

A DECADE OF OPERATIONALIZING GHANA'S PUBLIC PROCUREMENT LAW: SUPPLIERS' PERSPECTIVE

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ABSTRACT: *This paper evaluated the perceptions of Ghanaian suppliers on key procurement principles, after a decade of operationalizing Ghana's Public Procurement Law. A One-way ANOVA, complimented by a Turkey-b test for homogeneity of means was applied; with sample size of 204 registered suppliers drawn from eight out of the ten regions of Ghana. The results indicated that suppliers had negative perceptions on the principles of; transparency, ethics and professionalism, efficiency and effectiveness. They had moderately positive perceptions for fairness.*

KEYWORDS: Public Procurement Law, Transparency, Ethics & Professionalism, Fairness, Efficiency & Effectiveness, Ghana.

INTRODUCTION

Ghana's Public Procurement Act, 2003 (Act 663) received presidential accent on December 31st 2003 and became operational on January 1st 2004. It has been a decade since it was promulgated. Both private and public entities have relied on this law in the conduct and execution of their procurement activities. The law, among other things, sought to harmonize public sector procurement activities with the view to managing corruption along the procurement processes and achieving value for money. The role of suppliers in maintaining a credible procurement system in any country cannot be over emphasized. Their perceptions and the extent to which the law facilitates their operations determine to some extent the level to which MDAs² can determine their level of compliance to the Act. To this end, sections 79 and 80 of this law uphold the right of an aggrieved supplier(s) to a review process. While section 79 provides for review by the procurement entity, section 80 provides for Administrative review as an additional procedure should section 79 not suffice (Ghana, 2003). Though various research works have examined different aspects of the law, research in the area of suppliers' perception of the underpinning procurement principles such as transparency, ethics and professionalism, fairness, and effectiveness and efficiency have not been profoundly explored.

This paper therefore seeks to examine the perceptions of suppliers regarding the principles enunciated in the research objectives below. It will be contributory to existing literature on public procurement in general with a specific intent on supplier perception.

The objectives of this paper are to:

- i) Examine the perceptions of registered suppliers under Ghana's public procurement Law on the principles of: Transparency, Ethics and Professionalism, Efficiency and Effectiveness, and Fairness
- ii) Recommend to the Public Procurement Authority (PPA) ways to improve suppliers' use of the Law.

Public Procurement as defined under Act 663 is '*the acquisition of goods, works and services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place for the direct benefit or use of governments, corporations, or individuals, generally via a contract*' (PPA, 2007). In other words, Public Procurement is the process by which organizations acquire goods, works and services using public funds. It is a comprehensive process that takes into account proper procurement planning, budgetary allocation, bids invitation, bids evaluation, award of contract, contract management, performance measurement, monitoring, auditing and reporting (Ghana, 2003;Uyarra, 2010;Arrowsmith, et al., 2011).Public procurement laws provide a regulatory frameworks through which the public procurement and supplier selection processes are conducted. They also provide the procedural details under which suppliers conduct or carry out their contractual obligations and responsibilities under these acts.

An efficient supplier selection process in both public and private procurement activities is key to achieving value for money (VfM). Indeed, the pool of suppliers generated in the course of procuring goods, works and services, affords the procurement entities the opportunity to select the best supplier with the requisite compliments of quality, expertise, experience and a sound demonstration of the business at hand (Gonani & Muula, 2015).The World Bank's procurement guidelines, from which almost all public procurement laws in sub-Saharan Africa are couched, support transparency, fairness, ethics and professionalism in the conduct of public procurement.

The Economic Significance of Public Procurement

Public Procurement has, among other things, a direct impact on the successful delivery of government projects and public services, sound public financial management by achieving value for money in government expenditure and encouraging private sector growth and investment (PPA, 2008).It is therefore imperative that any improvements in the public procurement system can have a direct and beneficial effect on the overall economic situation of a country.

Expenditure by the Government of Ghana and other Governments in sub-Saharan Africa constitute the biggest business in the state (Scott, 2003). Such Governments employ the largest number of persons (civil and public servants), undertake a wide range of transactions including development projects, implementing and supervising the construction of infrastructure in the country, among other responsibilities. Considering the potential size and magnitude of funds to be expended by these Ministries, Departments and Agencies, and the equally important functions for which these expenditures are to be made, it is imperative that public procurement is executed in a competitively strategic fashion (Scott, 2003).

