

# PUBLIC PROCUREMENT IN ZIMBABWE: ISSUES AND CHALLENGES

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## Abstract

With negative coverage largely by the media on state procurement, this article aims at exploring challenges and issues that militate against public procurement in Zimbabwe. The exploration is done through content analysis of statutes and procurement practices that currently obtain in the country. The study shows that despite the presence of some regulations public officials manipulate tender procedures for personal gains. There is need for improved political will to enforce the law on errant behavior. The value for money that the procurement system should promote is lost. There is no mechanism for feedback to inform management and policy makers. The article provides recommendations for the government in pursuit of public procurement best practices. \*\*

**Keywords:** Public Procurement, Public Officials, Tender Procedures

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## 1. Introduction

Public and political expectations for effective service delivery put public procurement under intense scrutiny (Bolton, 2006). Public procurement is an activity of purchasing the goods and services which a government needs to carry out its functions. Other scholars use different terminology to mean the same concept. The World Trade Organisation (WTO) uses the term government procurement and the United States uses the term public contracts or government contracts.

Public procurement is central to government service delivery as it often involves large sums of money. The Organisation for European Co-operation and Development (OECD) has estimated that public procurement can account for up to 5% of gross domestic product in developing countries and averages about 20% of public expenditure. According to Callender and Mathews (2000) public procurement officials around the globe control spending that is equivalent to 10% to 30% of GNP in any given year. It is therefore imperative that, procurement systems should be transparent and high performing in order to guarantee cost-effective delivery of goods and services. A research carried by Musanzikwa (2013) reports that, procurement expenditure constitutes over 65% of total public sector expenditure. Central government purchases range from 9% to 13% in the Middle East and Africa and this indicates that public procurement in a country plays a vital role (Odhiambo and Kamau, 2003:10). Ambe and

Badenhorst-Weiss (2012:245) note that, public procurement plays a key role in the successful management of resources and is increasingly getting recognised as a profession.

In Zimbabwe, public procurement is dominated by procedures and guidelines meant to ensure a fair process that provide value for money. In real practice, these guidelines tend to provide opportunities for abuse and malpractice for some procurement officials. Constitution amendment number 20, section 315 makes provision for the public procurement in general. Procurement Act (chapter 22:14) gives more details about functions, appointment and disqualification of members that constitute the State Procurement Board (SPB). This article discusses the research method used and reviews the nature of public procurement and its origin. It discusses public procurement in Zimbabwe and the legislative framework that is in place.

The article also highlights major issues reported by the print media and constraints to effective and efficient implementation of public procurement in Zimbabwe. Recommendations for the way forward are given that suit the economic environment of the country.

## 2. Research Method

Being exploratory in nature, this article employs a content analysis / conceptual analytical approach to research. According to Funer (2004), in conceptual analysis, concepts are treated as classes of objects,

relationships, properties or events. This involves definition of the concept through identifying and specifying the conditions under which the phenomenon is classified or could be classified. It is used to get an in-depth understanding of public procurement practices in Zimbabwe. The study benefits from content analysis of the provisions and guidelines of procurement as outlined in the Administrative Justice Act (chapter 10:28); Competition Act (chapter 14:28) and the Procurement Act (chapter 22:14). This will be complemented by data from secondary sources including but not limited to research reports and relevant literature review.

### **3. An Overview of Public Procurement**

Arrowsmith (2010) defines public procurement as the government's activity of purchasing goods and services needed to perform its functions. It refers to procurement planning, contract placement and contract administration. The history of public procurement dates back to 800B.C in the development of silk trade between China and a Greek colony as noted by Thai (2001). According to Coe (1989; 87), there is evidence of the earliest procurement order inscribed on a red clay tablet found in Syria with order dates between 2400 and 2800B.C being for "50 jars of fragrant smooth oil for small weight in grain".

Page (1980) reports that, in the United States of America, government procurement in municipalities predates that of state and federal governments and there were no procurement officials. The state legislatures began to create boards or bureaus responsible for purchasing in the late 1800s. Centralised purchasing gradually became common in local government and state. In recent years, researchers and practitioners have argued that purchasing in government must be centralised in order to provide more responsive support to end users especially in government. This eliminates bureaucratic obstacles, improve inter-departmental coordination and empower service delivery managers to procure without impediments by a centralised entity (Thai, 2001). However, despite many government procurement reforms in the United States over eighty years ago (Thomas, 1919:5), it appears problems are still similar today and may persist forever as a result of lasting unfavourable public perceptions. The problems are stated below:

Governments have in the past with few exceptions notoriously failed as purchasers. Dealers complain of red tape which hampers them in bidding, in delivering goods and in securing the payment of bills. Government executives themselves complain of delays between the issue of purchase acquisitions and the availability of goods for use. Citizens generally are prone to assert that graft and political favouritism taint a large part of government purchasing.

