



INTERNATIONAL JOURNAL OF ENGINEERING SCIENCES & RESEARCH TECHNOLOGY

DUE PROCESS IN THE PROCUREMENT SYSTEM: THE NIGERIA EXPERIENCE

Nwosu M. Eze*

* National Institute for Legislative Studies, National Assembly, Abuja, Nigeria.

ABSTRACT

With the upsurge in fraudulent activities in financial accounting and corrupt practices in the global economy especially Nigeria, due process in the procurement system has become an emerging topic of great importance for academia and real sector. However, determining how efficient and the extent to which due process in the procurement system is meeting up with the desired goal is a subject of discussion. The paper examines the effectiveness of due process in public procurement system with reference to implementing the culture and determines the degree of transparency in the implementation. Using seminar presentations and workshops, interviews and distributions of questionnaires on Due Process data obtained was analyzed using simple percentage and charts. The paper found that Due Process in the procurement system in Nigeria as organized by the Budget Monitoring and Price Intelligence Unit (BMPIU) works effectively as a result of the system being able to control the inflated process of contracts by contractors and public officers that have the authority to approve such contracts while ensuring that contracts are awarded to only the competent contractors, having allowed equal access and opportunities for tender. The paper recommends that government auditors and accountants should complement each other's effort to ensure effectiveness in the execution of their functions. In addition the paper recommends that ministries and parastatals should not embark on new projects when there is problem of funding.

KEYWORDS: Due Process, Degree of Transparency, Procurement System, Operationally Independent.

INTRODUCTION

The present administration in Nigeria is determined to offset the widespread notion that Nigeria is a corrupt nation, and to overcome the practice of embarking on developing projects that are not properly monitored. For this reason, it has set up the Budget Monitoring and Price Intelligence Unit (BMPIU) or in other words, 'The Due Process' office. The due process office was formally established under the office of the principal secretary to the former president in June 2003. It is run as an operationally independent body under the leadership of the Senior Special Assistant to the President on the Unit (Ezekwesili: 2003). Its staff comprises experts with biases for project management, construction and procurement. The unit was designed to act as the clearing house for all government contracts and procurement of goods and services and functions under three major strategies namely: goals, objectives and implementation. The goal is to ensure full compliance with laid down guidelines and procedures for the procurement of capital and minor capital projects, as well as, associated goods and services.

Nigeria, especially since the early 80s has been confronted with a magnitude of economic problems. These economic problems, in brief, 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. Some of the factors responsible for this are:

Poor Performance of the preferred sectors (Agriculture and Manufacturing sectors). These sectors are not doing well because of the following reasons:

- Unwillingness of investors to invest in our manufacturing sector due to political instability.
- Misplacement of Priorities.
- Shortage of Basic Infrastructural Amenities and Utilities.
- Problems of Raw Materials.
- Inherent Problems of Agriculture in Nigeria.
- Over dependence of Nigerian 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, 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 country became compromised as citizens began to devise extra-legal and informal ways of survival. All this gave 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 New Policy Guidelines for procurement and award of contracts in Government Ministries/Parastatals (Circular F. 15775 of 27th June, 2001).

The objectives are to harmonize existing government policies and update same on public procurement, introduce more honesty, accountability and transparency into the updated pricing standards and benchmarks for all supplies to government and ensure that only projects which have been budgeted for are admitted for execution.

Due Process implies that governmental activities and businesses can be carried out openly, economically and transparently 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. Due Process is a mechanism that certifies for public funding only those projects that have passed the test of proper implementation packaging and that adhere stringently 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. Wittig (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 procuring entities for instance have needs for material support like roads, hospitals, etc. to help in fulfilling their designated national mission. The business communities of actual or potential suppliers on the other hand need to satisfy government procurement requirement. There are also other interested parties like professional bodies, various agencies, interested public, etc who are all affected or influenced in one way or the other by public procurement.

Based on wide spread 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 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 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 Systems” (Ekpenkhio, 2003). It was based on this that the Country Procurement Assessment Report was produced through a participatory review approach from key stake holders 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 (Ekpenkhio, 2003):

- That Nigeria lacks a modern law on Public Procurement and Permanent oversight and monitor purchasing entities.
- That the finance (Control and Management) Act, 1958, together with 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.
- 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.
- That there was proliferation of tender boards which were perceived by the private sector as sources of delays and non-transparency. In addition, these tender boards appeared to have limited mandates with powers to decide contracts de facto resting with the permanent Secretary and the Minister/ Commissioner.
- That Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption; and
- That Procurement is often carried out by staff who substantially lack relevant training.

