

Public Procurement Law: its applications on Goods, Works and Services: Case Study of Bosomtwe District Assembly

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Abstract

The introduction of Public Financial Management Reform Programme (PUFMARP) in 1996 was purposely to take care of procurement of goods, works and services in the country. This policy was also made to improve and regulate the overall public financial expenditure in Ghana. However, the policy was fraught with operational irregularities and weaknesses such as; lack of comprehensive legal regime to safeguard the integrity of public procurement policy, no technical expertise, absence of clearly defined roles and responsible of procurement practices. In addition, there were economic pressures alluded to the revision of the 1996 policy. These included; huge and unattainable foreign debts, excessive budget deficits, huge contractual payment arrears, poor construction performance, corruption and pressure from international financial institutions forced the government to become committed to the reform of public procurement which culminated in the passage of the Public Procurement Act 2003 (Act 663). Public Procurement is the process by which government purchases goods, works and services using public funds. The Public Procurement Act 2003 (Act 663) was enacted as an act of Parliament to provide for public procurement in Ghana. This has 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, reducing corruption and encouraging private sector growth and investment. Procurement Act was to streamline and harmonise public procurement process in order to secure judicious, economic and efficient use of public funds by ensuring fairness, transparency and non-discriminatory in such procurement practices. The study was concerned on public procurement law: its applications on goods, works and services. Hence the objective of researchers were to determine whether or not Bosomtwe District Assembly (BDA) complies to the application of Public Procurement Act 2003 on goods, works and services and also ascertain problems the Assembly encounters in the application of the procurement Law.

The research adopts case study of impact of the Public Procurement Act on the procurement of goods, works and services. This is an exploratory study which seeks to find out what is happening, to seek insight, to ask questions and to assess phenomenon in a new light (Robson, 2002). The researchers adopted purposive random sampling technique for the study. Questionnaires, interviews and observations were the research instruments used for the collection of the data. A total number of 50 respondents were selected from the Bosomtwe District Assembly. Researchers used Microsoft excel for the data analyses, employing the Performance Assessment System Model (PAS).

Keywords: Performance Assessment System Model (PASM), Tender Opportunities, Tender Invitation, Public Financial Management Reform Programme

1. Introduction

The successive governments and military takeovers were not much concern about the significant guidelines of procurement.

The huge and unsustainable foreign debt, excessive budget deficits, huge contractual payment arrears, poor construction performance and poor delivery of goods and services, corruption and pressure from international financial institutions, forced the government to commit to a reform of public procurement, which culminated in the passing of the Public Procurement Act, 2003 (Act 663).

Over the years, public procurement has sometimes been used to accomplish a variety of policy objectives: to increase overall demand for goods and services; stimulate economic activities; to protect domestic firms from unhealthy foreign competition; to improve competitiveness among domestic firms by enticing 'national champions', to perform research and development activities; to remedy regional disparities; and to create jobs for marginal sections of the labour force (Martin, 1996).

The public sector procurement accounts for approximately 4.5% of developing countries' Gross Domestic Product (GDP) and governments tend to be the largest single consumers of goods and services and provision of works in most countries. (Olivia, 2008).

Outside Africa, World Bank (2003) revealed that in India, total procurement amounted to US\$100 billion. The WTO's Trade Policy Reviews show that Malaysia spends 20.6% of GDP on procurement, Colombia spent between US\$7,900 and \$13,000 million in 2004 on procurement (WTO Trade Policy Review, WT/TPR/S/156, 2006, p. 47).

Expenditure on procurement among the African countries are Dominican Republic 20%, Malawi and Vietnam 40%, Kenya 28%, Uganda as much as 70% is spent on goods, works and services compared with a global average of 12-20% (Olivia, 2008). In Uganda, an estimated of 34% of the government expenditure takes place at the local government level (Agaba & Shipman, 2007).

The Organisation for Economic Cooperation and Development (OECD) estimated the value of the government procurement market to be US\$2,000 billion in 1998, which was equivalent to 7% of world gross domestic product (GDP) and 30% of world merchandise trade (Organisation for Economic Cooperation and Development, 2002, p. 8).

