Price Intelligence Unit (BMPIU) to execute the mandate. The location of the unit in the Office of the President was a clear signal that highest political will to guarantee its effectiveness existed (Ezekwesili, 2002, p.3).

Except for a few who are driven by altruistic goals, most people are unfortunately attracted to public offices by the control of state resources as symbolized by the Budget. The Budget is the single most important instrument of power and governance, whether in a democracy or in any of its aberrant alternatives. It is therefore the case that access to state resources, wherever no form of oversight and sanction exist, provides the non-altruistic seekers of public office the huge opportunities and incentives for massive corruption. The antidote therefore is to crystallize budgetary and public expenditure management systems and procedures that have transparent and effective oversight. Recognizing this to be the story of our nation, the President, Olusegun Obasanjo, in demonstration of the personal commitment to transparency and accountability spearheaded the move for budgetary and expenditure management reforms.

The reforms started with the creation of the Budget Monitoring and Price Intelligence Unit in the Office of the President early 2001. Through the Due Process Review of the Budget and expenditure Management Process embarked upon by the BMPIU between May and August, 2001, many lessons were learnt of the systematic flaws that facilitated misappropriation and corruption in the financial activities of government (Ezekwesili, 2002).

In a nutshell, what is Due Process? Due Process could be conceptualized simply as a "Mechanism for ensuring strict compliance with the openness, competition and cost accuracy rules and procedures that should guide contract

award within the Federal Government of Nigeria" (BMPIU publication 2005, p.1). It has become the popularly adopted short form for the Budget Monitoring and Price Intelligence Unit (BMPIU), which is the unit tasked with implementing the program. The BMPIU was established by President Olusegun Obasanjo in 2001 in fulfillment of his tenacious commitment to ensuring transparency and accountability in the management of our public resources.

A diagnostic study conducted in 2001 into the state of Federal Government Public Procurement revealed that Nigeria may have lost several hundred billions of Naira over the last two decades, because of flagrant abuse of procedures for award of public contracts, inflation of contract cost, lack of transparency, lack of competence-based competition and merit as the fundamental criteria for award of public contracts. The findings of the study made it imperative that we urgently needed to reform the procurement system if we were to reduce the large-scale corruption and waste that had reduced the efficiency of the Nigerian Public sector. The vision of BMPIU is to help move Nigeria "to a level where public procurement (public contracting) is governed by the principles of integrity, transparency, competences and competitiveness as national ethos". The Mission of the BMPIU is "to use the Due Process Mechanism to re-establish and sustain an open, transparent and competitive Federal Procurement System and, by extension those of states and local governments, that are integrity-driven, upholds spending within Budget and ensures speedy implementation of projects in order to achieve value for money outcomes without sacrificing quality and standards".

The main objectives of the Due Processes are:

- (1) To harmonize and update all Federal Government policies and practices on public procurement and, by extension or implication, those of the state and local governments.
- (2) To ensure that project conceptualization and packaging match the defined priorities and targets as set in Annual Appropriations.
- (3) To strictly enforce the Due Process principles of transparency, competition and efficiency and value-for-money in the procurement of public goods, works and services.
- (4) To ensure efficient and integrity-based monitoring of the implementation of all Federal Government Projects and by extension those of the state and local governments, in line with Due Process Principles.
- (5) To prevent extra budgetary spending by ministries, departments and agencies by ensuring that only projects with due Appropriation by the National Assembly and, by extension, the State House of Assembly and the Local Government Councils are certified and thus funded for execution.
- (6) To prevent contract inflation by ensuring cost reasonableness, accuracy and comparability of

all public contracts with national, regional, and global costs.