Another major problem to the existing procurement system and guidelines in the country is the difficulty of implementation. The reasons for this as Ezekwesili (2004) 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. Most projects are not harmonized and are not selected on priority bases. There are gaps between budget and actual releases, which usually result in under funding, delayed competition, price escalating and abandonment. It is based on the above identified weaknesses that The Country Procurement Assessment Report (CPAR) made the following recommendations (Ekpenkhio, 2003):

- The need for a procurement law based on the United Nations Commission for International Trade Model (UNCITRAL).
- The need to establish a Public Procurement Commission (PPC) to serve as the regulatory and oversight body on Public Sector Procurements.
- The revision of key areas of the financial regulations to make them more transparent;
- The streamlining of Tender Boards and the strengthening of their functional authority, including powers to award contracts.
- A critical need to rebuild procurement and financial management capacity in the public sector; and
- A comprehensive review of the businesses related to export, import and transit regulations, procedures and practices.

It should be noted that the government “accepted The Country Procurement Assessment Report (CPAR) in its entirety with the exception of the Registration of Contractors and the involvement of Political Office holders such as Ministers/Commissioners in the award of contracts in excess of fifty million Naira which the report was against” (Ekpenkhio, 2003)

The Obasanjo administration decided to stop the “Business as Usual Syndrome” by establishing the Budget Monitoring and Price Intelligence Unit (BMPIU) in the Presidency. By so doing, the government aimed at formulating and implementing appropriate policies on procurement and contract awards. The Budget Monitoring and Price Intelligence Unit (BMPIU) serves as a “vanguard of ensuring fiscal transparency, strict compliance with Federal Government guidelines on Due Process Certification as it concerns budgeting for and procurement of facilities/services/contracts at appropriate costs(Ezekwesili, 2005). 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 (Ezekwesili, 2005)

- To harmonize existing government policies/practices and update same on public procurement
- 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.
- To introduce more probity, accountability and transparency into the procurement process.
- To establish and update pricing standards and benchmarks for all supplies to government
- 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).

- To ensure that only projects which have been budgeted for are admitted for execution
- 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 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 money without sacrificing quality and standards for the Federal government of Nigeria” For realization of The Budget Monitoring and Price Intelligence Unit (BMPIU) objectives, the government put in place the regulatory functions for regulating standards including the enforcement of harmonized bidding and tender documents, Certification functions for certifying Federal-wide procurements in categories of Resident Due Process Team certification (projects with a 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 training programmes (Ezekwesili, 2005). The documents to be forwarded to The Budget Monitoring and Price Intelligence Unit (BMPIU) as requirements for Due Process Review as outlined by Ezekwesili include:

- The Project Policy file
- Evidence of Advertisement as appropriate
- Tender Returns
- Tender Evaluation Report
- Contract Award Letter and Agreement
- Original Contract Bills of Quantities (if any)
- Contract Drawings (if any)
- Other Contract Documents
- Financial Summary and Statements
- Progress Reports
- Variation Requests and Variation Orders arising
- Interim Valuation and Certificates

Due Process mechanism has made reasonable progress in Nigeria. Within 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). Obasanjo (2003) also stated that “the Due Process Mechanism has saved Nigeria over N102 billion in two years arising from various Federal Government’s over-bloated contracts”. Ezekwesili (2003) also disclosed that her office “saved N672.4 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”. Various contracts awarded with spending units that failed to comply with laid down competitive bid parameters have been cancelled. Inflation of contract has also been reduced to a reasonable extent. There is also a general awareness of anti-corruption mechanism put in place by Government.

However there are some problems which The Budget Monitoring and Price Intelligence Unit (BMPIU) faces. These problems as highlighted by Ezekwesili include the ignorance and unwillingness of some officials to comply with the provisions of the circulars. Again, at the initiation of some projects there is inadequate project definition and scope. Professionals are also not involved in some project packaging and supervision. In other cases there is improper in-house pricing arising out of inadequate continuous professional development. Again, there is in some cases insufficient or inadequate documentation, accompanying requests for certification and delays in responding to issues raised in the draft Due Process Review Report.

