

**KWAME NKRUMAH UNIVERSITY OF SCIENCE AND
TECHNOLOGY, KUMASI**

COLLEGE OF ARCHITECTURE AND PLANNING

DEPARTMENT OF BUILDING TECHNOLOGY

**IMPLEMENTATION CHALLENGES OF PUBLIC PROCUREMENT ACT,
2003 ACT, 663 ON ROAD SECTOR PROJECTS**

**A DISSERTATION SUBMITTED TO THE DEPARTMENT OF BUILDING TECHNOLOGY
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF**

MSC PROCUREMENT MANAGEMENT

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DISSERTATION DECLARATION FORM

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ABSTRACT

The Public Procurement Act of 2003 was intended to address the weaknesses which were inherent in the Public Financial Management Reform Programme (PUFMARP). The objects of the Act among others was to harmonise public procurement processes, secure judicious, economic and efficient use of state resources and to ensure that public procurement is fair, transparent and non-discriminatory. However effective implementation by the procurement entities has been the greatest challenge in the attainment of the said objectives. The research therefore assessed the challenges affecting the implementation of the Public Procurement Act of 2003, by the road sector. Interviews were conducted with officers of the Department of Urban Roads who have been using the Public Procurement Act to procure Works, Goods and Services. The data obtained was then analysed using the thematic matrix approach. The road sector appears to be doing well in terms of the implementation of the Act, except that some sections of the law is affect its effective implementation. The implementation of the Act is being hindered by poor information dissemination, inadequate capacity and training, delay in payment of works executed by service providers and challenges with the Law itself. Many of these challenges account for the delay in completion of projects, abandoned projects and loss of value for money. To enhance effective implementation of the Act, the following, were recommended: amendment to Public Procurement Law is required, proper information dissemination as well as Training and capacity development.

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CHAPTER ONE

1 INTRODUCTION

1.1 BACKGROUND

The Public Procurement Law, 2003 (Act 663) is a comprehensive legislation designed to eliminate the shortcomings and organizational weaknesses which were inherent in the Public Financial Management Reform Programme (PUFMARP) for public procurement in Ghana. The government of Ghana, in consultation with its development partners had identified the public procurement system as an area that required urgent attention in view of the widespread perception of corrupt practices and inefficiencies, and to build trust in the procurement system. A study by the World Bank (2003), reported that about 50-70% of the national budget (after personal emoluments) is procurement related (Collins et al., 2012). Therefore an efficient public procurement system could ensure value for money in government expenditure, which is essential to a country facing enormous developmental challenges.

To ensure sanity and value for money in the public procurement landscape, the government of Ghana in 1996 launched the Public Financial Management Reform Programme (PUFMARP). The purpose of the programme was to improve overall financial management in Ghana. PUFMARP identified weaknesses in the procurement system. Some of these weaknesses included: lack of comprehensive public procurement policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities for procurement entities, absence of comprehensive legal regime to safeguard public procurement, lack of rules and regulations to guide, direct, train and monitor public procurement. The programme also identified that there was no independent appeals process to address complaints from tenderers and independent procurement auditing unit. These findings led to the establishment of the Public Procurement Oversight Group in 1999. The aim of this group was to steer the design of a comprehensive public procurement reform programme which led to the drafting of a public procurement bill in September, 2002 that was passed into law on 31st December, 2003. The Act provides the legal framework and guides all public procurement activities and this includes Urban Roads projects.

1.2 PROBLEM STATEMENT

Every institution that uses state funds for its operations was supposed to comply with the Public Procurement Act 2003, (Act 663) with effect from August 2004. The implementation of the Public Procurement Act is very crucial to these institutions. It is to address the loopholes identified by Public Financial Management Reform Programme (PUFMARP).

However, the problems with the implementation of national laws are pervasive especially in developing countries, Ghana not being an exception. Research has shown that about 50-70% of the national budget (after personal emoluments) is procurement related (Collins et al., 2012). It is estimated that, the compliance rate of the implementation of the Public Procurement Act, 2003 Act 663 in Ghana is between 17.80% - 19.58% (Ernest et al., 2011). This result shows a low compliance rate of the implementation of the Public Procurement Act 663 which is worrying because of the huge budgetary allocation for procurement related issues in Ghana.

Effective implementation of the Act in the road sector is critical as the sector takes up the major share of government expenditure, its importance to development and its present state of high time and cost overruns is worrying and need to be critically assess.

It is therefore important to ensure fullest implementation of the public procurement Act, 2003 Act 663 in the road sector in other to give meaning to the object of the Act which was enacted to harmonize public procurement processes in the public service, secure judicious, economic and efficient use of state resources, and furthermore, ensure that public procurement is fair, transparent and non discriminatory.

1.3 RESEARCH AIM AND OBJECTIVES

1.3.1 AIM

The overall aim of this study is to provide the much needed information to improve on the implementation of the Public Procurement Act 663 on road sector projects.

1.3.2 OBJECTIVES

The specific objectives however include the following:

- To identify the challenges affecting the effective implementation of the Public Procurement Act 663 within the Road section in Ghana.
- To recommend solutions for the effective implementation of the Public Procurement Act 663 within the Road section in Ghana.

1.4 SIGNIFICANCE OF THE STUDY

The success of this research will offer an in-depth knowledge that will be instrumental in enhancing effect implementation of the Public Procurement Act 663 in the road sector.

Findings that arise out of this research would serve as an input for the review of the Act which is currently on-going and the country will benefit by way of effective implementation of the Act and value for money on projects executed. It will also serve as a source of information and reference by other researchers in the future as well as public institutions and construction companies who are involved in procurement related issues.

1.5 SCOPE AND LIMITATION OF STUDY

The study focused on assessing the challenges affecting the implementation of the Public procurement Act, 2003 Act 663 within the Road sector in Ghana. The Road sector is made up of Ministry of Roads and Highways and its subsectors agencies such as Ghana Highway Authority, Department of Feeder Roads, Ghana Road fund secretariat and Department of Urban Road, but the

works focused on the Urban Roads sector because of its location (Urban sector) and the nature of their procurement which are mostly base on the Public Procurement Act (PPA) documents.

1.6 RESEARCH QUESTIONS

The following research questions were articulated based on the following performance indicators: Procurement planning, Procurement cycle management, Procurement management and compliance issues and finally Disposal planning relation to the Public Procurement Act, 2003 Act 663 to fulfill the stated aim and objectives of the study.

1. What are the challenges encountered by the roads sector actors implementing the Public Procurement Act, 2003 Act 663?
2. How is the roads sector dealing with the difficulties in terms of the implementation of the Act?
3. Does the Public Procurement Act need a review to enhance effective implementation?
4. What areas of the Act need a review to enhance effective implementation?

1.7 BRIEF RESEARCH METHODOLOGY

In addressing the key research questions mentioned in section 1.6, it was important to adopt an approach which would enable appropriate data collection, analysis and interpretation of the findings for the benefits of stakeholders and researchers. Subsequently, as in all researches, the study commenced with an extensive literature review to help provide a deep understanding of the recent development in the methodologies used for measuring the implementation of the Act 663 on Road sector in Ghana. Hart (1998), defines literature review as the selection of available documents (both published and unpublished) on the topic, which contain information, ideas, data and evidence written from a particular standpoint, to fulfill certain aims or express certain views on the nature of the topic and how it is to be investigated, and the effective evaluation of these documents in relation to the topic being proposed. To obtain a comprehensive knowledge on the research topic, an extensive literature review was conducted. The literature review provided insightful opportunity to identify an appropriate framework for the study. There after interviews

were conducted to elicit the relevant data and that data was analyzed using thematic matrix approach.

In achieving the objectives stated, the following method of gathering data and information including both primary and secondary sources were used.

1.7.1 Primary Data

Interviews were conducted to serve as the major source of primary data. The interviews were conducted with the most experienced personnel who were purposely selected from the Department of Urban Roads under the Ministry of Roads and Highways for the study.

1.7.2 Secondary Data

The major secondary sources included textbooks, published and unpublished thesis and various reports of some institutions. The data from these sources were carefully selected and reviewed to create a sound conceptual background for the research.