While Arrowsmith(1998) noted that, public procurement has been utilised as an important tool for achieving social, economic and other objectives, some have perceived public procurement as an area of waste and corruption(Thai,2001). According to Transparency International (undated, chapter 2);

Mention the subject of corruption in government and most people will immediately think of bribes paid or received for the award of contracts for goods or services, or –to use the technical term –procurement. Whether this is really the most common form of public corruption may be questionable but without doubt it is alarmingly widespread and almost certainly the most publicised. Hardly a day goes by without the revelation of another major scandal in public procurement somewhere in the world.

Surveys conducted in 1995 by Transparency International (TI)'s national chapters reveal that corruption in the public sector manifests in much the same forms whether in developing countries or developed ones. The areas most vulnerable to corruption include, re-zoning of land .government appointments, and public procurement (Transparency international, undated).In view of this, in South Africa's Constitution section 187 makes the following procurement provisions;

- The procurement of goods and services for any level of government shall be regulated by an Act of parliament and provincial laws, which shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.
- The tendering system referred to in subsection (1) shall be fair, public and competitive, and tender boards shall on request give reasons for their decisions to interested parties.
- No organ of state and no member of any organ of state or any other person shall improperly interfere with the decisions and operations of the tender board.

All decisions of any tender board shall be recorded.

Sources of procurement regulations in most countries include statutes passed by legislative bodies, national constitutions, executive orders issued by chief executives or their delegates, rules and regulations and administrative law decisions. Thai (2001) contends that, public procurement is a very complicated system in which there are many conflicting interests. As such, sound procurement regulations are needed to increase public confidence in the procedures and to ensure fair treatment of all participants who deal with the system. The procurement systems must provide feedback to policy makers and management so that they are made aware of procurement problems that the public procurement system encounters.

#### **4. The Public Procurement System and its Environment**

The environment which influences the public procurement system like any other system include, the legal ,political ,market, internal and socio-economic environment.

##### **4.1. Internal environment**

This involves professionalism and procurement related workforce and the interactions between the three branches of government

##### **4.2. Market environment**

Due to variations in economic growth among countries, market conditions are favourable in developed countries and may not be favourable in developing countries. The National Institute of Governmental Purchasing (1999:34) reported that, “before embarking on a foreign purchasing program, public procurement professionals must carefully assess the total cost implications and compare them to domestic cost.” Professionals in public procurement are often torn between their countries’ economic development policies and free trade agreements when they face a hard choice of selecting between foreign and domestic firms (Thai;2001).

##### **4.3. Legal environment**

As opposed to public procurement rules and regulations, the legal environment refers to broader legal framework that governs business activities. These include among others; regulations dealing with equal opportunities for the minorities and women, disclosure of product characteristics, deception of advertising, disclosure of information, workplace and pollution control, health and safety, manufacturing and marketing, contract law and disputes.

##### **4.4. Political environment**

In a democracy, interest groups are actively involved in aspects of public procurement systems. They lobby legislative bodies to alter or pass statutes. What normally sees the light of the day is a compromise between government and interest groups.

##### **4.5. Socio- economic environment**

Most countries prefer national or local firms over firms from other countries. Professionals in public procurement may be in an unfavourable or favourable environment that has a great impact on their practices as they face imperfect competitive markets. Culture and technology also influence public procurement. Where giving gifts is a common public relation

practice in a given culture, it may be difficult to make a distinction between gifts and bribes.

The World Bank conducted a Country Procurement Assessment Review (CPAR) in collaboration with the government of Gambia and concluded that the country lacked four basic elements to have a good procurement system. These elements were;

- An adequate set of policies and procedures;
- A strong and effective procurement organisation;
- A sufficient number of competent and dedicated procurement staff;and
- An overseer and adjudicator to assure compliance.

Gambia may not be alone in lacking these four elements.

After the overview above, the discussion proceeds to public procurement in Zimbabwe’s public sector.

#### **5. Management of Public Procurement**

There are two key pieces of legislation that guide management of public institutions in procurement. These are, the Administrative Justice Act (Chapter 10:28) and the Competition Act (Chapter 14:28).The Administrative Justice Act is primarily concerned with procedural aspects of procurement while the Competition Act focuses more on promoting competitive procurement. While public sector organisations have internal regulations that direct the procurement process such regulations are not expected to conflict with Acts of Parliament.

Chikomwe (2012) reminds public entities when he refers to the Administrative Justice Act section 3 which requires administrative authorities to act lawfully, reasonably, fairly and to supply written reasons for awarding a tender and section 5 which deals with the basis upon which non-compliance with section 3 is determined. He argues that, a basic procurement process in Zimbabwe must have the following identifiable components; pre-qualification, anti-fraud/corruption declarations, qualification criteria, eligibility, bid preparation, bid submission, notification, adjudication and award criteria.

