# Discriminating in Favor of Local Tenderers: Evaluating Mainland Tanzania's Domestic Procurement Preference Practices

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***Abstract***
*As a result of international collaboration, countries worldwide opened their procurement practices to foreign competition. However, with foreign competition, governments are jeopardizing the achievement of national economic, political, and social objectives through public procurement. Thus, governments have implemented protectionism by stipulating in the procurement laws that domestic tenderers should be granted preference when making government-related acquisitions. Therefore, this study primarily evaluated Tanzania's domestic preference practice to determine the application of legal provisions and the efficiencies achieved from making acquisitions through domestic tenderers. The study used a doctrinal method, where the expositions of the law were compared with actual practice. Data was collected from fourteen procurement experts using in-depth interviews. The interviews were derived from the Delphi research concepts, where interviews were conducted on a 'rounds' basis to establish the consensus of findings between procurement experts. The study found inconsistencies when applying domestic preference, where procuring entities did not state in tendering documents the application of domestic preference while the procurement value fell within the range of domestic preference application. Also, preference for special groups in procuring entity jurisdictions was not included in procurement plans. Additionally, it was found that domestic tenderers are faced with capital challenges that affect their ability to effectively discharge procurement contracts by possessing sufficient resources. The study recommends that procuring entities embrace domestic preference to contribute to domestic economic growth and development by correctly abiding by the provisions of the law when administering tendering processes.*

***Keywords:*** *Domestic Tenderers, Procurement Preference, Public Procurement, Procurement Laws*

## 1.0 INTRODUCTION

After relatively many years of isolationism, progress has been achieved through treaties, agreements, and practice to make global public procurement an open market that allows for foreign competition. This opening of public procurement has enabled domestic economies to gain access to a new and diverse pool of goods and services, often at competitive prices. In turn, states that open their procurement markets also benefit from having foreign markets open doors for domestic producers (Yukins and Schooner, 2007). This way, the fundamentals of equity that advocate providing fair access to all bidders regardless of their national background made price criteria the main aspect of public procurement decision-making (Keulemans and De Walle, 2017).

Liberalizing trade through opening procurement markets, however, remains unstable because many states, particularly developing nations, harbor fear that fully opening their procurement markets will annihilate domestic industries as a result of crushing competition (Yukins and Schooner, 2007). Public procurement has struggled immensely with the twin goals of equity and efficiency. The struggle unfolds when the government wants to provide a neutral playground for all tenderers, but at the same time, governments want to use their purchasing power as a tool to achieve certain social and political purposes (Qiao, Thai, and Cummings, 2009). Indicating the importance of procurement on societal priorities, governments that ratified the Government Procurement Agreement [1] (GPA) opted to reserve some discretion to determine their own societal and environmental standards and specifications that are procurement-related (Dawar and Oh, 2017).

Despite the benefits that emanate from permitting international trade through procurement opportunities, countries insert in their laws, provisions that are intended to protect their nationalism. Such provisions align with the country's industrial policy, which focuses on protecting local industries (Ssennoga, 2006). In between these varying policy initiatives, the consensus is that procurement laws domestically should promote competition as a means to achieve purchasing decision legitimacy. Further, competition is regarded as a good governance tool that prevents corruption practices that undermine the efficiency of the government procurement system (Dawar, 2017). On the contrary, the opening of procurement markets to include foreign competition has led to the reporting of several high-profile corruption cases that involve multinational companies. On the other hand, restricting foreign competition and discriminating in favor of domestic tenderers also gives rise to significant corruption risks that include conflict of interest and nepotism (Schoeberlein, 2022).

