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KUMASI  
COLLEGE OF ARCHITECTURE AND PLANNING  
DEPARTMENT OF BUILDING TECHNOLOGY

**CHALLENGES IN THE APPLICATION OF PUBLIC PROCUREMENT ACT  
(ACT 663): *CASE STUDY* PROCUREMENT OF WORKS IN SHAMA  
DISTRICT**

BY

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(BSc. Hons)

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## DECLARATION

This is to certify that this work or any part thereof has not been previously submitted in any form to the University or to any other body whether for the purpose of assessment, publication or for any other purpose. I confirm that except for any expressed acknowledgements and references cited in the work, the original work is the result of my own efforts.

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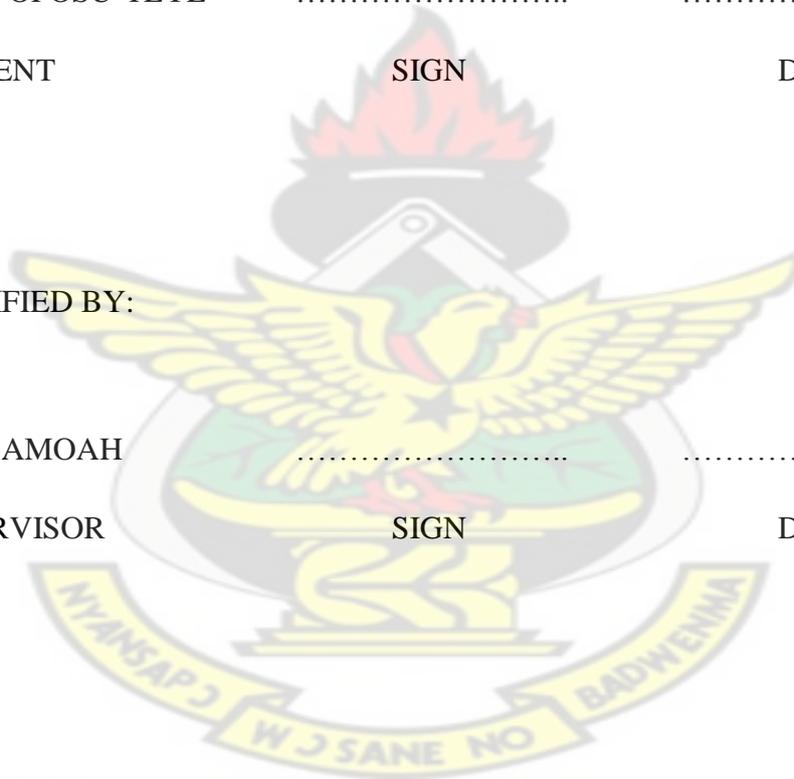
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## DEDICATION

This work is dedicated to:

- God for His grace, favour and protection throughout my study.
- My lovely wife and children Esther, Judith, Winnie and to my friend Eric for their understanding and supportive role they played.

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## ACKNOWLEDGEMENT

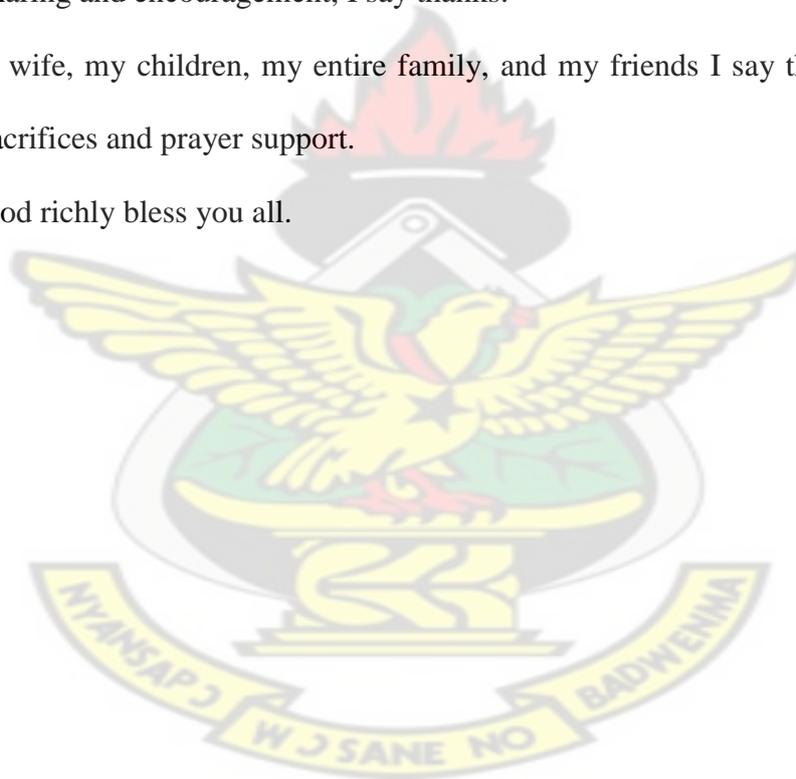
I wish to express my gratitude to my supervisor, Mr. P. Amoah for his immense help, guidance, suggestions and encouragement which led to the success of this work, indeed I am sincerely grateful.

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May God richly bless you all.



## ABSTRACT

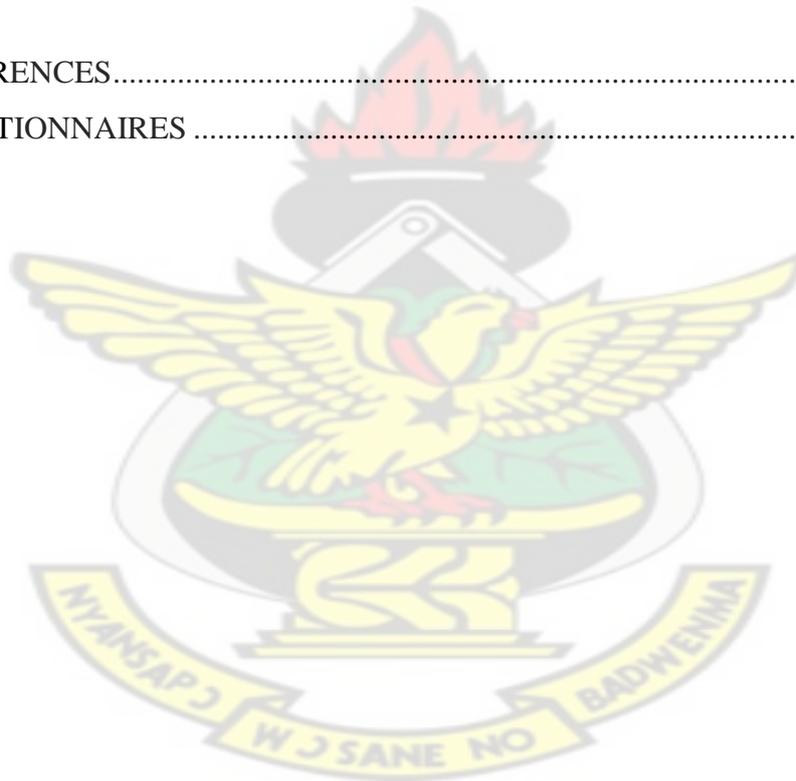
In Ghana like other countries, procurement laws are instituted to ensure an efficient utilization of resources in the acquisition of goods, works and services. The formulation of the law and its successful implementation are two entirely different issues. The latter is very important as it leads to the realization of the aim of the first. Many a times there exists difficulties in implementation of laws. The study sought to investigate into the challenges which befall the successful implementation of the Public Procurement Act (Act 663) and consequently proffer solutions to address them. The Shama District in the western region was used as a case study. Procurement entities ranging from the Education (the secondary schools) sector, Health (the hospitals) sector and Energy (power generation) sector were integrated into one so as to bring the challenges in the various sectors into one bucket for discussion. Multiple research approaches including; review of relevant literature, interviews and questionnaire survey of 32 procurement personnel entities were use. SPSS (Statistical package for Social Scientist) version 16.0 was used to analyse the results. The results indicated that there exist challenges in the implementation of the Public procurement law in the district. The topmost challenges were Low capacity of procurement personnel; deliberate controlling of competition; splitting of contracts into smaller lots and Lack of funds. The study further revealed that these challenges were partly attributed to lack of frequent training and qualification of the officers in procurement as an academic discipline. This led to misinterpretation of some aspects of the procurement act. The study therefore concluded by recommending that frequent training and refresher course should be organized for procurement staff to build their capacity and efficiency. On the other hand where there is deliberate abuse of the procurement process by an officer, punitive measures should be applied accordingly. These will ensure that the country achieves efficiency, transparency and value for money in its procurement processes.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background

The last few decades have witnessed increasing calls for efficient public procurement systems that would ensure value for money in government expenditure. Several Legislations and Acts have been passed globally in the light of this to support the call. In Ghana, the Public Financial Management Reform Programme was launched in 1996 to help improve financial management (PUFMARP). Years after the passage of the law, PUFMARP identified some weaknesses in the procurement system which included: lack of comprehensive public procurement policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities, lack of rules and regulations to direct, train and monitor procurement process (Ameyaw et al, 2012). These findings led to the establishment of the Public Procurement Oversight Group in 1999 with the responsibility of drafting a comprehensive public procurement reforms. On 31st December, 2003 the bill which was drafted by the Committee was passed into law. This law known as the Public procurement Act, Act 663 was aimed at bringing reforms in our Ghanaian procurement system and ensuring efficiency, transparency and value for money.

#### 1.2 Problem Statement

The passage of the Persons Public Procurement Act, (Act 663) in Ghana was hailed by many as a giant step toward achieving efficiency, transparency and value for money in our procurement system. Years after the passage of the law, very little work has been on assessing the institutional challenges of the Act. In the year 2012, Ameyaw et al conducted a study on the implementation challenges of the Procurement Act, but their study was limited to only procurement of works in the

District, Municipal and Metropolitan assemblies. This study sought to extend the scope to the procurement of works in the Educational, Health and the Energy sectors of the economy. This was aimed at unveiling the bottlenecks at the various procurement entities.

