

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

**COLLEGE OF ARTS AND SOCIAL SCIENCE
SCHOOL OF BUSINESS**

**“THE IMPACT OF PUBLIC PROCUREMENT ACT 2003 (ACT 663) AND
PROCUREMENT PRACTICES AT BOSOMTWE DISTRICT ASSEMBLY”**

by

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of

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College of Arts and Social Science

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DECLARATION

I hereby declare that this submission is my own work towards the MBA and that, to the best of my knowledge, it contains no material previously published by another person nor material which has been accepted for the award of any other degree of the University, except where due acknowledgement has been made in the text.

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DEDICATION

This project is dedicated to my son Filex Kwadwo Agyekum

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ABSTRACT

The introduction of Public Financial Management Reform Programme (PUFMARP) in 1996 was purposely to take care of procurement of goods, works and services in the country. This policy was also made to improve and regulate the overall public financial expenditure in Ghana. The effect of the policy was to regulate government financial administration and procurement. However, the policy was fraught with irregularities and weaknesses. The identified shortcomings and organizational weakness were; lack of comprehensive legal regime to safeguard the integrity of public procurement policy, no technical expertise, absence of clearly defined roles and responsible procurement practices. This prompted the government to become committed to revision of the procurement policy, so as to address the lapses and shortfalls of the policy.

In addition to the above stated operational lapses, there were economic pressures that caused/alluded to the revision of the 1996 policy. These included; huge and unattainable foreign debts, excessive budget deficits, huge contractual payment arrears, poor construction performance, corruption and pressure from international financial institutions forced the government to become committed to the reform of public procurement which culminated in passing of the public Procurement Act 2003 (Act 663). Public Procurement is the process by which government purchases goods, works and services using public funds.

The public procurement Act 2003 (Act 663) was enacted as an act of Parliament to provide for public procurement in Ghana. Public procurement has a direct impact on; the successful delivery of government projects and public services, sound public

financial management by achieving value for money in government expenditure, reducing corruption and encouraging private sector growth and investment.

Procurement Act was to streamline and harmonise public procurement process in order to secure judicious, economic and efficient use of public funds by ensuring fairness, transparency and non-discriminatory in such procurement practices.

The study analyse the passing of public procurement Act in relation to potential impact and challenges of the procurement of goods, works and services carried out in the Bosomtwe District Assembly.

The study also offers suggestions that ensure the achievement of sound implementation of the Public Procurement Policy. This would consequently, leads to sustainable public procurement policy in Ghana, resulting in the achievement of value for money and an improvement economic development in the country.

This study concludes that whiles the Procurement Act sets out the legal, institutional and regulatory framework to secure fiscal transparency and public accountability, the sole reliance on traditional contracting limits the value for money of procurement practices.

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CHAPTER ONE

1.0 Background of the study

In keeping with government's commitment to financial discipline, there has been a mechanism for effective management of the procurement process to obtain value for money. The government has since 2001 made various efforts to correct the uncontrolled expenditure of public funds that characterised the national economy and led to a rather unstable economic climate. The government therefore set itself the task of regulating expenditure and instilling discipline in public finances.

In 1996 the government launched the Public Financial Management Reform Programme (PUFMARP) to improve overall public financial management in Ghana. The policy sought to regulate government expenditure. However, there were irregularities of the policy which prompted government to revise and enact a more concrete procurement policy that could address the lapses of the policy (Ministry of finance 2001).

The reform exercise identified shortcomings and organizational weaknesses inherent in the existing procurement system. These included the absence of a comprehensive public procurement policy and the lack of a comprehensive legal regime to safeguard the integrity of the public procurement system. Others were the absence of a central body with the requisite capability, technical expertise and competence to develop a coherent public procurement policy and many others.

Public Procurement is the process by which government purchases goods, works and services using public funds. It may also refer to the acquisition of goods 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 government, corporations, or individuals, generally via a contract.

In order to eliminate the various shortcomings and organizational weaknesses in the public procurement process, it was considered desirable to enact a comprehensive

procurement law. This was to be supported with standard tender documents. Appropriate administrative and institutional arrangements were to be made with an oversight body to superintend the public procurement system.

The Public Procurement Act, 2003 (Act 663) was enacted in 2003 as an Act of Parliament to provide for public procurement.

The following are the mandates of PPA;

- To establish the Public Procurement Board
- To stipulate tendering procedures to make administrative and institutional arrangements for procurement
- To stipulate tendering procedure
- To provide for the purposes connected with these functions.

Public procurement accounts for between 50% to 70% of total Government expenditure, represents 14% of Gross Domestic Product (GDP) and accounts for about 24% of total imports. An improvement in the public procurement process will in no doubt therefore create wealth and reduce poverty.

The Act harmonizes the application of procurement related rules with international conventions and treaties. It is expected to foster competition, efficiency, transparency and accountability in the public procurement process.

It also seeks to harmonise public procurement process in the public services, securing judicious, economic and efficient use of state resources. The Act ensures, public procurement, fair, transparent and non-discriminatory process of procurement of goods, works and services.

Moreover, the Act applies to procurement of goods, works and services and contract administration and this is financed from public funds either wholly or partly. Again, it is applied to the disposal of public assets and equipment and procurement financed by funds or loans taken by the government including foreign aids and funds.

1.1 Statement of Problem

The introduction of Ghana's Public Procurement Act 2003, (Act 663) was basically to rectify the weakness of old system of procurement characterised by a fragmented legal

system, lack of codified procedures and regulation, weak capacity of procurement staff, unclear institutional and organizational arrangement, non-transparent procurement procedures, poor contract management, inadequate procurement planning and others.

Institutions to ensure a comprehensive, transparent, legal and institutional framework, modernised procurement procedures, tendering and procurement, proficient procurement staff, independent control system and anti-corruption measures.

Despite the good intention of the Act to achieve successful delivery of government's projects, sound public financial management by achieving value for money in government expenditure, reducing corruption and encouraging private sector growth and investment, the problems still persist. Among the problems includes corruption, poor contract management, appeals and complaints.

It is against this background that the researcher intends to conduct a study generally addressing the problems of corruption, poor contract management, appeals and complaints and bringing the full impact of the application of the Public Procurement Policy on the execution of goods, works and services to the benefit at the Bosomtwe District and Ghana as a whole.

1.2 Objectives of the study

- To assess how Bosomtwe District Assembly applies the public procurement law on the procurement of :
 - (a) Goods
 - (b) Works and consultancy services.
- To evaluate the benefits of using the Public Procurement Act in procuring goods, works and services.
- To identify the challenges of the public procurement Act in procuring goods, works and consultancy services.

1.3 Relevance of the study

The research would offer the general public insight into the benefit of the application of the public procurement policy. The study would sensitise the public about the processes involved in the procurement of goods, works and services. Through the study, the public would become much aware of the benefits of the application of the public procurement policy.

The research work would reveal to the government the reality of the application of the procurement policy. It would therefore indicate whether the objectives of the public procurement law to ensure judicious, economic and efficient use of resources are being achieved. This study would reveal the gaps that could foster corrupt practices so that effective monitoring mechanisms are applied.

The study would identify an effective way of procurement of goods, works and services that result in budgetary savings and efficiency of the Bosomtwe District expenditure. The document indicating benefits and problems (deficiencies) in the application of the procurement policy, would serve as policy planning document that could enhance budgetary savings. The study would propose better ways of optimal use of District Assembly resources such as human, materials, capital, funds etc. Increasingly, governments recognize the (financial) savings from a better organized and transparent procurement system (Hunja, 2003).

The study would benefit the private organization with respect to the application of public procurement policy to achieving value for money. This would help encourage private sector growth and investment. Thus, the study would reveal whether application of the public procurement policy that sets out the legal, institutional and regulatory framework to secure transparency, accountability and fairness achieves some benefits or not.

To the communities, the study would bring equitable distribution of projects and participation in procurement process. For contracts to be awarded, it has to go through tender process. Bidding is open to the general public of which the inhabitants of the

District are also entitled to put in their offer. Upon assessments of all the bidders/tenderers, the principle of margin of preference is applied and the contract can be awarded to a local contractor from the District. This ensures economic growth and development hence increases standard of living of the people in the District. The same principle applies to competitive bidding for both national and international bidders.

Also, to benefit the suppliers as there will be transparency in the procurement process. The Act sets up an Appeals and complaints Panel to settle complaints from suppliers and contractors in the bid to create confidence in the procurement processes, practices and procedures thereby ensuring transparency, accountability and cost-effectiveness. Award of contracts is open to the general public of which fairness is assured. The best lowest evaluated cost bid is offered the contract.

Lastly, it will serve as a database and a background stage for further research by students on related topic for academic purposes. The study is to assessing the impact of public procurement with respect to procurement of goods, works and services. The document will serve as a base for students and individuals who wish to carry out further research or acquire in-depth knowledge about the application of the public procurement Act.

1.4 Scope of the study

The study could have been conducted at all the Districts in Ghana, however, for time and financed constraints, it had to be focused on the Bosomtwe District Assembly. The study shall cover assessing or evaluating developmental projects since the introduction of public procurement policy to ascertain the impact on the lives of people within the Bosomtwe District. Data collection will be limited to stakeholders on public procurement in the Bosomtwe District.

1.5 Limitations of the study

The limitation of the study is the constraint of time and finance. The study has to be completed under a stipulated time which poses restriction to an in-depth assessment of impact of public procurement policy.

1.6 Organisation of the study

The study will consist of five chapters. These are as follows;

Chapter one deals with the introduction of the study, problem statement, objectives, relevance, limitation and organization of the study.

Chapter two is composed of literature review of relevant information to the study. It extensively covers the Public Procurement Act 2003 (Act 663) and other policies relating to public procurement. The achievements of the existing Procurement Policies, the impact of public procurement policy, the role played by the stakeholders towards the achievement of the objectives of the Public Procurement Policy and constraints of public procurement boards monitoring activities.

Chapter three looks at the study area as a whole. This chapter would provide an extensive profile of the district. It covers the location of the site, population distribution, occupation (economic activities and development in the district), level of infrastructural development etc. It also covers the methods for data collection and analysis. This includes questionnaires, interview and discussions with the sample population.

Chapter four represents presentation and analysis of data. Here the research intends to provide a critical assessment of using the public procurement act to procure goods, works and services. It would also provide an in depth knowledge concerning the benefit of procuring goods, works and services using the act as well as spelling out some of the challenges involved in using the act in procuring goods, works and services.

Chapter five concludes the report with summary, discussions of major findings, conclusion and recommendations towards identified problems to ensure a sustainable procurement process.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

2.1 General Perspective

All over the world, procurement plays important role in terms of the delivery of goods, works and services to end-user organizations, groups and individuals. The international financial institutions like the World Bank, donor countries like G-8 and inter-state bodies like World Trade Organizations are concern about the procurement situation in developing countries.

The Organisation for Economic Cooperation and Development (OECD) estimated the value of the government procurement market to be US\$2,000 billion in 1998, which was equivalent to 7% of world gross domestic product (GDP) and 30% of world merchandise trade (Organisation for Economic Cooperation and Development, 2002, p. 8). It has been estimated that between US\$30 to US\$43 billion could be available in the procurement market place in Sub-Saharan Africa (Wittig, 1999, p. 8). Most industrialised countries spend at least 10% of their GDP on public procurement (Trionfetti, 2003, p. 224).

Consequently, developed and developing countries require a well-functioning procurement system. This is particularly true for developing countries, where procurement usually accounts for a high proportion of total expenditure.

Since significance of the public procurement in the countries cannot be over stated, it contributes substantially to Gross Domestic Product (GDP). It accounts for approximately 4.5% of developing countries GDP, while constituting 20% of governments' expenditure worldwide which tend to make the government the largest single consumer of goods, works and services in most countries. According to a study by

the European Commission in 2004, the total EU procurement market was worth €1.5 trillion or over 16% of EU GDP.

Expenditure on procurement among the African countries are Dominican Republic 20%, Malawi and Vietnam 40%, Kenya 28%, Uganda as much as 70% is spent on goods, works and services compared with a global average of 12-20% (Development Assistance Committee, 2005, p. 18).

Outside Africa, World Bank (2003) revealed that in India, total procurement amounted to US\$100 billion. The WTO's Trade Policy Reviews show that Malaysia spends 20.6% of GDP on procurement, Colombia spent between US\$7,900 and \$13,000 million in 2004 on procurement (WTO Trade Policy Review, WT/TPR/S/156, 2006, p. 47).

The vision of the Public Procurement is to achieve a world class, efficient, transparent and accountable professionally management that enjoys a high level of business confidence and ensures consistent attainment of the best value for money in the procurement of goods, works and services in support of national development.

Many developed and developing countries have undertaken reforms of their national procurement systems aimed at ensuring that public funds are used in the most efficient and economic way and that the system delivers value for money. Increasingly, governments recognize the financial savings from a better organized and transparent procurement system (Hunja, 2003). The main objectives of the public procurement reforms are value for money, efficiency, transparency, probity and accountability (Arrowsmith, 2005).

Over the years, public procurement has sometimes been used to accomplish a variety of policy objectives: to increase overall demand; stimulate economic activity and create employment; to protect domestic firms from foreign competition; to improve competitiveness among domestic firms by enticing 'national champions' to perform research and development activities; to remedy regional disparities; and to create jobs for marginal sections of the labour force (Martin, 1996).

The European Union legislation on public procurement (European Commission Directive 2004/17 & EC Directive 2004/18/EC) has been implemented by the Member States to ensure greater flexibility in procedures in order to meet the needs of public procurement bodies and economic operators. The legislation specifies the procurement procedures for entities operating the water, energy, transport and postal services sectors.

Directive 2004/18/EC deals with procedures for the award of public works contract, public supply contracts and public service contracts (European Commission, 2004).

2.2 Overview of Public Procurement in Ghana

Ghana is among the first countries that emerged from colonialism (Anvuur and Kumaraswamy 2006). It experienced the highest GDP before economic crises in the late 1970s. However, falling prices of mineral, cocoa, timber and rising prices for petroleum imports led to a sharp deterioration of GDP in 1999 -2000 (Anvuur and Kumaraswamy 2006).

Though World Bank assisted macro-economic programmes, Ghana has made robust recovery that achieves a fairly stable macro-economic environment. These reforms, backed by critical components of new vision of Ghana emphasises wealth creation, improve governance and reduce income and regional inequalities.

The project outlines the events leading to, and features of, the public procurement reform in Ghana and analyse its potential impact on goods, works and services and the unique challenges it presents. The work concludes that, while the sole reliance on traditional contracting and price-based selection limits the scope of the value for money, the Procurement Act sets out the legal, institutional and regulatory framework that secure fiscal transparency, public accountability and cost-effectiveness.

An approximate annual value of public procurement for goods, works, and services has been given as US\$600 million [World Bank 2003] representing about 10% of the country's GDP. The bulk of the expenditure programmes of Ministries, Departments,

Agencies (MDAs) and District Assemblies (DAs) involve capital construction procurement [Westring 1997].

Any improvement in the public procurement system will therefore have a direct and substantial impact on the overall economic situation of the country and that result in budgetary savings and efficiency in government expenditures.

The successive governments and military takeovers were not much concern about the significant guidelines of procurement.

The huge and unsustainable foreign debt, excessive budget deficits, huge contractual payment arrears, poor construction performance and poor delivery of goods and services, corruption and pressure from international financial institutions, forced the government to commit to a reform of public procurement, which culminated in the passing of the Public Procurement Act, 2003 (Act 663).

In 1996, the government launched the Public Financial Management Reform Programme (PUFMARP) to take care of procurement of goods, works and services in the country. The policy was basically, to improve overall public financial management in Ghana. In keeping government's commitment to financial discipline, this calls for effective management of public procurement to obtain value for money. However, there were still problems with the policy that compel the government to set up a committee to review and come out with the lapses for the reform of the policy.

The introduction of policy reform exercise identified shortcomings and organizational weakness inherent in the country's procurement system (PUFMARP). These were lack of a comprehensive legal regime to safeguard the integrity of public procurement policy, the absence of central body with the requisite capabilities, no technical expertise and competence to develop a coherent public procurement policy, no independent procurement auditing functions, absence of clearly defined roles and responsibilities for procurement entities.

The Public Procurement Act (Act 663) was enacted in 2003 to address these weaknesses in the public procurement.

The project explores the major issues of procurement in Ghana and analyses the potential impact of the Public Procurement Act on goods, works and services in search of value for money (VfM).

2.3 Procurement of Goods and works

Goods means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods.

Works means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

2.4.0 Procurement methods

The procurement methods that can be used for the procurement of goods or works are:

2.4.1 International Competitive Tendering (ITC)

International Competitive Tendering is appropriate for high value or complex procurements, or where the supply of goods or works by their nature or scope, is unlikely to attract adequate local competition. The Act requires the use of ICT for procurement of goods/works above the threshold stated in Schedule 3.

2.4.2 National Competitive Tendering (NTC)

National Competitive Tendering is appropriate for lower value procurements, where the goods/works by their nature or scope are unlikely to attract foreign competition, or where there are justifiable reasons for the Procurement Entity to restrict tendering to

domestic suppliers. The Act permits the use of NCT for procurement of goods or works valued at the thresholds stated in Schedule 3.

The Competitive tendering using ICT or NCT is the preferred method for Government procurement.

2.4.3 Restricted Tendering

Restricted Tendering is a tendering process by direct invitation to a shortlist of pre-qualified,

pre-registered or known suppliers, and is subject to a specific approval being granted by the Public Procurement Board.

