**AN APPLICATION OF DUE PROCESS IN EXISTING PROCUREMENT METHODS IN NIGERIA**

**Abstract**

This research work looks at Due Process Application in the procurement of construction projects in Nigeria. It gives a brief background of the introduction of due process generally in the Nigerian public sector and specifically in the construction industry.

This research goes further to highlight the gains made by the introduction and application of due process in construction projects. This was achieved by interviews and administering of questionnaires, which focused on the awareness/understanding of the concept of due process by project participants in the Nigerian construction industry.

This project also looked at the effectiveness of the application of due process procedure in the Procurement of construction project, since it’s adoption. It further asserts that ‘application or non-application’ of due process procedure or mechanism affects project delivery.

This research finally recommends that due process procedure should strictly be complied with and further extended to other tiers of Government, which are the State and Local Government. In doing this the gains so far made in the procurement of construction projects in the public sector would be fully harnessed.

**CHAPTER ONE**

**INTRODUCTION**

**1.1 BACKGROUND TO THE STUDY**

The construction industry activities include procurement of goods and services as well as the execution of a variety of physical structures and infrastructure (Ayangade, Wahab and Alake 2009), using different procurement methods. The activities of construction industry has helped in contributing to Gross Domestic Product (GDP), Gross fixed capital formation and creation of high level of employment to the changing professionals (Wahab, 2005). 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 (Akindoyeni, 2004). 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 building 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 (Bamisile, 2004).

Until 1999, Nigeria had practically institutionalized corruption as the foundation of governance.

Hence institutions of society easily decayed to unprecedented proportions as opportunities were privatized by the powerful. This process was accompanied, as to be expected, by the intimidation of the judiciary, the subversion of due process, the manipulation of existing laws and regulations, the suffocation of civil society, and the containment of democratic values and institutions. Power became nothing but a means of accumulation and subversion as productive initiatives were abandoned for purely administrative and transactional activities. The legitimacy and stability of the state became compromised as citizens began to devise extra-legal and informal ways of survival. All this made room for corruption. (BPP website).

There was therefore an urgent call for Procurement Reforms and enthronement of Due Process in the Nigerian public Sector. It is as a result of this, that due process was established in 2001.

Nigeria nation has lost several trillions of Naira on poorly executed contracts, bad workmanship, collapsed structures, delayed and abandoned projects, and the multiplier economic and social benefits derived from such projects are unachievable (Ajator, 2004). The problems of capital development program from the era of military dictatorship were characterized by full paid ghost projects, poorly executed or even abandoned projects.

Since the early 80s, Nigeria has been confronted with a magnitude of economic problems. These economic problems include stagnant growth, rising inflation, unemployment, food shortage and mounting external debt. Nigeria therefore like most other nations, has been battling with how to achieve its major economic objectives. These objectives include full employment, price stability, economic growth and healthy balance of payments. It has not been easy for Nigeria to realize the above objectives. The root of all these problems is corruption (Oguonu 2007).

Over the years in Nigeria, 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 [BMPIU, 2005]. Oboirien, 2005 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- value for public treasury, high cost of procurementandothers. Obasanjo (2004) rightly observed that Nigeria had practically institutionalized corruption as the foundation of governance. Hence, institutions in the society easily decayed to unprecedented proportion as opportunities were privatized by the powerful. Power became nothing but a means of accumulation and subversion as productive initiatives were abandoned for purely administrative and transactional activities. The legitimacy and stability of the state became compromised as citizens began to devise extra-legal and informal ways of survival. All this made room for corruption.

There was therefore an urgent call for Procurement Reforms and enthronement of Due Process in the Nigerian public Sector. In 2001, the Federal Government issued New Policy Guidelines for procurement and award of contracts in Government Ministries/Parastatals (Circular F. 15775 of 27th June, 2001).

In the President Obasanjo political dispensation, the Budget Monitoring and Price Intelligence Unit (BMPIU), also known as Due Process was inbuilt into the capital budgetary system, so as to ensure that projects started are completed within stated criteria.

Due process implies that governmental activities and business can be carried out openly, economically and with transparency without favouritism and corruptible tendencies (Ezekwesili 2004). The essence of this is to ensure that rules and procedures for 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.