It was estimated that between US\$30 to US\$43 billion in the procurement market place in Sub-Saharan Africa (Wittig, 1999). Most industrialised countries spend at least 10% of their GDP on public procurement (Trionfetti, 2003).

The Public Procurement Act is based on five basic principles. These pillars are: the legal and institutional framework; standardized procurement procedures and tender documents; independent control system; proficient procurement staff; and anti-corruption measures. (World Bank, 2003).

Ghana is among the first countries emerged from colonialism (Anvuur and Kumaraswamy, 2006). It experienced the highest GDP before economic crises in the late 1970s. However, falling prices of mineral, cocoa, timber and rising prices for petroleum imports led to a sharp deterioration of GDP in 1999 -2000 (Anvuur and Kumaraswamy, 2006).

Though World Bank assisted macro-economic programmes, Ghana has made robust recovery that achieves a fairly stable macro-economic environment. These reforms, backed by the critical components of the new vision of Ghana emphasises wealth creation, improve governance and reduce income and regional inequalities.

The project outlines the events leading to, and features of, the public procurement reform in Ghana and analyse the application of the Procurement Law on goods, works and services and the unique challenges it presents. The work concludes that, while the sole reliance on traditional contracting and price-based selection limits the scope of the value for money, the Procurement Act sets out the legal, institutional and regulatory framework that secures fiscal transparency, public accountability and cost-effectiveness.

In Ghana, public procurement represents about 50 - 70% of the national budget, 24% of total imports, and 14% of Gross Domestic Product (GDP) that constitute the annual value of public procurement of goods, works, and services amounted to US\$600 million (Adjei, 2005).

The bulk of the expenditure programmes of Ministries, Departments, and Agencies (MDAs) and District Assemblies (DAs) involve capital construction procurement (Westring, 1997).

Any improvement in the public procurement system will therefore have a direct and substantial impact on the overall economic situation of the country and that result in budgetary savings and efficiency in government expenditures.

In 1996, the government launched the Public Financial Management Reform Programme (PUFMARP) to take care of procurement of goods, works and services in the country. The policy was basically, to improve overall public financial management in Ghana. In keeping government's commitment to financial discipline, this calls for effective management of public procurement to obtain value for money.

However, there were still problems with the policy which prompted government to revise and enact a more concrete procurement policy that could address the lapses of the policy (Ministry of Finance, 2001).

The introduction of policy reform exercise identified shortcomings and organizational weakness inherent in the country's procurement system as stated in the Public Financial Management Reform Programme (PUFMARP).

These were lack of a comprehensive legal regime to safeguard the integrity of public procurement policy, the absence of central body with the requisite capabilities, no technical expertise and competence to develop a coherent public procurement policy, no independent procurement auditing functions, absence of clearly defined roles and responsibilities for procurement entities.

The Public Procurement Act (Act 663) was therefore, enacted in 2003 to address weaknesses in the 1996 public procurement law.

The research focuses on the public procurement Law and its application of Goods, Works and Services in search of value for money (VfM).

The main objectives of the public procurement reforms are value for money, efficiency, transparency, probity and accountability (Arrowsmith, 2005).

2. Methodology

The research is on the application of the PPA on procurement of goods, works and services. This is an exploratory study which seeks to find out what is happening, to seek insight, to ask questions and to assess phenomenon in a new light (Robson, 2002).

The researchers adopted purposive sampling technique for the study. Questionnaires, interviews and observations were the research instruments used for the collection of the data.