It is an appropriate method of procurement where: the requirement is of a specialised nature or has requirements of public safety, or public security which makes an open competitive tender inappropriate; due to the urgent nature of the requirement, an open competitive tender is not practical; the number of potential suppliers is limited; or an open competitive tender has failed to bring an award of contract.

2.4.4 Two-Stage Tendering

Two-stage tendering is an infrequently used procurement process in which a Procurement Entity invites tenderers in the initial stage to contribute to the detailed specification of the goods. Following review and consultations, new detailed specifications are prepared and a restricted tender issued in the second stage to all participants who were not rejected in the first-stage.

It is an appropriate method of procurement when it is not feasible for the Procurement Entity to formulate detailed specifications for the goods or works, to identify their characteristics, or the character of the goods/works is subject to rapid technological advances.

2.4.5 Single Source

Single source procurement from a supplier without competition (direct procurement) is subject to a specific approval being granted by the Public Procurement Board.

Single source procurement may be appropriate when: the purchase is for urgently needed products, provided this is restricted to the minimum quantity to meet the urgent need until a purchase by other methods can be fulfilled; or the requirement can only be supplied by one source for physical, technical or policy reasons, e.g. the required equipment is proprietary and obtainable only from one source when national security (non economical) considerations are paramount.

2.4.6 Request for Quotations (RFQ)

This is also known as “shopping” and is based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices.

Request for Quotations may be used when: the estimated value of the threshold specified in Schedule 3 of the Act. Standard RFQ documents are particularly suitable for procuring readily available off-the-shelf goods or standard specification items of low value.

2.4.7 Specification of Requirement

The description of goods or works to be procured shall contain or be accompanied by a complete, precise and unambiguous description of the goods or works required. The description may include drawings where appropriate.

Specifications shall include: the purpose and objectives of the goods/works; a full description of the requirement; a functional description of the goods, including any environmental or safety features; performance parameters, including outputs and any indicators or criteria by which satisfactory performance can be judged; process and materials descriptions; dimensions, symbols, terminology, language, packaging, marking and labelling requirements; inspection and testing requirements; and any applicable national or international standards required.

2.5.0 Definition of Consultancy Service

Procurement of Consultant Service is the request for services which are of an intellectual and advisory in nature provided by firms or individuals using their professional skills to

study, design and organise specific projects, advice clients, conduct training or transfer knowledge.

The types of services include the following:

Feasibility Studies, Preparation of Tender Documents, Construction Supervision, Project Management, Procurement Assistance, Reorganization, Institutional Building, Training and Knowledge Transfer, Management Advice, Cleaning Services etc.

2.5.1 Method of Selecting Consultants

The procurement of consultancy services is a specialised form of procurement, requiring tender procedures and documents which are very different from those for standard goods and works.

The methods of selection are as follows:

2.5.2 Quality and Cost Based Selection (QCBS)

Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultant services, and uses a merit-point score system. The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of Reference, will receive the major percentage of the total points to be awarded.

Only firms/consultants whose technical proposals achieved a minimum technical score will have their financial proposal considered. The general practice in Ghana is that, the best compromise between technical quality and cost of the services is often achieved by allocating 80% of the total points to the technical features of the proposal and 20% to the financial score.

2.5.3 Quality-Based Selection (QBS)

Quality-Based Selection (QBS) may be suitable for complex, difficult to define, or highly specialised assignments, where the best expertise available is required without consideration of the price. In this case, only technical proposals are evaluated, with the

winning Tenderers being invited for detailed negotiations to agree the price of the services and the contract.

2.5.4 Selection under a Fixed Budget

Fixed Budget Selection (FBS) may be used when the assignment is simple, it can be clearly defined, and there is only a strictly limited budget available for the services. Consultants are invited to submit their best technical proposal within the fixed budget price and award of contract is made to the highest scoring technical proposal.

This method is only appropriate when, the assignment is simple and can be precisely defined; and when the budget is fixed.

The Consultant who submits the highest ranked technical proposal within the budget will be selected for award of contract. (Manuals - Public Procurement Act, 2003 (Act 663)

2.5.5 Least-Cost Selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well-established practices and professional standards exist, and when the contract value is small. A minimum qualifying score for the required quality should be established and stated in the Request for Proposal.

2.5.6 Selection Based on Consultants' Qualifications

This method may be appropriate for very small assignments where the need for submission and evaluation of detailed competitive proposals is not justified or necessary. Information on the consultants' experience and competence relevant to the assignment are requested.

2.5.7 Single-Source Selection

Single source selection of consultants lacks the benefit of competition with regards to quality and cost. The selection is not transparent, and may encourage unacceptable practices. Therefore, Single-source selection should only be used in exceptional

circumstances. The justification for Single-source selection must be examined carefully to ensure economy and efficiency.

Single-source selection is appropriate if there is a clear advantage over competitive selection for instance: natural continuation of previous work carried out by the Consultant; where rapid selection is essential (for example, in an emergency situation); for very low value assignments; when only one firm is qualified or has the necessary experience for the assignment. Single source selection would be based on the PPB guidelines which is available.

2.6.0 Selection of Consultancy Services

The procedures and guidelines below are based on the standard QCBS process.

The procurement of consultancy services will normally include the following steps:

- Preparation of the Terms of Reference (TOR).
- Preparation of a cost estimate and confirmation of available budgeted funds.
- Advertising for expressions of interest (if appropriate) or preparation of the shortlist of consultants.

Preparation and issue of the Request for Proposals (RFP), including:

Letter of Invitation (LOI); Information to Consultants (ITC); Draft contract, Receipt of proposals, Evaluation of technical proposals, Evaluation of financial proposals, Final evaluation according to the criteria stated in the RFP, Negotiations and Award of the contract to the selected firm.

2.6.1 The Terms of Reference

The Terms of reference (TOR) is the key document in the RFP. It ensures that both the Client and the Consultant are fully aware of the objectives and outputs of the services.

The Terms of Reference will normally contain the following headings:

Background, Objectives, Scope of the Services, Transfer of Knowledge/Training (when appropriate), Deliverables, Assignment Reports and Schedule of Reports, Facilities,

services and resources to be provided by the Client, Assignment Period and Assignment Management & Administration.

2.7.0 Legal Framework

2.7.1 The Public Procurement Act (Act 663)

- The Act establishes the Public Procurement Board, Tender Committees and Tender Review Boards.
- Specifies/outlines rules for procurement methods, procedures, appeals by tenderers and disposal of stores.
- Defines offences and applicable penalties.
- Specifies Procurement thresholds.
- Authorises the issue of Regulations, which are enforceable under the Act

The PPA further establishes five basic pillars of public procurement [World Bank 2003]:

(1) Comprehensive, transparent, legal and institutional framework; (2) clear and standardized procurement procedures and standard tender documents; (3) independent control system; (4) proficient procurement staff; and (5) anti-corruption measures.

2.8.0 Institutional framework

The PPA establishes Public Procurement Board (*the Board*) section 1 of Public Procurement Act (Act 663) (s.1) as a legal corporate entity. Procurement entities are defined as comprising Ministries, Districts, Agencies and all parastatal establishments that utilize public funds (s.14). A tender committee in each procurement entity awards, approves and manage contracts that are of predefined value thresholds (s.17). The tender committee may make use of external consultants in the performance of its functions. The committee shall refer any procurement exceeding its value threshold to the appropriate tender review board at the district, regional, ministerial or central government level. The tender review board reviews all procurement activities for compliance with the PPA, provides approval for procurement referrals, hears complaints and forwards unresolved issues to the Board (s.20).

2.8.1 Transparency, Accountability, and Ethics

The procurement system must ensure value for money in the procurement of goods, works and services. The procurement system aims at procuring goods, works and services of the right quality, at the right price, at the right time and at the right place through an open competitive tendering process. The government is entrusted with public funds to provide services to the public.

The use of public money must be conducted in a transparent and open manner, allowing stakeholders and the general public access to information on procurement activities by the government as well as a means to control and audit all procurement cases. Furthermore, the rules governing public procurement must be readily available to all interested parties.

The government requires that: all public officials and practitioners of procurement shall be held accountable and responsible for their actions; all suppliers, contractors and consultants will be treated fairly and given equal opportunity to obtain contracts with the Government; procurement shall be done in the most efficient manner, upholding the principles of value for money, transparency and fairness, funds will be used solely for the purposes for which they have been entrusted; appropriate procedures of the government or the Development Partners are applied; all transactions are properly authorised and fully supported by written records; value for money can be demonstrated by comparison with market rates; and an appropriate Code of Ethics is followed by all staff involved in the procurement process.

2.8.2 Gains from Transparent Procurement

The following are the gains from more open procurement. The policy enhanced transparency, increased competition and reduced corruption. As Trepte noted there are three main aspects of transparency: *what transparency is, why it is desirable and what are the consequences of a non-transparent procurement system* (Trepte, 2004). Many trade agreements on procurement prohibit discrimination and include transparency requirements to support and render effective this prohibition. In this respect,

transparency rules are aimed at preventing public authorities from concealing discrimination in favour of one party.

As Arrowsmith pointed out, transparency rules also support other objectives such as probity, preventing corruption, deterring abuse of discretion, maintaining the confidence of contractors in the system and are also used as a means to prevent discrimination (Arrowsmith, 2003).

The literature consulted reveals that, three factors are essential for public procurement regime to be classified as transparent.

Firstly, where there is existence of clear public procurement rules is required. All participants should be informed about the procurement rules that will be applied by the contracting authority (for instance what are the criteria for selecting the suppliers and awarding the contract etc). The existence of clear rules allows participants in the procedure to know in advance how it will be conducted and to behave accordingly.

Secondly, procurement opportunities should be public in order to enable all possible interested suppliers to participate (this is achieved by publishing procurement opportunities on national, regional and international bulletin/newspapers (Public Procurement Act Manuals).

Thirdly, the opportunity should be given to scrutinize decisions and to enforce the rules in order to ensure that the procurement agency has adhered to the rules and that the decision was not motivated by self-interest but was taken having regard only to commercial consideration.

Lack of transparency can impede the ability of foreign firms to bid for contracts even if there is no intended discrimination (Arrowsmith, 2003). When a procurement system is characterised by non-transparent rules, foreign suppliers can be reluctant to enter the market, "as bidders must trust in the fairness of process to participate in a tender, the

perception of transparency is crucial in attracting the largest possible number of tenderers and increasing competition” (ADB/OECD 2006). The result of lack of transparency can be a substantial loss for governments’ budgets. Case studies revealed that excess costs can be in the range of between 25-50% (Rose-Ackerman cited in Evenett and Hoekman, 2005).

Another possible effect of a non-transparent system is an increase in the information costs, which, in turn, raises the marginal costs of firms and so the prices of the goods or services (Evenett and Hoekman, 2005). Again, lack of transparency can result to corruption and self-interest of procurement officials. The importance of transparency is that, it makes visible what would otherwise be disguised and allows the actions of the procurement agency to be scrutinised and monitored (Trepte, 2005).

Many are the measures usually implemented for achieving transparency, including making procurement laws and administrative regulations publicly accessible; ensuring broad advertisement of procurement opportunities in journals of national and international relevance (for instance EU Member States are required to advertise in the EU official Journal procurement opportunities falling within the EU procurement directives thresholds); limiting the use of negotiated procedures to very limited and well defined cases giving preference to the use of more open procurement methods such as open tendering or selective procedure; give the possibility to all bidders be present at the opening of tenders; the requirement that all criteria for evaluating tenders shall be stated in advance in the contract documents.

An additional important element of any transparent procurement system is ensuring that suppliers are giving the possibility to complaint against procurement decision and that, would ensure effective and independent review and complaint systems.

However, there are also potential costs on transparency (Rege, 2001). For instance, running a procurement competition through an open procedure is more costly than running it through a negotiated procedure. Constraints on substantive discretion can affect the entities’ capacity to achieve value for money, or can render too burdensome and lengthy the procurement process. Furthermore, transparency rules alone are not sufficient to ensure probity. Therefore, careful attention is to be paid to the rules to be

chosen to achieve transparency. The rules need to take into account the characteristics and preferences of the regulated jurisdiction.

Rules on advertisement of procurement opportunities, time limits, notification of the award of the contracts etc. are all aimed at increasing transparency and ensuring a level playing field between suppliers of different nationality.

Evenett and Hoekman (2003) argued that if the self-interest of procurement officials motivates non-transparency, any market access gains from introducing transparency are likely to be less than if non-transparency was motivated by protection.

2.8.3 Public Procurement Regulations

Section 97 of the Public Procurement Act 2003, (Act 663) provides for the right of the Minister, in consultation with the Public Procurement Board, to make Regulations based on legislative instrument to give effect to the purpose of the Act. The Section also contains the detailed rules and procedures for all aspects of the procurement system such as the operations of Public Procurement Board (PPB) and procurement entities and the conduct of procurement activities and the penalties for the contravention of any such regulation.

All procurement entities must use the appropriate standard tender/contract document provided in Schedule 4 and modifications can only be introduced through tender/contract data sheets or special conditions of contract (s.50). The successful tender for contracts shall be the lowest evaluated tender price ascertained on the basis of criteria specified in the invitation documents, which shall include (s.59): (1) the tender price subject to any margin of preference for domestic contractors (s.60); (2) the lifecycle costs of the tendered contract; (3) the potential for economic development, local involvement or technology transfer; and (4) national security considerations. The selection of consultants shall be on quality and cost-based criteria (s.75) with the price component assessed in a similar manner as for works (s.69). Quality-based selection is allowed for complex or highly specialized assignments (s.72), and least-cost selection is reserved for small value assignments.

2.9 Public Procurement Manual

This Manual details the standards and procedures to be followed in the procurement of goods, works and services within the public sector, and also includes a section for guidance on asset disposal procedures, single source procurement, margins of preference and further guidelines issued as and when.

These standards, policies and procedures are designed to:

- Provide uniform procedures for the procurement of goods, works and services
- Ensure transparency and accountability in all operations and consistency
- Ensure the consistent application of the provisions of the Act and Regulations
- Promote the consistent application of best procurement practices and international standards required.

2.10.0 Public procurement structures

2.10.1 Public Procurement Board (PPB)

The Public Procurement Board acts as the statutory advisory and coordinating body on procurement. All Procurement Entities, Tender Committees and Tender Review Boards, Tender Evaluation Committee are required to abide by the technical guidelines and regulatory instructions issued by the PPB.

The Board has responsibility for the overall coordination, direction and development of Government procurement practices and procedures.

The PPB Secretariat is strategically structured in such a manner so as to be effective and efficient in championing excellence in public procurement. The departments include Legal and Public affairs, Monitoring and Evaluation, Management Information System, Policy and Strategy, Capacity Development, Finance, and Internal Audit. The mission and specific functions of each department is clearly delineated to foster productive and profitable job execution.

2.10.2 Standard Tender Documents

- This is issued by PPB, listed in Schedule 4 in the Act that seeks for Standard invitation and contract documents for procurement of goods, works and services.

- These documents govern the relationship between the Procurement Entity and the Supplier or Contractor during tendering process and contract execution.
- In government-funded procurement, the tender documents must comply with the requirements of the Public Procurement Act 663 of 2003.

2.10.3 Purpose of Standard Tender Documents (STDs)

The main purposes are to:

- Instruct tenderers on procedure for submission of tenders.
- Describe goods, works or services to be procured.
- Inform the bidders of the criteria to be used for evaluation of the tenders and tenderers' qualification.

2.10.4 Procurement Oversight, Capacity Building and Anti-Corruption Measures

The Board's duties include, (s.3):to provide policy and regulatory oversight; provide training and capacity building for procurement officials; hear appeals and complaints; and assist local industries to become competitive and efficient suppliers to the public sector. The head of the procurement entity must first investigate a complaint (s.79) and then, if unresolved within the time frame allowed, the complainant may seek administrative review by the Board (s.80). The Board shall establish and publish a code of conduct for all procurement officials, such as the Board, Tender review boards as well as for suppliers, contractors and consultants (s.86). Corrupt practices, as defined in the Constitution and the Criminal Code, 1960 (Act 29), Violation of any provision of the Act, upon conviction, is punishable by a fine not exceeding 1000 or a term of imprisonment not exceeding five years or both (s.92).

2.10.5 The Effects of the Reform of the Government Procurement System

First is saving government procurement funds and improving the efficiency of public resources. The government procurement system saves 10% in procurement funds every year. The China's procurement savings reached US\$ 4.8 billion in 2005, and more than US\$ 12.7 billion from 2001 to 2005.

Second is standardizing government procurement practices and promoting honest and clean government activities. Greater transparency in government procurement will greatly facilitate the supervision of the whole procurement contracts and considerably cut down commercial bribery. The government procurement parties take more initiative to participate in supervision, thus creating a favourable condition for the relevant government department to uncover corruption problems and investigate corruption cases.

The third effect of the reform is supporting government policies by regulating the use of funds, and thus, protecting national and public interests. The financial authorities have introduced a series of government procurement policies in favour of energy conservation and environment-friendly products, and have publicized lists of relevant products. These policies require that such products be prioritised in government procurement. The results have been positive.

The fourth is solving problems of general concern and making the benefits available to the public. Some local governments have incorporated public-interest projects into government procurement. For example, distance education engineering equipment for countryside primary schools and middle schools in the western regions and the renovation of dilapidated primary schools and middle schools was integrated into the government procurement, thus bringing the substantial benefits of the government procurement system to the public (Azeem 2007).

2.11.0 Achievements of the public procurement ACT 2003 (ACT 663)

Public procurement policy is a standard element in the “good governance”. that is generally accompanied by reforms to the civil service, legal, judicial and security sectors; revenue and budget systems; and electoral, financial and administrative decentralisation.