Adesugba (2004) opined that in order to provide additional boost to government anti-corruption policy, an office of the BMPIU, otherwise known as Due Process (D.P) was established in June 2003. To realize the objective for which it was set up, BMPIU was headed by a financial specialist, Mrs. Obiageli Ezekwesili and staffed with experts in financial regulations, project management and corruption prevention.

The seemingly professional failure of Nigerian project planners, designers and administrators to give value to capital projects has cast doubt on the credibility and relevance of construction professionals and contractors. Nigerian government since 2002 fiscal year has reservation on the import of consultancy fee scale in capital project delivery (Awosemusi 2002) and has instituted the Due Process Compliance (DPC) exercise in the planning and implementation of capital budget /projects (Ezekwesil 2002). The goal of BMPIU is to ensure full compliance with laid down guideline and procedures for the procurement of capital and minor capital project as well as associated goods and services for all Government contracts.

The objectives of BMPIU according to Ezekwesili (2003) are as follow:

1. To introduce more honesty, accountability and transparency into the procurement process.

2. To determine whether or not Due Process has been observed in the procurement of services and contracts.

3. To establish and update pricing standards and benchmarks for all suppliers to Government

4. To ensure that only projects which have been budgeted for are admitted for execution.

5. To harmonize existing government policies / practices and update same on public procurement

6. To monitor the implementation of projects during execution with a view to providing information of performance output and compliance with specifications and targets.

Lock (1989) opined that the objectives of contract / project performance or management can be condensed under three headings. A successful project is one which has been finished on time, within its cost budget and to a technical or performance standard which satisfies the end user. The Due Process Certificate ensures that the stated criteria are met by who will be the contractor to execute any project and the originating government Ministry and Public institutions.

For any project to actually get Due Process Certificate readiness to implement, Kharbanda and Stallworthy (1989) stated some criteria for choosing the contractor to include:

i. Cost incentive and liability arrangement proposed

ii. Local currency content of the project cost and the total investment required for the project

iii. Appreciation and knowledge of local conditions at the job site.

iv. Quality of personnel nominated to carry out the project, with special emphasis on the project manager

v. Long terms meant for the project

vi. Project organization and relationship with local subcontractors

vii. Quality and contents of the technical proposal

viii. Contractor’s recent experience in the design and construction of similar projects

ix. Ability to provide the owner with technical support services

x. Schedule for project completion

The above criteria which are not exhaustive are similar to that used by the Due Process Unit (DPU) in contract procurement, regulation, certification, monitoring, implementation, evaluation, training and advisory. It is worthwhile to inquire whether this DPC has impacted positively or not on the performance of public executed projects since its inception.

The introduction of Public Procurement Reforms in Nigeria followed a World Bank Country

Procurement Assessment survey conducted in 1999 which established the link between poor/weak public procurement procedures and corruption as well as its far reaching negative \consequences on national development especially in the area of infrastructural development in

Nigeria. The Assessment Report revealed that 60k was being lost to underhand practices out of every N1.00 spent by Government and that an average of ten Billion US Dollars ($10b) was being lost annually due to fraudulent practices in the award and execution of public contracts through inflation of contract cost, lack of procurement plans, poor project prioritization, poor budgeting processes, lack of competition and value for money and other kinds of manipulations of the procurement and contract award processes.

In order to address the above shortcomings, the Federal Government initiated the Public

Procurement Reform as part of its Economic Reform agenda designed to restore due process in

the award and execution of federal government contracts. This led to the setting up of the Budget

Monitoring and Price Intelligent Unit (BMPIU known as Due Process) in 2001 to implement the Federal Government's Public Procurement Reform Policy aimed at minimizing open abuses to known rules, processes and standards in the award and execution of public sector contracts in Nigeria.

Following the growing Public demand that the reforms are sustained and institutionalized with legal backing, a Public Procurement Bill was articulated in 2003/2004 by the Leadership of BMPIU and presented to the National Assembly. The Public Procurement Bill was thereafter

passed by the National Assembly on the 30th of May, 2007 and subsequently signed into Law by President Yar Adua on the 4th of June, 2007. (BPP website)

Today the duties carried out by the bureau of public procurement is popularly referred to as due process.

**1.2 Statement Of The Problem**

There are various procurement methods used in carrying out different project in the construction industry, of which due process is applied.

