

The Impact of Due Process Policy on Construction Projects in South East Nigeria.

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ABSTRACT

The aim of this paper is to examine the impact of due process policy on the award of contracts in Nigeria. In order to achieve this aim, the paper examined the procurement situation in the country before the advent of due process policy with a view to ascertaining the influence of due process on the award of contracts. Structured questionnaires were distributed to workers of five notable construction companies in each of the five states in South East Nigeria, including federal government ministries and parastatals involved in the award and execution of contracts in Nigeria. In all, 548 well completed questionnaires formed the basis of the study and were analyzed accordingly. The findings revealed that due process policy has to a reasonable extent succeeded in eliminating of sales of contract papers to touts and sycophants. As a result, the level of contract manourvers has reduced, the usual concept that my man is at the helm of affairs as a basis of getting a contract without following the procedures has been checkmated to a reasonable extent. In conclusion, the paper observed that no internal control is hundred percent water tight, the study therefore advocated for the composition of procurement council as a panacea to further strengthen the procurement process. The composition of the council according to the paper is critical for proper administration and monitoring of contracts in Nigeria.

Keywords: due process, Nigerian construction industries, procurement process, public procurement, award of contracts, project failures and abandonment.

INTRODUCTION

When someone speaks of due process, or receiving their “due”, they are usually talking about something that they feel is entitled to them. In fact, that is precisely the historical meaning of due process (Maine,2000). Ever since antiquity, every society has had some concept of it. That’s because the notion of due process varies from society to society. The basic idea remains constant, but how much a person feels rightly entitled to depends on the historical and cultural context in which they live. Due process is tied to custom, which can vary even among regions or localities within a nation (Sadler,1986). Customs are the regular habits and non-religious rituals of a local people. Customs along with folkways (proverbs and symbols) and norms (guides for behavior) make up the sociological definition of culture. The extent of due process among the customs of a people is the hallmark of a civilized or decent society.

Due process generally refers to the regularity, fairness, equality, and degree of justice in both procedures and outcome (Maine,2000). The ancient Egyptians, for example, required judges to hear at least both sides of a case. The code of Hammurabi is a type of due process--- something written down so people would know what the laws are. Even the ancient Chinese had some minimal procedures for notice and hearing when people were charged with something. When Jesus Christ was put on trial, He was given the opportunity to reply and present evidence. Even in the Igbo traditional setting, there are procedures set out by the elders on sharing of community lands to families in that community. When these procedures are followed, the issue of due process comes to mind. Historically,the founding fathers thought of due process as fairness.

Fairness is the idea of doing what is the best. It may not be perfect, but it’s the good and decent thing to do (Haiman,1991).

Now, lets trace the origin of due process as relates to contract award in the Nigerian context.

Over the years in Nigeria, the public procurement system has been described to be characterized by non compliance with the principle 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 (Binpiu,2005).

Obiora (2006) states that the country has 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 value for public treasury, high cost of procurement and others. It is a well known fact that the process of contract award both in the public and private sectors in Nigeria leaves much to be desired. It has not only entrenched corruption in the system, but has also contributed immeasurably to the underdevelopment

of our country. This has also equally led to unquantifiable wastages and delays in the execution of contracts, as well as loss of confidence in Nigeria by foreign and even local investors (Agbu,2010). Based on wide spread corruption in the award and execution of contract, conducting government business degenerated so much by the year 2000 (Oguonu,2012). This was due to the fact that no serious attention was paid to Public Service Rule, Financial Regulations and Ethics and Norms because of obvious systemic failure.

The federal government under former President Olusegun Obasanjo noted the urgent need for transparency in government procedures so as to be able to move the system forward. Hence the federal government in 2000 commissioned the World Bank to collaborate with some private sector specialists to study financial systems and general procurement-related activities of the country (Oguonu, 2012). The essence of that request to the World Bank was to assist Nigerian government “ with a process of enthroning efficiency, accountability, integrity and transparency in government procurement and financial management system” (Ekpenkhio,2003). It was based on this that the Country Procurement Assessment Report was produced through a participatory review approach from stake holders including representatives from the private sectors and federal state and local governments with assistance from international and national consultants. The Country Procurement Assessment

OBJECTIVES OF THE STUDY

1. To ascertain the influence of Due Process policy on the award of contracts in Nigeria
2. To establish the effect of Due process policy on the performance of construction industry in Nigeria.

THEORITICAL FRAMEWORK

Government all over the world use public procurement policy and implementation to address a number of issues including budget implementation, service delivery, social economic development, environmental human rights and general developmental concerns (Oguonu, 2004). Thus, public procurement reforms in Nigeria were meant to address a number of developmental and governance challenges that faced the nation.

