

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

COLLEGE OF ARCHITECTURE AND PLANNING

DEPARTMENT OF BUILDING TECHNOLOGY



DISSERTATION

**(Submitted in partial fulfilment of the Requirements for the degree of M.Sc. in
Procurement Management)**

TOPIC:

**CHALLENGES IN THE IMPLEMENTATION OF THE PUBLIC
PROCUREMENT ACT, 2003(ACT 663) IN THE DISTRICT ASSEMBLIES
(A CASE STUDY OF TARKWA-NSUAEM MUNICIPAL ASSEMBLY)**

BY

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Declaration

I hereby declare that this Thesis is the result of my own work and that no part of it has been presented or accepted for the award of any other degree of the University or elsewhere, except where due acknowledgement has been made in the text.

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Head of Department

Prof. Joshua Ayarkwa

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Dedication

I dedicate this piece to Almighty God for how far He has brought me and the travelling mercies granted. Also to my wife and children, friends and all well-wishers for their prayers, support and encouragement throughout the study.

KNUST



Acknowledgement

My profound gratitude goes to the Almighty God for his abundant grace and travelling mercies throughout the study.

To Prof. Joshua Ayarkwa, my supervisor, thank you for the challenge and constructive criticisms which were of exceptional help to complete this work.

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Finally, my heartfelt and sincerest gratitude goes to my family especially my wife of which words cannot express how grateful I am for your support, encouragement and even more so typing this piece. All I can say is God richly bless you.

Abstract

The aim of this Dissertation is to identify challenges in the implementation of the Public Procurement Act, 2003 (Act 663) at the District Assembly level. The objectives are to identify some of the causes of these challenges in the implementation of the Public Procurement Act, 2003 (Act 663) in the Tarkwa-Nsuaem Municipal Assembly, and also identify the effects of the implementation of the Act, using the Tarkwa-Nsuaem Municipal Assembly as a case study.

The research was conducted using questionnaires, exploratory interviews and reviewed literature.

The findings were that the procurement plan preparation was time-involving and thus has the high tendency of being ignored or delayed in preparing it. It was not easy to strictly adhere to the procurement plan preparation before commencement of procurement. Procedurally, the procurement plan would however have to be prepared before procurement commences. It further revealed that there is no procurement unit and this makes officers like the Works Engineer, the Planning Officer or the Stores Manager initiate and do the procurement on behalf of the Assembly. The quarterly review of the procurement plan is hardly done by the Entity Tender Committee. Evaluation Panel for projects are apparently permanent, that is, same people appear to be doing the Evaluation all the time. Publishing of notice of Procurement Contract Awards including the non-successful tenderers is not done but occasionally for the notice of Award to the successful tenderer. Lastly is the non-availability of funds for projects. All the above have their attendant consequential effects/impacts like delays in project completion, contract price increase, and fraudulent practices/connivance of suppliers or contractors with officers. Permanent evaluation panels breed corruption, stampeding the Public Procurement Act's objectives.

The use of the Public Procurement Act, 2003 (Act 663) is useful since it serves as a guide in Public Procurement bringing about orderliness. Strict adherence to the Procurement Plan, though difficult, would ensure that all spending would have been budgeted for but funds would mostly not be available even supposing the procurement plan had been readily prepared and to be followed.

It is recommended that, there should be a periodic review and monitoring, say quarterly, by the Public Procurement Authority (PPA) for compliance to the Act by Procurement Entities. Bureaucratic tendencies when seeking various approvals from the PPA must be minimised. Procurement as a discipline must be encouraged. Government should ensure that cash flows are not erratic. Persons found culpable of the Act's offences should be penalised.

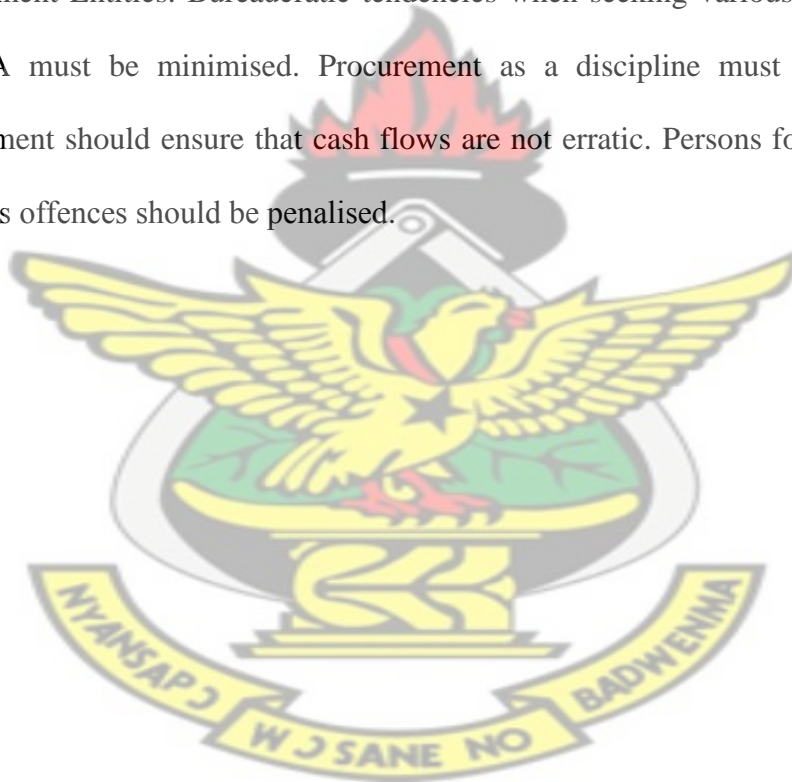


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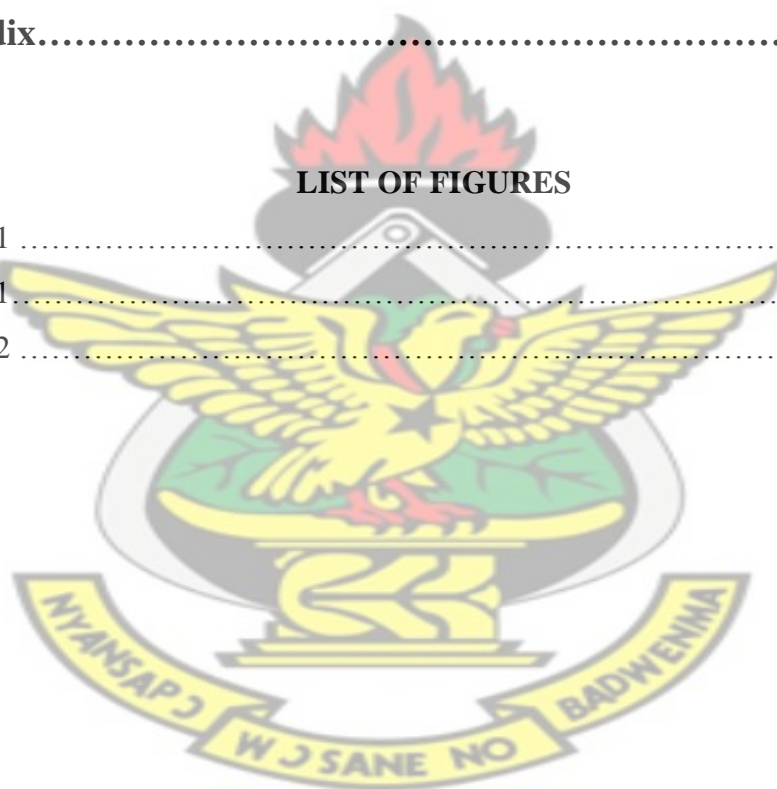
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CHAPTER ONE

INTRODUCTION, BACKGROUND AND RELEVANCE

1.1 INTRODUCTION

All public entities are expected to use the Public Procurement Act as a guide in their procurement activities. This is because public procurement is a multi-faceted challenging field and would be financed from public funds-wholly or partly by the government of Ghana, including foreign aid funds etc. All District Assemblies are public entities and therefore have to use the Public Procurement Act as a guide in their procurement activities. The Public Procurement Act does not seem to have completely eradicated the problems which existed prior to the enactment of the Act and which also brought about the Reforms. There were issues like corruption, fraudulent practices in the award and execution of contracts through the inflation of contract cost, delays in execution of works, etc. These problems are still persisting implying that there are challenges in the implementation of the Act. This study therefore seeks to enquire into the Implementation of the Act in the Assemblies and its accompanying challenges, with specific study of that of works contracts at the Tarkwa - Nsuaem Municipal Assembly in view of time constraints.

The Public Procurement Act (PPA), 2003 was enacted to guide public procurement albeit for Goods, Works and Services, by Public Entities using public funds in order to ensure Efficiency, Effectiveness, Transparency and Accountability. The Procurement process spans a lifecycle from identification of the need mostly by the user, through the selection of suppliers based on various rules, procedures and processes, to Post – Contract award management including disposal. It includes planning, inviting offers, awarding contracts and managing contracts. At various levels of the cycle, the Act is there to guide and therefore the non-use of the Act as a

guide by Public Entities (like the Assemblies) in procurement mostly ends up with a host of issues. For instance with the lifecycle as stated above, in the identification of the need, the Act clearly stipulates that it should be captured through the procurement plan and thus would have been budgeted for. However, most of such needs are just identified and done under Emergencies or sole sourcing not to talk of the capital intensive nature of it, bringing about untold pressure to bear on the Assemblies and suppliers as well. This comes about due to insufficient planning of procurement activities or simply put, procuring out of the procurement plan and eventually, spending out of the budget.

In the selection of suppliers or contractors, which involves inviting offers, the Act is clear about the rules, procedure and processes which include sufficient public advertisement to notify all about the impending assignment (transparency and fairness), to opening of the offers (tenders) at Tender Opening by the Entity Tender Committee chaired by the Head of Entity, in this case the Municipal Chief Executive. A Tender Evaluation Panel is formed after the opening to do the evaluation of the offers and recommend for award. Over here, there is the tendency to use discretionary powers since the panel comprises people with Skills, Knowledge and Experience. The challenge of choosing favourites who might not necessarily have the aforementioned attributes, although the Act is clear about it. At times the panel could comprise persons who are all members of the Tender Committee.

