

PAPER PRESENTED
TO
THE COMMITTEE ON ESTABLISHMENT AND
PUBLIC SERVICE

ON
THE PUBLIC HEARING

ON
THE PUBLIC PROCURMENT BILL

BY

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COMMITTEE ON ESTABLISHMENT AND PUBLIC SERVICE.

Re Public Hearing on the Public Procurement Bill

The Imperative of the Public Procurement Act.

- i) To entrench the budget implementation procedures set up by BMPIU and make them endure from government to government
- ii) To set up a body to consider and set policies on guidelines and regulations on public procurement.
- iii) To enforce the procurement rules by holding procuring entities for the responsibilities assigned to them.
- iv) To carryout procurement dispute resolution within a three of their system
 - First line – Procuring entities
 - Second line – Bureau review panel
 - Third line Federal High Court
- v) Promote professional practice
- vi) Bring Nigeria into line with International Public Procurement Standard – United Nations Commission for Internal Trade Law (UNICTRAL), DFID, UNDP, World Bank etc.

Corruption and Budget Implementation

Budget performance by a government agency, be it a ministry parastatal or programme is the attainment of its stated mission.

According to Susan Rose Ackerman, whenever an agent is given discretionary authority, corruption provides a way for the objectives of the higher authority to be undermined. Corruption defeats budget implementation and budget performance.

The twin evils that have held Nigeria back from development are

- Corruption; and
- Poor public expenditure management (budget making and budget implementation)

The cost of corruption and poor PEM are heavy indeed

The twin evils feed on each other and must therefore be fought together using systems procedures entrenched in a legal framework.

- Corruption jeopardize the development of a nation
- Corruption undermines efficiency
- Corruption discourages investment and growth
- Corruption intrinsically undermines the quality of governance

Political corruption occurs when political decision-makers independently, or in collusion with corrupt officials, divert public resources in a way that will reduce the welfare of society or will be contrary to public interest. Corrupt behaviour and/or corrupt activities, which take place during the budget execution phase, where economic and administrative decisions are predominant, are qualified as administrative corruption.

Administrative corruption at the PEM can be fought by returning the treasury to a position of sanctity as the people's commonwealth by the institution of procurement reforms in the public expenditure management process in order to ensure that the stakeholders in the process always, 'do the right things' and continuously 'do things right'. This is what 'Due Process mechanism' instituted and applied by the Budget Monitoring and Price Intelligence Unit (BMPIU) has set out to achieve in the key elements of this public expenditure process encompasses, the following:

- Budget appropriation;
- Apportionment;
- Commitment;
- Receiving/Verification;
- Preparation and issuance of payment orders; and
- Payments.

It is the summation of the creation of a robust public procurement system through planning, acquisition and contract administration phases. The public procurement bill when passed into law will underpin this process.

The Due Process Campaign

Public officials and private sector providers are able to engage in corrupt behaviour essentially for three reasons:

- The lack of an adequate legal framework accompanied by relevant rules and regulations and near exploitation by astute officials who can engage in quasi illegal activities without the risk of being punished;
- The blatant abuse of discretionary powers; and
- Collusion among corrupt officials to circumvent checks and balances built into the system.

The most frequent source of corruption in the public expenditure management process is the abuse of discretionary power. Discretionary power, as defined earlier, is a power of decision or choice granted to a government official to carry out an official duty. This duty might be the making of an expenditure commitment, expenditure payment, procurement of goods and services etc.

As corruption is the use of this discretionary power for private purposes, the temptation is great to argue that in order to eradicate corruption less discretionary power should be granted to officials. Unfortunately, public expenditure management without discretionary powers will be rigid, ineffectual and unworkable. It is, therefore, important to find a lasting solution other than the withdrawal of discretionary powers, bearing in mind that the essence of the public expenditure system is the delivery of goods and services to the citizenry, and that the elements of the system are procedures, processes, techniques, etc. applied by public officials who are operators of the system. Consequent upon this, efforts to lessen corruption in the system should focus on measures, which would be aimed at improving the system and making the operators of the system more efficient and less susceptible to corruption.

A successful anti-corruption strategy at the budget implementation phase must have two key features.

- A set of measures designed to reduce both the opportunities and need for corruption; and
- The creation of an agency, which will be in charge of supervising the implementation of these measures.

The Public Procurement Bill before the Distinguished Senate does exactly this.

The Due Process mechanism in the last four years has taken the above issues boldly in their stride by taking concrete steps towards the ejection of sanity into budget implementation by:

- Building and implementing a model to test the level of efficiency and effectiveness that could be obtained if appropriate rules and regulations were adequately set out and were properly applied;
- Evaluating the existing legal framework together with the rules and regulations relating thereto and eliminating necessary gaps and overlapping therein; and
- Taking steps to create an effective and enduring legal and regulatory normative framework to execute the Due Process mechanism that would be so established. This is embodied in the Bill before the Distinguished Senate.

The Due Process mechanism as presently being implemented by BMPIU is a paradigm shift. It has

- changed the focus on the fight against corruption away from pontifications, probes and illusory punishment to efficiently and effectively guarding the national treasury;
- enhanced the value of each Naira spent by the Treasury;
- put a stop to abandonment of contracts and projects;
- commenced the assurance of efficient and effect contract performance and service delivery; and
- commenced the reformation of the value system in Nigeria.

Distinguished Senators, I hereby support the Public Procurement Bill in order that the Due Process gains can be made to endure for the benefit of Nigerians from generation to generation.

Thank you, Distinguished Senators.

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