Notably, it is expected that discrimination to favor local tenderers will be made when there is an absence of comparative advantages. When foreign companies lack comparative advantages, then domestic firms should be favored because proceedings from the procurement transaction in the form of the firm's profit will enter domestic welfare (Branco, 1994). The recent push to liberalize procurement markets has also seen an equal rise in protectionism measures (Schoeberlein, 2022). That is to say, while governments worldwide have acknowledged the benefits of obtaining external markets for their local suppliers, no government has been willing to relinquish control over granting advantages to local suppliers (Emanuelli, 2023). The reluctance of governments to allow for a full liberal procurement market to support local industry has raised the question of whether it is wise to use procurement to support and promote the growth of local industries (Wells and Hawkins, 2008). While it is true that there is a need to support local producers, the general view is that assistance should be on the supply side and that procurement policies should be neutral. The adoption of local preference runs against the global principles of an open procurement system, and as such, procurement or demand-side policies aren't neutral, and as a consequence, the playing field isn't neutral (Wells and Hawkins, 2008; Carboni, Iossa, and Mattera, 2017; Emanuelli, 2023).

Applying domestic preference implies a violation of free-competition rules and discriminatory programs adds another layer of difficulty to the purchaser's job and makes governments pay a higher price for purchased requirements (Qiao, Thai, and Cummings, 2009). While there may be economic justification for domestic procurement, there is also a huge potential for inefficiency and corruption (Hutcheson, 2006). In light of the paradoxical circumstance where governments are torn between opening procurement markets and protecting local industries, this article evaluates the application of domestic preference policies through public procurement practices in public entities. Specifically, the article evaluates the legislative provisions, the practice, and the efficiencies obtained from applying domestic procurement preference. Therefore, the study was guided by the following three research questions;

i) What is the position of the law with regard to the application of domestic preference in public procurement?
ii) How do public entities comply with legal framework requirements in applying the domestic preference propositions?
iii) Are there any efficiency-related issues when awarding procurement contracts under the domestic preference regimen?

## 2.0 METHODOLOGY

This study descriptively evaluates the administration and application of domestic procurement preferences for local tenderers in Tanzania. To that end, the study evaluates the provisions of the law, the practical part of applying domestic preference, and the efficiencies achieved by granting procurement contracts through domestic preference. Thus, the study used the doctrinal method/black letterism that is complemented by the empirical method to address the study objective. A doctrinal method refers to research that provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty, and perhaps predicts future developments (Hutchinson and Duncan, 2012). Black letterism in this study was used to critically evaluate the provisions of procurement legislation that include the Public Procurement Act No. 7 of 2011 CAP 410, Public Procurement Regulations of 2013 GN No. 446, Case Laws, and pre-existing guidelines. The focus of black letterism is to establish the extent to which procurement legislation has addressed the issue of domestic preference. Hence, the doctrinal method was used to extensively review the legislation and understand the provisions that relate to domestic preference. To complement the doctrinal method, the empirical method was used to evaluate the operationalization of the law provisions and further understand how public entities are responding to the law provisions (Davies, 2020).

The empirical data was collected using face-to-face, in-depth interviews that were conducted with procurement stakeholders in Dar es Salaam and Singida. The interviews were built on the Delphi technique concepts. The Delphi technique posits that expert opinion is solicited on a 'rounds' basis, where experts are asked to provide their opinion on a particular issue. The questions for each round in the Delphi technique are based on part of the previous round's findings (Naisoler-Ruiter, 2022). Further, the sample inclusion in rounds of the Delphi technique for this study was derived from the cohort approach to research. The cohort approach to research study allows for the inclusion of different samples or cohorts in different time intervals for conducting research. A cohort approach was used to avoid the risk of bias by collecting data for the second time from the same person (Cooper and Schindler, 2014). In this study, the Delphi technique consisted of two rounds where the sample elements in the first round were not included in the second round.