Aside the Gross National Product (GNP) estimates, public procurement expenditure by Governments in developing countries may be as high as 70% (UNDP, 2006, p. 4).Government expenditure in public procurement stands at 40% in Malawi and 70% in Uganda respectively

(Development Assistance Committee, 2005, p. 18). In Ghana, public procurement expenditure accounts for 50% to 70% of the national budget (after personal emoluments), represents 14% of Gross Domestic Product (GDP) and accounts for 24% of total imports (World Bank, 1985;1996, 2003).In South Africa, public sector procurement was estimated to amount to 14% of Gross Domestic Product (GDP) (Bolton, 2006). Judging from the foregoing analysis, it is certain that any improvements in the public procurement system can have a direct and beneficial impact on the overall economic fortunes of a country.

Supplier Selection

Selection involves the generally broad comparison of suppliers using a common set of criteria and measures. It involves the determination of quantitative and qualitative factors so as to select the best possible suppliers. Supplier selection involves the process by which firms identify, evaluate and contract with suppliers (Beil, 2009). It is a multiple criteria decision-making (MCDM) problem which is affected by several conflicting factors (Tahriri, et al., 2008;Boran, et al., 2009;Nobari & Zadeh, 2013).However, the level of detail used for examining potential suppliers may vary depending on a firm's needs (Garfamy, 2005). Globalization, outsourcing and offshoring among other factors have added to the already competitive burden of supplier selection. Suppliers are needed to furnish organizations with the necessary products, components and materials in a timely and effective manner to help maintain a competitive advantage (Bai & Sarkis, 2009). The overriding aim of every procurement process should be to choose the best possible supplier (after considering both technical and commercial specifications) to deliver the required goods, works or services to the purchasing organization at the right time, in the right condition and in the right quantity and quality Achieving this objective will however be incumbent upon a meticulous supplier selection process. Important information of suppliers should include technical capability, quality assessment and organizational profile (Mwikali & Kavale, 2012).

One important stage in the purchasing function is the efficient selection of suppliers, because it can potentially and significantly result in cost savings to the organization especially in the long-term. The supplier selection process deploys a tremendous amount of a firm's financial resources hence firms expect significant benefits from contracting with suppliers offering high value. Beil (2009) states further that a buyer(s) must identify qualified potential suppliers and evaluate them according to a predetermined procedure. This process is initiated when the buyer formally solicits information from suppliers as required by the advertisements or other forms of communication. Depending on the information requested, potential suppliers respond by presenting "bids" for the contract, specifying an offer on the contract terms, such as price, lead time, quality, etc.

Purchasing involves buying the raw materials, supplies, and components for the organization and is often associated with selecting and qualifying suppliers, rating supplier performance, negotiating contracts, comparing prices, quality and service, sourcing goods and services, timing purchases, selling terms of sale, evaluating the value received, predicting price, service, and sometimes demand changes and specifying the form in which goods are to be received (Bello, 2003).

Typically, organizations look for suppliers who, among other things, are reliable and can deliver on time, quote acceptable prices and financing arrangements, flexible to customers' needs and changes, financially sound with good long term prospects and have the ability and capacity to supply the necessary materials (Beil, 2009). Buyers' failure to procure the *right*

goods, in the right quantity, in the right condition, delivered to the right place, at the right time, for the right cost could affect the efficiency and effectiveness level of the firm. This could result in knock-on delays within the production process culminating in reduced profit margins or retarded socio-economic development. These delays could also mean the customer who was expecting to pick up his finished goods at a particular time shall have his entire supply chain severely delayed and disrupted. When this happens, any advantage in terms of price will quickly disappear (Prescott & Coates, 2012).