With award and contract management, the Act is also clear by allocation of responsibilities, communication channels, dispute resolution, contract modifications (variations, amendments, determination of contracts etc.). Clearly, the non-compliance to the Public Procurement Act (Act 663) as a guide in Public Procurement

is therefore consequential and eventually renders Public Procurement non-efficient and non-effective and thus the non-attainment of the objectives of Procurement and value for money.

The Act seeks to basically achieve value for money and ensure Transparency. The same rules apply to all suppliers of goods, works and services, encouraging competitiveness and leading to greater supplier participation and inward investment. Transparency further makes individuals of an organisation fully responsible and accountable for all aspects of the procurement process over which they exert authority. Without transparency, corruption thrives and becomes inherent even in spite of the authority exerted which would at this instance co-exist with monopoly.

Procurement processes in Ghana is to bring an efficient, effective, transparent, accountable and professionally managed system which enjoys a high level of business confidence and ensures consistent attainment of the best value for money in the public procurement of goods, works and services in support of national development and physical policies.

An efficient public sector procurement system will no doubt reduce poverty, create wealth and ensure good governance, transparency, reduce corruption and improve the entire public financial management system (David, 2002; DCD/DAC, 2003; NSSF, 2005; Atkinson, 2006; and PPA, 2007).

Regardless of the effort by the governments of Ghana and development partners like the World Bank to improve performance of the procurement function, public procurement is still marred by shoddy works, poor quality goods and services (David, 2002; DCD/DAC, 2003; NSSF, 2005; Atkinson, 2006; and PPA, 2007).

Failure to implement or delayed implementation of recommended performance standards has resulted in unnecessarily high operational costs, uncoordinated business activities, and failure to attract and retain experienced and skilled personnel in the procurement positions, thus affecting the function's performance (David, 2002; DCD/DAC, 2003; NSSF, 2005; Atkinson, 2006; and PPA, 2007).

In 1960, the Government as a republic enacted the Contracts Act, 1960 (Act 25) and Ghana Supply Commission Act which was later on reviewed in 1990 by PNDC law 245. In 1976, the Ghana National Procurement Agency Decree, 1976 (SMCD 55) was passed by the Supreme Military Council. In 1979, another law, the Financial Administration Decree (SMCD 221) was also passed. All these laws, decrees and instruments were meant to provide a comprehensive framework of administrative powers to regulate the activities of procurement within the public sector. However, successive review of the public procurement regimes in Ghana reveal substantial inefficiencies, corruption and lack of transparency in the procurement processes of governmental agencies as a result of unclear legal framework, lack of harmonized procedures and regulations and unclear institutional and organizational arrangement required in the management of the public procurement process. It lacked capacity development of procurement practitioners and career path for them in the Public and Civil Service. This led to non-achievement of value for money in government and donor funded procurements. It became clear therefore that, there was the need to critically examine the processes and procedures of public sector procurement to ensure operational efficiency and institutional capacity to address procurement issues.

It is in the light of all these challenges that the government of Ghana after a major review of its public expenditure system in 1993, decided to establish a comprehensive

public financial reform programme designed to strengthen its Public Financial Management System by addressing the deficiencies in the system and operationalize an integrated Financial Management system in the country. This reform programme known as Public Financial Management Reform Programme (PUFMARP), was established in 1995 but became operational in 1996. The objective of PUFMARP was to promote efficiency, transparency and accountability in the public financial management system thereby improving financial management in Ghana. PUFMARP in its work identified weaknesses in the procurement system. Some of these weaknesses included: lack of comprehensive public procurement policy which includes budget preparation and formulation, expenditure monitoring and control, proper accounting and auditing system; lack of central body with technical expertise; absence of clearly defined roles and responsibilities for procurement entities i.e. lack of ownership and accountability for implementation of budget by the sector procurement entities; absence of comprehensive legal regime to safeguard public procurement; lack of rules and regulations to guide, direct, train and monitor public procurement to mention but a few. The programme also identified that there was no independent appeals process to address complaints from tenderers. To achieve this, PUFMARP recommended the review of Public Procurement system.

Prior to the establishment of all these objectives, procurement activities were still going on and were guided by various new rules. Even as at 1999, Two (2) Legislations were promulgated to among others regulate the management of public funds by state organs, namely the National (Centralized) and Local Government (decentralized). The Public Finance Management Act 1 of 1999 (PFMA) regulated the management of public finances at National spheres of government whereas the

Municipal/District Finance Management Act 56 of 2003 (MFMA) regulated the management of public funds at the local government level. Various Ministries, Department and Agencies began or set up their own Procurement Units of a sort. They developed a set of rules, actions and standard documents to be followed (World Bank, 1997) addressing problems as and when procurement was needed.

Government officials struggled to identify which of the rules to follow due to obvious reasons like the absence of the policy framework for public Procurement, lack of institutional arrangement and the absence of a Central Body for procurement (Suleiman, 2010). In view of the above confusion, the government through the Ministry of Finance and Economic Planning in 1999 established a steering committee known as Public Procurement Oversight Group (PPOG) to assist in the design of a comprehensive public procurement reform programme. The group completed one of its major objectives by drafting a public procurement bill in September, 2002, which was passed into law in December, 2003 (Ameyaw et al., 2012). To operationalize the concept of good governance and to push towards “zero tolerance” of corrupt practices, the Public Procurement Act, 2003 (Act 663) was enacted by the government of Ghana to address the real and perceived shortfalls in the public procurement of goods, works and services. It however became operational on 27th August, 2004 (PPA Manual, 2007).

The Public Procurement Authority in its review in 2006 still identified the weaknesses in the public institutions that need urgent attention. These are: Lack of qualified procurement personnel, incorrect interpretation and application of some provisions of the procurement Act, slow pace in regularizing the Draft Regulations, lack of clear

procedures for Emergency Procurement, lack of Training Avenues or Institutions, poor Record Management (scattered files), poor handling of Suppliers' Complaints, poor Procurement Planning, Mobilization & Implementation, poor Contract Management and high cost of Advertisement (PPA Annual Report, 2007). The Report further highlighted inadequate funding as the leading barrier and lack of adequate office accommodation as the institution's (PPA) challenges. Country Procurement Assessment Report (CPAR), prepared by a team of Government officials, World Bank and donor staff, and national consultants, reveals substantial inefficiency in public procurement and concludes that the principle of "value for money" is not achieved. This is true for both government and donor financed procurement. The main findings of the 2002 Country Portfolio Performance Review of World Bank projects also reviewed slow project implementation and disbursement among others, and to a large extent inadequate procurement planning, non-transparent procurement procedures and poor contract management. A review in 2002, of 132 works contracts, which constitute an important part of public expenditure, indicated that about 84% incurred cost-overruns of up to 30% of the initial amount (World Bank, 2003b). It is in line with all the above that this researcher seeks to investigate the problem.

1.2 PROBLEM STATEMENT

Public Procurement is undertaken by Public Entities of which the MMDAs are no exception. Here budgets are supposed to be prepared prior to the ensuing year for approval and subsequent spending. A cursory observation however indicates that in spite of the use of the Public Procurement Act, 2003(Act 663), there are still numerous challenges and problems in the procurement of goods, works and services.

Most of the procurements, especially Works, end up with Cost Overruns. These overruns range between 40% to 60% and at times 100%. It is said to be due to various factors like unsuitable contractor selection, non-availability of funds, variations, political interferences, poor scope definition etc.

These bring about untold pressure on the Assemblies. The Assemblies would have to deal with the non-completion of projects, abandoning of sites/projects which leads to re-packaging and re-award.

Delays in the transfer of budgetary funds allocation to the Assemblies also account for making them have difficulties in implementing projects and programmes. It further does not send good signals to Contractors since public procurement could be non-attractive. Some of these Contractors adjust by increasing their workloads in order to make up.

Other stakeholders like the taxpayer easily notice that he/she is not having value for money just like the donor agencies because for instance the cost per same projects at not too variant locations have very vast variations in cost.

1.3 AIM OF THE STUDY

To identify the challenges in the Implementation of the Public Procurement Act (Act 663) at the District Assembly level.

1.4 OBJECTIVES

1. To identify some of the causes of the challenges in the Implementation of the Public Procurement Act (Act 663) in the Tarkwa-Nsuaem Municipal Assembly.
2. To identify the effect of the use of the Public Procurement Act (Act 663) in the Tarkwa-Nsuaem Municipal Assembly

1.5 JUSTIFICATION/SIGNIFICANCE OF STUDY

District Assemblies use public funds in the procurement of goods, works and services using the Public Procurement Act (Act 663) as a guide. In the use of the Public Procurement Act as a guide in public procurement, which seeks to improve the public procurement system, the District Assemblies generally rather encounter various challenges and problems. In view of the foregoing, the Research thus is necessary.

1.6 SCOPE OF STUDY

This research was conducted in the Western Region and limited to the Tarkwa-Nsuaem Municipal Assembly. It was centred on the procurement of works, and focused mainly on the implementation challenges faced by the Municipal Assembly.

Works Contracts was chosen instead of goods and services in view of works evidently being one of the core activities of the District Assemblies. That is, provision of infrastructure (capital procurement) at the local level, like schools, clinics, toilets, and lorry parks, which forms a greater portion and thus important part of public expenditure, and of which the ultimate aim of its procurement is the physical

completion of the said envisaged work. As stated elsewhere, per the physical completion, everyone sees the progress of the said work and thus able to easily judge whether the said procurement is meeting its objective like value for money and delays prevention, compared to that of goods and services procurement which may not be physical. The impact of procurement of works is also higher compared to that of goods and services in view of its uncertainties and complexities. It also involves multiple stakeholders, and hence the choice.

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1.7 RESEARCH PLAN

The research has been categorized into Five Chapters.

Chapter 1 dwells on the Background to the study and Problem Statement and it also includes the Aim and Objectives, Justification and the Scope.

Chapter 2 considers the Literature Review which would be collated from Libraries, web pages and journals.

Chapter 3 looks at the Methodology for the research which would involve vivid description of the methods involved in the collection of data to achieve the aim of the study.

Chapter 4 deals with Data Analysis, Findings and discussions i.e. data so brought forward in

Chapter 5 gives a summary of the key findings, recommendations and conclusion of the study.