The Delphi technique doesn't require a large statistical sample size that is representative of the population because it is a group decision mechanism that seeks to collect rich data that allows for exploration and understanding of a specific topic (Okoli and Pawlowski, 2004; Keeley et al., 2016). In that regard,

with the Delphi method, a panel sample of experts between seven and thirty is deemed appropriate (Sobaih et al., 2012; Sekayi and Kennedy, 2017). Thus, this study used a sample of fourteen (14) procurement experts, of whom six (6) were included in the first round and eight (8) were included in the second round. The data was collected from procurement professionals who were selected by means of convenient sampling. Convenient sampling was used to select procurement professionals whose participation in this study was entirely voluntary. The procurement professionals included in this study provided their consent to be interviewed (Lune and Berg, 2017). By virtue of their consent to participate in the study, the procurement professionals represented their respective procuring entities. Therefore, the first round of interviews was conducted in Singida with procurement practitioners from TIA-Singida, SUWASA, TARURA, Singida Municipal Council, TPSC, and TEMESA. The second round of interviews was conducted in Dar es Salaam with procurement practitioners from Temeke Municipal Council, the Tanzania Ports Authority (TPA), the Institute of Adult Education, the University of Dar es Salaam (UDSM), the National Institute of Transport (NIT), the Export Processing Zones Authority (EPZA), the Tanzania Postal Corporation (TPC), and the National Social Security Fund (NSSF). The findings obtained from the first round were presented to procurement practitioners during the second round of interviews to ascertain their concurrence with previous findings. Also, empirical data from the annual performance reports (2016–2021) by the Public Procurement Regulatory Authority (PPRA) was utilized for this study. The findings from interviews and review of annual performance reports were subjected to content analysis.

## 3.0 DOMESTIC PREFERENCE IN TANZANIA

### 3.1 Establishment of Domestic Preference

Establishing a priori, it is crucial to revisit the reforms that were made pertaining to the public procurement system in the country. The wave for reforming public procurement systems in developing countries, Tanzania included, started in 1992, when several changes were made, including the establishment of institutional frameworks and governing laws. Specifically, the new era of procurement was guided by the Public Procurement Act of 2001, the Public Procurement Act of 2004, and the Public Procurement Act of 2011. To operationalize the Acts, various procurement regulations were synthesized, and today the applicable regulations are the Public Procurement Regulations of 2013 (Nkinga, 2003; Malinganya, 2015). However, in 2016, the government amended some sections of the PPA and regulations in the PPR. Therefore, currently, the country's legislative framework is made up of Public Procurement Act No. 7 of 2011 as amended in 2016 and Public Procurement Regulations of 2013 as amended in 2016. The preference for domestic tenderers is clearly established by the

procurement legislation, which states that procurement made through contributions made by the government shall be undertaken through domestic tenderers. Also, where it is proven that domestic tenderers have limited capacity and are unable to satisfy wholly or in part the procurement requirements, they shall be granted a preferential opportunity to participate in the procurement proceedings of the procuring entity and, where applicable, to offer such requirements from third sources (PPA 2011, S. 4(2)(a) and S. 3).

The public entities are required to invite tenderers without regard to their nationality, except when the public entities have decided to limit participation in the tendering proceedings based on nationality. Also, when tenderers are invited by means of national or international tendering, procuring entities are required to grant a margin of preference for the benefits of tenders for goods that are manufactured, mined, extracted, or grown in Tanzania, works by Tanzanian contractors, and services provided by Tanzanian consultants (PPA 2011, S. 54). Further, the inclusion of local experts in consultancy contracts and goods, works, and non-consultancy contracts is promoted by providing favorable weights to foreign firms that partner with local experts in the execution of procurement contracts (PPA 2011, S.55A). In addition, when the source of funds is exclusively a Tanzanian public body, the procurement of goods, works, and consultancy in such a case shall be reserved for domestic tenderers, provided that the value of the procurement doesn't exceed the threshold values laid down in the procurement regulation (PPA 2011, S. 55(1)).

### 3.2 Domestic Preference Categorization

Domestic preference is a form of discrimination whereby the government tends to favor its own domestic industry's supplies and disregard those of foreign firms. This discrimination in public procurement can be explicit or implicit. Explicit forms of discrimination can include preferential price margins and/or domestic content requirements. With preferential price margins, government institutions tend to award contracts to domestic tenderers, provided that the difference in price with foreign firms doesn't exceed a specific margin of preference. Concomitantly, the domestic content requirement is a form of discrimination where the government commits to buying from a foreign firm, provided that the foreign firm purchases some components domestically. Implicit discrimination is when the tendering proceeding purports to be fair but there is a tacit bias or discrimination behavior (Ssennoga, 2006). Also, another type of preference is when governments want to achieve certain social objectives, particularly with regard to supporting minority-owned businesses (Qiao, Thai, and Cummings, 2009).