### **1.3 Research Questions**

Based on the above problem, the following questions were posed:

- i. What is the extent of knowledge of the procurement personnel on the act?
- ii. What are the current impediments that bedevil the successful implementation of the Public procurement Act?
- iii. What measures should be put in place to address the issues that confronts the successful implementation of the Act?

### **1.4 Aim**

The study aimed at the identification of the various implementation bottlenecks to the Ghanaian Public Procurement Act (PPA), Act 663 in the procurement of works in the Shama District.

### **1.5 Objectives**

To achieve the aim set above the following objectives were pursued:

- i. To identify various implementation bottlenecks to the Public Procurement Act (PPA) Act 663
- ii. To find out the extent of knowledge of the procurement personnel on the Act;
- iii. To proffer some solutions to address the issues that impedes the successful implementation of Act 663.

## **1.6 Scope of the Study**

Due to time constraints, the study was centered on the procurement of works in some selected public institutions in the Shama District of Western region. The institutions ranged from those in the Educational sector, Health sector, Energy sector and the Shama District Assembly itself. This was done in order to obtain a broader picture of the problems.

## **1.7 Methodology**

The study adopted multiple research approaches, including; review of literature, interviews and questionnaire survey of 4 public institutions in the Shama District of Western Region.

The literature review began the research process. At this stage information were gathered from Journals, previous thesis, the internet, etc. on the challenges associated with the implementation challenges of procurement laws worldwide. The findings from these sources formed the basis for the development of structured questionnaire to solicit primary information from the study area.

The questionnaires were administered to all personnel involved in the procurement process in a given entity (i.e. in each of the public selected institutions). The questionnaire was divided into two sections: The first section collected information about the demographic characteristics and the general particulars of the respondents and their assemblies. The other section asked all the relevant questions needed to achieve the aim of the research. The questions were mainly closed ended. Besides the questionnaires, interviews were also held with some of the respondents. The Data collected were analyzed.

Finally, based on the findings, recommendations were made to all stakeholders for the management of future projects.

## **1.8 Justification of Research**

Among the aim of the Public procurement Act, (Act 663) was to bring reforms in our Ghanaian procurement system and ensures efficiency, transparency and value for money. This can be achieved through periodic evaluation or assessment of the Act to reveal its weaknesses. A rigorous analysis of the factors that militate against the smooth implementation of the Act will promote discussion and reflection on steps needed to promote the Act. It is against this background that this survey was carried out.

## **1.9 Structure of the Thesis**

The Thesis is organized into five chapters as follows;

Chapter 1: This gives a general introduction to the topic. It explains the background to the study, the problem statement, the aims and objectives, the scope of the research, the methodology as were as the justification for the research.

Chapter 2: This section presents an extensive review of existing literature that is pertinent to the problem under consideration. The object of this section is to open up the topic and give the researcher information/guidelines in undertaking his survey.

Chapter 3: The methodology formed this section of the study. Here, the overall research process or strategy adopted in carrying out the research is explained in depth.

The analysis and discussion of the survey results is presented in chapter four.

The last chapter, which is chapter five, concludes the survey and makes recommendations for consideration in future projects.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.1 Introduction

In Ghana, the Public Procurement Act (Act 663) 2003, was enacted to harmonize public procurement processes in the public service, secure judicious, economic and efficient use of state resources, and furthermore, ensure that public procurement is fair, transparent and nondiscriminatory (Ministry of Finance, 2001). This new Act was promulgated after years of foul play and abuse as far as procurement was concerned in the country. This necessitated a thorough review of the existing procurements regulations. The enactment of the law in 2003 further ensured that modern trends in procurement was adopted to bring about the much needed sanity to local procurement system which had been flawed by bad procurement practices such as corruption and other malfeasances (Osei-Tutu et al, 2010).

In Ghana, public procurement accounts for 50%-70% of the national budgets (after personal emoluments), 14% of GDP and 24% of imports. Implicitly, public procurement therefore has both social and economic impact on the country (World Bank, 2003a).

The challenges to the application of national laws are pervasive in developing countries, Ghana not being an exception. The National Public Procurement Authority of Sierra Leone in its 2005 report outlined several challenges be devilling the operations of the Authority. Some of them include: inadequate funding, deficient staff strength and organizational and logistical limitations. The report recommended among other things, that the law could achieve its objective if there is a concerted effort by all stakeholders, backed by very firm political will and adequate budgetary support, to streamline and improve public procurement procedures in Sierra Leone

(NPPA Annual Report, 2005). According to Ameyaw et al, 2012, Annual reports of the Public Procurement Authority (PPA), since its establishment, have always cited inadequate funding as the leading barrier to smooth operations of the Authority. Lack of adequate office accommodation was specifically reported in the 2007 and 2008 annual reports (PPA Annual Report, 2007 & 2008).

Political will is the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, stakeholder groups etc.) to attack perceived causes or effects of corruption at a systemic level (Sahr, 1998). Generally, successful reform programmes around the globe indicate that the paramount success factor is strong political will demonstrated by a commitment from leadership at all levels of government (Sahr, 1998). However, those who exert power lack the moral courage or capacity to exercise that power to ensure the needed change. Kosack (2008) argued strongly that success chalked in several countries around the world in areas of access to basic education was due to political will of the leaders in those countries and their commitment to increasing access to education. New rules and campaign tricks adopted by politicians alone are not enough for procurement reforms (Philip, 2002). The principal challenge in assessing political will is the need to distinguish between reform approaches that are intentionally superficial and designed only to bolster the image of political leaders and substantive efforts that are based on strategies to create change (Sahr, 1998). Political commitment is a necessary condition for procurement reforms to curb corruption. Without political will and commitment by the leadership of a country, grand corruption is perpetuated at an alarming rate with petty corruption becoming endemic and more difficult to stop (Philip, 2002). There are concrete signals of political will by some stakeholders at the lower levels to effect change, but this cannot be achieved if those at the climax

of the game, lean back (Szeftel, 1998). According to (Osei-Tutu, Badu & Owusu-Manu, 2009) the battle against corruption should begin with a strong political will and explicit commitment to eradicate all its manifestations.

## **2.2 Assessment of Public Procurement Entities**

Increasing the effectiveness, efficiency and transparency of procurement systems is an on-going concern of governments and the international development community. All countries have recognized that increasing the effectiveness of the use of public funds, including funds provided through official development assistance (ODA) requires the existence of an adequate national procurement system that meets international standards and that operates as intended. The regular and continuous assessment of procurement entities in countries of their national procurement systems with regard to their compliance with the procedures, rules and regulations setup in the Public Procurement Laws has been embraced worldwide. The baseline indicator assesses the strengths and weakness of National Procurement Systems. The indicator covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulation, procedures and bidding documents formally in use. These indicators can be broken down into eight sub-indicators which are individually scored. These are: Scope of application and coverage of the legislative and regulatory framework, Procurement Methods, Advertising rules and time limits, Rules on participation, Tender documentation and technical specifications, Tender evaluation and award criteria, Submission, receipt and opening of tenders and Complaints (OECD-DAC/World Bank, 2006). Performance indicators includes: Implementing regulation that provide defined processes and procedures not included in higher-level legislation, Model tender documents for goods, works ,and services, Procedures for pre-qualification,

Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion, User's guide or manual for contracting entities and General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements (OECD-DAC/World Bank, 2006). For a public entity in a developing country to conduct procurement performance assessment, there are numerous challenges that are encountered. Notable among them are: i) there are many ways of measurement that may be in use, ii) most measures are irrelevant iii) there is no way of standardizing the measurements and iv) conducting performance measurement is costly (Kakwezi & Nyeko, 2010) .

### **2.3 Performance/Compliance of Procurement Entities**

The Public Procurement Authority in its review in 2006 identified the weakness 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 and implementation, poor Contract Management and high cost of advertisement (PPA, 2007). 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 governments financed 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 other factors due to, a large extent of 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).Similar findings of public procurement weaknesses were recorded in the1996 Country Procurement Assessment Report (World Bank, 1996). Successive waves of management and financial reforms have, inter alia, focused on improving public procurement efficiency, effectiveness and outcomes (Calendar & Matthews, 2002). Requirements for greater performance produce a refocusing of procurement management away from accountability for compliance through rule-bound codified processes (McCue & Pitzer, 2000) towards accountability for outcomes

It is worth noting that studies have shown that corruption pervades developing countries because of weak institutional infrastructures and lack of effective monitoring mechanisms (Lengwiler & Wolfstetter, 2006). Public procurement has been perceived as an area of waste and corruption (Thai, 2004) that is widespread (Jones, 2007). If procurement laws and regulations are not enforced to the letter, issues of corruption will continue to cover headlines in both the print and electronic media. Wilson (2004) argued that in a situation where there is huge system loopholes coupled with laxity in legal and administrative systems, compounded by non-transparency and extensive discretionary powers at the hands of politicians, there needs to be concerted effort to ensure strict enforcement of laws to achieve the purpose for which those laws were enacted. Studies in Uganda, Tanzania and Kenya reveal that corruption in public procurement has mainly been through hidden violation of laid down procurement rules (Transparency International, 2009).Low

detection of breaches of the law (Kanaga, 1999), weak enforcement of rules (Larmour,2006) and regulations will also strengthen the hands of wrongdoers to misapply the law with impunity.