Due process implies that government activities are done openly, economically and transparently without favourites (Ezekwesili, 2004). The essence of this is to ensure that rules and procedures in procurement are made in such a way as to be implementable and enforceable. It is hoped that this due process should put an end to “ the Business as usual syndrome “ in Nigeria (Ezekwesili, 2003) . Due process is a mechanism that certifies for public funding only those projects that have passed the test of proper implementation packaging and adhere strigently to the international competitive bid approach in the award process (Obasanjo, 2003). There is no gain saying the fact that improved public procurement systems would have a beneficial effect on economic condition of the nation. Wittingi (1999) views public procurement as a business process within a given political system, with distinct considerations of integrity, accountability, national interest and effectiveness. These business operations of government, as controlled by public procurement, usually affect many different elements of society. The procurement entities for instance have needs for material support like roads, hospitals,etc.to help in fulfilling their designated national mission, which the mission of the Budget Monitoring and Price intelligent Unit (BMPIU) is to use due process mechanism to establish transparent, competitive and fair procurement system, which is integrity driven, encourages spending within budget and ensures speedy delivery of projects, while achieving value for realization of the budget monitoring and price intelligent unit (BMPIU) objectives. The government put in place the regulatory functions for regulating standards including the enforcement of harmonized bidding and tenders documents, certification functions for certifying federal wide procurements in categories of resident due process team certification (projects with threshold of between N1.0 million and N50 million) and full due process certification (projects above N50 million at various stages). Monitoring functions to supervise the implementation of established procurement policies and training and advisory functions to co-ordinate relevant and training programmes(Ezekwesili, 2005).

CONSTRUCTION INDUSTRY IN NIGERIA.

The construction industry is almost as old as nature itself and unlike many manufacturing industries, is concerned mostly with one- off project (Ogunsemi et al, 2010). The construction industry is a sector that is sensitive to change in both fiscal and monetary disturbance. The construction industry is very important in the economic development of any nation especially in an expanding economy like Nigeria (Ibironke, 2003). The construction industry according to Nwachukwu (2002), refers to the organized, economic activities involving the assembly of materials, labour, capital, machines, equipment and other resources and managing all these inputs towards achieving a desired goals which usually is a permanent structure (project) to serve both individuals and public interest. It involves a collection of clients, professionals, contractors, sub-contractors, who are primarily engaged in making architectural and engineering designs and transferring them into real structure with some kind of technological expertise.

Ofori (1999) defines construction industry as that sector of the economy which plans, design, constructs, and even those with little or no basic knowledge of construction operations. An efficient construction sector is a pre-requisite to effective national development.

The construction industry contributed greatly to the domestic product (Ajayi, Ogunsanmi and Ofili, 2004). In Nigeria, construction investment accounts for over 60% of the gross fixed capital formations (GFCF) i.e the total national investment (Dlakwa and Culpin, 1990). Problems in construction projects in Nigeria therefore hold back planned economic development (Ajayi et al, 2004). Current construction projects are complex efforts requiring the support of the design and construction profession (Ogunsemi and Jagboro, 2006). Therefore, a realistic time for execution of project will reduce the possibility of disputes between the state agency and the contractors (Almomani, 2000). It also reflect the contractor's ability to organize and control site operations, to optimally allocate resources and to manage the flow of information to and from the design team among contractors (Xiao and Proverbs, 2002). The correct choice of construction contractor(s) is a critical function of either the client or the client's consultant/project manager. It usually has a significant impact on the success or failure of a project. Attempting to predict contractor performance with regard to a forthcoming project requires appraisal of current workload and residual resource capacities as well as investigation of performance on recent project (Kuwaraswamy, 1996). One of the most difficult decisions taken faces adversity and uncertainty and an inappropriate contractor increases the chances of delays, cost overruns, substandard work, disputes or bankruptcy (Elinwa and Joshua, 2001).