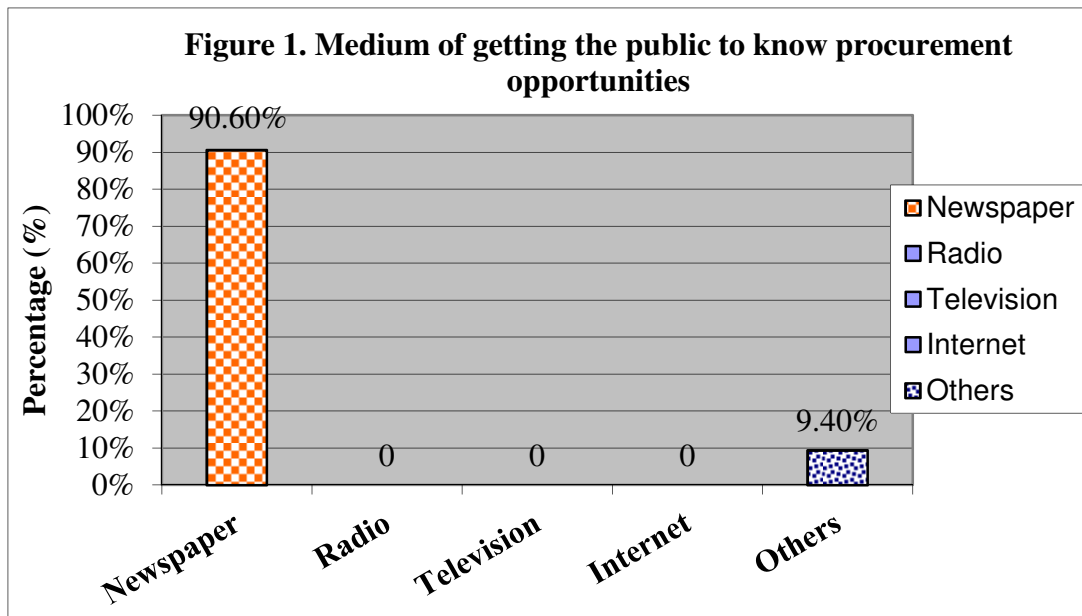
A total number of 50 respondents were selected from the Bosomtwe District Assembly. Researchers used Microsoft excel for the data analyses employing the Performance Assessment System Model (PAS).

3. Findings and Discussions

3.1 Advertisement of Tender Opportunities

In the Public Procurement Act 2003 (Act 663), it is the requirements of the public organisations to advertise their procurement activities in a widely circulated newspaper. For this reason, researchers decided to find out the advertisement opportunities for tenderers to supply their needs.

Figure 1, below indicates the medium through which public gets to know the procurement opportunities.