Ghana remains one of the most corrupt nations in the world judging from the annual Corruption Perceptions Index (CPI) released by Transparency International in 2012 (Transparency International, 2012). Though corruption is said to be present in all societies (Sahr, 1998), Lengwiler and Wolfstetter (2006) revealed that the quantum of money changing hands through corruption in public procurement is estimated between \$390-400 billion per annum all over the world. However it is estimated that corruption in Sub-Saharan Africa exist in about 70% of public contracts and results in about 20-30% rise in contracts sums. The cost of corruption in Africa is estimated at around \$148 billion a year (Mawenya, 2008).Corruption occurs throughout the procurement process and project cycle, through the actions and inactions of political officers, public servants, clients, consultants, contractors and suppliers (Osei-Tutu, Badu & Owusu-Manu, 2009). There is no evidence that the passage of the Public Procurement Law and its implementation has made any significant impact in curbing corruption in public procurement in Ghana. According to the 2010 and 2011 annual Corruption Perceptions Indices (CPI) released by Transparency International, Ghana ranked the 62nd and 69th most corrupt country respectively, out of 183 countries worldwide (Transparency International, 2012). With only 4.1 CPI in 2010 and a further slump to 3.9 in 2011 CPI score, corruption in Ghana remains a significant impediment to effective resource utilisation and efficient service delivery. There is no real evidence that Ghana has made serious gains through the enactment of corruption targeted legislation, thus their impact cannot be discounted completely. Schiele and McCue (2006) described the public procurement implementation

challenges as environmental factors. These include market conditions, legal and political environment, organisational and socio-economic environmental factors. It was established further that, regardless of the effort by central government and its related agencies to overcome implementation challenges, and an understanding of the value adding potential of procurement departments, a large number of internal customers act on their own and frequently bypass the procuring department.

The Country Procurement Assessment Report of Ghana produced in 2003, revealed that most staff members of Ministries, Departments and Agencies (MDAs) and District Assemblies (DAs) responsible for procurement were not procurement-proficient, even though they have been trained. The report contended that application of the PPA and the Standard Tender and Contract Documents will not be successful without broad training and 'refresher' programmes for officials in charge of procurement. Similarly Forgor (2007) agrees that lack of proper training of managers on the procurement process is a challenge that confronts procurement reforms. This supports the assertion that poor dissemination of procurement law is one of the challenges facing the smooth implementation of public procurement laws (Azeem, 2007). Political interference with the procurement process poses a challenge to the implementation process and public procurement reforms. A good number of politicians think that they have the right to intervene in the procurement procedures thereby leading to capricious procurement decisions (World Bank, 2004). The lack of career development path and low salaries of procurement personnel also militate against procurement reforms implementation (World Bank, 2003b). Poor record keeping (World Bank, 2003b), delays in payment of contractors and suppliers are also cited as some of the crucial factors that challenge procurement reforms implementation (Azeem, 2007). In a similar vein, low level or absence of capacity

building for service providers has been identified as one of the factors inhibiting successful public procurement reforms in Malawi. Many of its bidders are limited in various capacity issues including lack of basic knowledge of the law, inadequate capacity to appreciate the standard tender documents, poor access to tender information and insufficient technical and managerial skills to be competitive in the tendering process (ODPP Annual Report, 2007). The office of the Director of Public Procurement of Malawi in its 2006/2007 Annual report outlined the following factors, among others, impeding the operation of the procurement law in Malawi: shortage of qualified personnel, lack of adequate financial resources, lack of adequate office space, non-compliance with some provisions of the law, poor records management by entities and overpricing of goods, works and services by bidders. These and other challenges appear to be common in the country's procurement environment as in many other developing countries and therefore this paper set out to proffer and catalogue the challenges that exist, and find solutions towards the effective management of Ghana's procurement system.

It is an undeniable fact that sound public procurement policies and practices are essential for good governance. Examples from the world affirm that public procurement involves huge resources and when directed well could be used to improve development. Ghana's Public Procurement Authority (PPA) claims that corrupt practices in procuring of goods especially have significantly reduced following the implementation of the Public Procurement Act 663. This has been attributed to the potential for punitive measures put in place, a view which is shared by the OECD DAC Committee and the Auditor General reports (Business Anti-Corruption portal, 2010).

However, a recent report by the World Bank suggests that only 37 % of government purchases were subjected to competitive bidding and refers to widespread abuses in public contracting (Freedom House, 2010). Also, the deafening outcry over mounting and allegedly scandalous judgments debts payments by government of Ghana raises critical issues about the procurement system.

#### **2.4 Public Procurement Law**

Procurement law was drawn to make the public procurement more effective and cost efficient. It also improves the process of purchasing quality products and increases fair competition between different companies and organizations in the market. The main principles in public procurement include organizing the procurement operations in such a way that they produce the most cost efficient and well-planned results and taking into account the environmental issues. The procurement process has to be implemented on a fair basis openly without discriminating any of the participants. Framework agreements and joint procurement can be used as a tool for reducing administrative work. (Act on Public Contracts 2007/348.)

The different variations of public contracts such as public works contracts, public supply contracts and public service contracts are defined in detail in the procurement law. Also other definitions such as “supplier” and “tenderer” are specified to avoid the possible misunderstandings. Restricted and negotiated procedures are examples of procurement procedures that need to be taken into account when organizing public procurement. Technical standards and specifications have been set up to define the technical requirements that need to be met. (Act on Public Contracts 2007/348.)

Contracting authorities including state and municipal authorities, the Evangelic Lutheran Church, state enterprises and bodies that are governed by public law are

determined in the procurement law. The threshold for national public tenders is EUR 30,000 and for EU tenders it is EUR 130,000. (Act on Public Contracts 2007/348.)

The procurement law clearly defines the procedures for contract awards. Different kind of methods can be applied when the requirements are fulfilled. The available options include a negotiated procedure, a direct award of contracts, a competitive dialogue, a framework agreement and design contests. Chapter six in procurement law notes the specific requirements concerning publication. Prior information notice, contract notice and contract award notice and possible other notices depending on the method of contract award need to be published by the contracting authorities. An important factor to be considered is fixing the appropriate time limits for a tender. The time limits can be shortened or extended when the arguments respond to the requirements (Act on Public Contracts 2007/348).

The information in tender invitations needs to be stated clearly to avoid misunderstandings and misinterpretations to ensure mutually comparable offers. The contents of tender invitations and definition of the object of the contract can be found in seven in the procurement law. The selection of candidates and tenderers is done through a verification process that begins with a categorizing of whether the candidates are suitable or not. After that the contracting authorities can exclude tenderers from the tender competition if they meet the exclusion criteria.

(Act on Public Contracts 2007/348).

Measuring the suitability of the candidates is based on the financial situation of the tenderer as well as their technical performance and professional qualifications. The contracting authorities must select the offer that presents the economically most advantageous solution or the selection can be made based on the lowest price.

The last part of the procurement law concerns issues like award contract decisions, contract documents and remedy procedures (Act on Public Contracts 2007/348).

## **2.5 Public Procurement Law and Implementation Challenges**

In most developing countries, the procurement function is transitioning from a clerical nonstrategic unit to an effective socio-economic unit that is able to influence decisions and add value (Knight et al, 2007). Developing countries in one way or another have reformed their public procurement regulations. The reforms have not been limited to regulations only; they have included public procurement process, methods, procurement organizational structure, and the work force. The reforms have been as a result of joint efforts with various development partners like the World Bank, International Trade Centre, WTO, and UNCTAD varying from country to country. In addition, public procurement is faced with the challenges imposed by a variety of environmental factors (external factors) such as market, legal environment, political environment, organizational and socio-economic environmental factors. Regardless of the effort by the central government and its related agencies and the acknowledgement that the procurement department is capable of adding value to the organization, still a large number of the internal customers act on their own and more frequently bypass the procuring department.

Reform efforts are often unsuccessful due to the combined influence of inadequate strategies, political resistance, failure to sustain long-term reform efforts and the lack of knowledge about appropriate tools to establish systemic change (World Bank, 1994). Kagwe (2005) indicated that the perceptions among Kenyans about corruption in public service have unfortunately gone higher despite all the laws passed to fight against this menace. This was attributed to several factors including, loopholes in the legislative provisions of the public procurement and conflicts of

interests (Kagwe, 2005). This section looked at some challenges in the implementation of procurement act as identified.

### **2.5.1 Access to a Trained Procurement Officer**

The challenge is that the existing qualified candidates often choose to seek employment in the private sector where the salary package is more attractive (Office of the Director of Public Procurement Malawi, 2007). Some institutions public also do not view procurement as an established profession as such there is no standard certification or clear careers path (World Bank Ghana CPAR- 2003). While some entities are able to attract qualified professionals for procurement positions, the vast majority of procuring entities suffer from a serious lack of qualified candidates when attempting to recruit new officials (Agbesi 2010).

It is therefore well argued by (Osei-Tutu and Adjei-Kumi 2000) that procurement decision- making should be made by professionals who have been trained in the methodology, especially, Building Technologist and Quantity Surveyors.

### **2.5.2 Experience and Expertise of Key Players**

Public procurement entities lack trained procurement officers who have the ability to establish realistic and clearly defined procurement plans and its follow up or updating (Douh 2009). New and emerging procurement systems must become integral component of Continuous Professional Development Programmes of the Professional Associations in Ghana (Osei-Tutu and Adjei-Kumi 2000).

### **2.5.3 Effective Participation Of Key Players**

In preparing a procurement plan by MMDAs it is instructive to public entities that key offices such as Head of entity, Procurement unit, Store unit and Heads of Department plays effective role (PPA manual 2003), rather in most cases the

preparation of the plan is left with an individual to handle hence reliable inputs into the plan becomes a problem.

#### **2.5.4 Establishment of Functional Procurement Units**

There are no procurement units responsible for procurement activities in the MMDAs (Agbesi 2010), this therefore meant that procurement functions are diffused in other administration functions which do not guarantee effective procurement outputs.

#### **2.5.5 Timing of Resource Mobilization**

MMDAs on many occasions complained on the inconsistencies in the time their statutory funds are transferred to them for instance whiles in second quarter of a particular year they were yet to receive the fourth quarter allocation of the previous year, the situation therefore makes the execution of their procurement plans ineffective.