1.8 ORGANIZATION OF CHAPTERS

The dissertation consists of five (5) chapters which are as follows:

- **CHAPTER 1**

This chapter covers the background of the study, the problem statement, the aim and objectives, scope, methodology and the general organization of the study.

- **CHAPTER 2**

This chapter covers the review of literature concerning the subject matter.

▪ **CHAPTER 3**

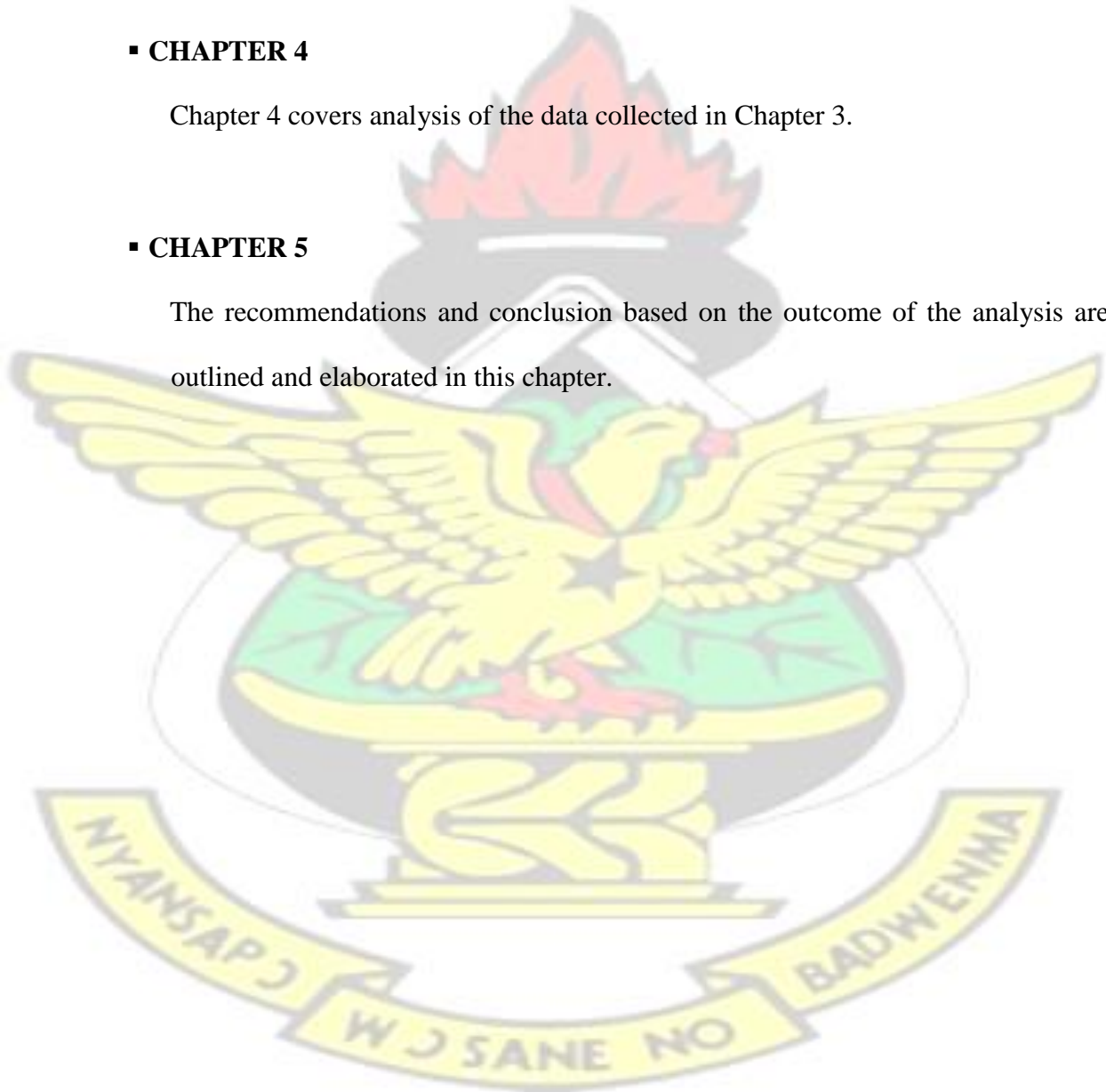
This chapter deals basically with the collection of data by means of interactions and questionnaires.

▪ **CHAPTER 4**

Chapter 4 covers analysis of the data collected in Chapter 3.

▪ **CHAPTER 5**

The recommendations and conclusion based on the outcome of the analysis are outlined and elaborated in this chapter.



CHAPTER TWO

2 LITERATURE REVIEW

2.1 INTRODUCTION

An effective public procurement system is essential for the smooth running of an entity. A poor procurement system results in higher costs to entity and for that matter government and the public. It also interrupts the implementations of projects, increases costs and time which ultimately affect effective delivering of projects. It also causes poor quality, and delays in the delivery of projects to the beneficiaries. Poor procurement also increases the likelihood of corruption, spawns concerns about the effectiveness of the law and its process. It also dampens the possibility of competent firms either national or international from participating in bids; this goes a long way to deprive an entity of receiving the best goods, works and services and the best price (World Bank, 2000). This research looked at the procurement law implementation on the road sector in Ghana.

This chapter reviews theoretical work done on Public Procurement in general. The review focuses on the overview of Procurement reforms in Ghana and the implementation of the Public Procurement Act, 2003. In this chapter, a number of relevant literatures on the Public Procurement reform, implementation and level of compliance in Ghana are presented in order to establish and provide answers to the research question.

2.2 DEFINITION OF PUBLIC PROCUREMENT

According to Ayitey (2012), Procurement is a means of obtain materials, goods and services at the right quality, in the right quantity from the right source delivered to the right place at the right time at the right price, to achieve an organizational objective.

Public Procurement Act, 2003 (Act 663), also define procurement as a process of acquiring goods, works and services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place for the direct benefit or use of governments, corporations, or individuals using public funds.

Public procurement is the process by which governments and other publicly-funded entities acquire goods, works, and services needed to implement public projects. It accounts for at least 15% of the world's gross domestic product (GDP), and even more in African countries. Reducing bottlenecks, combatting corruption, and building capacity in procurement help governments maximize the buying power of their budgets and improve the quality of service delivery to their citizens. Competitive and transparent public procurement systems are therefore a key element to achieving sustainable development and more prosperous societies in Africa (World Bank, 2013).

2.3 PUBLIC PROCUREMENT SYSTEMS BEFORE THE REFORMS

Since independence, Ghana has attempted to address weaknesses in its public procurement process by the passage of several financial and legal instruments. These have come in the forms of constitutional, legislative instruments, administrative instructions and financial circulars.

In 1960, the Government enacted the Ghana Supply Commission Act which was reviewed later in 1990 by PNDC law 245. In the same year, Contracts Act, Act 25 of 1960 was also passed. In 1976, the National Procurement Agency Decree SMCD 55 was passed by the Supreme Military Council. In 1979, another law, the Financial Administration Decree SMCD 221 was also passed. All these laws, decrees and instruments were meant to provide a comprehensive framework of administrative powers to regulate the activities of procurement within the public sector (PPA, 2006). Unfortunately, none of these legal frameworks included the establishment of an effective oversight body to oversee the successful implementation of these laws. Both the Ghana Supply Commission and National Procurement Agency were established as Central Procurement Agencies which were involved directly in frontline procurement and therefore did not perform oversight responsibility (Verhage et al., 2002).

These procurement regimes, no doubt, led to a system which was characterized by unclear legal framework, lack of harmonized procedures and regulations and unclear institutional and organizational arrangement required in the management of the public procurement process. It became clear therefore that, there was the need to critically examine the processes and procedures of public sector procurement to ensure operational efficiency and institutional capacity to address procurement issues (Ayitey, 2012).

2.4 PUBLIC PROCUREMENT OVERVIEW

It is worth mentioning that public procurement represents about 24% of total imports of this country and 14% of Gross Domestic Product (GDP). Public procurement also represents between 50-70% of the national budget apart from personal emoluments. You will therefore agree with me that an improvement in the public procurement process will in no doubt create wealth and reduce poverty (World Bank, 2008).