Analysis have shown that most contracts awarded by the government or its officials are awarded through corrupt means. Some of these contracts are awarded to contractors who have agreed to give the procurement official a certain percentage of the original contract amount. This encourages contractors to use substandard goods, render poor services or sometimes project abandonment (Ayodele, Charles, Akinusi & Marion 2010).

Over the period, Nigeria as a nation has lost several trillions of Naira on poorly executed contracts, bad workmanship, collapsed structures, delayed and abandoned projects, and the multiplier economic and social benefits derived from such projects are unquantifiable. It has not been easy for the nation to realize the full economic objectives. The root of all these problems is corruption ( Ejiofor 2009).

In recent years, many people are wary of doing business in Nigeria because; the cost of doing business here is predictably higher than elsewhere. There seems to be more need, now than ever, to ensure that, rules and procedure put in place for any form of procurement show adequate clarity of purpose to make them implementable and enforceable ( Nwaogwugwu 2005).

There are due process criteria set for any public project to be undertaken at different government levels. Irrespective of this, there are still several abandoned public projects due to selfish reasons. It is therefore worthwhile to investigate the level and extent of the use of due process for project procurement in Nigeria.

**1.3 Aim And Objectives Of The Study**

The aim of this study is to assess the application of due process in existing procurement methods in Nigeria. The following are the study objectives.

(1) To examine the level of understanding/awareness of Due Process in the procurement of construction projects by projects participants

(2) To assess the effectiveness of due process in public project execution in Nigeria

(3) To determine challenges or barriers of due process application in project procurement process in Nigeria.

**1.4 Research Questions**

Based on the research objectives, the following research questions have been proposed.

(1) What is the level of awareness/understanding of Due Process in the procurement of construction project by project participants in Nigeria?

(2) How effective is due process application in public project execution in Nigeria?

(3) What are challenges/barriers towards effective due process application in public procurement as it relates to the construction industry?

**1.5 Significance Of The Study**

This study is to assist the policy makers and other stakeholders on the effects of the Due Process procedure in the delivery of public projects in Nigeria. The assessment of the Due Process application will help to ascertain the gains of its use from when it was introduced in 2001 to 2013 in contract award, performance and implementation using Due Process certifications. Finally, this will throw more light on the importance of due process procedure as a prerequisite for project procurement used for public project delivery.

**1.6 Scope And Limitation Of The Study**

As it is more directly related to construction procurement, construction contract, project delivery, monitoring, implementation and evaluation.

Sampling of the professionals will be limited to Architects, Quantity Surveyors, Civil/Structural Engineers, Builders and Services Engineers along with the construction firms that have handled public project contract.

This study will focus on the project carried out within five years in which due process procedure was applied.

**1.8 Definition Of Terms**

**Due Process**

This is 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.

**Due Process Unit**

The Unit under the Presidency charged with budget monitoring and price intelligence. It ensures that project procurements are implemented in accordance with laid down criteria.

**Due Process Methodology**

The application of basic tools and criteria in project management, assessment, monitoring and evaluation of government projects to ensure transparency, integrity, competence, competitiveness and create value for money in the planning and execution of capital program by the Due Process.

**Procurement**

This is the process that creates, manages and fulfills contracts. It is an integral part of construction projects and it covers the overall pattern of decision made by the client in executing project

**Due Process Compliance**

The exercise and assurance that these basic tools and criteria in the planning and implementation of capital budget / projects are adhered to by all the parties involved in project execution.

**CHAPTER TWO**

**LITERATURE REVIEW**

**2.1 Conceptual review**

**Concept of Due process**

Due process is the proper, right and correct way of doing something. This correct manner and ways at which things should be done, can be seen in companies, market places, schools, workshops, homes state, local government, countries, ministries, etc.

As developed through a large body of case law in the United States, Due Process gives individuals a varying ability to enforce their right against alleged violations by governments and their agents (that is state actors but normally not against other private citizens. Due Process has also been frequently interpreted as placing limitations on laws and legal proceedings; in order for judges instead of legislators to define and guarantee fundamental fairness, justice and liberty. This interpretation has often proven controversial and is analogous to the concepts of natural justice and procedural justice used in various other jurisdictions. The term “Due Process” dates back to Magna Carta of A.D. 1215. In chapter 59 of the Magna Carta, King John of England promised as follows: “No free man shall be taken or imprisoned or despised of his freehold, or liberties, or free customs or be outlawed or exiled, or any other wise destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his pears or by the law of the land”. Magna Carta used immediately because part of the law of the land and chapter 61 of the greater charter authorized an elected body of twenty-five barons to determine by majority vote what redress the king must provide when the king offends “in any respect against any man”. Thus, Magna Carta established the rule of law in England by not only requiring the monarchy to obey eh law of the land, but also limiting how the monarchy could change the law of the land. It should be noted, however, that in the thirteenth century these provisions might have been retiring only to the rights of landowners, and not to ordinary peasantry or villagers.