It should be noted that Due process and Procurement reforms produced some useful dividends. It resulted in a more transparent, efficient and effective procurement system which creates equal access to bidders of public sector contracts. It leads to increase in Government revenue base by minimizing avenues of wastages and leakages in the economy through efficient management of government resources. It makes it possible for Contractors and Suppliers to have a fair hearing when aggrieved through filing their protests to a statutory contract appeal Board (Ekpenkhio, 2003). However Ekpenkhio suggested that to fully maximize the benefits of procurement reforms, there is need to develop a new cadre of professional procurement officers and contracting officers in the public service for the implementation of procurement reforms. It is also necessary to work out an appropriate scheme of service to be

adopted by all the tiers of government for procurement and contracting officers. Capacity building and training (at home and abroad) workshops, Seminars, and Courses, for new cadre of Procurement and Contracting Officers and all those involved in procurement awards should be organized. It is also necessary to restructure Ministries to create cadres of procurement officers and contracting officers in the public service so as to make for uniform implementation and easy monitoring of the procurement reforms. There is also the need to build consensus among the three tiers of government in order to promote the smooth implementation of the procurement reforms by a law which is binding on all the tiers of government.

Finally, it should be emphasized that for effective Procurement System through Due Process, a lot still need to be done. There is need for institutionalizing, internalizing and building ownership for the multitude of reforms within the public sector so as to ensure that it sustains the changes in the anti-corruption campaign. Some people feel that our Legislators are found wanting in this area. It is necessary that Legislators should play a leading role in enthroning the principles of openness, accountability, probity and transparency. They must behave in such a way that they are seen and perceived by the public as the epitome of integrity. To be able to gain such respect, it is necessary that the legislative bodies and their members reflect the highest corporate and personal standard of ethics and integrity. On the part of the Judiciary too, a lot is still desired from them especially as regards building confidence for its vital role in the sanctioning of corrupt conducts. The public perceives the Judiciary as still battling with corruption which makes the prosecution and the judicial process less effective. Another criticism is leveled on Anti-Corruption Commission for its inability in most instances to successfully prosecute and sentence any high level public official for corruption. The Commission however has always blamed this on the failure of the judicial process which usually do not respond speedily and appropriately to the quest for effective sanctioning of corrupt acts (Obasanjo, 2003). These trends should stop for dividends of Due Process to be realized.

The importance of Due Process Mechanism cannot be overemphasized. It is a framework for implementation and it is committed to tackling corruption, promoting transparency and accountability in Nigeria polity.

OBJECTIVES OF THE STUDY

The objectives of this paper is to show the importance of due process in the government of Nigeria and to determine the workability in the procurement of capital projects by the government. It is also the aim of this paper to find out how the various top functionaries of the government have imbibed the implementation culture in their exercise of due process, as the Auditors and Accountants ensure accountability and transparency in the use of public funds, and how the bidders of public sectors' contracts in Nigeria are given equal access to compete for public contracts. The rest of this paper is divided into four sections. Immediately following this introduction is objective of the study followed by statement of the problem and scope, then conceptual framework and methodology. In the fourth section, data are presented and analyzed and result discussed before conclusion and recommendation conclude the paper.

STATEMENT OF THE PROBLEM & SCOPE

The notion is that the integrity of the citizens of this country is questionable. The present administration has been in the eyes of the storm on account of corruption and condoning corrupt practices. Hence, the introduction of due process system. It is expected that the procurement system in the government should receive accountability and transparency. The problem therefore is to determine how the government of Nigeria implements the cultures of Due Process system in their procurement system.

The scope is limited to Nigeria. The Study was carried out to check the implementation of Due Process among government accountants and auditors in improving accountability as contracts are awarded, executed and payments being made.

CONCEPTUAL FRAMEWORK

The Due Process Office or Budget Monitoring and Intelligence Unit (BMPIU) was formally established under the office of the principal secretary to the president in June 2003. It is run as an operationally independent body under the leadership of the Senior Special Assistant to the President on the Unit (Ezekwesili, 2003). The Unit was established to combat corruption relating to public procurement. This has been the major source of leakage of public funds in Nigeria. Its primary aim is to ensure transparency and accountability in government procurement system.

The Budget monitoring and intelligence Unit (BMPIU) was designed to act as the clearing house for all government contracts and procurement of goods and services, and functions under three major strategies; goals, objectives and implementation (Ezekwesili, 2003).

The implementation strategy has the following guidelines – regulatory functions, certification functions, monitoring functions, training and advisory functions.

