

“Procurement Fraud in the Construction Industry- the Nigerian Public Private Partnership (PPP) Dilemma”

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Abstract

This paper researches the risk of procurement fraud in the construction industry in Nigeria within a Private-Public Partnership (PPP). It analyses the diverse Nigerian culture and environment to assess the impact of the control environment, internal controls, institutions and risk of procurement fraud. 35 questions were posed to 193 respondents through a questionnaire. The respondents for this research were professionals from the construction industry in Nigeria focusing on site personnel, engineers, consultants etc. This is step away from the typical research within this area that had focused on accountants, compliance officers, auditors and others that may have been exposed to the anti-fraud or anti-corruption education. The analysis revealed that risk of procurement fraud is mainly due to the political and cultural environment, and the tone at the top in the PPP procurement process. This can be explained as pressure on management by political God-fathers and nepotism that exists in the Nigerian society. To address this issues it is recommended that, PPP procurement process be automated, regulations be reviewed, punishment for corruption and bribery increased, whistleblowing awareness and administrative bottle-necks be eliminated.

Keywords: *Procurement Fraud, Corruption, Construction Industry, Nigeria.*

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I. Introduction

The transfer of Nigeria's capital from the southern city of Lagos to the centrally located village of Abuja in 1991 provided ample opportunities for construction companies (local and international) to build the modern city (Dantata, 2013). At that point, the area had close to zero modern buildings and infrastructure. Presently, only a small percent of the original master-plan of the nation's capital has been completed. Similarly, other major cities such as Kaduna, Lagos and Port Harcourt are also

expanding and yet to attain high levels of completion of their master plans. In addition, the expanding middle class population in Nigeria are also demanding significant level of construction work in the residential sector (Dantata, 2013). This implies that there is significant amount of work for the construction industry over the coming decades.

Despite the potentials and improvements that can be seen in the Nigerian construction industry, the industry still faces significant challenges. Operationally, budgetary constraints and scarcity

of resources have urged the Nigerian government to consider joint ventures with private organizations to tap potential investment capital and expertise (Arimoro, 2018). The collaboration between the private and public sector is known as the Public – Private Partnership (PPP). The market is mostly dominated by big foreign construction companies for large scale contracts. Other issues plaguing the industry include shortage of reliable electricity, highly skilled graduates and professionals making it hard to operate efficiently in the industry.

Another crucial challenge is corruption. Bangura (1986) aptly described the first civil ruled government, the Shagari administration of (1979-83) as “the government of the contractors by the contractors and for the contractors”. Subsequent to that, the military took over again, and which finally changed to the present day democratic based government in late 1998. The return of civil rule has brought challenges of corruption and democratic instability, involving both public and non-public entities in Nigeria. Nigeria has been ranked as the 148th position out of 180 globally, a low rank in the Transparency International (TI) Corruption Perception Index (CPI) denoting its high corruption. Corruption is at the core of the crisis of legitimacy and governance, establishment of a stable democracy, rule of law, development and welfare of Nigerians citizens. Corruption is seen as the major explanation for the seemingly insolvable problems of diseases, hunger, poverty and general acute development tragedy in Nigeria (Oladinrin, Ogunsemi and Aje, 2012). This is further aggravated by the struggle of citizens over resources known as the “national cake” (Arimoro, 2018). The ideology amongst Nigerians that the “national cake” is to be shared rather than baked by various ethnic groups in Nigeria provides a fertile ground for political elites and bureaucrats who are obsessed with siphoning of public funds irrespective of ethnic or religious belief (Arimoro, 2018).