#### **2.5.6 Delays in Payment of Works Executed**

Service providers have often times complained about long delays in payment for works, goods or services rendered (Azeem, 2007). MMDAs in that regards are worse offenders, service providers therefore tends to execute their works having no regards to contract durations hence affecting the implementation of procurement plans.

### **2.6 Procurement Plan Monitoring and Updating**

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. If slippage occurs in the award or execution of one major contract, it may require rescheduling of other related contract awards and deliveries.

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.

## **2.7 Ghana's Local Government System**

Since 1988, Ghana has operated a decentralized political and administrative system aimed at establishing efficient and effective local governance. Among other priorities, the assembly system of local governance is intended to promote popular participation in the public decision making process. To this end, the Fourth Republican Constitution provided for the system in Chapter 20. Subsequently, various laws were enacted, including the Local Government Act, Act 462 of 1993 which set out the modalities for the organization, functioning and relationships within the local government system.

### **2.7.1 Entity Tender Committee**

Section 17 of the Act; mandate each Procurement Entity to establish a Tender Committee in the manner set out in schedule 1.

#### **Establishment of Entity Tender Committee**

Tender Committee is established at the following levels:-

- a. Central Management Agency/Ministry/Sub vented Agency.
- b. Tender Committee for Regional Co-ordinating Council
- c. Metropolitan/Municipal/District Tender Committee

For the purposes of this research, emphasis is being put on District Tender Committee.

### **Metropolitan/Municipal/District Tender Committee Membership**

1. **Chairperson** the Metropolitan, Municipal or District Chief Executive

2. **Members**

- The Director of Finance
- A Lawyer appointed by the Municipal District Assembly
- One Member of Parliament
- Three (3) Heads of Departments: one of whom represents the user department or agency.

### **Functions**

The functions of District Tender Committee are:-

- a. Review procurement plans in order to ensure that, they support policies and programmes of the Entity.
- b. Confirm the range of acceptable cost of items to be procured and match these with the available funds in the approved budget of the Entity.
- c. Review the schedules of procurement and specifications and also ensure that, the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines.
- d. Ensure that, the necessary approval is secured from the relevant Tender Review Board in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract.
- e. Facilitate contract administration and ensure compliance with all reporting requirements under this Act.

- f. Ensure that, stores and equipment are disposed off in compliance with this Act.

### **2.7.2 Tender Evaluation Panel**

Section 19 of the Act establishes a tender evaluation panel by each procurement entity to evaluate tenders and assist the tender committee in its work. A panel is an ad hoc body (Regulation 19(20)) of not more than five members constituted for a specific procurement package. The panel includes members with skills, knowledge and experience relevant to procurement requirements.

### **2.7.3 District Review Board**

A District Review Board is established in accordance with schedule 2 of the Act to review procurement decisions of the District Tender Committee within the thresholds set out in schedule 3 of the Act 663. The District Review Board is to review the activities at each of the procurement cycle which will lead to the selection of the lowest evaluated tender by the District Tender Board.

### **2.7.4 Selection of Procurement Methods**

The threshold for applying the different procurement methods are defined in schedule 3 of Act 663. Table 2.1 and 2.2 indicates threshold for selection of procurement method and threshold for review/approval respectively.

**Table 2.1 Selection of Procurement Methods: Source: Act 663.**

No.	Procurement method/advertisement	Characteristics	Threshold for Application
1.	Prequalification a. Goods b. Works c. technical services	Public advertisement to select tenderers who are qualified prior to the submission of tenders.	Above GH €3.5million Above GH€7.0million (not more than 10% of cost of works)
2	International competitive tender a. Goods b. Works c. Technical services	Public advertisement of tender in international paper	Above GH€1.5million Above GH€2million Above GH€200,000
3	National Competitive tendering a. Goods b. Works c. Technical services	Public advertisement of tender in the procurement Bulletin and two national papers	More than Gh€20,000 up to Gh€200,000 More than gh€50,000 up to Gh€150,000 More than Gh€20,000 up to Gh€200,000
4	Restricted tendering a. Goods b. Works c. Technical services	Direct procurement method without advertisement where goods, works, or services are unavailable from a limited number of contractors.	Subject to approval
5	Price Quotation  a. Goods b. Works c. Technical services	Without advertisement. A minimum of three bids from a shortlist	Up to Gh€20,000 Up to Gh€50,000 Up to Gh€20,000
6	Single source procurement	In emergency situations and when only one supplier or contractor is available.	Subject to approval by PPA

**Table 2.2 Thresholds for Review/Approval Authority (Amounts in GH¢)**

Authority	Goods	Works	Technical Services	Consulting Services
(1) Head of Entity	Up to 5,000	Up to 10,000	Up to 5,000	Up to GH¢5,000
(2) Entity Tender Committee	>5,000-25,000	>10,000-50,000	>5,000-25,000	>5,000-10,000
(3) District Tender Review Board	>25,000-100,000	>50,000-200,000	>25,000-100,000	>10,000-50,000
(4) Ministerial and Regional Tender Review Board	>100,000-800,000	>200,000-1,500,000	>100,000-800,000	>50,000-350,000
(5) Central Tender Review Board	Above 800,000	Above 1,500,000	Above 800,000	Above 350,000

**Source: Public Procurement Act, Act 663.**

## **2.8 Procurement Cycle (Works, Goods and Services)**

The Public Procurement Manual of the PPA outlines procurement cycle for works goods and services, the cycle is the road map of the procurement process. It establishes the key activities required at every stage of the procurement process and the actions to be taken by respective offices. It gives direction and step-by-step approach to the implementation of the procurement activity.

### **2.8.1 Works Procurement**

The manual defines works as work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment

and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

### **2.8.2 Procurement Methods**

The procurement methods that can be used for the procurement of Works are:

- International Competitive Tendering (ICT)
- National Competitive Tendering (NCT)
- Two-Stage Tendering (National or International)
- Restricted Tendering (National or International)
- Single Source (Direct Procurement)
- Request for Quotations (RFQ)

Competitive tendering using ICT or NCT is the preferred method for public procurement and the use of alternative methods is strictly limited to the provisions of Part IV of the Public Procurement Act.

### **2.8.3 Tendering Procedures**

Tendering procedures by procurement entities are commenced with the preparation of a standard tender document.

### **2.8.4 Standard Tender Document**

A Standard Tender Document is the set of documents issued by a Procurement Entity, which establishes the works required (technical specifications, plans, bill of quantities or activity schedule), the procurement procedures to be followed, and specifies the proposed contract conditions. It should contain all information necessary to allow the tenderer to prepare a responsive tender or quotation.

The Standard Tender Document must contain information to:

- instruct tenderers on the procedure for submission of tenders;
- describe the works to be procured;
- inform tenderers of the criteria for evaluation of tenders; and
- define the conditions of any resulting contract.

Use of a Standard Tender Document (STD) format, as defined in Schedule 4 of the Act, is mandatory for all procurement of works funded by Government, unless an alternative format has been specifically approved by the Public Procurement Board. Note that procurement of works using development partners funds may be subject to the required use of their standard formats if so specified in the loan or credit agreement, in accordance with Section 96 of the Act. The updated versions of each approved STD, together with an individual User Guide to assist in preparation of the STD, may be obtained on electronic media from the Public Procurement Board, or directly downloaded from the PPB website.

### **2.8.5 Invitation Advertisements for Competitive Tenders (ICT and NCT)**

Publication of the advertisement must allow sufficient time before the deadline (or closing day and time of the tender) to enable prospective tenderers to obtain the tender documents and to prepare and submit their tenders. The period allowed should be a minimum of 6 weeks for ICT, and 2 weeks for NCT following the date of the first advertisement, but longer periods may be necessary for more complex requirements. Procurement Entities must be careful to also allow for the time between submission of the advertisement to the press and the time the advertisements are actually published. Advertisements for National Competitive Tendering shall be published:

- in the Public Procurement Bulletin and the PPA website; and

- in at least in two local daily newspaper of general circulation in Ghana,

In the case of International Competitive Tendering, publication in international newspapers or journals is also required. However, copies of the Invitation to Tender submitted to all foreign Embassies and High Commissions in Ghana shall be deemed to have met this requirement.

#### **2.8.6 Sale of Tender Document for Competitive Tenders**

The sale of tender documents for competitive tenders will be co-ordinated by the Procurement Unit or the Technical Department as appropriate. The price charged for the documents must reflect only the cost of printing and provision of the tender documents. The Procurement Entity must ensure that tender documents are available for sale before publication of the invitation. If the stock of tender documents is exhausted, immediate action to print additional copies shall be initiated. It is an offence to deny a prospective tenderer the opportunity to purchase a tender document, and failure to provide a tender document for inspection or purchase by a potential tenderer may constitute grounds for complaint under Part VII of the Act.

#### **2.8.7 Opening of Tenders**

Tender Opening shall commence immediately after the close of the tenders (as stated in the tender document) The Procurement Unit will co-ordinate the Tender Opening, ensure smooth operation of the proceedings, take a register of attendance, prepare Minutes of the opening, and advise the Chairperson of the opening session on procedural issues if requested. A Tender Opening Panel shall comprise at least 3 persons, including a member of the Entity Tender Committee. They shall ensure that minutes of the tender opening proceedings are duly written. The Chairman of the Tender Opening Panel will control and direct the Tender Opening and not allow

tenderer's representatives to interfere with the work of the panel. Any objections by a tenderer to the procedures or decisions of the Tender Opening should be made in writing to the Head of the Procurement Entity. For purposes of transparency it is not permitted for a tender opening to be halted or postponed once the process begins.

### **2.8.8 Tender Evaluation**

Tender evaluation will be conducted by a Tender Evaluation Panel consisting of a minimum of three qualified members. It should be noted that tenderers frequently attempt to contact the Procurement Entity during Tender evaluation, directly or indirectly, to ascertain progress of evaluation, to offer unsolicited clarifications, or to provide criticisms of their competition. The evaluation Panel must evaluate Tenders solely on the basis of the information provided in the respective Tenders and no changes in the Tender price or substance of a Tender will be permitted. No circumstances shall justify meetings or consultation between the Procurement Entity (or its consultants) and tenderers during the Tender evaluation process.