The Board has successfully undertaken many activities and programmes, though some of them are ongoing.

Since the introduction of the Act, public procurement has sometimes been used to accomplish a variety of policy objectives: to increase overall demand, stimulate economic activity and create employment, to protect domestic firms from foreign competition; to improve competitiveness among domestic firms by enticing 'national champions' to perform Research and Development activities, to remedy regional disparities, and to create jobs for marginal sections of the labour force (Martin, 1996).

The Board has launched Public Procurement Model of Excellence (PPME) tool in May 2006. The PPME tool has the objective of monitoring compliance of the Act; providing results on the level of performance of procurement entities, and institutionalising the assessment process in public procurement (Ayuure 2007).

Moreso, the Board has fashioned out a Public Procurement Bulletin which contains information such as proposed procurement notices, invitation to tender, expression of interest and contracts.

In 2007, 25% score was recorded for advertisement of tender opportunities of 515 entities that were assessed in that year. There was further improvement of the score of 95% recorded for 26 high spending entities in the year under review. These were achieved as a result of intensified training and capacity building activities organised for procurement entities in 2007 for the award contracts. (PPA Annual Report 2007).

It has also been noted that the method of open competitive tendering achieved a success and recorded a total of 23%. These were made up of 22.72% and 0.51% for National and International competitive tendering respectively (PPA Annual Report 2007).

The Procurement Board in collaboration with the Controller and Accountant General's Department and Internal Audit Agency embarked on Skills and Training Needs Assessment Programme. Under the programme, training modules for nationwide training of personnel in various procurement units was organised for Entity Tender committees, Tender Review Boards, Private Sector Organizations etc.

Under the programme, PPB devised short, medium and long term training schemes. The modules for the short term training were targeted at Entity Tender committees, Tender Review Boards, public and private oversight institutions on suppliers of goods, works and services. As part of training, participants were taken through the provisions and requirements of Act 663 in order for them to respond effectively to tender notices and help create a competitive at the local market place.

“To ensure that people who benefit from the training receive a hands-on experience with regards to public procurement management, students and graduates would be attached to public institutions and supported through a comprehensive internship programme.”(Mr. Adjeinim Boateng Adjei CEO Public Procurement Authority, *Statesman August, 2008*)

Last but not least, the Board has set up an Appeals and complaints Panel to settle complaints from suppliers and contractors in a bid to create confidence in the procurement processes, practices and procedures, thereby ensuring transparency, accountability and cost-effectiveness.

2.12.0 Public Procurement and Societal Needs: Public vs. Private Users: Not all public procurement is carried out in order to meet the direct needs or goals of public authorities, agencies or civil society at large. There are also instances of procurement cases where purchasing by the state or public sector actors is directed not only towards fulfilling their tasks, but also aims to influence and support certain patterns of demand on the part of private consumers. On this basis, we can distinguish three main varieties of public procurement: *direct, co-operative, and catalytic procurement*.

Essentially, these distinctions refer to different types of end-users and corresponding categories of societal needs. The theoretical foundation for these distinctions was established in an earlier dichotomy between “direct” and “catalytic” procurement (Edquist & Hommen, 2000, pp. 22–23).

2.12.1 Direct Procurement

In direct public procurement, the public agency or authority that carries out the procurement is the primary end-user of the product in question, and the needs that motivate the procurement are thus *intrinsic* to this procurer. In other words, Direct Public Procurement corresponds to the case where a government body, public agency, or authority, purchases a product for its own use i.e., to fulfil its particular mission or mandate. The procurement of a high-speed train by a state-owned railway company provides an example of this type of procurement. Although the railway company subsequently makes use of the train to provide public transportation services, it is not the travelling public, but rather the state-owned railway company that is the primary user of the high-speed train. The societal need that has motivated the procurement can in this respect be said to have been *intrinsic* to the public sector buyer.

2.12.2 Catalytic Procurement

In catalytic public procurement, the procurement is conducted on behalf of end-users other than the public agency or authority that carries out the procurement and the societal needs that motivate the procurement can thus be said to be *extrinsic* to the procurer and located primarily within the private sector, among firms or individual consumers.

There is catalytic public procurement when a state or public sector is involved in the procurement or even initiates it, but the purchases are exclusively by private end-users. The crucial feature of catalytic procurement is that the state or public sector plays a key role as the initial buyer, but it does not purchase the product(s) in question for its own, direct use. Rather, the intention is to support private actors by providing them with the opportunity to buy a product. Such programmes involved, for instance, the procurement of energy-efficient home appliances, the main end-users of which would not be public-sector organisations but rather private individuals and households. Naturally, widespread market acceptance of such products would reduce demands for energy provision by public utilities, but the primary need that they addressed was that of private individuals and households to reduce energy costs. In this respect, the needs addressed by such procurements were external, or *extrinsic*, to the procurers.

2.12.3 Co-operative Procurement

It is also possible to refer to a third, “mixed” type of case, where the public agency or authority that carries out the procurement is one, but not the only, intended end-user of the product in question, and the needs that motivate the procurement are thus *con-generic* - i.e., shared by the procurer and other intended end-users. This type of public procurement can be called “cooperative” public procurement.

Cooperative public procurement occurs when public authorities or agencies may buy jointly with private purchasers and both utilize the bought item. In such cases, initial demand by the public sector is very often intended to serve as a “launching” markets that will bring development of an equally demand from the private sector.

Government purchasing of environmentally office equipment provides an example of this kind of public procurement. The same products can also be purchased and used by private firms and individuals, once they become readily available in the market, thus provides one important means of realising broader societal goals of energy efficiency or environmental sustainability. These goals, however, reflect the needs that are broadly shared by, and thus *con-generic* to, a very broad range of social and economic actors.

2.13.0 Challenges of Public Procurement

Despite the generous support of donor partners from the international community, the introduction of Procurement Act is faced with challenges.

The PPA has been under-resourced and unable to provide the degree of momentum to the reform process that would be desirable.

There is still evidence that, the reforms carried out so far have not been successful in reducing the incidence of corruption in public procurement in Ghana.

According to Social Enterprise and Development Foundation (SEND) studies indicated that, some Districts did not go through the District Tender Committee as required by the Public Procurement Law. Districts such as Abora-Asebu-Kwamankese, Dangbe West, Jasikan, Jirapa/Lambussie, Krachi West, Agona and

Bawku West were listed to have awarded contracts by their District Chief Executives (Statesman 25th August 2008). According to Benjamin Addo, the representative of SEND Ghana, who made the study known said, "Whilst the threshold limits stipulated in Act 663 indicated up to GH¢5,000 for goods and technical consultancy service and up to a value of not more than GH¢10,000 for works, some districts received as high as GH¢ 207,358 for 2007, yet cited the threshold limit for justification" (Statesman 25th August, 2008).

The annual surveys by Transparency International have shown that Ghana is one of the most corrupt countries in the world and that little progress has been made in reducing it. An integrity survey that focuses specifically on public procurement was undertaken 2006. This survey revealed the extent of perceived corruption in procurement and the areas and stages of the procurement process where it is most prevalent. Future surveys on similar lines may indicate whether the procurement reforms together with the planned tightening of anti-corruption legislation are having a beneficial impact on the rate of prevalence. There is no evidence that Ghana has been made a more attractive place for local and international companies to do business.

Ability to Manage High-Value Projects is a key test of the prevalence of corruption in public procurement is whether the system is able to manage high-value projects, where there are huge potential profits and consequently much greater scope for bribery. For instance in Hong Kong, where corruption has been effectively controlled, large-scale projects has been managed effectively. In review of the project, the mission of Transparency International found that the vast project had been implemented largely within budget and with minimal corruption (Rooke & Wiehen, 1999).

The main factors that brought about the success of the project were strict anti-corruption laws and strong enforcement; clear rules for procurement of services and supplies; monitoring of contract performance; enforcement of accountability; and dispute resolution; and a favourable working environment, including good salary levels, strong professionalism and high morale.

By contrast, there have been several cases in Uganda where large projects have collapsed on account of failures in the procurement system. The US\$550 million Bujagali Dam hydro-electric project collapsed in 2002 when the World Bank suspended funding after a former energy minister admitted to having accepted a US\$10,000 bribe from a construction company that had been awarded the contract without going through a fully-competitive bidding process (Prayas Energy Group, 2002).

In a similar case, in 2006 the evaluation of tenders for supply of national identity card system was halted when the Inspector General of government intervened to investigate corruption allegations. All these obstacles make it difficult to recognise the full benefit of public procurement law. Despite the government's declaration of zero tolerance for corruption, there are several high profile cases related to procurement where influential people who have been criticized in Commissions of Enquiry remain unpunished.

The recent case, involving misappropriation of funds from the Ministry of Youth and Sports, which led to the resignation of the minister, has shown the seriousness of the problem persistence (Daily Graphic Thursday 9th July 2009). In a similar incidence, when Public Accounts Committee implicated (a document prepared by the Auditor General) the Minister of Foreign Affairs, Alhalji Mohammed Mumuni of misappropriation of funds during operations of National Vocational Institute (NVTI) (The Chronicle Tuesday 14, 2009).

In October 2006, Accra's High Court found that the government had not been complying with its own new law. The Ministry of Education and Sports (MOES) did not follow the Public Procurement Act when it single-sourced Macmillan Books to supply secondary school materials worth US\$28million (Judgement for Suit no. AP 6/2006).

Deeply vested interests and lack of political will; paucity of technical knowledge and capacity; and the complexity of the substantive issues involved, particularly in respect of the type of legal instruments to be used, the means of providing the regulatory body with adequate authority and independence for taking firm and consistent measures to enforce

the prevailing rules (Hunja, 2003, pp. 17-21) has become one of the obstacle to successful procurement law implementation.

Contract is awarded to favourites or preferred suppliers/tenderers by the Districts Tender Committee. Suppliers and contractors are imposed on the District by their superiors.

Delay in evaluation and its associated cost participation in tender are seriously impacting negatively on the number of companies which subject themselves to the frustration and disappointments in tender participation. Moreover, delays in payment of contract that has been well executed by the procurement entities posed hindrance to suppliers for further engagement in contract.

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2.14 Obligations of Public Servants

It has been established that one of the essentials of professional conduct is adherence to code of conduct (Kenneth 2006).

The guiding principles of ethical behaviour are impartiality, independence and integrity. Ethical behaviour must be promoted and supported by appropriate systems and procedures, but systems and strict adherence to procedures alone cannot create an ethical and accountable procurement function. Public Servants that involved in procurement are obliged to follow the Civil Service Code and the regulations governing public procurement. Moreover, it is absolutely essential that all procurement activities are carried out in a manner above reproach, with complete impartiality and with no preferential treatment. The procurement process must allow suppliers, contractors and consultants to compete for contracts on a fair basis. Public officials associated with the procurement function, are responsible for protecting the integrity of the procurement process and maintaining fairness in the government's treatment of all suppliers, contractors and consultants.

2.15 Responsibilities of Officers

Senior officers in a Procurement Entity have responsibility to:

- Provide instructions and guidance to staff, especially where they may be exposed to opportunities for accusations of fraud or corruption.

- Encourage staff to follow ethical principles and practices and create an environment where transparency and openness are the standard.
- Ensure that all staff complies with instructions and guidelines, including the maintenance of documented records.

Junior officers in a Procurement Entity have responsibility to:

- Follow management instructions and procedural guidelines
- Be alert to and report any indications of unethical behaviour.
- Seek guidance from a manager or auditor on any concerns that may arise.

2.16.0 Responsibilities of the Private Sector

The Private Sector is not exempt from responsibility to act ethically and transparently in procurement proceedings. This message is to be reinforced by requiring tenderers to sign a formal declaration before participating in any procurement process.

The content of the declaration form shall be:

“I hereby certify that Iand all officers of the Company which I represent will uphold the highest ethical standards in doing business with the Government of Ghana. We will not attempt to bribe government officials with money or other goods or services; we will not request favourable treatment and we will not seek information about competitors or other information regarding the procurement process. I understand that if I or other officers of the Company which I represent are found to have breached this commitment that sanctions will be made against the Company, including being debarred from doing business with the Government of Ghana for a period of 5 years.”

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter discusses methods that are used in collecting data for the study. The chapter also specifies that, to undertake a good research work requires proper data collection and data analysis method that best requires the elements under study. A careful selection of research data serve as a platform for and appreciable analysis of the importance of the research and meaningful recommendation being suggested for the study.

It covers the sample design, sample selection, methods, tools, instruments, data collection and data analysis.

3.1 Research Design

The research is a case study of the impact of the public procurement act on the procurement of goods, works and services. This is an exploratory study which seeks to find out what is happening, to seek insight, to ask questions and to assess phenomenon in a new light (Robson 2002). The study adopts multi-purpose procedure of which both quantitative and qualitative research techniques such as empirical and statistical are used. However the use of qualitative and quantitative poses a challenge. This approach has been accepted to be a more effective approach to complement each other ensuring the accuracy and authenticity of the study. The study was based on the use of research questionnaires, interviews and observations.

3.2 Population

A case study organization, Bosomtwe District Assembly was selected as representative of District Assemblies and the stakeholders involved in the procurement process constituted my population. The population was selected in order to give an in-depth knowledge and coverage of the results and findings of the research work. Through that, data were collected from many sources that represented in the research area selected and to make a more representative conclusion.

3.3 Sample size and Sampling Technique

A total number of 50 respondents sample size was selected from the Bosomtwe District Assembly. These were the employees, Heads of Department/Managers, Staff, suppliers, and community/inhabitants. The sample was selected by the non-probability sample method. The choice of this technique enables the researcher capture the components of the research population.

The sample was chosen as a result of the time frame in which the study had to be completed. It became prudent to select a minimal number to cover the study. Specifically purposeful or judgmental and self-selection sampling method was used. The process implies that the researcher deliberately selected managers/departmental heads, employees and contractors/customers to constitute the sample size. Sample was selected in accordance with the established objective of the study.

3.4.0 Tools of Data Collection

The research uses questionnaires, observations, informal interviews and documentary sources as instruments to collect the needed information.

The questionnaires were used to collect quantitative data whilst the qualitative data was collected using interviews.

3.4.1 Questionnaires

Self-administered questions were predominantly used in collecting data from respondents. The questions were printed for respondents to provide their responses. It was numerically stated to differentiate one question from the other. Boxes were provided for respondents to tick where necessary. Again, questions were used in cases where a personal interview was impossible to carry out. For instance, officials involved in the tendering process in the Bosomtwe District Assembly were given questionnaires to answer which were collected later date. This helped reduce inconvenience caused by unfavourable interview times and busy schedules. Before questionnaires were administered, there was pilot testing and amendments before questions were dispatched for administration.

The pre-coded questions were given to respondents to answer. With these questions, answers were provided for respondents to select their views. Some of the questions were multiple choices whereas others were Yes/No.

The length of the questions was influenced primarily by the scope of the study and the depth of the information needed.

3.4.2 Interview

Stakeholders such as members of the Tender Committees, Tender Evaluation Board and Tender Review Board of the assembly were also strategically selected and interviewed as part of data gathering process. With the interviews, the focus was on the senior/heads of each selected group segment.

Also senior officers who work with the District office in Kuntanase were interviewed. This was done for relational analysis and views and for other confirmatory response given by the respondents. The use of interviews in this study is deemed appropriate in order to get closer to the interviewee and be able to solicit information which might not be divulged on the questionnaire. The use of interviews is also intended to afford interviewee the opportunity to express themselves and to afford interviewer the choice to ask other relevant questions pertinent to the study.

Most questions involving government policies and laws on the implementation of the public procurement law in the District were asked using interviews. This was done in order to help the researcher solicit information to justify the various assertions made such as public procurement law has either created problem or improved procurement of goods, works and services.

3.4.3 Observation

Situational observation was used as another tool in the data gathering process. In this regard, the day-to-day operations of the Bosomtwe District Assembly were observed. The researcher spent time in one of the District Tendering and Evaluated Panel to observe proceedings.

According to Mullin (2005), "Observation of physical structures, social differences, behaviour actions and symbols provides important information for posing control questions". This tool was used by the researcher to collect qualitative data concerning the topic in question. This was achieved when cases were observed for the first hand information before they were substantiated.

Any time the researcher visited the study area for data collection, issues concerning the subject were looked at with keen interest. Notes about the things observed were immediately taken. This was done because the researcher wanted to avoid forgetting any vital information about the research.

Respondents were asked for clarification on things which were not clear after observing them from their area of operation.

3.5 Primary and Secondary Data

Both primary and secondary data was collected and analysed.

Primary data included information gathered from respondent by the researcher himself through questions, interviews and observation. This primary data provided reliable and authentic first hand information relevant to this study about the operation of the Bosomtwe District Assembly (Procurement Entity) in relation to the impact of public procurement Act on procurement of goods, works and services and other issues necessary for the research.

Secondary data is used for a research project that was originally collected for some other purpose (Mark *et all* 2007). Information from books, journals, articles, research works, gazettes, magazines and other written sources were also analysed to identify other people's opinion on the impact of public procurement Act on the procurement of goods, works and services under the study. Other sources of secondary data include press releases and the internet.

3.6 Analyses

Quantitative and qualitative methods were used to analyse statistical data. The results were subsequently computed into percentages.

Percentage values which were not round figures were approximated as a representation of the statistical summaries of the results. These were presented in the form of pie charts, bar charts and histograms.

Computer data analyses software such as the use of Social Science Statistical Package (SPSS) and other relevant software such as Microsoft excel were the main tools employed to analyse the data in order to help interpret results.

The other questions that were open-ended were analysed by listing all the vital response given by the respondents. The responses were considered based on the relevance to the study. This gave the general idea of the study with respect to the impact of the public procurement Act on procurement of goods, works and services.