Shorter versions of Magna Carta, were subsequently issued by British Monarchs and chapter 39 of Magna Carta was renumbered “29”. The phrase “Due Process of Law” first appeared in a statutory rendition of Magna Carta. In A.D. 1354, during the reign of Edward 111 of England, it states as follows: “No man of what state of condition he be shall be put out of his hands or tenements, nor taken, nor disinherited, nor put to death, without he being brought to answer by Due Process Law”.

**2.1.1 Background of Due Process In Nigeria**

Nigeria history since independence has been stormy. There was a civil war from 1966 to 1970 and there have been five consecutive military coups. Nigeria is blessed with mineral resources. Agriculture used to dominate the Nigerian economy. Hence at the eve of political independence in 1960, the proportion of GDP contributed by agriculture (embracing crop cultivation, livestock, fisheries and forestry stood at 67.0 percent, while that of petroleum was only 0.6 percent (Dunlap, 1975). However, with the oil boom of 1970’s agriculture was neglected. This raised Nigeria’s level of imported consumption and over dependence on manufacturing sector on import.

**2.1.2 Problems of Due Process**

The discovery of oil in Nigeria has not been free from problems despite the various attempts from government (Dunlap, 1975) note the launching of the ambitious National Development Plan (1970-74) and the expedient use of contract awards for execution in the economy. These include the culture of excessive costs; corruption management and ill-considered contracts from being a middle-income country in the 1970s. Nigeria has fallen to be among the poorest nations in the world. It should be noted that in the 1960s and early 1970s, Nigeria, Malaysia, Taiwan, Singapore and South Korea, had similar per capital income, GDP growth rates and underdeveloped political structure (Ekpo, 2004). However, the Asian Tigers, (newly industrialized countries [NIC]) have actually escaped under-development and poverty. Most people attributed this to the way their economies are being managed. Nigeria has gone through all the processes of business cycle-decline, depression, (recession), recovery and boom, yet none of these booms as Ekpo (2004) noted, has resulted in any significant restructuring and transformation of the economy since each boom sector and none of the benefits associated with the booms was maximized. Nigeria, especially since the early 80s has been confronted with a magnitude of economic problems. These economic problems include, stagnant growth, rising inflation, unemployment, food shortage and mounting external debt. Nigeria therefore like most nations has been battling with how to achieve its major economic objectives. These objectives include full employment, price stability, economic growth and healthy balance of payment. It has not been easy for Nigeria to realize the above objectives, because of the following reasons: Poor performance of the preferred sectors (agriculture and manufacturing sectors). These sectors are not doing well because of the following reasons:

1. Unwillingness of investors to invest in our manufacturing sector due to political instability
2. Misplacement of priorities
3. Shortage of basic infrastructural amenities and utilities problems of raw materials.

**2.1.3 Problems arising from the Abandonment of Agriculture in Nigeria**

Over dependence of Nigeria economy on a single commodity i.e. oil  Management problems  Social problems  Inadequate statistical data for policy formulation  Inadequate infrastructural amenities  Gaps in the judicial and law enforcement agents  Lack of effective implementation policy  Lack of enabling environment. At the root of all these problems is corruption. As Obasanjo (2004) rightly observed until 1999, Nigeria had practically institutionalized corruption as the foundation of governance. Hence, institutions of society easily decayed to unprecedented proportions as opportunities were privatized by the powerful. This process was accompanied at to be expected, by the intimidation of the judiciary, the subversion of due process, the manipulation of existing laws and regulations, the suffocation of civil society, and the containment of democratic value and institutions. Power became nothing but a means of accumulation and subversion as productive initiatives were abandoned for purely administrative and transactional activities. The legitimacy and stability of the state became compromised as citizen began to devise extra-legal and information ways of survival. All these made room for corruption. There is therefore an urgent call for procurement reforms and enthronement of due process in the Nigerian public sector. In 2001, the federal government issued a new policy guideline for procurement and award of contracts in government ministries / parastatals (East Java Design Team, 1990).