Within the construction industry itself, the procurement process plays a major role in combatting or motivating fraud. The World Bank has estimated a total of \$1.5 trillion in public contracts awards as a result of bribes exchanges in the public sector globally (Olufemi, 2013). The occurrence of procurement fraud can be attributed to the weak control environment, internal control and institutions in Nigeria. The control environment refers to the “tone at the top” (Choo and Tan, 2007) and include the sets of standards, structures and processes that provide a basis for carrying out internal controls. Internal Controls are procedures and methods carried out to regulate or restrict personnel behavior in order to achieve corporate goals and effectively guards assets of an organization (Lai, 2017). Finally, institutions are sets of formal and informal factors that affect an organization. Formals institutions refer to legal laws and guidelines incorporated by the law while, informal institutions refer to culture and other social traditions that shape the conduct of people in the society (Booth, 2014).

Past research assessing the Nigerian construction perspective include Achua (2011), Adeyemo (2016), Augustine (2018), Ayangade (2009) and Inuwa et al (2010); whereby Augustin (2018) focused on corruption and PPP, Adeyemo (2016) assessed the relationship between corruption and the construction industry, Ayangade (2009) focused on the impact of due process policy on construction projects delivery, Achua (2011) considered the challenges of public procurement competences strategies and Inuwa et al (2010) assessed factors that led to construction delays. Achua (2011) suggested that good governance and well-designed legislations would be the best initiative to achieve effective reforms to control corruption in the public procurement system. Inuwa et Al, (2010)observed that in the Nigerian construction industry, most project fails due to corrupt activities by professionals and management. Therefore, there is a significant gap

in the research literature in connection with procurement fraud within the construction industry in Nigeria, focusing on the PPP. Although Augustine (2011) did discuss the PPP corruption and governance aspect in his conceptual paper, this has not been applied empirically. Therefore, this research aims to assess the relationship of the control environment, internal control and institutions on the risk of procurement fraud within the Nigerian construction industry PPP.

II. Procurement Fraud in the Nigerian Construction Industry PPP

Public Private Partnerships (PPP) is defined as a joint venture between governments and the private sector, whereby the private sector is engaged by the public sector to build or finance public services (Augustine, 2019 and Etomi, 2019). The PPP is structured to ensure both the public and private sector mutually benefit from the arrangement whilst ensuring that the goals and key performance indicators are met. The private sector normally contributes in the form of management expertise in commerce and innovation and funds and is complemented by the government contribution in the form of transfer of assets, capital investments, social awareness and ability to mobilize political support (Sanda, 2016). Nigeria is not left out in the campaign for the adoption of PPP. Dada (2006) observed that national budgets derived from taxes and revenues alone cannot meet the huge requirement. The concept of PPP appeared in Nigeria and became present at the end of 1990's when the country was in need of substantial investments. In fact, it is in 1999 that the private sector started to engage in a more systematic manner with the government to undertake projects. Some example of PPP projects include the MMA2 Airport and Apapa Ports concessions. (Etomi, 2019)

Studies reveal that the major challenge is about the corruption and the inconsistent government policies in adopting and implementing PPP. It is

completely possible that relevant party in power may aim to choose a project for the sake of illicit profit or benefit or where incumbent politicians seeking for re-election (Etomi, 2019).

In the Nigerian construction industry, the clients invite willing contractors to participate in their tenders to submit their estimated prices, details of cost associated with the completing of buildings (Jasiukevicius and Vasiliauskaite, 2013). The complexity of the projects and the large budgets require the tendering process to be a vital part of procurement scope to ensure that organizations find suitable contractors. However, fraud in the procurement cycle is one of the most serious and frequent as it involves large amounts of money which brings out human greed (Ismail, 2013). Procurement fraud refers to unlawful activities that relate to fraud within the procurement cycle, which includes the stage of sourcing, bidding, and contract awarding (CIPFA, 2015). The risk of fraud resides in multiple phases of the procurement process itself such as, bribery in the shortlisting or awarding phase, manipulation of requirements in the pre-tendering phase, collusion between bidders in the tendering phase, unfair disclosure of confidential or additional information to preferred vendors and kickbacks in the contract award stage (Schultz and Soriede, 2008). The CIOB (2013) corruption survey suggests that the pre-tendering and tendering process is perceived as the most susceptible stage that fraud occurs. The research further suggests that the tendering process is the most risky stage compared to planning and design, operations and maintenance and the project execution stage. This is supported by the EFCC (2014) study by the Nigerian government that also reflects that the tendering and contract award phases to have the highest manipulation rates.