In Tanzania, the legislative frameworks require that procuring entities grant a margin of preference to the benefit of local firms or associations between local firms and foreign firms for works, services, and certain goods available in Tanzania. The margin of preference granted shall be up to 10% when the procurement contracts are to be awarded using international tendering or national tendering (PPR 2013, Reg. 33 & 34). On the other hand, procuring entities shall grant exclusive preference, that is, tenders only limited to Tanzanian firms, when procuring goods, works, and services whose values correspond to the threshold values as enumerated in the schedule of the regulations. This exclusive preference is further subdivided into national preferences and regional preferences. Further, a joint venture between a local firm and a foreign firm shall be eligible for exclusive preference if the contribution of the local firm is greater than seventy-five percent (PPR 2013, Reg. 39). Additionally, domestic preference shall be applied when procuring entities want to achieve certain social objectives by calling for the inclusion or participation of local communities and special groups that include women, youth, the elderly, and people with disabilities (PPA 2011, S. 64(2); PPR 2013, Reg. 40).

### 3.3 Administration of Domestic Preference

Procuring entities are granted discretion by the procurement law to apply domestic preference by limiting international competition (Kaya, 2012). For a procuring entity that wishes to engage domestic preference in any form, it is mandatory that they satisfy that the tenderers fulfill the qualification, eligibility, and registration requirements as set out by the procurement laws (PPA 2011, S. 54(3); PPR 2013, Reg. 31, 32, and 33(2)). Further, when a procuring entity intends to grant a margin of preference when evaluating and comparing tenders, it is required that they state the application of the margin of preference in the tender documents (PPA 2011, S. 54(2)). On the other hand, when a procuring entity procures goods, works, or services that do not exceed the value of granting exclusive preference, it is not a direct requirement that they state explicitly in the tender documents about the application of exclusive preference to domestic tenderers (PPAA, 2016). When a procuring entity requires tenderers to furnish a tender securing declaration in the tender data sheet or proposal data sheet, it is an explicit implication that exclusive preference for domestic tenderers is applicable and hence foreign firms need to be disregarded (PPR 2013, Reg. 27). The granting of a margin of preference in the evaluation of tenders will involve the calculation of a margin of preference and shall take into account the shareholding structure. When the firm is fully a local firm, a procuring entity shall grant a 10% margin of preference. When there is a joint venture between a local firm and a foreign firm, the percentage of the margin of preference to be granted shall consider the inputs split between the parties. When a foreign firm contributes

inputs amounting to 50–70%, 25–49%, and 0–24%, the applicable margin of preference shall be 6%, 8%, and 10%, respectively. Meanwhile, the applicability of national exclusive preference for the procurement of goods, works, non-consultant, and consultant services shall consider the contract sum not exceeding the values of TZS 2 bil., 10 bil., 2 bil., and 3 bil. respectively. In addition, regional exclusive preference for local communities and special groups shall be TZS 200 mil. when procuring goods, non-consultancy, and consultancy services, while the value shall be TZS 1 bil. when procuring works (PPR 2013, Reg. 38, 39, and 40).