CHAPTER 2

LITERATURE REVIEW

2.1 Importance of Procurement

In the implementation of the Procurement Act (Act 663), there were certainly going to be challenges in view of Procurement itself being full of uncertainties and complexities. That is, it represents many different situations, anything from the construction work of a new international airport to the acquisition of pencils, not to talk of the Tendering procedures including the several stages, from designing the tender to evaluating the bids. The challenges have become very inherent lately and are on the rise and thus the interest by this researcher to find out about what other authors might have done over the years after the passing of the Procurement Law, in order to compare and contrast, to aid in coming come out with solutions or recommendations in the end.

Public Procurement is the process by which governments and other publicly-funded entities like the Tarkwa-Nsuaem Municipal Assembly acquire goods, works and services (world Bank News bulletin,2011), needed to implement public projects and programmes. It accounts for at least 15% of the world's Gross Domestic Product (GDP), and comparably measures even more in developing countries like Ghana. In Ghana, Public Procurement accounts for 50 -70% of the National Budgets (after Personal Emoluments), 14% of the Gross Domestic Product (GDP) and 24% of the imports (World Bank, 2003). An Approximate annual value of public procurement for goods, works and Consultancy services has been provided as US\$ 600 million (World Bank, 2003) which represents about 10% of the country's GDP. The Bulk of the expenditure programmes of Ministries, Departments and Agencies (MDAs) and

District Assemblies (DAs) like Tarkwa-Nsuaem Municipal Assembly involve capital procurement.

So therefore an improved public procurement or the elimination or mitigation of its challenges or bottlenecks will have a direct and substantial impact on the overall economic situation of the country resulting in budgetary savings and efficiency in government expenditures (World Bank, 2003). Eventually also an efficient and effective Public Procurement system could ensure value for money in government expenditure (Ameyaw et al., 2012) thereby improving the quality of service delivery to their citizens, and reducing poverty. Government's power would also be maximized.

Public Procurement is thus an important function of governance for various reasons. Notably amongst them is the sheer magnitude of procurement outlays which has a great impact on the economy and thus need to be well managed. Indeed, in all countries in the World, procurement activities are estimated to range between 10% and 30% of the Gross National Product (Thai, 2001) as cited by Calender and Mathews(2000). Competitive and transparent public procurement systems are therefore key elements to achieving sustainable development and more prosperous societies in Africa.

Due to fraudulent practices in the award and execution of public contracts through inflation of contract cost (Country Procurement Assessment Survey in Nigeria, 1999), lack of procurement plans, poor project prioritization, poor budgeting processes, lack of competition and value for money and other kinds of manipulations of the

procurement and contract award process, an average of Ten Billion (US\$10b) is lost annually.

All of the above depicts highly the importance of Procurement and when improperly handled results in higher costs to government and the Public. It affects projects and programmes implementation in view of increased project costs which leads to poor execution of assignments, not to talk of its accompanying delays in the delivery of service to the beneficiaries. Its improper management also brings about corruption, bribery and other malfeasances thereby not attractive to competent firms to tender, thereby robbing an economy of receiving the best goods, works and services at the best price (World Bank, 2000).

2.2 Procurement Reforms in Ghana

Procurement Reforms in Ghana can be said to have come a long way and of which great strides have been made by tackling the underlying issues affecting performance such as patch work legal framework, a weak civil or Public Service System, and a lack of access to information by civil society partners and the public at large (World Bank, 2008).

These reforms have been necessitated in view of huge and unsustainable foreign debts, excessive budget deficits, huge contractual payment arrears, poor performance delivery, corruption, and pressure from international financial institutions, like the World Bank, which has culminated into the passing of the Public Procurement Act, 2003 (Act 663) (Anvuur & Kumaraswamy 2006).

It started in 1960, when Ghana as a republic enacted the Contracts Act, 1960 (Act 25) and the Ghana Supply Commission Act which was later on reviewed in 1990 by

PNDC Law 245. Since Public Procurement is a business process in a political system, how well these two are blended will affect the sustainability of the reforms should one perceive those ideas. This is so because it was until 1976, that the Ghana National Procurement Agency Decree, 1976 (SMCD 55) was passed by the Supreme Military Council, all to control expenditure of Public funds. In 1979, came another law, the Financial Administration Decree (SMCD 221), further efforts to provide a comprehensive framework of procurement within the public sector. In view of the prevailing political situation then, the inefficiencies, corruption, lack of transparency in the procurement processes of governmental agencies and departments were rife until in the Fourth Republic, the idea of reforms became eminent again in view of the urgent need for it. Thus, in 1993, the Ghana government, after a major review of its Public expenditure system established a comprehensive Public financial Reform Programme designed to strengthen its public financial Management Reform Programme (PUFMARP). This however became operational in 1996.

PUFMARP's objective was to promote efficiency, transparency, and accountability in the Public Financial Management System thereby improving the financial management system in Ghana. The Programme identified various weaknesses in the procurement system and some of which were: lack of comprehensive Public Procurement Policy, lack of central Body with technical expertise, absence of clearly defined roles and responsibilities for Procurement Entities, absence of comprehensive legal regime to safeguard Public Procurement, of rules and regulations to guide, direct, train (protect) and monitor Public Procurement. The Programme further identified that there were no independent appeals process to address complaints from Tenderers. To achieve all these objectives the PUFMARP recommended the review of the Public Procurement System.

Prior to the establishment of all the objectives, procurement activities were going on and were guided by various rules. Even as at 1999, Two (2) Legislations were promulgated to among others, regulate the management of public funds by state organs, namely the National (Centralized) and Local (decentralized) Government. The Public Finance Management Act 1 of 1999 (PFMA) regulated the management of public funds at the local government level. Various Ministries, Department and Agencies began to set up their own Procurement Units of a sort. They developed a set of rules, actions and standard documents to be followed (World Bank, 1997) addressing problems as and when procurement was needed. Government officials struggled to identify which of the rules to follow due to obvious reasons like the absence of the policy framework for public Procurements, lack of institutional arrangement and the absence of a central Body for procurement (Suleiman, 2010).

In view of the above confusion, the government through the Ministry of Finance and Economic Planning, in 1999, taking the development of a national procurement policy or procedure importantly, established a Steering Committee known as the Public Procurement Oversight Group (PPOG) to assist in the design of a comprehensive Public Procurement Reform Program. The group completed one of its major objectives by drafting a Public Procurement bill in September, 2002 which was passed into law in December, 2003 known as the Public Procurement Act 2003 (Act 663), (Ameyaw et al., 2012). The Public Procurement Act (Act 663) now enacted seeks to operationalize the concept of good governance and push towards the 'zero tolerance' of corrupt practices which were hitherto rife in the procurement of goods, works and services over the years. It ensured that modern trends in procurement were adopted to bring about the much needed sanity to local procurement systems

especially, which had been flawed by bad procurement practices such as corruption and other malfeasances (Ameyaw et al., 2012).

The targeted objectives were achieved. Some of which are promotion of national development, enhanced harmony with local and International Laws, fostering competition, fairness, non-discrimination, transparency and accountability, facilitation of ease of procurement administration and ensuring value for money by judicious, economic and efficient use of state resources. According to the Public Procurement Act, there existed, have to comply measures, monitoring of expenditure ceilings for all Ministries, Departments and Agencies in consonance with the Annual budget and updated cash flow forecasts. New anti-corruption strategies including codes of conducts for state officials were implemented and all Procurement Entities were to seek clearance from the Ministry of Finance through certification as proof of the availability and adequacy of funding before any contract was awarded.

2.3 Implementation of the Act

The Public Procurement Act (Act 663) applies to Procurement financed from public funds – wholly or partly, procurement financed by funds or loans taken by the government of Ghana include foreign aid funds, procurement of goods, works, services and contract administration, disposal of Public Stores and Equipment. The exceptions are: when a Minister decides that alternative procedures are in the national interest and where a loan or funding agreements specifies alternative procedures of some aid agreements. It does not also apply to stores management or distribution (PPA, 2007). This implies that the Act is to be used so far as the procurement is wholly or partly funds from the public or loans from foreign countries.

The following institutions come under the ambit of the Act (Act 663) and would have to use it as a guide in their procurement. They are central Management Agencies like the office of the President; Ministries e.g. Ministry of Health, Departments e.g. Department of Feeder Roads and Agencies e.g. EPA; sub vented Agencies like DVLA, Governance Institutions; State –owned enterprises, eg. VRA, SIC, ECG (when using public funds); Public Universities, Schools, Colleges and hospitals; the Bank of Ghana and financial institutions owned or majority owned by Government and Institutions established by Government for the general welfare of the public, (PPA, 2007). The Public Procurement Act establishes the Public Procurement Board, Entity Tender Committees, and Tender Review Board. It also specifies outlined rules for procurement methods, procedures, and appeals by tenderers and disposal of stores. It defines offences and applicable penalties. It specifies thresholds in schedules to the Act and authorizes the issues of Regulations, which are enforceable under the Act.

These Regulations are issued by the Minister for finance, in consultation with the PPA, under section 97 of the Act which indicates detailed rules and procedures for all aspects of the procurement system, the operations of PPA and procurement entities and the conduct of procurement activities. (PPA, 2007). Further to the Regulations are Guidelines, issued by the Public Procurement Authority (PPA) under the Act which provides supplementary guidance on specific topics like disposal, single source procurement, margins of preference. Additionally, the PPA provides Standard Tender Documents and different for goods, works and services. The authority also provides a manual which provides practical guidance and step-by-step procedures for undertaking procurement in accordance with the Act.

It thus summarily implies that Public Procurement is hinged on the Public Procurement Act 663 of 2003, Public Procurement Regulations, Public Procurement

Manual, Standard Tender Documents and Guidelines. The Procurement Manual as stated earlier provided practical guidance and step-by-step procedures thereby assisting Procurement Entities to undertake procurement in accordance with the Act. The Manual is aimed at providing uniform procedures for the procurement of goods, works and services and for asset disposal; ensuring transparency and accountability in all operation, and consistency with the guidelines of Development Partners where necessary; ensuring the consistent application of the provisions of the Act and Regulations; and promoting the consistent application of best procurement practices and International Standards (Public Procurement Manual, 2007). The Public Procurement Authority acts as the statutory advisory and coordinating body on procurement. All Procurement Entities, Tender Committees and Tender Review Boards are required to abide by the technical guidelines and regulatory instructions issued by the PPA.

