



## Contracting Out: The Role of Public Procurement in Zimbabwe

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### Abstract

The public procurement function provides an important mechanism for achieving value for money in spending of public resources by public institutions. It is a key component of public financial management. It is critical that the Government of Zimbabwe strengthens governance and accountability in public resource management. This paper critically assesses the objectives of public procurement, legal framework, organisational issues and the procurement process. Public procurement in Zimbabwe faces the following challenges: corruption, political interference, indigenisation policy confusion, and discord between public finance management system and procurement laws. It is critical that public procurement system in Zimbabwe be anchored by a comprehensive and transparent legislative and regulatory framework.

**Key words:** Public procurement, contract, competitive bidding, corruption.



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## 1. Introduction

Government procurement is the acquisition of goods and services and public works in a timely manner that results in best value to the government and the people (Schiavo-Campo and Sundaram, 2002:315). The performance criterion for evaluating procurement activities is economy, i.e. acquisition at the lowest price without sacrificing quality and timely delivery. Public procurement gives substance to the tasks of government.

Poor procurement management has an impact beyond project implementation and the functioning of the public agency concerned. Public procurement includes procurement by government and by statutory boards. Procurement in the broad sense covers issues of procurement strategy, storage, distribution, contract monitoring and supplier management (Schiavo-Campo and Sundaram, 2002: 316).

As a part of the broad procurement process, contracting out has become more prominent. Contracting out the delivery of public services such as transport and garbage collection has been common for years. Procurement can be centralised or decentralised in different degrees. Central procurement operations are generally carried out by the ministry or agency concerned, but under policy guidelines and oversight by a central procurement entity.

Public managers must follow prescribed competitive procedures and the rules give a major weight to fairness and equity (Schiavo-Campo and Sundaram, 2002: 318). Public procurement is subject to oversight by the legislature and audit. Mistakes and malfeasance in public procurement can have vast political repercussions, owing to the focus that the media and the public place on the subject. In the post-1990 period, there have been several allegations of corruption in Zimbabwe in the areas of public procurement (Daily News 2000).

Public procurement is often used as a tool for achieving public policy goals e.g fostering the growth of local industry or benefiting groups of poor women or disadvantaged groups.

## 2. Methodological Approach

The print media has done a remarkable job of reporting on the corruption scandals in Zimbabwe. This study undertook documentary search and made use of the data collected. Both state-controlled and independent media publications were searched for appropriate data for this study.

Since the late 1990s, both the state and civil society have conducted numerous workshops and seminars on the corruption scandals in Zimbabwe. Some of the reports that were generated as a result of these workshops and seminars were gathered and analysed to determine the impact and implications of the scandals on public procurement. The Zimbabwe government has also been issuing numerous documents on aspects of the scandals in an attempt to defend itself from both internal and external criticism. Such documents were studied and analysed as part of the data for this study. Content analysis was utilised in order to give the collected data scholarly interpretation. The underlying public procurement concepts and principles were highlighted in the process.

The study also identified and interviewed selected key informants from such groups as the civil society, the business sector, legislators and citizens in general. Deliberate sampling of these possible respondents was utilised to focus primarily on those that had significant roles to play in attempts to address public procurement scandals.

Some of the documents that were needed for this project were quite difficult to obtain from government offices. It was, nonetheless, possible to devise ways and means to overcome these methodological problems and get the study completed.

With reference to the section that discusses corruption, the study wishes to make the following methodological observations. Scholars all over the world agree that empirical research on the subject of corruption possess many severe problems. The obstacles to the gathering of reasonably accurate data include: the secrecy that surrounds virtually all corrupt practices, destruction of documents and other forms of incriminating evidence by the perpetrators, fear of victimisation by would-be informants, to mention a few.

What seems to be the general practice among most scholars who investigate corruption is to resort to perception surveys, court records and media reports alternative sources of data. This present study is no exception in this regard.

## 3. Literature Review

### 3.1 Objectives of Public Procurement

- i. Economy: acquisition of goods and services of defined specification on a timely basis and at the lowest cost (Schiavo-Campo and Sundaram, 2002: 318).
- ii. Import substitution: the government procurement strategy may deliberately encourage the growth of local industry by giving preferences to local suppliers or restricting purchases from foreign firms. Some preferences to domestic firms in international competitive bidding have traditionally been recognised by donor agencies, for example, the World Bank. The European Union (EU) allows countries applying for membership (from central and eastern Europe) to keep domestic preference provisions, but only for a limited time.
- iii. Fostering competition: competition in procurement is defined as "equality of opportunity for qualified suppliers to compete for public contracts" (Schiavo-Campo and Sundaram, 2002: 319). Competition and impartiality are needed not only to ensure a beneficial outcome in price and quality but also to promote public accountability in the process.