**2.1.4 Due Process and Procurement in the Nigeria Public Sector**

Based on widespread corruption, conducting government business degenerated so much by the year 2000. This was due to the fact that no serious attention was paid to public service rule, financial regulations and ethics and norms because of selfish reasons. The Federal Government noted that urgent need for transparency in government procedures so as to be able to move the system forwards. Hence, the Federal Government in 2003 commissioned the World Bank to collaborate with some private sector specialist in the country.

The essence of this request to the World Bank is to assist Nigerian government with a process of enthroning efficiency, accountability, integrity and transparency in government procurement and financial management system. It was based on this that the country procurement assessment report was produced through a participatory review approach from key stakeholders including representatives from private sectors and the federal, state and local governments with assistance from international and national consultants. The Country Procurement Assessment Report (CPAR) identified some major weaknesses in the procurement system in Nigeria as follows:

1. That Nigeria lacks a modern law on public procurement oversight and monitory purchasing entities.
2. That the finance (control and management) Act, 1958, together with the financial regulations which set basic rules for managing public expenditure have gaps, deficiencies and faulty implementation of existing regulations on procurement (e.g. lack of permanent arrangements for control and surveillance), which create opportunities for bribery and corruption.
3. That due to inflation and lack of regular adjustments on the thresholds of the approving limits of the tender boards, their authorization were constantly being eroded resulting in abuses, prominent among which is splitting of contracts.
4. That there was proliferation of tender boards, which were perceived by eh private sector of delays and non-transparency. In addition, these tender boards appeared to have limited mandated power to decide contracts factor resting with the permanent secretary and the minister / commissioner.
5. That customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption; and
6. That procurement is often carried out by staff that substantially lacks relevant training.

Another major problem of the existing procurement system and guidelines in the country is the difficulty of implementation. The reasons for this, as (Grossman and Krueger, 1995) pointed out include absence of economic cost/benefit analysis of projects. There is lack of genuine competition and transparency since applicable rules are usually tilted in favour of a predetermined winner whose most projects are not harmonized and are not elected on priority basis. There are gaps between budget and actual release which usually result in underfunding, delay competition, etc. The Budget Monitoring and Price Intelligence Unit (BMPIU) serves as a Vanguard of ensuring fiscal transparency, stretch compliance with federal government guidelines on due process certification as it concerns budgeting for and procurement of facilities / services / contracts at appropriate cost (Ehrlich and Ebruch, 1994). The Budget Monitoring and Price Intelligence Unit (BMPIU), which also addresses the development and operation of procurement of services for federal government and its agencies, has the following objectives (Ehrlich and Ebruch, 1990):

1. To harmonize existing government policies / practices and update same on public procurement,
2. To determine whether or not due process has been observed in the procurement of services and contracts through the initiation and execution of such projects,
3. To introduce more probity, accountability and transparency into the procurement process,
4. To establish and update pricing standards for all supplies to government,
5. To monitor the implementation of projects during execution with a view to providing information on performance, output compliance with specifications and targets, (cost, quality and time),
6. To ensure that only projects which have been budgeted for are admitted for execution, and
7. To ensure that budget spending is based on authentic reasonable and fair costing.

The mission of the Budget Monitoring and Price Intelligence Unit (BMPIU) is to use one process mechanism to establish transparent, competitive and fair procurement system which is integrity driven, encourage spending within budget and ensure speedy delivery of projects, while achieving value for money without sacrificing quality and standards for the federal government of Nigeria for realization of the budget monitoring and price intelligence unit objectives. The government put in place the regulatory functions for certification, functions for certifying federal-wide procurement in categories of resident, due process team certification (projects with a threshold of between N10 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 coordinate relevant training programmes. The documents to be forwarded to the budget monitoring and price intelligence unit as requirements for one process review as outlined by (Dietz, 1994) include: (1) The project policy file (2) evidence of advertisement at appropriate (3) tender evaluation report (4) tender return (5) contract award letter and agreement (6) original contract quantities (if any (7) contract drawing (if any) (8) other contract documents (9) financial summary and statement (10) progress reports (11) variation requests and variation orders using (12) interim valuation and certifications.

