

VALUE FOR MONEY, THE LIMPING PILLAR IN PUBLIC PROCUREMENT – EXPERIENCE FROM TANZANIA

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ABSTRACT. A number of reforms in public procurement systems aimed at bringing in justification for expenditure of taxpayers' money have taken place across many developing countries. Subsequently reviews have been carried out and indicators developed to assess the performance of the post-reform procurement regimes. However, most reforms have been skewed to the dos and don'ts of procurement laws. Procurement systems are thus strongly regulated and their implementation rarely assure attainment of value for money having failed to take on board managerial performance indicators – cost effectiveness, efficiency and the manner in which resources have been deployed or managed in a procurement process. The role of procurement in delivery of strategic corporate objectives is also frustrated. The author has cited a case from Tanzania showing how procurement reforms have failed to take up value for money in its agenda. It is all about the recent attempts by Tanzania's power utility firm to buyout a second hand power plant earlier acquired under lease.

INTRODUCTION

During the last decade public procurement has gained attention amongst developing countries than ever before. With procurement accounting for about 20% of all government expenditure world wide (Mlinga 2009) many governments have embarked on reforms in their procurement systems particularly streamlining and harmonizing the regulatory (legal) and institutional (structural) framework. In some countries the reforms have gone further to address the effectiveness and competence of the contracting authorities i.e. "Procurement Operations

and Market Practices” and “Integrity of Public Procurement Systems” though some analysts are associating the success of the latter with issues like the overall level of corruption in a country and effectiveness of the organs responsible for addressing corruption. While in most countries the reforms going on might be viewed as voluntary or internally driven the role of the international community and institutions like the World Bank (WB), the Organization for Economic Cooperation and Development (OECD), United Nations Commission for International Trade Law (UNCITRAL), bilateral and multilateral donors particularly on matters related to international trade competition and investment and policies, and the pursuit for internationally accepted best practices is obvious. There is also the question of public procurement practices gaining prominence across developing countries as it is difficult to imagine how a government can deliver substantial improvements in the well being of its citizens without a public expenditures systems that includes effective public procurement policies. (Evenett et al, 2005)

However, there is a growing feeling, supported by empirical cases, that many of the reforms have embraced the regulatory aspects of public procurement giving little attention if at all, to realization of value for money. There is a tendency by enforcers of public procurement laws and some sections from the public to forget that procurement is a strategic activity which requires managerial skills and competence so that it contributes fully towards delivery of strategic corporate objectives. In this case / practitioner’s paper the author discusses the reforms carried recently in Tanzania’s public procurement system and how managers of public bodies end up frustrated in their pursuit for value for money and attainment strategic corporate goals due to the rigidity of the existing legal provisions on public procurement.

PUBLIC PROCUREMENT REFORMS IN TANZANIA

Reforms undertaken by the government to improve the country's procurement system can be discussed in two phases:

Phase 1: 1992 - 2001

In 1992 the Government commissioned a consultant to undertake the country's Public Procurement and Supply Management study. It was concluded from the study that the public procurement system in Tanzania suffered serious weaknesses and that there was an urgent need for reform. Some of the weaknesses had included inadequacy and fragmentation of procurement laws i.e. absence of an all inclusive public procurement system covering the central government and all its institutions and inadequacy of the existing laws to cater for the wider definition of procurement i.e. to include procurement of works and selection and employment of consultants (Nkinga, 2003). Also there was no regulatory body to set standards, regulate and enforce compliance. So out of the 1992 study and recommendations a new public procurement legislation was passed by the Parliament – the Public Procurement Act (PPA) No. 3 of 2001 which became operational on 1st July 2001.

Phase 2: 2002 Todate

In 2002, shortly after becoming operational of the Public Procurement Act No. 3 of 2001, a further study on the country's public procurement regime was carried out and was documented in the 2003 country Procurement Assessment Report (CPAR). The study suggested further reforms on the procurement system and processes, capacity to conduct procurement and also attempted to address handling of corruption in procurement. The review was therefore able to resolve some of the major bottle necks which PPA 2001 failed to address e.g. shift from centralized to decentralized procurement system, more authority to accounting officers, abolishing the Central Tender Board (CTB) which had assumed the two conflicting roles of both a tender board and a regulator; and establishment of the Public Procurement Regulatory Authority (PPRA) in its place as an exclusive regulator. It was the recommendations of the report which culminated into enactment of another law on public procurement i.e. the Public Procurement Act No. 21 of 2004 which became effective on 11th February 2005 and it remains in force todate. The act also provides for the operation of the Public Procurement Appeals Authority (PPAA) making Tanzania one among countries having the most comprehensive and elaborate procurement complaints review mechanism in the world (CPAR, 2007).