The PPA has responsibility for the overall co-ordination, direction and development of Government procurement practices and procedures. Some of which are, monitoring compliance with requirements established by legislation; obtaining and ensuring dissemination of information relating to public procurement; facilitating and supporting capacity building in public procurement; organizing and participating in administrative review of complaints and appeals on public procurement; maintaining registers of procurement entities, members and secretaries of tender committees, and of suppliers, contractors and consultants who have contravened the provisions of the Act and Regulations, and communicating a list of detained firms to Procurement Entities (Procurement Manual, 2007).

A Procurement Entity is an organization or person that has legal/administrative mandate for procurement purposes. Such Entities are to be uniquely identifiable, can

undertake procurement activities, able to prepare and submit a budget as stipulated by statute or as required by policy, have the legal/administrative authority to enter into contracts. The Head of Procurement Entity and any officer to whom authority is delegated are responsible and accountable for actions taken and for any instructions with regard to the implementation of the Act. He/she is responsible to ensure that provision of the Act are complied with; and concurrent approval by any Tender Review Board will not absolve him/her from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of the Act.

The Head of Entity is required to establish a Procurement Unit to undertake all activities related to procurement within the Entity in accordance with the Act and shall appoint or designate a proficient procurement person with the requisite qualifications, experience and skills as Head of the Procurement Unit to undertake the detailed activities of procurement on behalf of the Procurement Entity.

A procurement Unit is an outfit in a Procurement Entity with the responsibility of superintending procurement. The Head of the Procurement Unit (and his/her team) shall be responsible for undertaking and coordinating all detailed procurement activities within the procurement entity. Some of which include, receiving procurement requests from originating offices, checking that the proposed procurement is within the approved procurement plan, and that budgeted funds are available prior to commencement of procurement proceedings; ensuring that funds are properly committed prior to the issuance of any contract or purchase order; coordinating the preparation of specifications, terms of reference, bills of quantities, drawings, short-lists or advertisements, and pre-qualification, tender or request for

quotation documents; arranging the publication of advertisements and notices of contract award; coordinating the process of opening of tender and quotations; participating in evaluation activities of the Tender Evaluation Panel, where necessary, and assisting the preparation of formal Evaluation Reports; maintaining and updating the database of suppliers, contractors and consultants, among others.

An Entity Tender Committee is required to be established in each Procurement Entity with a structure as defined in schedule 1 of the Act, which indicates that an Entity Tender Committee is responsible for review and approval of annual procurement plans as well as the review and approval of quarterly updates of procurement plans. The committee may approve or reject with reasons any submissions made by the procurement unit or the Tender Evaluation Panel. This implies it shall not reject any submission without a good and justifiable reason. The committee may approve a submission, subject to clarification or minor amendments but shall not modify a submission in particular recommendations for contract award.

Each procurement Entity is required to appoint a Tender Evaluation Panel with the required expertise to evaluate tenders and assist the Tender Committee in its work. A Tender Evaluation Panel shall be an adhoc body of not more than five members constituted for a specific procurement package. The panel shall include members with skills, knowledge and experience relevant to procurement requirements, which may include: relevant technical skills, and user representation, or procurement and contracting skills, financial management or analysis skills; legal expertise. Members appointed to the panel may be staff of the Procurement unit but no members of the Entity Tender Committee shall act as a member of the Tender Evaluation Panel,

except in an advisory capacity. To ensure transparency, members of the Tender Evaluation Panel shall not be directly involved in the approval of any award of contract.

A Tender Review Board is a body established in accordance with schedule 2 of the Act to review procurement decisions within the thresholds set out in schedule 3 of the Act. The Tender Review Board is to review the activities at each step of the procurement cycle which will lead to the selection of the lowest evaluated tender by the Procurement Entity. Procurement Entities as defined by the Public Procurement Act, 2003 (Act 663) of Ghana states that, they are set ups which conduct Public Procurement under the Act. Procurement Entities are required to prepare procurement plans for each fiscal year and prepare quarterly updates for approval by the Tender Committee. The Regulations require that the procurement planning process is fully integrated with applicable budget processes and circulars issued by the PPA and the budget preparations by the Ministry of Finance. Adequate procurement planning and prioritization of needs by each Procurement Entity is an essential pre-requisite to effective purchasing based on the following : funding for procurement is unlikely to be sufficient to meet all requirements, effective planning allows requirements to be aggregated into larger purchases at lower unit costs, Procurement of common user items may also be aggregated more than one Procurement Entity into framework (bulk purchasing) saving of time which would have been wasted by separate procurements.

Structured development of procurement plans is an essential part of the annual budget preparation process and provides a ready checklist for the approval of procurements by Tender Committees and Tender Review Boards, and monitoring of procurement

activity by the PPA. During project execution, the original procurement plan should be regularly monitored and updated. The essence is to see how actual performance compares with the planned activities and to make changes in the plan if necessary. The purpose of monitoring is to complete the details of what has actually been executed, to note whether there are major discrepancies with what was anticipated and make adjustments in the plans so as to give a complete picture of procurement performance. A full revision and update of the Procurement Plan must be submitted to the Tender Committee for review and approval on a Quarterly basis throughout each financial year.

2.4 Value for Money

The Ghana Government enacted the Public Procurement Act in 2003, laying the foundation for a standardized procurement system that takes into account the country's decentralization and local industry development policies. It created the Public Procurement Board now the Public Procurement Authority, as the central entity charged with harmonizing policy and ensuring efficient and transparent procurement, carried out using the Public Procurement Act (PPA). Procurement Entities with Tender Committees carry out procurement for government bodies, and Tender Review Boards provide concurrent approvals for recommendations for contract award made by the committees, (World Bank 2003). This means that Public Entities do the procurement for government through their Entity Tender Committees; Tender Review Boards come in when required.

The overall objective of the public procurement system is to provide value for money to the Government by ensuring public funds are spent in a transparent, efficient and fair manner. This can only be achieved when goods, works or services so procured are of the right quality, the right quantity, at the right price, at the right time and at the right place through an open competitive tendering process (PPA Manual, 2007). 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 actions by the Government as well as means to control and audit all procurement cases (PPA Manual, 2007). It is the auditing which would determine whether there has been value for money or not. A way of demonstrating value for money is by comparing a particular procurement with the market rates and prices. Public Procurement Authority price lists guide buyers to achieve value for money by comparing (benchmarking) quoted prices against market prices before contracts are signed or awarded per Request for Quotations. Suppliers/Contractors are made to sign a code of conduct, that is, Commitments about honesty, transparency, efficiency under a statement of priorities to ensure government is getting Value for Money.

Value for money is a critical measure of the effectiveness of the procurement process, its inputs and outcomes (PPA, 2007). It thus implies that value for money is how effective a particular procurement was, and also based on the application of efficient methods or procedures. Value for money does not mean 'lowest price'. It is the optimum combination of whole life cost and quality to meet the end user's requirement. Value, as returns for the resources so invested, and here, the customer or end user is very much satisfied and not much bothered about the investment since it is worth it, unlike when not satisfied and then the value for money audits begin. In this situation, there is always even the regret by the end user for the procurement. All

concerned stakeholders must therefore ensure that quality standards do not fall below an acceptable level.

Achieving Value for Money requires (PPA, 2007) a strategic and integrated approach to procurement. This means that Value for Money would not be achieved if the approach to procurement is not strategically done and thereby integrating it into various systems. When value for money is not achieved, the implications are enormous and immediately the customer or end user is dissatisfied, the objective of the procurement activity would not have been achieved, public procurement activities become non-attractive to suppliers/contractors (private sector) and donor institutions/countries as there is **loss of confidence**. Ultimately then, there would have been improper utilization of the funding thereby making the procurement non-efficient and **non-effective**.

Corruption defeats the objective of the Act (to achieve value for money) whenever it occurs at any stage of the procurement cycle and therefore a very critical area to be looked at when value for money is **to be achieved**.

A typical case, in reference to the above was when a project was to be constructed at a cost of GH¢50 million. Ten (10) companies took part in the tender. A suggestion was made that five (5) companies each were to pay GH¢50,000 of grease payments to win the contract or in any case they the bidders chose to do it on their own volition, and further on the eventual winner is made to part with 10% of the project cost. The apparent effect is that GH¢5,250,000 is wasted. This would lead to the inflation of prices by the successful company or renege on quality. The other four bribing companies also in order to regain their sunk cost would increase their prices, thereby contributing to higher domestic inflation and other related macro-economic effects.

Value for money is essentially necessary to serve as a guide in all spheres for good public services and good governance. Public Entities are therefore expected to apply the highest professional standards when they spend money/funds (they have been entrusted with) on behalf of the tax payer in order to achieve **value for money**.

2.5 Challenges of Procurement

Public procurement practitioners have and will always face many challenges. Each country has its own economic, social, cultural and political environment. Each country's public procurement practitioners face different types of challenges, or the same types of challenges but at different levels from their counterparts in other countries (Thai, 2001).

2.5.1 Types of challenges

Public procurement is an important function of government for several reasons. First, the magnitude of procurement outlays has a great impact on the economy and needs to be well managed. Estimates of the financial activities of government procurement managers are believed to be in the order of 10% – 30 % of GNP (Callender and Mathews, 2000). Efficiently handling this size of procurement outlays has been a policy and management concern as well as a challenge for public procurement practitioners

Secondly, public procurement has been utilized as an important tool for achieving economic, social and other objectives (Thai, 2001). The Commission on Government Procurement reports that the magnitude of Government's outlays for procurement and grants creates opportunities for implementing selected national policies (Federal Acquisition Institute, 1999). The World Bank's Procurement under IBRD Loans and

IBRD Credits specifies following four major concerns or objectives of public procurement for projects funded by its loans:

- Ensuring that the loan is used to buy only those goods and services needed for the project;
- Ensuring fair competition for all qualified bidders from the World Bank's eligible countries;
- Promoting transparency and integrity; and
- Encouraging development of indigenous contractors and manufacturers by allowing local buyers to build in a margin of preference for local contractors and manufacturers (Tucker, 1998).

Thirdly, reasons such as greater scrutiny of taxpayers and competing vendors have let major stakeholders to perceive public procurement as an area of waste and corruption. Corruption and bribery are widespread in government contracts (International Transparency, n.d.). In the United States, corruption in government contracts have been regularly reported in newspapers; and the first week of September 2004 witnessed the reporting of a flurry of criminal prosecutions against state officials for violations of state procurement laws. Overcoming this negative perception -- and the objective reality, to a certain extent -- is one of the biggest challenges in public procurement.