The Evaluation Panel should ensure that the Tender evaluation report is double-checked, signed and complete before submission to the ETC for its concurrent approval. The evaluation report forms a part of the record of procurement proceedings required under Section 28 of the Act.

### **2.8.9 Review and Approval of Evaluation Report**

The appropriate review authority (Head of Procurement Entity, Tender Committee, District, Regional, Ministry or Central Tender Review Board) will review the evaluation report and recommendations presented in the Evaluation Report. The review authority, before giving approval, will ensure that any written complaints made by Tenderers concerning the tender process have been addressed and responded to. If the complaint reveals a serious breach of procedures or ethics, the

review authority may recommend rejection of the evaluation report and call for re-tendering.

#### **2.8.10 Award of Contract**

Following approval from the relevant review body, the contract will be awarded to the Tenderer who has submitted the lowest evaluated Tender. Notice of the tender award shall be issued promptly to the successful Tenderer. The successful Tenderer shall be required to confirm in writing acceptance of the tender award and submit the appropriate Performance

Security (if required). The Tenderer shall be invited to attend for contract signature, or where this is not practical, provided with copies of the Contract for signature and return of signed copy of the Contract to the Procurement Entity. Failure of the Tenderer to confirm acceptance of the award, or to submit the Performance Security, or to sign the contract may constitute grounds for the annulment of the award and forfeiture of the Tenderer's Tender Security. In that event, the Procurement Entity may award the contract to the next lowest evaluated Tenderer, whose offer is substantially responsive and is determined to be qualified to perform the contract satisfactorily.

Procurement Entities are required to submit notice of contract awards to the Public Procurement Authority within 30 days of contract signature, for publication on the PPA website and/or in the Procurement Bulletin. The information on contracts awarded/signed shall include the:

- name of the Contractor;
- description of the works;
- Contract Sum;
- duration of the contract; method of procurement used; and

- the source of funding.

### **2.8.11 Contract Effectiveness**

Although the Contract may have been signed by both parties, the legal effectiveness of the Contract may be dependent on one or more of the following conditions:

- Receipt by the Procurement Entity of an Advance Payment Security;
- Receipt by the Contractor of the Advance Payment;
- Receipt by the Contractor of an acceptable Letter of Credit; or
- Mobilization and Site possession by the Contractor.

### **2.8.12 Initial and Final Takeover of Works**

Initial and final takeover of works shall be certified by an Inspection and Acceptance team comprising the Project Manager, and a representative from each of the Procurement Unit and the Technical Department.

- On issue of an initial takeover certificate by the Inspection and Acceptance Committee, part of any retention monies held may be paid to the contractor if specified in the contract.
- Following the end of the defects liability period and subject to all defects being rectified, , the Inspection and Acceptance team for will certify the final takeover of the Works and sign the Certificate of Completion.
- On issue of the final takeover certificate by the Inspection and Acceptance team, a Final Certificate shall be raised to authorize payment of the balance of any retention monies due to the contractor.

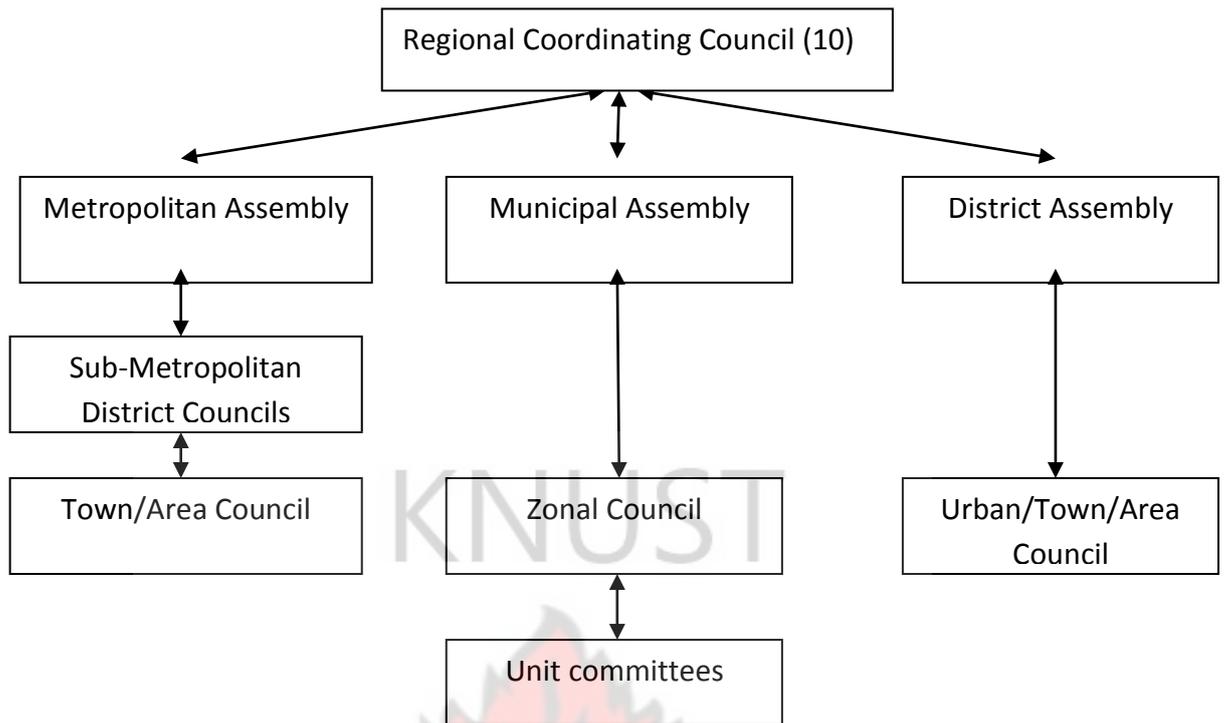
## **2.9 The Local Government Structure**

The local government structure as depicted in Fig. 1 below consists of the Regional Coordinating Council (RCC) and a four –tier Metropolitan, and three-tier Municipal

/District Assemblies Structure. The structure below the Metropolitan, Municipal, and the District Assemblies are known as the sub-structure of the Assemblies. For the purposes of the this research the scope was limited to Metropolitan, Municipal, and the District Assemblies within the structure since they control and manage the various funds and resources allocated within the structure.

### **2.9.1 Shama District Characteristics**

The Shama District is bordered to the west by the Sekondi Takoradi Metropolitan Area to the east by the Komenda – Edina – Eguafo – Abrem District, to the north by the Mpohor Wassa East District and to the south by the Gulf of Guinea the District covers an area of 215 square kilometers. The District has 48 settlements, with a population of 88,314 comprising 44,236 males and 44,078 females as at the year 2008. The growth rate as at 2000 was 3.5% which is higher than the regional and national average of 3.2% and 2.7% respectively (2000 Population and Housing census).The District has all the decentralized department that constitute an effective governance body. It is in this District that four key sectors of the economy were chosen for the study, The institutions ranged from those in the Educational sector, Health sector, Energy sector and the Shama District Assembly itself.



**Figure 2.1 Local Government structure**



## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.1 Introduction**

This chapter outlines the strategy adopted in carrying out the study. It discusses the design of the questionnaires, Sampling, Data collection among others.

#### **3.2 Research strategy/Approach**

The survey was conducted to identify the various implementation bottlenecks to Ghanaian Public Procurement Act (PPA) Act 663 in the procurement of works in Shama District. The survey utilized a structured questionnaire approach. Based on the fact that questionnaires are the simplest method to collect data from a number of respondents, a well-designed questionnaire that is used effectively can gather information on both the overall performance of the test system as well as information on specific components of the system (Aminudin 2007). Besides, if questionnaires include demographic questions on the participants, they can be used to correlate performance and satisfaction with the test system among different groups of users. Survey questionnaires are categorized as quantitative research and this was preferred because, quantitative approaches are deemed more specific and result oriented; and involves the collection of numerical data in order to explain, predict, and/or control phenomena of interest.

#### **3.3 Research Design**

The design of the research involved the following steps

- i. Questionnaire Design
- ii. Sampling Technique
- iii. Data Collection
- iv. Data Analysis

### **3.3.1 Questionnaire Design**

The survey commenced with a thorough review of literature on the challenges associated with the implementation of procurement laws worldwide. This secondary data were obtained from Journals, Newspaper reports, previous thesis, the internet and Books. The findings from these sources formed the basis for the development of structured questionnaire to solicit primary information from the various respondents. It is imperative to first establish the information to be gathered so that relevant questions are solicited (Oppenheim, 1996). The format of the questionnaires was guided by considerations to respondents and ease of reading and supplying the required data so that research participants' time were not wasted during the data collection. The questions were mainly close ended. Almost all the questionnaires have closed-ended questions to ensure consistency of respondent feedback. Because it is not entirely possible to design all questions as closed-ended, some questions were left open-ended, to obtain numerical data or to solicit some written comment and ascertain expert opinion on some of the issues.

The questionnaire was divided into two sections: The first section drew information about the general particulars of the respondents such as their capacity/position in their organization, their experience in procurement activities. This aspect was deemed necessary in order to ascertain the reliability and credibility of the data. The other section asked all the relevant questions needed to achieve the aim of the research. A copy of the questionnaires is attached at Appendix A

### **3.3.2 Interview**

Besides the questionnaires, interviews were also held with some of the respondents.

### 3.4 Sampling Technique

The study adopted purposive sampling techniques to obtain a comprehensive coverage of the personnel involved in the procurement process in a given entity. In all 32 respondents were selected for the study. Eight (8) procurement personnel each were selected from the Education sector, Health sector, the Shama District Assembly and the Energy sector. This gave us broad and varied views from the various respondents.