For the effective operations, workings and functioning of the Due Process Policy, the following important functions were designed and assigned to the BMPIU, which is the husband of the Due Process. The functions are as follows:

- (1) Regulates and sets standards to enforce harmonized Bidding and Tender Documents for all Federal Government contracts.
- (2) Formulates general policies and guidelines on public sector procurements.
- (3) Upholds professional ethics and reports erring procurement personnel, public officials, departments and private sector companies and their personnel to relevant authorities for appropriate application of prescribed sanctions.
- (4) Monitors prices of tendered items and provide price data base advisory services to the public sector. Performs procurement audits.
- (5) Documents and monitors Federal Government projects from point of award until completion.
- (6) Coordinates training to promote capacity building of procurement personnel and development of systems and standards in the public sector.
- (7) Sensitizes, promotes and educates the public on public procurement issues.
- (8) Advises the President on states of Federal Government procurement in relation to the Annual Appropriation.
- (9) Provides relevant procurement and budget performance information to any interested parties and institutions.

The BMPIU reviews and certifies Federal Government Contracts according to established and approved thresholds, to ensure that compliance with the principles of rights procedures (transparency, competition and merit, and right costs) guide all Federal Government Contracts for goods, works and services from the award stage through to the successful execution and completion (Due Process Manual, 2005).

2. THE ADMINISTRATION, STRUCTURAL AND ORGANIZATIONAL FUNCTIONING OF THE DUE PROCESS POLICY

The application of the due process policy especially on public procurement and award of contract in Government Ministries/Parastatals are predicated on three main thresholds, namely:

2.1 Contracts Below ₦1 Million

For this category of contract the Permanent Secretary/Chief Executive of a Ministry/Department or Agency can approve the award of such a contract, provided that the

Due Process guidelines are strongly adhered to according to the laid down rules and regulations.

2.2 Contracts Above ₦1 Million but Below ₦20 Million

Contracts under this category requires the constitution of a Due Process Committee to comprise the following:

The Permanent Secretary/DG	-	Chairman
Director of Finance/Accounts	-	Member
Director of Research and Statistics	-	Member
Director of Admin/Finance/Supplies	-	Member
A representative of BMPIU	-	Member

In the case of parastatals for contract above ₦700,000 but below ₦20 million thresholds, the composition of the Resident Due Process Team (RDPT) shall be as follows:

The Chairman of the Board	-	Chairman
The Chief Executive	-	Member
Director, Finance and Administration,		
Research & Statistics	-	Member
A representative of the BMPIU	-	Member

Contracts above ₦20 million is referred to the Ministerial Tenders Board (Treasury [Try] Circular, 2002).

2.3 Contract of ₦50 Million and Above

Contracts under this category, are processed by the relevant Ministry, Department or Agency in accordance with the Treasury Circular Try/A4 & B4/2002 of July 1, 2002 on Due Process Guidelines for Award of contracts on capital projects. Upon conclusion of the contract requirements, the Ministerial Tenders Board forwards their conclusions and all relevant supporting documentation to (BMPI) unit for Due Process. Compliance Review and Certificate is issued by the (BMPI) unit; the ministry, department or agency concerned will immediately forward the project to the Federal Executive Council for final approval and award of contract (Due Process ABC Manual, 2005).

3. THE ADMINISTRATION PROCEDURE FOR IMPLEMENTING THE DUE PROCESS POLICY

The following administrative procedure guides the implementation of the due process guidelines for contract award in each ministry, extra-ministerial office, parastatal agency and other arms of government. These are:

3.1 The Tender Process

According to a framework for an open and competitive tendering process released in Circular Ref. No. F.P5775 of 2nd June, 2001, for all contracts below ₦50 million to be considered, a memorandum should be presented to the Tenders Board by the Executive Department or Unit. The memorandum should contain the following information in order to enable the Tenders Board to make an informed decision:

(1) Title of the memorandum.
(2) Purpose of the memorandum.
(3) Evidence that all aspects of internal preparation for project implementation readiness has been completed; principally:

- Project dossier containing summary details on project objectives and scope.
- Specification of all items of works.
- Bill of quantities.
- Project design.
- Schedule of basic rates where relevant.
- Implementation schedule and execution period.
- Responsibility for supervision and how capacity building is being addressed for sustainable operations and management (O&M).
- Cost of the project and financial provision available from previous allocations and current budget.
- Terms of payment to be used.