Fourthly, as many countries have moved to a regional and or global economy, public procurement practitioners face another challenge that is, how to comply with their government's procurement regulations and social and economic procurement goals without violating regional and/or international trade agreements. For example, how to comply with national economic policies (in nurturing domestic firms), without

dealing unfairly with foreign firms as provided in regional trade agreements and/or the World Trade Organization (WTO) agreements. This requires a careful study of trade agreements in order to take advantages of special provisions. The WTO Agreement on Government Procurement (GPA) Article XVI provides: “Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.” Without careful examination of GPA provisions, procurement practitioners in developing countries may not use an exception. However, GPA Article XVI.2 “expressly allows for the use of offsets by developing countries” (Arrowsmith, 2003). Properly using ‘offsets’ is a major challenge for public procurement practitioners. Similarly, the World Trade Organization's general rule requiring that contracts be advertised for a period of no less than 40 days from the date of publication of the notice to the tender submission deadline. The 40-day requirement would hinder a speedy procurement. The 40-day standard period, however, may be reduced in certain cases to 24 days or 10 days, as set out in GPA Article XI.3.

In developed as well as developing countries, disregarding their economic, social, and political environment, a sound procurement system has accomplished two sets of requirements: management requirements and policy requirements. The procurement management requirements normally include quality, timeliness, cost, minimizing business, financial and technical risks, maximizing competition, and maintaining integrity. The procurement policy requirements normally include economic goals, environment protection or green procurement (promoting the use of recycled goods), social goals (assisting minority and woman-owned business concerns), and international trade agreements. It is very difficult for policy makers and public

procurement practitioners to make an optimal decision, as there are always trade-offs among these goals (Federal Acquisition Institute, 1999; Thai, 2001).

Lastly, facing the challenges above and others, including rapid developments in technology (which have led to new procurement methods), public procurement cannot be perceived as merely a ‘clerical routine,’ as procurement practitioners are and should be involved in strategic procurement planning (Office of Management and Budget, 1997; Hinson & McCue, 2004). In recent years, public procurement practitioners have forcefully challenged the perceived clerical task of public procurement. According to a recent unscientific survey of 704 members at the National Institute of Governmental Purchasing, Inc., 83% of respondents contended that the major role of current purchasing is tactical. Thus, making public procurement a recognized profession is another challenge. Building a body of public procurement knowledge, one of attributes of a profession, is very critical.

2.5.2 Public Procurement Challenges: Internal Factors

Thai(2001) developed a model depicting the scope of public procurement that consists of five elements: policy- making and management; authorizations and appropriations; procurement regulations; procurement function in operations (processes, methods, organizational structure, and procurement workforce; and feedback) (Figure 1). Public procurement practitioners’ ability to accomplish procurement objectives and policies is influenced very much by internal forces including:

- Interactions between various elements (as depicted by the five boxes in Figure 1) of the public procurement systems, various officials and organizations in the three branches of government, and various actors and sub-agencies within a department or executive agency and actors and organizations external to sub-agencies;
- Types of goods, services and capital assets required for an agency's missions;

- Professionalism or quality of procurement workforce;
- Staffing levels (e.g., ratio of procurement practitioners to contract actions) and budget resources;
- Procurement organizational structure such as the issue of centralization vs. decentralization;
- Procurement regulations, rules and guidance; and
- Internal controls and legislative oversight.

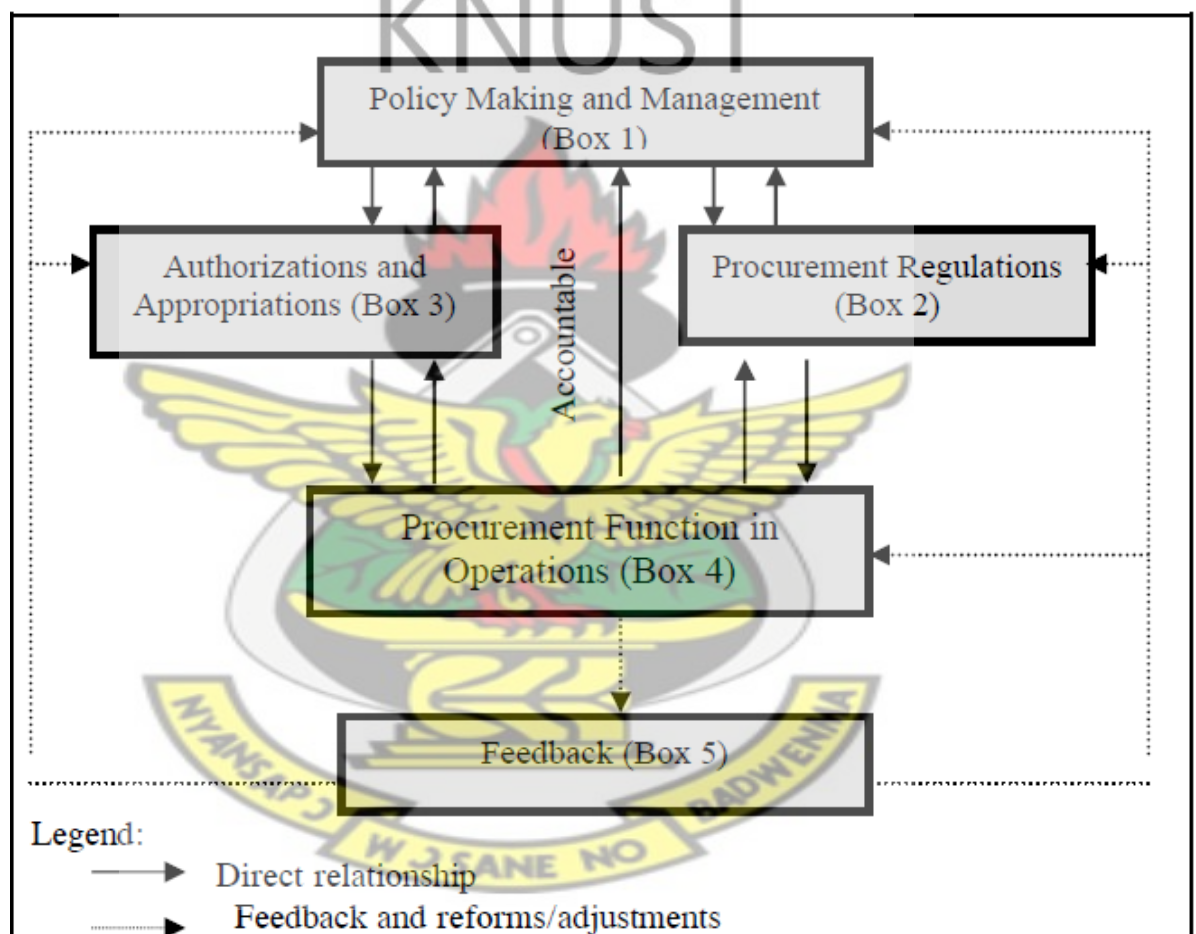


Fig. 2.1 Public Procurement System (Source: Thai, 2001)

2.5.3 Public Procurement Challenges: External Factors

Public procurement practitioners have always faced challenges imposed upon by a variety of environmental factors including market, legal environment, political

environment, organizational environment, and socio-economic and other environmental factors.

2.5.3.1 Market Environment

Market conditions have a great influence on public procurement practitioners' effort to maximize competition. Moreover, the market determines whether or not socio-economic objectives of procurement are accomplished, whether or not a governmental entity can fulfill its needs; the timeliness of fulfillment; and the quality and costs of purchased goods, services and capital assets. As there are different levels of economic growth among countries in the world, market conditions are very favorable in industrialized countries, while they may be unfavorable in developing countries. Even under a perfectly competitive condition like that in the United States, some supplies and services are required only by the government (particularly for weapons systems) and are available in the market. This is a captive market, which is limited in scope and competition.

Also as markets become more and more globalized through regional and international trade agreements and treaties, public procurement practitioners face a greater challenge. In addition to compliance with their governments' procurement laws and policies and international trade requirements as mentioned above, they face additional challenges including communication, currency exchange rates and payment, customs regulations, lead-time, transportation, foreign government regulations, trade agreements, and transportation. Thus, "before embarking on a foreign purchasing program, public procurement practitioners must carefully assess the total cost implications and compare them to domestic costs" (National Institute of Governmental Purchasing, Inc., 1999, p. 34). Public procurement practitioners are

torn between free trade agreements and their countries' economic development/stabilization policies when they face a hard choice between selecting domestic or foreign firms.

2.5.3.2 Legal Environment

Apart from public procurement regulations and rules, the legal environment refers to a broad legal framework that governs all business activities including research and development (regulations dealing with safety and health of new products), manufacturing (safety and health regulations at workplace and pollution control), finance (regulations dealing with disclosure of information), marketing (regulations dealing with deceptive advertising, disclosure of product characteristics), personnel (regulations dealing with equal opportunity for women and minorities), and contracts. Indeed, most aspects of contracts--public or private-- such as contract requirements, disputes, and breach of contract are governed under the same contract law. In developing and particularly transitional countries, where legal systems are not comprehensive, government contracts may need detailed provisions.

2.5.3.3 Political Environment

In a democracy many individuals, groups, and organizations in the private sector including trade associations, professional associations, and business firms or companies (commonly known as interest groups) are actively involved in all aspects of the public procurement system. Having various interests, objectives and beliefs, interest groups are involved in the public procurement system in several ways such as lobbying legislative bodies to pass or alter procurement statutes, influencing implementation of these statutes, and influencing budget authorization and appropriations processes. Normally, a government program that is eventually adopted

is a compromise among different views of interest groups, policy makers and management. In this democratic environment, there are cases of a strong coalition of policy makers, bureaucrats and interest groups in their effort to get their programs adopted. This coalition has led to the concept of the 'iron triangle,' which is very popular in the area of defense procurement.

However, the iron triangle shifts immediately after the procurement program authorization and appropriations stages to move to the procurement stage. As failure or success in winning large defense contracts has a great impact on a company, defense specialized companies compete against each other for these contracts. Public procurement practitioners have choices as they face various political pressures as well as sound economic decisions. For example, should they be concerned with maintaining future business competition by keeping some relatively weak companies in business or should they let these small weak firms go out of business and leave a few defense-specialized firms to compete for contracts? This issue is more common in developing countries where perfect competition hardly exists. Large firms are more willing to make a small profit margin or even to take business losses by offering best bids. After small and weak firms are out of business, they will enjoy an imperfect competitive market.