It is in the light of these challenges that the government after a major review of its public expenditure system, in 1993, decided to establish a comprehensive public financial reform programme designed to strengthen its Public Financial Management System. This reform programme known as Public Financial Management Reform Programme (PUFMARP) became operational in 1995. The objective of PUFMARP was to promote efficiency, transparency and accountability in the public financial management system. A major component of the PUFMARP programme was the Public Procurement Reforms (Ameyaw et al. 2012).

The World Bank in 2003 initiated a move to encourage developing countries including Ghana to strengthening their procurement structures. This was to make the Procurement systems more effective and also to encourage capacity building. To address the weaknesses identified by the World Bank and PUFMARP, the Ministry of Finance and Economic Planning in 1999 established a steering committee known as Public Procurement Oversight Group (PPOG) to assist in the design of a comprehensive public procurement reform programme. The group completed one of its major objectives by drafting a public procurement bill in September 2002.

The draft bill was finally passed into law on 31st December 2003 and was called Public Procurement Act 2003, (Act 663) (Kwaku, 2009).

The Act essentially provides a framework for developing and strengthening procurement institutions and streamlining their operational processes in the context of poverty reduction, private sector development and good governance as well as anti-corruption (Kwaku, 2009).

2.5 IMPLEMENTATION OF THE PUBLIC PROCUREMENT ACT, 2003 (ACT 663)

In 2007, the expenditures for public procurement in Ghana were estimated at 17 percent of GDP and around 80 percent of tax revenue.’ Due to the important role public procurement plays, there is a strong link between the efficiency of the national procurement system, its impact on Public Financial Management as a whole and the achievement of development goals stated in the GPRS II. Therefore effective implementation of the public procurement Act is highly necessary (World Bank, 2008).

The challenges that face countries wanting to implement national laws include a lack of education and awareness, a lack of capacity, a lack of political will, and a culture of bureaucratic secrecy (Laura and Richard, 2007). General lack of professional input in management has led to various ad hoc arrangements including the use of external expertise at various stages of the procurement process. An assessment of about 100 selected entities on the implementation of the procurement law revealed that majority of practitioners involved in public procurement lacked the requisite professional expertise and knowledge of the law governing procurement practice (Agyenim, 2007).

The institutionalisation of national laws and its implementation in developing countries are pervasive (Ameyaw et al., 2012). Inadequate funding, deficient staff strength and organisational and logistical limitations are among some of the challenges bedeviling the procurement operations in Africa. For the public procurement law to achieve its objective there must be a concerted effort

by all stakeholders, backed by very firm political will and adequate budgetary support to ensure an effective implementation, to streamline and improve public procurement procedures in Africa. Inadequate funding is the major problem affecting the implementation of the public procurement laws in Africa (Ameyaw et al., 2012).

According to Ernest et al. (2011) implementation of the public procurement is seriously challenge due to Lack of qualified procurement personnel, incorrect interpretation and application of some provisions of the procurement Act, slow pace in regularizing the Draft Regulations, lack of clear procedures for Emergency Procurement, lack of Training Avenues or Institutions, poor Record Management (scattered files), poor handling of Suppliers' Complaints, poor Procurement Planning, Mobilization & Implementation, poor Contract Management and high cost of Advertisement. This inefficiency has led to the principle of that "value for money" is not achieved.

In 2005, the Joint Venture for Procurement was set up with a mandate to Strengthening Procurement Capacities in Developing Countries to ensure Effective implementation. Ghana has been actively involved and has developed a methodology for assessment of compliance and performance of procurement entities, referred to as the Public Procurement Model of Excellence (PPME). The tool was piloted in 2005 and a large scale assessment of more than 200 entities to ensure value for money (VFM) (World Bank, 2008).

2.5.1 Modification of Contract

A review of about 132 works contracts in 2002 which constitute an important part of public expenditure indicated that about 84% incurred cost-overruns of up to 30% of the initial amount (Ernest et al., 2011). This position of Ernest et al. (2011) was upheld by Kikwasi (2012), who argues that delays in project completion as a result of modification to the project has serious negative implication such as time overrun, cost overrun, negative social impact, idling resources and disputes

2.5.2 Organizational Structure, Human Resources Capacity and Training

Procurement needs to be considered as a profession and recognized as an important function on a par with other important functions, such as finance and human resources management (Cihan and Istvan, 2011). Thus procurement function needs to be structured, and resources provided on a par with its importance. The number and professional qualifications of procurement staff is of the utmost importance in ensuring effective and efficient procurement processes. According to Cihan and Istvan (2011), dynamic nature of procurement, including the expansion of activities and increasing technical complexity, calls for regular professional training of procurement staff. Staff without proper training should not be placed in positions of responsibility over procurement matters. Staff employed in key procurement posts should have completed or should be working towards advanced certification on procurement.

Increasing procurement knowledge and expertise across the organizations could be one of the most effective ways to improve the procurement function (Cihan and Istvan, 2011). Staffs need regular training to update their knowledge and capabilities in order to be able to cope with fastdeveloping procurement challenges in a dynamic environment. Given that procurement involves substantial amounts of resources and complex situations that require competencies in a wide variety of areas (i.e. market and cost-benefit analysis, evaluation, negotiation, quantitative and qualitative methods, ethics, etc.) it is necessary to have highly qualified staff so as to avoid any unnecessary waste of resources (Cihan and Istvan, 2011).

Rapid changes in the type and complexity of procurements call for regular professional training of procurement staff. To that effect organizations should have a dynamic training plan based on a training needs assessment, and it should be regularly updated. Executive heads should consider increasing procurement staffing and training opportunities as an investment capable of providing a relatively quick payback in terms of financial savings and best value for money

Whereas adequate recruitment practices should be a standard in ensuring that qualified staffs are employed in the procurement function, training is imperative in order to maintain and develop skills, based on needs assessment.

2.5.3 Communication

It is good practice for agencies to provide feedback to tenderers as a matter of routine. The process for providing feedback can be built into the agency's procurement procedures. By providing good feedback to tenderers, agencies will educate the market about the procurement process and their expectations and this, in turn, may assist to improve the standard of submissions in the future (GPP, 2007).

According to Good Procurement Practice (GPP) (2007), Tenderers can benefit from receiving feedback by getting the opportunity: to obtain information and to help them understand how and why decisions were made in relation to their submission: what they did well and didn't do well, and any areas of their submission that did not comply with the approach to the market;

- a) to obtain a better understanding of the agency's expectations, assisting them to prepare and submit a higher standard of submissions in future procurement processes;
- b) to establish or consolidate a fair, open and ethical relationship with the procuring agency and gain confidence in the procurement process; and
- c) to accept an offer of help and guidance to increase their future chances of undertaking procurement transactions with the Government Ghana.

According to Good Procurement Practice (GPP) (2007), Agencies can benefit from providing feedback by getting the opportunity to:

- a) be accountable and transparent and show that their procurement process is robust and defensible;
- b) establish or consolidate a fair, open and ethical relationship with tenderers;

- c) receive valuable information from tenderers regarding the structure and content of the request documentation;
- d) encourage confidence in the procurement process, thereby keeping tenderers in competition and improving value for money prospects;
- e) educate tenderers as to their expectations, thereby encouraging improved submissions for future procurement processes; and
- f) clear up any misconceptions and resolve any possible disputes with tenderers, thereby minimising complaints.

Section 65(9) of the public procurement Act, 2003 Act 663 states that procurement entity shall give notice of the procurement contract in writing to unsuccessful suppliers and contractors and the notice shall:

- a) specify the name and address of the successful supplier or contractor who has entered into the contract and the contract price;
- b) be given after the commencement of the procurement contract and may include the provision by the supplier or contractor of security for the performance of the contract;
- c) for contracts above the threshold in Schedule 3, be published in the Procurement Bulletin which shall disclose the names of firms or individuals awarded contracts, the start and completion dates, as well as the value of the contracts.

This means that after issuing the letter of acceptance to the winning firm, the unsuccessful tenderers must also be notified and their bid securities returned to them. This position was confirmed by Acquaye (2011), who argues that in view of the time frame and confidentiality in the procurement process, unsuccessful tenderers may not know when the contract has been awarded. Hence all unsuccessful tenderers must be notified in writing.

