

DUE PROCESS IN GOVERNANCE:

AN IMPERATIVE OF TRANSPARENCY AND ACCOUNTABILITY,

A PAPER PRESENTATION BY:

ABBA B. UMAR,

DIRECTOR - GENERAL

ADAMAWA STATE BUREAU OF PUBLIC PROCUREMENT (ADSBPP),

**AT A RETREAT FOR LOCAL GOVERNMENT CHAIRMEN, VICE CHAIRMEN,
SECRETARIES AND ELECTED COUNCILLORS.**

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Introduction

I am delighted to be invited to deliver a paper on; Due Process; The Imperative of Transparency and Accountability in Local Government Administration in Adamawa State.

Whatever parameters that was used to select me for this presentation by the organizers, I must confess, may not be unconnected with my position as the Director General of the Adamawa State Bureau of Public Procurement (ADSBPP) and the avowed confidence that I can have something to offer no matter how minute to the advancement of good governance and development of our dear State.

For us to understand the import of what we are here for, it is important to understand in clear perspectives what DUE PROCESS IN GOVERNANCE is all about. To a layman, the word DUE PROCESS could simply means doing things in the right way and manner, but when you look at it broadly it means much more than what we think and talk about.

Due Process therefore, can be defined as the conduct of legal proceedings strictly according to established principles and procedures, laid down to ensure fair trial for every person or group of persons responsible for procurement of works , goods and services. It is an established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of an individual.

In fact, many due process cases do involve the question of fair procedures or procedural due process, however, question of legal fairness may be related not only to procedures, but also to legislation that affects people.

As a grass roots government, it is imperative to remind ourselves that due process policy and principles have been with us for ages, it pre-dates history and civilization, but our failure to imbibe the culture and principles has over time been responsible for the underdevelopment we are experiencing in virtually every aspect of our existence.

It is in recognition of this that the Adamawa State Government domesticated the Public Procurement Act of 2007 of the Federal Government in 2013, which gave birth to law No. 7 of 2013 title: A Law to establish the Adamawa State Board on Public Procurement and the Bureau of Public Procurement as the Regulatory Authorities Responsible for the Monitoring and oversight of Public Procurement, Harmonizing the Existing Government Policies and Practices, liaising with Federal Counterpart Bodies by Regulating setting standards and developing the

Legal Framework and Professional Capacity for Public Procurement in Adamawa State and for related matters.

In view of the above, therefore this reform process as enshrined in order related Laws such as Adamawa State Fiscal Responsibility Commission Law and State Debt Management Agency Law, both advocates for Due Process and Good Governance, monitoring service delivery functions and providing review of efficiency and effectiveness (value for money) in all State Procurement and Local Government.

For the avoidance of doubt, Part III Section 17 of the State Procurement Law provided that *“the provisions of this Law (2013 State Procurement Law) shall apply to all Procurement of Goods, Works and Services carried out by: (a) State Government and all procuring entities (MDAs) (b) Public Procurement by Local Governments in the State and the value of which exceeds a sum which the Bureau may stipulate at the commencement of the financial year of the State”*.

It is in view of the above that the Bureau have approved the Applicable Threshold for all Procurement at the Local Government Councils Level for:

- i) Chairman approval limit of not exceeding ₦1Million for all kinds of Procurement.
- ii) Financial and General Purpose Committee (F&GPC) of the Local Governments which the Bureau consider as Local Government Tenders Board (LGTB) and their approval limit of above ₦1million but not more than ₦3million.
- iii) Ministry for Local Government Affairs, Ministry Tenders Board (MTB) for all procurement of individual Local Government above ₦3million will be initiated by the individual Local Government Council, but the procurement processes, procedures and approval is by the Ministry for Local Government Tenders Board and where the procurement exceeds the Ministry Tenders Board Threshold of ₦50million for goods, ₦60million for works and ₦20million for services, the Ministry will advertise and subsequently recommend to the BPP for **“No Objection”** for an award of contract on behalf of the individual Local Government.
- iv) All procurement of Goods, Works and Services to be jointly executed by the 21 Local Government Councils of the State, the Ministry Tenders Board (Ministry for Local Government) is expected to initiate the procurement process following the Joint Account committee approval to carry out the joint procurement process and procedures on behalf of the 21 Local Government Councils and thereafter, recommend to BPP for **“Certificate of No Objection”** for an award of the contract. This is in line with Section 18 (1) (a)-(g), Section 2, 3 and 4 of the State Procurement Law.

Governance Defined

- **Governance** refers to "all processes of governing, whether undertaken by a government (State and Local Government), market or network, whether over a family, tribe, formal or informal organization or territory and whether through the laws, norms, power or language."

What is Good Governance?

- **Good governance** therefore, is about the processes for making and implementing decisions. It's not about making 'correct' decisions, but about the best possible process for making those decisions.
- Good decision-making processes and good governance, share several characteristics. All have a positive effect on various aspects of governance including consultation policies and practices, meeting procedures, service quality protocols, officer conduct, role clarification and good working relationships.