Social, Economic, and Other Environment Forces

While some countries impose social policies on their public procurement practices (such as a policy placing a fair proportion of government acquisitions with woman/minority-owned small business, or economically disadvantaged areas), most

governmental entities --be it a developed or developing country or federal, state, and local governments-- use their large procurement outlays for economic stabilization or development purposes by preferring national or local firms over firms from other countries or other geographic locations. Public procurement practitioners may be in a favorable economic environment or market (with many competing tenderers in their country or local areas) or an unfavorable economic environment (where competition hardly exists). This environment would have a great impact on their practices as they may face an imperfect competitive market.

In addition to social and economic environment, public procurement practitioners are under other external pressures such as an environment protection movement, and foreign policy commitments.

Environmental Protection Concern or Green Procurement. Environment protection has been present in every country-- developed and developing-- and environmentalists have placed a great deal of pressure on public procurement practitioners. This type of pressure can be seen frequently and across countries.

Foreign Policy: Many countries have used public procurement as a tool to achieve specific foreign policies. For example, in the 1980s, the Pakistani government bought 28 F-16 fighter jets, but the United States government withheld the contract because Pakistan was pursuing, against American wishes, the development of nuclear weapons. Public procurement practitioners in poor and weak countries are frequently facing the problem of having to deal with the foreign policy of other nations in their procurement decisions.

Other Environmental Forces: The public procurement system is also influenced by culture and technology. In a culture where giving gifts is a common public relation practice, it is difficult to distinguish between gifts and bribes. Moreover, rapidly advanced technology has forced public procurement to (a) adopt new procurement methods, such as the use of e-signature and purchase cards; and (b) be knowledgeable in many aspects and considerations of how to procure information technology.

Interactions of Environment Forces

Various pressures on the public procurement system, as described above, are not constant variables, but they interact with each other and become conflicting forces that public procurement practitioners have to deal with. There are tradeoffs between the environment forces, and these practitioners have to seek an optimum solution. These tradeoffs in many cases are the most challenging decisions that public procurement practitioners are facing.

As noted earlier, each country has its own economic, social, cultural and political environment, and each country's public procurement practitioners face different types of challenges, or the same types of challenges but at different levels compared to their counterparts in other countries. This book does not intend to cover all areas of challenges that public procurement practitioners in the world are facing. Papers published in this book were selected, through a rigorous peer-review process, from a total of 46 papers presented at the 2004 International Public Procurement Conference. They can be grouped under some two major themes: procurement reforms and lessons learned.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 INTRODUCTION

This research was conducted using questionnaires, exploratory interviews and reviewed literature. The use of the Assembly as a case study helped in establishing practical situations with the implementation of the Act. The exploratory interviews brought out relevant information from respondents like the Municipal Coordinating Director, Municipal Planning Officer, Municipal Works Engineer and the Internal Auditor. The reviewed literature assisted in positioning the study within its theoretical context while the questionnaire established basic facts about the Assembly which could not be established from the interviews.

3.2 RESEARCH STRATEGY

The choice of method to apply in a particular research depends on the nature of the research problem. According to Naoum (1998), research strategy is the enquiry of research objectives. The three main types of research strategies are quantitative, qualitative, and triangulation. However, the choice to adapt any particular strategy depends on the purpose of the study, the type, as well as availability of information for the research (Naoum, 1998). Hence, this research adopted both quantitative and qualitative strategies.

3.3 RESEARCH DESIGN

A research design is a collection of guides or rules for data collection. Literature suggests that, this concurs with the structure for data collection and analysis; the structure that influences the technique for collection and analysis of data and provides the connection between empirical data as well as its conclusions in a logical sequence to the initial research question of the study.

3.4 THE STUDY LOCATION

The case study for this thesis was the Tarkwa-Nsuaem Municipal Assembly. It is one of the Twenty-two (22) administrative Metropolitan, Municipal and District Assemblies (MMDAs) in the Western Region of Ghana.

It is located between Latitude $4^{\circ}51'$ and Longitude $5^{\circ}51'$ and shares boundaries with Prestea-Huni Valley District to the North, Nzema East district to the South and Mponor and Wassa East District Assemblies to the East. The Municipality has a total land area of 978.26km^2 . It lies within the South-Western Equatorial zone and therefore has fairly a uniform temperature ranging between 26°C in August and 30°C in March. Sunshine duration for most part of the year averages 7 hours per day. Relative humidity is generally high throughout the year between 70 to 80 percent in the dry season and 75 to 80 percent in the wet season. The Municipality experiences one of the highest rainfall patterns in Ghana. It has a mean annual rainfall of 187.83cm with a double maximum rainfall starting from March to September as the Main rainfall season and October to February as the dry season.

The municipality is an ideal zone for investment due to the degree or level of interaction between socio-economic activities. The Revenue of the Municipal

Assembly for 2009 fiscal year, as at October, 2009 stood at GH¢2,671,246.01 whilst expenditure for the same fiscal year was GH¢2,456,654,55.

The Municipality was chosen as the case study in view of researcher's knowledge of the areas as well as the limitation of resources and time constraints towards the production of this thesis.

Procurement of Goods, Works and Services at Tarkwa Nsuaem Municipal Assembly are done based on the mandate of the Public Procurement Act (Act 663) by preparing procurement plans for a period of one (1) year. The Procurement Plan so prepared, guides the activities as regards the procurement of Goods, Works and Services.

3.5 RESEARCH PROCEDURE

This aspect of the research methods addresses the sampling method, data collection instruments, and procedures.

3.5.1 Sources of Data

In this research, the approach for gathering data involved both literature review (secondary data) and field survey (primary data). The literature review forms an essential aspect of the research setting the pace for the development of questionnaire. The secondary data obtained from reviewed literature on the area of study includes; reports, relevant books obtained from libraries, journals, articles, and published works of interest. The primary data deals with a collection of empirical data based on the literature reviewed using survey questionnaires and scheduled interviews. Direct

observation was also done to validate responses that were received from the respondents. The data was collected from the Tarkwa-Nsuaem Municipal Assembly.

3.5.2 Questionnaire Development

The questionnaire designed had questions that were close-ended and open ended in nature. Questions in the questionnaire were kept in simple language, null and void of technical terms in order to minimize potential errors from respondents. The questionnaire consisted of twenty one (21) questions. The questions centred on whether respondents understood the Public Procurement Act. They were to state whether it was useful or not at the Assembly. If yes, then how useful. Respondents were asked about the publishing of procurement contract awards. If yes, how often. Whether they encounter any challenges in the implementation of the Act for procurement of works. They were to state the challenges. The procurement plan preparation and how it is done. How often is it reviewed? Whether there is a procurement unit and whether it was necessary to have. Does the use of the Act cause delays in awarding of contracts. If yes, what are some of these delays. How are evaluation panels constituted among others.

3.5.3 Scope of Questionnaire Survey and Target Respondent and sampling technique

The validity of the data collected depended much on the structure and the format of questions addressed. Questionnaires were self-administered. Based on its purpose, design, and practical implication of the study, census sampling approach was adopted. Thus, questionnaires were administered to all eligible respondents of the Assembly. The questionnaires targeted the major stakeholders namely Municipal Planning

Officers, Municipal Budget Analyst, Internal Auditor, Municipal Engineer, Municipal Coordinating Director, Municipal Finance Officer, Town and Country Planning Officer, Urban Roads Engineer and an assistant Procurement Officer of the Tarkwa-Nsuaem Municipal Assembly. For easy understanding, the questionnaires were phrased to be self-explanatory in order to get the required information. All questionnaires were received for subsequent analysis and discussion.

3.5.4 Exploratory Interviews

Exploratory Interviews was conducted as stated earlier with Ten (10) officials /staff of the Municipal Assembly and five (5) non-staff i.e. the private sector for a balance on various infrastructural projects, to gather information at first-hand. The officials, because they deal with or have a hand in the procurement of the infrastructural projects which would mean they knowing and using the procurement Act as a guide and their experiences, and for a balance, the private sector comprising a businessman, a farmer, a taxi driver, a University lecturer, and a Radio presenter. The officials comprised of the Municipal Chief Executive, the Municipal Coordinating Director, the Municipal Finance Officer, the Municipal Planning Officer, the Municipal Budget Analyst, the Municipal Works Engineer, the Supply Officer, the Internal Auditor, the Assembly Lawyer and the Presiding Member of the Assembly. Their various responses assisted in obtaining at first hand various impressions and impacts of the use of the procurement Act as a guide.

Interviews were scheduled at the convenience of the interviewees. This resulted in the use of twenty-five (25) working days to complete the conduct of the interviews. Each meeting lasted for a period of between 45 minutes to one (1) hour.

3.6 DATA ANALYTICAL TOOL

Close-ended data from questionnaire was coded into the Statistical Package for Social Sciences (SPSS) and processed using descriptive statistics and presented in charts. The open-ended questions and data from the interviews were analysed using content analysis. This ensured that closely related ideas were discussed under common themes.



CHAPTER FOUR

FINDINGS AND DISCUSSION

4.1 INTRODUCTION

The data collected via the interviews, reviewed literature and the questionnaire survey are thoroughly analysed in an attempt to further establish the challenges in the implementation of the Public Procurement Act, 2003 (Act 663) in the District Assemblies, a case study of Tarkwa –Nsuaem Municipal Assembly.

4.2 LEVEL OF KNOWLEDGE OF THE PUBLIC PROCUREMENT ACT (ACT 663) AMONG RESPONDENTS

All respondents agreed that they knew and understood the usefulness of the Public Procurement Act (Act 663). They all further said the Act was useful with various reasons of usefulness. The major significance assigned to the use of the Procurement Act were the ‘removal of all ambiguity’, ‘subjectivity in contract awards’, ‘provision of standard procedures and guidelines for procurement which ensures sanity in the procurement activities’. Majority of the respondents agreed that it brings about transparency and competition in the award of contracts thereby ensuring value for money, accountability, etc.

4.3 CHALLENGES IN THE PROCUREMENT OF WORKS

All respondents said they encounter challenges in the procurement of works. The main challenges were identified as follows:

- i. Delays which could arise from various causes, including getting majority of entity tender committee members or the procurement committee to agree on meeting days, limited capacity in critical and complex evaluations, limited resources to verify supporting documents provided by tenderers.
- ii. Most tenderers (locally) were not taking tender instructions seriously or were just incompetent thereby making evaluation difficult.