3.7 There are six main processes involved in the research.

The process includes;

Pre-editing; this looked at examination of the responses received for completeness, relevance, appropriateness and its importance to the study.

Coding of Rough Data; this involved the groupings of the data into the various categories and subjects that would help to analyse them.

First write up; this is the next stage where all the information was written to form one continuous piece.

Data entry; this is where the written data is fed to the computer.

Data Modification; at this stage, the researcher edit typed data, corrections were made to give meaning to the information.

Finishing; this is the stage where the entire project was put together and final corrections made. It was at this stage that printing and binding took place to give the research its completeness.

3.8.0 Profile of the study area

3.8.1 Bosomtwe District Assembly

In Ghana, there are ten regions comprising six Metropolitan Assemblies, thirty-one Municipal Assemblies and one hundred and twenty-nine District Assemblies. These local Authorities are categorised into Metro, Municipal and District Assemblies. There are five main public sector institutions. These are; Central Management Agency (CMAs), Ministries, Departments and Agencies (MDAs), District Assemblies (DAs), Sub-vented Agencies and State Owned Enterprises (SOEs). These public sector institutions, referred to as Procuring Entities are responsible for procurement of goods, works and services, also carry out government programmes, financial accountability and management.

One of such institutions is the Bosomtwe District Assembly.

3.8.2 Location of Bosomtwe District

The Bosomtwe District is located at the central part of the Ashanti Region. It lies within latitudes 6° 24' and 6° 43' North and longitudes 1° 15' west and 1° 46' west. It is bounded on the North by Kumasi Metropolis and Ejisu Juaben District, on the south by Bekwai Municipal, on the west by Atwima-Kwanwoma and on the East by Bosome-Freho District. The District covers a land area of 900sq.km and has 65 communities with Kuntanase as its administrative capital. It is divided into three area councils, namely; Jachie, Kuntanase and Boneso.

3.8.3 Population Characteristics

The district has a total population of about 93,000 (2000 census) comprising 50.8% females and 49.2% males. Out of the 65 communities, only Jachie has an urban status with a population of 7,368. Nearly 41% of the population falls in the 0-14 year group, 55% in the 15-64 year group and 4% fall in the 65% and above age group.

3.8.4 Commercial Activities

The agricultural sector absorbs about 58% of the labour force while industry, service and other commercial activities take 18%, 13% and 11% respectively. The general district

economy is therefore agrarian and rural with low commercial activities especially in the remote and smaller communities. Relatively high commercial activities are confined to the few larger communities particularly those along major roads and those close to Kumasi. Such communities include; Jachie, Esreso and Feyiase. There is no weekly or periodic market in the district.

3.8.5 Education

The District has 40 Kindergartens (KGs), 63 Primary schools, 64 JHS and 3 SHS. The teacher pupil ration is 1:30. In addition, there are 3 Vocational and 2 Technical Institutions, all in the Bosomtwe constituency.

The major problems confronting the education sector are inadequate accommodation for teachers and insufficient professional teachers especially in the remote areas as well as parents' lukewarm attitude.

3.8.6 Health

There are 19 health facilities in the district ranging from hospitals, health centers to clinics. Ten of them are public, 4 are mission centers and the remaining 5 are private. There are two hospitals, one public and other belonging to the Catholic mission at Kuntanase and Pramso respectively. There are 10 clinics, 3 health centers and 3 maternity homes. These health facilities are manned by 7 doctors, 70 nurses and 90 other staff with a doctor patient ration of 1:21,884. Malaria ranks first among the top 10 disease in the district. Accommodation for health workers and inadequate personnel are a major challenge to effectively and efficient health service delivery in the District. Due to its close proximate to Kumasi, the prevalence of the HIV/AIDS diseases is relatively high in the district.

3.8.7 Water and Sanitation

About 89 communities representing 65% of all communities in the district have access to borehole water and another 20% have access to hand-dug wells. About 3 communities which adjoined Kumasi (Peri-urban communities) previously enjoyed pipe-borne water

from Kumasi. However, for the past 10years due to severe pressure on the system, these communities no longer have access to any form of portable water. In desperation, they have resorted to water from streams and rivers. Furthermore, the number of boreholes is woefully inadequate leading to intense pressure on the few in the large communities.

There are very few places of convenience in the communities and almost all houses (compounds) in the communities do not have toilet facilities in their homes, hence the entire population in the district depends largely on public toilet and to some extent on the free range system. This situation pollutes not only the environment but also air and streams. Again it has made the management of public toilets in the communities more difficult. The management of both liquid and solid waste in the district is therefore a serious problem.

3.8.8 Basic Services

The district has three Post Offices at Kuntanase, Beposo and Jachie. The telephone services are available at Kuntanase, Beposo, Esreso, Pramso, Jachie and Abono. There is a Court and Police Station at Kuntanase and Jachie. There is a rural bank headquarters at Kuntanase with an agency at Jachie.

3.8.9 Spatial Accessibility

There is about 300km length of feeder roads in the district. Out of this only the Kumasi-Lake road and Ejisu-Bekwai road which cut across the district are tarred. The rest of the roads are in very bad state especially those linking the remote and farming communities, making most of them inaccessible especially during rainy season. Not only the conditions of the roads are bad, but also the entire road network in the district does not encourage effective internal transportation.

CHAPTER FOUR

ANALYSIS, FINDINGS AND DISCUSSIONS

4.0 Introduction

Since the introduction of Public Procurement Act 2003 (Act 663), there has been a steady recognition of the contribution that Public Procurement had on both cost reduction and value addition to the enhancement of Bosomtwe District Assembly (BDA) activities that has impacted on the overall performance.

As application of the Public Procurement Act grows at a strategic level within the Bosomtwe District, so does the recognition of what professional procurement can achieve-not just cutting costs but obtain value for money. Effective procurement is critical to the sustained success of any public or private organization. For example, the government combating corruption, “Zero tolerance for corruption”, Public Procurement Law has been identified as the area to make largest contribution to overall value for money.

Introduction of Public Procurement Act was also in response to an urgent need for developing countries to pursue policies tailored at defeating corruption and ensuring prudent management of public resources. As a result of this, there has been a massive reform leading to enactment of Public Procurement Act 2003 (Act 663) which is the subject of analysis in this study.

The role of public procurement Act within most organizations has undergone considerable changes in recent years. However, few studies have empirically indicated the effect on the way procurement is organized within the District Assemblies in Ghana. This presentation evidence on the different approaches that exists within various departments in the Bosomtwe District Assembly. This research work was to assess the impact of public procurement act on the procurement practices to ascertain the assembly’s procurement performance.

4.1 Analysis, Findings and Discussions

Bosomtwe District Assembly is one of the Districts in the Ashanti Region with a population of about 93,000 residents and the youth comprising a sizeable majority of the population (Source: Census 2000). It is rural in general with few communities such as Esreso, Feyiase, Jachie classified into peri-urban. There are three (3) main Area Councils which includes; Jachie, Kuntanase and Boneso. For the purpose of administration, the District is divided into 26 electoral areas and each represented by an assembly member.

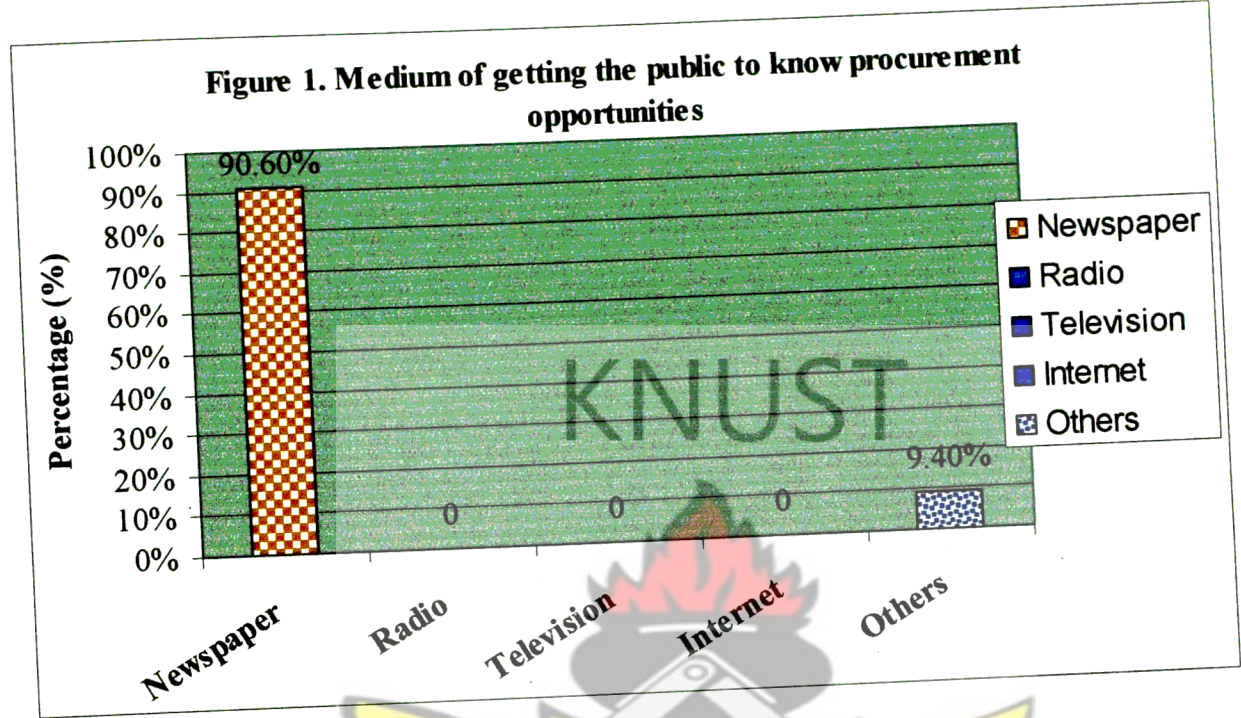
The study sought to find the impact of public procurement practices in line with Public Procurement Act 2003 (Act 663) in Ghana. The assessment of Bosomtwe District Assembly (Procurement Entity) performance on procurement practices was based on using Public Procurement Model of Excellence (PPME) Tool. Under this, there are two ways in which performance assessment indicators can be presented. These are:

- (a) The Performance Measurement Indicators (PMI)
- (b) The Performance Assessment System (PAS)

For the purpose of this study, the performance measurement indicator (PMI) was used. There are 14 performance measurement indicators (PMI). These indicators/parameters includes; Advertisement of tender opportunities, Publication of awards, Time for tender invitation and opening, Tenderers participation, Tender acceptance, Method of procurement, Tender processing lead-time, Cancelled tendering procedure, Protests, Contract amendment, Contract dispute resolution, Completion rate, Late payment and Contractual advance payment. These indicators serve as a reliable quantitative means of gauging the performance activities of the Bosomtwe District Assembly.

Advertisement of Tender Opportunities

Figure (1) below indicates that largely, BDA activities were advertised, and the various medium through which they were advertised is as shown in figure (1).



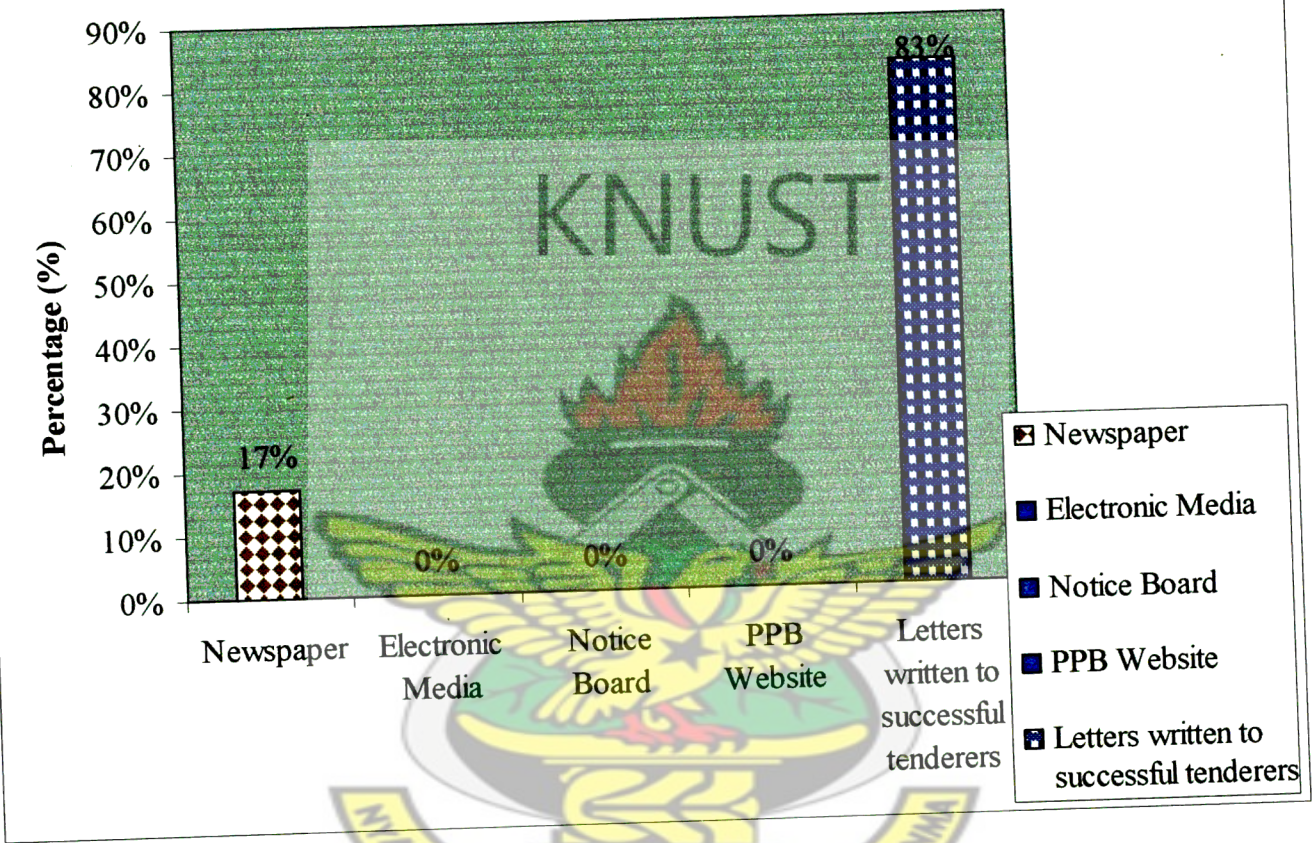
Source: *Researchers Fieldwork, 2009*

The data revealed that 90.6% of contracts were advertised in the Dailies which is in conformity with the Public Procurement Act 2003 (Act 663), Section 47 (2) states that notices are to be published in the newspapers of wide national circulation, whiles 9.4% responded from other sources such as news letters, friends etc. However, medium such as radio, television and internet were not areas captured as channels through which the public gets to know procurement opportunities available in the district.

Publication of Awarded Contracts

Figure (2) below indicates where the awarded contracts are published.

Figure 2. Publication of Awarded Contracts



Sources: *Researchers Fieldwork, 2009*

Section 31 of Act 663 requires procurement entities to publish contract awards in a form and manner prescribed by PPA. The Public Procurement Law requires that notices for contract awarded should be posted on the PPA website and published in the Procurement Bulletin. However, the data collected indicated that 83% of respondents stated that letters were written to successful tenderers while 17% indicated that publications are through newspapers. It was clearly evident from the responses that BDA do not abide by what has been stated in the Public Procurement Act 2003 (Act 663) concerning publication of awarded contracts.

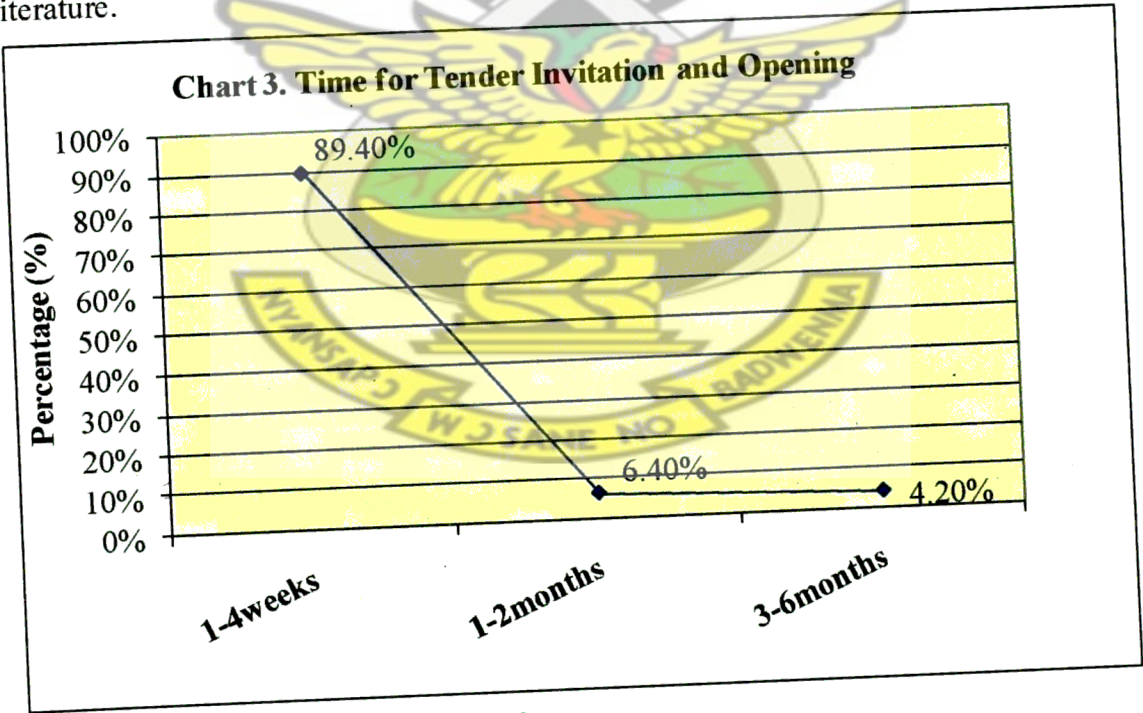
Time Allowed for Tender Invitation and Opening

This is the time tenderers are allowed to put together their tenders. It is measured as the difference between the date the tender notice appeared in the newspaper and the date of the tender opening.