Key Procurement Principles

Transparency, economy, efficiency, fairness among others are the prerequisites for the execution of any efficient public procurement exercise (OECD, 2009). Transparency is one of the key procurement principles essential for an enhanced public procurement service provision. Accessibility and availability of relevant information regarding the entire public procurement process is paramount in executing public procurement. Relevant details of the procurement procedure such as the bidding documentations, the evaluation process, the selection criteria and the award of the contract should be open to all parties (Petrus Le Roux De La Harpe, 2009). Aside improving access to public procurement opportunities, transparency through full disclosure of information and proper guidelines and documentation can ease the smooth submission of bids thereby saving valuable time and money to SMEs (Kaspar & Puddephatt, 2012). Transparency not only clarifies administrative procedures but also provides mechanisms and processes in the execution of public procurement (PPA, 2011). While public procurement accounts for a significant share of public spending, the procedures for awarding and monitoring contracts lack transparency (Adusei & Awunyo-Vitor, 2015). Public procurement is one of the most vulnerable and risk prone activity within the public sector of any growing nation (OECD, 2011). Consequently openness and transparency are essential elements if the attempt to minimize the risks associated public procurement corruption are to be effective.

Efficiency involves ensuring that the award process itself is conducted in a timely and cost effective manner. This goal must be taken into account in designing procurement procedures, and the financial and other costs of procurement must be balanced against the benefits to be obtained in terms of better value. Efficiency is often best achieved through open and transparent competition. The level of efficiency in public procurement is basically measured by the proper application of complete written procedures and standards of procurement such as pre and post qualification procedures; pre and post bid conference procedures; bid evaluation procedures; and bid challenge procedures (Abebe, 2012). Public procurement is challenged to make savings by improving efficiency. Standards can enable procuring entities and suppliers to work together so that they share the advantages of innovation and collaboration (BSI Group, 2008, p. 10; Abebe, 2012). Efficiency and value for money is delivered through the whole procurement cycle, from planning stage to contract management stage. Efficiencies can be obtained through a combination of methods. For instance a strategic approach can be taking to planning, combining and conducting procurement activities in order to minimize time loss and resources (IFAD, 2010). In addition professionalization of public procurement, institutional and professional capacity, extent of e-procurement, and the performance of procurement department indicate the level of efficiency.

Effectiveness can be defined as productiveness with relation to the costs of the procurement process (Petrus Le Roux De La Harpe, 2009). The effectiveness of a system is to some extent determined by how good quality products are timeously purchased and delivered to the right place for the use of the procuring entities. Effectiveness could also be gauged by how generally

responsive the system is to delivering on its mandate. According to Ndolo & Njagi (2014) effectiveness of the procurement process is measured through achievement of key performance indicators such as timeliness, quality and quantity of the purchases. An effective procurement process is identified by some of the indicators of an efficient procurement process such as; acquisition of excellence comprising quality assurance systems and communication of quality standards, increased professionalism of procurement staff, the development of cross functional teams, the degree of internal customer satisfaction with the procurement process. Effectiveness at each stage of the procurement process is necessary if value for money which is the ultimate objective of any purposeful public procurement system is to be achieved (Petrus Le Roux De La Harpe, 2009).

Ethics are the principles which define behavior as right, good and appropriate (CIPS, 2012; McGee & Kosensky, 2015). The three main categories of public procurement code of ethics includes confidence in the public procurement process, professionalism of employees and quality of execution. To ensure the full realization of these ethical objectives, public procurement officials ought to be resolutely impartial to all parties and professionally independent in the execution of their responsibilities (USAID, 2007)

One important responsibility of employees within the public service is to uphold these value to the highest possible standards. This is especially of paramount importance when it comes to public procurement. Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust. The guiding principles of ethical behavior are impartiality, independence and integrity (IFAD, 2010). Since procurement staff constitute the interface between their organizations and the outside world, sound ethical conduct in transacting business with them is paramount to the creation and sustenance of long-term relationships and the establishment of supplier good will. Ethics continues to remain one of the cardinal principles that is misconstrued by practitioners (Gupta, et al., 2015).