2.6 PROCUREMENT REFORM AT THE MINISTRY OF ROADS AND HIGHWAYS

The Ghana Supply Company Limited (GSCL) was the agency in charge of all public goods purchases since January 2000. However, unqualified personnel, absence of proper planning for the necessities, lack of a proper database, and delays in budgetary allocations led to poor projects implementation. As a result of these problems, other ministries decided to implement their own procurement structures which were not successful either. The government is obliged to serve the ministries. Thus each ministry having its own procurement process meant the government had to provide each ministry with its needs separately, thereby creating inefficiencies in the system (Eyra, 2012).

The Ministry of Roads and Highways was the first ministry to remedy its procurement practices. Decentralization was the hallmark of their key strategies because responsibilities are shifted from the ministry to projects implementation units which help ease the burden of procurement activities. The research suggested that it was a good idea because it meant that more responsibility was given to the people that were in charge of the projects implementation. Shortcomings were still identified in this procedure. Few of them were unqualified personnel, lack of procurement procedures and organizations and inadequate policy strategy. To combat these problems, the Ministry of Roads and Highways collaborated with the World Bank to train the contract managers on goods, works and services procurement. They developed a set of rules, actions and standard documents to be followed. Interestingly the procurement guidelines and procedures that were laid out were not just a replication of the ones the World Bank issued (World Bank, 1997) but addressed problems faced in Ghana as and when procuring was needed.

2.7 THE GOVERNMENTS' SELF-ASSESSMENT

The Government of Ghana has developed a tool to measure compliance and performance of the public procurement system at the entity level. The Public Procurement Board presented the

Public Procurement Model of Excellence (PPME) tool and the results of its pilot assessment at the OECD Joint Venture (JV) on Procurement in Manila in February 2006, and this initiative was highly appreciated by the JV members (World Bank, 2008).

The PPME tool allows for the qualitative and quantitative measurement of public procurement at the level of the procurement entity. Taking into consideration that Ghana's Public Procurement Act (Act 663) was approved in December 2003, it is highly commendable that a pilot selfassessment of the procurement system using the PPME tool was carried out as early as 2005 (covering 100 entities), followed by a more comprehensive assessment in 2006 including 213 entities (World Bank, 2008).

The self-assessments have been instrumental in disseminating the new legislation and to enhance management awareness at the entity level on the operational challenges involved. Moreover, they highlight the commitment of Ghana to monitor the implementation of its procurement law.

2.8 PERFORMANCE ASSESSMENT OF GHANA PROCUREMENT ENTITIES

The Public Procurement Authority in 2006 used the PPME to assess the performance of one hundred (100) entities in Ghana. The whole assessment focus on four (4) key performance indicators such as:

- Management Systems;
- Information and Communication;
- Procurement Process; and
- Contract Management (Adjei, 2006).

The result showed an overall procurement performance of 47.61% in program design (52.3%), management systems (40.8%), procurement processes and contract management (46.1%). The study also revealed that there was a low advertisement of tender opportunities, delay in payment of works executed, low awareness of publication of contract award and poor use of dispute mechanism (Adjei, 2006).

2.8.1 Limitation of PPME and other Assessment Tools

The PPME and other assessment tools have been designed to generate information on the level of performance of procurement entities. The tool fails to measure the level of compliance hence the development of a Compliance Assessment Tool.

2.8.2 Compliance and Performance Assessment of Uganda Public System in 2005

Marvin Baryaruha in 2005 carried a compliance and performance assessment research on Uganda public procurement system and indicated that the compliant by PPEs has risen to 90% and a further 8% are partially compliant. Only 2% are not compliant.

2.9 PUBLIC PROCUREMENT LESSONS FROM KENYA, TANZANIA & UGANDA

Comparing the public procurement systems in Kenya, Uganda and Tanzania in terms of efficiency, transparency and whether they're in line with international best practices (Walter and Paul, 2003). Though they have adopted procurement on the same basis but experienced different reforms

By 1974, the three countries were using the same procurement system. However, every institution had its own self-governing and independent supply system. Major goods, services and works were procured through the Central Tender Boards (Walter and Paul, 2003). The three East African countries came together to create a shared procurement manual, the East African Supplies Manual. This was a good idea but not sustainable. The manual ceased to exist because the East African Community collapsed in 1977. The three countries thus reversed to their status quo. Each country

designed new procurement guides which did not last long before they also collapsed Boards (Walter and Paul, 2003).

Obviously, there was a problem with their system and all they intend to achieve failed. It was clear from this failure that, they need to reform their procurement systems. According to Walter and Paul (2003), “the Finance and Ordinance Act of 1961 guided public procurement in Tanzania”. However, the Act did not provide specific process of procurement (Walter and Paul, 2003). This was the reason why public procurement in Tanzania had problems.

In their quest for an efficient and transparent procurement system and getting it in line with international best practices in procurement guidelines, serious bottlenecks have continued to delay their efforts to implement a competitive and fair procurement processes (Walter and Paul, 2003). Some of the problems were lack of data and records on public procurement.

Public procurement reforms then came up as a result of finding the best way of resolving the problems that has bedeviled their public procurement systems (Walter and Paul, 2003). In Kenya, in 1986, SGS Consultants evaluated the public procurement system, and found that a reform was needed, because the existing procurement system was not efficient in its operations. According the SGS Consultants, the state lost large amount of money through shoddy deals and that “the procurement system in Kenya, Uganda and Tanzania lacked transparency and fair competition, procurement staff were not adequately trained and lacked professionalism” (Walter and Paul, 2003). In the late 1990s, the Government of Kenya introduced the public procurement reform process. The intention behind the reform was to bring about transparency and create trustworthy institutions (Walter and Paul, 2003).

In Uganda, the reform brought about the establishment of a National Public Procurement Unit to oversee all matters of public procurement. In Tanzania, the reforms were enacted on the basis of a study conducted by the Crown Agents, an international consultant (Walter and Paul, 2003).

2.10 SUMMARY OF LITERATURE REVIEW

In Ghana, procurement is still “undervalued compared to the other key areas of Public Sector Reforms” (Verhage et al, 2002). The paper sought to bring together the implementation challenges of the procurement law passed in different countries.

The Public Procurement Act was promulgated to correct all the weaknesses identified with the Ghana procurement system. The Act has established a regulatory framework for all public procurement activities using public fund. The Act sets out the structure at various levels of entities, procurement rules and procedures. It is therefore imperative to understand the implementation and the compliance to the provision in the Act.



CHAPTER THREE

3 RESEARCH METHODOLOGY

3.1 INTRODUCTION

Two known research strategies i.e. quantitative and qualitative research, were available to the researcher. These two differ in many ways but can complement each other (Baiden, 2006). The decision to follow any particular strategy depends on the purpose of the study, the type and availability of information for the research (Baiden, 2006). Qualitative approach for the research design and method was adopted for this study. The two main research strategies are discussed below to clarify the choice adopted in this research.

3.1.1 Quantitative research

Quantitative research follows a deductive approach in relation to theory and is concerned with the design measurement and sampling. The strategy employs the use of mathematical and statistical techniques to identify facts and causal relationships. It follows the practices and norms of natural scientific model and particularly, positivism; and viewing social reality as an external, objective reality. Quantitative research is, therefore, objective in nature and based on testing a hypothesis or theory composed of variables (Baiden, 2006). Frechtling and Sharp (1997) characterized the common data collection techniques used in quantitative research as questionnaires, tests and existing databases. Hard and reliable data are often collected in quantitative research and, therefore, emphasizes on quantification. According to Baiden (2006) samples collected for quantitative research are often large and representative. This means that quantitative research results can be generalized to a larger population within acceptable error limits. The validity of results depends

on the careful choice of measuring instrument and how accurately it measures targets (Patton, 2002).

Quantitative research has, over the years, received criticisms from researchers as an appropriate research strategy. These criticisms were outlined by Baiden (2006) as: " failure of quantitative researchers to distinguish between people and social institutions from the natural world; " artificial measurement process and a sense of precision and accuracy not proceeding from the true or claimed source; " reliance on instruments and procedures that hinders the connection between research and everyday life; and " creation of a static view of social life that is independent of people's life in analyzing the relationships between variables.

3.1.2 Qualitative research

Qualitative research follows an inductive approach in relation to theory. It emphasizes words rather than quantification in the collection and analysis of data. Qualitative research is subjective in nature and is exploratory and attitudinal (Baiden, 2006). Qualitative researchers often rely on interpretive or critical social science and follow a non linear research path.

