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Challenges in Public Procurement in Kwahu West Municipal Assembly, Ghana

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Abstract

Public procurement is a legal means by which goods, works and services are acquired by public entities including District Assemblies to promote development. Although the procurement process is to enhance judicious government spending, it has been seen as bureaucratic and cumbersome. This study set out to examine challenges that characterise public procurement process in Kwahu West Municipal Assembly within the legal framework in Ghana. Qualitative approach was employed in the study. Purposive and snowballing sampling techniques were used to draw participants for the study while interview guides and focus group discussion guides were used in data collection. The study found that low level of professionalism on the part of suppliers and contractors, bureaucracy, corruption and political interference characterised the procurement process and recommended that citizens should be concerned about how their monies are being spent by monitoring the procurement process in order to achieve value for money.

Key Words: Bureaucracy, Corruption, Development, Government, Procurement

Introduction

Public sector procurement has undergone various reforms especially in developing countries. Governments and development partners are concerned about how to make procurement more effective to development. This is because there are claims that the sector is vulnerable and prone to corruption and other rent seeking behaviours due to the magnitude of its size and the amount of resources involved. The Organisation for Economic Co-operation and Development (OECD) also reports that corruption loss from public procurement is estimated to range between \$200 and \$500 billion annually with its damages ranging from 10-25 percent of contract value (as cited in Transparency International, 2010). Further, it has been estimated that roughly \$1.5 trillion in public contract awards are influenced by corruption while the volume of bribes exchanging hands in the public sector procurement alone is estimated to about US\$ 200 billion per annum (Kaufmann, 2005).

Ghana's case is no different. Annually, the Auditor General Report presents huge sums of money go waste through public procurement irregularities. There are claims that the whole procurement process is shrouded in secrecy, corruption and discrimination (Sarfo, 2011; Zaney, 2011). In Ghana, about 70 percent of corrupt practices are enhanced through the purchasing and supply of basic items for some ministries, departments and government agencies (Andoh-Kwofie, 2001 cited by Hannover, 2001).

According to Shah (2007), effective delivery of economic and social infrastructure rests on sound financial management system and that includes effective public procurement policies and practices. As such, with the institution of the procurement guidelines (Public Procurement (Amendment) Act 2016, Act 914), it was expected that public procurement would be more effective and efficient. However, with the above claims, it would be prudent to find out whether the objectives of procurement are being achieved in the midst of these claims especially at the district levels.

In the Kwahu West Municipal Assembly (KWMA), the public procurement process has been the principal means through which government implements development projects. However, the Ghana Statistical Service (GSS) in 2002 indicated that about 60 percent of the people living in the district live below the national poverty line and about 34 percent live in core poverty with an unemployment rate being about 16.8 percent compared to the national average of 28.7 percent (GSS, 2002). This paper therefore set out to find the challenges that bedevil the public procurement process of the Kwahu West Municipal Assembly.

Literature Review

Public procurement deals with purchases made within the jurisdiction of government or government entity. It is defined as 'acquisition of goods and/or services at the best possible total cost of ownership, in the right quality and quantity, at the right time, in the right place and from the right source for the direct benefit or use of corporations, individuals, or even governments, generally via a contract' (Mukhopadhyay, 2011, pp 23). According to Björn (2004), public procurement is a centrally negotiated legal process which is guided by political decisions and implemented by various local as well as international purchasers and suppliers.

It comprises the overall process of acquiring goods, civil works and services which includes all functions from the identification of needs, through to all phases of contract administration through the end of a services' contract or the useful life of an asset (United Nations Development Programme [UNDP], 2007).

According to Kashap (2004), purchases by governments and local authorities of the works, goods and services they need to operate form public procurement. These goods, services and works range from simple office items to sophisticated equipment. It also includes purchasing, hiring, leasing or any other contractual means of engaging suppliers in the provisions of public services. McCrudden (2007) sees purchasing by government from private sector contractors which are usually on the basis of competitive bidding, of goods and services that government needs. It can be said to be the purchase of goods, services and public works by government and public institutions through the most efficient and effective means.

Government procurement is embedded in rules which are applicable to purchasing entities depending on whether the total purchase value is over or below certain "threshold values". The threshold values differ with regard to goods, services and works. Procurement rules are embedded in a policy framework which can differ from country to country. Nonetheless, they should respect international rules and norms, including the International Labour Organisation (ILO) core labour standards and the United Nations (UN) Universal Declaration of Human Rights, Millennium Declaration and Millennium Development Goals (MDGs) as well as UN declarations on social development, sustainable development and also guided the principles of economy and efficiency, open and effective competition, transparency, integrity as well as accountability (Ellmers, 2009).

