

**THE DUE PROCESS MECHANISM & THE MANAGEMENT OF  
PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE**

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# **THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES**

## **– PRIVATE SECTOR PERSPECTIVE**

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# THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES

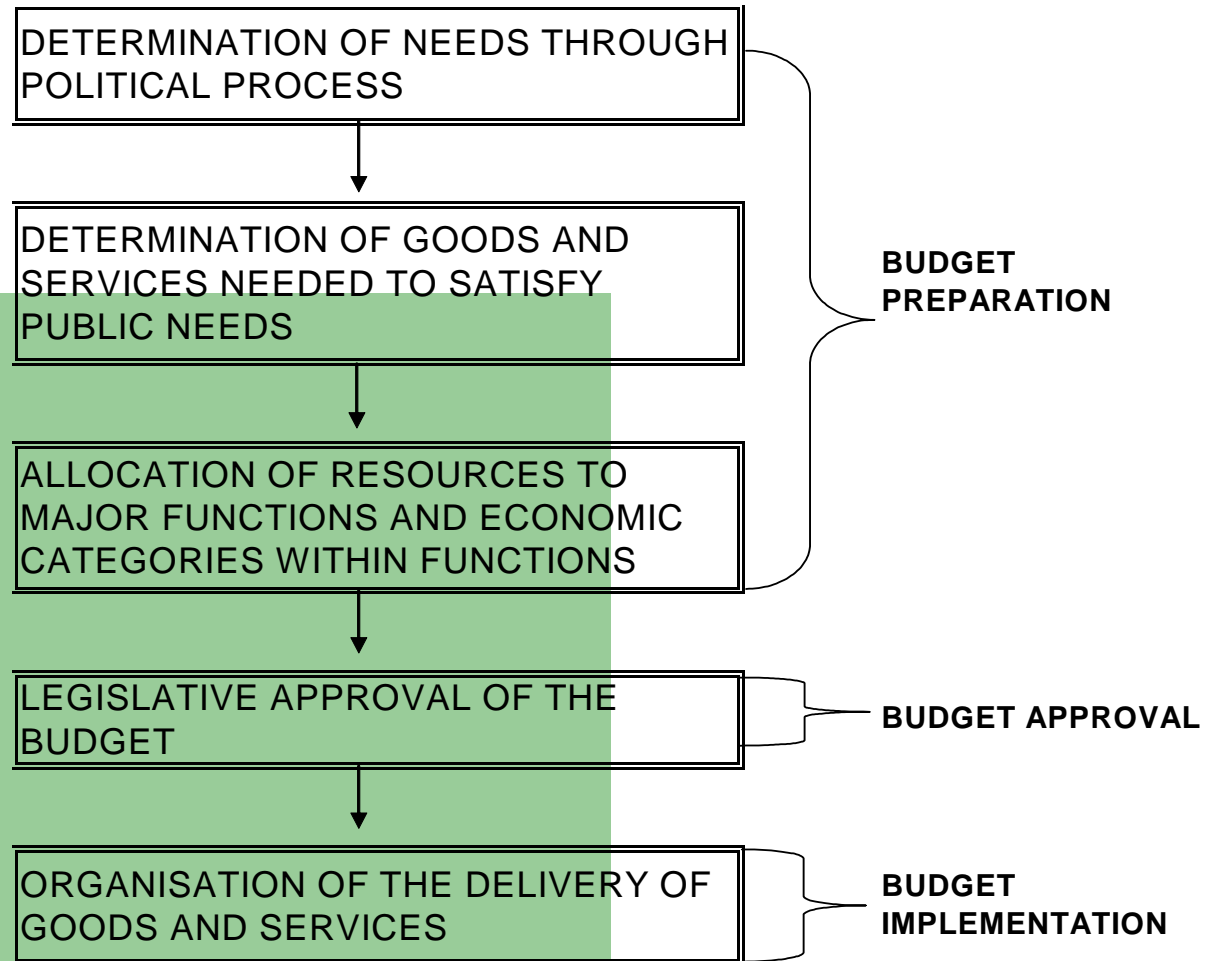
## – PRIVATE SECTOR PERSPECTIVE

### INTRODUCTION

Public Procurement is rooted in Government Financial Management

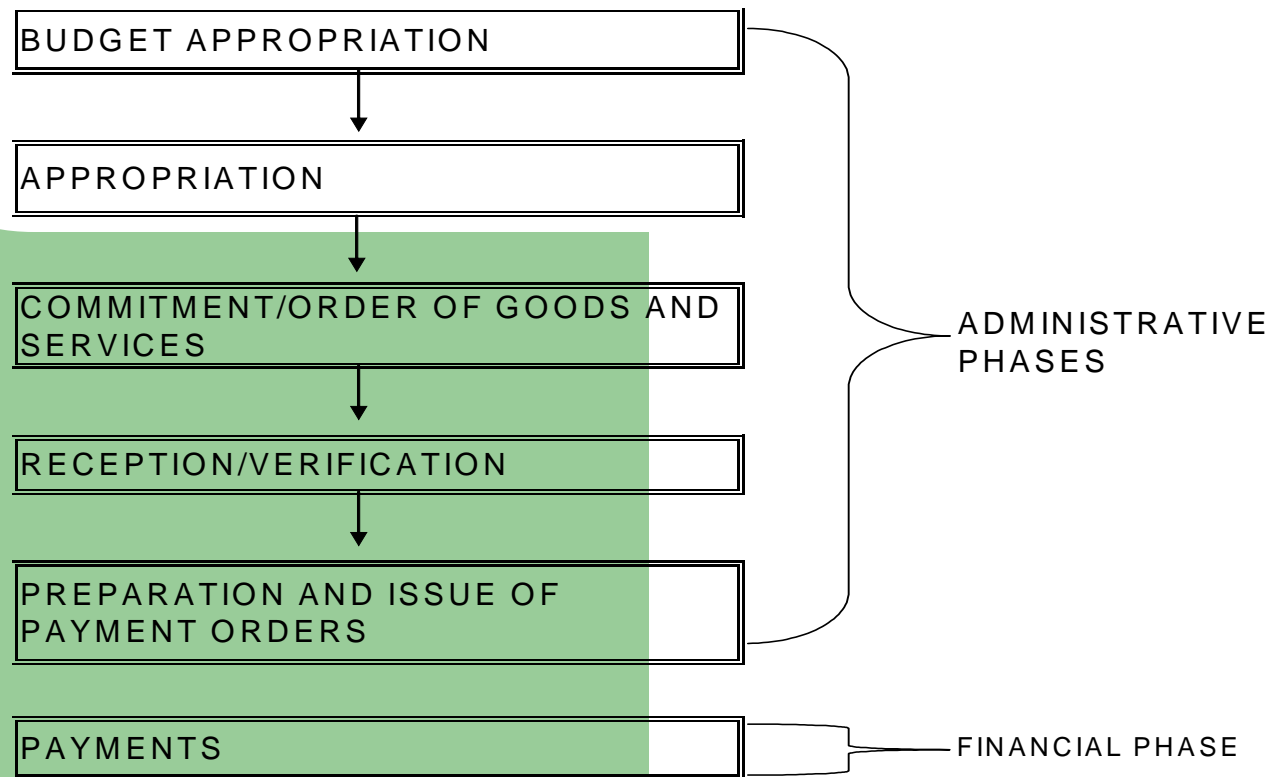
- Planning is setting goals and targets in National development plan
- Effectively implementing projects, programmes and policies
- Includes budgeting for resources to execute the plan – finance, manpower and materials.

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Budget Preparation and Implementation

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Phases in Budget Implementation Process

## THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE

Public Procurement is the process of acquisition of goods, services, works and projects from third parties by the Government.

Procurement activities cover

Goods -Supply of raw materials, commodities or Finished Products

Services -Provision of labour/knowledge based expertise

Works -Combination of goods and services building and infrastructure etc.

Transparency is the central characteristic of a sound and efficient public procurement system. This is achieved by:

- Well defined regulations and procedures open to public scrutiny.
- Clear and standardised tender documents
- Bidding and tender documents containing complete information
- Equal opportunity for all in the bidding process guaranteed by Open Competitive Tendering

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### RATIONAL FOR PUBLIC PROCUREMENT REFORM

- Procurement system is the bridge between public requirements and private sector providers
- Governments use budgets to decide and indicate what to provide “in house” and what to “buy in”
- Important that “buy in” should be at **right time and right price** to support government action – **integrity, accountability, effectiveness and national interest therefore crucial.**
- Public procurement accounts for 50 – 70% of imports of developing countries.
- Even developed countries have taken steps to revise public procurement system to improve efficiency and generate savings:-
  - USA – Reinventing Government
  - UK – Efficiency in Civil Government (1998)
  - France – Improving efficiency of public procurement
- Above all, public procurement is an instrument of government policy
  - Without key reform here other government reform can not produce desired results.