## 4.0 RESULTS AND DISCUSSION

### 4.1 Tendering Inconsistencies

The study found that there are inconsistencies regarding the application of domestic preferences. The position of PPA is that bid-securing declarations are applied when exclusive domestic procurement is applicable for both sole domestic firms and joint ventures between domestic firms and foreign firms, especially when domestic firms account for more than 75% of the input split. The inconsistencies of applying exclusive preference is manifested through the case reports provided by the Public Procurement Appeals Authority (PPAA) on three different cited cases which are; Appeal Case No. 27 of 2015-2016 between Ernie Enterprises Limited and Jeccs Construction and Supplies Ltd v Tanzania Institute of Accountancy (TIA), Appeal Case No. 8 of 2016-2017 between ICB Dar es Salaam Institute of Technology in partnership with Power Research and Consultants PVT Limited v Rural Energy Agency (REA) and Appeal Case No. 12 of 2019-2020 between Salem Construction Limited v Mwanza Urban Water Supply and Sanitation Authority (MWAUWASA). In all of the three aforementioned cases, the appellants argued that procuring entities unjustly awarded contracts to foreign firms, which means they erred in facts and law by failing to observe the application of exclusive domestic preference, which is a mandatory requirement of the law.

The analysis of the PPAA observed that all three procuring entities enumerated in the tender data sheet the submission of tender securing declarations as tender security, which in itself signifies the application of exclusive preference. However, despite stating that tender securing declarations are required, the procuring entities did not stipulate in the tender data sheet about the application of exclusive preference, even though the contract values were within the acceptable ranges of exclusive preferences. The inconsistencies of procuring entities in demanding submission of tender securing declarations and not stating the application of domestic preference in tendering documents did not affect PPAA's decision, which observed that the mere demand for tender securing declarations implies implicitly that domestic preference was applicable. Further,

PPAA observed that the contract values and submitted bid prices fell within the threshold for domestic preference applications.

The lack of stipulations on tendering documents about the application of exclusive preference deprived domestic tenderers of the opportunity to participate in the procurement opportunities because they perceived that the opportunities were open to foreign firms and that domestic firms regarded themselves as lacking the tools to compete with foreign firms. When procuring entities aren't stipulating the application of exclusive preference in tendering documents, it implies that procuring entities are not implementing exclusive preference. The country's procurement system assessment that was conducted by PPRA in 2007 indicated that 85% of tenders were eligible for exclusive preference and procuring entities did not apply, while only 15% of tenders were eligible for exclusive preference and it was applied (PPRA, 2007). The problem of ignoring exclusive preference is profound because, during the assessment of the country's procurement system in 2007, the country's procurement practices were following the Public Procurement Act of 2004. Even after repealing and enacting the PPA of 2011, the problem of lack of application of exclusive preference persists, which suggests there is a problem of operationalizing the requirements of the law. These findings contravene the narrative of Malinganya (2016), who argued that the country's procurement law suffers from systemic weaknesses and not operational inefficiencies. Further, the limited operationalization of exclusive preference indicates that there is minimal enforcement of the compliance of legal procedures as well as suboptimal professionalism. These findings are similar to the findings of Mohamed (2016) and Mnyasenga and Athanace (2021), who argued that there is weak enforcement in the public procurement system inadequate professionalism, and ineffective professionalization. In addition, Kinisa (2020) contends that the lack of compliance with legal procedures is induced by a lack of competence, commitment, and staff training.

### 4.2 Non-Inclusion of Domestic Preference for Special Groups

According to PPA S. 64(2)(c), procuring entities are required to restrict the issuance of tenders by calling for the participation of local communities and special groups. Also, Reg. 40 of PPR articulates that a procuring entity needs to reserve works, goods, and services for local firms that are found and operate in local government authorities or regions. To that end, under PPA S. 64(2)(c) and Reg. 30(c) of PPR, procuring entities are required to set aside a specific percentage of procurement volume to purchase from local firms in the respective local government authorities. According to Reg. 30C(1), the specific percentage that is required to be set aside for special groups operating in local government

authorities or regions is thirty percent (30%). However, findings from PPRA's annual performance reports for the financial years 2018–19, 2019–20, and 2020–21 indicated that 63%, 83.7%, and 94% of audited procuring entities respectively did not set aside the mandatory 30% of annual procurement volume exclusive to special groups.