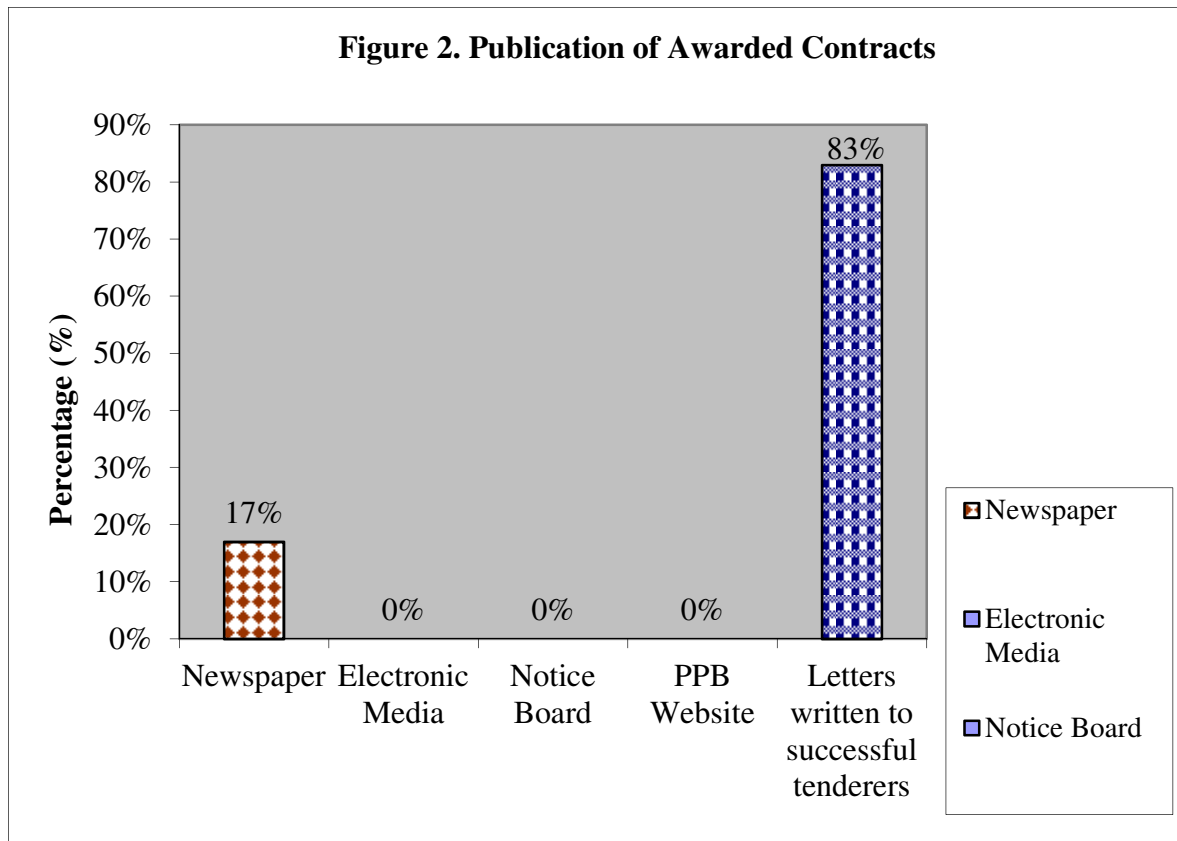


Source: *Researchers Fieldwork, 2015*

The data revealed that 90.6% of contracts were advertised in the Dailies which is in conformity with the Public Procurement Act 2003 (Act 663). With Section 47 (2) stating that, notices are to be published in the newspapers of wide national circulation, while 9.4% responded from other sources such as newsletters, friends etc. which has been on the flip side against the procurement law. However, medium such as radio, television and internet were not areas captured as channels through which the public gets to know procurement opportunities available in the district.

3.2 Publication of Awarded Contracts

Tenderers are supposed to be informed about the evaluation committee decision on their tender application. Figure 2, below indicates where the awarded contracts are published.



Sources: *Researchers Fieldwork, 2015*

Section 31 of Act 663 requires procurement entities to publish contract awards in a form and manner prescribed by PPA. The Public Procurement Law requires that notices for contract awarded should be posted on the PPA website and published in the Procurement Bulletin. However, the data collected indicated that 83% of respondents stated that letters were written to successful tenderers while 17% indicated that publications are through newspapers. It was clearly evident from the responses that BDA do not abide by what has been stated in the Public Procurement Act 2003 (Act 663) concerning publication of awarded contracts that is contrarily to the Act.

3.3 Time Allowed for Tender Invitation and Opening

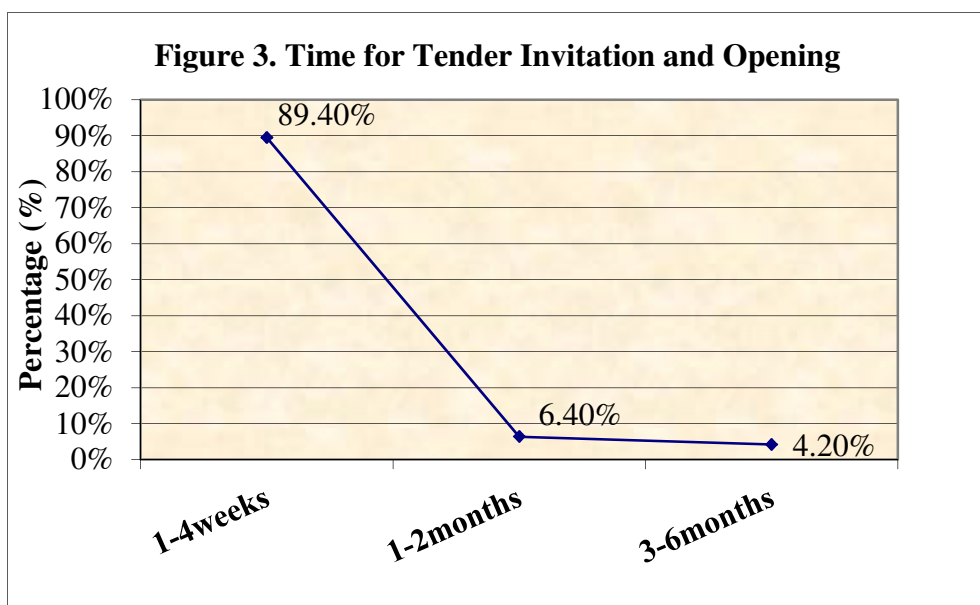
This is the time tenderers are allowed to put together their tenders. It is measured as the difference between the date the tender notice appeared in the newspaper and the date of the tender opening.