Procurement is a potential instrument of integrating socially and economically sustainable benefits to stimulate employment programmes. In countries with severe income inequality, procurement is seen as a tool to improve social justice. For instance, in South Africa and Namibia, public procurement has been used as an integral element in supporting local black business (McCrudden, 2007). Procurement was used as a development instrument to revive the global economic crisis which started in 2008 when governments began to inject economic stimulus funds into affected sectors to maintain productive capacities, jobs and income (Ellmers, 2009). This is an indication that Public procurement involves more than purchases but include strategies and policies of the procuring entity, methods and procedures, personnel and information about the procurement process. Public procurement function should be discharged honestly, fairly, and in a manner that secures best value for public money. Contracting authorities are expected to be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity (Harink, 1999).

Legal and Procedural Framework of Public Procurement

A major impediment in achieving effective procurement in Ghana was the fragmentation, vagueness and limited scope of laws, implementation procedures and regulations of public procurement. This gave rise to inconsistencies and lack of accountability and transparency in public procurement. As a result, the country took steps to develop a legal and administrative framework with the help of World Bank to streamline public procurement. This development

resulted in the promulgation of the Public Procurement Act in 2003 (Act 663) and amended in March 2018. The new procurement amendment Act is Act 914.

The Act is to create lucidity in the procurement process. It establishes a framework which makes the procurement process more competitive, transparent and accountable by securing judicious use of economic resources in a non-discriminatory manner. It specifies among other things rules and regulations of procurement; methods of procurement and the way procurement officials and committees are appointed. Their roles and responsibilities which they are supposed to play to achieve a smooth process are also spelt out clearly by the Act (Adjei, 2006).

The Act comprises nine parts. The first part relates to the establishment of a Procurement Board with a perpetual succession body which may sue and be sued. The Board is the central unit that oversees all public procurements and advice government on issues relating to procurement. The second part of the act deals with the scope of procurement which comprises works, goods and services. It considers the procurement structures which are procurement entity, tender review committees and evaluation panel. Rules and regulations that guide the procurement process and the methods that can be employed in government procurement are under the third and fourth parts of the Act respectively.

Part five directs the tendering process while the part six points out the methods and procedures to procure consultants. Part seven gives contractors and suppliers the right to review any transaction they have not been satisfied with. The eighth part deals with disposal of stores, plants and equipment and the final part gives effects to all provisions in the Act (GOG, 2003; 2018).

Methodology

The approach to this research was qualitative and it adopted exploratory and descriptive designs. The target population comprised stakeholders of the procurement process. They were Assembly members, contractors, suppliers and the core staff of the Assembly.

Purposive and snowballing sampling techniques were employed to draw samples from the population. Purposive sampling technique was used to select seven core staff of the Assembly. The core staff of the Assembly comprised the District Chief Executive Officer (DCE), District Coordinating Director (DCD), District Engineer, District Finance Officer (DFO), Planning Officer, Budget Officer and the District Procurement Officer. In addition, 21 Assembly members were purposively drawn for the study because they represented their communities at the assembly. 14 contractors and 5 suppliers who had been contracted were also purposively selected. Snowballing was used to select eight other contractors who had taken part in the district's procurement process but were no longer involved in undertaking any project or contract. These past contractors were selected because their views would help to understand what experiences and occurrences happened in the past. In doing this, a first respondent was identified, he then gave contacts of another contractor who had worked with the assembly and it continued in that order. Both primary and secondary sources of data were gathered for the study. The instruments used for primary data were interview guides and focus group discussion guides.

Results and Discussion

Qualitative content analysis and narratives were used in the discussion of results. The challenges that confront effective and efficient procurement process in the Kwahu West Municipal Assembly as identified by respondents and discussants are: inadequate understanding of the procurement process, inadequate logistics, bureaucracy, corruption and political interference.

Inadequate Understanding of the Procurement Process: Public procurement requires high level of professional competence to adequately execute the procurement process. Professionalism requires procurement practitioners to have the needed education, training and techniques in the field of procurement. Interview with core staff of the Assembly showed that they had the technical capacity as well as the necessary logistics to undertake the procurement process. Occasionally, the Assembly organises refresher courses in procurement for staff. A respondent stated that:

The Assembly does not have a problem with professionals. We have competent personnel to the job. Even this year, we have undergone procurement training at Ghana Institute of Management and public administration (GIMPA). We learnt so many things that would help us improve performance in the area of procurement.

