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A PRELIMINARY SURVEY OF QUANTITY SURVEYORS' PERCEPTIONS OF THE WORKABILITY OF THE PUBLIC PROCUREMENT ACT IN MINNA, NORTH CENTRAL NIGERIA.

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ABSTRACT

This paper studied how the provisions of the Public Procurement Act of 2007 contribute towards its workability, as well as what perceptions of the workability of the Public Procurement Act of 2007 are held by users of the Act. The study established a flowchart of general procedures for procurement of goods and services by the public sector in Nigeria, and conducted a questionnaire survey of forty (40) randomly selected quantity surveyors. The study concluded that the Public Procurement Act 2007 was viewed by the majority of respondents (66%) as requiring simplification. The Act itself prescribes a minimum of fifty-seven (57) individual steps to be completed before the entire process of procurement can be deemed complete and transparent. Recommendations were made that the Bureau of Public Procurement should reduce the cumbersomeness of the Act by providing a computerized database to hold most of the information that procurement committees would need to source manually otherwise (contractor registration, banking support, status of previous jobs etc).

Keywords: Construction, Legislation, Nigeria, Procurement, Public

BACKGROUND TO THE STUDY

For the past twenty years, the construction industry has attempted to improve its construction performance by finishing on-time, minimizing change orders, and meeting customer's expectations. Overall performance has hovered between the 60% - 70% range for owner satisfaction (Egan 1998, Vickers 2000, State of the Construction Industry Report 2000, Post 1998). In Nigeria, several hundred billions of naira were claimed to have been lost because of flagrant abuse of procedures for award of public contracts, inflation of contract costs, and a lack of transparency, competence-based competition and merit as the fundamental criteria for award of public contract (BMPIU, 2004).

The use of standards, both statutory and quasi-statutory, has also been tried in the construction industry. The conclusions reached by previous researchers on the use of standards to regulate procurement can be summarised as follows. When standards are used, it forces the client to inspect in terms of means, methods, and materials (MMM); this might lead to increased costs of supervision/oversight. Minimum standards have no correlation to performance (Lam 2001, Graham 2002, Stenman et al. 1994, Lounis et al. 1998). Standards and specifications also allow contractors who do not have experience to bid the project. The award to the low bidding,

inexperienced low bidder may actually result in a higher project cost. The risk can also be identified by the high costs to sureties in both the bonding and insurance payouts (SIO 2003, Morgan Insurance 2003, Construction Chart Book 2002).

The procurement of goods and services by public sectors the world over has always been subject to certain guidelines. Gounden (1996) studied the conceptual framework which underpinned the Reconstruction and Development Programme in South Africa, which was then embarking upon significant policy reform initiatives related to Public Sector procurement. Gershon (1999) reported that based on a detailed ministerial review of procurement practices, the United Kingdom should establish a common strategic framework within which all Departments will conduct their procurement activities in future. Holt and Proverbs (2001) studied contractor procurement in local authorities (LAs) in England, and found that 50% of LAs consider lowest tender most important; only 11% considered lowest tender to provide value for money. In Northern Ireland, the Practical Guide to the Green Book requires that all proposals that involve spending of public money should be supported by evidence of suitable appraisal, approval, management and evaluation (Northern Ireland Department of Finance and Personnel, 2008).

In Nigeria, quantity surveyors are the professionals recognized for the cost management of construction procurements (NIQS, 1999). The issue of finance is pivotal to the successful realization of any construction project; hence the role played by quantity surveyors is a highly public and visible one. More often than not, quantity surveyors not only form an important part of procurement teams, they also perform the task of the secretary of such teams. Their opinions of the applicability of the legislation that underpins public procurement in Nigeria based on the roles they play in the procurement process is thus worthy of study. In addition, the procurement of goods and services by the public sector in Nigeria has been the subject of increased interest in recent times, following passage of the Public Procurement Act of 2007. The problem this study is concerned with is how the provisions of the Public Procurement Act of 2007 contribute towards it's workability, as well as what perceptions of the workability of the Public Procurement Act of 2007 are held by procurement professionals who are users of the Act.