In pre-qualification, the tender process certifies genuine applicants as ones registered with the State Procurement Board of Zimbabwe (SPB).These applicants are expected to reveal their compliance with statutory obligations to remit corporate tax to the Zimbabwe Revenue Authority (ZIMRA).When they append their signatures to the anti-fraud declaration paper, bidders undertake not to flout the procurement procedures like dangling inducements to members of the procurement committee. By appending their signatures they also agree to be punished in the event that a fraudulent activity is proved against them. The qualification criteria assess the potential capacity of

the prospective supplier to deliver goods or services in a timely manner and the litigation history if any.

## **6. The Legal Framework**

The main legal texts for public procurement in Zimbabwe are:

- The Constitution of Zimbabwe (Amendment No: 20 Of 2013).
- The Procurement Act (2 of 1999).
- The Procurement Regulations, (2002).
- The Procurement (Amendment) Regulations, 2003 No.2.
- Urban Councils Act of 1995 (revised 1996).

## **7. The State Procurement Board of Zimbabwe**

The State Procurement Board is an institution that is empowered by the Procurement Act to conduct procurement on behalf of procuring entities where the procurement is of a class prescribed in procurement regulation. The institution supervises procurement proceedings conducted by procuring entities in order to ensure compliance with the Act. If there is suspicion of malpractice or allegations raised against a procuring entity the State Procurement Board initiates investigations and takes action as provided in Section 47. As far as possible, the SPB is not subject to the direction or control of any person or authority in the exercise of its function according to the Procurement Act.

## **8. Procurement, Tendering and Regulatory Issues**

The procuring entity is obliged to float tenders for goods and construction works to be done. The method of procurement should be according to the provisions of section 32. If for some reason a method adopted is not provided for a record of the circumstances which justify adoption of the method should be clearly stated. In undertaking the tender, invitation to suppliers should be published in newspapers that circulate in the area. But, if the procuring entity is the state then publication is done in the government gazette. For tenders extended to non-nationals the publications should be made through international newspapers or professional journals especially for services that are highly technical in nature. Basic information that should be carried in the invitation to suppliers includes the procuring entity's name and address; description of goods to be supplied and time within which the goods or services should be supplied. According to section 34; criteria by which suppliers will be evaluated should be given, manner in which solicitation documents may be obtained and their price, deadline for the submission of tenders and any relevant information.

The price for solicitation and pre-qualification documents should not exceed the cost of printing and providing them to the suppliers. The procuring entity must ensure that solicitation documents are detailed enough to solicit required information such as the criteria and procedure by which the successful tender will be determined. All requirements must apply to all suppliers and no tender should be disclosed to any other supplier. This means all tenders must be submitted in sealed envelopes and deposited in the tender box. All suppliers that submitted tenders should be permitted to witness the opening of the tenders and have the right to be informed of the price and other important terms of each tender opened. Finally, any formalities that need to be complied with are communicated to the successful tenderer before the procurement contract is concluded.

The procedure for procurement of services follows almost the same for tendering proceedings in terms of transparency and clarity. The procurement regulations are provided in Chapter 33 of the Act. The regulations are very clear on methods of procurement that may be adopted, classes of procurement, the manner in which suppliers should conduct themselves and alterations that suppliers may be permitted to make. There are provisions for circumstances in which the regulations may be departed from or waived. These may prescribe requirements by reference to the UNCITRAL Model Law on Procurement of Goods, Constructions and Services adopted by the United Nations Commission on International Trade Law at its 26<sup>th</sup> session in 1993.

With respect to eligibility, this is where most procuring entities falter. Section 34(1) (a) states clearly that suppliers must satisfy that, "...they possess the necessary professional and technical qualifications and competences, financial resources, equipment, facilities, personnel and experience to perform the procurement contract". It is easy to determine suppliers who were awarded tenders through bribes or corruption when measured against this clause.

## **9. Public Procurement Challenges in Zimbabwe**

The print media has been awash with reports of corruption and bribes in the public procurement. Some matters have gone unreported despite having been unearthed by the internal or external auditors. While the rules and regulations on public procurement attempt to plug loopholes for corrupt practices there seem to be no enabling legal framework to allow bidder's enforceable right to review when public entities breach the rules. The statutes are clear on the oversight role of the State Procurement Board on procuring entities but it appears the law is silent on who oversees the State Procurement Board itself.