PUBLIC PROCUREMENT DEFINED

While the word “Procurement” can be simply viewed as the activity to buy goods, works and services, the definition gains more significance when the activity is performed by a public body or is for a public body, the general public or all using public funds or non public funds meant for the public, thus termed, “Public Procurement”.

Public Procurement is a comprehensive process stretching from procurement planning, budget allocation, bids invitation, bids evaluation, contract award, contract management, performance evaluation, auditing and reporting. It is an activity that must support the delivery of a public body’s strategic objectives at the same time live up to the expectations of the targeted public and taxpayers at large. With procurement accounting for about 20% of government expenditure in most developing countries, proper management of the activity is of paramount importance. Due to the cost implication embodied at the different stages throughout the process, public procurement must be built on the principles of “Value for Money” and sustainability. This paper supported with a relevant case study from Tanzania, discusses the question of “Value for Money” and looks at how much have the recent public procurement reforms and the current procurement legislation and institutional framework been able to play their roles without compromising the performance of this major pillar.

VALUE FOR MONEY

Value for Money (VfM) is an essential test against which a procuring entity must justify a procurement outcome. From the user or the targeted public point of view, value for money is the value (output) attached to some defined cost (input).

Value for money is narrowly defined as a concept associated with deployment of resources vis a vis realization of some expected output values. The user department or consumer attempts to attach value to products or services received and compares the same with resources expended. A broader definition associates value for money with the economy, effectiveness and efficiency of a product, service or process. A comparison is made between the input costs against the value of the outputs and a qualitative and quantitative judgment over the manner in which the resource involved have been utilized and managed. Value for money is based therefore not only on the acquisition price/cost (economy) but also on the maximum efficiency and effectiveness of a

procurement transaction. One might therefore wish to verify proof of use of technology, financial analysis tools, timeliness etc. throughout a procurement process, particularly where large sums of money are involved. Accounting officers and their procurement staff must have the capacity and skills to run the show efficiently and effectively to minimize risks and maximize impact; and must understand the markets and effectively manage suppliers. The team must peg its performance against peers and other industries so as to seek for continuous improvement and innovations necessary to deliver greater value to the procuring entity..... And this also where the catch is – value for money being eroded by incompetence of staff involved with procurement in the public sector. In some countries there is still no defined curricula or training path for public procurement staff. The Public Procurement Regulatory Authority (PPRA) in Tanzania admits in an OECS/DAC assessment of the country's procurement system in 2006 that, “there were no defined skills and knowledge profiles for specialized procurement skills” (EOCD/DAC, 2007). The EOCD/DAC study revealed failure by many procuring entities to observe simple issues like bid validity periods thus rendering many awarded tenders null and void. Some tenders were awarded far beyond the legally allowed maximum period (sometimes up to six months later) while others had their bid period slashed to below the legally allowed minimum period e.g. 19 days instead of 30 days (Msita 2009).

There is also the problem of procuring entities attempting to modify mandatory (legal) provisions through the solicitation documents or evaluation teams using criteria other than those stipulated in the solicitation documents. Most of these have been referred to the Public Procurement Appeals Authority while others have landed in court. Inadequate procurement competence is thus taking toll on public procurement, making it expensive to PE's and the taxpayer. It acts as an impediment against achievement of value for money in procurement.

PUBLIC PROCUREMENT AS A PROCESS

As a process public procurement is performed through a logical flow of activities and predetermined time limits (work plan) all of which have got cost implications. The performance of each activity is largely influenced by time management and competence of the P.E staff involved. This paper has identified five activities undergone by a typical public procurement process with specific reference to Tanzania.