Increasing competition in public procurement is a goal of most governments and is supported by international organisations as well. In the United States (US), for example, the Competition in Contracting Act of 1984 aims to increase competitive efforts within departments and to narrow the justification for sole-source contracting. Countries like the United Kingdom require their local governments to resort to compulsory competitive tendering for all purchase and services. Many countries require their national and local governments to increase their use of open bidding, improve the handling of competitive bids and streamline administration and payment procedures, to attract more firms to compete for government business (Schiavo-Campo and Sundaram, 2002: 320). In developing countries, competition is often restricted by market imperfections such as barriers to entry and information gaps for small and less experienced contractors.

- iv. The governance dimension: predictability, a key principle of good governance, presupposes consistent principles and regulations for procurement, qualifications of contractors, award of bids and contract management. Information and documentation on these rules should be widely available and the rules should be enforced fairly and consistently. Predictability in procurement also requires a well-understood system for registering and resolving complaints speedily, a well-functioning system for dispute settlement and checks on the arbitrary behaviour of procurement managers and on the inconsistent exercise of discretionary power in contract award, enforcement and management (Schiavo-Campo and Sundaram, 2002: 321).
- v. Accountability and transparency are vital to procurement management as well. Lack of oversight measures to ensure accountability undermines the capacity of governments to secure the confidence of contractors with the public procurement process and the trust of citizens in the proper use of those public funds. Trust and confidence can be especially eroded by secrecy in procurement transactions. Transparency reduces uncertainty and inhibits corruption in procurement by assuring equality of access to information for all bidders before, during and after bidding process.
- vi. Protection of citizen interests: governments have responsibility of assuring that the services reach the citizens. This responsibility implies setting up recourse mechanisms in case of contractor failure, carefully monitoring contract execution by private suppliers, giving credible information to citizens about the actual providers of service and opening avenues of complaints.
- vii. Environmental protection: the United Nations (UN) advocates making the preservation of environment quality and the reduction of waste a part of procurement guidelines.

### 3.2 Legal Framework for Procurement

The legal framework for public procurement includes international obligations, specific domestic legislation on procurement, contract and commercial in general, and patent and copyright law, labour law and laws governing lease and hire purchase agreements, arbitration and conciliation. Some countries, for example, South Africa has constitutional provisions as well as enabling laws for procurement. South Africa is among the developing countries whose constitution contains a special provision on government procurement. Section 187 of its 1994 constitution provides for the following:

- i. The procurement of goods and services for any level of government shall be regulated by an Act of Parliament and provincial laws which shall provide for the appointment of independent and impartial tender boards to deal with such procurement.
- ii. The tendering system shall be fair, public and competitive and the tender boards shall have to justify their decisions at the request of interested parties.
- iii. No organ of state or any member of State or any other person shall improperly interfere with the decisions and operations of the tender boards.
- iv. All decisions of the tender boards shall be recorded.

Other countries such as Republic of Korea and United States (US) have passed regulations and legislations. In the US, procurement related laws include the Competition for Contracting Act of 1984 and the Federal Acquisition Streaming Act of 1994.

### 3.3 The Regulatory Framework For Procurement

Most countries that rely on general contract law regulate public procurement by internal rules that prescribe the formal process of bidding, the evaluation of bids, the award and conclusion of contracts and contract management. The rules also mandate procedures for dealing with possible court challenges from unsuccessful bidders and procedures for contract interpretation, breach of contract and dispute resolution and arbitration. The intention is to provide a self-contained regime for contract award and management which would avoid recourse to external arbitrators.

#### Procurement Guidelines in the United Kingdom (UK)

In the UK, the Procurement Practice and Development team is the central unit in the Treasury that promotes best practices and the development of procurement strategies by departments. The government has stipulated the following points for its senior management: value for money, compliance with national and international legal obligations, cost-effective fulfilment of users' needs, appropriate level of completion and honest and impartial relationships with suppliers.



The procurement process would ensure fairness, efficiency, courtesy and firm dealings, and high professional standards, wide and easy access to information on the procurement of the bidding, efficiency and integrity in contract management and prompt response to suggestion and complaints.

In selecting bidders, undue emphasis should not be placed on size and the standards of financial and technical capacity should be proportionate to the contract in question. The criteria for the award should not consist of price alone, but should also consider other factors like whole-life cost, quality and delivery. (UK Government and World Trade Organisation web sites).

After the award of contracts, additional regulations to deal with breach of contract and unsatisfactory contractor performance can be reduced in the first instance through clear and complete specification, well-defined standards and the inclusion of incentives and penalties in the contract.