The research was set to find out the average time period allowed for tender invitation.

Figure 3, below indicates that 89.4% of respondents revealed that a period of one-four weeks were allowed for tender participation. The shorter the period the better it facilitates procurement procedure.

6.40% of the respondents also supported the 1-2 months average time period whilst 4.2% also appraised the 3-6 months average time period.

The above analysis conforms to existing literature since available research work supports the assertion that the shorter the time period the better it is, as it facilitates procurement procedures. Hence the assertion of 89.4% is in conformance to existing literature.



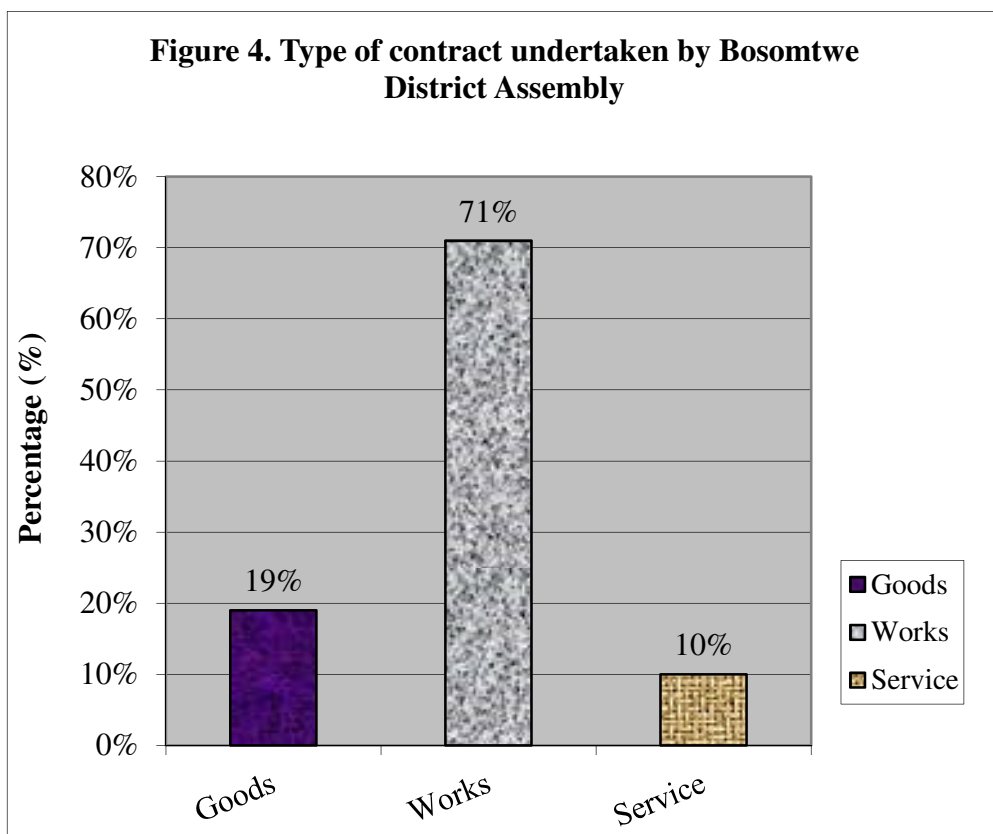
Sources: *Researchers Fieldwork, 2015*

However, different time periods given by the respondents on the same data was because there is no Procurement Unit and hence each department/individual interviewed was discarding the Public Procurement Act. It was a problem for the Assembly not to have a definite procurement department equipped with professionals to steer the affairs of procurement activities to achieve value for money to the Assembly.