Due process mechanism has made reasonable progress in Nigeria with two years of its implementation. Progress has been made especially in the promotion of fair play and competition. A lot of savings have been made especially in the area of reduction to contract sums in some cases to the tune of $500 million (Obasanjo: 2003). Ezekwesili also disclosed that her office saved N572.4 million (an equivalent of 4.1 million Euros) from a single project by the Ministry of Health meant to procure and supply equipment to tertiary health institutions.

**2.1.5 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 el, 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 permenent 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 transfering 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 el, 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 possibilty 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 inapproprate 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 challange 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 enviromental considerations, poor work practices and adversarial relatioship(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 infrastrutural 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.

**2.1.6 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 inagurated the 20-man PPAC to, other things, take inventory of all ongoing 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.

**2.2 Theoretical 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, enviromental human rights and general developmental concerns ( Oguonu, 2004). Thus, public procurement reforms in Nigeria were mearnt 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 intereest 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 suppor 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 enforcemant 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 progarmmes(Ezekwesili, 2005).

**CHAPTER THREE**

**RESEARCH METHODOLOGY**

**3.1 INTRODUCTION**

In this chapter, we described the research procedure for this study. A research methodology is a research process adopted or employed to systematically and scientifically present the results of a study to the research audience viz. a vis, the study beneficiaries.

**3.2 RESEARCH DESIGN**

Research designs are perceived to be an overall strategy adopted by the researcher whereby different components of the study are integrated in a logical manner to effectively address a research problem. In this study, the researcher employed the survey research design. This is due to the nature of the study whereby the opinion and views of people are sampled. According to Singleton & Straits, (2009), Survey research can use quantitative research strategies (e.g., using questionnaires with numerically rated items), qualitative research strategies (e.g., using open-ended questions), or both strategies (i.e., mixed methods). As it is often used to describe and explore human behaviour, surveys are therefore frequently used in social and psychological research.

**3.3 POPULATION OF THE STUDY**

According to Udoyen (2019), a study population is a group of elements or individuals as the case may be, who share similar characteristics. These similar features can include location, gender, age, sex or specific interest. The emphasis on study population is that it constitute of individuals or elements that are homogeneous in description.

This study was carried out to examine the application of due process in existing procurement methods in Nigeria. Selected Architects, Quantity Surveyors, Civil/Structural Engineers, Builders and Services Engineers across the country form the population of the study.

**3.4 SAMPLE SIZE DETERMINATION**

A study sample is simply a systematic selected part of a population that infers its result on the population. In essence, it is that part of a whole that represents the whole and its members share characteristics in like similitude (Udoyen, 2019). In this study, the researcher adopted the convenient sampling method to determine the sample size.

**3.5 SAMPLE SIZE SELECTION TECHNIQUE AND PROCEDURE**

According to Nwana (2005), sampling techniques are procedures adopted to systematically select the chosen sample in a specified away under controls. This research work adopted the convenience sampling technique in selecting the respondents from the total population.

In this study, the researcher adopted the convenient sampling method to determine the sample size. Out of all the entire population of the Architects, Quantity Surveyors, Civil/Structural Engineers, Builders and Services Engineers in Nigeria, the researcher conveniently selected 126 out of the overall population as the sample size for this study. According to Torty (2021), a sample of convenience is the terminology used to describe a sample in which elements have been selected from the target population on the basis of their accessibility or convenience to the researcher.

**3.6 RESEARCH INSTRUMENT AND ADMINISTRATION**

The research instrument used in this study is the questionnaire. A survey containing series of questions were administered to the enrolled participants. The questionnaire was divided into two sections, the first section enquired about the responses demographic or personal data while the second sections were in line with the study objectives, aimed at providing answers to the research questions. Participants were required to respond by placing a tick at the appropriate column. The questionnaire was personally administered by the researcher.

**3.7 METHOD OF DATA COLLECTION**

Two methods of data collection which are primary source and secondary source were used to collect data. The primary sources was the use of questionnaires, while the secondary sources include textbooks, internet, journals, published and unpublished articles and government publications.

**3.8 METHOD OF DATA ANALYSIS**

The responses were analysed using the frequency tables, which provided answers to the research questions. Chi- square statistic is used to test the hypothesis.

