

Appraisal of Integrity in Public Procurement Processes in Nigeria

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Abstract: *Governments across the globe are charged with the responsibility of delivering public goods and services to the citizenry. The process of delivering such goods and services entails enormous procurement transactions on the part of government and its agencies. The hall mark of proficient public procurement in any given society includes economy, efficiency, fairness, reliability, integrity, transparency, accountability and ethical standards. Public procurement is one aspect of government operations that is prone to corrupt practices in many countries of the world. In Nigeria, the procurement practices before and during the early days of the fourth republic, provided the enabling environment for diversion of funds, siphoning of contract sums or the outright abandonment of project sites by contractor thereby shortchanging the economy and the country at large. The set up of the due process policy in 2001, public procurement Act in 2007 has revealed a lot as to the unprofessional nature in public procurement processes in Nigeria. This study identified the factors that undermine integrity in the procurement processes as well as hindrances to the efficient operations of public procurements in the country to include; political interference, use of proxy-contractors, delay and non—release of funds, and inability of ICPC & EFCC to promptly prosecute offenders. The paper concludes that the enactment of the Public procurements Act 2007, has not ensured integrity in public procurements and recommends that government create an independent body that will monitor public procurements as well as ensure speedy trial of offenders.*

Keywords: *Integrity, Public Procurement, Transparency, Nigeria.*

I. Introduction

Public procurement is a procedure that ensures that goods, services or works are appropriate and are procured at the best possible cost to meet the needs of the buyer in terms of quality, quantity, time and location. In Nigeria, public procurement is done by ministries, departments and agencies of government.

The objective of instituting a virile public procurement procedure is to increase the competition among potential suppliers or service providers, thereby allowing achieving a

The Organization for Economic better value for money result, while at the same time developing market opportunities for companies. The processes of the award of any government contract should start with the call for bids by potential service providers, followed by the tendering of sealed bids by contractors. Upon evaluation and scrutiny of qualified bids, the contract is awarded to the most suitable firm or company. A procurement procedure leads to the conclusion of a public contract. Cooperation and development (OECD) (2007) writes that:

Public procurement has been identified as the government activity most vulnerable to corruption. As a major interface between the public and the private sectors, public procurement provides multiple opportunities for both public and private actors to divert public funds for private gain. For example, bribery by international firms in OECD countries is more pervasive in public procurement than in utilities, taxation, judiciary and state capture (OECD, 2007: 9).

The challenge of ensuring integrity in the public procurement processes is therefore not a problem peculiar to Nigeria or the developing countries alone. The lack of open processes and procedures and mismanagement of resources in the award of contracts in the government circles may have necessitated calls by international **organizations for governments to pay greater attention to the public procurement process, to ensure that award of contracts and other procurement matters are handled professionally, in compliance to acceptable global standards.**

Nigeria's drive towards industrialization and her target of been among the twenty most developed economics by the year 2020 has also increased the awards of contract. The wasteful nature of the Nigerian system and the non-adherence to laid down principles especially with regards to procurement processes has necessitated the need for greater transparency, openness, accountability in procurement process. This influenced the adoption of the due process policy in Nigeria's procurement system in order to eliminate all forms of waste and extravagance.

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The set up of the Bureau of Public Procurement and the enactment of Public Procurement Act 2007 were necessary as there was the need to make public procurement processes more professional, efficient and effective. The paper examined the public procurement processes in Nigeria, in the post public procurement era, to ascertain if there is integrity in the public procurement processes, and investigate if the purposes for enacting the public procurement Act are being achieved. The paper is sub-divided into eight sections; introduction, conceptual clarification, theoretical framework, methodology, public procurement processes in Nigeria, challenges to efficiency in the public procurement processes, conclusion and recommendations.

II. Conceptual clarification

Public Procurement: Public procurement is the process of acquiring goods, works and services, covering both acquisitions from third parties. It involves option appraisal and the critical make or buy decision which may result in the provisions of goods and services in appropriate circumstances (Sarfo and Mintah, 2014). In addition, public procurement means acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or any type of works, services or supplies or any combination up to the time a user consumes or utilizes a service as per his requirement and in line with the procurement act and regulations of the country (PPDA, 2014).