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### STAKEHOLDER OF THE PUBLIC PROCUREMENT SYSTEM

The business operations of government, as controlled by public procurement systems affect many different elements of society.

- The procuring entities with the responsibility to perform designated missions
- The business community of actual or potential suppliers to government
- International organisations and external donors of funds for use by a country
- Academic, training and public interest groups
- The largest interest group is the general public who are more likely to feel satisfaction with an efficient public procurement system



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United Nations Commission for International Law (UNCITRAL) lays model for a good public procurement system

- Legal or regulatory framework
- Means to monitor compliance with the law and regulations
- A responsible Manager to oversee the system
- Standard terms and contract
- Open and advertised tenders
- Means to aim at best practice and continuous improvement
- Develop high level of procurement professionalism

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### INTERNATIONAL COMPETITIVE BID

This is tendering process that is open to all participants (both local and international)

#### **Competitive**

- **Open Competitive Bidding (International or National)**  
Opportunity to bid given by invitation to Pre-qualify or to bid advertised in international or national newspapers
- **Two Stage bidding**
  - Technical proposal on basis of conceptual design
  - Submission of final technical proposal and priced bids

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### INTERNATIONAL COMPETITIVE BID (CONT'D)

#### Consultancy Contracts

- Routine Assignments
- Conceptual, Complex and multi-disciplinary assignments

Contract awarded on basis of quality/price with price accounting for 15% of points allocated

#### Consultant Selection

- Quality and Cost-Based Selection (QCBS)
  - Quality and cost weighted
- Quality Based Selection (QBS)
  - Highest Technical proposal asked to submit financial proposal
- Selection under a priced budget
  - RFP indicates budget
  - Technical & financial proposal
  - Financial proposal exceeding budget are rejected
  - Technical ranked Highest negotiate contract
- Least Cost Selection
  - Minimum qualifying mark for quality.
  - Technical qualification above minimum compete on financial

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A good public procurement system

- Is Open to all, and is transparent (bidders know and understand the actual means and processes by which contracts are awarded and managed).
- Is Fair to all bidders (fairness in reality and perception)
- Delivers Value for Money, enhances competition
- Has Accountability and ethical standards
- Is Responsive to the Nigeria citizenry
- Focuses on best practice, eliminates fraud, waste and abuse

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### WHAT DUE PROCESS IS

Due Process 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

### WHY IT WAS ESTABLISHED

A study conducted in 2001 into the state of Federal Government procurement revealed that billions of naira may have been lost over the years as a result of the following:-

- Lack of adequate legal framework;
- Blatant abuse of discretionary powers;
- Collusion with officials to circumvent checks and balance;
- Lack of competition and transparency in project procurement leading to high cost of projects;
- Improper project packaging and definition, compounding ineffectiveness;
- Budget proposals submitted by ministries and parastatals not being related to justifiable needs
- Projects not prioritised, reconciled and synchronised between ministries
- Preference for new projects thereby encouraging regular midstream abandonment of projects in progress.
- Absence of efficient and effective project monitoring aimed at ascertaining compliance with original project deliverables, plans and target
- Overemphasis on initial project cost without due regard to total cost of ownership that total life cycle costing makes possible
- Frequent government policy reversals.

In the light of the above, it was imperative that the procurement system need to be reformed through the Due Process Mechanism. The Budget Monitoring and Price Intelligent Unit (BMPIU) was therefore established by the President in 2001

## **THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE**

### **BMPIU's VISION**

The vision of the BMPIU is “to help move Nigeria to a level where Public Procurement (Public Contracting) is governed by the principles of Integrity, Transparency, Competence and Competitiveness as National Ethos”.

### **BMPIU's MISSION**

The mission of the BMPIU is “to use the Due Process Mechanism to reestablish and sustain an open, transparent and competitive Federal Procurement System that is integrity-driven, upholds spending within Budget and ensure speedy implementation of Projects in order to achieve value for money outcomes without sacrificing quality and standards”.

## THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE

### OBJECTIVE OF THE DUE PROCESS

- To harmonize and update all Federal Government Policies and Practices on Public Procurement
- To ensure that project conceptualization and packaging match the defined priorities and targets as set in annual Appropriation
- To strictly enforce the Due Process principles of transparency, competition, efficiency and value for money in the procurement of public goods, works and services
- To ensure efficient and integrity based monitoring of implementation of all Federal Government projects in line with the Due Process principle
- To prevent extra budgetary spending by ministries, departments and agencies by ensuring that only projects with due Appropriation by the National Assembly are certified and thus funded for execution
- To prevent contract inflation by ensuring cost reasonableness, accuracy and comparability of all public contract with national, regional and global cost

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### FUNCTIONS OF THE BMPIU

- Regulates and sets standards to enforce harmonised Bidding and tender Documents for all Federal Government contracts
- Formulates general policies and guidelines on Public Sector Procurements
- Develops, updates, maintains relevant system wide database and technology
- Upholds professional ethics and reports erring procurement personnel, public officials, departments and private sector companies and their personnel to relevant authorities for appropriate application of prescribed sanctions.
- Monitors prices of tendered items and provides price database advisory services to the public sector.
- Performs procurement audits
- Documents and monitors Federal Government projects from point of award until completion.
- Coordinates trainings to promote capacity building of procurement personnel and development of systems and standards in the public sector
- Sensitises, promotes and educates the public on Public Procurement issues.
- Advises the President on status of Federal Government procurement in relation to the Annual Appropriation.
- Provide relevant procurement and budget performance information to any interested parties and Institutions.



## **THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE**

### **GUIDELINES FOR PUBLIC CONTRACTING**

The BMPIU reviews and certifies Federal Government contracts according to established and approved thresholds to ensure compliance with the due process procedures (transparency, competition, right costs etc) for goods, works and services contracts from the award stage.

Three approval thresholds are:-

- Contracts below N1M
- Contracts above N1M but below N50M
- Contract of N50M and above

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### Specific requirements for each thresholds

- Contracts below N1M
  - Permanent Secretary/Chief Executive of the procuring Ministry/Department/Agency can approve and award
- Contracts above N1M but below N50M
  - Must follow the Resident Due Process Compliance Review
  - The Resident Due Process Team (RDPT) can approve and award
- Contract of N50M and above
  - Contract to be processed by the relevant Ministry/Department/Agency following the FGN Treasury Circular TRY/A4&B4/2002 on Due Process Guidelines for award of capital projects.
  - The Ministerial Tender Board forwards the conclusions on each contract to the BMPIU for the Due Process Certification
  - If satisfy, the BMPIU will issue the Due Process Certificate to the relevant Ministry/Department/Agency
  - The spending Ministry/Department/Agency forward the project to the Federal Executive Council for Final approval to award contract

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### THE DUE PROCESS RULES

The following are the Due Process requirements the procuring entities must satisfy

- Advertising requirements
- Prequalification criteria
- Invitation to tender (Technical & Financial Bid process)
- Opening of tender
- Bid evaluation requirement
- Determination of successful bid

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### ADVERTISEMENT REQUIREMENTS

Equal access to bidding opportunities is fundamental to effective competition which ensures that the public procurement derives value for money.

There are two categories of advertisement requirements.

- Contract Below N10m
  - Advert in the notice board of the procuring entity
- Contract above N10M
  - Advert for prequalification of contractors in at least two National Newspapers
  - Or Government Gazette
  - Federal Tender Journal (effective May 2005)

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### PREQUALIFICATION CRITERIA

Invitation to prequalify for bidding on specific contract is usually advertised in the national newspapers. It is done to evaluate the capability and resources of the prospective bidder.