The aim of this paper is to comprehensively examine the provisions of the Public Procurement Act of 2007 and perceptions of users of the Act, in order to form an informed opinion of the workability of the Act in the Nigerian public sector. The objectives of the project include the following: -

- (i) Review of the individual provisions of the Act, in order to establish the general procedures for procurement of goods and services by the public sector in Nigeria.

- (ii) Analysis of the perceptions of intended users of the Act, with emphasis on the ease or otherwise of applying the provisions of the Act.

REVIEW OF PUBLIC BUILDING PROCUREMENT IN NIGERIA

In the Nigerian building industry, contractor selection remains an essential part of the construction development process (Anyadike, 1999). Some of the criteria for contractor selection have been found to be unsuitable, unrealistic or even misapplied at times (Omole, 2000). Ndah (2000) suggests that competitive tendering produces three things: the contractor, the contract price and the completion time for the project. One method of improving construction performance suggested by Krammer and White-McCurry (2002) is to pre-qualify contractors prior to the bidding process so as to ensure that contractors are able to execute the assigned project in accordance with client and project objectives. Construction projects in Nigeria are characterized by delays, substandard works, cost overruns, disputes, claims, and in extreme cases abandonment. While criticism of failures of the construction industry to deliver projects in a timely manner has been almost universal (Odeyinka and Yusif, 1997), cost and time overruns continued unabated common occurrences in the Nigerian construction industry (Ogunsemi, 2002).

The “Due Process” mechanism for ensuring strict compliance with openness, competition and cost accuracy was introduced to re-establish and sustain an open, transparent and competitive federal procurement system (BMPIU, 2004). The prequalification criteria under the “Due process” in Nigeria according to BMPIU (2004) and Mshelbwala (2005) are categorized into two major groups. Basic/fundamental criteria are those with zero score yet the absence of any one of them automatically disqualifies a candidate contractor from participating in the prequalification exercise. Main criteria are usually rated with scores and all respondents with scores of 70% and above are referred to as the competent bidders.

The provisions of the Public Procurement Act 2007 are contained in thirteen parts containing 61 sections. Part 1, which was titled *The National Council on Public Procurement*, established the Council made up of five permanent members, six part-time members who are representatives of key interests in the procurement field and the head of the Bureau of Public Procurement, who acts as the Secretary to the Council. *The Bureau of Public Procurement*, which was the title of Part 2, was set up with 4 objectives and 13 wide ranging powers, to aid it in discharging 20 functions. These functions revolved around the harmonization of existing government policies and practices, establishment and application of pricing standards and benchmarks, and attainment of transparency, competitiveness and professionalism in the public

sector procurement system. The Bureau's membership was undefined by the Act. Part 3 of the Act was titled *Scope of Application* applies the provisions of the Public Procurement Act to all procurement of goods, works, and service carried out by all procurement entities of the Federal Government of Nigeria and other procurement entities which derive at least 35% of the fund devoted for any type of procurement from the Federation's share of Consolidated Revenue Fund.

In *Fundamental Principles for Procurements*, which was the title of Part 4, 28 principles of good public procurement practice were outlined. All procurements must be by competitive bidding, have been included in the current financial year's budget, and be transparent. Part 5, titled *Organization of Procurements*, dealt with the manner in which procuring entities plan and implement their procurement, the officer responsible for all of these tasks, as well as the setting up of a procurement planning committee, constitution of a tenders' board, and pre-qualification of contractors and suppliers were all covered in great detail. Part 6, which was titled *Procurement Methods for Goods and Services*, contained 15 sections dealing with the methods of procurement for the public sector, invitations to bid, bid submission, security, modification and rejection. The examination and evaluation of bids was also treated in detail, as was the issue of mobilization fees, and performance guarantees.