### **3.4 Model Codes**

The stress in recent years has been on a uniform procurement code to set the basic framework for procurement, supplemented by the more detailed rules by implementing ministries.. For example, in Australia, the procurement framework is contained in the 93-page Commonwealth Procurement Guidelines issued in December 1997. In the UK, the procurement function is exercised under Treasury guidance. In United States of America, there is a uniform procurement code for State and Local Governments. The People's Republic of China, for its part, has drafted procurement legislation with Asian Development Bank support.

The most widely used model procurement law is the one adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1994, consolidating previous model law. The model addresses the inefficiencies and the potential for abuse in laws of many countries and to make these laws more compatible with international trade practices.

### **3.5 Manuals and Procedures**

Public procurement manuals comprise:

- i. A policy manual, which include purchasing rules and administrative procedures;
- ii. An operations manual of internal practices and procedures; and
- iii. A vendor manual, which takes the form of a booklet, entitled Doing Business with the Government.

In Singapore, for example, all government entities must follow the administrative procurement procedures laid down by the Ministry of Finance in an instruction manual.

## **4. Organisational Issues in Procurement**

A fundamental problem in public procurement is disinterest and neglect by operational managers who tend to leave procurement to the specialists. There are several reasons for this neglect. Firstly, managers are more interested in policy and find the tasks of purchasing dull by comparison. Secondly, they rarely have enough time to understand the intricacies of product quality, pricing structures and technical specifications. The general disinterest of public managers in procurement matters finds its expression in the absence of the subject from the curriculum of public administration schools (Schiavo-Campo and Sundaram, 2002; 328). This is not a healthy state of affairs.

A central question is whether responsibility for procurement should rest with the agency that requires the service or with a central purchasing agency. The main advantage of centralisation is that the central procurement officer knows the law, policies and procedures and has the institutional memory to gain the maximum benefit for government. Decentralisation speeds up the process and places greater emphasis on the services and goods to be delivered.

The degree of centralisation or decentralisation varies from one country to another. In the UK, a Procurement Policy Team, a joint unit of the Treasury and the Department of Technology and Industry, advises the Ministries on procurement policy. In Slovakia, procurement is the responsibility of the Ministry of Construction and Public Works. In Singapore, the Government has decentralised the bulk of its procurement to the Ministries, departments and statutory boards which work their own arrangements.

## **5. Local Government Procurement**

Procurement is becoming important at the local level. Some developed countries (e.g the UK) have been enforcing compulsory competitive tendering at the local level for years, in the interest of service efficiency and quality. Model procurement codes for state envisage a procurement policy unit reporting to the city manager. The unit provides research support, maintains a contractor database and monitors complaints (Schiavo-Campo and Sundaram, 2002: 334). The higher levels of government must be cognisant of the risk of corruption and waste in local government procurement and take steps to build local capacities, along with nonintrusive oversight mechanisms.



## 6. The Procurement Process

### 6.1 Forms and Stages of Procurement

The forms and stages of procurement depend on the nature of the goods and services, the size and complexity of the contract, the administrative levels and market structure. International organisation guidelines and bid documents recognise the following forms of procurement:

- i. Competitive bidding: aims at providing all eligible bidders with timely and adequate notification of the requirements of the procuring agency and an equal opportunity to bid for required service.
- ii. Shopping: involves comparing price quotations obtained from at least three suppliers for readily available off-the-shelf goods of small value, for example, office equipment, medicines, books.
- iii. Direct contracting/sole-source contracting/direct selection: is used for relatively small contracts requiring specialised skills of a specific individual or firm.
- iv. Force account: also called direct government, is the provision by the government's own personnel and with its own equipment.
- v. Procurement through agents.

#### 6.1.1 Competitive Bidding

The complexity of the competitive bidding process depends on the values and nature of the goods or services being procured (Transparency International 1996) inter alia:

- i. A clear and fair description of what is to be purchased
- ii. A published opportunity to bid;
- iii. The criteria for selection and decision making
- iv. The receipt of bids from responsible contractors
- v. Comparison of bids and determination of the best or most responsive bid, according to the predetermined and publicised rules for selection; and
- vi. Contract award.

Accordingly, the stages in the process of competitive bidding are:

- i. Prebid
- ii. Public notice and invitation of bids
- iii. Bid opening and evaluation
- iv. Resolution of complaints
- v. Contract award and conclusion (Schiavo-Campo and Sundaram, 2002: 337).

##### 6.1.1.1 Prebid process

Prebid requirements include standardised bid and tender documents, rules for classifying and registering contractors, rules for prequalification, bid evaluation committees and process of deciding on the award of bids. Documents must contain clear specifications, instructions to bidders and contracting terms. The key requirement of a fair and open process is the easy availability of bid documents in comprehensible language to all willing bidders. (Schiavo-Campo and Sundaram, 2002: 339).