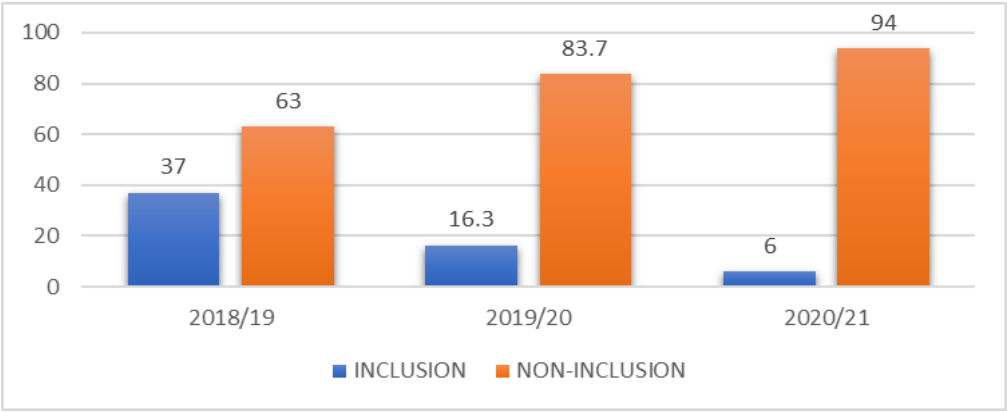


**Figure 1: Exclusive Preference for a Special Group Inclusion in the APP**

Irrespective of the number of audited procuring entities, the percentage increase in non-inclusion of special group exclusive procurement in the entity's annual procurement plan (APP) signifies a lack of compliance with the requirement of the law to set aside the procurement volume for special groups. The issue of preference for special groups was raised through the amendment of the PPA in 2016, and its implementation guideline was issued in 2020. Considering the time that has elapsed since the first declaration of the law to apply special group exclusive preference, five years later there is still a reluctance to implement special group exclusive preference, which entails that procuring entities aren't contributing to the country's developmental objectives by favoring domestic tenderers. The lack of inclusion of special group preference may imply that procuring entities perceive that special groups in their jurisdiction lack the ability to effectively discharge procurement contracts. These findings pertaining to non-inclusion and negative performance perception have been echoed by Murrel and Bangs (2019), who contended that there is a notion that there is no qualified minority-owned business (MBE) to be awarded prime contracts. Additionally, the results of the interviews show that some procurement practitioners entirely refuted the presence of regional exclusive preference. The refusal by some interviewed practitioners on the presence of regional exclusive preference for special groups may imply that procurement practitioners haven't acclimatized themselves to the late changes in public procurement practice because PPRA issued a special group implementation guideline in 2020 to permeate for the kick-

start of implementing special group regional preference. This suggests that procurement professionals are lagging, contrary to the dynamism and fluidity required of the procurement profession. According to the OECD (2019), the competence context in which a procurement professional is required is dynamic and changes fluidly. Hence, procurement practitioners need to have access to a regularly updated set of tools.

### 4.3 Value for Money Achievement Under Domestic Preference

In public procurement, the ultimate test of an efficient and effective procurement practice is the achievement of value for money. For most public entities in developing countries, achieving value for money is an inherent problem that originates from rigid laws and regulations (Mchopa et al., 2014). Value for money is said to be achieved when the procurement processes yield results that are of three types: quality delivery, timely delivery, and cost-effective procurement (Matto, Ame, and Nsimbila, 2021). The interviews conducted in this study established the value-for-money performance of the tenderers selected under domestic preference. The interview results reveal that tenderers selected under the domestic preference scheme, especially regional exclusive preference, are charging a high price for procurement requirements. This finding aligns with the stipulations of Qiao, Thai, and Cummings (2009), who suggested that applying domestic preference means tasking the government to pay higher prices for the procured requirements. Also, tenderers selected under the domestic preference scheme tend to raise requests for contract variations, which leads to an unnecessary increase in the cost of purchased requirements.