The rate of fraud and corruption is disturbing. The Economic and Financial Crimes commission (2010) reports over 70% of the perpetrators caught for procurement fraud are internal employees of the firms. This could be associated with the culture

of the firm and industry, weak internal controls and control environment, pressure due to financial constraints etc. In a PPP, especially when politically connected persons are involved, overriding of controls or disregard of controls will further create opportunities to collude and cover up. This can be associated with the lack of automation of the procurement process in Nigeria, as manual processes are easily overridden by colluders (Aladejebi, 2017). The internal controls map strongly with the control environment. The tone from the top plays a major role. The management should extend greater pressure for an ethical environment both within the firm and industry. The management should set a good example by ensuring they too consistently adhere to the code of conduct of the firm, as staff are quick to perceive when there is irregularities in behavior due to rank or preferences, and eventually, unethical behavior becomes a norm and acceptable (Davis and Pesch, 2013). The key factors within the control environment are values and ethics, organizational structure and competence. It is important management promote and demonstrate high integrity and ethical values which ensures the tone at the top is taken place of a highly ethical organization (COSO, 2014).

Frequently, management fails to rectify or review internal control procedure or might be committing the fraud. Infrequent review of internal control might lead to an increase in the fraud risk within the organization and it eventually provides the fraudster ample opportunities to be able to exploit and commit fraud due to control weaknesses (Mohd-Sanusi et al., 2015). Tran and Le, (2018) also assert that weak internal control systems and the lack of effective organizational structure in terms of managing the procurement in organizations especially those in the construction industry has caused the failure to address weaknesses in the internal control that subsequently results in undermining organizations efforts for taking corrective actions in improving

the procurement process. However, the case of Nigeria isn't so surprising, as corruption is an endemic that only a few are willing to fight. In most cases those charged with governance are the same people committing fraud in the Nigerian construction sector (Benedict, 2016).

Whistleblowing is considered part of the internal control system an organisation adopts to achieve good corporate governance practices (Michalos and Poff, 2013). Whistleblowing is the disclosure by members of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action (Near, 1985).

Whistleblowing is one of the most direct methods of internal control that could be used to expose bribery and corruption both in the public sector and the private sectors. Bribery and corruption practices are mostly collusion practices which involved parties do not betray each other and reveal secrets of trade. Hence, it is difficult to detect this kind of fraud unless someone comes forward to reveal such unethical practices. In a US report, it found that half of incident of fraud or corruption cases were detected by tipoffs rather than monitoring (Achua, 2011). Also studies by various other scholars indicate that whistleblowing policies are powerful tools to detect fraud (Rachagan and Kuppusamy, 2013) and (Tan Pei Meng, 2011)).

A number of countries including Nigeria, have introduced the whistleblowing policy which among its provisions is mainly to deter corrupt practices and guide a formal investigation into them. The country has for a long time been confronted with issues of corruption that has eluded the nations resources which could have been used for improving or developing the country's infrastructure and standards of living (Qudus and Fahm, 2019).

The new administration of President Muhammadu Buhari in December 2016 created a new whistle

blower policy in Nigeria. The modern policy of whistleblowing in Nigeria aims to encourage individuals by rewarding a portion of the successfully recovered funds. As a result the policy has yielded over \$151 million and 7 billion of recorded looted funds (Qudus and Fahm, 2019). Reports by Thisday Newspaper state that “that more Nigerians, mostly account officers and bankers have started to advantage of the whistleblowing policy to report wrongdoings of current and former office holders for suspected embezzling of public funds”