Qualitative researchers tend to collect three kinds of data; in-depth and open-ended interviews; direct observations and written documents. These yield quotations, descriptions and excerpts which are either unstructured or semi-structured (Patton, 2002). The data are soft, rich and deep and determine what things exist rather than how many there are (Baiden, 2006). The credibility of qualitative research depends on the skill, competence and the rigor of the researcher (Patton, 2002).

Qualitative research has not escaped criticisms from researchers. According to Baiden (2006), critics of qualitative research argue that the strategy: is too impressionist and subjective and the findings are based on unsystematic views about what is important and significant; " is difficult to replicate because it relies on unstructured data and because there are hardly any standardized procedure to follow, the quality depends on the researcher's ingenuity; " has problems of generalization because the scope of qualitative research is often restricted: and " lacks transparency

due to the difficulty which sometimes arises from the establishment of what the qualitative researcher actually did and how the study conclusions were arrived at.

3.1.3 Table 3.1 : Characteristics of Research Designs

Quantitative	Qualitative	Mixed methods
<ul style="list-style-type: none"> • Testing objective theories. • Examining relationship between variables. • Analysis of numbered data. • Data analyzed deductively. • Data analyzed using descriptive and inferential statistics. • Formulating mathematical laws to depict patterns in nature. 	<ul style="list-style-type: none"> • Exploring and understanding. • Focus on individual meaning. • Analysis of text data. • Data analyzed inductively. • Data reduced to themes and categories and analyzed subjectively. • Emphasis on description and discovery. • Close interaction between the researcher and what is researched 	<ul style="list-style-type: none"> • Combines both qualitative and quantitative strategies. • Collects both qualitative and quantitative data. • Employs analytical tools from qualitative and quantitative

(Creswell, 2009, Rudestam and Newton, 2001)

3.2 STRATEGY ADOPTED IN THIS RESEARCH

The choice of a particular type of design would influence the specific strategy of inquiry and research methods that would be employed for a particular study (Creswell, 2009). Qualitative,

quantitative and mixed methods of research design have their unique characteristics; the choice of one would depend on the philosophical worldview of a researcher and the purpose of the study.

The characteristics of qualitative research adequately fit the philosophical worldview and purpose of this study. This study seeks to explore and understand the challenges for the implementation of the Act. The researcher closely interacted with participants, collect qualitative data (audio and text) and analyzed them using thematic matrix.

A qualitative strategy was adopted in this research for reasons outlined below:

- The research was aimed at finding out the challenges regarding the implementation of the Public Procurement Act, 2003 on Road sector projects and a holistic approach to enhancing effective implementation of the Act, 663.
- The choice of this design was also informed by the fact that understanding the nature of the challenges was more important then, suggesting to the respondents what one thinks the actual problem was.
- The findings and subsequent conclusions drawn in the study were applicable within the context in which the research was carried out.
- The study did not involve any creation and subsequent testing of a theory or hypothesis which are associated with quantitative research as identified by Ashiboe-Mensah et al., (2013).
- The study also covered issues in depth and involved detailed rather than numerous descriptions.

This approach was necessary to elicit the needed information to appreciate the objectives of the study and understand the attitudes and behaviours of the members that made of the team. The data available in the research quotations were from interviews only. They were soft, descriptive and less structured data and had to be collected using techniques such as interviews. The data were analyzed using non-statistical techniques and involved the creation of typologies as suggested by Ashiboe-Mensah et al. (2013).

3.3 STRATEGY OF INQUIRY

The specific strategy of inquiry for this study was case study research. Creswell (2009) describes case study research as “*a strategy of inquiry in which the researcher explores in depth a program, event, activity, process...*” This description fits the aim and research question for this study which essentially is to critically explore the challenges with the implementation of the Public Procurement Act and suggest ways for effective implementation. Creswell (2007) described case study as an approach to research where the investigator explores a “*bounded system*”. Bounded system for this study would be procurement activities at the Department of Urban Roads. According to Simons (2009), the focus of case study as a method of inquiry is to form “*in-depth understanding of a specific topic... to generate knowledge and/or inform ... professional practice*”. The description of case study by Simons (2009) encapsulates the primary purpose of this study which is to generate a deep understanding of the challenges the road sector faces implementing the Public Procurement Act, 2003 Act 663. The outcome of the study would inform/enhance effective implementation of the Act.

3.4 RESEARCH METHODS

Specific methods employed for data collection, analysis and the write-up for this study are presented below.

3.4.1 Data Collection

3.4.1.1 Research Participants

The case for this study is the Department of Urban Roads’ headquarters and Accra Metropolitan Roads Department. This case was chosen because the purpose of the research was to find out the

challenges face by the road sector implementing the Act and Department of Urban Roads is the project implementation unit of the ministry of Roads and Highways. Further, the study was limited to Department of Urban Roads. Based on the researcher's experience of projects management unit in Ghana, the research participants for this study were Procurement officers, Contracts managers and Quantity Surveyors. This is because they are the ones who handle procurement activities at the Department of Urban Roads. The headquarters takes procurement decisions for all the cities because the project manager is the Director representing the interest of Minister for Roads and Highways.

3.4.1.2 Purposeful Sampling

Purposeful sampling instead of random sampling was used for selecting participants for qualitative research (Creswell, 2007). The idea of purposeful sampling is to select participants with a good understanding of the subject being studied to gain relevant data to answer research questions (Creswell, 2007). For case study research where the objective is to gain a deep insight into a case, purposeful sampling would be the most suitable means of selecting participants (Simons, 2009). For this study, Procurement officers, Contracts Managers and Quantity Surveyors with Department of Urban Roads who are the most experienced and have been using the Public Procurement Act were purposely sampled.

3.4.1.3 Types of Data

To develop an in-depth understanding of a case, multiple sources of data are collected (Simons, 2009; Creswell, 2007). Interview, documents, artifact, and audio-visual materials are among the common sources of data for case studies (Yin, 2009; Creswell, 2007). Procurement is highly sophisticated and mostly based on experience; hence interviews were the key sources of data for this study. Further, documents such as the Public Procurement Act were also relied on for the study.

3.4.1.4 Exploratory Interviews

Exploratory interviews were conducted to identify the challenges the road sector face implementing the Public Procurement Act, 2003. The conclusions from the interviews formed the basis for the analysis. The first stage of the research process was to gather information from procurement experts on the road sector projects. Interviews were used because, according to Baiden (2006), they yield direct quotations from people about their experiences, opinions and feelings. The interviews were, therefore, very credible way of obtaining information from procurement experts within the Department of urban roads. Interviews can be exploratory or standardized (Oppenheim, 2003). This research follows an exploratory approach to allow depth and flexibility in administration and thematic in its analysis. Exploratory interviews are useful when an idea is being developed. They attempt to understand how people think and feel about the issues being researched (Baiden, 2006).

3.4.1.4.1 Interview Objectives and Guide

The exploratory semi-structured interviews were conducted in this research to explore expert opinions and knowledge from the use of the Public Procurement Act, 2003 on procuring the road sector projects. The objectives were to:

- explore challenges of implementing the Act, 663;
- Identify ways of effective implementation to ensure value for money.

To achieve the above objectives, an interview guide was developed and given to the interviewees prior to the interviews. The guide covered areas such as challenges with the public procurement Act, 2003 itself and Department of Urban Roads as an institution.

3.4.2 Method of Analysis

Qualitative data analysis is a challenging process and requires creativity and systematic searching. The analysis of qualitative data takes place in four stages: data reduction, data display, conclusion drawing and verification. These stages occur throughout the duration of any qualitative research

project (Baiden, 2006). The analysis can be done manually, when the volume of data is manageable, and information technology (IT) tools are available for large volumes of data (Baiden, 2006).

An adapted form of "thematic analysis" was used in the research to analyze data from the interviews. Thematic analysis is an inductive matrix-based method of qualitative data analysis used for ordering and synthesizing data under conceptual headings emerging from the field of enquiry. The method helps to define concepts, create typologies, find associations and seek explanations for the emerging phenomena. It also allows the shifting, charting and sorting of data into key issues and themes and enables rapid comparison of research findings across the cases investigated (Baiden, 2006).