Nigeria contractors are faced with the problem of lack of technical education, managerial skill and finance when compared with their counterparts in the developed countries. The performance of a project will definitely correlate with the performance of the contractor (Ajayi, Ogunsanmi and Ofili, 2004). The evaluation of performance has been a challenge for the construction industry for decades. Several models and procedures have been proposed for the evaluation and measurement of project performance. However, most of these procedures limit their analysis to selected measures such as cost, schedule, or labour productivity (Alarcon, 1994). The increasing competitiveness of the construction industry (CI) motivates companies to assess performance and implement efficiency improvement strategies in order to obtain competitive advantage. Consequently, focus directed towards the site contractors, to raise the levels of competitiveness, contractors need to increase the use of performance assessment tools as a means of supporting performance improvement programmes. Contractor performance is defined to embrace construction cost, construction time, construction quality and sustainable development, the philosophy being that the achievement of one aspect of performance should not be at the expense of another (Hong and Proverbs, 2003). Poon (2003), remarks that the major indicator of the contractor's performance is the client's satisfaction. Poor contractor performance, is characterized by poor quality and low productivity, is common in the industry. Furthermore, other problems associated with poor performance are cost over-runs, rework, late completion, unacceptable high accident rate, insensitivity to environmental considerations, poor work practices and adversarial relationship (Allens, 1994; Henry, 1994; Lobelo, 1996; Alwi, Hampson and Mohamed, 2002).

The contribution of the construction industry to national economic growth necessitates improved efficiency in the industry by means of costs effectiveness and timeliness and would certainly contribute to cost savings for the country as a whole (Aibina and Jagboro, 2002). The construction industry has many features which set it apart from other process industries and which accentuate the need for professional engagement (Ayangade, Wahab and Alake, 2009). In construction contract awards which is part of procurement system, 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 and the manner in which projects are managed (Bamisile, 2004). Which means you cannot talk about good construction process and procurement system without contribution of project management. This is because, project management is believed to be justified as a means of avoiding the ills inherent in the construction and production sectors of the economy and for which reasons most project fail or abandoned

PROJECT FAILURE AND ABANDONMENT, THE NIGERIAN PERSPECTIVE

Project failures and abandonment has assumed a negative dimension in Nigeria that necessitated President Goodluck Jonathan to institute the Presidential Project Assessment Committee (PPAC) 2010. The Committee in June 2011 as reported in The Guardians Newspapers of 3rd June 2011, blamed mass failure of public projects over the years to corruption, inadequate budgetary provision, poor project conceptualization and institutional mediocrity.

President Goodluck Jonathan had, March 4, 2010 inaugurated the 20-man PPAC to, other things, take inventory of all on-going projects awarded by the Federal Government; assess the level of funding; and to physically inspect each projects to determine work done and to ascertain whether it is commensurate with the amount paid to the contractors. Headed by a former Minister of the Federal Capital Territory, FCT, Engr, Ibrahim Bunu, the panel said the Federal Government, within the period under review lost billions of naira to dubious contractors and public officers.

Bunu in an address delivered at the presentation of the committee’s report to President Jonathan, said that the committee, in the course of its work, visited 200 sites of on-going projects across the country and physically assessed performance on the sites. He said, “in the process, the committee has made an inventory of 11,886 on –ongoing capital projects being executed by the federal Government. The estimated cost implication of these projects stood at N7.78 trillion. He added that “out of this outstanding amount, N2,696 trillion had been paid to contractor’s leaving outstanding of over N5 trillion.

The committee’s in- depth assessment

Bunu noted that following the committee’s in-dept assessment of many of the projects,they took no joy in confirming that there was indeed evidence of large scale, widespread institutional mediocrity, deficiency of vision and a lack of direction in project management, which result in poor conceptualization, poor design and faulty execution. Needless to add that this has resulted in avoidable loses of billions of naira to the Government.”

He said that the committee also confirmed the existence of inadequate budgetary allocation, high cost of financing projects and corruption in the handling of projects by many self-seeking, inept public officers and contractors which has led to massive inflation of costs and undermined the legitimacy of their monitoring and supervision responsibilities.

Bunu, however, lamented that the figure “represents the total responses received from ministries, departments and agencies, MDAs, of government, some of whom for reasons best known to them, failed to respond to the committee’s request for data on on-going projects.” Noting that the figure represents an incomplete inventory, he said the correct figure may well be some 20 percent higher. He added, there are many uncompleted projects where trillion of naira has already been spent, and abandoned, prominent example of which is the 30 year old multi-billion dollar Ajaokuta Steel Company project. The sum of \$4.5 billion which have been spent lie wasted. “Ajaokuta and over 200 dams spread across the country not yet applied to their design objectives, are painful examples amongsts many, to show that this country hardly realise the value for money in many projects where government has spent a lot of money. These I believe the transformation agenda needs to address.” The committee also advised government on the need to place emphasis on capacity building and on retraining and orientation at all levels of government officials “as human capital is critical to the needed predisposition and eventual actualisation of the transformation agenda.”

Table one

How does the contract mechanism of due process influence the award of public contracts?