##### 6.1.1.2 Public Notice and Invitation to Bid

Timely notice should be published in local and national newspapers, official gazettes or electronic bulletins, to suit the nature and size of the project. Information on the invitation to bid should be available in offices of the agency and the district administration.

Prequalification of bidders is necessary for large or complex works. The process ensures that invitation to bid is extended only to those with adequate capability and resources. Prequalification is also used to determine eligibility for preference for domestic contractors in donor-assisted projects. Prequalification should be restricted to the capacity, experience and resources of the contractors to perform the particular contract satisfactorily, taking into account their past performance in similar contracts. Prequalification must be based on transparent and well-publicised guidelines.

The bidding documents should furnish all the information necessary for a prospective bidder to bid for the services or works to be provided. (Schiavo-Campo and Sundaram, 2002; 340). Bidding documents include:

- i. Invitation to bid;
- ii. Instructions to bidders, including the criteria for bid evaluation;



- iii. Form of bid;
- iv. Form of contract;
- v. General and special conditions of contract;
- vi. Specifications;
- vii. List of goods or quantities;
- viii. Delivery time or schedule of completion; and
- ix. Necessary appendixes for such items as the types of deposits or securities.

### **6.1.1.3 Bid Opening and Evaluation**

Key to transparency and fairness is to open the bids at a designated time and place in the presence of all bidders or their representatives who wish to attend. This reduces the risk that bids will be leaked to competitors, lost or manipulated. After the bids are opened, no information on the bid evaluation and award recommendations should be disclosed until the successful bidder is notified of the award.

Bid evaluation is one of the most difficult steps to carry out correctly and fairly in the procurement process. A report on the evaluation of bids should be prepared, giving the specific reasons for the recommendations. This process calls for the exercise of judgement in splitting unrealistically low bids, will lead to change orders during a project or to unsatisfactory performance.

### **6.1.1.4 Award of Contract**

The agency should award the contract within the period of validity of the bids to the bidder whose bid has been determined:

- i. To be substantially responsive to the bidding documents; and
- ii. To offer the lowest evaluated cost

The bidder should not be required to undertake responsibilities not stipulated in the bidding documents or to otherwise modify the bid. However, if the winning bid exceeds the prebid estimates, the agency may negotiate with the successful bidder to lower the contract price by reducing the scope of work or reallocating responsibility. This process should be transparent and based on objective criteria.

Rejecting all bids is justified where there is lack of effective competition or none of the bids is substantially responsive. If it rejects all bids, the agency should consider wider advertising after examining the reasons for the lack of responsive bids or the low number of bidders and possibly make suitable revisions in the bid documents. Rejecting bids may be a device to elicit bribes from contractors or provide privileged information to friendly contractors who can subsequently place an artificially low bid.

### **6.1.1.5 Redress Complaints**

Avenues should be available for entertaining legitimate grievances and complaints from bidders about the fairness and confidentiality of the process for furnishing clarifications. In Japan, a special unit in the cabinet office considers complaints relating to international competitive bidding. Attitudes are very important here. The unresponsive behaviour of procurement staff to complaints and suggestions can make it less attractive to do business with the government and thus reduce effective competition in the future. Hungary and Poland have created specialised institutions to deal with public procurement complaints, inspired by the model UNCITRAL law.

## **7. Contract Administration and Monitoring**

### **7.1 Importance of Contract Administration**

Contract administration and monitoring is a neglected area in many developing countries, reflecting poor implementation capability in government in general. Contracts must be carefully implemented and monitored. Resorting to contracts with private parties does not solve the problems of bureaucracy. Indeed, accountability may become more difficult because at least three organisations are involved: the public organisation that completed the bidding process and awarded the contract, the public agency that is expected to oversee the execution of the contract and the private entity that will execute the contract. Developing countries are rife with examples not only of outrageous delays and excessive costs of implementation but also of abuse, waste and fraud in contract implementation (Schiavo-Campo and Sundaram, 2002 348).

Contracting out services or works does not relieve the government of responsibility for the manner in which the service is provided or the work constructed and for the quality of both. Any government that forgets this rule will be very sharply reminded by an angry public as soon as something goes wrong.

### **7.2 Nature of Contract Monitoring**

Monitoring contract execution includes reviewing contract or reports, making inspections, commissioning audits and obtaining citizen feedback. The relationship between the public official and the contractor should not be adversarial and



antagonistic. Nevertheless, direct inspection and observation of the progress of the work remains the most important element.

Quality is a component of economy and quality assurance is a critical aspect of contract monitoring. It relates critically to the clear drafting of the technical and other characteristics of the service to be provided under the contract.

Citizen associations should be systematically consulted, not only because of their involvement as stakeholders, but also because feedback from informed citizens is a highly reliable and cost-effective way of monitoring contracts.