The Nigerian Treasury circular of July 5, 2002 provides a plan for the implementation of the capital budget which include approval of contracts as follows:

- Contracts between N1 million to be approved by either the permanent secretary or chief executive of parastatals.
- Contracts over N10 million but below N50 million, a resident Due Process team shall approve.
- Contracts above N50 million shall be processed in accordance with Government guidelines and approved by the ministerial Tender Board before being forwarded to BMPIU to obtain a Due process certificate. When certificate is obtained from BMPIU, the project would be forwarded to Federal Executive Council for approval before an award can be made.

This is the second time the bill for an Act for the establishment of national council on public procurement Bureau as the Regulatory Authority responsible for monitoring and harmonizing existing government procurement and practice and regulating, setting standards and developing the legal framework is being set up. (Ogbu, (2005).

Public enlightenment programmes should be organized in form of workshops or seminars detailing the importance of public sector procurement reforms to sensitize various stakeholders.

(Ekpenkhio (2003). The Government Auditor and the Accountant should ensure public accountability and act as tools for financial control. (Ndibe and Okoye, (1998). They also stated that the Government Auditor should examine the adequacy and effectiveness of the procedure laid down by the ministry tracing the records of some financial transactions noting the weakness at each stages. Then (Jenta, 2000), opined that the Auditor Generals report is a very important feature of an auditor as it is the end product of all audits.

However, (Aguolu, 2002), states that “inspite of the importance attached to auditor’s report, the report does not amount to a certificate as the auditor merely expresses his opinion on the report”. While (Anyafor, 1996), opines that the important task governments face as they plan, budget and implement public spending decisions, is to control the overall level of spending, set priorities for its allocation, and ensure quality within each spending category. Hence, the Due process reform.

METHODOLOGY

The data were obtained from many sources such as seminar presentations and workshops on Due Process, textbooks and interviews through distributions of questionnaires. The questionnaires were administered, data obtained and analyzed using simple percentage and charts

The questionnaires consist of questions for Auditor-General’s office, Accountant-General’s office, Due Process office in Nigeria. The questions reflect the role of Government Auditors, Government Accountants and Due Process Unit in ensuring transparency and accountability in public procurement and the use of government funds.

Out of the one hundred (100) questionnaires that were distributed, eighty (80) were returned representing 80%

RESULT AND DISCUSSION

The distribution of the sample obtained is shown in table 1. Majority of the respondents are in the Auditor-General’s office followed by the Accountant-General’s office.

Table 1

Establishment	No. of Questionnaire	No. of Respondent	Percentage
Auditor-General	45	40	50.0
Accountant-General	35	30	37.5
Due Process Office	20	10	12.5
Total	100	80	100%

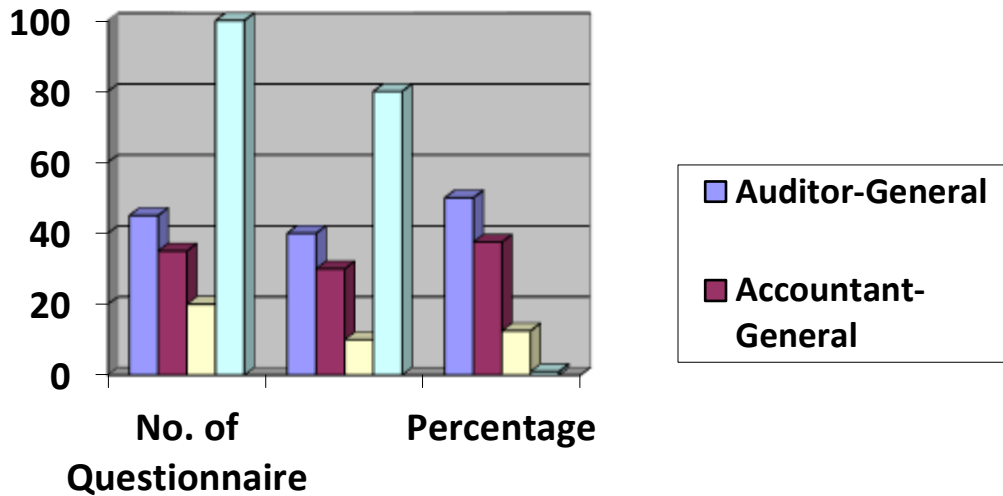


Table 2

Question (1) How do you see the working or procurement procedure in the civil service?

Options	No. of Respondent	Percentage
Highly Satisfactory	35	44
Satisfactory	40	50
Not Satisfactory	5	6
Total	80	100%

This table shows that 40 or 50% of the respondents are satisfied that procurement system in Nigeria is working according to Due Process requirement, and 35 or 44% are highly satisfied, while only 5 or 6% are not satisfied.