There have been many cases of whistleblowing in Nigeria from far back as 2006. Examples include; Cadbury Nigeria Plc in 2006 where an overstatements of revenues was discovered, which took place for many years and was to the tune of between N12 billion to N14 billion. Other notable cases include the case of the Emir of Kano, former governor of the central bank of Nigeria, Sanusi Lamido that alleged some funds were missing from the state oil corporation in 2014. Sanusi claimed that over \$19 billion of the country’s treasury were missing and unaccounted for. The governor was suspended by the then President Jonathan Ebele. The reason for the suspension was stated as due to his financial recklessness, fraud and fiscal misconduct (Olawoyin, 2017).

Culture plays a role as well when assessing this phenomenon. Nigeria does not have a national culture sociologically speaking (Aluko, 2014) and is made up of more than three hundred ethnic groups. Based on this alone, one cannot expect a multicultural, multi-religious and multi-ethnic nation like Nigeria to have the same culture. However, regardless of this diversity, three dominant ethnic groups, Hausa, Igbo and Yoruba are recognised in most social science research. The Yoruba ethnicity is collective, hardworking, works according to dictates and needs of the situation and aims for excellence; whilst the Igbo clan is rather individualistic (Attoh, 2011; Aluko, 2014). The

Hausa culture places high premium on deference to loyalty, authority and obedience to opinions and interest of one’s superiors. The custom unequivocally supports characteristics of servility, regard for power, devotion to the board or whoever is incredible, and accommodation. Such a convention scowls at the self-confidence of the worker as individual initiative and self-prompted activities towards objectives not endorsed by one’s superior were contrarily assessed (Aluko, 2000; Attoh, 2011; and Ukiwo, 2005). Lastly, the Igbo culture is mainly achievement oriented and receptive to change. The work culture is individualistic and anarchic pursuits having due respect to age. Their struggle for survival is ruthless determination to succeed and individualistic struggles. The Igbo man must be self-motivated to work hard and to compete with his superiors (Nnoli, 2010; Attoh, 2011; and Ukiwo, 2005).

On that note Mihret (2014) writes, with the coexistence of so many cultures in a country such as Nigeria tends to encourage nepotism. As stated, “Nepotism is the practices among those with influence to favor friends, familiar cultures and relatives”. In terms of procurement in the construction industry in Nigeria, construction contracts are usually large scale which provide lucrative opportunity for corruption. Contracts are manipulated by a corrupt individual by rigging the tender process in order to ensure contract are awarded to designated contractors. Aluko (2014) asserts that there are well-known cultural differences around the world with respect to standards of acceptable and unacceptable behavior as it is extremely difficult to distinguish the line between a gift and a bribe. However, there are genuine differences in perception and attitude about the point at which gift giving may shade into bribery. For example, in Nigeria the act of giving a gift is an obligation that is a pivotal aspect of common social interactions. Gifting like loyalty to friends and relatives is embedded in the

framework of the society, as such, cultural differences mark different thresholds between acceptable gifts and bribes and this may provide opportunities to create larger schemes to siphon off huge procurement contracts for personal gains.

Lloyd Bierstaker (2009) argues that, corruption flourishes in almost every society despite the vast cultural differences. The United States of America tallies over \$500 billion year lost to fraud, even with its efficient law enforcement machinery. He further states that the cultural relativist's argument that culture is to blame for corruption and fraud is not very persuasive because, cultural differences are the main problem although it might create complication in the development of enforceable international standards of acceptable behaviors.

Another factor that adds to the endemic corruption in Nigeria includes the politics of the Godfather. The Godfather ideology is constructed on the belief that certain individuals possess considerable means to unilaterally determine who gets contracts or party nominations for political offices. Often, the Godfather influences the decisions of government officials in the procurement process (Ogundiya, 2009).