### **7.3 Safeguarding Integrity in Procurement**

There are some areas of corruption in the procurement process. This problem is hardly new. Over 2000 years ago, Kantilya wrote in Arthasastra:

Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so is it impossible for one dealing with government funds not to taste, at least a little bit of the King's wealth.

Corruption can occur in procurement mainly if the bid documents are poorly drafted or ambiguous, the specifications and standards are not clear and contract monitoring is loose. Accordingly, either the procurement unit or the bidder can corrupt the procurement process. The procurement unit can:

- Tailor the specifications to benefit particular contractors;
- Restrict information on bidding opportunities to only some potential bidders;
- Disqualify potential contractors through improper prequalification or excessive bidding costs;
- Act directly in collusion with the bidders or outside influences to distort the entire process (Schiavo-Campo and Sundaram, 2002: 355).

The bidders, too, can take a number of actions to distort the bidding process and its outcome, such as:

- Colluding among themselves to fix bid prices
- Promoting discriminatory technical standards
- Using their influence or bribes to push political leaders or senior public officials to interfere improperly in bid evaluation.

The most direct approach to bribery is to avoid competitive bidding altogether and contrive to have the contract awarded to the desired party through direct negotiations without any competition (Schiavo-Campo and Sundaram, 2002;356).

Serious corruption problems arise also during the contract execution phase, after the award of contract, such as:

- Failing to enforce quality standards quantities;
- Permitting 'lowballing' (accepting artificially low bids, which are then jacked up by mutual consent, for a price)
- Delaying payments to extort a bribe

Political corruption-financing of political parties in exchange for contracts-pork-barrel politics are blight on the integrity, efficiency and effectiveness of public administration.

## **8. Zimbabwean Experiences**

### **8.1 Legal Framework**

Public procurement in Zimbabwe is governed by the State Procurement Act [Chapter 22:14]. This Act provides that purchase transactions that exceed the US\$50 000 threshold pass through the State Procurement Board (SPB). The SPB Act creates opportunities for companies owned by formerly marginalised races, for example, black indigenous people. The general guideline is that 10 per cent of all tenders should be given to locally owned companies.

The Procurement Act [Chapter 22:14], Part IV provides for procurement proceedings. Section 30 (1) states that the procurement of goods or construction work by a procuring entity shall be done by means of tendering proceedings. Section 31 of the Procurement Act deals with tendering proceedings. These proceedings include:

- i. Subject to this Act, in any tendering proceedings conducted by a procuring entity:
  - a) The invitation to suppliers to tender shall be published:
    1. In the Gazette, where the procuring entity is the state;
    2. In a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the state; and
    3. In a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation, where tenders are invited from suppliers who are not nationals or residents of Zimbabwe.
  - b) The invitation to suppliers to tender shall contain the following:



1. The procuring entity's name and address;
  2. A comprehensive description of the goods to be supplied;
  3. The time within which the goods are to be supplied;
  4. The criteria by which supplies will be evaluated;
  5. The manner in which solicitation documents may be obtained and their price;
  6. The deadline for the submission of tenders and the place where they are to be submitted; and
  7. Such other information may be prescribed in procurement regulations.
- c) An invitation to prequalify shall be published and contain the information such as:
1. The manner in which prequalification documents may be obtained and their price; and
  2. The deadline for the submission of prequalification documents and the place where they are to be submitted.
- d) The price charged for solicitation documents and any prequalification documents shall not exceed the cost of printing them and providing them to suppliers.
- e) Solicitation documents shall contain comprehensive information as follows:
1. The nature, quantity and quality of the goods or construction work required;
  2. The criteria and procedures by which tenders are to be prepared and submitted;
  3. The criteria and procedures by which the successful tender will be determined
  4. The manner in which the tender price is to be formulated and expressed;
  5. Any tender security request;
  6. The date, time and place for the opening of tenders and the procedure to be followed at such opening;
  7. Any right on the part of the procuring entity to reject all tenders;
  8. Any modification of a solicitation document shall be communicated without delay to all suppliers who have received the document;
  9. Any extension of the deadline within which tenders must be submitted shall be communicated without delay to suppliers who have received solicitation documents and tenders shall be submitted in writing and sealed in an envelope or other container so that they cannot be read before the time fixed for the opening of all tenders;
  10. Any tender that is submitted after the deadline for their submission or any extension of that deadline, shall not be opened and shall be returned to the supplier concerned;
  11. All suppliers that have submitted tenders shall be permitted to witness the opening of the tenders and shall have the right to be informed of the price and other salient terms of each tender opened; and
  12. The procuring entity shall accept whichever valid tender offers the lowest price, unless other criteria are specified in the solicitation documents.