These challenges are discussed under the following sub sections

4.3.1 Preparation of Procurement Plans

All respondents agreed that procurement plans were always prepared by extracting from the Annual approved budget. New projects/programmes that the Assembly intends to carry out (also captured in the budget) with their corresponding sources of funding were selected and incorporated. It indicates/includes the time frame for projects/programmed, that is, expected start and finish dates. This was done on-line at the Public Procurement Authority website. It was further revealed that the procurement plan was always readily prepared before procurement commenced.

All respondents further agreed that the procurement plan is reviewed occasionally. However, 40% indicated that it was reviewed quarterly, 40% indicated semi-annually while (20%) were uncertain (Fig. 4.1). The preparation of the Procurement Plan was done using approved budgets to address the needs of the Assembly within the set time frame for the start and expected completion of works.

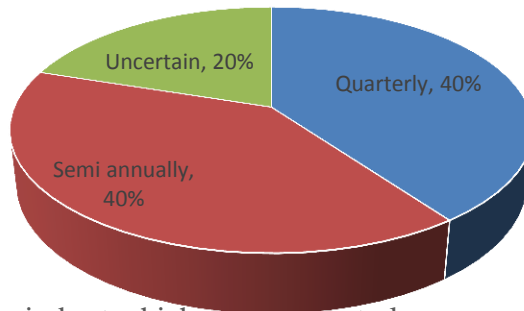


Fig. 4.1 Periods at which procurement plans are reviewed

It was noted that, the preparation of the procurement Plan was time demanding (i.e. needs assessment, analysis, confirming procurement methods and processes, evaluation criteria, financing etc.). Thus, it was said to have high tendency of causing delays in procurement process and hence some entities mostly procrastinated its preparation. However, it is always better than not to prepare since it serves as a guide as well. Estimating the cost of the various packages also takes time and that also accounting for the procrastination.

The Procurement Plan prepared was submitted to the Entity Tender Committee not later than one month to the end of the financial year for approval. Further to it, a quarterly review of the procurement plan is done by the Entity Tender Committee. Supposing the procurement plans were reviewed quarterly per strict adherence of the Act, it would have been very difficult for political interference in terms of political heads insisting on carrying out a particular project or projects which were not in the procurement plan. Some blatantly state that they need to initiate their own projects instead of say per the procurement plan there are various uncompleted projects which have been rolled on and have to be completed. The effects are, abandoning of projects, and thereby making the end user suffer.

4.3.2 Procurement unit

Sixty percent (60%) of the respondents indicated that the Assembly had a procurement unit whilst 40% thought otherwise. Interestingly, though, all respondents however agreed that there was the need for the establishment of a procurement unit or having one in place. Some of the common reasons assigned for the establishment of procurement units are 'that procurement was a specialized activity which required that personnel who should be purposely trained for that activity' and that 'huge state resources are disbursed through procurement'. 'All relevant documents relating to procurement will be kept at a centralized location for easy reference, procurement processes can be easily handled, procurement will be worked on by professionals, duplication of work will be reduced'. 'Bear the responsibility of managing all procurement activities of the Assembly as well as facilitate the implementation of the Tender Committee's decisions'. Thus a procurement unit solely responsible for procurement, would ensure that purchases meet the criteria of value for money. Procurement activities would also be properly/effectively co-ordinated and ultimately ensure that the process is transparent.

Ideally, a Procurement Entity is required to establish a procurement unit to undertake all activities related to procurement within the entity in accordance with the Act and shall appoint or designate a proficient procurement person with requisite qualification, experience and skills as the Head of Procurement Unit to undertake and co-ordinate the detailed activities of procurement on behalf of the Procurement Entity. Thus, every entity is supposed to have a Procurement Unit. The interviews revealed that, it could not be due to the absence of trained procurement professionals or personnel

taking procurement as a full time profession like an Engineer or Accountant. Therefore, other professionals act in their stead and this makes it quite difficult to establish these units.

It was further revealed that, the Tender Evaluation Panel comprises the same people most of the time which is in contradiction with what the Act stipulates: that it should be an adhoc body per every package. The Tender Evaluation Panel do not award but recommend, which implies that whatever is submitted or presented by the panel has to be scrutinized by the Entity Tender Committee before the award. However, the Entity Tender Committee hardly challenge the evaluation reports and thus accepts whatever the panel present as right and carried through. Additionally, some members of the Tender Evaluation Panel also at times double as members of the Entity Tender Committee of which the Act frowns upon. For instance, the Municipal Works Engineer is a member of the Entity Tender Committee and also the person who leads the evaluation of the Tenders.

4.3.3 Evaluation

Evaluation panels are constituted based on the projects at stake and their number. It is an adhoc committee of not more than five (5) members with skills, knowledge and experience relevant to the procurement in question. ‘The qualification and field of expertise is taken into consideration’. Twenty percent (20%) of the respondents however mentioned some statutory members, implying that the panel was somewhat permanent. This panel is constituted by the chairman of the entity tender committee in consultation with members. ‘The head of the user department is also at times involved in the panel’.

Sixty percent (60%) of the respondents noted that, it takes the Assembly one (1) month to evaluate and respond to tenders. However, forty percent (40%) indicated that the Assembly used two (2) months. This shows that the procurement process at the assembly was not well organised. Respondents further revealed that only forty (40%) of procurement contract awards were published while sixty percent (60%) were not published. Section 31 of Act (Act 663) explicitly states that it should be promptly done and even governed by regulations for the manner of publication of the notice of procurement contract Awards. However, the results imply that Notice of Procurement Contract Awards was not published for majority of the projects. Relatedly is the submission of notice of contract awards to the Public Procurement Authority within 30 days of contract signature. This was also not adhered to except for some donor or special projects, and once again when adhered to aids in the monitoring of procurement activities.

4.3.4 Delays in procurement

Sixty percent (60%) agreed that the Public Procurement Act causes delays in awarding contracts (Fig. 2). Twenty percent (20%) strongly agreed same whilst twenty percent (20%) disagreed. Some of the reasons given for the delay are the general perception that the process is cumbersome and not transparent and fair. Additionally, the waiting periods in between the process like the mandatory days that should be allowed between publications of the tender documents through to the award of the contract resulted in delays for instance the 'time for adverts, evaluations, meeting for approvals, threshold and its referral processes'. 'The threshold for procuring may require involving either the district tender review board or even the regional tender review board which takes time to convene'. Other reasons included

the fact that some of the Entity Tender Committee members lacked knowledge of the Public Procurement Act as well as the general attitude of tenderers to procurement. Tender preparation including readiness of Tender documents span between one and two months although was cited as an area that causes delay.

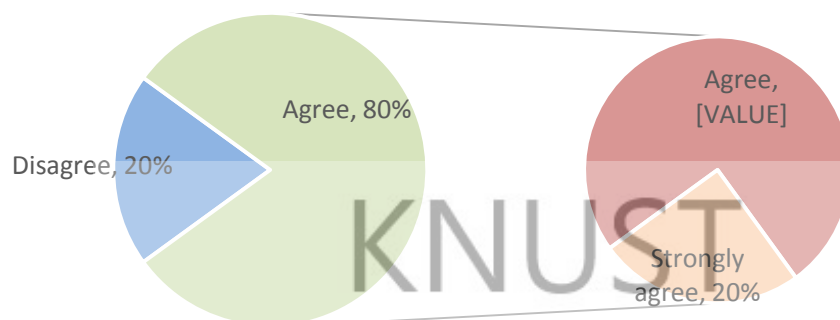


Fig. 4.2 Respondents level of agreement with delays associated with the PPA

In single source procurement, there is the need for the Entity Tender Committee to seek approval from the Public Procurement Authority which has to be justified. In view of other Entities abusing the use of single source for procurement, the seeking of approval for it is highly necessary, but this approval mostly takes unnecessarily too long thereby defeating the need for the procurement method. Relatedly is the issue of Thresholds and having to seek approval before. The bureaucratic tendencies associated with it also accounts for such delays.

4.3.5 Non-availability of funds

Twenty percent (20%) of the respondents agreed that funds were always readily available for some of the procurement whilst eighty percent (80%) thought otherwise. Non-availability of funds could be said to be the bedrock of the challenges in the implementation of the Act (Act 663). A Procurement Plan is drawn based on package,

budget, the tendering procedure and processes, and time schedules. The non-availability of funds can make the commencement of a project very difficult in that some come with Advance Mobilization payment. In view of the time schedules, the plan is thrown overboard thereby making the procurement plan ineffective. Management of the contracts/projects becomes difficult since one cannot authorize a contractor to go to site when he is owed. Consequential effects like delays and contract price increases are eminent. The delays change the project plan. It also affects final prices of contracts resulting from price fluctuations which are seriously considered based on the conditions of the contract. Non-availability of funds therefore does not make the Procurement Plan to be followed accordingly and thus some projects are rolled on to the following year or years. This happened because of the inability to adhere to the schedule, even to commence and thus rolled over.

Following the Analysis it is evidently clear, no doubt that the coming into force of the Public Procurement Act, 2003 (Act 663) is good and the earlier we periodically look at its reviews as well as improve on the monitoring activities by the PPA, the better.

4.4 CHALLENGES WITH THE PROCUREMENT CYCLE

This section discusses findings of the interviews conducted in relation with the various stages of the procurement cycle. Relevant issues pertaining to the implementation of the Act and its accompanying challenges at the Tarkwa-Nsuaem Municipal Assembly are discussed accordingly.

4.4.1 Project not captured in Procurement Plan

Bringing on board projects which were not captured in the Procurement Plan and thus not budgeted for. Such projects are usually executed with high urgency and that they are usually executed before capturing in the procurement plan. By schedule 1 (3) of the Act, the Entity Tender Committees shall review Procurement plans in order to ensure that they support the policies and programs of the Assembly and also, shall confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Assembly. However, in such situations, the Assembly always abused this schedule of the Act.