### 3.5 Data Collection

The questionnaires were sent out to all the 32 procurement entity personnel in the selected entities who were asked to indicate their level of agreement with a number of statements concerning the usage of the Public procurement act in their institution. Thirty (30) out of the 32 questionnaires were successfully responded to representing 93.75% of the total figure. This figure indicates a good response rate looking at the busy work schedule of the respondents.

**TABLE 3.1** *Detail of Questionnaires Administered and Returned*

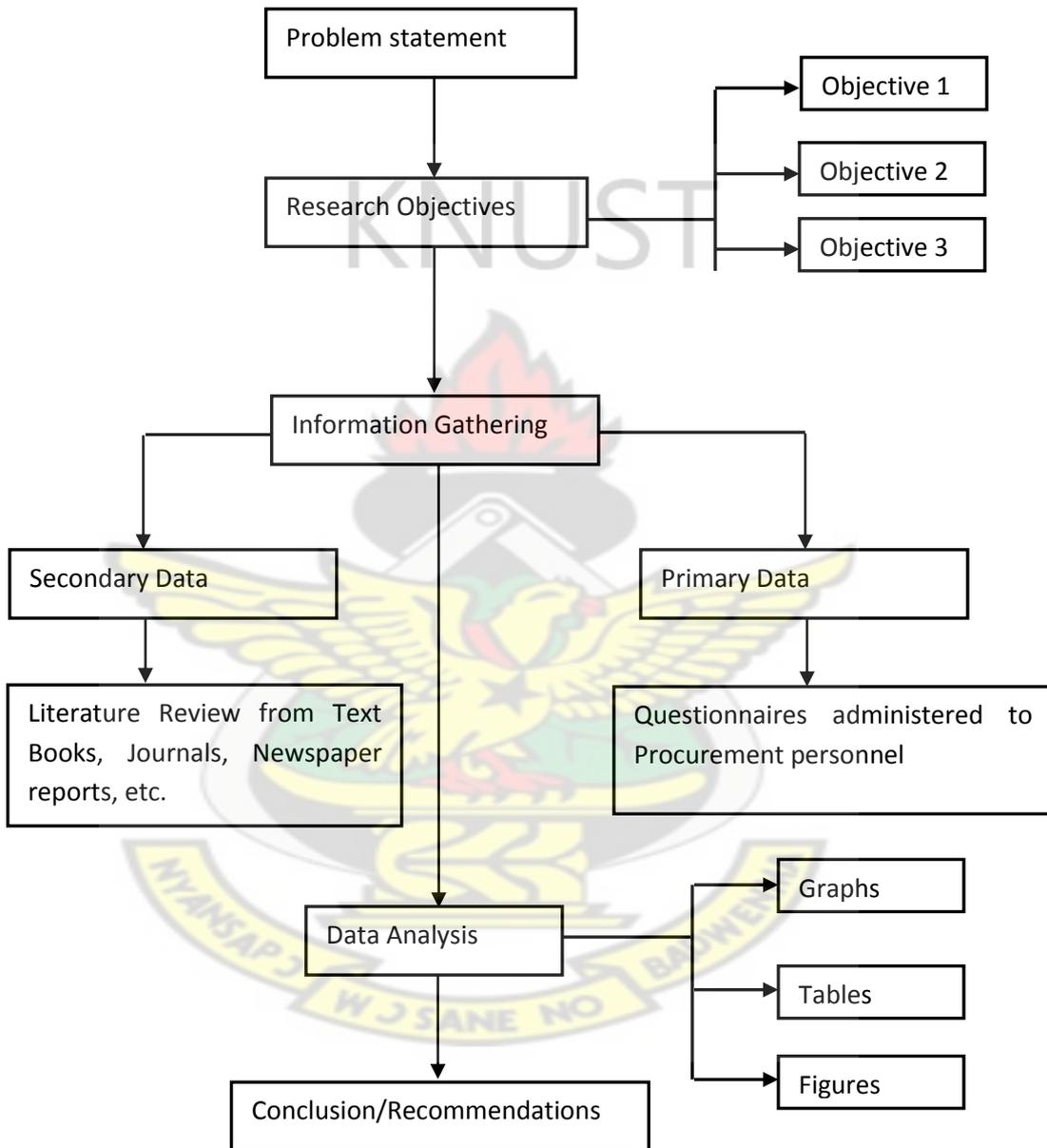
	NO. SENT	NO.RETURNED	RESPONSE RATE (%)
MMDAs	32	30	93.75

### 3.6 Data Analysis

The responses of the respondents were analyzed to enable discussions to be made on the subjects. SPSS (Statistical Package for Social Scientist) version 16 was first used to collate the responses. Afterwards, the questions on the demographic characteristics and general particulars of the respondents were analyzed into percentages. The results were further presented in graphs, charts and tables. The other types of questions were also analyzed to obtain the level of agreement of the

respondents with the challenges which militate against the smooth implementation of the procurement act in the Shama district.

The results of the analyses are presented in chapter 4. Figure below summarizes the research process.



**Figure 3.1 Research process**

### 3.7 Summary

This chapter has discussed research methods and given reasons for the options selected to achieve the research aims and objectives. It is therefore clear that a

research design is a very important process that needs much careful attention. Indeed the chapter has comprehensively described the entire research design and the methodology for the study. Survey was deemed the most appropriate research method to obtain data for the study. Following that, the design of the survey instrument including the sample size, techniques for eliciting the relevant data and how the data will be analyzed have been described. The next chapter now discusses the analysis of the data and findings from the survey.

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## CHAPTER FOUR

### RESULTS AND DISCUSSION

#### 4.1 Introduction

This chapter presents the results and a discussion on the responses of the 30 respondents selected for the study. The first section deals with the presentation of the results whereas the second section is the discussion.

#### 4.2 General Information about Respondents

The breakdown of the procurement entities surveyed include, eight from the health sector, six education, eight energy sector and eight from the Shame District Assembly itself (Table 4.1). Thus this ensures a fair distribution of the respondents across the various procurement entities. The main respondents were the procurement committee members who comprise head of the entity, director, finance officer, procurement officer, engineer who are responsible for the procurement of works within these entities.

**Table 4.1 Institution of respondents**

	Frequency	Percent
Health	8	26.7
Education	6	20.0
Energy	8	26.7
District Assembly	8	26.7
Total	30	100.0

**Table 4.2: Respondent’s position in their organization**

	Frequency	Percent
Head of entity	8	26.7
Director	3	10.0
Finance officer	5	16.7
Procurement officer	5	16.7
Other	9	30.0
Total	30	100.0

The results from Table 4.2 reveal that a high percent of the respondents are in most cases the heads of the procurement entity. These people been the heads are usually, abreast with all the procurement challenges and hence are the best people to consult in issues like this. The presents of “other” respondents (such as secretaries) who also help in the procurement process is a plus as these people are likely to reveal some information which the head of the entity or the procurement officers may not want to reveal. The study therefore can be said to have utilized most avenues necessary to solicit the required information. The credibility and reliability of the data provided here in is therefore highly enhanced.

**Table 4.3: Gender of respondents**

	Frequency	Percent
Male	21	70.0
Female	9	30.0
Total	30	100.0

Further analysis of the profile of the respondents revealed that as high as 70% of the respondents were male and 30% female. One can infer from the above observation that the male gender forms a majority in our procurement process although it does not have any implication in our procurement issues. A section of the questionnaire sought to find out the age and experience of the respondents in procurement

activities. From Table 4.4 more than half i.e. 17 representing 56.7% of the respondent had ages between 41-50 years. Consequently, (Table 4.5) as high as 53.3% had been in procurement activities between 5-10 years. This shows the level of experience of these personnel and therefore strengthens the credibility of the data provided here in

**Table 4.4: Age of respondents**

Age	Frequency	Percent
18-30years	2	6.7
31-40year	11	36.7
41-50years	17	56.7
Total	30	100.0

**Table 4.5: Duration of being in procurement Activities**

	Frequency	Percent
Less than 5 years	14	46.7
5-10 years	16	53.3
Total	30	100.0

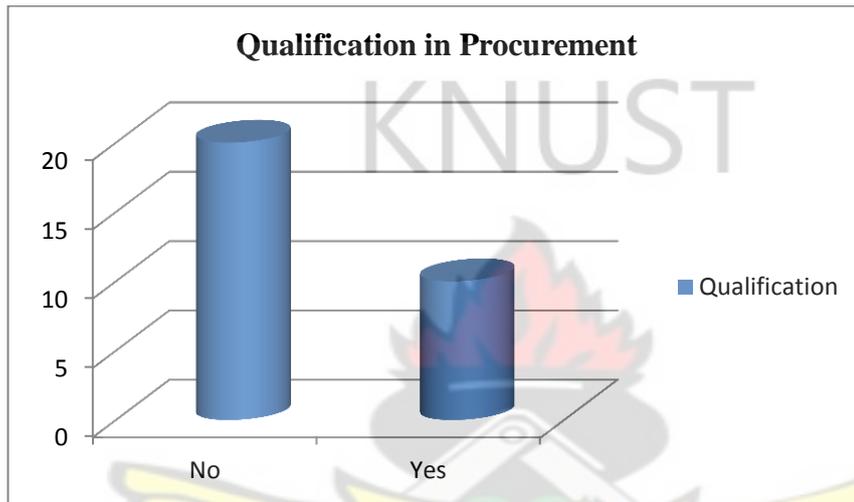
On the issue of the capacity of the procurement staffs, the results as per Table 4.6 reveals that an amazing figure of 66.7% of the procurement personnel lacked qualifications in procurement while only 33.3% had.