The Parliament of Zimbabwe in 2010 amended a number of laws in order to centralise all procurement and tender allocation authorities to fall under one national body. Before, these amendments, only government ministries in need of goods to undertake their various mandates had to go through the State Procurement Board (SPB) empowered by the Procurement Act [Chapter 22:14]. Local Authorities used to procure their goods through Municipal Procurement Boards as stipulated by the Urban Councils Act [Chapter 29:15] and Rural District Councils Act [Chapter 29:13]. The Urban Councils Act of 1995 was the governing instrument calling for tenders by municipalities.

"Every municipal council shall appoint a municipal procurement board consisting of not less than five and not more than seven members, which shall be responsible for carrying tenders in terms of section two hundred and eleven and for making recommendations to the council in regard to the acceptance of tenders and the procurement of goods, materials and services" (Urban Councils Act 29:15, Section 210).

The Procurement Regulations are based on the Model Law on Procurement of Goods and Construction adopted by the United Nations Commission on International Trade Law in 1993.

The key clauses in the 2010 amendment laws that centralised procurement are discussed below.

Clause 12 amends the Procurement Act so that all local authorities are deemed to be procuring entities in terms of the Act. The clause amends Section 2 (Interpretation) (2) of the Procurement Act by repealing the proviso and the substitution of the following: "Provided that the Minister shall not make any such declaration in relation to a person other than a body corporate wholly owned or controlled by the state without that person's consent".

Clause 18 repeals Section 79 of the Rural District Councils Act [Chapter 29:13] which provides for contracts and tenders of councils. The tendering process is now done in terms of the Procurement Act Chapter 22: 14.



Clause 19 repeals section 210 and 211 of the Urban Councils Act [Chapter 29:15] which provides for the procurement board and the tender process respectively which fall under the ambit of the Procurement Act.

These three clauses 12, 18 and 19 centralised all procurement of local authorities, both urban and rural.

These developments have far-reaching effects. The centralisation contradicts the new Constitution which provides for devolution. The development annulled global trends that dictate that systems of governance, administration and power should be devolved from the centre to the grassroots. This centralisation of procurement by the central government has perpetuated the marginalisation of smaller towns. Some of the regressive effects of centralisation are discussed below.

Corruption would be entrenched. The tender process in Zimbabwe has become a breeding ground for corruption where government officials responsible for the allocation of tenders and together with powerful politicians in the different line Ministries have benefited from kickbacks and bribery.

Accountability challenges. Members of the SPB are appointed by the President; hence, they are political appointees who are only accountable to the President. Centralising the tender processes would mean that the SPB would be inaccessible to the general public for accountability purposes, cannot be questioned on negligence, delays, corruption or incompetence (Bulawayo Progressive Residents Association 2011). The old arrangement where tender processes were undertaken by the Local Authorities ensured accountability and participation of residents both as tender seekers and monitors. It is easy for residents to bring councillors to account rather than appointed members of the procurement board who are answerable only to the appointed.

Unlike the Municipality Procurement Board, the state entity is chosen by the Head of State, leaving room for patronage and abuse of office to further political ends. Besides, the process by which the President appoints the Board is not elaborate in the Act hence making the SPB accountable to a limited few. Such a scenario is an affront to the principles of accountability and transparency since the members of the Board are political appointees rather than professional technocrats.

No efforts have been taken to explain or demystify problematic terms such as 'locally based' or 'previously economically disadvantaged' in the regulations. Such terms can easily be misinterpreted, misrepresented or misconstrued to fit the political landscape of the day or to favour business initiatives of the ruling party or its members. For example, a local company with political connections but little expertise can be favoured against a well equipped and experienced foreign firm. This compromises service delivery while enriching the politically connected and their cronies. Furthermore, the Procurement Regulation of 2002 grant a 10% preference given to locally-based contractors over external ones and 'previously economically disadvantaged contractors' is open to abuse just as the affirmative action agenda had been abused by politicians for mileage.

The centralisation of municipal procurement has complicated the issue further as 'local' in local governance terminology means a resident of the locality while 'previously economically disadvantaged contractors' can also refer to marginalised ethnic groups. However, an indigenous Zimbabwean contractor which submits an equally advantageous bid, with competitively matching price and technical specifications as those of a foreign bidder, shall be given preference.

## **8.2 Modes of Awarding Tenders**

Zimbabwe has three ways in which tenders can be awarded to private companies under the public-private partnerships (PPPs) framework. These are: competitive public bidding, limited competitive bidding and through unsolicited project proposals. These are expansively discussed below.

### **8.2.1 Competitive Public Bidding**

This refers to the process whereby tenders are open to both domestic and international bidders, either by auction or by public tender. Competitive public bidding will be conducted under a two envelopes/ two stage system. The first envelop contains the financial proposal. The second envelop contains the qualification proposal.