- Procurement Planning

- Budget/Resource Confirmation and Allocation
- Solicitation of Bids
- Bids Evaluation
- Contract Award and Management

Procurement Planning

Poor planning and management of the procurement process which include needs that are not well identified and estimated, unrealistic budgets and inadequacy of the skills of staff responsible for procurement is featuring as one of the major set backs in public procurement. Procuring entities must view procurement as a strategic activity that must be fully integrated into their short and long term plans and provide support to delivery of their strategic objectives and realization of value.

Public Procurement Audits in Tanzania are singling out absence of annual procurement plans (APPs) in most procuring entities as one of the major factors fueling procurement costs and thus rendering achievement of value for money a distant dream. Section 45 of the Public Procurement Act, 2004 compels procuring entities to have procurement plans so as to avoid emergency procurement; to aggregate procurement requirements to reduce procurement costs and to integrate their procurement budgets with their expenditure programmes.

A number of procurement costs can be reduced and even avoided upon selection of the appropriate procurement method and proper scheduling of the bid processing stages, an activity performed during procurement planning which can significantly keep down transaction costs and enhance productivity. Besides identification and prioritization of needs, procurement planning charts out goals, performance tracking/monitoring mechanism and assists PE's to effectively manage risks.

Budget/Resource Confirmation and Allocation

All PE needs as identified during planning must be quantified and interpreted in monetary terms i.e. into a budget and funding sources clearly confirmed. The law in Tanzania compels PEs to ensure that funds have been set aside or committed before commencement of procurement proceedings. Procuring entries commencing a procurement process without having firmed up the financial resources may end up in costly wrangles with suppliers and service providers but the worse part of it is that they will have breached the law.

In absence of a budget it may not be easy to measure the impact or effectiveness of the resources being expended in procurement.

Solicitation of Bids

In a typical procurement process this is the activity in which most costs pertaining to communication and documentation are incurred. The law in Tanzania requires open tenders to be advertised at least twice in news papers of national wide circulation (for national competitive bidding) or international trade journals or magazines for international competitive bidding.

Though the law doesn't go further to describe the size of the adverts it has been observed by PPRA that some procurement adverts are "over size". Adverts which could easily be accommodated in a quarter pages are placed on a full page thus sending high advertisement costs. The regulator has recently issued a guideline on this which calls for procuring entities to reduce bid advertisement costs by combining several similar tenders in one advert and designing the advert to fit the minimum necessary space. Use of standard bidding documents issued by PPRA can significantly reduce the cost of the solicitation documents i.e. paper work.

Bids Evaluation

Bids are said to be under evaluation throughout the period covering submission deadline and award of contract. It is a period characterized by a series of meetings of the tender committees (boards) and evaluation teams. If not properly managed, the process can be quite costly. According to the guideline issued by PPRA on this exercise, procuring entities are required to exercise proper planning of procurement in which for example opening of several tenders can be scheduled on one date and also adjudication of several tenders to be done in a single meeting of the tender board. The guidelines also advocates approving of contract award using circular resolutions as allowed by Regulation 41 (6) G.N. No 97 of 2005.

However, through experience the author has gathered that some of the most wasteful costs generated during bid evaluation are those pertaining to the incompetence of the evaluation team. This is where value for money is at stake and the potentialities for appeals and litigation are found. Incompetence of the team increases the frequency of the tender board rejecting the evaluation reports.

Contract Award and Management.

Contract management covers all the activities performed by both the procuring entity and the suppliers/contractors/service provider upon signing of the contract up to full discharge of the obligations of each party. Regulation 121 of the Public Procurement Act 2004 requires procuring entities to be responsible for the effective management of any procurement of goods, services or works which is undertaking; to

monitor the timely delivery of goods and services in the correct quantities and quality specified in the contract and to monitor the progress and timely completion of works in accordance with the terms of each contract. The regulation further requires each procuring entity to take or initiate steps to correct or discipline deviations from observance of contract conditions and to ensure that the responsibilities imposed on it by the contract are fully discharged. However despite all these explicit requirements PPRA admits that many PEs are not managing their contracts properly and among areas of concern include failure to appoint inspection and acceptance committees to inspect delivery of goods so as to ascertain quantity and quality as per contract requirements. In works procurement where more funds are normally committed relative to goods and services, works supervisors to oversee the implementation of construction works are not appointed. Studies and audits carried out in Tanzania confirm that for many PEs the procurement process virtually “ends” upon award of contract! A lot of good effort is spent up to the point of selection of supplier, contractor or service provider without further questioning whether what is being delivered is actually what is being paid for. There is a tendency of the available literature on procurement giving little regard to issues on contract management. Much of the focus is on how to solicit, negotiate and award a contract. Award of contract is not the closure point of a procurement process but rather the “beginning” (Lloyd, 2004). Procuring entities need to exercise proper contract management to avert the apparent loss of value during this procurement phase.