The criteria usually will cover the following:-

- Evidence of incorporation or Business name registration
- Registration with relevant government Ministry/agency etc
- Audited Financial Account (current three years)
- Evidence of Tax Clearance Certificate
- Evidence of financial capability
- Technical qualification and experience of key staff
- Similar project executed in the past

The above criteria are rated and prospective bidder with a score of between 70% and 100% is considered qualify to bid for the contract and is included in the list of “Prequalified Bidders” or “Competent Bidders”

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### BID DOCUMENT/INVITATION TO BIDDERS

- The bid documents must follow a standard tender document and will furnish all the necessary information for a prospective bidder to prepare a bid.
- While the details and complexity of these documents may vary with size and nature of the contract, the documents will include the following:-
  - Invitation to bid;
  - instruction to bidders;
  - form of bid;
  - form of contract;
  - condition of contract (both general & special);
  - specification & drawing;
  - delivery time or schedule of completion etc.

Prospective bidders are expected to respond to bid invitation six weeks after the bid documents are issued.

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### BID OPENING

- Bid opening takes place immediately after the closing of the bidding/tendering period.
- The bidders or their nominated representative are expected to witness the bid opening
- Bid will be opened in the public

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### BID EVALUATION

- Bid evaluation by the Evaluation Team of the Procuring Entity

The procuring entity will set up a bid evaluation committee at the appropriate level to evaluate and prepare a report with recommendations for award.

- The Tender Evaluation Committee (TEC) will comprise of five members out of which three must have experience in procurement.

### TECHNICAL BID EVALUATION

To ascertain that the bid meet:-

- eligibility requirements
- substantially responsive to the bidding documents
- Scope and depth of the assignment under consideration

### FINANCIAL BID EVALUATION

To determine the cost of each bid to the procuring entity and ultimately the lowest evaluated tender cost (best responsive bid)



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### SUCCESSFUL BID

The winner of a successful bid in a competitive bid process is:-

- the competent bidder (pre-qualified and technically evaluated)
- offer the lowest evaluated tender cost for the execution of the contract

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### DUE PROCESS REGIME

The BMPIU reviews and certifies Federal Government Contracts according to established and approved thresholds to ensure that compliance with the principles of right procedures (transparency, competition and merit) and right costs guide all Federal Government contracts for goods, work and services from the award stage through to their successful execution and completion.

### DUE PROCESS REVIEW

- To ensure that
  - Contract award PROCESS was right
  - The recommended winner is the right one
  - The Cost of the award is right.
- If correct, Due Process Certificate is issued.  
If not, certificate is declined.

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### DUE PROCESS CERTIFICATION

#### Documents necessary for Due Process Certification

The following documents must be forwarded by a Procuring Entity to the BMPIU along with Letter of Request (LOR) for Due Process Compliance Review and Certification for Award of Contract or Payment on on-going contract.

#### Project policy file

- The background documents that include technical and financial preparation of the project by the Spending Units and which includes and not limited to:
    - Bills of quantities (if any)
    - Contract Drawings and Engineering Designs
    - Other Related technical Documents
    - Final Summary and Statements
    - Project Reports
  - Internal cost estimates
- Variation in scope request and variation orders, arising.  
Evidence of advertisement as appropriate.
- Pre Qualification Exercise, the objective criteria for short listing the pre qualified bidders.

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### THE CERIFICATION PROCESS

- Request from the Procuring entity for compliance review and certification
- Compliance review carry out by a team composed of procurement specialists within BMPIU. It seeks to determine the degree of compliance by the procuring entity with the provisions of the Treasury Circular Number A4&B4/2002 of July 2002 and the Due Process checklist.

The review will focus on:-

Contract award process

The process for recommending the winner

The cost

After the review of the above documents and processes, if satisfied, a Due Process Compliance Certificate will be issued

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### Project policy file (contd.)

- Pre qualification evaluation report
- Evidence of Invitation to tender sent to all pre qualified bidders

### Tender returns

The Tender evaluation report and analysis of the financial bids submitted by all the pre qualified bidders

Tender Evaluation reports showing a due process compliance

Interim valuation and certificates (for payment)

- Consultant Work Progress Report (for payment)

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### DOMESTIC AND INTERNATIONAL PARTICIPANTS

The public procurement process is opened to both local and international participation. However, in furtherance of the Federal Government Local Content Policy some incentives is given to local firm.