The research was set to find out the average time period allowed for tender invitation. Chart (3), below indicates that 89.4% of response revealed that a period of one-four weeks were allowed for tender participation. The shorter the period the better facilitates procurement procedure.

6.40% of the respondents also supported the 1-2 months average time period whilst 4.2% also appraised the 3-6 months average time period.

The above analysis conforms to existing literature since available research work supports the assertion that the shorter the time period the better it is, as it facilitates procurement procedures. Hence the assertion of 89.4% is in conformance to existing literature.



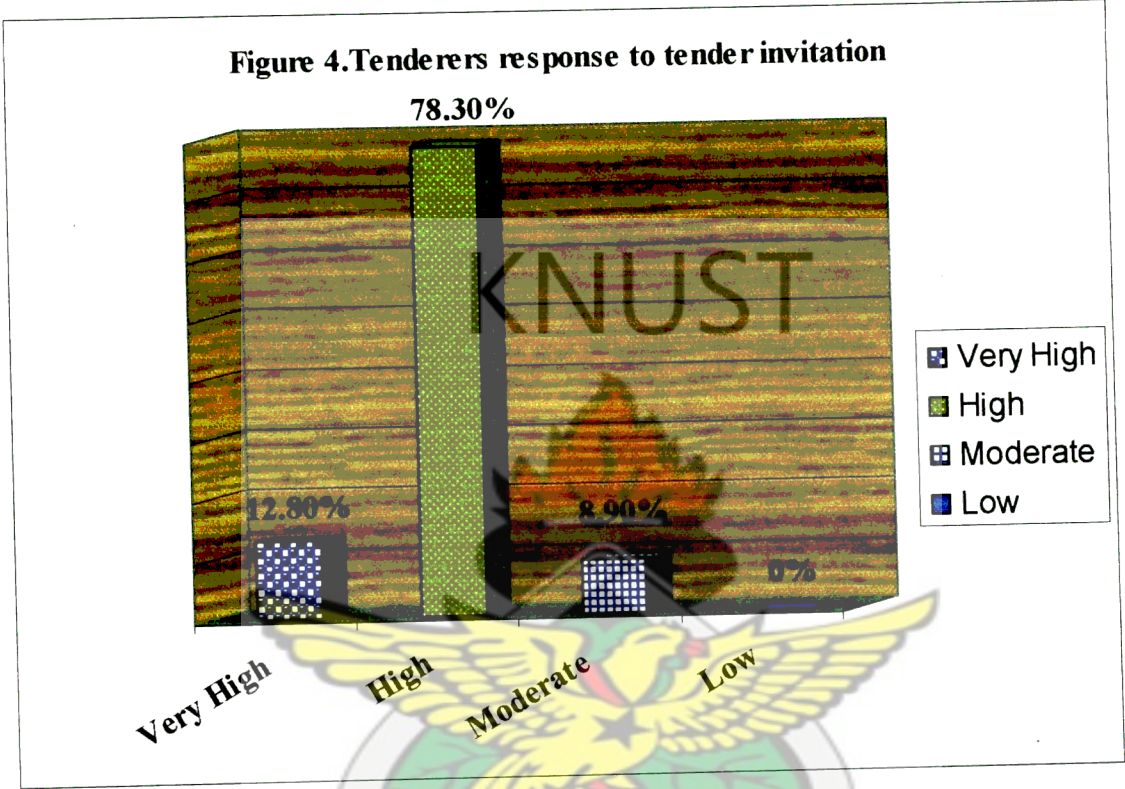
Sources: *Researchers Fieldwork, 2009*

However, different time periods given by the respondents on the same data was because there is no Procurement Unit and hence each department/individuals interviewed was discarding the Public Procurement Act.

Tenderers Response to Tender Publications

The data also revealed that, publication of procurement opportunities inviting bidders were highly patronized by tenderers.

Figure (4) below depicts the responses;

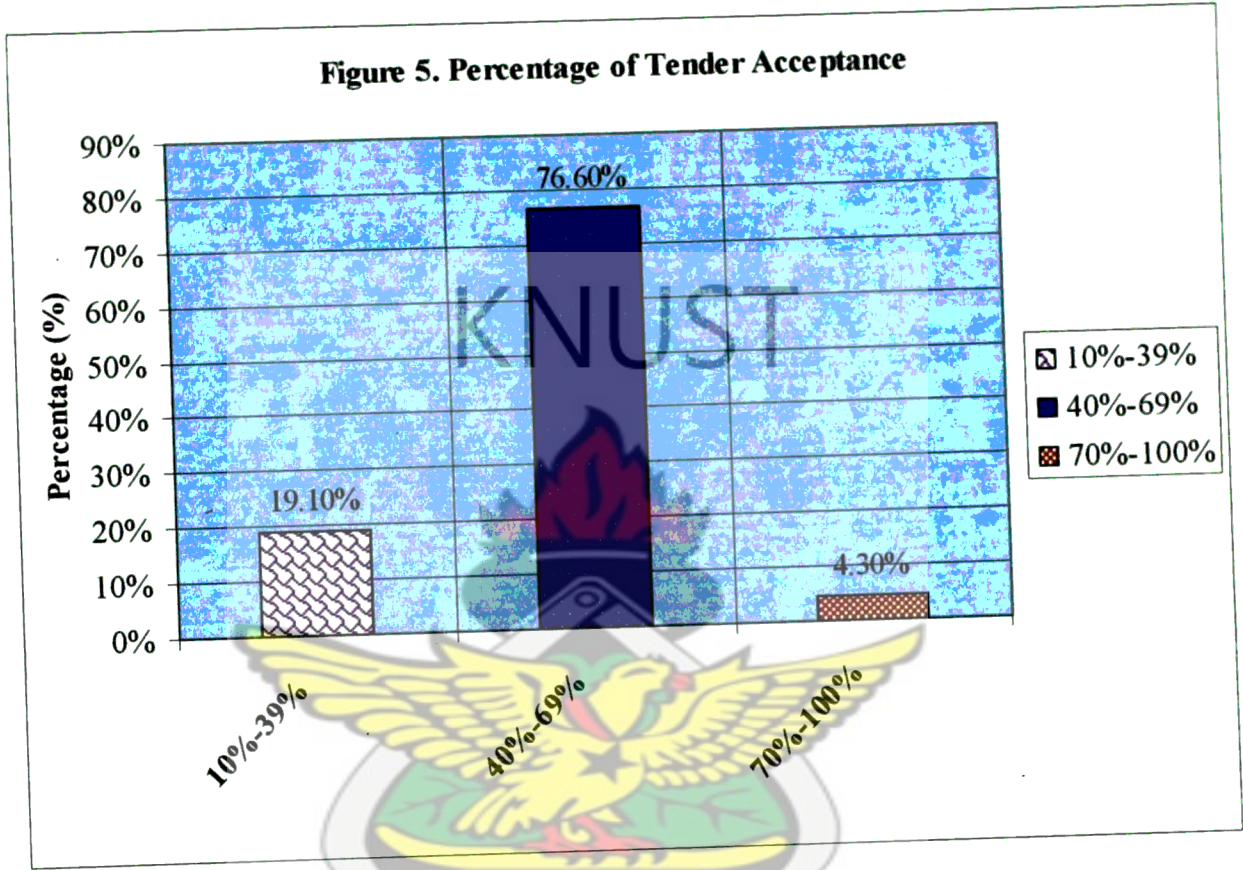


Source: *Researchers Fieldwork, 2009*

The study indicated that 78.3% responses were of the view that many suppliers/bidders tender in their application which conforms to the very high group whiles 12.8% asserted that more than necessary people apply which also conforms to the high group and the remaining 8.9% were of the view that an average potential bidders tender in their application which also conforms to the low group. The disparities with respect to response on number of tenderers who tender in was that, it depended on the type of project to be awarded for contract. Projects that require highly technical skills attract few suppliers whiles projects that does not need too much technical skills attract more tenderers.

Tender Acceptance

This indicator gives a measure of the ratio of acceptable tender that were received for each notice put out by the entity (BDA).



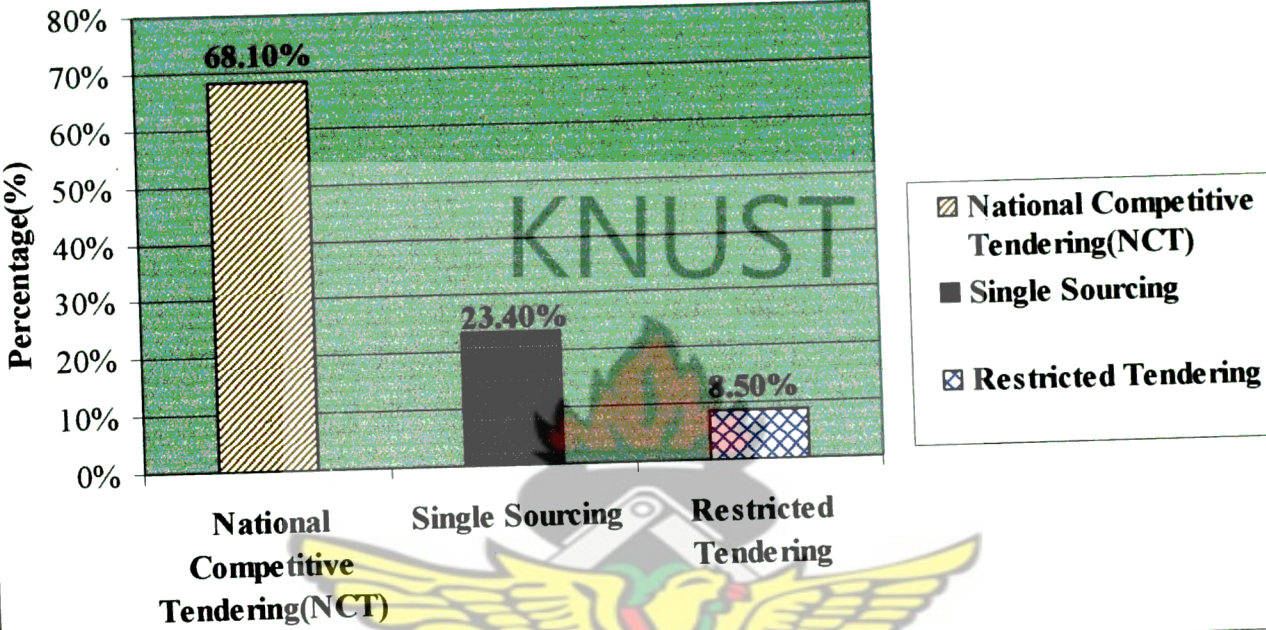
Source: *Researchers Fieldwork, 2009*

Chart (5) above revealed that 40%-69% (76.6%) of applications were accepted after invitation, while 10%-39% (19.1%) of the respondents revealed that applications submitted were accepted and the remaining 70%-100% (4.3%) also asserted that applications were accepted after invitation. It is therefore evident that out of the total applications put in by tenderers, 40%-69% constituted an average accepted level.

Procurement Method

The figure (6) below depicts the type of procurement method used by BDA.

Figure 6. Procurement Method



Source: *Researchers Fieldwork, 2009*

The findings depicted pictorially in the above diagram indicated various procurement methods employed in the execution of the procurement activities at the BDA. 68.1% response was for National Competitive Tendering (NCT) method, while 23.4% were Single Sourcing, and the remaining 8.5% went into the area of Selective Tendering.

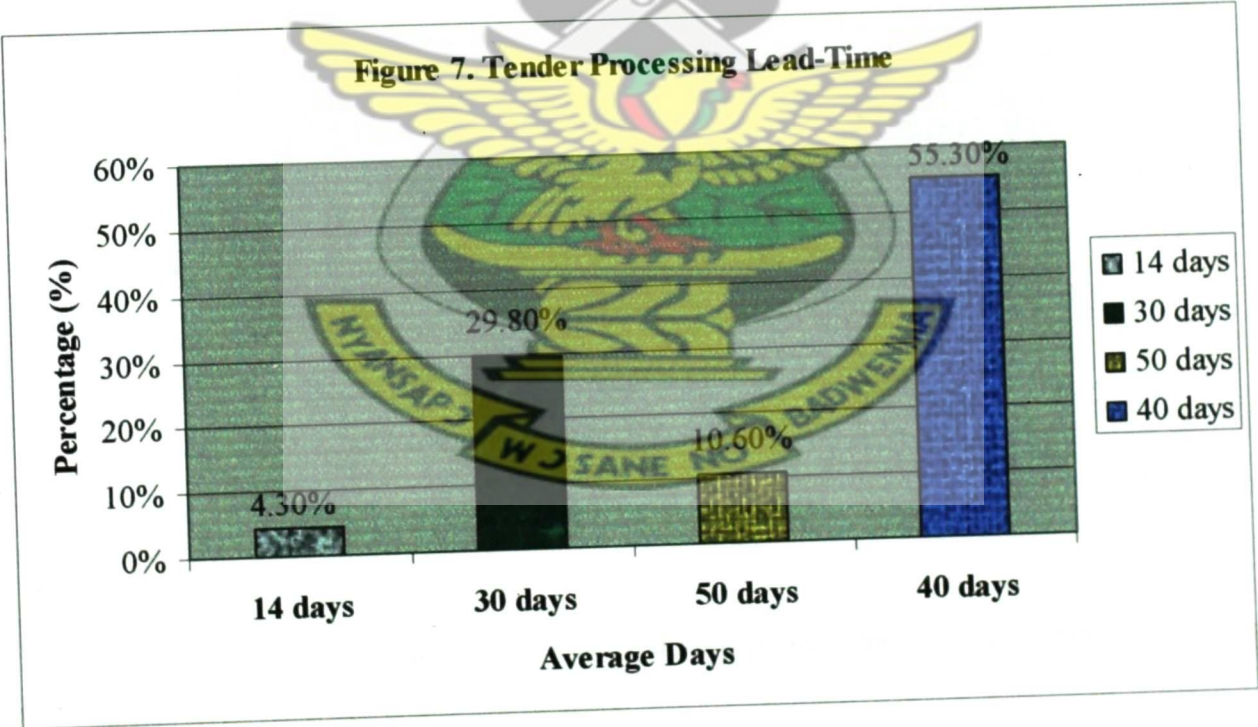
From the foregoing analysis, it presupposes that National Competitive Tendering rated the highest among the procurement methods employed by the assembly. The study revealed that the National Competitive Tendering was appropriate for lower value procurements where the goods, works or service by their nature or scope do not require to attract foreign competition or even justifiable reasons for the BDA to restrict tendering to domestic suppliers. The Act 2003 (Act 663) requires that the district assemblies should adopt NCT for the procurement of goods, works and services based on the threshold specified in Schedule 3 of the Act. Moreover, single sourcing was the next procurement method BDA adopted because there was an urgent need for the supply

of computers and accessories for the assembly within a short possible time of which the assembly engaged Frank Boakye Enterprise Limited who supplied the items. The least method applied by the BDA was the selective tendering. The response indicated that the assembly carried out external works on DCEs residence, Kuntanase. The contract was awarded to GYANGICO Ltd.

From the above analysis, NCT among the methods benefits suppliers as it ensure fair and transparency in the tendering process. The applications of these methods were in conformance to the Public Procurement Act.

Tender Processing Lead-Time

This is the time period between the date of tender opening and the date contract award. The period covers the period for evaluation, the period for seeking approvals and the signing of the contract.



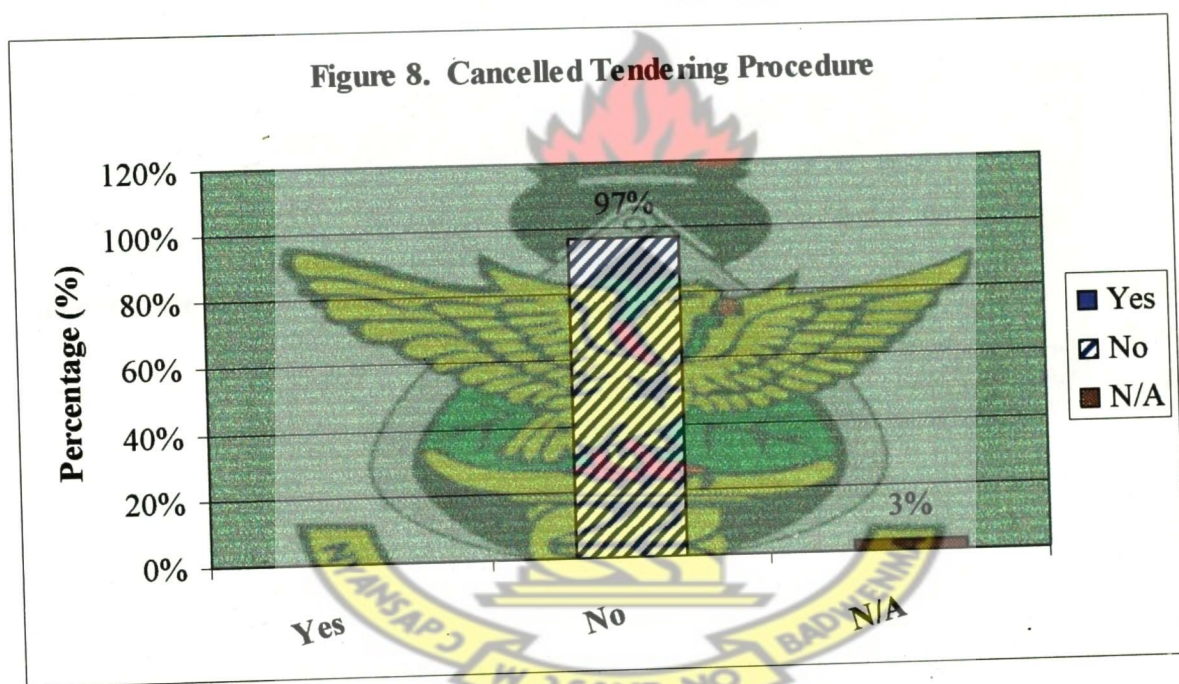
Source: *Researchers Fieldwork, 2009*

Figure (7) above indicated 55.3% of respondents that 40 days were the average time period allowed to put together necessary information before contract awarded, 29.8%

asserted that takes an average of 30days for the contract award whiles 10.6% responses were for 50days, the least time period was 14 days with 4.3%.