RIGIDITY IN PROCUREMENT LAWS

Rigidity of public procurement laws in the developing economies has been singled out as one of the major factors impeding the achievement of value for money and attainment of international best practices. With procurement in Tanzania gaining a wider definition (CPAR, 2006) to include consultancy services, works and high tech projects and the attempts by the new legislation governing public procurement delegating more authority to accounting officers and tender boards entrepreneurial/managerial skills of those involved in the process become of paramount importance than ever before. Procurement laws are compelling public institutions to “invite the world” to participate in a tender so as to increase competitiveness in anticipation for reduction in public spending. However, management science is challenging the legal requirement in that it has failed to take into account all costs associated with the increased competition. Models have been developed showing

possibility to save money through limiting the number of bidders (Costantino et al,2008) but without compromising competition.

The public procurement system in Tanzania and its governing legislation i.e. the Public Procurement Act (PPA) No. 21 of 2004 have managed to embrace enforcement of legal and regulatory compliance – sometimes at the price of sacrificing value for money. There is currently a tension mounting between managers of public enterprises on one side as they attempt to run their firms along the pursuit for economy, efficiency and strategic sustainability and enforcers of the legal and regulatory compliance on the other. But perhaps the worst scenario is when these relationships become complicated by pressure from political interests and expectations for more transparency by the general public. The recent attempts by the Tanzania Electric Supply Company Limited (TANESCO) to buy a power generating plant (Popularly known in Tanzania as “DOWANS”) is a case cited by this paper, trying to explain the failure by the on going procurement reforms to take on board value for money.

THE TANESCO CASE

In early 2007 TANESCO had leased a 100 Mega Watt power plant from Ms. DOWANS, as one of the power utility firm’s strategic initiatives to mitigate the effect of electricity generation shortfalls in the country. The Plant was acquired new. For some reasons, in August 2008 the lease agreement between TANESCO and DOWANS was curtailed and the latter decided to sell the plant through adverts placed in newspapers. The Management of TANESCO viewed this as an opportunity and if I may quote the appeal by the Chief Executive Officer (Rashid, 2009) to the government, “..... For such a critical situation, TANESCO is of the opinion that DOWANS plant which is already installed and in an operating condition is the best opportunity if the government could assist TANESCO in buying the plant, thereby reducing the lengthy time for procurement of a new similar generating plant. The other advantage of this plant is that it will also reduce the cost of buying energy from the private investor who will otherwise buy it and sell electricity to TANESCO in terms of energy and capacity charges” end of quote. The DOWANS buyout proposal to the government was supported by an expert study carried out by an independent consultant. TANESCO had engaged Ms. Lahmeyer International GMBH of Germany to inspect the plant in order to know its condition, capacity and its ability to continue generating power for longer periods as well as evaluate the value of the plant.

From the study which covered technical inspection, economic evaluation including capacity and heat rate and the estimated remaining useful life, Lahmeyer International had confirmed that the deal was viable and thus recommended the buyout. According to the report, TANESCO (and therefore the government) was to save millions of dollars upon implementation of the buyout proposal leave alone the opportunity cost of power rationing or total black out to the larger public i.e. industries and endless list of public institutions. But with all good intentions and economic justification to support acquisition of the plant TANESCO's race suddenly came to a halt –the Public Procurement Act, 2004. Regulation 58 (3) of the Act reads, “Motor vehicles, heavy plant and spareparts to be purchased *shall* be brand new”. The use of the word “shall” in this paragraph means there is no room for doing otherwise irrespective of technical and economic justification to back up a procurement proposal.