The relevant line Ministry/local authority, in liaison with the State Procurement Board, shall prepare the bid/tender documents, including clear and comprehensive instructions to bidders. The prequalification, invitation of bids, evaluation of bids and award of tenders shall be done by the line Ministry/Local Authority in liaison with the State Procurement Board and the PPP Unit.

It should be noted that although open tendering is the default public procurement method, the UNCITRAL Model Law now provides in addition, procurement framework for restricted tendering, request for quotation, request for quotation with negotiation, two stage tendering, request for proposal with dialogue, competitive negotiation, electronic reverse auction and single source procurement.

### **8.2.2 Limited Competitive Bidding**

Competitive negotiation is done by the relevant government agency which selects at least three short listed bidders using agreed criteria and then negotiates with each bidder, with the aim of awarding the contract to the best capable bidder also taking account of other terms and conditions.

### **8.2.3 Unsolicited Proposals**

This refers to negotiated entry or direct entry. Normally projects are initiated by the private sector. Direct negotiations may be entered into on the following basis:



- a) That the government has invited comparative or competitive proposals/bids and has not received any other proposals;
- b) That, in the event that another private proposer has submitted a more competitive proposal; the original proposer will have to match this, in order to qualify to undertake the project.

### 8.3 Public Procurement Challenges

Public procurement is an important function of government (Musanzikwa, 2013:122). However, a number of challenges are faced (Shaw, 2010). Some of the global procurement challenges are distilled below:

1. The sheer magnitude of procurement outlays has a great impact on the economy and needs to be well managed. Indeed, in all countries in the world, estimates of the financial activities of government procurement are believed to be in the order of 10-30% of Gross National Product (GNP) (Caldwell, Roehrich and Davies, 2009).
2. Public procurement has been utilised as an important tool for achieving economic, social and other objectives (Arrowsmith and Trybus, 2008, Shaw, 2010). There is therefore a need to comply with a myriad of legislations and guidelines and this presents a challenge (Musanzikwa, 2013). For instance, in its report to the United States Congress, the Commission on Government Procurement states that “The magnitude of the Government’s outlays for procurement and grants creates opportunities for implementing selected national policies” (Federal Acquisition Institute, 1999).
3. Public procurement has been perceived as an area of waste and corruption (Shaw, 2010).

Given this global picture, the following paragraphs give challenges to public procurement in Zimbabwe.

#### 8.3.1 Corruption

There are a number of tenders that have been associated with corruption. The following examples attest this proposition.

1. Harare City Council has been accused of awarding tenders for the supply of water treatment chemicals to shoddy and incompetent companies that offered them setbacks. One of the companies contracted to provide water treatment chemicals to the city delivered poisonous sodium cyanide, instead of aluminium sulphate solution, to Harare’s Morton Jeffry Water works in September 2012.
2. Temba Mliswa US\$165 million Scandal: The legislator tried to force businessman Bill Rautenback to pay him at least US\$165 million as “consultancy”, “facilitation” fees and “commission” for the deals facilitated. The legislator demanded the money for linking Mr Rautenback up with prominent politicians who enabled the businessman to establish an ethanol plant at Chisumbanje and to clinch coal and platinum concessions at Hwange Colliery and Unki Mine respectively.
3. Zimbabwe Electricity Supply Authority (ZESA) US\$183 million Scandal. The State Procurement Board and the Zimbabwe Power Company (ZPC), a subsidiary of ZESA Holdings awarded a US\$183 million tender to losing bidders. ZPC floated a tender for the installation of a 100 megawatt solar power station to alleviate the crippling power supply shortages. China Jiangxi Corporation emerged the winner. However, a controversial decision was taken to include two losing bidders namely Intratrek Zimbabwe (Private) Limited and ZTE Corporation without having to re-advertise the tender as required by the law. Intriguingly, the SPB did not consider other losing bidders namely Lanlake Power (Private) Limited, Afriven Investments (Private) Limited and No.17 Metallurgical Construction (Private) Limited (Manyukwe, 2014).

This reveals double standards and favouritism on the part of SPB and ZPC. This was a gross violation of tender laws. Despite it being at variance with international best practices, the manner in which the tender was handled raised serious ethical questions. The awarding of tenders to Intratrek and ZTE was illegal as there is no provision for negotiation of tenders with losing bidders in the Procurement Act.

The two companies that agreed to negotiate their prices downwards from figures as high as US\$350 million to US\$ 182 million like in the case of ZTE Limited of China and Intratrek, it is a sign that they were quoting for something they did not know or they want to compromise quality to achieve the price cut. This violated Section 11 (1)a of Procurement Regulations, contained in Statutory Instrument 171 of 2002, which stipulates that tenders should be awarded to the lowest bidder.