The process followed in analyzing the interview data is described below:

- The interviews were transcribed verbatim. This is because interview data are in the form of words and have to be translated into text for further manipulations.
- To make any meaning out the data, they were sorted into emerging themes.

The conclusions from the interviews provided the basis for recommendations on effective implementation of Public Procurement Act, 2003.

3.4.3 Validation Strategy

Validation for this study was on two fronts. Firstly, internal validity of respective cases was ensured by using multiple sources of data (Simons, 2009; Yin, 2009). Convergence and divergence of data would inform sense making and validation (Yin, 2009). Cross comparison of evidence from the interviewees as well as information from literature ensured external validity (Simons, 2009; Yin, 2009). Hence, triangulation of data from different sources helped ensure validation.

3.4.4 Research Ethics

Research ethics is an important part of qualitative research which involves the collection of primary data (Rudestam and Newton, 2001). The anonymity of interviewees was ensured through the use of coded identification (Creswell, 2007; Rudestam and Newton, 2001).

Participants were adequately informed of the purpose of the study and their role clearly stated. Anticipated risks and potential benefits of the study were also communicated to participants (Rudestam and Newton, 2001). Participants were informed that their participation in the study is voluntary and their consent will be sought before the use of interview data and other information that were collected (Creswell, 2007; Rudestam and Newton, 2001).

3.4.5 Limitation of Research Design

One of the fundamental limitations of case study research is generalization (Simons, 2009). Because case studies look into a particular subject in-depth in a particular context, it is not possible to generalize the findings of a particular case to all cases (Simons, 2009). The Department of Urban Roads is one of the projects management Unit of the Ministry of Roads and Highways and the sample size would not be enough for generalization beyond the cases that was studied. However, the outcome is useful for the effective implementation of the Public Procurement Act on the Road sector and provides information for cross case comparisons in future studies.

CHAPTER FOUR

4 INTERVIEW RESULTS AND ANALYSIS

4.1 INTRODUCTION

Interview data gathered from the exploratory semi-structured interview at this stage of the research were recorded on thematic areas. To enable detailed analysis to be carried out, the data were transcribed verbatim. The transcribed data were then sorted out into various themes under challenges with the Public Procurement Act, 2003, Act 663. These issues covered responses or data that were related to sections of the Act 663 affecting its effective implementation on road sector projects. This section presents the results of the interviews. Using an adapted form of "framework analysis" from the work of Baiden (2006), in-case and cross-case assessment of practices towards effective implementation of the public procurement Act was carried out.

4.2 PROFILE OF INTERVIEWEES

DUR1 was the Contracts Manager for Department of Urban Roads and currently deputy director for procurement at the ministry of roads and highways. He has been working with the Procurement Act since its inception to date. He is also a resource person for the Ghana Institute of Management and Public Administration GIMPA and World Bank procurement training for the West African English speaking countries on World Bank procurement guidelines.

DUR 2 is currently the Contracts and Procurement Manager at the Department of Urban Roads in charge of Greater Accra region. He has also been working with the Public Procurement Act since 2003. He is Department of Urban Road, Greater Accra regional representative to the central and ministerial review board.

DUR3 is currently the Deputy Contracts and Procurement Manager at the Department of Urban Roads in charge of Greater Accra region. She has also been working with the Public Procurement Act since 2003. She is Accra Metropolitan Roads Unit representative to the regional review board.

DUR4 is the deputy Contracts and Procurement Manager at the Department of Urban Roads head office. He has also been working with the public procurement Act since 2003. He is a procurement specialist and a member of chartered institute of purchasing and supply (CIPS). He has also been working with the World Bank Procurement and other donor funded projects under the implementation and supervision of the Department of Urban Roads.

DUR5 is the current Contracts and Procurement Manager at the Department of Urban Roads. He is in charge of all procurement related issues including donors and government of Ghana sponsored projects at the Department of Urban Roads. He is also a resource person for the GIMPA and World Bank procurement training for the West African English speaking countries on World Bank procurement guidelines and Ministry of roads and highways training school at Koforidua. He has also been working with the public procurement Act since 2003. He is a procurement specialist and a member of chartered institute of purchasing and supply (CIPS).

4.3 ACT, 2003 ACT 663 IMPLEMENTATION ISSUES

Interview data on challenges with the Procurement Act, 663 affecting its implementation are summarized in Appendix 1. The data were sorted into main themes, within Act 663 context, identified from the verbatim transcriptions. The issues identified are detailed below the following sections

4.3.1 Modifications

Section 87 (1) Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of the contract by more than 10 percent of the original price, a procurement entity shall inform the appropriate Tender Review Boards in the case of contract subject to review by the Tender Review Board of any proposed extension, modification or variation order with reasons.

DUR 1 “this particular provision has a serious implication on procurement of works and project implementation. A lot of our projects are currently experiencing high risk due to excessive cost and time overruns”.

DUR 2 “Because there is no seal as to percentage of variation allow on a project as per this section of the Act, a lot of our projects are heavily loaded with unnecessary variation keeping those projects open ended”

DUR 5 “most of our projects are not completed because of the number of variations order issued on those project. Once you get good reason to explain why you need the variation order, the review boards will always give approval. The effect is that you have entities varying project without funding and the results is non-payment to contractors as we are currently experiencing”.

According to Kikwasi (2012), delays in project completion as a result of modification to the project has serious negative implication such as time overrun, cost overrun, negative social impact, idling resources and disputes. DUR1, DUR2 and DUR5 agree to this assertion and argue that the current position of the law where there is no seal to a percentage of modification allow on a project put road construction projects at great risk. One major effect of delays on construction projects is non-payment of contractors and suppliers and also low participation of the private sector in such procurement activities which eventually increase government expenditure since government has to pay interest on delays. Again, this situation raises suspicion and questions the integrity of road project procurement activities in the country.

Section 38.1 of the PPA conditions of Contract says that if the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

Section 28.1 of the PPA conditions of Contract states that the Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to

incur additional cost. This confirms Kikwasi's (2012), view that variation could lead to time overruns and cost overruns. He noted that modifications such as design changes could lead to delays in payment to contractors, information delays, funding problems, poor project management, compensation issues and disagreement on the valuation of work done and its intended effect could be time overrun, cost overrun, negative social impact, idling resources and disputes.

4.3.2 Schedule 3 Thresholds for Procurement Methods

The Procurement Act establishes Approval authorities and Tender review Boards which give approval or concurrent approval in terms of the applicable threshold in schedule 3 of the Act, prior to the award of contract. This is to ensure fairness and transparency which the Act seeks to promote. Schedules 3 also serve as checks and balance on the procurement processes and determine which procurement method to be used.

DUR1 “Thresholds on schedule 3 definitely need to be reviewed as it is no longer applicable on Road sector Projects. The economic situation in Ghana since 2003 has not been the same and that is the more reason why the threshold level will have to be reviewed.”

DUR2 “The thresholds in schedule 3 are making implementation difficult. The values are too low for the various entities, creating serious congestion at the central and regional review bodies”

DUR 3 “They should have decoupled the thresholds from the Act and give the mandate to PPA to update and present it to parliament for approval”

DUR 4 “Currently as the thresholds stands now, the Department can only procure projects through ICB. Most of our projects are either procured using single source, restricted or price quotations. The price quotation is purely slice and package which is also against section 21(5) of the Act.

DUR5 “the threshold levels need to be critically assessed and review to reflect the current economy situation of the country and to remove all the ambiguities. For instance, under schedule 3 (2) and (3) the threshold for Ministerial and Regional review boards are the same. In this case who goes to ministerial and Regional review boards are not clearly defined by the Act. Again in schedule 3 (1) there is a gap between the threshold levels for ICB and NCB. e.g. for ICB for works talks about threshold above GHC 20billion and NCB more than GHC 500 million up to GHC 15 billion. So the gap between the GHC 15 billion and GHC 20 billion what happen?”

Section 94 of Act 663 places the responsible for the review of the threshold levels specified in Schedule 3 on the Public Procurement Authority and presented by the Minister for the approval of Parliament. Since the passage of Act, 663 in 2003, the Public Procurement Authority has not review the threshold level in schedule 3 as required by section 94 of Act, 663 creating implementation challenges for stakeholders and procurement entities using the Act for procurement of Works, Goods and Services. The DUR 3 concern about decoupling the thresholds in schedule 3 and given the mandate to PPA has already been address by section 94 even though the thresholds are still part of the Act. DUR 4 on the other hand argues that the threshold levels in schedule 3 of the Act is forcing procurement entities to engage in single source, restricted and price quotations.