**Table 4.6: Do you have academic qualification in procurement?**

	Frequency	Percent
Yes	10	33.3
No	20	66.7
Total	30	100.0

Low capacity of procurement staffs have been identified as a key challenge towards the successful implementation of procurement reforms globally. This finding confirms the findings of Ameyaw et al (2012) and the 2007 Annual Report by the

ODPP on the situation in Malawi. In their report, ODPP indicated that low capacity of procurement staff inhibits procurement reforms in developing countries including Ghana. In the survey by Ameyaw et al, it was also found that out of the 49 procurement entities surveyed; only 5% of the procurement staff had qualifications in procurement while 95% lacked procurement qualifications.



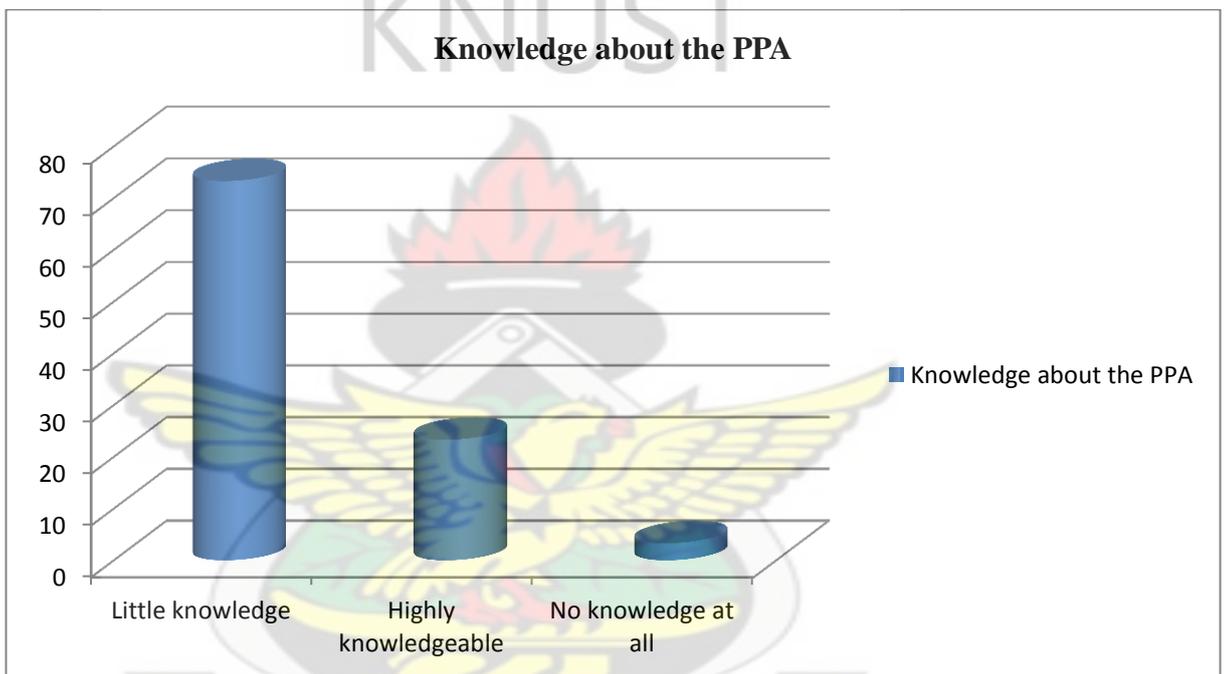
**Fig 4.1 Qualifications in procurement**

**Table 4.7: Respondents' extent of knowledge in the PPA (Act, 663)**

	Frequency	Percent
Highly knowledgeable	7	23.3
Little knowledge	22	73.3
No knowledge at all	1	3.3
Total	30	100.0

Knowledge of the PPA Act to a procurement Act staff is as important as knowledge of the Holy Bible to a Christians or the Holy Quran to the Moslem. Each of these documents provides relevant information to guide the activities of the user. Failure to familiarize oneself with the content will bring about total deviation or non-compliance with the provisions of document. This aspect of the questionnaire sought to find out how abreast or knowledgeable the various participants were with the

provisions of the Public Procurement Act, Act 663. An amazing figure of 73.3% of the respondents (Table 4.7 and Fig 4.3) indicated that they had “little knowledge” about the PPA. This raises a question about how these personnel carry out their procurement activities with the “little knowledge” they have in the master plan (i.e. the PPA). The finding here explains why Ameyaw et al (2012) observed that “non-compliance with the provisions of the Public Procurement law” is one of the key challenges inhibiting the successful implementation of the PPA in Ghana.



**Fig 4.2: Knowledge about the PPA**

### 4.3 Implementation of Procurement Methods

**Table 4.9: Procurement methods used by respondents**

	Frequency	Percent
National competitive tendering	13	43.3
Request for quotation	15	50.0
Restricted tendering	2	6.7
Total	30	100.0

**Table 4.10: Number of bidders received per lot**

	Frequency	Percent
2-3 bidders	10	33.3
4 or more bidders	20	66.6
Total	30	100.0

Out of the 30 respondents, 15 of them representing 50% indicated that most of their works contracts are procured using Request for Quotation (RFQ) while 43.3% use National Competitive Tendering (NCT). This result is also not too different from the earlier submission by Ameyaw et al (2012). It was also observed that most of the contracts could have been aggregated to attract competitive tendering but were split into smaller lots that allowed for the use of RFQs. This is a total breach of section 21 (5) of the Act which states that “ A procurement entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in this Act”. According to Ameyaw et al, the splitting of contracts into smaller lots allows for the use of RFQs which is believed to be relatively more susceptible to manipulation by procurement officers.

Contrary to the submission of Ameyaw et al (2012), on competitive tendering, the respondents did indicate that, as high as 66.6% of contracts received 4 or more bidders per lot while only 33.3% had between 2-3 bidders per lot. This result shows a high level of competition in the bidding of contracts in the district. In the case of Ameyaw et al (2012), out of the 384 contracts reviewed, there were a total of 1005 bidders. 23% of those contracts had one bidder per lot, 65% had 2 to 3 bidders per lot, and only 10% had 4 or more bidders per lot. The remaining 2% had unknown number of bidders per lot. Therefore an average of 2.6 bidders per lot/contract was

observed. They therefore concluded that there was low level of competition in the bidding of contracts.

**Table 4.11: Communication of the results of tender to bidders**

	Frequency	Percent
Yes	7	23.3
No	23	76.7
Total	30	100.0

Section 65 (9) of the procurement law requires that the results of any procurement exercise should be communicated to unsuccessful bidders. The study results as shown on Table 4.11 revealed that in most cases this aspect of the law is breached. As high as 76.7% of the respondents indicated that they do not communicate the result of their procurement exercise to unsuccessful bidders. Thus, the findings by Ameyaw et al (2012) is confirmed by this study where in their case, as high as 87% of procurement cases or exercises were found to have erred in communicating results to unsuccessful tenders. This raises doubts about the credibility of the procurement process and undermines the aim of the Act in ensuring transparency and accountability.

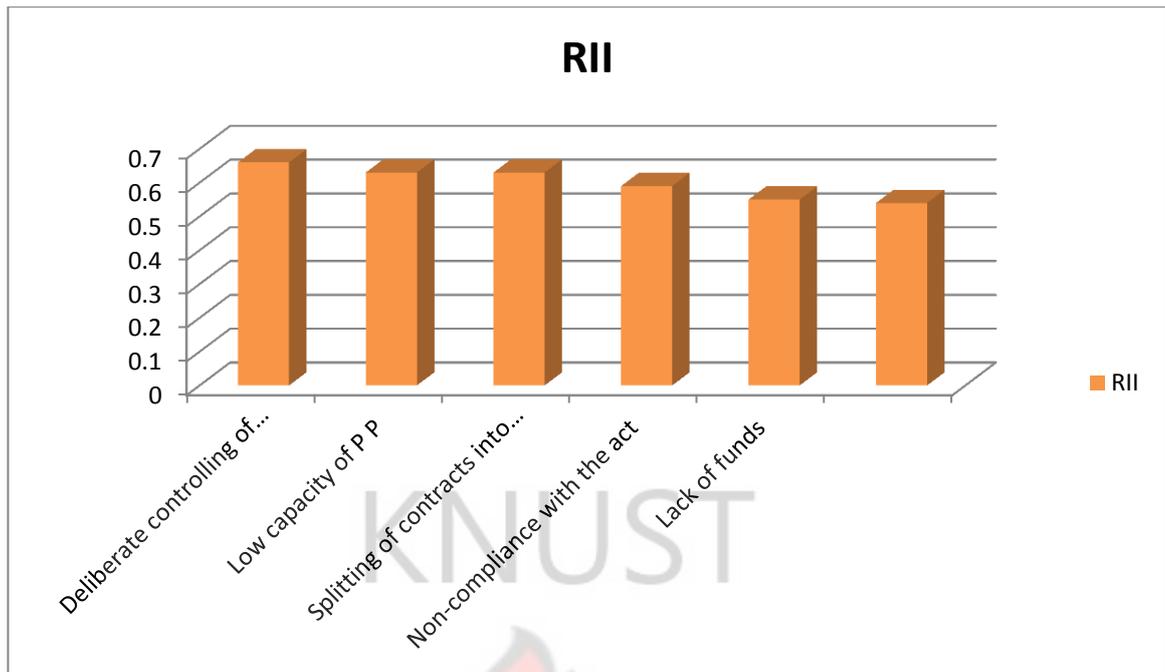
#### **4.4 Challenges with the Implementation of the PPA, Act 663**

Six challenges were identified from the literature review as: Low capacity of procurement personnel; deliberate controlling of competition; splitting of contracts into smaller lots; Lack of funds, Low interaction between procurement entities and non-compliance with the provisions of the act. Given the above bottlenecks, the respondents were asked to indicate their level of agreement with the factors on a 5 point Likert scale. Their responses were consequently analyzed to obtain the relative importance index value (RII) of the various variables to enable the researcher rank the factors. The result is presented in Table 4.12.