THE MAIN CHARACTERISTICS OF GOOD GOVERNANCE

- **Good Governance is Accountable (Answerable)**
Accountability is a fundamental requirement of good governance. In this regard, our leaders both political and non-political have an obligation to report, explain and be answerable for the consequences of decisions they made on behalf of the people they represent.
- **Good Governance is Transparent (Openness)**
People should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made, what information, advice and consultation council considered, and which legislative requirements (when relevant) government followed.

CHARACTERISTICS OF GOOD GOVERNANCE CONT'D.

- **Good Governance Follows the Rule of Law**

This means that decisions are consistent with relevant legislation or common law and are within the powers of the State.

- **Good Governance is Responsive**

All levels of government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.

- **Good Governance is Equitable and Inclusive**

A community's wellbeing results from all of its members feeling their interests have been considered by the government in the decision- making process.

CHARACTERISTICS OF GOOD GOVERNANCE CONT'D.

This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

- **Good governance is effective and efficient**

Government at all levels should implement decisions and follow processes that make the best use of the available human resources and time to ensure the best possible results for their citizens.

- **Good governance is participatory**

Anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision. This can happen in several ways, citizens may be provided with information, asked for their opinion, given the opportunity to make recommendations or, in some cases, be part of the actual decision-making process.

WHAT IS GOOD CONDUCT?

- Good conduct in local government administration means that Chairmen, Vice-Chairmen, Secretaries and elected councillors should act with integrity and impartiality. They should be honest and diligent, avoid conflict of interest, treat all procurement issues with due process and always act lawfully and show leadership.
- Good conduct or behaviour is an important part of a civil society. It is also the basis for good relationships which are, in turn, crucial for good governance.

PRINCIPLES OF GOOD CONDUCT

- The principles for good conduct are set out in our procurement laws. It defines several other requirements for the conduct of all procurement stakeholders at the State and Local Government levels.
- Some forms of conduct are considered to be criminal and can result in prosecution.

GOOD CONDUCT, GOODWILL AND GOOD GOVERNANCE

- An important foundation of good governance in local government is goodwill.
- While there are various mechanisms to guide and manage our elected and non elected Local Government leaders behaviours (such as code of conduct, conduct panels and tribunal), good governance depends on the capacity and preparedness of our Local Government leaders to behave well and do whatever is necessary to build and maintain good working relationships when things come unstuck as they may do from time to time.

DUE PROCESS ROLES IN LOCAL GOVERNMENT

- The Chairman, Vice Chairman, Councillors and Secretaries all play an important role in the successful operation of a local government. Having a good understanding of these roles contributes significantly to good governance.
- They must understand the purpose of these roles in local government, how each relates to and interacts with other roles and what the key responsibilities are.
- The way in which the Chairmen superintend over council meetings makes a significant contribution to good governance. A well-run meeting that is inclusive and has high standards of governance relies on the chairman's

approach and he/she should have a good knowledge of meeting procedures as well as State law governing public expenditure (Public Procurement Law, Fiscal Responsibility Commission Law and Debt Management Agency Law) of Adamawa State.

- Effective chairing also ensures that all councillors have the opportunity to be heard. While not every councillor can get his or her way on an issue, they are more likely to accept a decision if they feel that they have been included in the process. More often than not, this means that even controversial and difficult decisions are more 'stickable'.

DUE PROCESS AND KEY GOVERNANCE ROLES CONT'D.

- If the chairman takes sides in a council meeting and actively suppresses minority views, this will give dissenters the ammunition not only to attack the outcome, but also the process.
- The chairman should ensure that all councillors have the opportunity to express their views, even if their proposals are defeated.
- Group facilitation concepts such as participation, communication, involvement, consensus, mutual respect and listening are all important in promoting the success of the councillor group.

PUBLIC PROCUREMENT DEFINED

- Public Procurement is the Public Sector purchasing of goods, works and services that needs to carry out its functions. This comprises of three main phases: procurement planning, the procurement process and contract management.
- During the planning phase, the Local Government Council decides on which services, works and goods to buy and when. In the second phase, the Local Government as a procuring entity establishes and executes a tender procedure with the aim of concluding a contract.
- The third phase is a process of contract administration or management with the objective of securing effective performance.

PUBLIC PROCUREMENT RULES

- Procurement rules generally focus on the second phase which, depending on the approved monetary threshold (value) in line with the subject matter regulated by national, state, or international procurement regimes.
- The subject matter of procurement is commonly divided into three categories:
 - i) Goods (supply of products);
 - ii) Services and
 - iii) Works (construction).

The scope of goods and services bought by public authorities ranges widely, from Multi Million Naira infrastructure and urban development projects, to the acquisition of complex items, to commissioning of essential public services to buying common goods such as stationery, furniture and foodstuff.