Special and Restricted Methods of Procurement were covered in Part 7, wherein the Act provided for two-stage tendering, restricted tendering, direct procurement and emergency procurement. The methods require the issuance of a 'Certificate of No Objection' by the Bureau of Public Procurement before their use, except in the case of emergency procurement. Part 8 (*Procurement of Services from Consultants*) specified that services for ascertained or unascertained needs may be procured from consultants. Advertisement of the required services is a necessity, except in the case of services having to do with national security. Direct procurement of services from a limited number of consultants was also conditionally allowed. *Procurement Surveillance and Review* was the title of Part 9; the options open to the BPP in this context of procurement surveillance include nullification of the procurement proceedings, cancellation of the procurement contract, and ratification of any actions taken during procurement proceedings.

Part 10 of the Act was titled *Disposal of Public Property*, and laid out the manners of disposing of public property, which apply where public agencies are being commercialized and/or privatized were detailed. Methods of accomplishing disposal include sales and rental, leases, hire purchase, franchising, tenancies, or transfers between government ministries, departments and agencies. The eleventh Part of the Act (*Code of Conduct*) provides a code of conduct for all persons involved in public procurement. Actions of public officers that would be

considered as violating the provisions of the Act were detailed. *Offences Relating to Public Procurement* could be found in Part 12, where detailed definitions of the offences relating to public procurement which could be committed by natural or legal persons were given. The last part of the Act (*Part 13: Miscellaneous Provisions of the Act*), dealt with the validity of the transactions of the organs for public procurement, the definition of some key terms as employed in public procurement and the manner in which the Act might be cited.

Figure 1 below presented a flowchart of the procurement process in the public sector derived from the Public Procurement Act 2007. The stages are not rigidly sequential, and overlaps might occur occasionally.