Section 65 (2) of the Act stipulates that “where the tender documents require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming to the tender, the procurement entity and the supplier or contractor shall sign the procurement contract within 30 days after the tender opening”. It is therefore evident from the above reference that BDA exceeds the tender processing lead time of 30 days which is not in conformity with the Act.

Cancelled Tendering Procedure



Source: *Researchers Fieldwork, 2009*

This indicator looks at the number of tendering procedures that were cancelled by the entity (BDA) in its procurement process.

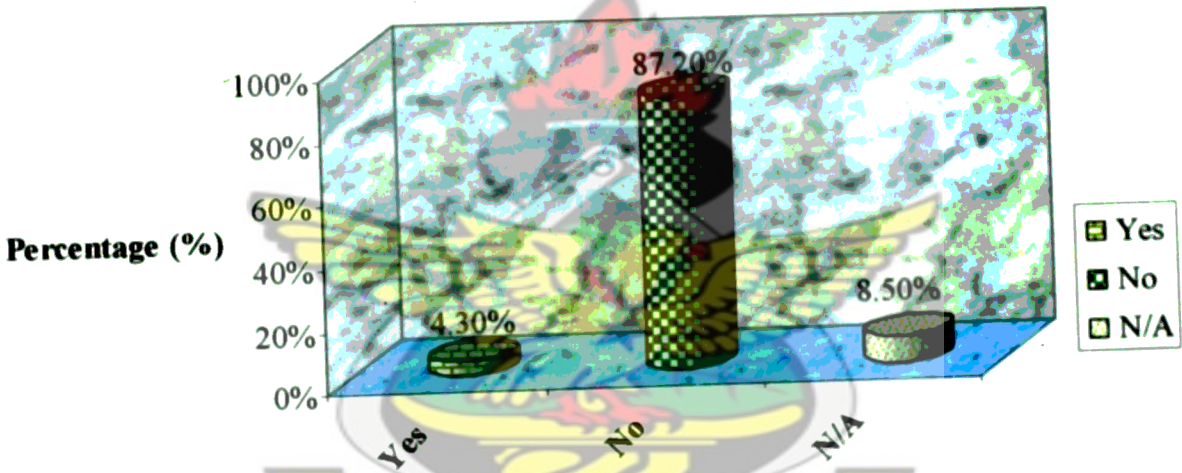
Figure (8) above indicated the result of 97.2% responses signifies that cancellation of procurement procedure has not been recorded in the activities of BDA procurement activities. 3% did not know whether or not there had ever been cancellation of procurement procedure. Public Procurement Act 2003, Section 50 (2) stated that changes

shall be introduced only through tender or contract data sheets, or through special conditions of contract and not by introducing changes in the standard tender documents. The above responses revealed that the activity of BDA conforms to the procurement law.

Protest by Tenderers

This indicator captured the number of protests received and the ratio resolved. The Figure (9) below revealed that 87.2% responses implies that there had not been records of tenderers registered their protest. However, 8.5% of total response was indecisive as to whether or not suppliers protest against procurement procedure.

Figure 9. Tenderers Protest



Source: *Researchers Fieldwork, 2009*

It is suffice to say that BDA had not gone contrarily to the existing literature.

Contract Amendment

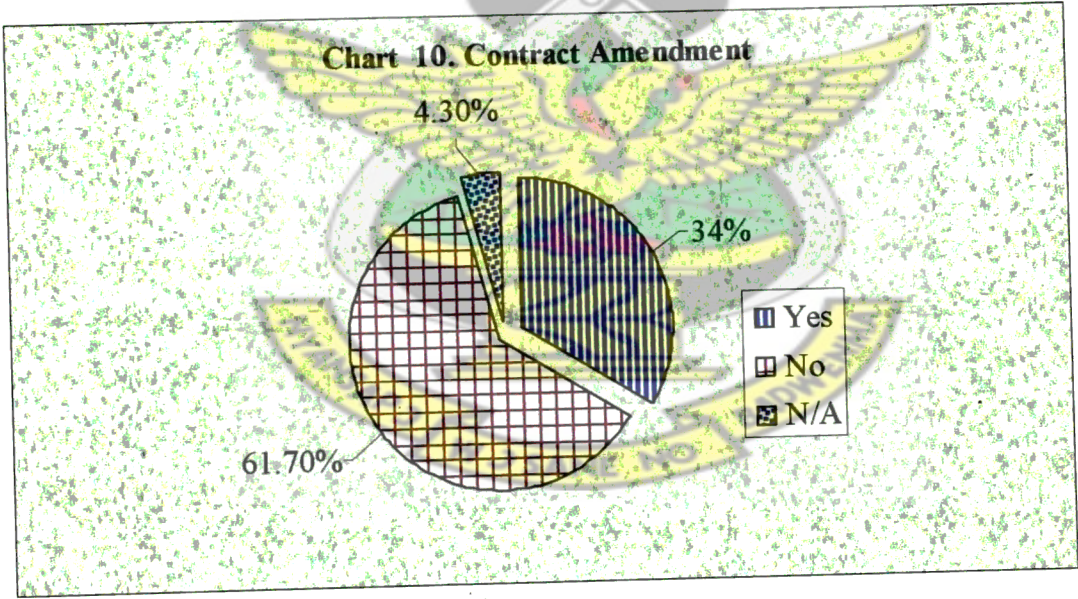
This measure the average ratio amendment of contract awarded in monetary terms. Figure (10) below revealed that contracts awarded were not frequently revised indicated 61.7% response whiles 34% indicated that some contracts awarded were amended to

review contract sum upwards. 4.3% of the respondents were certain of contract amendment.

Contract amendment may become necessary as a result of the application of price fluctuations specified in the contract, the resolution of disputes, additional or reduced requirements (contract verification) by the Procurement Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices.

The contract may allow the Procurement Entity to modify contract values by a pre-determined percentage when this is in the public interest and essential for the work of the Procurement Entity.

All other amendments to costs, quantities, time-periods and other terms and conditions of the contract must be approved by the Tender Committee and confirmed in a formal contract amendment or addendum-Manual-Public Procurement Act 2003 (Act 663). The study result (Chart 10) was in line with the Act.

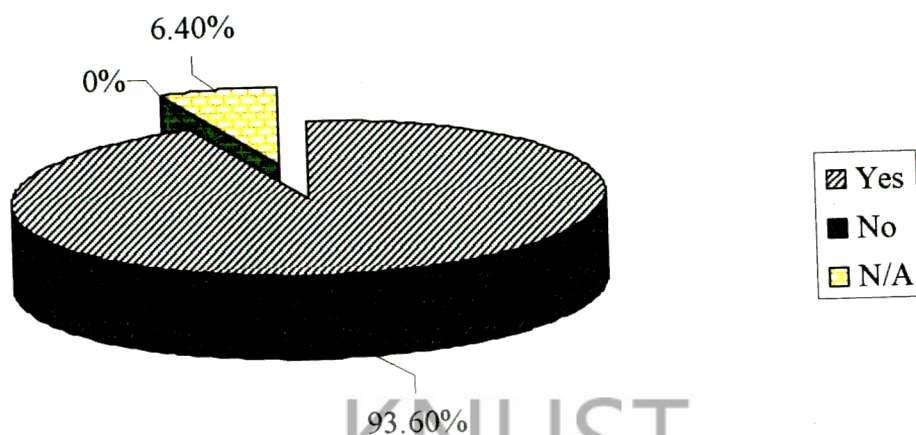


Source: *Researchers Fieldwork, 2009*

Contract Dispute Resolution

This indicator shows the number of contracts with disputes and how many of them were resolved using the provisions of the Conditions of contract.

Chart 11. Contract Dispute Resolution



Source: *Researchers Fieldwork, 2009*

The Figure (11) above revealed that BDA do not have records of contract disputes that required resolution. 93.6% response indicated that contractors had not contested the procedure and decision of the entity (BDA) in their discharge of duties that had generated into dispute.

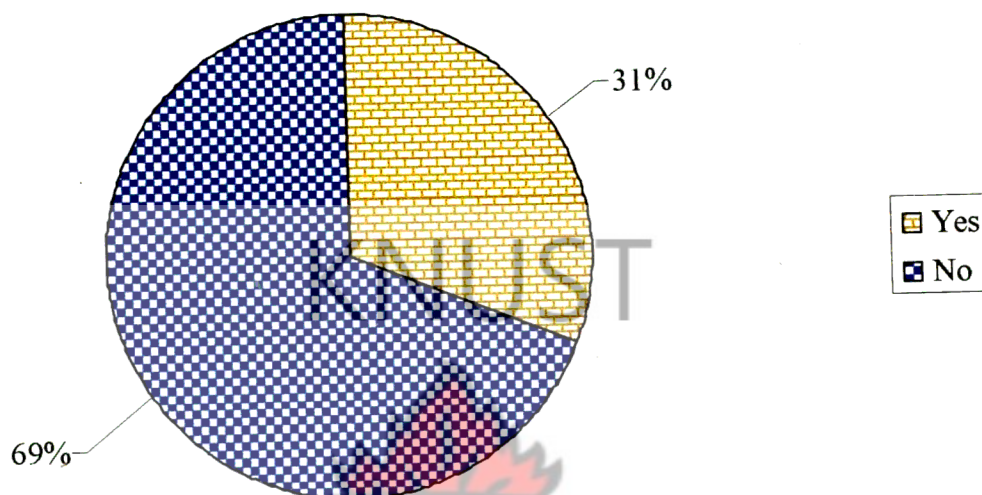
The procurement Manual-Act 2003 provides that any minor dispute between supplier and procurement entity (BDA) may be resolved by discussion and agreement between the responsible officer and the Supplier to rectify the cause of complaint. However, a formal written complaints received from a Supplier should be fully investigated and referred to the Head of the Procurement Entity to authorize correspondence or formal negotiations with the Supplier. Since the response was negative the BDA activities was in conformance to the Act.

Completion Rate

The timely Completion of projects is measured by this indicator.

Figure (12) above depicts how timely contracts awarded to tenderers completed on scheduled.

Chart 12. Timely Completion of Awarded Contracts



Source: *Researcher Fieldwork, 2009*

Generally, the study indicated that contracts awarded were poorly completed on time scheduled. The chart depicts that 69% respondents were of the view that contracts awarded were not completed on time while 31% of the entire procurement contracts were completed on time.

In the same analysis, it was evident that contracts that did not receive mobilization were not completed on time. The Public Procurement Act 2003 (Act 663) stipulates that 15% of the contract sum should be paid as the mobilization fund. A total of 8.5% (Fig.14 below) of contract awarded were paid mobilization.

In a related analysis, verification and fluctuation of prices were identified to be factors that affect timely completion of contract awarded as it delays projects execution. The Act states that Performance of the works should be completed by the Contractor in accordance with the time schedule prescribed in the Schedule of Requirements.

However, where delay becomes inevitable, contractor must notify the Procurement Entity, through the Project Manager, in writing of the conditions delaying performance, including full details of the delay, the likely duration and the cause(s). In a similar manner, where there is verification the procurement entity should formally written to the contractor for the changes.

The implementation of procurement act was to reduce cost through efficient time management. If contract periods were exceeded, fluctuation becomes necessity, thereby affecting time and cost. It is therefore, imperative state that both parties to the contract do their best to complete projects on time.

Late Payment

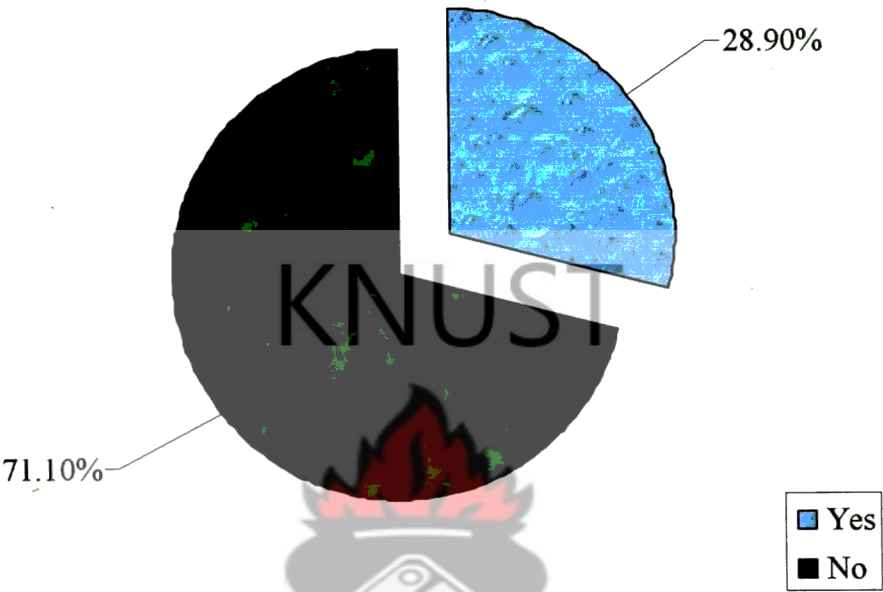
The importance of making payment promptly upon completion of contracts was picked up under this indicator. It measures the rate of payments made by BDA to its contracts awarded for the period.

The study revealed that 71.1% responded late payment upon completion of contracts; while 28.9% constituted prompt payments.

Although the Act made it clear that before issue of the contract, a formal commitment of the required funds against the budget of the Procurement Entity must be approved so that payment can be made, however, interview with the management revealed that about 30%-40% contract completed had not been paid as at the time of research.

Among the reasons assigned to the late payment upon completion of projects were that the cash flows were irregular to the assembly both the common funds and assistance from donor agencies. The above data (Chart 13) signifies that BDA performance does not conform to the procurement act with respect to prompt payment of contract upon completion.

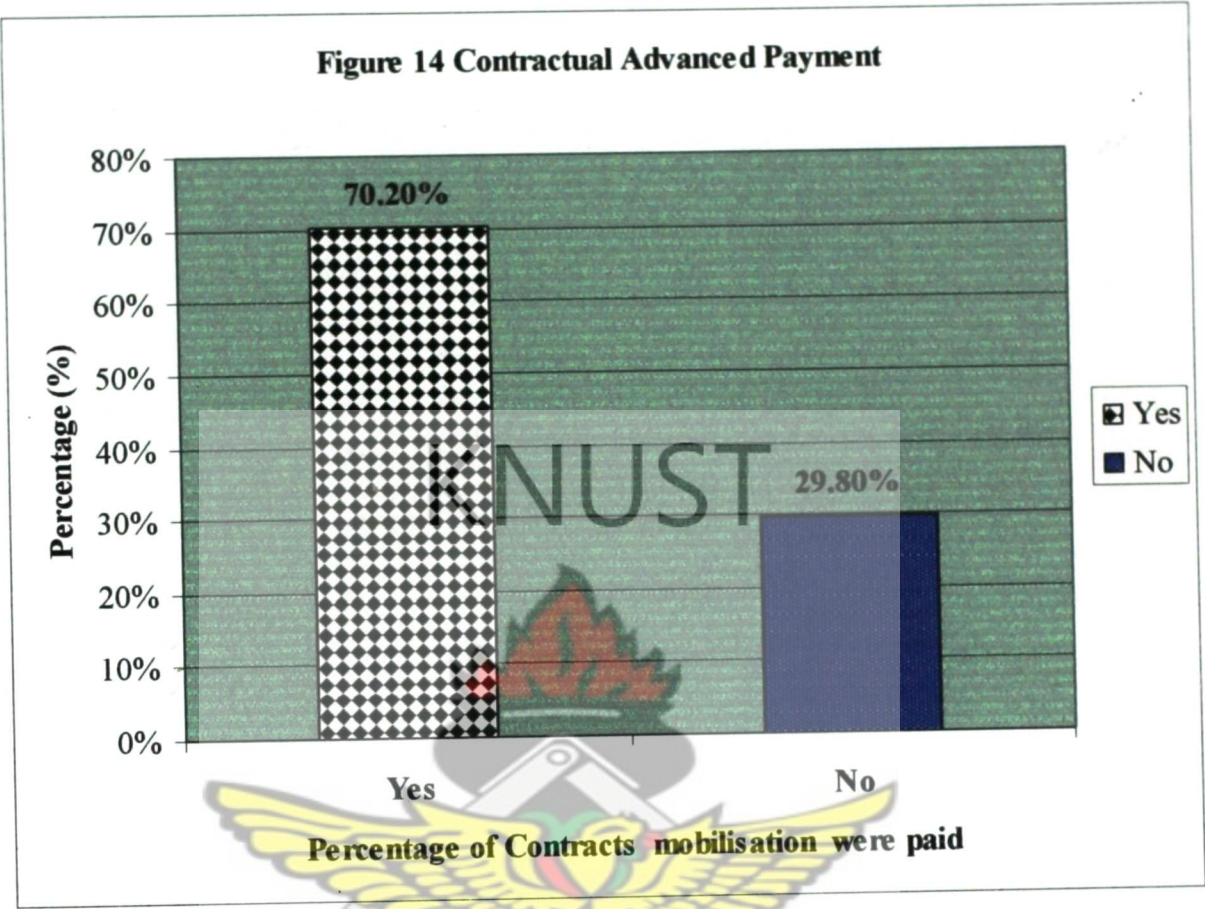
Chart 13. Prompt Payment Upon Completion of Contract



Source: *Researchers Fieldwork, 2009*

Contractual Advanced Payment

This indicator was made to find out whether mobilization fund were paid to contractors. Figure (14) below indicated that 70.2% respondents were of the view that contractual advanced payment were made to providers whilst 29.8% asserted that advanced payment were not made. This explained that only few instances where contractual advanced payments were not made.