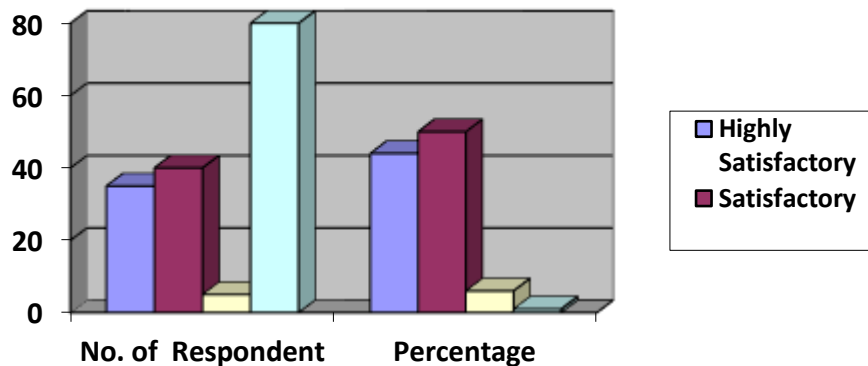


Table 3

Question (2) How has Auditing improved the standard of accountability and transparency in the public procurement system in Nigeria?

Options	No. of Respondent	Percentage
Absolute improvement	40	50
Average improvement	38	47.5
Weak improvement	2	2.5
Total	80	100%

The table above shows that 40 or 50% of the respondents absolutely agreed that Auditing has improved the standard of accountability and transparency in the public procurement of Nigeria government, 38 or 47.5% are of the opinion that the improvement is average, while 2 or 2.5% of the respondents say that the improvement is weak.