Over the years, there has been the increasing tendency by heads of institutions to treat public procurement as a simple administrative task. When this rather important activity is treated as such, it lends itself to abuse through corruption by officers. The situation even gets worse when procurement officer are poorly remunerated, badly trained and lacking a clearly defined and progressive career path (Kuhn & Laura, 2014). Professionalism is where experienced, educated, adequately trained and responsible procurement officers make informed decisions regarding procurement operations. If professionalism is given the necessary attention it has the potential to promote functionality, transparency and could even significantly bring about tremendous savings in public expenditure (Kalinzi, 2014). In view of this, the Public Procurement Authority (PPA) in Ghana has channeled much of its resources into the training, professional development, promotion and support for individuals and groups that are engaged in public procurement to ensure adherence to professional and ethical standards (Adjei, 2006). An efficient public procurement system is one which operates in a timeous manner, with a minimum bureaucracy, while being responsive to the needs of the ultimate users of the goods or facilities procured (Kotoka, 2012).

Hypothesis

Transparency

H₁: The public procurement process in Ghana is perceived to be transparent.

Ethics and professionalism

H₂: The public procurement process in Ghana is perceived to promote ethics and professionalism.

Efficiency and Effectiveness

H₃: The public procurement process in Ghana is perceived to be efficient and effective.

Fairness

H₄: The public procurement process in Ghana is perceived to be fair.

METHODOLOGY

This survey sought to evaluate the opinions of registered suppliers of goods, works and services within the context of Ghana's Public procurement law Act 663 (2003). The analysis was based on some selected public procurement principles underpinning this Act. We analyzed some selected principles which in our view are germane both to the essence and intent of the law. Telephone interviews were primarily used complimented by interviewer-administered questionnaire. A total of 354 questionnaires were administered. The return rate was (63%, i.e. 223 questionnaires), of which 135 interviews were via telephone and 88 being interviewer self-administered. 19 questionnaires out of the 88 were rejected owing to lack of validity. These 19 had issues to do with data omission and outliers whilst other were clearly not answered, a situation which affected data coding.

The instrument was structured along four thematic areas as follows: (i) Transparency, (ii) effectiveness and efficiency, (iii) ethics and professionalism and (iv) fairness. The questionnaire was semi-structured, containing both Likert-scale test items and open-ended test items. The test items were initially generated through an exploratory factor analysis. A further confirmatory factor analysis was conducted to ascertain the strength of each test item using Cronbach alpha. Under each of the thematic areas examined, Cronbach alpha values ranged from a low of 0.73 to a high of 0.90. These were within the acceptable zone in light of (Pallant, 2005).

Per Ghana's public procurement law, suppliers are required to register with institutions as legitimate and recognized suppliers before they could participate in any form or type of procurement activity (supplies). This registration is non-discriminatory on the basis of type of business nor place of incorporation. As a result, the list of registered suppliers pooled from the institutions in the Upper East Region (place of research) invariably contained registered suppliers from across eight out of the ten regions of Ghana.

The participants (registered suppliers from the educational, health, construction and utilities sectors in the Upper East Region of Ghana) for this study were purposively selected. As a developing country, Ghana pays particular attention to some key sectors of its economy such as education, health, roads, utilities and the supply of other amenities. The selected institutions

from both the health and education sectors were purposively sampled because these two sectors spend about 43% of Government budgetary allocation (Ghana, 2014) and therefore devote more resources on procurement activities.

A one-way ANOVA was applied in the analysis of the data. ANOVA was used due to the relatively large sample size (354) as opposed to using a t-test. The hypothesized level of significance was at 0.05. Given the results of the ANOVA for fairness, a post-hoc (Turkey-b) test for homogeneity of means was further adopted with the view to curing the level of variance between and within groups in that tested variable.

DATA ANALYSIS

Biographic data of respondents

An analysis of the biographical data of respondents (table 1) indicates that more than half of the respondents are into the supply of Goods (67.16%) whilst the remainder is into the supply of works and services. This is not surprising because most of these institutions under the study (hospitals and schools) are consumers of finished products and therefore would tend to contract more of the services of suppliers of goods. This will better position them to deliver on their core mandates. The table also shows that more than half of the total respondents (69.09%) had their businesses aged above 10 years (the period which formed the basis for this study). Thus they had the wealth of experience in regard to the application of the procurement law in the conduct of their businesses. In the area of the level of education, the results showed that as high as (74.51%) of respondents had at least tertiary education signifying that majority of the respondents were literates who could understand and interpret clearly the requirement of the law and the research instruments.