3.4 Type of Contracts Undertaken by Bosomtwe District Assembly (BDA)

The study sought to find out the various types of contract BDA undertakes.

Figure (4) below showed that works represented 71% of response constituted the highest procurement activity, while 19% was procurement of goods and 10% indicated service being the least among the procurement activities undertaken by the Bosomtwe District Assembly (BDA).



Source: *Researchers Fieldwork, 2015*

Goods that the Assembly procured were; aluminium corrugated roofing sheets and cements to such communities as Brodikwano, Kokoado, Asisriwa and Nyameani. Moreover, the Assembly procured Computer & accessories and sitting chairs to furnish DCE, District Co-ordinating Director, Deputy Co-ordinating Director and DCE & DCE's secretary's office at Kuntanase.

The Assembly engaged Jamic Construction Limited that managed the construction of 1 No. 2-Sotery Police Station with District Police Administration Office at Kuntanase and Asuntaba Construction Work Limited who also managed Construction of External Works of DCE's Residence at Kuntanase. More so, the Assembly constructed pipe bole holes for communities such as Pipie, Abuontem, Nkwanta, Oyoko and Adunku.

This clearly indicates in Figure 4 above, that the Assembly was not much into the procurement of services. Interactions with the management revealed that the Assembly was under-resourced by the central government, limited internally generated fund and other donor assisted funds were not available, hence the Assemble was much into works (physical development) with little funds available rather than procurement of goods and services. The procurement of works which was dominance with procurement activities was in conformance to Act 663.

4. Conclusions

The study indicated that, the media through which the public gets to know the assembly's procurement opportunities which was through newspapers. This was in conformity with the Procurement Act of 2003 that requires procurement entity to publish tender invitation in a wide national circulated newspaper as stated in Section 47 (2) of Act 663.

It was discovered that contract awarded were not posted in the Public Procurement Authority's website and published in the procurement bulletin but rather letters were written to successful tenderers. More so, those tenderers who did not succeed in the tendering process were not informed stating reasons why they were not picked up.

The time allowed for tender invitation and opening was manageable. 1- 4 weeks (89%) was the maximum time period allowed for tender invitation and opening. The assembly being able to maintain short period is an indication that has enhanced procurement activities.

It was revealed from the study that the assembly spent most of its resources in the procurement of works/projects; goods were the second procurement activity. Little information was discovered in the area of service which also forms an integral part in the implementation of the procurement act.

The study indicated that 71% of the district procurement was in the area of works/projects while 19% constituted goods and the remaining 10% was for services. This clearly shows that, the assembly was not much into the procurement of consultancy/technical services. The physical developments such as renovation/construction of school blocks, construction of police Administration, workers residency, stand pipes, rehabilitation of DCEs office, Area Council Office etc. had improved upon standard of living of the people in the district.

5. Recommendation

It is recommended that the Assembly intensifies public education on the medium (newspapers) through which suppliers and contractors get to be aware of procurement opportunities in the public organisations. This would help curb the situation where potential suppliers and contractors rely on friends, newsletter and other sources (as indicated in Figure 1. 9.40%) for information on procurement opportunities in the Assemblies. The PPA of 2003 (Act 663) makes it mandatory that contract awarded should be posted to the PPA website and published in the procurement bulletin (Section 31 of Act 663). It is therefore suggested that the Bosomtwe District Assembly should make effort to comply with the mandates of PPA. It is moreover, recommended that the Assembly intensify and adopts strategies to improve upon the internally generate sources of funds. Areas such as development of Lake Bosomtwe for tourism purposes, payment of property rates, selling of building permit application forms, market tolls, annual stool lands administration fee and hiring of Assembly Grader. They could also solicit for funds from donor agencies to beef-up their revenue base apart from the internally Generated Funds (IGF). This could help ease the tension of sole dependence of funds from the government (common funds) to undertake developmental projects. The researchers recommend that the Assembly should have right calibre of trained procurement professionals to undertake procurement activities to ensure compliance of the Act 2003 (Act 663). Public Procurement Authority (PPA) organise training programme to equip procurement professionals about the application of the Act to ensure value for money.

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