**3.9 VALIDITY OF THE STUDY**

Validity referred here is the degree or extent to which an instrument actually measures what is intended to measure. An instrument is valid to the extent that is tailored to achieve the research objectives. The researcher constructed the questionnaire for the study and submitted to the project supervisor who used his intellectual knowledge to critically, analytically and logically examine the instruments relevance of the contents and statements and then made the instrument valid for the study.

**3.10 RELIABILITY OF THE STUDY**

The reliability of the research instrument was determined. The Pearson Correlation Coefficient was used to determine the reliability of the instrument. A co-efficient value of 0.68 indicated that the research instrument was relatively reliable. According to (Taber, 2017) the range of a reasonable reliability is between 0.67 and 0.87.

**3.11 ETHICAL CONSIDERATION**

The study was approved by the Project Committee of the Department. Informed consent was obtained from all study participants before they were enrolled in the study. Permission was sought from the relevant authorities to carry out the study. Date to visit the place of study for questionnaire distribution was put in place in advance.

**CHAPTER FOUR**

**DATA PRESENTATION AND ANALYSIS**

This chapter presents the analysis of data derived through the questionnaire and key informant interview administered on the respondents in the study area. The analysis and interpretation were derived from the findings of the study. The data analysis depicts the simple frequency and percentage of the respondents as well as interpretation of the information gathered. A total of hundred and twenty (120) questionnaires were administered to respondents of which 100 were returned. The analysis of this study is based on the number returned.

**4.1 DATA PRESENTATION**

**Table 1: Gender Distribution of Respondents**

|  |  |  |
| --- | --- | --- |
| Gender | Frequency | Percentage |
| Male | 48 | 48% |
| Female | 52 | 52% |
| Total | 100 | 100.0% |

Source: Author’s Computation from Field Survey 2022

The table above shows the gender distribution of respondents. 48% of the respondents were male and the remaining 52% were female. Thus, female respondents were slightly higher than their male counterparts.

**Table 2: Age Distribution of Respondents**

|  |  |  |
| --- | --- | --- |
| Age | Frequency | Percentage |
| 20-30 years | 24 | 24% |
| 31-40 years | 47 | 47% |
| Above 40 years | 29 | 29% |
| Total | 100 | 100.0% |

Source: Author’s Computation from Field Survey 2022

The table above shows the age distribution of respondents. 24% of the respondents are between the age bracket of 20-30 years; 47% which constituted the majority are between the age bracket of 31-40 years and 29% are above 40 years.

**Table 3: Marital Status of Respondents**

|  |  |  |
| --- | --- | --- |
| Marital Status | Frequency | Percentage |
| Single | 13 | 13% |
| Married | 87 | 87% |
| Total | 100 | 100.0% |

Source: Author’s Computation from Field Survey 2022

The table revealed the marital status distribution of respondents. Majority of the respondents, which constituted 87% are married while the remaining 13% respondents are unmarried.

**Table 4: Educational Qualification of Respondents**

|  |  |  |
| --- | --- | --- |
| Qualification | Frequency | Percentage |
| SSCE | 11 | 11% |
| HND/B.Sc | 80 | 80% |
| M.Sc/PhD | 9 | 9% |
| Total | 100 | 100.0% |

Source: Author’s Computation from Field Survey 2022

The table revealed the educational qualification of respondents. 11% of the respondents are SSCE holders, 80% of them, which formed the majority, are HND/B.Sc holders and 9% are M.Sc/PhD holders.

**Table 5: Position of Respondents**

|  |  |  |
| --- | --- | --- |
| Position | Frequency | Percentage |
| Manager | 12 | 12% |
| Accountant | 31 | 31% |
| Auditor | 26 | 26% |
| Cashier | 24 | 24% |
| Others | 7 | 7% |
| Total | 100 | 100.0% |

Source: Author’s Computation from Field Survey 2022

Table 5 unveiled the distribution of position of respondents. 12% are managers, 31% are accountants, 26% are auditors, 24% are cashiers and 7% are mostly administrative staff.

**ANSWERING RESEARCH QUESTIONS**

**Question 1:** What is the level of awareness/understanding of Due Process in the procurement of construction project by project participants in Nigeria?