Table 1: Suppliers' Bio-data & response rate

Type of suppliers	Number of respondents	Percentage
Works	57	27.94%
Goods	137	67.16%
Services	10	4.90%
Total	204	100%
Age of business		
	Response rate	Percentage
1 - 5 years	49	24.00%
6 – 10 years	92	45.09%
11 – 15 years	21	10.29%
16 – 20 years	24	11.76%
Above 20 years	18	8.86%
Total	204	100%
Education		
Basic education	5	2.45%
SHS³	27	13.23%
HND⁴	103	50.49%

First Degree	49	24.02%
Second Degree	18	8.82%
Others	2	0.99%
Total	204	100

As demonstrated in the literature review (Beil, 2009) asserted that suppliers' perception on the extent to which procurement laws are transparent influences their respective evaluations. In view of that, a one way ANOVA test (with $P < 5\%$ significance level and 2 degrees of freedom) was conducted on the basis of 6 group test items shown in table 2_a below. The p-values for the first 4 items are all greater than 0.05 thus causing a rejection of the null hypothesis. The last 2 items (i.e. period of registration and number of contracts won) however showed P-values < 0.05 consequently resulting in a rejection of the hypothesis. This created an ambiguity in as far as the two items were concerned. We therefore conducted a post-hoc (Turkey-b) comparison test in order to validate the said hypothesis. The results of the Turkey-b test also indicated significant variances between the 2 factors. This result is shown in table 2_b below.

Table 2_a: ANOVA on perception of transparency

		Sum of Squares	Df	Mean Square	F	Sig.
Existing public procurement procedure easily abused	Between Groups	2.922	2	1.461	1.074	.446
	Within Groups	148.53	202	1.360		
	Total	151.452	204			
Law grants too much authority to head of entity	Between Groups	3.604	2	1.802	1.135	.394
	Within Groups	320.776	202	1.588		
	Total	324.38	204			
Too much interference from procurement Officers	Between Groups	3.28	2	1.640	1.056	.462
	Within Groups	313.706	202	1.553		
	Total	316.986	204			
Number of registered clientele	Between Groups	8.387	2	4.1935	3.941	.763
	Within Groups	214.833	202	1.064		
	Total	231.607	204			
Period of registration	Between Groups	2.16	2	4.32	3.029	.018
	Within Groups	288.052	202	1.426		
	Total	290.212	204			
Number of contracts won	Between Groups	19.348	2	9.674	6.449	.000

	Within Groups	303.015	202	1.5		
	Total	322.363	204			

Table 2b: Results of Turkey-b analysis

Existing public procurement procedure easily abused	N	Subset for alpha = 0.05
Strongly Agree	15	6.5000
Disagree	68	6.8421
Neutral	25	9.0000
Agree	21	10.8333
Strongly Disagree	75	50.0952

Means for groups in homogeneous subsets are displayed.

Ethics and Professionalism

Five principal test items were retained from the principal component factor analysis in measuring ethics and professionalism. An analysis of variance was conducted to test the level of significance in this area at 0.05 relative to the null hypothesis (H_2). The results of the ANOVA as shown in table 3 revealed that all p-values were greater than 0.05. Thus the null hypothesis was completely rejected. This firmly confirms prior studies that the presence of professional and ethical conduct is a critical ingredient in public procurement. The degree to which officers demand gifts showed a p-value as high as 0.861.

Table 3: ANOVA on perception of ethics and professionalism

		Sum of Squares	Df	Mean Square	F	Sig.
How often do you offer gifts to secure contracts	Between Groups	4.79	2	2.395	1.313	.277
	Within Groups	368.65	202	1.825		
	Total	373.44	204			
How often do officers demand for gifts	Between Groups	2.321	2	.580	.323	.861
	Within Groups	362.388	202	1.794		
	Total	364.709	204			
How often do you receive privileged information from procurement officers (PO)	Between Groups	1.31	2	.655	.716	.584
	Within Groups	184.83	202	.915		
	Total	186.14	204			
POs always behave in a gift seeking manner	Between Groups	6.534	2	3.267	2.484	.054
	Within Groups	265.63	202	1.315		

	Total	272.164	204			
How often do you meet contractual deadlines	Between Groups	1.97	2	.985	.581	.678
	Within Groups	342.794	202	1.697		
	Total	344.764	204			

Efficiency and Effectiveness

In line with Arrowsmith et al (2011) this paper tested the perceptions of suppliers on efficiency and effectiveness within the public procurement process in Ghana. The results on the analysis of variance for efficiency and effectiveness showed clearly that Ghana's public procurement procedures in the views of suppliers is neither effective nor efficient as evident in table 4 below. All the p-values > 0.05. Documentation and the stages in the procurement process appeared to be the cardinal concerns of suppliers in their evaluation of the public procurement process. This is evident by the respective p-values of 0.827 and 0.811 respectively in the ANOVA in table 4 below.