Generally, all the factors were admitted by the respondents as being a challenge toward the successful implementation of the procurement law. This is revealed by the RII values of the variables (i.e. they all had values above 0.5). However, ranking the factors, “deliberate controlling of competition” was found to be the topmost implementation bottleneck. Interview with some of the respondents indicated that, there were several instances where politicians interfere in the tendering process. This took the form of them dictating whom the contract should be given to or how much the contract figure should be set. This indicates a clear manipulation of the tendering process and a total breach of the procurement act. Thus the report of the World Bank (2004) is confirmed by this study where it was reported that a good number of politicians think they have the right to see in the procurement procedures thereby leading to capricious procurement decisions.

**Table 4.12: Ranking of the challenges associated with the implementation of the PPA**

	RATING					Total	ΣW	Mean	RII	Rank
	1	2	3	4	5					
<b>Challenges</b>										
1. Low capacity of procurement personnel	2	10	2	14	2	30	94	3.1333	0.63	2nd
2. Deliberate controlling of competition	2	6	4	17	1	30	99	3.300	0.66	1st
3. Splitting of contracts into smaller lots	5	2	7	16	0	30	94	3.1333	0.63	2nd
4. Lack of funds	4	11	3	12	0	30	83	2.7667	0.55	5th
5. Low interaction between procurement entities	0	17	9	0	4	30	81	2.700	0.54	6th
6. Non-compliance with the provisions of the act	0	11	10	9	0	30	88	2.9333	0.59	4th



**Fig 4.3 challenges associated with the implementation of the PPA**

Splitting of contracts into smaller lots and Low capacity of procurement personnel were the second key factors. As noted in earlier studies, (Ameyaw et al, 2012; Thai 2008) splitting of contracts into smaller lots allows for the use of RFQs which is believed to be relatively more susceptible to manipulation by procurement officers. Procurement methods which could result in competition and efficiency were usually put at the road side while conspicuous methods are employed to the advantage of the procurement personnel and the politicians. This poses a difficult challenge to the public procurement law in ensuring transparency, fairness and value for money in our procurement system.

Low capacity of procurement staff has also been confirmed by this study as being another key implementation bottleneck to the successful implementation of procurement laws developing countries as noted earlier on by the ODPP Annual Report in 2007. As observed in Table 4.6 amazing figure of 66.7% of the procurement personnel did indicate that they lacked qualifications in procurement.

In worsening the case, interview with some of the respondents indicated that they hardly receive packages such as workshop to update and train them in matters concerning procurement from their institution. These things results in non-compliance with the provisions of the act. A section of the respondents put the blame on lack of adequate financial resource. Quoting from the head of one procurement entity “It takes money to undertake all these training courses and put mechanisms in place to ensure efficient and effective procurement process but where the funds are not coming, it becomes difficult” Judging the above, it means lot of things have to be put in place by the government if the dream of the public procurement law has to be realized.



## CHAPTER FIVE

### SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

#### 5.1 Summary of Findings and Conclusion

The study sought to identify the various implementation bottlenecks to the Ghanaian Public Procurement Act, Act 663 in the Shama District in the Western region of Ghana. It looked at four key procurement entities in the district: The Shama district Assembly, procurement of works at the Education (the secondary schools) sector, Health (the hospitals) sector and Energy (power generation) sector. This was done so as to integrate the challenges in the various sectors into one to enable discussion to be done and consequently make recommendations to address the challenge. From the questionnaire survey delivered to the 30 procurement personnel in the selected procurement entities, the following key findings were observed:

- (a) Most of the procurement officers (66.7%) in the entities surveyed lacked qualifications in procurement. Despite this, a majority of them have had practical experience in procurement activities for a number of years (i.e. 5-10 years).
- (b) The extent of knowledge of the procurement personnel in the Ghanaian Public Procurement Act, Act 663 is very low.
- (c) There is high inclination towards using less competitive procurement methods for procuring works in the district. In most cases, works contracts were split into smaller lots to enable the use of Request for Quotation (RFQ) which is a violation of section 21 (5) of the Act which states that “A procurement entities shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in this Act.

- (d) Where competitive tendering process was adopted, most of the exercise records 4 or more bidders per lot. A sign of high competition in the bidding of contracts in the district.
- (e) A breach of Section 65 (9) of the procurement law was also observed 76.7% of the respondents indicated that results of their procurement exercise are not communicated to unsuccessful bidders.
- (f) Deliberate controlling of competition; Low capacity of procurement personnel, Splitting of contracts into smaller lots and lack of funds were found to be among the key challenges towards the successful implementation of the public procurement law in the district.

The study therefore concludes there are a number of challenges that bedevil the successful implementation of the Public procurement Act in the Shama District. This goes to confirm the earlier study by Ameyaw et al (2012) on the Act. Thus, the government has to put measures in place to address these bottlenecks to ensure the complete realization of the goals of the Act.

**1) To improve on the experience and expertise of key players**

- MMDAs and other public organisations must commit resources in building the capacity of key players in procurement activities.
- The Public Procurement Authority must compliment in periodic capacity building training in procurement planning and management for key players in the MMDAs

**2) To reduce the delays in payment of works executed**

- MMDAs and other public organisations must confirm the availability of revenue to fund projects before they initiate their procurement process.

- MMDAs and other public organisations must give priority in payment for planned projects and programmes before attending to unplanned ones.
- The directive by His Excellency the President of the Republic of Ghana that all public entities must complete on-going projects before planning for new ones must be strictly adhered to.

## 5.2 Recommendations

Based on the observed developments in our procurement activities, the following recommendations are suggested for integration into our procurement system the Government and other body that have a say in the implementation of procurement law in Ghana.

- (a) *Capacity building:* Workshops and training programmes should be organized on frequent basis to educate procurement personnel on the interpretation and application of the law. It was observed that most of the respondents due to misinterpretation misconstrued the meaning of some provisions of the act and consequently applied it the way they understood it. These refresher courses should not be limited to the procurement act only but extended to include the subject “procurement” as academic discipline. Most of the personnel lack qualifications in procurement making them less efficient in this area of science.
- Institutions of higher learning such as KNUST through the Department of Building Technology must train more students at BSc. and MSc. levels in procurement management and collaborate with the Local Government service and public organisations to absorb such professionals to manage activities in procurement.

*(b) Punitive measures:* The adoption of disciplinary measures to punish officers who deliberately abuse the procurement process for their own self-aggrandizement should be highly considered. Foreign investors would be unwilling to invest in our economy where they have to deal with public procurement entities whose procurement processes are at variance with norms, standards and practices. This will ensure that the country saves a lot of money from abuses such as controlling of completion by procurement entities and politicians, irrelevant splitting of contracts into smaller lots, etc. and consequently, ensure that value for money is achieved in our procurement process.

*(C) To reduce the delays in payment of works executed* MMDA's and other public organisations must confirm the availability of revenue to fund projects before they initiate their procurement process. MMDA's and other public organisations must give priority in payment for planned projects and programmes before attending to unplanned ones. The directive by His Excellency the President of the Republic of Ghana that all public entities must complete on-going projects before planning for new ones must be strictly adhered to.

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## QUESTIONNAIRES

KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY

(KNUST)

DEPARTMENT OF BUILDING TECHNOLOGY

MSc. PROCUREMENT MANAGEMENT

### “CHALLENGES IN THE APPLICATION OF THE PUBLIC PROCUREMENT ACT (ACT 663); PROCUREMENT OF WORKS IN THE SHAMA DISTRICT”

Dear Respondent,

The study aims at the identification of the various implementation bottlenecks to the Ghanaian Public Procurement Act (PPA), Act 663 in the procurement of works in the Shama District. The results from this report will help proffer some solution to address the issues that confront the implementation of the Act and consequently improve procurement in the District.

Your response to the following questions would be highly appreciated for the success of the project. Any information given would be treated with utmost confidentiality.

#### Instructions

- Please tick (✓) or circle (○) the most appropriate answer to each of the questions.

#### SECTION I: DEMOGRAPHIC CHARACTERISTICS

1. Gender      Male ( )      Female ( )

2. Age (Tick whichever appropriate)

(a) 18– 30 Years    (b) 31 – 40 Years    (c) 41 - 50 years    (d) Over 51 years

3. What sector is your institution?

(a) Health (b) Education (c) Energy (d) District Assembly

4. What is your position in your institution?

(a) Head of Entity (b) Director (c) Finance Officer (d) Procurement Officer

(d) Engineer (e) Others, Please specify .....

5. How long have you been involved in procurement activities?

(a) Less than 5 years (b) 5 – 10 years (C) Above 10 years

6. Do you have any academic/professional qualifications in Procurement?

(a) Yes (b) No

7. What is your extent of knowledge about the Ghanaian Public Procurement Act, (Act 663)?

(a) Highly knowledgeable (b) Little knowledge (c) No knowledge at all

8. Which of the following methods do you normally use in procuring works?

Tick all that apply

(a) National Competitive Tendering (b) Sole Sourcing (c) Request for Quotations (d) Restricted Tendering (e) Two-stage Tendering

9. How many bidders per lot do you normally receive in your tendering process?

(a) 1 bidder (b) 2-3 bidders (c) 4 or more bidders

10. Do you normally communicate the results of any procurement exercise to unsuccessful bidders? (a) Yes (b) No

**SECTION II: Challenges associated with the application of the Public procurement Act**

11. Please indicate your level of agreement with the following challenges associated with the application of the PPA in the procurement of works in your institution on a scale of 1-5 where 1 = Strongly Disagree 2 = Disagree 3 = Neutral 4 = Agree 5 = Strongly Agree

Challenges	1	2	3	4	5
1. Low capacity of procurement professionals					
2. Deliberate controlling of competition					
3. Splitting of contracts into smaller lots					
4. Lack of funds					
5. Non-compliance with the provisions of the act					
6. Low interaction between procurement entities and the PPA					
7. Others, please specify.....					

12. What measures do you suggest should be put in place to address the challenges identified above?

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. ....
- vi. ....

Thank you.