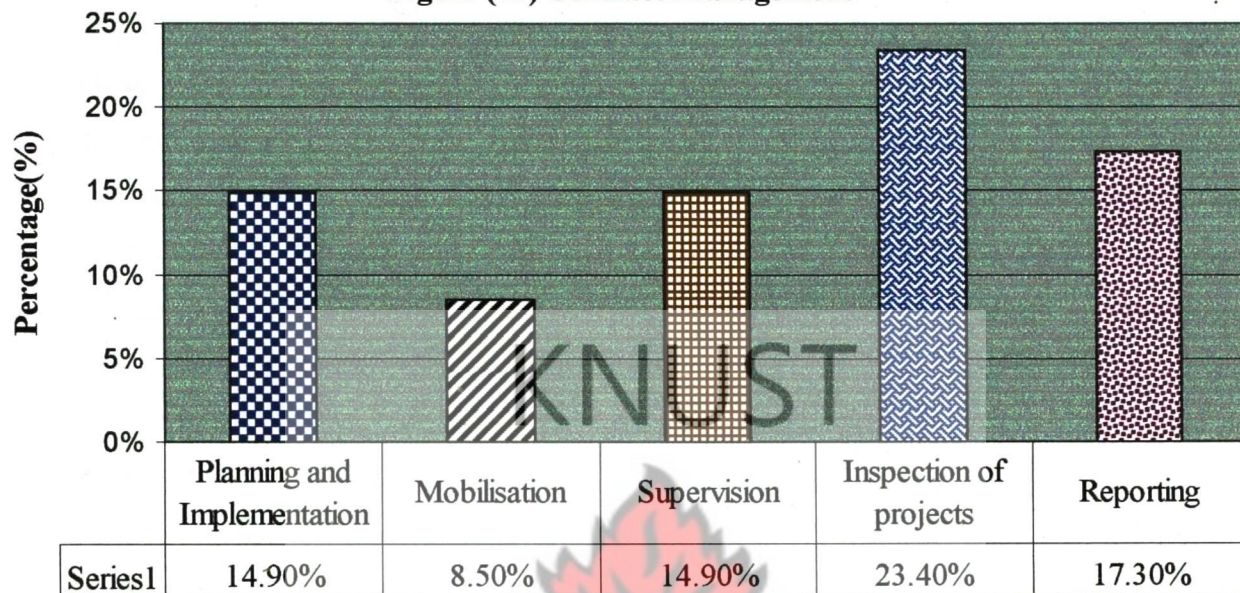


Source: *Researchers Fieldwork, 2009*

The assembly position was that those contractors who did not apply for that initial payment were not received the mobilization although it was specified in the act that 15% of contract sum should be paid to successful tenderers (Act 663). It was clear from the analysis that the activities of BDA was in line with the existing literature (PPA 2003).

After assessing the assembly’s performance using the 14 Performance Measurement Indicators (PMI) of the Public Procurement Model of Excellence (PPME), the additional information obtained from the research pertinent to the study was analysis below.

Figure (15) Contract Management



Source: *Researcher Fieldwork, 2009*

Contract Management

This category measures how the BDA (Procurement entity) monitor performance of their contracts. This is very critical category as the procurement process was erroneously thought of as having ended once the contract was signed or awarded.

Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the contract. The Procurement Unit or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that swift remedial measures can be taken when problems arise, or preventative action taken when problems are foreseen.

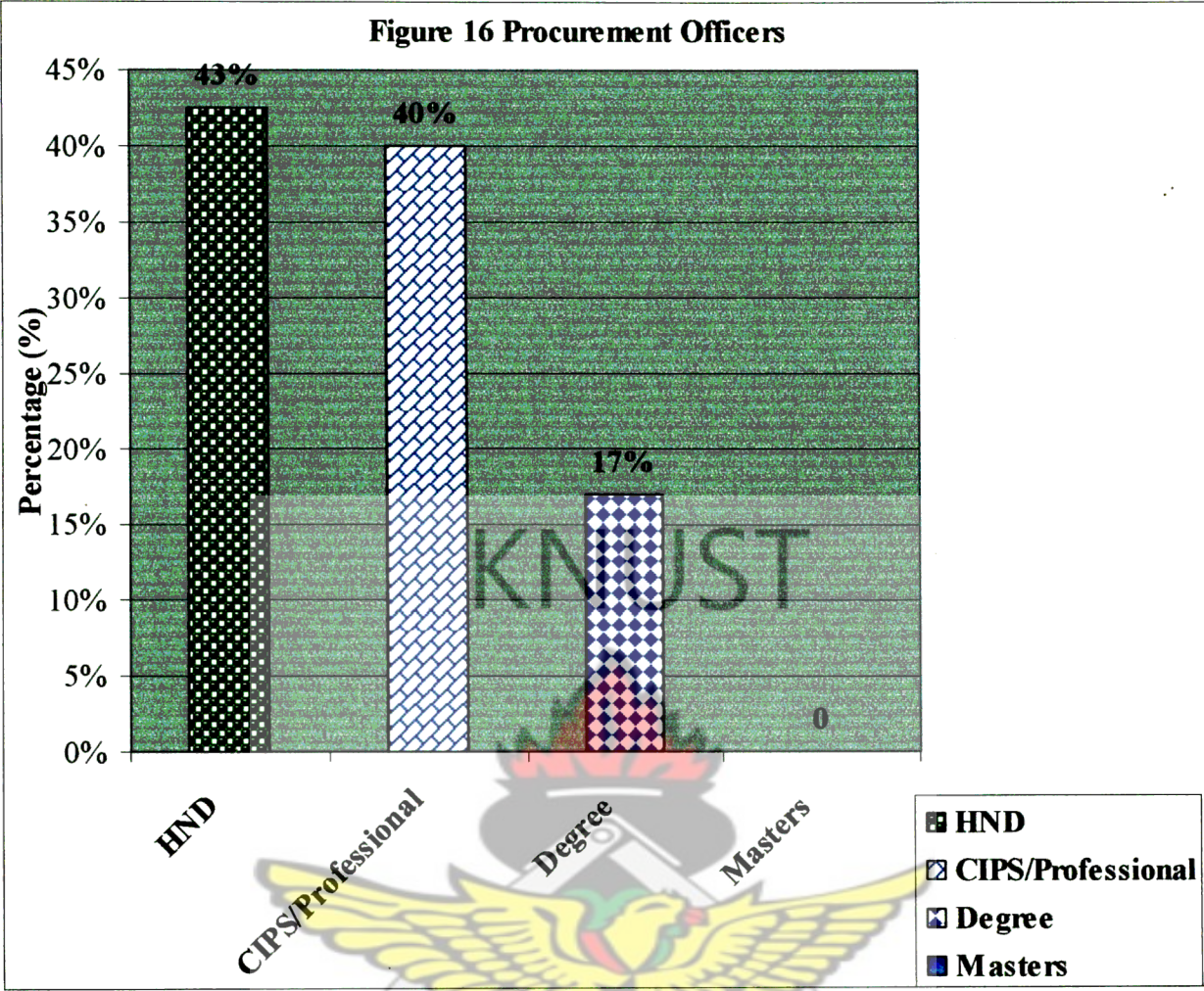
Figure (15) above shows the scores for the period under study. Among the responses scored were that; planning and implementation 14.9%, mobilization 8.5%, supervision 14.9%, inspection of projects 23.4%, and reporting constituted 17.3%.

To assess the impact of public procurement act on procurement practices at BDA, contract management was also one of the parameters that required proper attention. The study made it evident that contract awarded was averagely managed. The figure (15) above revealed that inspection of projects represented 23.4% was one of the activities that the district procurement entity pursue most, while mobilization was the least performance activity with 8.5%, planning and implementation and supervision were approximately 15% each that constituted the third highest performance with the contract management. The Act specifies that there should be effective contract management. (Manuals - Public Procurement Act, 2003 (Act 663)).

Procurement Officers

Figure (16) below indicates the level of educational background of procurement officers. It can be inferred from the figure below that, BDA do not have distinct procurement department established purposely for procurement of goods, works and services.

The study further indicated that there were no trained professional procurement officers in charge of procurement activities in the district but rather, various departmental heads such as the District Development Officer (DPO), District Engineer (DE), District Budget Officer (DBO), District Co-ordinating Director (DCD), District Director Town & Country Planning, Member of Parliament, District Finance Officer (DFO) etc constituting the procurement committee undertaking procurement activities.



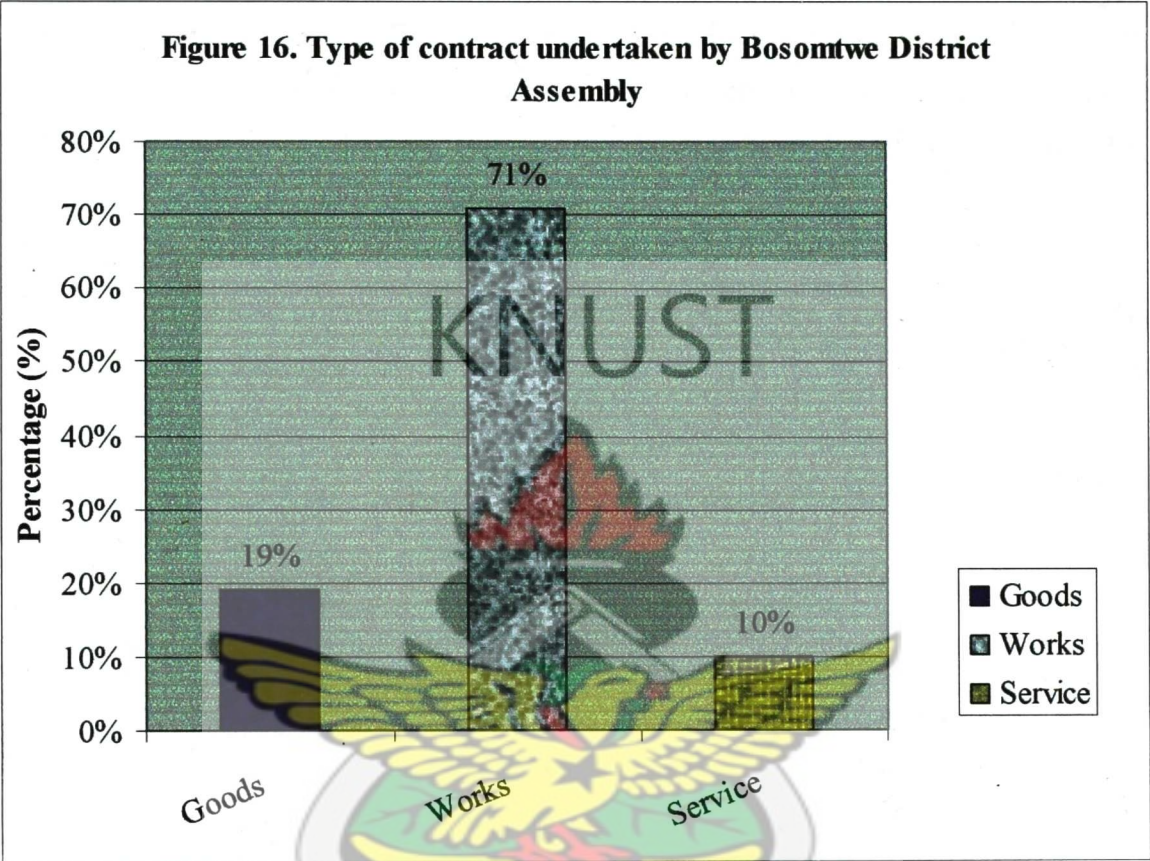
Source: *Researchers' Fieldwork, 2009*

Figure (15) above revealed that 43% of the responses indicated High National Diploma certificate holders (HND), while 40% were holding professional certificates such as ACCA, CA etc., and the remaining 17% of the respondents were for first degree holders. None of the procurement officers had a professional procurement certificate such as Chartered Institute of Purchasing & Supply (CIPS), Chartered Institute of Logistics and Transport (CILT) or masters' degree.

Type of Contracts Undertaken by Bosomtwe District Assembly (BDA)

The study sought to find out the various types of contract BDA undertakes. Figure (16) below showed that works represented 71% of response constituted the highest procurement activity, while 19% was procurement of goods and 10% indicated

service being the least among the procurement activities undertaken by the Bosomtwe District Assembly (BDA).



Source: *Researchers Fieldwork, 2009*

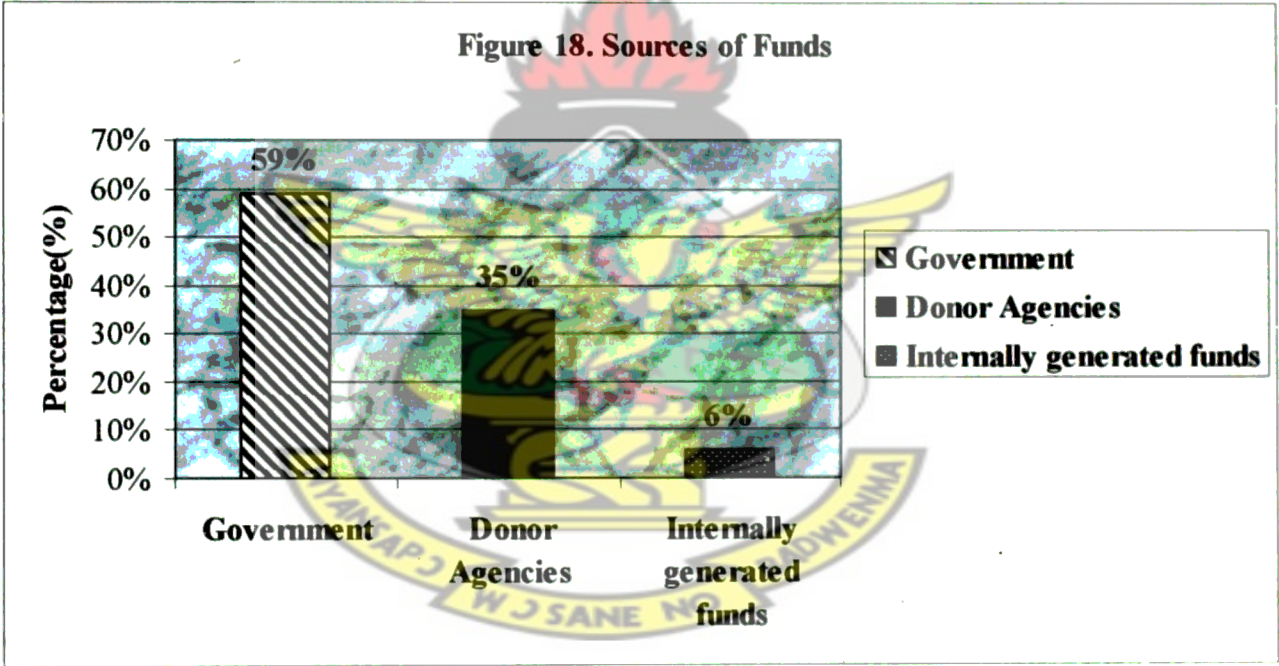
Goods that Assembly procured were; aluminium corrugated roofing sheets and cements to such communities as Brodikwano, Kokoado, Asisriwa and Nyameani. Moreover, the Assembly procured Computer & accessories and sitting chairs to furnish DCE, District Co-ordinating Director, Deputy Co-ordinating Director and DCE & DCE’s secretary’s office at Kuntanase.

The Assembly engaged the services of ADD Design Group Ltd. that managed the construction of 1 No. 2-Sotery Police Station with District Police Administration Office at Kuntanase and CEE Construction Ltd. who also managed Construction of External Works on DCE’s Residence at Kuntanase.

This clearly indicates that (Figure16), the Assembly was not much into the procurement of services. Interactions with the management revealed that the Assembly was under resourced by the central government, limited internally generated and other donor assisted funds were not available, hence the Assemble was much into works (physical development) rather than procurement of goods and services. The procurement of works which was dominance with procurement activities was in conformance to the Act 663.

Sources of Funds

Figure (18) below depicts pictorial representation of the various sources of funds available to the assembly.



The study revealed that 59% of respondents indicate funds from the central government common funds being the main source of revenue to the assembly whiles 35% asserted funds from donor agencies, and the least source was the internally generated funds represented 6%.