This assertion contradicts the findings of World Bank (2004) that MDAs and District Assemblies were not procurement proficient. It also disagrees with the findings of Osei-Tutu et al. (2011) that procurement officials have limited knowledge about the procurement process. However, contractors and suppliers were not in the same position as the Assembly staff. They had not received any of such training on the procurement process. It was also identified that the lack of training in the procurement process affected their ability to prepare accurate documentation for tendering. This supports the claim by Ameyaw et al. (2012) that the procurement sector is plagued with contractors and suppliers who do not have the technical and managerial capacity to effectively participate in the procurement process.

Bureaucracy: Bureaucracy is when procedures for actions and decisions become formalised and impersonal through structured rules (Sarfo, 2011). The public procurement process is required to follow strictly the structures and rules of the Public Procurement Act. This appears to negatively affect the operations of the Assembly by limiting its ability to attend to emergencies. A respondent remarked:

The nature of the procurement process is such that we are almost handicapped to act during emergency situations. This is because anything that has to be procured must first of all be in the procurement plan. For example, if there is flooding and it becomes necessary to construct a gutter, we cannot do it immediately. The people will suffer because the Act requires that we have to go through the laid down procedure in getting the gutter done and by that time the harm would have already been caused.

Not only does the bureaucratic nature of the process places a limitation on attending to emergencies but also leave community members to endure inconveniences. In a focus group discussion, a discussant shared her experience by narrating that:

I remember two years ago during the rainy season, one of the communities in my electoral area needed a gutter urgently because floods was evacuating people from their homes, when I reported, I was told the procurement plan had already been drawn and also the urgency of a solution could not wait for the long procurement process, so I had to organise communal labour to temporarily salvage the situation.

In the same breadth, contractors and suppliers were also of the view that the procurement process is bureaucratic and cumbersome. It causes delays which affects prices of products. A supplier had this to say in an interview:

The process is time consuming. By the time all paper works are done for me to finally deliver the goods, prices would have even gone up. In that case, I lose all my profit. Even after supplying, the payment delays, you have to be going and coming for you to be told; Oh, we are processing your documents, it is with accounts, director is yet to sign, the documents are with chief, a whole lot of stories. It is really stressful!

The above confirms the finding that public procurement is a centrally legal process embedded in a lot of bureaucracy which delays the overall process (Sarfo, 2011; Björn, 2004). Bureaucracy affects the Assembly's responsiveness to people's development of needs.

Political Interference: Respondents viewed public procurement as an activity that is highly political. Politics play a major role in its success or failure. Political considerations often dictate which projects are approved; timing of award of contracts and who wins the contract, some projects get abandoned because of political interference. Respondents pointed out that the Assembly's procurement is inherently political, and that politics could not be detached from the process completely. The finding confirms the assertion by Raymond (2008) that, the public procurement sector is a politically sensitive sector. A respondent stated that:

Politicians distort procurement plans by awarding contract for unplanned projects. Even the timing of award of contracts is politically motivated. Most often politicians want projects that can score them higher political points and there is very little we the technocrats can do about it. We go, sit down and draw up plans but we do not implement them. The plans are put on the shelves to gather dust. Look on your right, the big book on top of the shelf is the annual plan; ask me how many of the planned projects have been implemented and look at the month we are in now. Procurements are pushed to election years. So, you can observe we do a lot of projects when we are nearing elections. My sister, it is not here alone, where I came from, the situation was the same, but if the politicians decide, who am I, a technocrat to oppose? I do not want any unwarranted transfer. It is like that everywhere! That is the system.

The narration confirms the argument of Akech (2005) who noted that, the threat of being suspended or fired has in many cases lure public procurement officials into obeying illegal ministerial directives leading to non-compliance of procurement rules, resulting in poor procurement outcome. It is evident from the narration that, the provision of infrastructure is very essential to the well-being of people as such, electorates vote for politicians who can provide infrastructure for their people. This confirms the findings of Rogerson and Vorster

(2003), that public procurement is mostly targeted at the provision and maintenance of public infrastructure which have been identified as critical elements in development.

In an interview with a contractor, he believed political interference pertains to the procurement process. He said:

Politics have taken over the process now. Contracts are now awarded in reference to which party you belong to irrespective of your experience and capacity. If you do not align yourself to the party in government, you will not be awarded a contract. We know people who have been given contracts who are not even contractors.

Another contractor narrated his experience related to the politics in the procurement process. He narrated:

I was given a contract in 2008, after completing the foundation level, I was given notice to stop work in 2009. That was the era that there was a change in government so the District Chief Executive who supervised the award of the contract was also changed. The reason for the suspension of contract was because there was no money, so I stopped. Meanwhile other projects were being awarded for contracts, where were they getting money to finance those projects? It is simply because “he” wants to have all the credits for himself. The assembly has not even paid me the money I am supposed to be paid.