The act stipulates that institutions go through National and International Tendering procedures depending on the amount involved in a particular procurement. These are very transparent procurement processes which help in the fight against corruption in the sense that contracts are not just awarded to individuals or institutions but qualified suppliers/contractors win contracts only after going through a competitive procurement process. According to DUR4, the threshold level discourages the use of national and international competitive tendering given way to noncompetitive methods of selecting contractors and suppliers. This is to ensure fairness and transparency which the Act seeks to promote.

Again, the Procurement Act establishes Approval authorities and Tender review Boards which give approval or concurrent approval in terms of the applicable threshold in schedule 3 of the Act, prior to the award of contract. Procurement practitioners knowing that their activities relating to award of contract are subject to approval by relevant authorities and/ or tender review boards will do their best to ensure fairness in the process and ultimately guard against any temptation to engage in corrupt practices. DUR2 believes that the current threshold levels is putting pressure on central review board as almost all procurement at the road sector will have to go through central review board.

4.3.3 Prohibition of Negotiations with Suppliers or Contractors

Section 64 (1) of the Act states that, no negotiations shall take place between the procurement entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor. By this section procurement entities are prohibited from negotiating with suppliers/contractors in order to obtain a satisfactory contract. However, Section 64(2) is of the view that if the lowest evaluated responsive tender exceeds the budget for the contract by a substantial margin, the procurement entity shall investigate the causes for the excessive cost and may consider requesting new tenders or subject to approval by the relevant Tender Review Board and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract.

DUR5 “section 64 of the Act is confusing in the sense that in sub-section (1) clearly prohibit negotiation and in sub-section (2b) negotiation is allowed”.

DUR 3 “the tender review boards has no guidelines for contract negotiations making it difficult to negotiate with contractors if their tender price exceed the entity budget. Again section 64(2) talks about a substantial margin, at what percentage is considered a substantial margin is not clear”.

For the implementation of the law to be successful, the law must clear and free from any ambiguities. Section 64 of the public procurement Act looks confusing and this was confirmed by DUR5 and DUR3.

4.3.4 Acceptance of Tender and Entry into Force of Procurement Contract

Section 65(9) of the Public Procurement Law requires that procurement entities communicate the results of any procurement exercise to unsuccessful bidders.

DUR3 “To be honest the law required as to write to unsuccessful bidders and also return their bid securities to them, but we have not been doing that”

DUR5 “For World Bank projects we have been doing that, but PPA we have not been communicating with the unsuccessful bidders”

A survey conducted by Collins et al. (2012), revealed that about 87% of procurement entities in Ghana do not write to unsuccessful bidders. This assertion was confirmed by DUR 3 and DUR 5 respectively. This is a worrying trend. Shielding the results of tendering processes from unsuccessful tenderers affects the credibility of procurement entities which in turn affects the level of competition on future tenders. It is good practice for agencies to provide feedback to tenderers as a matter of routine. The process for providing feedback can be built into the agency's procurement procedures. By providing good feedback to tenderers, agencies will educate the market about the procurement process and their expectations and this, in turn, may assist to improve the standard of submissions in the future.

Tenderers can benefit from receiving feedback by getting the opportunity:

- a. to obtain information and to help them understand how and why decisions were made in relation to their submission: what they did well and didn't do well, and any areas of their submission that did not comply with the provisions in the tender documents;
- b. to obtain a better understanding of the agency's expectations, assisting them to prepare and submit a higher standard of submissions in future procurement processes;

- c. to establish or consolidate a fair, open and ethical relationship with the procuring agency and gain confidence in the procurement process; and
- d. to accept an offer of help and guidance to increase their future chances of participating in future procurement processes.

4.3.5 Training on PPA/Human Resource Development

For the object of the Act as stated on section 2 of the Act to be realized, PPA will have to organize training programmes to ensure that policy implementation and human resource development for public procurement entities are enhanced as required by section 3 of the Act.

DUR 4 “Entity has a training programme but implementation has always been a problem due to lack of funds. The World Bank in conjunction with GIMPA organizes procurement training annually but only on World Bank procurement guidelines”

DUR 3 “The Department lacks capacity in terms of procurement professionals at various Entities. Currently the Department has difficulty in getting people with qualification in procurement. So we use the Engineers and the QS's for procurement Transactions.

DUR 4 and DUR 3 confirm the assertion made in the literature review by Laura and Richard (2007). Procurement needs to be considered as a profession and recognized as an important function on a par with other important functions, such as finance and human resources management. Thus procurement function needs to be structured, and resources provided on a par with its importance. The number and professional qualifications of procurement staff is of the utmost importance in ensuring effective and efficient procurement processes (Cihan and Istvan, 2011). The dynamic nature of procurement, including the expansion of activities and increasing technical complexity, calls for regular professional training of procurement staff (Cihan and Istvan, 2011). According to Cihan and Istvan (2011), Staff without proper training should not be placed in positions of responsibility over procurement matters. Staff employed in key procurement posts should have completed or should be working towards advanced certification on procurement. Executive heads should consider increasing procurement staffing and training opportunities as an

investment capable of providing a relatively quick payback in terms of financial savings and best value for money. To that effect, organizations should assess their procurement capability on a regular basis and develop strategies to ensure that their procurement capacity can achieve best value for money. To this effect, the road sector need to build adequate human resources and information management capacity for data collection, procurement analysis and strategy development.

If there were training programmes organized by PPA and the road sector agencies on the implementation of the Act, there could have been better information on the lapses in the implementation process, which could have shaped/improved policy directions. Adequate Training could help the entities to build their capacity in the law and to seek assistance of any kind from the PPA, especially in the areas of capacity development and clarification of any section of the law. Application of the PPA and the Standard Tender and Contract Documents will not be successful without broad training and “refresher” programs and encouragement of officials in charge of procurement to uphold procurement ethics



CHAPTER FIVE

5 CONCLUSIONS

5.1 INTRODUCTION

The primary aim of this research was to explore the implementation challenges of the Public Procurement Act, 2003 (Act 663) on road sector projects so that improvement could be made to facilitate effective implementation of the Act. Interview was used as a study instrument. The findings of the study are being grouped as challenges of the Act which required review of the relevant sections and those stemming from Department of Urban Road operations requiring operational reforms.

The study also sought to find answers to the following key questions:

1. What are the challenges encountered by the roads sector actors implementing the Public Procurement Act, 2003 Act 663?
2. How is the roads sector dealing with the difficulties in terms of the implementation of the Act?
3. Does the Public Procurement Act need a review to enhance effective implementation?
4. What areas of the Act need a review to enhance effective implementation?

In view of the above, this chapter therefore gives a detailed overview of the findings deduced from the field survey so as to answer the research questions and achieve the objectives or goals.

This chapter therefore discusses the conclusion and ends by giving a recommendation.

5.1.1 CHALLENGES AFFECTING THE EFFECTIVE IMPLEMENTATION OF ACT,663

From the data provided and discussed in chapter 4 of this study report, the following concludes are drawn:

1. The study concludes that inadequacy of section 87 of the Act which deal with modifications are the causes of delays and disruptions on ongoing road projects procured using the Public Procurement Act, 2003 Act, 663 and their effects put construction projects at great risk that have an effect on their performance. Modifications causes delays in projects implementation which ultimately lead to time overrun, cost overrun, negative social impact, idling resources and disputes. hence the need for a review
2. The thresholds on schedule 3 of the Public Procurement Act, 2003 Act 663 makes the implementation of the Act on road sector projects difficult and this is because the threshold levels do not reflect the current economy situation in Ghana. The thresholds on schedule 3 of the Public Procurement Act are low and forcing procurement entities to split procurement contracts into smaller packages which is against Section 21(5) of the Act hence the need for a review.
3. Procurement entities are confused as to whether the Public Procurement Act, 2003 Act, 663 as in Section 64 Permit negotiation or not making implementation of the Act difficult. It was realized from the study that tender review boards has no guidelines for negotiation as required by Section 64(2b) of the Act and the issue of what constitute substantial margin was not clear hence the need for a review.
4. Procurement entities in the Road sector do not communicate the results of any procurement exercise to unsuccessful tenderers as required by section 65(9) of the public Procurement Act, 2003 Act 663. The study also reveals that procurement entities in the Road sector do

not return tender securities to unsuccessful tenderers. These stem from Department of Urban Roads operations hence requiring operational reforms.