Further interviews revealed that in terms of quality delivery, domestic tenderers tend to provide satisfactory quality but not the premium quality that a foreign tenderer could provide. Additionally, it was found that domestic tenderers are repeatedly making late deliveries, causing complaints from user departments and a general public outcry. These findings narrate that domestic tenderers are performing poorly when awarded procurement contracts in terms of cost, quality, and time. The poor performance by domestic tenderers implies that the procurement process or procurement practitioners selected a supplier who was incapable from the outset. This assertion aligns with the findings of Changalima, Ismail, and Mchopa (2023), who contend that procurement practitioners are capable of improving procurement efficiency by properly selecting and monitoring the engaged suppliers. Under normal circumstances and with proper selection of tenderer, it is expected that a domestic tenderer will perform better because of their good command of the local context and environment. Otherwise, poor performance by such a tenderer signifies weaknesses in the legislation and operationalization of the legislation.

### 4.4 Challenges of Applying Domestic Preference

The study, through interviews with procurement practitioners, determined several challenges associated with applying domestic procurement preferences. Procurement practitioners identified that they fail to apply regional exclusive preference because there is a total absence of a tenderer in their jurisdiction with the qualifications to be awarded a public contract. In such circumstances, they ought to apply national exclusive preference even though the threshold falls under regional preference. Further, the introduction of electronic procurement has been a challenge to domestic tenderers because the majority of them aren't proficient in using computer systems. The lack of computer proficiency renders the tender submitted by domestic tenderers through the computer system to be unresponsive and hence disqualified from the tendering processes. These findings align with the findings of Siwandeti, Sanga, and Panga (2021), who argued that vendor participation in the Public Electronic Procurement System (PEPS) is influenced by computer and information technology literacy.

Another challenge that was raised through interviews was the issue of capital constraints. Procurement practitioners argued that domestic tenderers have limited financial capital required to execute procurement contracts in a timely manner. The shortage of capital makes domestic tenderers use inadequate and outdated technology as well as unskilled labor in executing contracts for services and work. Also, in work contracts, because bidders aren't paid in advance, they struggle to hurriedly complete at least twenty percent of the work before raising certificates to make them eligible to receive payment from procuring entities that relieve their financial burden. The tenderers wish for quick completion of work to enable them to receive payments pursuant to Reg. 10(4) and Reg. 44(1), which require procuring entities to ensure that payments are made promptly to tenderers, particularly local firms, to enable them to meet their contractual obligations in accordance with the terms of the procurement contract. This raises concern about the quality of work executed by domestic tenderers. In addition, as a result of the financial struggles of domestic tenderers, procuring entities go the extra mile to offer advance payments, which is often against the provisions of the PPA, to help tenderers who then abandon their contractual obligations, which leads to lawsuits being filed against them while the projects are not progressing. These findings bode well with the findings of Chileshe et al. (2020), who argued that indigenous contractors are embroiled in challenges of liquidity and lack of equipment.

Additionally, it was found that since public tendering involves the evaluation of tenderers' eligibility and qualification to be awarded procurement contracts through documents submitted, procuring entities can make erroneous selections

of tenderers by considering the documents that inflate the tenderer's ability to perform. That is to say, documents can paint a tenderer capable of performing the contract, but once awarded the contract, their performance tends to be suboptimal. Subject to PPA S. 51(1), tenderers are required to meet defined and appropriate criteria to participate in procurement proceedings. Meanwhile, Reg. 9(5) states that the tenderer shall provide evidence of his eligibility, proof of compliance with the necessary legal, technical, and financial requirements, and the capability and adequacy of resources to carry out the contract effectively. Furthermore, Reg. 9(11) details the documentation that a tenderer needs to submit as proof of their eligibility and qualification. Regarding the application of domestic preference, tenderers are required to provide evidence of their eligibility in documentary form, as enumerated in PPA S. 54(1) and PPR Reg. 31. The overreliance on the documents and information provided by tenderers to award procurement contracts may lead to the dodgy selection of an incapable domestic tenderer because documents can easily be fiddled with to provide the wrong picture of what is true. Misrepresentation occurs because the majority of evaluation criteria are centered around experience, staff competence, technical capability, and past performance that are submitted in a documentary fashion (Watt, Kayis, and Willey, 2009). These findings are aligned with the findings of Kalubanga, Kakwezi, and Kaylise (2013), who argued that the bid acceptance stage is vulnerable to falsification of the tenderer's qualifications, financial capability, and successful completion of previous jobs.