**Table 4.3:**Respondent on question 1

|  |  |  |
| --- | --- | --- |
| **Options** | **Frequency** | **Percentage** |
| Very high | 60 | 60 |
| Not high | 19 | 19 |
| Undecided | 21 | 21 |
| **Total** | **100** | **100** |

**Source: Field Survey, 2021**

From the responses obtained as expressed in the table above, 60 respondents constituting 60% said Very high. 19 respondents constituting 19% said not high. While the remain 21 respondents constituting 21% were undecided.

**Question 2:** How effective is due process application in public project execution in Nigeria?

**Table 4.4:**Respondent on question 2

|  |  |  |
| --- | --- | --- |
| **Options** | **Frequency** | **Percentage** |
| Very effective | 56 | 56 |
| Not effective | 21 | 21 |
| Undecided | 23 | 23 |
| **Total** | **100** | **100** |

**Source: Field Survey, 2021**

From the responses obtained as expressed in the table above, 56 respondents constituting 56% said Very effective. 21 respondents constituting 21% said not effective. While the remain 23 respondents constituting 23% were undecided.

**Question 3:** What are challenges/barriers towards effective due process application in public procurement as it relates to the construction industry?

**Table 4.5:**Respondent on question 4

|  |  |  |
| --- | --- | --- |
| **Options** | **Frequency** | **Percentage** |
| lack of interaction with procuring organisations | 61 | 61 |
| the use of over-specified tenders as opposed to outcome based specifications | 17 | 17 |
| Undecided | 22 | 22 |
| **Total** | **100** | **100** |

**Source: Field Survey, 2021**

From the responses obtained as expressed in the table above, 61 respondents constituting 61% said lack of interaction with procuring organisations. 17 respondents constituting 17% said the use of over-specified tenders as opposed to outcome based specifications. While the remain 22 respondents constituting 22% were undecided.

**CHAPTER FIVE**

**SUMMARY, CONCLUSIONS AND RECOMMENDATIONS:**

**5.1 Introduction**

This chapter summarizes the findings on the application of due process in existing procurement methods in Nigeria, Enugu State as case study. The chapter consists of summary of the study, conclusions, and recommendations.

**5.2 Summary of the Study**

In this study, our focus was on the application of due process in existing procurement methods in Nigeria, Enugu State as case study. The study is was specifically focused on examining the level of understanding/awareness of Due Process in the procurement of construction projects by projects participants assessing the effectiveness of due process in public project execution in Nigeria and determining challenges or barriers of due process application in project procurement process in Nigeria.

The study adopted the survey research design and randomly enrolled participants in the study. A total of 100 responses were validated from the enrolled participants where all respondent are Architects, Quantity Surveyors, Civil/Structural Engineers, Builders and Services Engineers.

**5.3 Conclusions**

With respect to the analysis and the findings of this study, the following conclusions emerged;

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 manourvers 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

**5.4 Recommendation**

Based on the findings the researcher recommends that;

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, harphazard procurement, and incompetent contractors and project management the key causes or is it financial management?. Inspite 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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**APPENDIX**

**QUESTIONNAIRE**

PLEASE TICK [√] YOUR MOST PREFERRED CHOICE AND AVOID TICKING TWICE ON A QUESTION

**SECTION A**

**PERSONAL INFORMATION**

**Gender**

Male [ ]

Female [ ]

**Age**

18-25 [ ]

20-30 [ ]

31-40 [ ]

41 and above [ ]

**Educational level**

WAEC [ ]

BSC/HND [ ]

MSC/PGDE [ ]

PHD [ ]

Others………………………………………………(please indicate)

**Marital Status**

Single [ ]

Married [ ]

Separated [ ]

Widowed [ ]

**Section B**

**Question 1:** What is the level of awareness/understanding of Due Process in the procurement of construction project by project participants in Nigeria?

|  |  |
| --- | --- |
| **Options** | **PLEASE TICK** |
| Very high |  |
| Not high |  |
| Undecided |  |

**Question 2:** How effective is due process application in public project execution in Nigeria?

|  |  |
| --- | --- |
| **Options** | **PLEASE TICK** |
| Very effective |  |
| Not effective |  |
| Undecided |  |

**Question 3:** What are challenges/barriers towards effective due process application in public procurement as it relates to the construction industry?

|  |  |
| --- | --- |
| **Options** | **PLEASE TICK** |
| lack of interaction with procuring organisations |  |
| the use of over-specified tenders as opposed to outcome based specifications |  |
| Undecided |  |