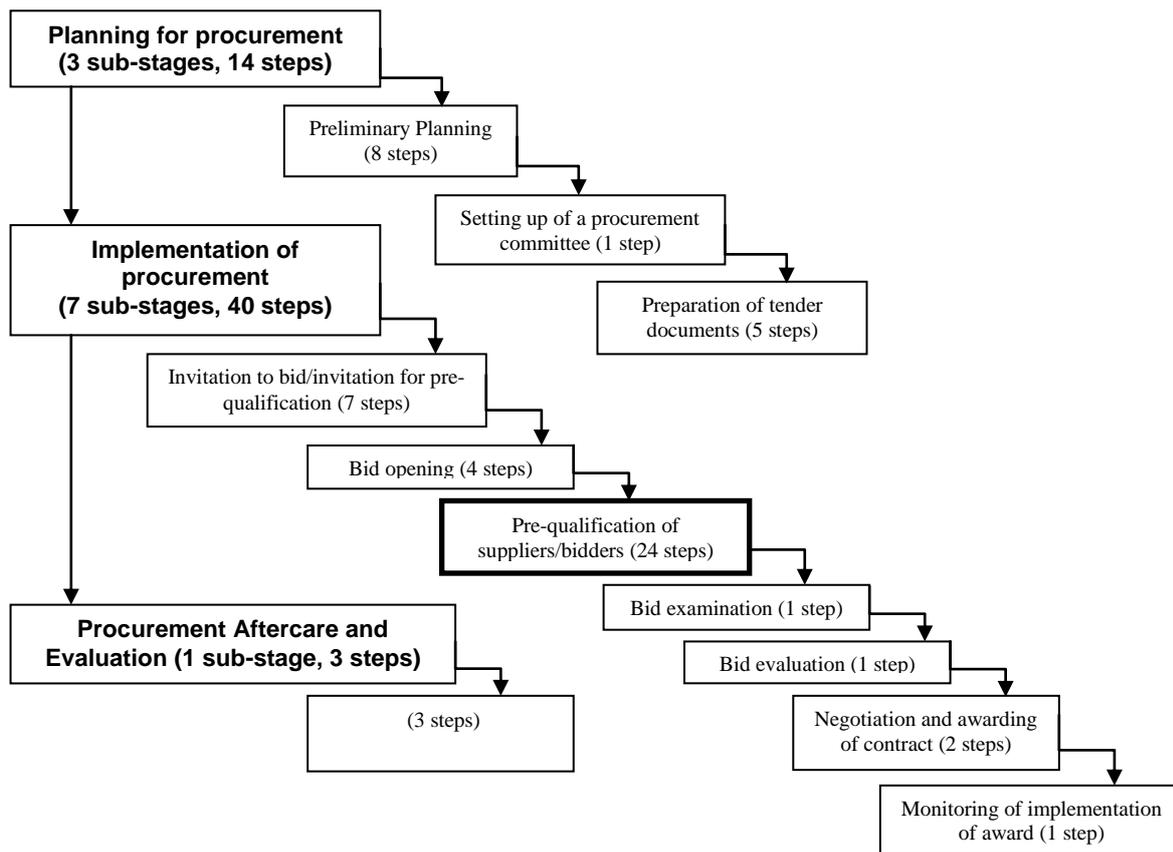


Fig 1: Flowchart of procurement stages for the public sector

RESEARCH METHODOLOGY

This research work employed an exploratory research method aimed at identifying the sample population, collecting data from the sample population and analyzing the data to convey meaning. The main instrument employed by this study was a questionnaire titled ‘Questionnaire on Quantity Surveyors’ Perceptions of the Workability of the Public Procurement Act’. The questionnaires contained a total of fourteen (14) questions. Ten (10) were simple multiple-choice questions, while the four other questions required respondents to fill in some information specific

to projects carried out under the Public Procurement Act of 2007.

The scope of this paper encompassed the collection of the opinions of users of the Act within Minna, over a timeframe commencing January 2009 and ending February 2009. This research work is subject to certain limitations arising from the fact that the Public Procurement Act of 2007 had only been in operation for less than two years; users might not be in a position to have formed opinions based on actual familiarity with the workings of the Act in practice. However, the procurement procedures required by the Act have been in practice in Federal public sector for as far back as the year 2002.

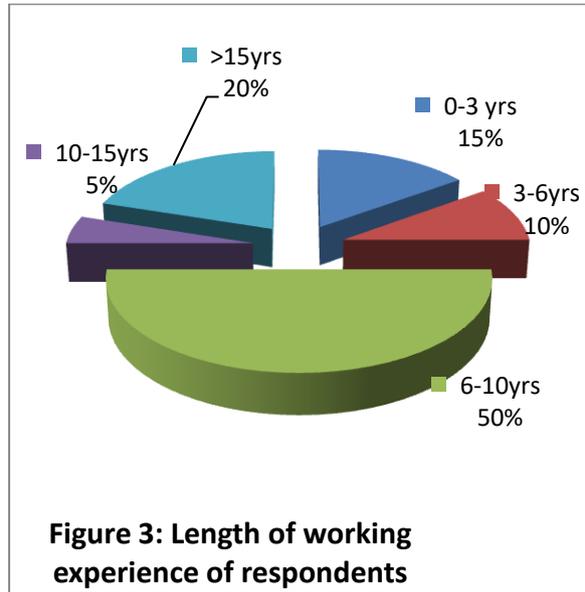
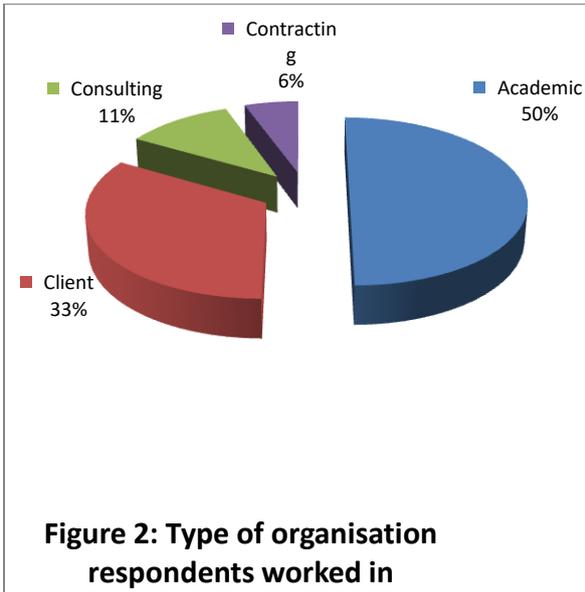
The population of interest to this research work comprised the entire population of quantity surveyors involved with the procurement of construction projects in Minna, Niger State. This number is not readily verifiable. Random selection of respondents working in client organizations and the academia was employed, based on the likelihood of having worked on projects that were carried out under the Public Procurement Act. The respondents also had to be in a position to possess financial knowledge of the projects. For this reason, the study purposively focused on quantity surveyors.