The statements by the contractors agree with the study of Lodhia and Burritt (2004) that ministerial and political interference with the tender process renders the procurement process ineffective. The findings also show consistency with that of Hui et al. (2011), that public procurement is influenced by local politicians, parliamentarians and influential top management individuals. The implication of this is that the completion of projects delays, costs of projects increase and value for money becomes an illusion and also results in government having to pay a lot of extra monies to contractors in the name of judgement debts.

Corruption: The nature of corruption in the district’s public procurement process is difficult to address because most respondents were adamant to talk about it. It was found out that discussing corruption openly and pointing out the culprits would amount to witch-hunting and nobody would want to be tagged with that. Talking about corruption meant washing officials’ dirty linen in public and shielding corruption was an alternative option. It implies that when people are part of a system, they find it difficult coming out to say things that inconvenience them.

There were contradictory views as to whether corruption existed in the Assembly’s procurement process. Some respondents interviewed were of the view that there was no corruption in the process due to the compliance with the procurement law. Others however, were of the view that corruption still prevails in the procurement process even with the implementation and compliance of the public procurement Act. The reason was that the Assembly is a human institution. A respondent stated:

Why do projects that have gone through tender evaluation get abandoned because contractors are ill equipped? Yet we do not prosecute them. I cannot tell you everything that happens but like I said earlier it is the system and its not only here. But I can tell you that corruption in the form of bribes and lobbying goes on here. I cannot give you

the details of it but all I can tell you is that we have all become selfish and only interested in pursuing our selfish agenda leaving the majority of the people who are poor to suffer.

The assertion confirms literature that corruption in public procurement can be attributed to the inherent opportunistic nature of humans which tend to make procurement officials greedy and act selfishly by using their positions to enrich themselves at the expense of the poor majority (Kashap, 2004; Forgor, 2007; Osei-Tutu et al., 2009). Even though, it was found from some discussants that corruption did not exist in the procurement process and that award of contracts are based on merit, a section of other contractors who were interviewed were of the opinion that corruption exists in the procurement process. Corruption causes limited tender space. Not all contractors are given the opportunity to purchase tender documents. A contractor had this to say:

Corruption has spoilt the construction business; tender documents are sold to favourites. Now I do not bother myself tendering at all because when you come you will be told tender documents are finished just because they do not want to sell tender documents to you. Madam, if you want to verify what I am saying when you hear of the announcement come and see if you will get some to buy yourself. They know those they will award the contract to so as for the advert, it is just a formality. What is happening now to me is not fair at all. I remember there was a time I was bluntly told a particular project that was advertised was for the regional minister. It meant that it was waste of money and time to even think of buying tender documents. My sister, if they knew who they were going to award the contract to, why do they advertise. Most of us do not talk about what is happening in the industry but we are really suffering.

Nepotism and favouritism were identified as factors that give rise to corruption in the procurement process. This give credence to the assertion by Osei - Tutu et al. (2009) that, high ranking public officials and politicians may have undue influence on procurement processes and the allocation of government budget. Findings again indicate that Section 49 of the Public Procurement Act (Act 663), which makes it clear that tender documents are to be made available and accessible to all eligible bidders is not being complied with.

In another interview, a contractor was of the view that most of them were not getting contracts because corruption has become pervasive in the procurement process. Bribes have to be paid in order to fast track documentations, letters and payment certificates and claims. He shared his experience by saying that:

I can tell you there is corruption in the procurement process because of my experience in the construction industry. I started this work in the 1970s so I know what I am talking about. Before there was nothing like 10% kickback but now it has come to stay. You cannot get things done here without giving out the brown envelope, I am sure you understand. If you do not pay them your documents may even get missing at the office and you will just be going back and forth. As for me, I paid to get my documents to be processed for me without delay. But now I am not given the opportunity to participate in the tendering at all. I have been turned down on a number of occasions and the reason I am always given is that tender documents are all sold off. I know it is intentional, but

I am not bothered because I have decided to even retire by the end of this year. I only pity the young and up and coming contractors.

This allusion raises a lot of concern because in Egypt, it was found out that 90 percent of businesses saw the payment of bribes to public officials as normal and something everybody does (Puddephatt, 2012). This finding is replicated by the study. Contractors are comfortable and have accepted payment of bribes to be a part and normal thing in the procurement process. This behaviour tends to increase the overall cost of undertaking procurement.