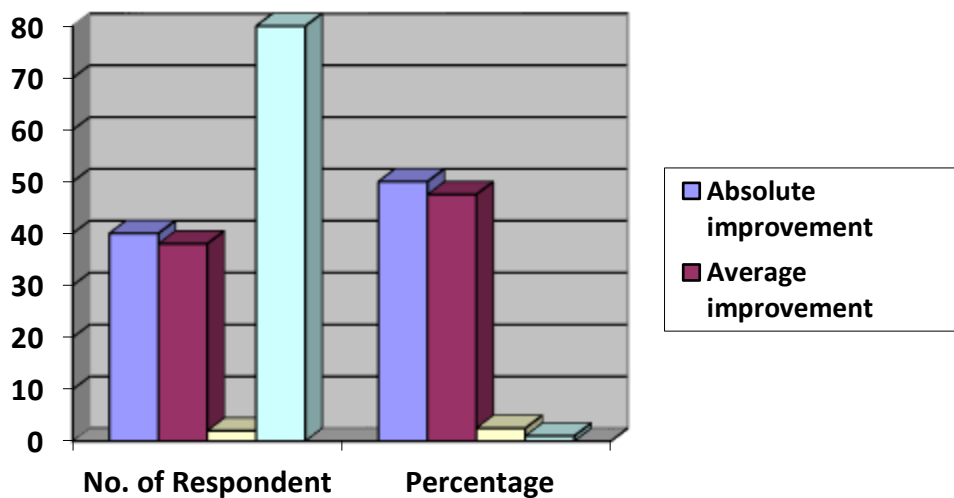


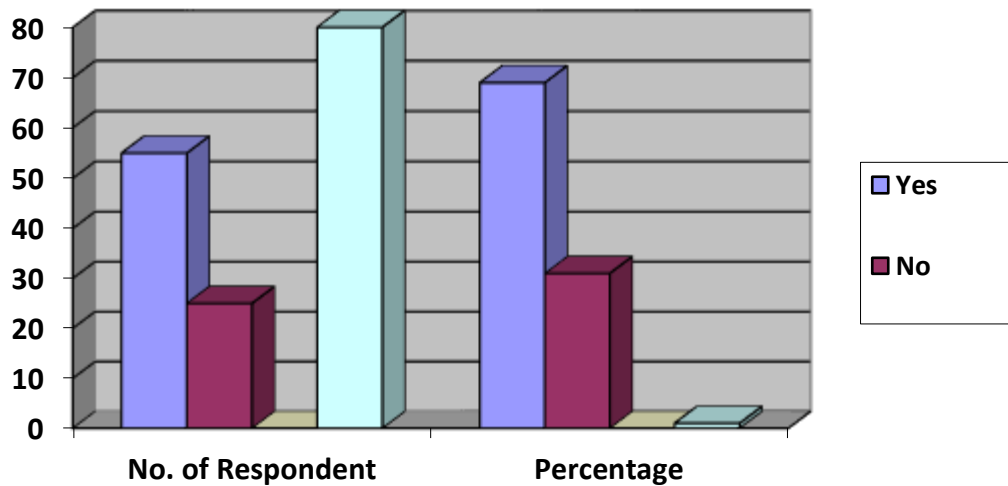
Table 4

Question (3) Are bidders of public sector contracts in Nigeria given equal opportunity to compete for government contracts?

Responses

	No. of Respondent	Percentage
Yes	55	69
No	25	31
Undecided	0	0
Total	80	100%

Table (iv) above shows that 55 or 69% of the respondents agree that bidders of public sector contracts in Nigeria are given equal opportunity to compete for government contracts, while 25 or 31% disagree that there is any such opportunity ever given to bidders. This is implying that contracts are awarded indiscriminately without regards to the culture of Due Process in Nigeria.



CONCLUSION

As analyzed above, this paper has apparently probed into the compliance system of the culture of due process in the public procurement and the use of government fund in Nigeria. It was found that the Auditor-General and Government Accountants applied the due process, even though some people were of the opinion that it has not been fully implemented. It was also found that the procurement system in Nigeria as organized by the Due Process Unit works effectively as a result of the system being able to check the inflated process of contracts by the contractors and public officers.

The procurement system in place, also gives equal access to all public sector contractors, and equal opportunities for tender. The Auditor, too, has improved the standard of accountability and transparency in public procurement system in Nigeria.

The audit department has been able to perform or live up to public expectation by ensuring proper scrutiny of all documents and records relating to the award of government contracts.

RECOMMENDATIONS

In conclusion, the following recommendations should be adhered to for a completely successful implementation of Due Process policies/culture.

Ministries/Parastatals should not embark on new projects when there is a problem of funding.

- No selective tendering arrangements should qualify for due process review.
- Compliance with Due Process procedures should be mandatory for all government agencies, ministries, parastatals and contractors.
- Procurement should observe the highest standards of honesty, integrity, impartiality and objectivity.

REFERENCES

- [1] Aguolu, O (2002), "Fundamentals of Auditing", Meridian Associates Press, Enugu.
- [2] Anyafo, A.M.O. (1996) "Public Finance in a Development Economy. The Nigerian Case B & F Publication. UNEC
- [3] Ekpenkhio S.A. (2003) "Public Sector Procurement Reforms: The Nigerian Experience"
- [4] A Paper presented to the Government of the Federation at the Regional Workshop on Procurement Reforms and Transparency in Government Procurement for Anglophone African Countries in Tanzania.
- [5] Ekpo A.H. (2004) "The Nigerian Economy under a New Democratic Experience: The
- [6] Charles Soludo Effect" A paper presented at The Convocation Ceremony at University of Nigeria, Nsukka.
- [7] Ezekwesili, O. (2003), "Budget Monitoring and Price Intelligence Unit" www.nigeriafirst.org.
- [8] Ezekwesili O (2005) "Due Process Mechanism and Digital Opportunities" A Paper Presented to the University Community at Princess Alexandria Auditorium, University of Nigeria, Nsukka.

- [9] Jenfa, B.I. (2002), Tips and Principles and Practice of Auditing, Investigation Circular, July 5.
- [10] International Monetary Fund (2005) "Nigeria and IMF: 2005 Article IV Consultation Concluding Statement".
- [11] Neibe, N and Okoye E (1998), "Auditing and Investigations" Futuretec Publishers, Enugu.
- [12] Nwosu, M.E (2013) Principles of Accounting with Questions and Suggested Solutions. Petra Digital Press, Abuja.
- [13] Obasanjo O. (2003) "Nigeria: From Pond of Corruption to Island of Integrity" Lecture Delivered at the 10th Anniversary Celebration of Transparency International Berlin Obasanjo O. (2004) "Due Process Saves Nigeria N102 bn" This Day, Nigeria.
- [14] Obinna O.E. (1997) "Economic Revival and Sustainance in Nigeria: What Hope for Fourth Republic?" A Paper presented at the Seminar on Vision and Mission of Nigeria.
- [15] Ogbu, A. (2005), "House Rejects Law Setting up Due Process Office," Thisday online, February 24.