3.2 Advertisement for Award of Contracts

It is a Due Process requirement that all contracts must be publicly advertised. Once the Tenders Board is ready to award a contract, it must authorize for the advertisement of the contract under which the conditions for the pre-qualification for the contract would be made public. Contracts above ₦1 million but below ₦10 million should have notices for pre-qualification placed on the Notice Board of the Ministry, parastatals, agency or other arms of government concerned. For contracts of ₦10 million and above, advertisement must be placed in at least two national newspapers and government gazette for “invitation for pre-qualification”. The submission period must not exceed two weeks from the date of first advertisement and all pre-qualification documents must be submitted at a time and location to be specified. The invitation for pre-qualification should include the following:

- (1) Name and address of the processing agency.
- (2) A brief description of the objective and technical specification of the project.
- (3) The qualification and category of the contractors expected to tender.
- (4) The invitation for pre-qualification Reference Number – this will eventually become the contract number.
- (5) The date by which documents must be returned (A minimum of 2 weeks should be allowed for submission).
- (6) The place and time for pre-qualification document return (An addressed label should be used for this purpose).
- (7) The contact details of the procurement staff member responsible for the invitation for pre-qualification.
- (8) Details of the procurement for dealing with

queries during the pre-qualification period; and

- (9) Pre-qualification Evaluation criteria.

It is important to note that the evaluation criteria should be clearly defined in the pre-qualification document. The pre-qualified contractors’ list should be based solely on the criteria so defined.

3.3 Pre-Qualification of Contractors

A pre-qualification document is usually issued to all firms that responded to the advertisement notice. All the responses to the advertisement are subjected to a pre-qualification process. The pre-qualification scrutiny are usually carried out to discover the technical, managerial and financial capability including the previous experience in performing similar projects and the suitability as likely bidders for the project. All specifications are standardized to ensure that a common denominator is used for the determination of all pre-qualification respondents.

As a norm, a pre-qualification Evaluation Committee is usually set up, made up of professionals. The Tender’s Board Secretary often serves as the Secretary of the committee, and at the same time a representative of BMPIU is appointed to monitor compliance with the Due Process Guidelines. If considered necessary, pre-bid meetings may be organized with likely contractors, to clarify any points or issues which seem to appear ambiguous in the bidding documents. Once accepted for submission, bids should not be allowed to be withdrawn for any alterations.

3.4 Invitation to Tender/Bid

The completion of the pre-qualification evaluation exercise by the committee is closely followed by the issuance of bid document to all the qualified contractors, which they must complete and return within six weeks of the invitation to bid.

3.5 Opening of Tender and Financial Evaluation

Opening of tender should take place immediately after the closing of the bidding period. The bidders or their representatives, members of civil society and the press should be encouraged through invitation to witness the tender opening.

Finally, the tender which offers the cheapest price or best-evaluated tender cost wins the contract.

3.6 Contract Agreement

At this stage an agreement of contract is entered into by all the parties concerned, with a provision in the contract agreement stipulated that any contract which is not covered by a Due Process Certification shall be null and void.

3.7 Transmission of Ministry Due Process Certificate (MDPC) to the Accountant-General of the Federation

Once the contract process has been completed and the

award of the contract approved, the Resident Due Process Team would issue the contract award certificate, which is immediately forwarded to the Accountant General of the Federation for clearance of payment of mobilization at the Central Bank of Nigeria.

3.8 Guidelines for Stages of Works Completion Certification for Projects Within and Below ₦20 Million Thresholds

With the initiation of a project following the payment of a mobilization fee, all further payments are conditional and predicated upon the certification by the Resident Due Process Team that preliminary investigations carried out strongly indicate that reasonable progress has been made toward completion of the work. Based on this satisfactory progress report, the project consultant/manager would be required to submit a technical and financial progress report to enable the Resident Due Process Team effectively evaluate the value for the money to be released. However, the project consultant/manager is expected to inform the Resident Due Process Team on the certification schedules for each project as to minimize the overall administrative demands of the certification process. The completion valuation certificates for a capital project should not exceed four. It is important to mention that the full mobilization fee earlier paid must be recovered completely from the first of the four certificates.