5. The challenges in the implementation of the Public Procurement Act could be traced to lack of training and procurement professionals on the road sector. These also stem from Department of Urban Roads operations hence requiring operational reforms.

In summary, the challenges in the implementation of the Public Procurement Law on road sector in Ghana are the result of low capacity of procurement professionals, low interaction between the key players within the procurement environment, controlling of competition by splitting of contracts into smaller lots as results of the low thresholds and difficulties with the sections of the Act that requires review.



5.1.2 SOLUTIONS

From the results of the study the following solutions are made to address the problem:

- Amendment to Public Procurement Law □
Procurement Training
- Notification to unsuccessful Tenderers

5.1.2.1 Amendment to Public Procurement Law

As the law stands now, it is very difficult to implement it in the procurement works, goods and service on road sector projects. The Public Procurement Board could make proposal to parliament for amendments to some parts of the Public Procurement law to ensure its effect implementation. The amendment could look at putting a seal to modification on section 87 (1) of the Public Procurement Law. The thresholds levels in schedule 3 must be de-couple from the Act and periodically review by Public Procurement Authority to reflect the current economy situation as required by section 94 of the Act and also to remove all ambiguities.

Section 64 (1) and (2) of the Public Procurement Act must be assessed carefully on the merit and demerits of negotiation by procurement entities to obtain a satisfactory contract. This particular section must be amended to indicate clearly whether Procurement Entities are allowed to negotiate with contractors and suppliers in order to obtain a satisfactory contract. Also, the issue of substantial margin as stated under section 64(2) must be defined clearly. That is, what constitute substantial margin and at what percentage.

5.1.2.2 Procurement Training

Procurement training is a key to enhancing the effectiveness and efficiency of the procurement function in every organization. To this extent, the Ministry of Roads and Highways and its agencies should develop a procurement training policy based on the assessment of the competencies needed

in procurement, with a view to ensuring that staff dealing with procurement are well trained and provide highly professional services.

5.1.2.3 Notification to unsuccessful Tenderers

All unsuccessful Tenderers should be notified in writing, immediately the contract has been awarded. This would enable Tenderers who may be waiting for the outcome of their Tender to review their records. Once the relevant contract has been signed, all Tender Securities must be returned immediately to the Tenderers both successful and unsuccessful as required by section 65(9) of the public Procurement Act, 2003 Act 663 in order to give meaning to the objects of the Act.

5.2 Limitations of the study

The study, like any other research work was not without limitations. In some cases the cooperation of some of the interviewees became quite difficult as they complained of lack of time and the fact that the information required is sensitive. However, the researcher has no course to believe that this limitation has seriously affected the validity or otherwise of the findings and conclusion of the study. Future researchers could examine the adequacy of the Public Procurement Authority PPA conditions of contract on Contract Management as the law is very brief on that.

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7 APPENDIX

7.1 Appendix 1 – Table 4.1

Table 4.1					
Themes	DUR1	DUR2	DUR3	DUR4	DUR5
Training	Entity has a training programme but implementation due to lack of funds	DUR has a training programme but implementation is only on world bank projects funded	<i>The Department lacks capacity in terms of procurement professionals at various Entities. Currently the Department has difficulty in getting people with qualification in procurement. So we use the Engineers and the QS's for procurement</i>	<i>Entity has a training programme but implementation has always been a problem due to lack of funds. The World Bank in conjunction with GIMPA organizes procurement training annually but only on World Bank procurement guidelines</i>	Entity has a training programme but implementation and selection method is not on merit
			Transactions		

Using PPA documents	We are aware of standard documents and we are using them	We have been using the Act 663, Regulation and the Manuals, also tender, evaluation and standard contract documents	We have been using all PPA documents	All the Documents are available and we are using them	We have been using the Act 663 and the other document
Records Keeping	Entity has separate files for every procurement transaction whether current or achieved are available	We have Files for Procurement Transaction		Approvals and Contract documents are available	
Communication			<i>To be honest the law required as to write to unsuccessful bidders and also return their bid securities to them, but we have not</i>		<i>For World Bank projects we have been doing that, but PPA we have not been communicating with the unsuccessful bidders</i>

			<i>been doing that</i>		
Political Influence	Seriously affecting the implementation of the Act	The politicians will always want to have their way even if is not possible	The politician apart from world bank projects will prefer their friends and cronies	As for the politicians the least said about them the better. They always want to influence procurement decision	They have the power and the used it the way there want.
Procurement Professionals	Even though we don't have procurement professionals, the Engineers and QS's have been given the some level of training to manage procurement issues	The law recommends that every procurement entity should have a procurement specialist. We are using the QS's for that purpose	The Department lack the capacity of procurement professional at various Entities and even those have procurement officers need build the capacity of these officers	The procurement professional are not there, so we are using the QS's for that purpose	Currently is difficult the get people with qualification in procurement. So we used the Engineers and the QS's for procurement Transaction

Private sector participation and capacity building	We used to have contractors training on how to improve quality of work but not on the procurement Act	Training contractors on quality standard and not on procurement. Private Sector or service Providers	Private sector participation and capacity building is good. We don't even have the funds to train our officers let along the private sector	We are planning of doing something like that, but funding has always been the problem	We have not yet organize training programme for the private sector
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		need to be trained on new dimension of Procurement Law, how to respond tenders competitively and responsive tenders.			
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The Act 663, Regulations and the Manuals	<p>1. <i>This particular provision has a serious implication on procurement of works and project implementation. A lot of our projects are currently experiencing high risk due to excessive cost and time overruns</i></p>	<p>1. <i>The thresholds in schedule 3 are making implementation difficult. The values are too low for the various entities, creating serious congestion at the central and regional review bodies</i></p>	<p>1. <i>They should have decoupled the thresholds from the Act and give the mandate to PPA to update and present it to parliament for approval</i></p> <p>They should have decoupled the thresholds from the Act and give the mandate to PPA to update and present it to parliament for approval.</p>	<p>Currently as the thresholds stands now, the Department can only procure projects through ICB. Most of our projects are either procured using single source, restricted or price quotations. The price</p>	<p>1. <i>The threshold levels need to be critically assessed and review to reflect the current economy situation of the country and to remove all the ambiguities. For instance, under schedule 3 (2) and (3) the threshold for Ministerial and Regional review boards are the same. In this case who goes to ministerial and Regional review boards are not</i></p>
	<p>2. <i>Thresholds on schedule 3 definitely need to be reviewed as it is no longer applicable on Road</i></p>	<p><i>The tender review boards has no guidelines for</i></p>			

	<p>sector Projects. The economic situation in Ghana since 2003 has not been the same and that is the more reason why the threshold level will have to be reviewed</p>	<p>contract negotiations making it difficult to negotiate with contractors if their tender price exceed the entity budget. Again section 64(2) talks about a substantial margin, at what percentage is considered a substantial margin is not clear</p> <p>2. section 87 Because there is no seal as to percentage of variation allow on a project as per this section of the Act, a lot of our projects</p>		<p>quotation is purely slice and package which is also against section 21(5) of the Act</p>	<p>clearly defined by the Act. Again in schedule 3 (1) there is a gap between the threshold levels for ICB and NCB. eg for ICB for works talks about threshold above GHC 20billion and NCB more than GHC 500 million up to GHC 15 billion. So the gap between the GHC 15 billion and GHC 20 billion what happen</p> <p>2. section 64 of the Act is confusing in the sense that in subsection (1) clearly prohibit negotiation and in sub-section (2b) negotiation is allowed.</p>
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		are heavily loaded with unnecessary variation keeping those projects open ended		3. Section 87 most of our projects are not completed because of the number of variations order issued on those project. Once you get good reason to explain why you need the variation order, the review boards will always give approval. The effect is that you have entities varying project without funding and the results is nonpayment to contractors as we are currently experiencing
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