- Potential investors (particularly foreign) avoid notoriously corrupt environments.
  - higher bribes imply declining profit
  - rent seeking investment crowd out productive investment
  - economic rational for projects gets distorted shifting investment from productive to less productive.
  - corrupt requires arbitrary costing more in time and money to negotiate through the maze
  - generally increases the country's risk profile
    - Political risk features
    - Legal/regulatory framework
    - Economic risk profile
    - Confiscation
    - Political violence
    - Existing transfer

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### **DOMESTIC AND INTERNATIONAL PARTICIPANTS (CONT'D)**

Due Process give assurance, certainty and create corruption free environment

For local investors, Due Process has:-

- enhanced social and economic justice
- reduced cult of mediocrity
- rejuvenated the value system
- reinstatement of over 120 Nigerians who rightly won public contracts by merit as at October, 2004
- elimination of sales of contract papers by touts as sycophants
- restoring the confidence of the average Nigeria that public contract can be conducted with openness, competition, integrity, transparency and right cost.

The achievements in this direction are no mean feats particularly in the announcement effect that they bear for the restoration of a better nation. The major objection to tribalism and nepotism is that they expose the citizen to unfair treatment, social and economic injustice whilst fanning the embers of corruption in the process. Most unfortunately it also confers an unfair advantage on mediocrity

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### REDRESS/DISPUTE RESOLUTION MECHANISM

- Right of Reply

Dispute resolution in the proposed Public Procurement Act

Three layers

- First line – Procuring entities
- Second line – Bureau Review Panel
- Third line – Federal High Court

All contracts must have arbitration clauses as primary mode of dispute resolution between contractor and the procuring entity

Bureau to:-

- Maintain list of arbitrators
- Make regulations for constituted arbitration panel
- Review arbitration decision before pronouncement



## **THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE**

### **PUBLICATION**

- **The BMPIU consider the Due Process review reports as public documents. Accordingly the reports and other public procurement related activities are published in the unit web site at [www.bmpiu.gov.ng](http://www.bmpiu.gov.ng)**
- **For publication of Tender notices**

# THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES

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### GAINS OF THE DUE PROCESS

- Improved Public Procurement Processes
- Enhanced openness, transparency, competition, right costs, stopped abandonment of projects etc.
- Good Management of Public money and assets
- Improved efficiency in public finance
- Created improved system of planning and project preparation.
- Enhanced information flows on public procurement.
- Insight into success achieved 2002, 2003 and 1<sup>st</sup> qtr of 2004
  - 459 projects were reviewed in two years mostly on post review basis
  - 298 projects representing 65.2% of contract reviewed were certified having passed requirements, which range from tender process, advertisement, bid opening and evaluation, pre-qualification amongst others.
  - 116 contracts on projects were still under review while 15 contracts were pending
  - 79 contracts representing 17.3% were cancelled
  - N88.5 billion was savings obtained from the contracts reviewed in the process of certification.

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### Savings obtained.

Federal Capital Territory (FCT)	18
Works	16
Power and Steel	12
Sports and Social	10
Transport	5
Communication	4
Water Resources	3
Education	3
Information	3

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### CONSOLIDATING THE DUE PROCESS GAINS

The Procurement and Disposal of Assets Bill (popularly known as the Procurement bill) laid before the National Assembly in 2005 with functions *inter alia*

- To Consider and approve policies on public procurement
- To set and/or amend the monetary and prior review thresholds
- Approved procurement guidelines and regulations
- Establishes. The Business of Public Procurement (BPP) with objective to
  - Harmonise existing government policies & practices
  - Establish pricing standards & benchmark
  - Ensure application of fair competitive, transparent and value for money standard & practices
  - Attain transparency, competitiveness, professionalism in public procurement system.

## **THE DUE PROCESS MECHANISM & THE MANAGEMENT OF PUBLIC RESOURCES – PRIVATE SECTOR PERSPECTIVE**

### **MAJOR ISSUES WITH PUBLIC PROCUREMENT REFORM**

Despite the above efforts of the Government, the major issues are:

- The dissatisfaction of the private sector with the transparency of the public procurement system, slow approval process and delays in contract payments.
- The slow implementation of the new procurement regulations
- Existence of significant capacity constraints in some of the ministries which face difficulties in preparing their procurement documentation in line with due process requirements.
- Concerns by the Public Accounts Committees of the House of Representatives, the Senate and the Private Sector about the over centralisation of the approval and review process of contracts at BMPIU
- Undue delay in the passage of an acceptable Procurement Law by legislative arm of government.

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– PRIVATE SECTOR PERSPECTIVE**

**THANK YOU**