Table 4: ANOVA on suppliers' perception of efficiency and effectiveness

		Sum of Squares	Df	Mean Square	F	Sig.
How often do you meet contractual deadlines	Between Groups	1.97	2	.985	.581	.678
	Within Groups	342.794	202	1.697		
	Total	344.764	204			
Law is timewasting	Between Groups	3.142	2	1.571	.706	.591
	Within Groups	449.248	202	2.224		
	Total	452.39	204			
Law demands too many documents	Between Groups	2.322	2	1.161	.373	.827
	Within Groups	206.848	202	1.024		
	Total	209.170	204			
Too many stages in law	Between Groups	2.128	2	1.064	.396	.811
	Within Groups	543.38	202	2.690		
	Total	545.508	204			

Perception of fairness

Hypothesis 4 sought to evaluate the extent to which suppliers perceive Ghana's public procurement process to be fair. From the exploratory and confirmatory factor analysis, only three test items were retained due to their high factor loadings from the varimax rotation of fairness variables. From the results of the ANOVA in table 5, reasons for not winning a contract, too much power in the hands of Heads of Entity and the ability of a supplier to

genuinely win a contract in the current state of the law all recorded statistically significant p-values greater than 0.05. These results indicate that fairness at all times within the public procurement process influences individual perception and not less for suppliers in procurement activities. Suppliers overall observations about the extent to which the law guarantees fair participation in the procurement activities fairly correlates their level of compliance.

Table 5: ANOVA on perception of fairness

		Sum of Squares	Df	Mean Square	F	Sig.
Reasons for not winning a contract	Between Groups	0.516	2	.258	.187	.944
	Within Groups	279.366	202	1.383		
	Total	279.882	204			
Can you genuinely win a contract under the law	Between Groups	0.178	2	.089	.387	.817
	Within Groups	46.46	202	.230		
	Total	46.638	204			
Law grants too much authority to head of entity	Between Groups	6.120	2	3.060	1.777	.147
	Within Groups	347.844	202	1.722		
	Total	353.964	204			

CONCLUSION AND RECOMMENDATIONS

The tested hypothesis set and evaluated above was designed to test for transparency, ethics and professionalism, efficiency and effectiveness and fairness. The results are summarized the table 6 below.

Table 6: Summary of results of hypothesis

Variable Tested	Hypothesis	Decision
Transparency	H₁	Rejected ⁵
Ethics and Professionalism	H₂	Rejected
Efficiency and Effectiveness	H₃	Rejected
Fairness	H₄	Accepted

This study was designed to evaluate suppliers' perspective on the underpinning public procurement principles from a Ghanaian context. As summarized in table 6 above, suppliers hold negative views on transparency, ethics and professionalism and the level of efficiency and effectiveness in so far as Act (663)2003 is concerned. The findings on transparency is consistent with the assertion by Adusei & Awunyo-Vitor (2015). Suppliers are more particular about ethics and professionalism as the p-values in the ANOVA are highly significant. The implication of this could be the provision of a fertile ground for the perpetuation of corrupt

practices in the execution of public procurement activities in Ghana. Consequently, procurement entities may not have sufficiently derived value for money in that regard.

Regarding fairness, the null hypothesis was accepted ($p\text{-value} < 0.05$) indicating that suppliers felt the public procurement procedures were moderately fair. Giving the positive correlation between fairness and transparency in any given process and the contradictory results in this study for these variables, makes room for further investigation. Thus a study to clearly establish whether or not it is procedural fairness or substantive fairness that ought to drive supplier's evaluation of public procurement in Ghana may be required.

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