

**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 HON. COMMISSIONERS, PERMANENT SECRETARIES AND  
SPECIAL ADVISERS IN ADAMAWA STATE.**

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## INTRODUCTION

- The title of this paper may have been carefully chosen to reflect a better understanding of the concept of good governance enabled through reform processes and procedures anchored on accepted principles that delivers value in governance.
- A regime of well-structured command, reporting and evaluation systems is engendered to deliver value through team work. The benefits of due process in governance can therefore be realized through establishment of extant laws, regulations and rules to guide everyone involved in the process of managing the human capital and other resources that are incidental to making life livable and better for every citizen within a given community.
- It therefore means that, today in Adamawa State the following three sunshine laws passed by Adamawa State House of Assembly must be strictly adhered to by our political leaders and all Public Stakeholders in procurement, most significantly the implementers of the laws and in line with the due process requirements. Eg.
  - Adamawa State Public Procurement Law
  - Adamawa State Fiscal Responsibility Law
  - Adamawa State Debt Management Agency Law

## GOVERNANCE DEFINED

**Governance** refers to "all processes of governing, human, material and capital resources whether undertaken by a 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 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 legislations or common laws 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.

## **EMERGENCE OF THE DUE PROCESS MECHANISMS**

- Due process is therefore, the legal requirement that the State must respect all legal rights that are owed to a person or group of persons who are saddled with responsibilities. Due process balances the power of law of the land and protects the individual person or government officials from it. When a government harms a person without following the exact course of the law or Government Official/Political Office holders prepared a memo seeking for His Excellency's or State Executive Council approval to release funds for contract award without adherence to all the due processes and procedures set by the Bureau for an award of contract, such would undermine the procurement processes and procedures and this constitutes a due process violation, which offends the rule of law.

## **DUE PROCESS DEFINED**

- **Due process** 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 windows in his or her MDAs.
- An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the 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.

## **DUE PROCESS DEFINED CONT'D,**

- However, fair procedures do help prevent arbitrary and unreasonable decisions. Due process requirements vary depending on the situation.
- Due process is a flexible concept. The procedures required in specific situations depend on several factors and the cost to the government, in time and money, in carrying out the procedures, the primary reason for establishing procedural safeguards is for the fact that - once a life, liberty, or property interest is affected by government action - is to prevent inaccurate or unjustified decisions.

## **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 government establishment decides on which services, works and goods to buy and when. In the second phase, the government 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-Billion 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 FRAMEWORKS FOR PUBLIC PROCUREMENT.**

- Public procurement globally accounts for large volume of budgetary expenditure on average across various countries within specific Sectors, the scale of public procurement can create or define a market.
- In general, government contracts are subject to the State 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).

### **LEGAL AND POLICY FRAMEWORKS CONT'D.**

- Our State 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 and 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 informations 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 requirement 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, 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 (Hon) Commissioners and Accounting Officers in various Ministries to the provisions of Section 58 (1) - (6) particularly the provisions of Section 58 Sub-section (5) 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 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 levels saddled with the responsibility of procurement, must as a matter of importance ensure **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 various MDAs must take full responsibility for every procurement decisions.
- All of the above is referred to as **DUE PROCESS IN PUBLIC PROCUREMENT.**