The sample size selected for this study was forty (40) quantity surveyors. However, only eighteen respondents actually completed the questionnaires in the required manner, with information that was needed by the study. This translated to a response rate of 45%. In the opinion of the researcher, this represented a fair view of the construction industry in the study area, based on the assertion of Moser and Kalton (1971) that the result of a survey could be considered as biased and of little importance if the return rate was lower than 30 – 40%.

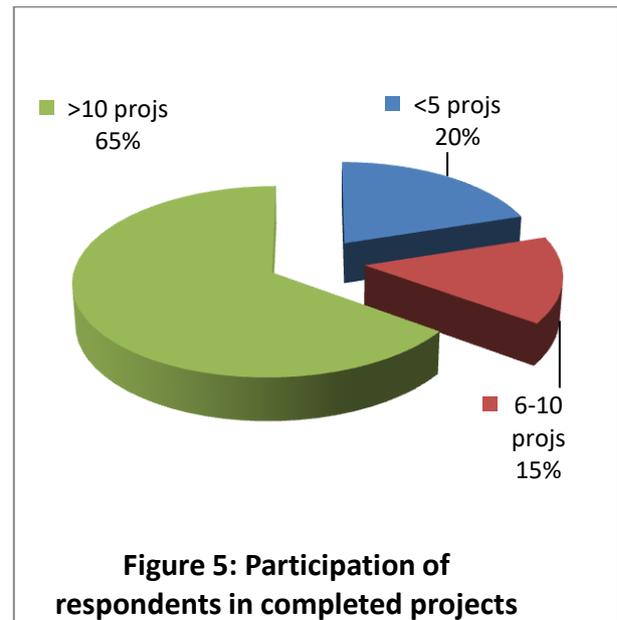
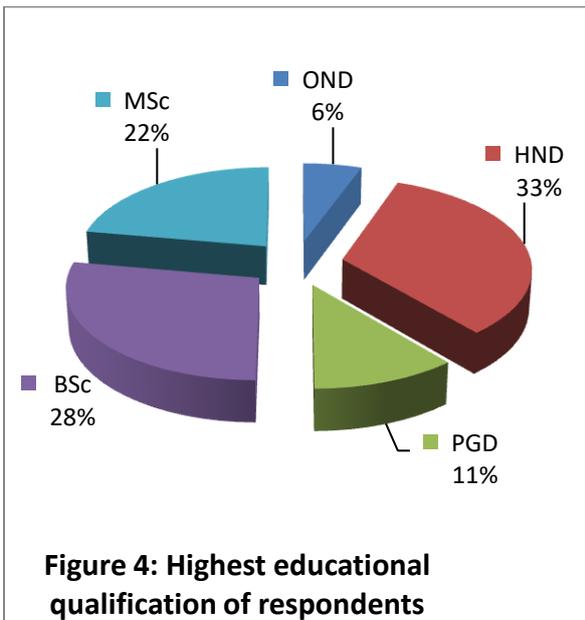
RESULTS AND FINDINGS

Demographic Characteristics of the Respondents

Half of the sample worked in the academia; client quantity surveyors made up 33%, independent consultants (11%), and contractor's quantity surveyors (6%). Fifty percent of the sample had worked for between six and ten years. Occupationally younger workers who had worked for not more than three years made up 15%, while 10% had worked for between three and six years only. Older more experienced professionals, who had acquired more than 15 years' experience, accounted for 20% of the sample (see Figs 1 and 2).