The way that corruption is an anathema to all types of improvement isn't slippery to the progressive Nigerian rulers both military and non-military personnel from 1960 to date a few measures and ways to deal with corruption have been utilized. These incorporate institutional methodology, legitimate approach, the utilization of purposeful publicity and political training approach. The legitimate institutional methodologies incorporate the proclamation of Decrees during the military time; Acts of Parliament during the civil rule time frames and foundation of organizations enabled by the law to capture and arraign degenerate authorities. Among such Decrees are Corrupt Practices Decree of 1975, The Public Officer (Investigation of Assets Decree No 5 of 1976), and Forfeiture of Assets(Commission, 2017).

Until 2007 Nigeria did not have a statute that regulated public procurement. The Public Procurement Act of 2007 is the essential enactment which builds up the national council on Public acquisition and the Bureau of Public Procurement (BPP) as the regulatory authorities in charge of the checking and oversight of public procurement in Nigeria (Jansa, 2013). This provides reasonable administration of the country's assets, guarantees long haul large scale financial steadiness of the national economy, and verifies more noteworthy responsibility and straightforwardness in monetary activities, which aims to lessen huge corruption and inconsistency inside public procurement. Towards the bid to battle official corruption and guarantee transparency, the government likewise established the Budget Monitoring and Price Intelligence Unit in 2003 so as to assess contracts and tenders, and to guarantee consistence with civil service procedures(Arimoro, 2018).

One evident advantage of PPP over conventional procurement is that the private sector is a superior supervisor of assets than the public-sector. It is trite that conventional procurement contracts are frequently defaced by charges of over-inflation of the expenses of agreements, kick-backs, and poor execution of agreements with the conspiracy of public officials (Arimoro, 2018). Despite what might be expected be that as it may, PPP intends to convey great quality ventures through a straightforward and focused process. The Corrupt Practices and other Related Offenses Act of 2000, characterizes corruption to incorporate "bribery, fraud and other related offences", The ICPC Act recommends a discipline of five years' detainment for any individual who: "Accepts, obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing" (ICPC, 2000) .

Furthermore, the PPP model is well structured to discourage corruption, it is possible the process can be manipulated (Arimoro, 2018) and undermines the citizen's confidence in public institutions. As such, in 2014 the ICRC in collaboration with the World Bank developed guidelines for PPP contracts in Nigeria and a PPP disclosure web portal. The objective was to ensure that PPP is transparent (Arimoro, 2018).

In this regard, the legitimate system for PPP in Nigeria is comprised of the considerable number of laws and guidelines that controls how PPPs can be actualized (Hassan, 2014). Thus, it is expected that apart from giving the lawful inclusion to enter enforceable contracts, the legal framework ought to give the private sector the vital support to fund, assemble, work and gather incomes or service payments. Even though the passing into law of the Nigerian Infrastructure Concession and Regulatory Commission Act 2005 and the setting up of the ICRC to oversee federal PPP transactions across the nation is intended to demonstrate government's political will to embrace the PPP model of infrastructure, the legal system for PPPs in Nigeria has been depicted, and rightly so, as involving a tangled and befuddling web of guidelines and policies.

III. Research Methodology

The study collected primary data using questionnaires targeting consultants, architect, engineers, project supervisors, project coordinators, CEO's, Partners, Directors, Procurement Officers, Resident Architects and other relevant players in the construction industry. Two hundred questionnaires were distributed. Thirty five questions were designed in the questionnaire related to perception of the respondents towards risk of procurement fraud, institutions, control environment and internal controls using a 5 point Likert Scale. Based on this, 193 responses were received.

IV. Findings and Discussion

In order to test the perception of the respondents on the phases and process of procurement in Nigeria, seven questions were asked. The first question was related to the corruption as a result of the lack of automation of the procurement process. 83.9% of the respondents agreed that the lack of automation in the procurement process creates an opportunities for manipulation. The respondents felt that the shortlisting and pre-qualification stages were the most susceptible to fraud in Nigeria, with the contract award phase following suit. This is further substantiated since there had been reports that contract awards had already been determined prior to the beginning of the process.