Lloyd and McCue (2004) describes public procurement as including all stages of the processes of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and close out. Public procurement has equally been defined as the acquisition, whether through formal contract or not, of works, supplies and services, by public bodies (EPA, 2014). The underlying principle of public procurement is that a competitive process must be instituted to ensure that the function is discharged honestly, fairly and in such a manner that ensures the efficient utilization of public resources.

Simpson, Sharma & Aziz, (2011: 9) write that “Procurement resembles a reverse auction, whereby suppliers compete to offer the lowest price for a good or service. Procurement rules aim to ensure the government receives the best value for money when buying goods and services, without incurring excessive transaction costs”.

In the last few decades, countries have moved from the traditional system of centralized procurements, to a more robust system of decentralized procurements, with each spending agency carrying out its procurements. The decentralized system of procurements has resulted in the need for more skilled procurement personnel across governments (Simpson, Sharma & Aziz, 2011: 10).

III. Theoretical framework

Principal – Agent theory

Principal agent theory has its roots in Economics, where its original proponents Spence & Zeckhauser (1971), applied the theory to the subject of insurance. However, further interrogation has revealed that the theory is central to understanding the effects of information asymmetries in several disciplines including in the social sciences. Holmstrom (1979), Shavell (1979) identify the six core assumptions of principal agent theory:

1. Agent impact -The agent takes an action that determines (along with a risky variable) pay off to the principal.
2. Information asymmetry - The principal can readily observe the outcome but not the action of the agent. Monitoring of agent actions may be theoretically possible, but gathering complete information is regarded as prohibitively expensive.
3. Asymmetry in preferences –The agent’s preferences are assumed to differ from the principal’s.
4. Initiative that lies with a unified principal. The principal acts rationally based on a coherent set of preferences, and is able to move first by offering a contract.
5. Backward induction based on common knowledge - Principal and agent share knowledge about the structure of the game, effort costs, probability distribution of outcomes, and other parameters.
6. Ultimatum bargaining -The principal is presumed to be able to impose the best possible solution from the agent’s correctly inferred best response function (cited in Miller, 2005: 205-206).

Principal-agent theory encapsulates a tradition of rational choice modeling, in which some actor(s) known as the principal(s) uses whatever actions are available, to provide incentives for some other actor(s) referred to as the agent(s) to make decisions that the principal most prefers.

In principal-agent models, some actor (or group of actors) called an agent undertakes an action on behalf of another actor (or group of actors) called a principal. The principal, for its part, can make decisions that affect the incentives of the agent to take any of its various possible actions (Gailmard 2012). This process of structuring incentives for the agent is the central focus of principal - agent theory. The decisions made by the principal that structure the agent’s incentives to take various actions constitute a contract, in the language of

principal-agent theory, and principal-agent theory is often taken as a specific area of contract theory more generally (Bolton and Dewatripont 2004).

In the context of public procurement processes in Nigeria, the officials charged with the responsibility of overseeing or discharging the procurement transactions and award of contracts for the government, are the Agents, while the Nigerian public are the Principal. The incentives for the agents are already predetermined through their appointment letters. However, the Nigerian factor creates a situation where the agents sometimes do not act in tandem with established norms. In such situations, the established processes are compromised as the agents seek their own interests instead of the interest of the principal. The prismatic nature of the Nigerian society where the administrative system operates like a Bazaar-canteen model (Riggs, 1964) accounts for the abnormal situations prevalent in the public procurement processes. As such, the system had been open to various abuses in spite of established processes that are supposed to be followed to ensure that the agent works according to the desires of the principal.

Public Procurement Processes in Nigeria

The litany of abandoned and uncompleted projects by both federal and state governments across Nigeria has been clear evidence of the fact that the public procurement system in the country was in a mal-functional state and prone to abuse, leading to the establishment of the bureau of public procurements. The fact that prior to the fourth republic, there was no law in place to guide public procurement process meant that public officials, charged with the responsibility for procurement and award of contracts saw their responsibilities as opportunities to amass wealth and enrich their families, friends and associates at the detriment of the state.

This practice encouraged profligacy and ensured the waste of public funds. It is notable to mention that for a country like Nigeria that is striving towards economic prosperity and development, issues surrounding award of contracts and public procurement are necessary in order to drive the performance of the economy towards development.