Six percent of the sample had Ordinary National Diplomas, 33% had Higher National Diplomas while 11% had postgraduate diplomas. Twenty-eight percent of the sample was university trained at first degree level, while the rest 22% had Master degrees. Almost two-thirds of the respondents (65%) had been involved in more than 10 completed projects. Twenty percent had only been involved in less than five of such projects, while 15% of the sample had worked 6 – 10 completed projects.



Perceptions of Respondents Regarding the Public Procurement Act

In response to the multiple-choice question “*without the Public Procurement Act of 2007, the completion of the project would have been_____*”, close to half (46%) of respondents felt that without the Act, public procurement would have been achieved at a faster pace and a similar price, although 30% of the sample was undecided (Fig 5).

In response to the multiple-choice question “*To improve project procurement, the Public Procurement Act of 2007 should be_____*”, 66 percent of the sample wanted the Act simplified; only 10% of the sample would like the Act left as it is.

In response to the multiple-choice question “*to improve the workability of the Public Procurement Act of 2007, the Bureau of Public Procurement should_____*”, 40% of the sample favoured the compilation of a central registry of contractors; 27% wanted pre-qualification results valid for three years at a stretch.

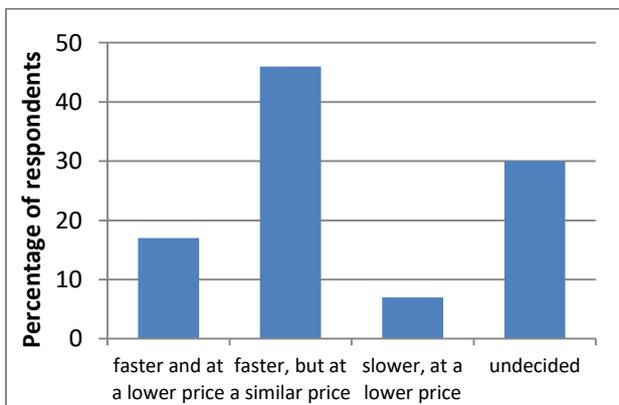


Figure 6: Perception of respondents regarding projects completed under the Public Procurement Act (2007).

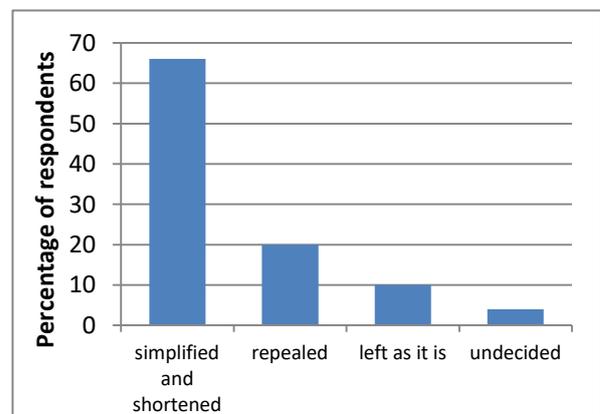


Figure 7: Perception of respondents regarding future use of the Public Procurement Act (2007).

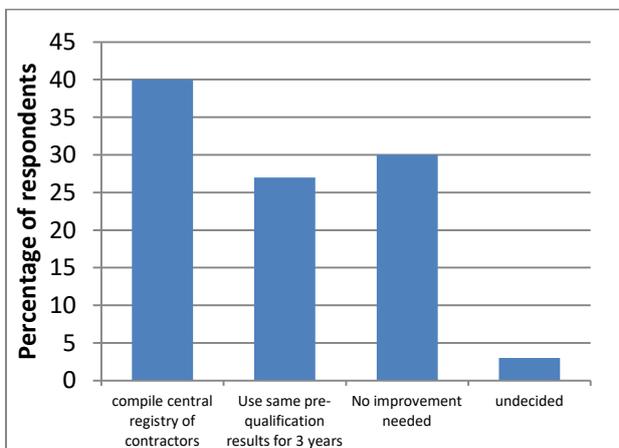


Figure 8: Perception of respondents regarding applicability of the Public Procurement Act (2007).