Somehow though in low profile, TANESCO had the support of the government in its attempts to acquire the plant. This was evidenced by the remark made by the head of state who was quoted by one local paper that, “The Public Procurement Act should not be a road block to big energy infrastructure projects particularly those in which investors are involved and where the nation is in need”. However, the proposal had already drawn a lot of interest among groups of politicians in particular the parliament and a section of the public who bitterly opposed it. Some parliamentarians said that buying the DOWANS plant would violate Public Procurement procedures which restrict government institutions from purchasing used items while others said that the plant was being sold at high prices and therefore move to buy it would cost the nation highly. Tension reigned forcing the government to back off. TANESCO was remained with no option but to drop the idea forthwith.

It is unfortunate that in a highly regulated public procurement system the focus is on compliance with prescribed rules and the procurement management performance is defined in term of compliance with the set of rules (Schapper et al, 2006). This is exactly what happened in TANESCO'S case.

CONCLUSION

The pursuit for value for money in public spending remains to be a big challenge to governments and their institutions across most countries. While lack of appropriate procurement skills and incompetence among managers and staff entrusted with public procurement activities have been pointed out by a number of studies

as some of the impeding factors, rigid rules regulating public procurement systems further complicate the challenge and may render the achievement of value for money a distant goal.

It is a universal practice to regulate public procurement systems, cutting across developed to developing economies. While it is undisputable that public procurement systems demand high level of transparency, compliance and accountability as enforced by law the allowance for risk management and maximization of value throughout the procurement process using managerial skills should be accommodated. There should not be a rule or prescript for every procurement activity and a room must be there for business practice (Smith, 2009). Imposition of rigid rules and strengthening of the regulatory frame work alone is no where closer to the achievement of value for money.

The debate introduced by the author's empirical study using TANESCO's case above amplifies the need to develop a model which will take on board interests of the conflicting camps and defuse the mounting tension. Along the pursuit for value for money in public procurement the issue of rigidity of the existing laws and rules needs to be addressed, but with caution to ensure accounting officers and/or their procurement staff do not exploit any flexibility then introduced to jeopardize the position and role of the other pillars like transparency, competition and integrity.

REFERENCES

- Ramadhani Mlinga (2009), "Promoting Integrity in Public Procurement" *Tanzania Procurement Journal* (Vol II No 5, PP 13 -39).
- Njonanje Samwel (2009), "We will not Dictate to Tanesco on Dowans," *The Guardian* (4th March, 2009 pp 1-2).
- Nicola Costantino et al, (2008), "Reducing the Cost of Public Tenders: A Modest Proposal" 3rd *International Public Procurement Conference Proceedings* (28 – 30 August 2008 pp 17 -30).
- Public Procurement Act, 2004 (Tanzania) pp 237 – 308
- Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Regulations (Tanzania) 2005 pp 17 -129.
- Public Expenditure and Financial Accountability Review (Tanzania) (2006).
- Msita, KMIM (2009), "Summary of the Decision on Appeal case No 21 of 2008" (Tanzania) *Construction Business Journal* (Vol. II No. 1, pp 9-27).
- OECD/DAC (2007), "Assessment of Country's Procurement System" (Tanzania) *Tanzania Procurement Journal* (Vol. 1 No. 5, pp 5 - 21)
- Idris Rashid (2009) "The Current Power Situation of the TANESCO Grid System" *The Daily News* (Tanzania) 28th Feb. 2009 pp 10
- Lahmeyer International GMBH (2008), "Buyout of Dowans Power Plant" *Consultant's Assessment Report for Buyout of Dowans Power Plant in Tanzania*.
- Paul R. Schapper et al, (2006), "An Analytical Framework for the Management and Reform of Public Procurement" *The Journal of Public Procurement* (Vol. 6 Issues 1 &3 pp 1 -26)
- Simon J. Evenett et at, (2005) "International Cooperation and the Reform of Public Procurement Policies" (On line) Available at www.worldbank.org.

Nkinga, N.S.D. (2003), “Public Procurement Reform – The Tanzanian Experience” Conference paper presented at the *Joint WTO – World Bank Regional Workshop on Procurement Reforms* held in Dar-es-Salaam, Tanzania 14th – 17th January 2003.

Isac Smith (2009), “The Value for Money Approach to Public Sector Procurement” (on line) Available at www.smartprocurement.co.za

Robert E. Lloyd (2004), “Enhancing Procurement Practices: Comprehensive Approach to Acquiring Complex Facilities and Projects” (Book Review) *The Journal of Public Procurement* (Vol.4, Issue 3, pp 471- 477)