From the diagram above assistance from the donor agencies ranked the second highest source of revenue to the assembly. Among the donor agencies includes; Community Based Rural Development Project (CBRDP), AIDs Commission, Community Water and

Sanitation Agency (CWSA), Rural Water and Sanitation Projects (RWSP) and Social Investment Fund (SIF). Agencies such as CBRDP, RWSP and CWSA were specifically into projects. However, the condition was that 5% each of the contract sum was paid by the Bosomtwe District Assembly and the beneficiary community respectively and the remaining 90% released to the assembly to finance the project. The other agencies such as AIDs Commission and Social Investment Fund were specifically offered services. The study indicated that donor agencies assistance to the assembly undertakes public procurement procedure that signifies positive impact as it enhances fair, transparency obtain value for money of assemblies procurement activities in the district.



CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.0 Conclusion

This study was set out to assess the impact of public procurement Act on the procurement practices in the Bosomtwe District Assembly. The research work was undertaken purposely not only to fulfil the academic pursuit but to ascertain the level of Bosomtwe District performance measured with reference to the Public Procurement Act since its promulgation in 2003.

After a series of intensive review and analysis of materials relating to public procurement, it became clear that the processes in developing economies such as Ghana was that, there were a number of challenges associated with procurement practices.

It was revealed from the study that the assembly spent most of its resources in the procurement of works/projects; goods were the second procurement activity. Little information was discovered in the area of service which also forms an integral part in the implementation of the procurement act.

In summary, the application/practice of public procurement act by the BDA has yielded both positive and negative impact on the lives of people in the district.

Bosomtwe District Assembly's compliance to PPA 663 on procurement practices.

1. It was realized that almost all the procurement activities in the assembly was entirely governed by the public procurement act 2003 (Act 663).
2. The study indicated that 72% of the district procurement was in the area of works/projects while 19% constituted goods and the remaining 9% was for services. This clearly shows that, the assembly was not much into the procurement of consultancy/technical services. The physical developments such as renovation/construction of school blocks, construction of police

Administration, workers residency, stand pipes, rehabilitation of DCEs office, Area Council Office etc had improved upon standard of living of the people in the district.

3. Furthermore, the study indicated the media through which public gets to know the assembly's procurement opportunities which was through newspapers. This was in conformity with the Procurement Act 2003 that requires procurement entity to publish tender invitation in a wide national circulated newspaper as stated in Section 47 (2) of Act 663.
4. It came to light that the assembly mostly adopts National Competitive Tendering method that enhances fair and transparency in the procurement practices. The daily graphic and pioneer were among the newspapers through which tender invitation were published.
5. The study revealed that 70.2% contractual advance payment (mobilization) was paid to contractors who were awarded contracts. This implies that the assembly achieved success as mobilization helps to facilitates project completion.
6. The time allowed for tender invitation and opening was manageable. 1- 4 weeks (89%) was the maximum time period allowed for tender invitation and opening. The assembly able to maintain short period is an indication that has enhanced procurement activities.
7. The study indicated that tenderers agitations, protest that could have resulted in disputes were not recorded in the activities of the tender committee. This meant that the assembly undertakes its procurement activities carefully and diligently that has avoided conflict that could have prolonged procurement procedure.

Benefits BDA derives from undertaking the Public Procurement Law

- It was revealed that through the application of the act, a number of donor agencies such as CBRDP, CWSA, RWSP etc have been attracted to assist the assembly's physical development. The open tendering process require by the act gives confidence to the private organizations, NGOs to support the assembly.
- Through competitive bidding/tendering, competent contractors/suppliers who perform quality work at the BDA are selected to undertake contracts.
- The law has helped the assembly to obtain value for money hence saved cost. Competitive tendering has prevented contractors/suppliers from exercising monopoly powers with its associated problems of charging an exorbitant price for contracts.
- Local contractors/suppliers have benefited from award of contracts since the law provides for condition of margin of preference.
- Enjoyment of economies of scale.

The following challenges were identified in the Bosomtwe District Assembly's procurement practices.

1. It was discovered that contract awarded were not posted in the Public Procurement Authority's website and published in the procurement bulletin but rather letters were written to successful tenderers. Moreso, those tenderers who did not succeed in the tendering process were not informed stating reasons why they were not picked up.
2. It became clear from the research that there was poor completion of contracts awarded (projects). 69% of contracts were not completed on time scheduled whiles 31% were completed on time. Late completion of projects imposes extra cost in terms of resources commitment and delay of the use of the structure.
3. Furthermore, one big challenge realized was in respect to late payment upon completion of contract (project). 71.1% of contracts had not been paid as at the time the study was conducted whiles 28.9% had received payment.

For example, upon completion of 2 Storey Police Station with District Administration Office, the assembly owed MESS BC BC Company Limited an amount of GH¢40,900.00 as at 12th August 2009, when the study was conducted while the project was completed in 14th June 2007. (Payment Certificated Issued).

4. It became evident that the BDA do not have procurement department that was equipped with procurement professionals. This necessitated for the drawing of people from different departments of the assembly to constitute the tender committee. These were District Planning Officer, District Finance Officer, District Director Town & Country Planning, District Chief Budget Analyst, Human Resource Manager, District Engineer, District Chief Executive, District Coordinating Director, Member of Parliament etc. The effect was that these officers were not conversant with the procurement principles and procedures in order to apply it much efficiently.
5. Moreover, until today, some Ghanaian public officers still cannot find their way clear as to how to implement the Act. The research revealed that some of the respondents were not conversant with some procurement terms.
6. The actual implementation has often led to delays in procurement processes partly due to donor agencies insistence on certain procedures and sometimes the use of certain service providers.
7. Another issue discovered was that there was not frequent Training Programmes for the procurement officers. This was a big challenge as the import of the act cannot be discerned to enhance professional competence of the procurement officers.
8. It was identified that political influence has been one of the hindrance to effective/smooth operations of the procurement entity in the district.

Flaws of the public procurement Act 663

The following are some of the criticisms of the public procurement Act 663.

1. Inadequate funding for the operation of the procurement entity as well as insufficient staffing.
2. The Act delays and prolongs procurement process. The law that requires the procedure for the award of contracts takes a longer time period.
3. The Act is rigid and does not make room for flexibility in the procurement process.
4. The fiscal decentralization and deconcentration in the public sector have placed procurement responsibility on procurement entities, many of whom are not prepared for the role.
5. The procurement threshold stipulated in the act has given room for corruption since lower value contracts do not pass through tendering processes.

5.1 Recommendations

The key to developing any good procurement system is the understanding of the mission and goals of the overall organization. The role played by the sub-entities within the overall structures and the relations among the various activities. The link between public procurement and social service provision to the public cannot be overemphasized.

The proper adherence to the law does not only enhance positive impact but also help to eliminate wastes/costs and curb the incidence of corruption in the procurement process that enhances procurement performance.

In view of the above issues submitted, the following recommendations were made;

1. Having the right calibre of procurement personnel to undertake procurement activity is one of the main ingredients for the success of procurement act. This is true for the use of qualify professionals for procurement activities in the Bosomtwe District Assembly. It is therefore imperative for the Assembly to have a separate procurement department. Organise Training Programmes that would help equip and staff the department with qualified professionals for procurement

activities. The modules for the training should be targeted at Entity Tender committees, Tender review Boards, Appeals and Complaints Committee, public and private oversight institutions, and suppliers of goods, works and services.

2. It is suggested that the procurement entity (BDA) should be independent in discharging of its duties without any form of political influence that could impede the entity's performance negatively. Most of the times, projects are abandoned when there is change of government or the District Chief Executive. This result to waste of the public resources in terms of money, material etc of which if the project was to be completed, could have to improve upon the living standards of the people in the district.
3. The PPA 2003 (Act 663) makes it mandatory that contract awarded should be posted to the PPA website and published in the procurement bulletin (Section 31 of Act 663). It is therefore suggested that the Bosomtwe District Assembly should make effort to comply with the mandates of PPA.
4. It is recommended that the Assembly comply with the contractual agreement with contractors/suppliers by honouring prompt payment upon completion of contracts/projects. This would enhance contractor's ability to become resourceful to improve upon their financial capabilities on subsequent execution of projects/contracts.
5. The PPA should also launch a performance system. This would entail developing a standard set of indicators for assessing procurement entities, collecting and analyzing the information and publishing the results regularly and local entities who fail to meet the standard set should be sanctioned appropriately.

However, it is important to stress that the following areas were identified for further research are stated below;

- The impact of skilled procurement personnel on procurement practices.
- The extent to which sound procurement practices enhances real competition in the private sector.

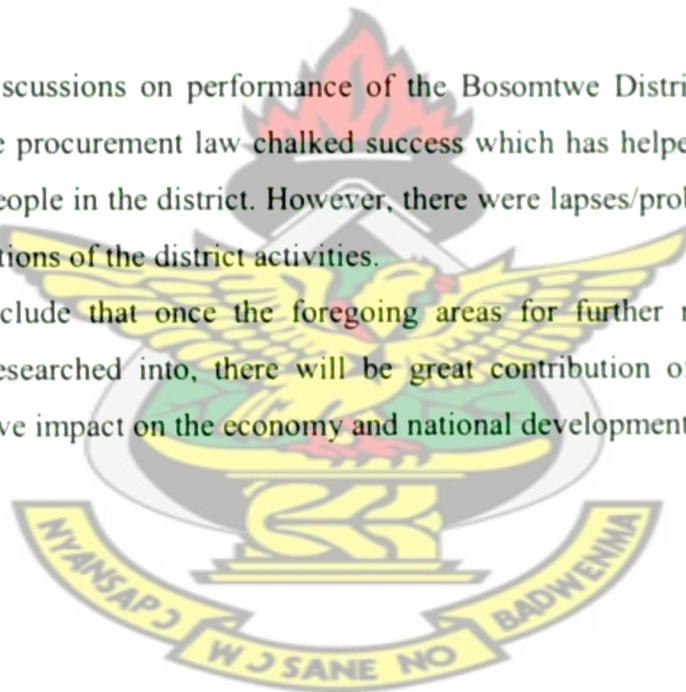
I believe that if the above recommendations are adopted and address the problems identified will help drastically to reduce the challenges in the public procurement practices in the district assemblies that would enhance value for money in the procurement practices.

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5.2 Summary

The foregoing discussions on performance of the Bosomtwe District Assembly in its application of the procurement law chalked success which has helped to improve upon the lives of the people in the district. However, there were lapses/problems that impeded the smooth operations of the district activities.

It is hereby conclude that once the foregoing areas for further research or similar magnitude are researched into, there will be great contribution of knowledge to be applied for positive impact on the economy and national development.



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APPENDICES

KNUST SCHOOL OF BUSINESS

COLLEGE OF ART AND SOCIAL SCIENCES

THE IMPACT OF PUBLIC PROCUREMENT ACT 2003 (ACT 663) AND PROCUREMENT PRACTICES AT BOSOMTWE DISTRICT ASSEMBLY

QUESTIONNAIRES

This is a questionnaire for a thesis in fulfilment of the requirement for attainment of Masters in Business Administration (MBA) degree in Kwame Nkrumah University of Science and Technology (KNUST). The thesis seeks to enhance public procurement practices in Ghana. Your answers/suggestions and comments are welcome and will be used for only academic purpose and be assured that all responses shall be treated confidentiality.

PERSONAL DATA

1. Date
2. Sex: Male () Female ()
3. Age: (a) 20-29 () (b) 30-39 () (c) 40-49 () (d) 50 and above ()
4. Department/Unit of Assembly
5. Number of years at work: (a) 1-5 years () (b) 6-10 years () (c) 11- 16 years ()
(d) 16 years and above ()
6. What certificate do you hold as a procurement officer in the Assembly?
 - (a) H N D ()
 - (b) CIPS/Professional ()
 - (c) Degree ()
 - (d) Masters ()

(d) Others please specify.....

7. Which level of Bosomtwe District Assembly (BDA) structure do you belong?

(a) Management () (b) Senior Staff () (c) Junior Staff () (d) Others please specify

PROCUREMENT PLANNING

8. Does BDA prepare a procurement plan to support its approved programmes?

(a) Yes () (b) No ()

9. Does BDA have a procurement entity?

(a) Yes () (c) No ()

10. Does the procurement entity submit to the tender committee an input in its planning process?

(a) Yes () (c) No ()

11. How long does the tender committee take to submit its procurement plan for approval?

(a) 1 month () (b) 2 months () (c) 3 months () (d) 4 months () (e) Others

12. Does the procurement unit coordinate with the other departments?

(a) Yes () (c) No ()

13. Do other functionaries in other departments involve procurement staff in key strategic decision concerning procurement of goods, works and services?

(a) Yes () (b) No ()

14. If yes to the above, name two of those departments;

(i)

(ii)

PROCUREMENT CAPACITIES

15. Are there procurement professionals in your department?

(a) Yes () (b) No ()

16. For how long have you been practising as a procurement officer?

- (a) Less than 1 year ()
- (b) 1-2 years ()
- (c) 2-3 years ()
- (d) 4 years and above ()

17. Does your set up organise procurement training for its staff?

- (a) Yes () (b) No ()

18. If (25) is *yes*, what criteria are used to select procurement personnel?

- (a) Training qualification () (b) Experienced () (c) Merit () (d) Others specify

LEVEL OF ADHERENCE TO THE PROCUREMENT DEPARTMENT

19. Does BDA have a procurement department?

- (a) Yes () (b) No ()

20. If *no*, which department is in charge of procurement?

- (a) Stores () (b) Finance () (c) Others, specify

21. Which of the following procurement methods is used by the Assembly?

- i. National Competitive Tendering
- ii. Selective Tendering
- iii. Single sourcing
- iv. Restricted Tendering

(a) i only

(b) i and ii

(c) i, ii and iii

(d) i and iv

(e) Others, please specify

22. Which of the tendering do you think benefits contractors/suppliers?

- (a) Competitive tendering
- (b) Selective tendering
- (c) Single sourcing
- (d) Restricted tendering

23. Which of the tendering methods do you think benefits BDA?

- (a) Competitive tendering ()
- (b) Restricted tendering ()
- (c) Selective tendering ()
- (d) Single sourcing ()

24. Which of the tendering methods in your opinion assures the entity of quality, time and cost?

- (a) Competitive tendering ()
- (b) Restricted tendering ()
- (c) Single sourcing ()
- (d) Selective tendering ()

25. What level of private sector participation in procurement activities?

- (a) Very high () (b) High () (c) Satisfactory () (d) Poor ()

26. Does BDA advertise invitation to tender?

- (a) Yes () (b) No ()

27. If yes, what is the medium of advert?

- (a) News papers () (b) Radio () (c) Television () (d) Internet

28. What method does your set up use to publish contract awards?
- (a) adverts in news papers
 - (b) announcement on electronic media
 - (c) notice boards
 - (d) PPB websites/bulletin
29. What is average time allowed between tender invitation and tender opening?
- (a) 15 days
 - (b) 20 days
 - (c) 31 days
 - (d) Others, please specify
30. Do tenderers protest against the tendering procedures?
- (a) Yes () (b) No ()
31. If **yes** does the appeals committee a able to **resole** these contract disputes?
- (a) Yes () (b) No ()
32. Indicate how timely contracts are being completed.
- (a) Very high (b) High (c) Moderate (d) Slow
33. Does the procurement entity make prompt payment upon completion contract?
- (a) Yes () (b) No ()
34. If **no** why, please give reasons
35. Do you provide advance payment for contracts before commencement?
- (a) Yes () (b) No ()

IMPACT OF THE PUBLIC PROCURMENT ACT ON PROCURMENT ACTIVITIES

36. Has the implementation of public procurement law enhanced procurement in your entity?
- (a) Yes () (b) No ()
37. Has the implementation of the Act helped to increase value for money in your department and the organisation as a whole?
- (a) Yes () (b) No ()

38. What is the level of efficiency in the application of the public procurement law at BDA?

- (a) Very high () (b) High () (c) Moderate () (d) Poor ()

39. Any other suggestion(s) to improve upon the procurement activities at BDA?

.....
.....

40. State the degree at which tenderers/bidders responds to tender notices/publications

- (a) Very high (b) High (c) Moderate (d) Low

PROBLEMS AND CHALLENGES

41. Which of the following procurement methods do you think is most expensive?

- (a) Competitive tendering ()
(b) Restricted tendering ()
(c) Selective tendering ()
(d) Single sourcing ()

42. What is maximum time allowed for invitation to tender?

- (a) 1-4 weeks
(b) 1-2 months ()
(c) 3-6 months ()
(d) 6-12 months ()

43. Does the supply of goods and services conform to specification?

- (a) Yes () (b) No ()

44. Do you encounter delays when applying the procurement procedures?

- (a) Yes () (b) No ()

45. What are the causes of delay in procurement?

- i. Lack of funds ()
ii. Long tendering process ()

- iii. Absence of entity head ()
- iv. Absence of valuation panel ()

- (a) i only
- (b) i and ii only
- (c) i, ii and iii
- (d) ii and iv
- (e) Above all

46. What are the sources of funding for your procurement?

- (a) Government of Ghana
- (b) Donor funds
- (c) Internally generated funds
- (d) Others, specify

47. In your own opinion what are the challenges facing the application of public procurement Act?

48. At what level will you consider the following contract management technique?

- Planning and mobilisation (a) very high (b) high (c) moderate
- Implementation (a) very high (b) high (c) moderate (d) poor
- Supervision (a) very high (b) high (c) moderate (d) poor
- Inventory (a) very high (b) high (c) moderate (d) poor
- Reporting (a) very high (b) high (c) moderate (d) poor