CONCLUSIONS AND RECOMMENDATIONS

This study has sampled eighteen construction procurement professionals about the workability of the Public Procurement Act 2007. The respondents were asked questions regarding the level of influence the Act has had on public procurement processes, whether the Act needed improvement, and what type of improvement would be required. Conclusions drawn from the results of the sampling were as follows.

Almost half (46%) of the sample felt that without the Act public procurement would have been achieved at a faster pace and a similar price. This probably shows that most people do not see the Act as having had a very positive influence on the process of public procurement. It might have been possible to refute such views, but the empirical data that would be used for comparison of construction prices between pre-PP Act period and post-PP Act period are not readily available within the study area. Ogunsemi (2006), who obtained and compared such data (though the study area was not specified), discovered that construction projects executed without prequalification lacked the requisite cost, time and quality performance with respect to success in construction project delivery in Nigeria. However, the pre-qualification of contractors alone requires 24 separate activity steps on the part of the procurement team (see Fig 8 above). The cumbersomeness of pre-qualification might encourage less-than-thorough scrutiny of bidders, which Ogunsemi (2006) warned against in his recommendations.

Only 10% of the sample would prefer the Act left as it is. Some 66% of the sample would like to see the Act simplified, so that the procurement process could be completed faster, and with less complexity. Twenty percent felt that the Act should be repealed. These findings are important for the long-term applicability of the Act. Even though these findings emanate from a very limited sample, they underscore an important point; legislation is never static or cast in stone. Laws such as the Public Procurement Act 2007 require regular fine-tuning to ensure that they stay in tune with the realities of the procurement environment.

Some 40% of the sample wanted a central registry of contractors to be compiled; this would be available on-line, and procurement teams could tap into it to speedily pre-qualify bidders. Twenty-seven percent felt that with the existing situation of manual pre-qualification, procurement teams should be able to use the results of a procurement exercise for three years before a bidder would require re-prequalification. Thirty percent felt the system worked well enough as it currently is.

This study has therefore arrived at the conclusion that the Public Procurement Act 2007 is, in the opinion of the quantity surveyors sampled in this study, not as workable as it should be. The study has, through a literature search, discovered that other forms of bidding and contracting

are being encouraged in other parts of the world. For example, relational contracting, also known as partnering, which puts emphasis on the development of a lasting relationship between clients and contractors, is on the rise in the United Kingdom and Australia (Egan, 1998; Cheung, *et al* 2005). Such developments need to be explored by the Nigerian construction industry as well, rather than comprehensive legislation, which has a tendency to exact compliance with the letter, rather than the spirit, of the law.

Based on the conclusions reached above, the following recommendations were proposed, in order to improve the perceived workability of the Public Procurement Act 2007:

- 1) The body charged with the overseeing of public procurement in Nigeria, the Bureau of Public Procurement (the 'BPP'), should explore the option of providing a computerized database to hold most of the information that procurement committees would need to source manually, in order to reduce the cumbersomeness of the Act. Information on contractor registration, banking support, status of previous jobs etc could be harvested from past records and on-going jobs, and stored centrally so that retrieval would be possible from any part of the country.
- 2) The relevance of the Act has been called into question by the results of this study, since more than a third (36%) of the sample felt that without the Act, public procurement would have been achieved at a faster pace and a similar price. This is a challenge that the BPP should take very seriously, by developing cost indices databases to compare construction prices and contract durations prior to and after the enactment of the Public Procurement Act 2007.

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