The manipulation and lack of due process involved in public procurement processes in Nigeria led to the institutionalization of the Bureau of Public Procurement, the agency saddled with the responsibility of providing the framework with which the award of contracts in government circles can be fair, open and justifiable. Ezekwesili (2004) writes that public procurement practices in Nigeria before 1999 was fraught with high level corruption, mismanagement of funds and the awards of contract to cronies, friends and the well connected companies. This position is corroborated by the report of the centre for Democratic governance (CDG, 2006), which stated that:

The key to cementing the country's patronage system through corrupt procurements is the handing out of government contracts to political favorites. This has been the case for contracts for building roads, schools, hospitals, and for the supply of electricity, water, and medicines, etc. Nigeria was ranked as the most corrupt place on earth in 2003, but its relative ranking has since been upgraded to 152nd out of 159 countries.(CDG, 2006)

The administration of former President Olusegun Obasanjo (1999 – 2007) introduced a due process policy as a pre-condition for the award of contracts. The aim was to eliminate waste, as it was necessary for the government to save cost and use such funds for other developmental efforts. Following the revelations of the due process policy which led to the integrity in the award of contracts and return billions to government coffers, the Obasanjo administration thought it wise to set up a regulatory body that will be in charge of procurement processes at the federal level. The former Director General of the Due process office, Dr. Oby Ezekwesili disclosed that her office saved 672.4 million from a single contract. The state governments also followed suit. The climax of the process led to the promulgation of the Public Procurement Act 2007 (Oguonu, 2013).

The need for good and efficient public procurement processes cannot be over emphasized. Apart from the fact that it ensures accountability and transparency in the award of contracts and in government circles, it is also a catalyst for development. The quality, timeliness, suitability and affordability of those procured inputs can largely determine whether the public investments will succeed or fail (FRN, PPM, 2010).

The procedure for public procurement in Nigeria is clearly stated in section 24 of the Public Procurement Act

1. Selection of a method of procurement
2. Preparation of the relevant procurement documents.
3. Pre-qualification of bidders.
4. Submission/receipt of tenders
5. Evaluation of tenders
6. Comparison of tenders
7. Recommendation of the winning bid
8. Certification of the procurement action.
9. Award of contract.

The thrust of the Public Procurement Act 2007 according to (Fayomi, 2013) was to harness, maximize, and utilize the resources of the country for the improvement of life of its citizens. Also, 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.

In view of the huge expenditure captured in annual budgets for public procurement, there has been the need to ensure integrity in our procurement practices. Nigeria's budget over the year have been characterized with billions of naira budgeted for Capital Expenditure. Literally, these capital expenditure translates to award of contracts and public procurement. The saving of a whopping sum of ₦216.6 billion naira during the 2010 Appropriation year from the review of contract processes according to (Onyema, 2011) is a reminder of how fictitious and dubious contract figures and processes have been in the past.

Fayomi (2013) writes that the public sector in Nigeria, which drives the nation's economy, 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 recurring overhead budget that is in a trillion of naira annually. The quest to make Nigeria one of the 20 largest economies in the world, has also led to greater procurement activities across various sub-sectors of the economy. The major procurement activities of government include road construction, building, defense, aviation, agriculture, water installation, education, technological equipment, information technology hardware and software. Others include health procurements, energy generation, transmission and distribution procurement in the energy sector, oil and gas procurements and the general recurrent expenditure items like stationary and other office and home consumables. The high volume of government contracts every year has made public procurement processes in Nigeria a challenging one.

Presently, the public procurement processes in Nigeria involves other departments of government such as the Ministry of Finance, Central Bank of Nigeria, National Assembly, and a host of other relevant government agencies all aimed at ensuring probity and accountability in the award of contracts. The Public Procurement Act however been amended in 2012 with the aim of tightening loose ends in fiscal responsibility matters and in the award of contracts.

Challenges/hindrances to integrity in Public Procurement Processes in Nigeria

The large volume of procurement transactions across various sectors in Nigeria which is plagued with high level of public sector corruption has provided enormous challenges to the public procurement processes in spite of the public procurement Act 2007. This is because of the fact that in various ministries, at federal and state levels as well as agencies and parastatals of government, the Nigerian factor had been introduced in various ways to circumvent in some cases the provisions of the public procurements act, with culprits smiling away with state resources without any form of sanction.