THE IMPORTANCE OF LEGAL AND POLICY FRAMEWORK FOR PUBLIC PROCUREMENT AS IT AFFECT THE LOCAL GOVERNMENT ADMINISTRATION

- Public procurement globally accounts for large volume of budgetary expenditure on average across various States within specific Sectors, the scale of public procurement can create or define a market.
- In general, all Local Government contracts are subject to State Procurement Law concerned. However, multiple levels of specific regulation typically apply to public procurement, including Federal and State or international (such as WTO Agreement on Governmental Procurement and the regulation of procurement under international finance instruments).

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LEGAL AND POLICY FRAMEWORK CONT'D.

- Our Local Government Public Authorities should also comply with their obligations under domestic law and the other legal regimes and agreements during public contracting, for instance, in the areas of environment and anti-corruption.
- However, when engaging in procurement, public bodies are often not only concerned with legal compliance but also with achieving policy aims. Many procurement systems share policy objectives such as:
 - Achieving value for money (or "efficiency") in public purchasing.
 - Sustainability;
 - Non-discrimination, equality and integration of marginalized or disadvantaged groups; and
 - Open competition.

THE IMPERATIVE OF TRANSPARENCY AND ACCOUNTABILITY

- **Transparency:-**
- Transparency in Public procurement is important, information on the public procurement process must be made available to all public procurement stakeholders; contractors, suppliers, service providers, and the public at large, unless there are valid and legal reasons for keeping certain information confidential. Examples of such information are; proprietary information belonging to companies or individuals participating in the solicitation process, and certain military and defense-related procurements, to mention but a few.
- When a public procurement is announced electronically, through press release, the internet and other avenues, the procurement must include sufficient details for interested contractors, suppliers and service providers to determine if they are qualified to compete.

THE IMPERATIVE OF TRANSPARENCY AND ACCOUNTABILITY CONT'D.

- The solicitation documents, particularly, must be available at a reasonable price, if not free of charge.
- After reading the solicitation documents, interested contractors, suppliers and service providers should also be able to determine:
 - The nature of the procurement and its scope
 - The closing date for submission of offers or information
 - The evaluation and selection criteria
 - How and where offers should be submitted
 - The number of copies to be submitted, and point of contact for additional information and response to queries (clarifications)
 - The deadline for submission of queries
 - The schedule of pre-bid meetings and site visits (if applicable), and any other pertinent details.

THE IMPERATIVE OF TRANSPARENCY AND ACCOUNTABILITY CONT'D

- Additionally, if there is a change to the solicitation documents all stakeholders should be notified using the same publications that were used for the initial notification, so that interested contractors, suppliers or service providers can take necessary and timely actions to comply with the change.

- Accountability in public procurement means that anyone involved in the procurement process is responsible for their actions and decisions with respect to the public procurement process.

THE IMPERATIVE OF TRANSPARENCY AND ACCOUNTABILITY CONT'D.

- As public servants, procurement practitioners, and others involved in the public procurement process, you are accountable and exposed to sanctions as a remedy for any behaviour that contravenes the public procurement rules. You also have an obligation to report and/or answer to a designated oversight entity, and the public on the consequences of your actions and decisions.
- I wish to once again draw your attention as Chairmen, Vice-Chairmen, Secretaries and Elected Councillors to the provisions of Section 58 (1) - (6) particularly the provisions of Section 58 Sub-section (5) of the State Procurement Law No. 7 of 2013 which provides for penalties, which read thus:-

*“Any person while carrying out his duties either as Officer or any (procuring entity) contravenes, any provisions of this law, commits an offence and is liable on conviction to a cumulative punishment of”:- (i) “A term of imprisonment of not less than 5 calendar years **WITHOUT** an option of fine or more depending on the gravity of the offence so committed”. (ii) “Summary dismissal from Government Service”.*

- You can see that none of the penalties above is lighter, because of the inability of the law to provide for an option of fine.

“Sub-section (6) further provide that any legal person (e.g company) that contravenes any provisions of this Law, commits an offence and is liable on conviction to a cumulative penalty of”:- (i) “Debarment from all Public Procurement from a period of not less than 5 calendar years”. (II) “A fine equivalent to 25% of the value procurement in issue”.

CONCLUSION

- Finally, every procuring entity in government establishment either at the Federal, State or Local Government levels saddled with the responsibility of procurement must as a matter of importance ensure that **DUE PROCESS** in the implementation procedures are followed mechanically: beginning with advertisement such as;
- Ensuring that, the fundamental principles of public procurement are strictly adhered with.
- Budgeting process with accurate/ verifiable pricing regime is assured.
- The right and acceptable method is chosen at all times
- Follow the rules mechanically.
- Necessary approvals such as Procurements above set thresholds **MUST** go to the Bureau for "**Certificate of No Objection**"
- Necessary approvals must be obtained at all times
- Accounting Officers of Local Government Administration must take full responsibility for every procurement decisions.
- All of the above is referred to as **DUE PROCESS IN PUBLIC PROCUREMENT.**