80% of the respondents also agreed that top management affect the ethical climate of the organization. This implied the perception of the respondents clearly linking the health of the control environment to the risk of procurement fraud. The tone from the top also played a major role, with a genuine and consistent culture being seen as a motivation for other employees. Top level manager's and CEO's have a positive effect on the ethical conduct of other employees (Venter, 2007 and Lam, 2007)

53% of the respondents also had a neutral opinion about the strength of related party disclosures. This could be because the majority of the respondents were from an operational or technical scope, and were not particularly concerned about such controls. Neither are such disclosures frequently noted in the Nigerian culture, also indicating a norm of corruption and nepotism within the construction industry PPP. This is consistent with the findings of KPMG (2013) which reported 70% of related party transactions were not disclosed in Nigerian PPP since contract awards in Nigeria are mostly based on who the contractors knows or how much the contractor is willing to pay.

In terms of institutions, 82% of the respondents were sympathetic about national cake ideology

amongst Nigerians. 72.4% of the respondent agreed that political God-fatherism in Nigeria has a significant impact on the risk of procurement fraud in Nigeria. These sort of drawback give rise to corruption acts and practices where candidates are not chosen based on merit but rather based on who you know. These findings are consistent with Augustin (2018) in his research on corruption and Nigerian PPP, where he found the procurement industry is led by politically connected Nigerians who do not play politics but rather sponsor candidates and political office holders.

This could also be a contributing factor towards the high number of respondents that were neutral about the Nigerian anti-corruption bodies. 81% of the respondents had a neutral view which could be an indication of either fear or indifference. However, almost 52% felt that penalties including imprisonment in Nigeria were insufficient under ICPC (12000), as the minimal penalties were not a deterrent. The lack of enforcement also suggest that the level of corruption was so high in Nigeria since there was no repercussion. In addition, more than 60% of the respondents agree that whistle-blowers in Nigeria face harassment, punishment and dismissal. Such acts tend to discourage whistleblowing in Nigeria. As Solomon (2018) found that the Nigerian society is yet to absorb the concept of whistleblowing, they are often regarded as disloyal or trouble makers. The findings further prove that Nigerians are still reluctant towards whistleblowing.

A significant result that stood out in this research was the weak link between the internal controls and the risk of procurement fraud. Although this is highly inconsistent with many other researchers, a possible explanation could be the background of the respondents. 82% of the respondents for this research are from technical, engineering or consulting backgrounds. Their focus is normally on on-site productivity rather than on control mechanisms. Hence, this could explain their indifferent attitude towards the control. However,

the lack of emphasis on internal controls often provide further opportunities and motivation for fraud and corruption. Both the Pearson Correlation and Multiple Linear Regression also reflect a weak relationship. The correlation results report Control Environment $r = 0.314$, for Internal Controls $r = 0.412$, and for Institution $r = 0.323$. The Multiple Linear Regression results report that the r -value is 0.461, r^2 is 0.212 and the adjusted r^2 is 0.2000. The R square implies that all three of the independent variable can be explained by 20% of the variations in independent variables (Risk of fraud in the procurement in the construction sector in Nigeria). Therefore, possibly a key area of improvement is to convince staff from various backgrounds on the importance of controls, institutions and the control environment.

V. Conclusion

The research does not reflect results that are consistent with other cultures. A key difference here is the background of the survey respondents. Previous research tend to focus on accountants or auditors to assess their perception of the control mechanism. However, in these cases, where the role of the individual is purely on performance and with lesser emphasis on the importance of controls, documents and ethics, the respondents would be indifferent towards fraud and corruption. This is further aggravated when the individual has grown up within a culture of gift giving, bribery and corruption and perceives it as a norm. They may also rationalize that since everyone is doing it, I should do it too or that he/she may be victimized for being too good. Therefore, it is important for the mindset to change, however, being realistic, the culture and education would need to be more severely revamped.

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