Firstly, the paradigm shift brought about by the public procurement act 2007 has become a cog in the wheel of the public procurement process itself. Dubious businessmen and contractors who previously saw government as an easy access to wealth, using their contacts in government work in complicity with government officials to frustrate the process. When they lose bids they collude with officials to adopt various schemes which deliberately frustrate the contract award, release of funds, execution and evaluation of contracts to frustrate the winners of the bid and make them look incompetent, with the aim of getting the contracts re-awarded to them at higher valuation subsequently (Onyema, 2011). This compromises the integrity of the process.

Secondly, political interference has been a major obstacle to efficient public procurement process in Nigeria. The overbearing influence which Ministers, Chairmen of boards, Special Advisers, party leaders, and sometimes Permanent Secretaries and other heads of agencies and parastatals have over the ministry or agency they superintend has created room for manipulation in the award of contracts. There are cases where these political appointees and bureaucrats threaten to blacklist winners of contract and procurement bids with blacklisting if they do not concede certain percentage of the contract sum to their clique, or in the alternative, the contract would be awarded to a more "friendly" and "proactive" company. These politicians and officials deliberate compromise the integrity of the public procurement process in efforts to enrich themselves at the detriment of the wider society.

Thirdly, the non-release of funds and the delay in the passage of annual budgets has also showed down the public procurement process. In government circles, money budgeted for is not money released. It is instructive that for couple of years, the federal government operated less than 60% of the approved annual budgets, before public outcry forced the government to improve on the implementation of the budget in 2014. Such practices will not only slow down the public procurement processes, it can also lead to the abandonment of contracts by contractors. When funds that are budgeted for particular projects are not released as at when due it leads to abandonment of projects and undermining of future procurement and contract bids. Competent

contractors and suppliers who prefer to deal with institutions that are transparent lose faith the process, as the integrity of the process is compromised.

Another challenge affecting procurement in Nigeria is the use of proxy contractors who front for people in government. Various pseudo-companies fronting for national assembly members and political appointees in government are the ones that are awarded supply contracts by the various ministries, departments and agencies (MDAs). National assembly members use threats of negative oversight function reports as mechanism to hoodwink the MDAs into awarding contracts to their proxy companies in the process they compromise the integrity of the public procurement processes in line with the public procurement Acts 2007.

Lastly, the inability of anti-corruption agencies – the EFCC and ICPC to promptly prosecute and dispose of cases arising from the abuse of the public procurement processes in court is another challenge. Many a times, individuals charged before the court employ different strategies and techniques to slow down the process in the court by seeking frivolous injunctions. There is the need to ensure optimum compliance with laid down rules and principles guiding public procurement, speedy trial of those who engage in corrupt practices bordering on contravening of the public procurement processes would help in ensuring integrity in the process.

IV. Conclusion

The enactment of public procurement Act (2007) has not brought about a clean and transparent system of public procurements for Nigeria, as envisioned. Instead, it has been prone to various kinds of abuses by politicians, public officials who have connived with unscrupulous contractors and suppliers both national and foreign. Several man-made challenges have been introduced into the system which compromised the integrity of the system, making it inefficient. As a consequence, there has been continual wastage of public resources and corrupt practices persisting in the public procurement processes.

Following the unprofessional conduct of some officials charged with public procurement responsibilities in Nigeria as identified in the challenges that still be-devil the public procurement processes in Nigeria, there is need for deliberate efforts to ensure integrity by officials charged with public procurement responsibilities.

To ensure integrity in public procurement would include tightening our fiscal responsibilities, ensure contract sums are released in tranches followed by evaluation, empower the anti-graft agencies to prosecute defaulters and remove the clogs that slow court processes. The time has arisen for Nigeria's anti-corruption drive to be more drastic. Enactment of draconian anti-corruption laws like the ones in operation in the Peoples Republic of China may serve as deterrent to corrupt officials as well as contractors and suppliers seeking to entice public officials into corrupt practices in the public procurement processes.

V. Recommendations

There should be an autonomous agency charged with the responsibility of monitoring the processes of bidding, award and execution of contracts, with powers to prosecute those who abuse the processes.

Strict anti corruption laws should be enacted, with corruption carrying a life sentence and confiscation of all assets of the convicted corrupt official. There should equally be special courts designated for trying corruption cases so that they can be dispensed with speedily.

There should be regular release of budgeted funds as at and when due, to enable ministries, departments and agencies meet with their responsibilities to suppliers and contractors for duly approved projects. Due background check should be made on all companies bidding for government supplies and contracts to ensure that they are not proxy - companies owned by top government officials in the executive, legislature and judiciary.

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