Why These Challenges Pertain to the Procurement Process

Findings revealed that the challenges in the procurement process were as a result of selfishness and greed on the part of some procurement officials, high level of apathy among stakeholders of process, institutionalisation of corruption in the system. The findings give credence to the principal agent theory which states that, the outcome of a contractual relationship between the principal and the agent in this case the central government and procurement officials at the local level is likely to result in moral hazards and adverse selection because of self-interest seeking, asymmetry of information and agency discretion which agents use to their advantage (McCue & Prier, 2007). Responses indicated that stakeholders were very much aware of the challenges that pertain to the process but were not so concerned about the damage it does to the district. This was due to the fact that; these challenges have become systemic. Paying kickbacks, for example, has become normal in the process; as such some contractors do not see it as corruption but a way of showing appreciation to the Assembly for awarding them with contracts.

How Challenges Affect the Procurement Process

Findings from the study showed that the challenges in the procurement process adversely affect the outcome and general objective of procurement. The challenges slow down the process, increase transaction cost, lead to the production of low-quality projects hence value for money becomes an illusion. A respondent conceded that:

Some of the problems we encounter in the process are persistence, they burden the Assembly unnecessarily. We mostly do not follow plans, so we always have budget deficit. At times because we are compelled to execute projects outside budgeted projects and some budgeted projects never get done. Projects are sometimes given out for contracts without having secured source of funding. It gets to a point contractor become fed up and have to abandon projects.

It can be deduced from the findings of the study that challenges in the procurement process delays service delivery and increases cost of project. If budgets and plans are also not being followed, it could result in uneven development where some communities will be more developed than others. A discussant was of the view that the challenges in the procurement process affect their businesses negatively. He stated that: *our businesses are very much affected. We work with bank loans so when projects are suspended without timely payments, we incur losses.*

Ways of Addressing Challenges

Responses indicated that in addressing the challenges that pertain to the procurement process, there should be integrative approaches that combine education and sensitization with punitive elements. There should be social accountability to help monitor performance of the procurement process. Politics should be eliminated from the process. Contractors and suppliers should be given education and training on procurement. In explaining how the challenges in the procurement process can be minimised through social accountability mechanisms a respondent had this to say:

Social accountability will help curb the many challenges that face the procurement process. When citizens or community members demand accountability, officials will be careful how they do things because they know someone is out there watching and will want to know everything that happen. For example, if the public get interested in the cost of projects, how contracts are awarded, who the contractors are as well as monitor execution of contracts, I am sure we will get value for money.

In relation to politics, a respondent expressed his view by stating that:

The party politics that has engulfed the assembly system is really a challenge. There should be the political will to disassociate award of contract with pursuing a political party's agenda. Members of political parties should be educated about the assembly concept so that they will stop putting unnecessary pressure on authorities to award them contracts. Authorities should also be firm and put the development of the district at heart rather than pleasing just a few party activists.

In an interview with a contractor, he was of the opinion that dealing with the problem of corruption begins from an awareness and recognition of its prevalence. The public should be made aware the cost of corruption and how it adversely affects the poor. In that way, people will be vigilant and will monitor the procurement process. When the public become interested in the process it will enhance transparency and minimise corruption.

Another contractor also stated that:

People should be empowered to boldly come out and report corruption. There should be some form of protection and reward for those who want to report the bad things that go on in the system. In this country, we are all aware and we know that what is going on is bad, but you cannot come out because you will rather be touted as you want to deprive someone of his or her daily bread. Also, there should be sanctions for those who will be found culpable to deter others from engaging in such evil practices.

Another respondent at the assembly remarked:

Contractors should also be given the same training and refresher courses we have been undergoing. In so doing, the work will be easier because we will all be at par in terms of understanding of the procedures. The mistakes will be minimised, and the process will go on smoothly.

Conclusion

The study has demonstrated that public procurement is at the centre of the way public money is spent. It also proved that the assembly's procurement process is not without challenges and acknowledged that there are both internal and external factors that influence the ability of procurement practitioners to effectively attain the objectives of the procurement process which basically seeks to achieve value for money on every cedi that is spent in acquisition. Noticeable challenges were political interference, professionalism, corruption and bureaucracy. These challenges were however attributed to the self-seeking behaviour of procurement stakeholders and the lack of effective monitoring and sanctioning of culprits.

The study therefore recommends recipients of procurement outcomes (community members) should use social accountability tools such as public expenditure tracking surveys, participatory budgeting and planning to ensure that stakeholders in the procurement become transparent and accountable in terms of monies spent and timely delivery of projects and services.

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