QUESTION	SA (%)	A (%)	U (%)	D (%)	SD (%)	MEAN	STD DEV
There is a positive influence in observing due process mechanism in the awards of public contracts	126 (25.61)	187 (38.01)	44 (8.94)	81 (16.46)	54 (10.46)	3.51	1.32
The mechanism has established transparency and fair play in contracting procedures for procurement of public contract	89 (18)	177 (31)	44 (9)	148 (30)	34 (7)	3.28	1.26
The mechanism has not established transparency and fair play in contracting procedures for procurement of public contracts	34 (7)	148 (30)	44 (9)	177 (36)	89 (18)	2.72	1.41
The mechanism allow participation by reputable, competent and reliable contractors.	138 (27.95)	211 (42.97)	20 (4.08)	89 (18.10)	34 (6.90)	3.67	1.25
The due process mechanism ensures faith by tenders in the tendering mechanism.	59 (12.10)	171 (34.71)	46 (9.41)	152 (30.80)	64 (10.07)	3.02	1.29

Table: above puts forward respondents responses with regard to how and to what extent does the contract mechanism of due process influence the award of public contract. From the table above, 126 (25.61%) of the respondents strongly agree that there is a positive influence in observing due process mechanism in the award of public contracts. Equally,187 (38.01%) of the respondents were of the same affirmation. According to them, before the coming of Chief Obasanjo administration that introduced due process policy, we have heard that government lost billions and billions of naira through contracts award and inflated contracts. According to them, the mechanism has helped to bring about regulated/formalised approach to procurement and awards of contract generally. According to them, now you cannot maneuver, you can’t use yes I have my man at the helm of affairs, “you can;t use man know man any longer to get contract but rather you must follow the procedure to get contract. 44 (8.94%) respondents were undecided on the positive impact of due process mechanism on the award of public contracts. 81(16.46%) and 54(10.98%) respondents disagreed and strongly disagreed respectively that due process

mechanism has not impacted positively on the award of public contract in Nigeria. According to them, there are still abandoned projects littered everywhere in the south eastern Nigeria and Nigeria is still losing billions of naira due to abandoned projects, irrespective of the fact that due process were followed in the awards of those projects.

It is positive to note, that following our decision rule of means $X > 3$, it can therefore be concluded that there is a positive influence of due process mechanism on the award of public contracts in Nigeria. On whether the mechanism has established transparency and fair play in contracting procedure for procurement of public contract, 89(18%) of the respondents strongly agreed, 177(36%) of the respondents agreed that the mechanism has established transparency and fair play in contract award. 44(9%) of the respondents were undecided. 148(30%) and 37(7%) of the respondents disagreed and strongly disagreed respectively that the mechanism has not established transparency. According to them, some due process officers award themselves contract through proxies. The mean value 3.28 and 2.72 for questions two and three respectively revealed that due process mechanism has established transparency and fair play in the award of public contract. As regards to the responses whether the mechanism allow participation of reputable competent and reliable contractors, 138 (27.95%) of the respondents strongly agreed. 211(42.97%) representing majority of the respondents agreed that the mechanism put in place by due process does not give room for incompetent contractors to bid for contract. They further stated that the certification and review of bid procedure involved in due process mechanism does not allow an incompetent contractor to bid for any contract under due process policy. It is pertinent to note that the high mean value of 3.67 revealed or affirmed the assertion that due process mechanism allow participation by reputable, competent and reliable contractors.

On the respondents perceptions on whether due process mechanism ensures faith by tenders in the tendering mechanism, 59 of the respondents representing 12.01% were of the strongly agreed view. 171(34.70%) of the respondents agreed and affirmed the above assertion. 46(9.4%) were undecided, while 152 (30.80%) and 64(13.07%) respondents respectively were of the disagreed and strongly disagreed side. The mean score of 3.02 revealed that due process mechanism ensures faith by tenders in the tendering mechanism.

Table two
What is the effect of due process policy on the performance of construction industry in Nigeria.

QUESTION	SA	A	U	D	SD	MEAN	STD Dev.
Regulating and setting standards to enforce harmonising bidding and tender documents in contract bidding	133 (27.10)	198 (40.20)	35 (7.16)	31 (6.20)	95 (19.34)	3.49	1.44
Formulation of general policies and guideline on public sector procurement and monitoring prices of tendered items and provide data base advisors	94 (19.17)	173 (35.11)	50 (10.15)	124 (25.17)	51 (10.40)	3.27	1.31
Documenting and monitoring government projects to completion and ensuring that executed contracts are according to specification and costs	10 (2.10)	124 (25.20)	85 (17.30)	183 (37.15)	90 (18.25)	2.55	1.11
Upholding professional ethics and reporting erring contractors for sanctions, thereby ensuring sanity in the Nigerian construction industry.	25 (5.11)	139 (28.15)	54 (11.02)	173 (35.12)	101 (20.60)	2.62	1.23
Co-ordinating, trainings to promote capacity building of procurement personnel and systems	51 (10.32)	173 (35.08)	45 (9.15)	145 (29.54)	78 (15.95)	2.94	1.30