4.4.2 ‘Permanent’ Evaluation Panel

The Act stipulates that the Procurement Entity shall appoint a Tender Evaluation Panel with the required expertise to evaluate tenders and assist the Tender Committee in its work and shall proceed according to the predetermined and published evaluation criteria. The composition of the panel comprises required expertise. This could be discretionary and ultimately ends up with the choice of favorites. In some instances, such panels end up to be a standing committee, i.e. somewhat Permanent Evaluation Panel meanwhile the act frowns on it. Members may be staff of the procurement unit but no member of the Entity Tender Committee shall act as a member of the Tender Evaluation Panel except in an advisory capacity. This somewhat permanent Tender Evaluation Panel at the Assembly, with some at times doubling as members of the Entity Tender Committee tends to create opportunities for corruption, political interferences, and thereby challenges the implementation of the Act and stampeding on the Act’s objective.

4.4.3 Public notice of Procurement Contract Awards

Section 3 (1) of the Act states that a Procurement Entity shall promptly publish notice of procurement contract awards and regulations shall provide for the manner of publication of the notice of procurement contract awards. Here the issue in case is that of the challenge to really publish the contracts Awards. It is simply not done and possibly not practical. Notice of award is however issued to the successful tenderer most of the time and then again leaving out the non-successful tenderers although the Act requests that they as well be notified, and even further to it returning their Tender securities. Another area of challenge is the submission of notice of contract awards to the Public Procurement Authority within 30 days of contract signature, for publication in the Public Procurement Authority's website or in the procurement Bulletin.

4.4.4 Seeking approval from PPA for single sourcing

Section 40 (2) of the Act states that a Procurement Entity may engage in single-source procurement with the approval of the Authority after public notice and time for comment. Mostly works under such procurement are with some urgency but in view of the delays at the Public Procurement Authority per approval it loses the certificate of urgency or emergency. A case in question is that a hospital has been built over 3 years now. The roads leading to it needed to be improved. In view of the urgency, approval was being sought from PPA for award and commencement works but alas. The issue is that would it be out of place for the Entity Tender Committee be given the authority to sit and approve of it in the presence of say a representative of the PPA thereby quickening the process than the status quo of which the end user suffers in the long run.

4.4.5 Non availability of funds for Procurement

Effective management of contracts is essential to ensure that the objectives of the procurement processes are achieved. One aspect of the contractual obligations is that payment of contractors is based on work done and you can imagine a contractor having worked extensively to a point and being owed. He would definitely suspend works awaiting payment before continuing. If care is not taken, he could be out of business. Mostly the related challenge is that as a contract administrator the moral right is even just not there to ask him to go back to site, making the Procurement management very difficult. Some contractors even abandon site bringing about delays thereby stampeding some aspects of the Act. Implementing the Act at this point is a big challenge. The delays have its own consequences like increase in the final price of project when completed in view of price adjustment etc. Another aspect is that projects planned and budgeted for never see completion according to the duration as captured in the procurement plan and thus rolled over to the ensuing year or years.

4.4.6 Low Public Confidence

In view of the perceived corrupt practices in public sector procurement, there is low public confidence in partaking in procurement of works activities of the Assembly. A case in question was when an infrastructural project was advertised etc. and had one (1) bidder tendering although the advert was thoroughly done. The feedback was that tendering (procurement) of works at the Assembly was always not transparent and fair and so why waste their energy and time to tender when the successful tenderer is known before opening. Another issue was the terms of payment being erratic. With the case in question, the challenge of the Act was whether to re-advertise, or go-ahead

and evaluate the lone tenderer and award. The Entity Tender Committee went ahead but had to negotiate in the end.

4.5 SUMMARY

Based on the literature reviewed, exploratory interviews and the case studies discussed, the following findings were established.

- (i) The Procurement Plan preparation is time-involving and thus the high tendency of being ignored or delay in preparing it.
- (ii) It is not easy to strictly adhere to the Procurement Plan preparation before commencement of procurement, since the preparation alone could delay procurement processes.
- (iii) Political Interferences make the implementation of the procurement and development plans even more difficult.
- (iv) There are no procurement units, or no defined procurement unit. Some offices act as such. The Works Department does the Procurement of Works alongside the Planning Unit, whilst the Supply Officer/Stores does that of the goods.
- (v) Quarterly review of the Procurement Plan is hardly done by the Entity Tender Committee.
- (vi) The Evaluation Panel is somewhat permanent i.e. fixed for all project packages.
- (vii) Some of the members of the Evaluation Panel are also members of the Entity Tender Committee.
- (viii) Publishing of Notice of Procurement Contract Award is not done. Notice of Award is however issued to only the successful tenderer and that is it.

- (ix) Submission of Notice of Contract Awards to the Public Procurement Authority within 30 days of contract signature is not strictly adhered to.
- (x) Approval requests by Entity Tender Committee from Public Procurement Authority for sole sourcing projects or Certificate of Emergency takes unnecessarily too long (bureaucracies).
- (xi) Funds are mostly non-available for procurement as scheduled (planned) and budgeted for. It makes the management of projects/contracts very difficult.
- (xii) The non-availability of funds for projects management has its consequential effects like delays in project completion, and contract price increases.
- (xiii) Projects captured in the Procurement Plan are rolled over to the ensuing year or years depending.
- (xiv) Strong misconception of corrupt practices at the Assemblies.
- (xv) Difficulty in adhering to the Thresholds as provided in the Act, Act 663 and in view of the approval request and its attendant delays.
- (xvi) The procurement system would have been chaotic without a guide like the Public Procurement Act and thus very useful.
- (xvii) The Act guides spending i.e. spending within budget and not exceeding it.
- (xviii) Auditing reveals Value for Money and accountability.
- (xix) The Tender Review Boards always concur.
- (xx) Hardly has any person been penalized for committing offences relating to procurement.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter concludes based on the findings and analyses made during the study as well as recommendations to help improve the general situation of procurement of works, a case study in Tarkwa-Nsuaem Municipal Assembly.

5.2 CONCLUSIONS

After analyzing the findings gathered from the interviews, case studies and reviewed literature, the following conclusions were made:

- (i) The Public Procurement Act, 2003 (Act 663) is good since it serves as a guide in procurement bringing about orderliness. All public entities doing the same thing as per the Law.
- (ii) Strict adherence of the Procurement Plan ensures that spending is within budget
- (iii) Compliance with the formation of Procurement Units would go a long way to assist most Entities.
- (iv) Proper planning and budgeting leading to the preparation of the procurement plan when done ahead of time helps the entity as the spending is controlled via the plan.
- (v) Permanent Evaluation Panel breeds corruption, stampeding the Public Procurement Act's objectives.
- (vi) The Non-availability of funds for planned procurement leads to a myriad of issues like project delays and increase in contract prices.

5.3 RECOMMENDATIONS

The following recommendations were made:

- (i) Periodic review and monitoring by the Public Procurement Authority for compliance of the Act by Procurement Entities, ensuring that the right things are done.
- (ii) The bureaucratic tendencies in reference to the various approvals sought by the Procurement Entities from Public Procurement Authority must stop. The approvals should be as fast as possible to remove all the bad impressions about the Authority.
- (iii) Professionalization of Procurement i.e. taking procurement as a discipline must be encouraged. This would motivate the establishment of Procurement Units.
- (iv) Penalize any Entity which starts procurement when the procurement plan is not even ready i.e. procuring out of the plan.
- (v) Monitoring by Public Procurement Authority should be intense and must include follow-ups on Training Workshops, Seminars etc. so organized for procurement practitioners.
- (vi) Government ensures that cash flow is good always in order to meet the schedules of the various procurement plans as they have been prepared (budgeted) for based on inflows/incomes and statutory transfers.
- (vii) Public Entities work hard at redeeming their image (the erroneous impression of corrupt practices) by simply endeavouring to use the Act for procurement.
- (viii) Persons found culpable of the Act's offences should be penalized to serve as deterrence to others.

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Appendix One

**KWAME NKRUMAH UNIVERSITY OF SCIENCE AND
TECHNOLOGY**

DEPT. OF BUILDING TECHNOLOGY

M.SC. PROCUREMENT MANAGEMENT

**Challenges in the Implementation of the Public Procurement Act
(Act 663) in the District Assemblies (A case study of Tarkwa-Nsuaem
Municipal Assembly)**

QUESTIONNAIRE

This research is being undertaken by Mr. Benjamin Kojo Armah, a final year student in MSc. Procurement Management, KNUST. The Questionnaire forms part of the dissertation leading to the award of MSc. in Procurement Management. Tarkwa-Nsuaem Municipal Assembly was used as a case study with the Topic, “Challenges in the Implementation of the Public Procurement Act (Act 663) in the District Assemblies”.

It is my belief that all stakeholders would provide practical and convincing answers to the questions below. All information offered will be treated with the confidentiality that it deserves, and the results will be presented in such a way that no individuals may be recognized.

Please respond to the following by either writing in the blank space provided or ticking the appropriate box.

Thank you in advance for your contribution and support to this work.

1. Do you understand the Public Procurement Act? Yes [☐] No [☐]

2. Is the Public Procurement Act useful in procurement at the Municipal
Assembly? Yes[☐] No [☐]

3. How useful is it?

.....
.....
.....

4. Do you publish the notice of procurement contract awards as well as non-successful tenderers? Yes [] No []

5. If yes, how often?

.....
.....
.....

6. Do you encounter any challenges in the procurement of works? Yes []
No []

7. If yes, what kind of challenges?

.....
.....
.....

8. Do you prepare procurement plans? Yes [] No []

9. If yes, how do you do that?

.....
.....
.....

10. Is your procurement plan always readily prepared before procurement commences? Yes [] No []

11. Are funds always readily available for procurement? Yes [] No []

12. Is the procurement plan so prepared reviewed occasionally? Yes [] No []

13. If yes, how often? Quarterly [] Semi-Annually [] Annually []

14. Do you have a procurement unit? Yes [] No []

15. Is it necessary to have a procurement unit? Yes [] No []

16. Give reasons for the above.

.....
.....
.....
.....

17. How long does it take the Municipal Assembly to prepare for tender including reading of tender documents? One Month [] Between One and Two Months [] Between Three and Four Months [] Five months and above []

18. Do you agree that the Public Procurement Act causes delays in awarding contracts? Strongly Agree [] Agree [] Disagree [] Strongly Disagree [] Uncertain []

19. If yes, what are some of the causes of the delay?

.....
.....
.....
.....

20. How long does it take the Municipal Assembly to evaluate and respond to tenders? One Month [] Two Months [] Three months []

21. How are the evaluation panels constituted?

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