Literature has shown that, the most successful procurement systems are those that provide bidders a legal basis to challenge the actions of public procurement officials when they breach rules (Hunja, 2001). For this reason, the World Bank regularly carries out assessments of procurement systems. It does carry these assessments in the countries where it lends, aimed at identifying strengths and weaknesses of the entire public procurement sector. It is also for this reason why the United Nations Commission on International Trade Law (UNCITRAL) also carried out a study of procurement laws in many developing countries. Like in Zimbabwe, Hunja (2001) argues that one consistent weakness in most developing countries appears to be the lack of an entity within government that is charged with overall responsibility to ensure that the system is properly functioning. He contends that the lack of an entity that has oversight responsibilities creates serious gaps in the enforcement of rules and regulations. In Zimbabwe, the most difficult challenge to install such an oversight body may be the lack of political will at the highest levels of government to significantly overhaul the existing system and capacitate the Anti-Corruption Commission. Some of the most apparent challenges are highlighted below.

### **9.1 Lack of political will and vested interests**

Vested interests can manifest themselves through local business cartels in which the private sector and their collaborators in the public institutions benefit from such flawed systems. Where a procurement system is loose, there are opportunities for abuse of the tender process through patronage and corruption. Hunja observed that access to public contracts in developing countries serves as a means in most cases of financing political parties and to reward political party supporters. In the absence of political will, recommendations can be made, draft laws discussed and position papers made but no action may be made to implement changes proposed.

### **9.2 Lack of knowledge and capacity**

Although Zimbabwe appears to have some modern legal public procurement frameworks, some political bureaucrats may lack the knowledge of good procurement practices and procedures and yet occupying influential positions in the procuring entities.

### **9.3 Type of legal instrument**

Scholars have observed that common law countries which have inherited a procurement system based on the United Kingdom (UK) model like Zimbabwe, it is the type of juridical instrument that the reforms should put in place to regulate public procurement.

The UK historically, regulated public procurement by means of a set of regulations. While this has changed with most of the procurement in UK being governed by the European Union Directives on Procurement, most developing countries that have the UK based model such as Zimbabwe, have maintained this basic structure. This has proven to be problematic because such regulations apply mainly to central government. This leaves local authorities and state owned enterprises to create their own systems of procurement.

### **9.4 Legal enforcement**

In Zimbabwe, the flagrant abuse of the procurement system is largely due to the fact that there is hardly any consistent enforcement of the rules and regulations. The procurement entities pretend to comply with procurement procedures while in actual fact compromising the spirit of the rules. The public officials and their accomplices severely compromise the systems because they have no fear of retribution if ever it comes. What is prevalent is advertising bids for a very short time so that just a few potential bidders get the opportunity and this reduces competition against their favourites who might have known about the coming advert well in advance. Uromo (2014) observes that despite, the fact that conflict of interest is covered under law, the law is not enforced in practice. For that reason, public officials still award tenders to themselves through a third party. In some cases, they award contracts to companies that are non-existent.

### **9.5 Indigenisation policy**

The study by Musanzikwa (2013) revealed that the need to comply with the indigenization policy resulted in tenders being awarded to incompetent companies.

## **10. The Way Forward for Public Procurement in Zimbabwe**

- Government should create tight procurement oversight mechanism on departmental procuring entities and the State Procurement Board
- Stakeholders must be educated on the value for money concept underlying public procurement systems so that they can report any form of graft.
- Alleged cases of public procurement must be thoroughly investigated and culprits brought to book with deterrent punitive measures taken
- Politicians must protect national resources rather than become accomplices of plundering
- Public officials involved in procurement must be trained adequately so that they carry their mandate efficiently and effectively.

- Losing tenderers must be given opportunities to learn how they missed the opportunity so that meaningful competition is encouraged in the next bidding in promotion of the value for money.
- The procurement system should provide a fair opportunity to all prospective suppliers of goods and services.
- Additional goods, works or services must be procured from the same source for reasons of standardization or compatibility with existing items
- Procurement should be free from political interference
- Suppliers who shortchange the procurement system must be debarred and blacklisted.
- There should be a board of contract appeals to resolve contract disputes between contract officers and contractors
- Feedback mechanisms should be put in place so that policy makers and management become aware of procurement problems the public procurement system may be encountering.
- Government must consider opening whistle blower channels
- Conflict of interest policies and fraud awareness training
- There should be policies setting out procedures and guidelines for giving and receiving gifts.

## Conclusion

Given the economic status of Zimbabwe, it is prudent that public procurement be done fairly, transparently and realise the value for money. In the framework of content analysis, an examination of relevant literature and public procurement practices in Zimbabwe discussed, the challenges being faced are not insurmountable. Politicians and public officials need to reflect seriously on the recommendations and go to the drawing board to counter these challenges. The recommendations highlighted have worked in some developed countries and appear to be working in other developing countries in Africa. Dealing decisively with public procurement practitioners found guilty of flouting procurement procedures may go a long way to restore confidence in the public sector and help woo investors.

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