The ground on which certification should be based include:

- Funds released earlier have been fully utilized;
- Site visit has been carried out to assess progress of work on contract;
- Contract work is being carried out as agreed in the contract;
- Percentage of work completed is commensurate with funds spent;
- Anticipated project results are being achieved or if not, appropriate measures have been taken to ensure that results and goals identified under the contract are fully achieved.

3.9 Finalization of Internal Due Process Cycle

It is a mandatory requirement for the ministry or spending unit concerned for its Due Process team at monthly interval to submit the records of aggregate certificates issued in the proceeding month to the BMPIU for the procedural oversight with the necessary reports, facts and information to enable the BMPIU complete the Due Process Cycle for each capital project.

3.10 The Procedure for Project Certification Above Fifty Million Naira Thresholds

The sole mandate for certification of projects above the fifty million Naira thresholds is exclusively reserved for the BMPIU. As a result a submission of any memorandum to the Federal Executive Council for the award of any contract above fifty million Naira should follow the approved guidelines as stated hereunder:

- Tender documents have been prepared in line with Federal Government Guidelines
- Tender process and selection have been carried out as per guidelines
- Lowest/best evaluated bidder determined to be qualified to perform the contract satisfactorily was recommended for the award of the contract;
- Management/Tenders Board has approved the selection on good reasons for change in recommendation have been provided
- The selected contractor can still do the job at the time of contract award
- Contract price is comparable with local, national, regional or international experiences as may be appropriate.
- It has been verified that successful bidder continues to meet pre-qualification requirements; and
- Appropriate performance security has been indicated

The procedure for certification is that each spending unit should inform the BMPIU when it intends to commence the contract award process for contracts above ₦50 million thresholds. The BMPIU expert(s) are expected to monitor the procurement process from the point of advertisement, pre-qualification, invitation to bid and selection of successful bidder. The certification by the BMPIU should be on satisfactory compliance with all the aspects of the procurement guidelines by the Ministry/Spending Unit. A Due Process Contract Award Certificate would be issued to the office of the Accountant General of the Federation through the Federal Ministry of Finance, to make funds available for project execution.

3.11 Guidelines for Completion Work Certification

Once the project is initiated as characterized by the down payment (mobilization fees), further payments are conditional upon the certification by spending units/ministries, in conjunction with BMPI that satisfactory progress is being made toward completion of the work. To this end, spending units/ministries are required to prepare and submit to the BMPI a technical and financial progress report with advice on possible modifications, cost implications and timing for completion, to enable the BMPI effectively evaluate value-for-money to be released. The joint certification by BMPI and spending unit requires that the former must notify the latter of certification schedules for each project, in order to minimize over-all administrative demands of the certification process. Each capital project certificate is issued annually.

The basis for certification shall be that:

- Fund released earlier has fully been utilized;
- Site visit has been carried out to assess progress of work on contract;
- Contract work is being carried out as agreed in the contract;

- Percentage of work completed is commensurate with funds spent;
- Anticipated project results are being achieved or, if not, appropriate measures have been taken to ensure that results and goals identified under the contract are fully achieved. (Ezekwesili, 2002).

CONCLUSION

The Due Process policy, from evaluation and analysis, has laid the necessary foundation for rejuvenating and reinventing “honesty” and “transparency” in the conduct of government business in Nigeria, especially in procurement and award of contracts by Ministries, Departments, Agencies etc. The benefits of the Due Process could be listed as follows:

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

Improved system planning and project preparation work leading to accuracy of costing, cost/benefit analysis and prioritizations in deciding the spending pattern and plan for any given year.

Improved fiscal management through more effective expenditure management, institutions, processes and control mechanism.

Improved liquidity management of public funds.

Improved technical efficiency in managing and utilizing resources through improved information flows. More relevant decision responsibilities of managers.

Enhance transparency and accountability of government providing better information as a guide to the future.

The rebuilding of the confidence of average Nigerian in government’s conduct of public and financial activities.

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