Domestic tenderers were found to apply for multiple tenders, which brings about a requirement for stringent supervision by procuring entities because tenderers are likely to indulge in the apportioning of their limited resources to multiple contracts awarded. The PPA doesn't restrict tenderers who have won a procurement contract with one procuring entity from applying for another elsewhere. However, this freedom of applying for multiple tenders for domestic tenderers with limited resources exposes a procuring entity to the risk of delivery delays due to resource apportionment. This realization raises the question of the effectiveness of post-qualification or due diligence conducted by procuring entities. Procuring entities are required to evaluate tenderers by considering their capability with respect to personnel, equipment, and current commitments before awarding a contract (PPR 2013, Reg. 224(2)(c), (d), and (f)). Further, according to Reg. 224(6)(a) of PPR, a procuring entity shall reject a tenderer who is determined to have limited resources even though they were the lowest or highest evaluated tenderer. Awarding a procurement contract to a tenderer with limited resources and realizing during implementation that they have limited resources and are apportioning resources across multiple contracts signifies a weakness on the part of the procuring entity. These findings pertaining to weak due diligence

by procuring entities are echoed by De Koker and Harwood (2015), who argued that there are several weaknesses in public procurement and that there is a need to improve supplier due diligence. Additionally, Crowe (2023) posits that a lack of proper due diligence leads to higher costs and poor service quality. Furthermore, the limitation in resources for domestic tenderers brings the suggestion that domestic preference should be applied to certain specific sectors instead of applying it to the whole of government procurement. Primarily, preference should be applied to sectors that are more labor-intensive, such as the service sector. This assertion is half-supported by the findings of Vieira (2020), who assures that preference should be channeled to specific sectors of greater technological complexity in which production has suffered loss of competition in relation to foreign players. In Tanzania, preferring domestic tenderers on the grounds of technology may render the protection useless because the country still lags behind in the technological arena.

## 5.0 CONCLUSION AND RECOMMENDATIONS

The government's motive for encouraging domestic tenderers to participate in public procurement is to stimulate the growth of the domestic economy. To achieve the dream of stimulating the domestic economy, the government relies on its procuring entities to adequately apply the domestic procurement preference scheme. This study has found that the issue of domestic preference has been well articulated in the procurement legislation. However, the operational weaknesses of the articles in the procurement legislation affect the realization of stimulating the domestic economy through public tendering. The inadequate application of domestic preference by procuring entities limits the participation of domestic tenderers, which in turn deprives the country's economy of the multiplier effect. Even though there are systemic weaknesses on the part of procuring entities to apply domestic preference, to some extent, tenderers are also culprits for their failure to register in the respective jurisdictions, the necessary qualifications required to be granted preference. On the preference for special groups, the preference isn't merely inadequate but rather absolute because procuring entities are increasingly failing to set aside a portion of their annual procurement volume for special groups, contrary to the requirements of the law. In addition, there are multiple challenges associated with the implementation of domestic preference, of which the majority lies within the incorrect operationalization of domestic preference and legislative requirements by procuring entities.

In all the noted weaknesses pertaining to the application of domestic preference, the study suggests that procuring entities embrace the challenges of implementing domestic procurement preference and being a part of domestic economic growth. When embracing domestic procurement preference, it is

shrewd that procuring entities abide by all the requirements of the law when preparing tenders, evaluating tenders, awarding tenders, and managing contracts emanating from tenders. Post-qualification for domestic tenderers should be as stringent as possible to ensure they are absolutely capable of discharging procurement contracts to the standards expected. Post-qualification needs to be stringent so as to circumnavigate the selection of the domestic tenderer who has submitted the lowest evaluated tender but with the most commitment and limited resources that enable them to discharge multiple contracts effectively.

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