The questions in table two above were designed to help determine the level of understanding of due process policy and what effect does it have on the performance of construction industries and administration of contract in Nigeria. 133(27.10%) of the respondents strongly agreed that due process through regulating and setting standards has enforced harmonised bidding and tender documents in contract bidding. Majority of the respondents 198 representing 40.20 percent strongly affirmed the above assertion. 35(7.15%) of the respondents were undecided while 31(6.20%) and 95(19.34%) of the respondents disagreed and strongly disagreed respectively to that assertion. The mean of 3.49 is an indication that due process policy through regulating and setting standard has enforced harmony in contract bidding.

On the aspect of formulation of general policies and guidelines on public sector procurement and monitoring prices of tendered items and provision of data base advisor, 94 (19.17%) of the respondents strongly agreed to that statement. 173 of the respondents representing 35.11 percent strongly affirmed that statement. 50(10.15%) of the respondents were undecided. 124 (25.17%) disagreed to that statement while 51 of the respondents representing 10.40 percent strongly disagreed. The mean score of 3.27 indicates that the majority of the respondents were of the affirmation that due process has been able to formulate policies and guidelines on public sector procurement and has been able to monitor prices of tendered items and has provided data base advisors.

On the aspect of documenting and monitoring government projects to completion and ensuring that executed contracts are according to specification and cost. Minority of the respondents 10(2.10%) strongly agreed to that question. 124(25.20%) agreed, 85(17.30%) were undecided. Majority of the respondents 183 representing 37.15% disagreed to that statement, while 90(18.25%) of the respondents strongly disagreed. According to them, if due process office has been monitoring projects and ensuring that contracts are executed, series of abandoned and unexecuted projects littering the south east of Nigeria would not have been there. The mean value of 2.55 following our decision rule ($X < 3$) disagree indicates that due process has no significant effect in monitoring projects to completion and ensuring that executed contracts are according to specification and costs.

As regards to upholding professional ethics and reporting erring contracts for sanctions, thereby ensuring sanity in Nigerian construction industry, 25(5.11%) of the respondents strongly agreed to that question. 139(28.15%) agreed, 54(11.02) were undecided. 173 (35.12%) and 101(20.60%) of the respondents disagreed and strongly disagreed respectively to that question.

It is positive to note, that the mean value of 2.62 going by our decision rule indicates that due process policy has failed in their duties of upholding professional ethics and reporting erring contractors for sanctions. This failure to a great extent has hindered the desired sanity expected in the Nigerian construction industry. On the aspect of co-ordinating training to promote capacity building of procurement personnel and system, 51(10.32%) of the respondents strongly agreed to that statement, 173(35.08%) agreed, 45(9.15%) were undecided. 145(29.90%) disagreed, while 78(2.94%) strongly disagreed to that question. In view of the mean of 2.94, it is pertinent to note that, that assertion was disagreed. There is need for government to examine issues critically on how projects are initiated, bid for, negotiated and awarded and why they get abandoned. Who and what are really responsible?. Are poor planning, haphazard procurement, and incompetent contractors and project management the key causes or is it financial management?. In spite of the mobilization fees already paid, why is nobody held accountable when projects are not completed.

FINDINGS

1. That the due process mechanism to a reasonable extent has established transparency and fair play in contracting procedures and also allow participation by reputable, competent and reliable contractors in bidding for contracts. The agency has succeeded to a great extent in eliminating of sales of contract papers to touts and sychophants. As a result, the level of contract manouvvers have reduced and you can't use yes I have my man at the helm of affairs to get contract without following the procedures.
2. That Nigerians understands due process office as an agency set up by Government to regulate and set standard to enforce harmonised bidding and tender documents in contract bidding and equally understand the agency as an institution that formulates general policies and guidelines on public procurement. That an efficient construction sector is a pre-requisite to effective national development and usually contributes to gross national product and national employment.

RECOMMENDATIONS

1. There is need for government to examine issues critically on how projects are initiated, bid for, negotiated and awarded and why they get abandoned. Who and what are really responsible?. Are poor planning, haphazard procurement, and incompetent contractors and project management the key causes or is it financial management?. In spite of the mobilization fees already paid, why is nobody held accountable when projects are not completed.
2. The composition of the public procurement council under the procurement act is very critical to contracts implementation. The federal Government should expeditiously constitute the council for proper administration and monitoring of contracts in Nigeria.

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