4. Huawei-NetOne Contract. A Zimbabwean businessman who lives in South Africa took NetOne, Zimbabwe’s State Procurement Board, Huawei and the Anti-Corruption Commission of Zimbabwe to Harare’s administrative court over the awarding of the US\$218 million contract to Huawei. The Chief Executive Officer (CEO) of Investment Group Africapacitti, wanted to find out how Huawei won the NetOne contract without going through an official tender process. Because NetOne is a state-owned entity, it is obliged to adhere to Zimbabwe’s procurement laws with regard to the awarding of contracts. The CEO of Africapacitti alleged that the contract was awarded to Huawei despite Zimbabwe’s SPB having expressed concerns over an inflated price for the project. An amount of US\$298, 6 million was quoted for the upgrade. The figure was then dropped to US\$251 million and ultimately dropped to US\$218 million.
5. NetOne officials argued that only Huawei could carry out the upgrade deal as the mobile networks infrastructure is from the Chinese telecommunications firms.

The SPB had raised the following issues:



- i. Members noted with concern that the Secretariat had failed to properly analyse the matter for logical presentation to the board;
- ii. The presentation was jumbled up and comprised of disparate requirements including upgraders, New equipment and construction of a Building;
- iii. The matter was also hastily presented as an urgent item without adequate background and factual information;
- iv. Background was inadequate and lazy;
- v. There was no clear justification why the current requirements should not go to tender, in light of the unclear relationships between the projects;
- vi. Members noted with concern that according to the minutes from the Secretary for Transport, Communications and Infrastructure Development to Treasury dated June 19, 2013, NetOne and Huawei Technologies of China had already signed a contract for the works without authority; and
- vii. Members noted that there were allegations of overpricing some aspects of the project components.

The SPB resolved to defer the awarding of the contract to wait for further input.

In the documents, the Zimbabwe's Ministry of Transport, Communication and Infrastructure Development, did write to the SPB calling for the upgrade to be given to Huawei. The Ministry argued that the deal could help NetOne boost its services, subscriber base and contribute to Zimbabwe's information and communication technology (ICT) development.

Further reading into the documents also revealed that the Post and Telecommunication Regulatory Authority, as the watchdog had not consulted the relevant industry experts.

Huawei responded by denying alleged corruption regarding the deal. It said the company strictly abode by all procurement laws and regulations of Zimbabwe.

Horrendously, the SPB eventually approved the Huawei deal despite its concerns outlined in the recording of proceedings. The SPB then further highlighted how it sought advice from three government ministries and telecommunications and IT engineers. SPB asked the court to reject Africapacitti appeal as 'frivolous and vexatious'. One key informant informed this study that what the SPB did was within the 'Look East Policy'. 'Remember we are dealing with China. This is looking east. SPB was directed to award the tender to Huawei', the informant narrated. Subsequently, the court threw out the appeal with costs for a lack of merit.

3. Zimbabwe National Road Authority (ZINARA) US\$2 million scandal. ZINARA chief executive officer (CEO) authorised the release of funds for the rehabilitation of a 31 kilometre in Umguza, Matabeleland North province before the conclusion of tender procedures. Zimbabwe Anti-Corruption Commission (ZACC) report show that funds were also released for the construction of a bridge across Umguza River before the tender was awarded. According to the ZACC documents, tenders were advertised as a cover up after the contract had already been corruptly awarded without going to tender. The company was non-existent. "My investigations reveal that Notify Enterprises to all intents and purposes is a brief case company, while the Gwabalanda address that they provided does not exist, the occupants of 6252 Gwabalanda Bulawayo know nothing about Notify Enterprises and neither is there a record of this company at the Deeds office" reads a motion forwarded by one of the councillors. There were no records regarding certificate of incorporation, company registration and profile and a bid bond which was adequate grounds for disqualification. Furthermore, the bid was US\$491 491 more expensive than the lowest bid.

4. Incompetence: the adjudication process of three tenders to supply ZESA with prepaid meters was flawed. SPB was alleged of awarding tenders to companies with no capacity to carry out the intended projects and this is denying development in the country.

5. Here are some of the scandals that are directly responsible for destroying the economy;

- a) 1987 Zisco Steel blast furnace scandal
- b) 1988 Willogate scandal
- c) 1989 ZRP Santana scandal
- d) 1994 War Victims Compensation scandal
- e) 1995 GMB Grain scandal
- f) 1996 VIP Housing Scheme
- g) 1998 Boka banking scandal
- h) 1998 Harare City Council refuse Tender scandal
- i) 1999 Noczim scandal
- j) 1999 Ministry of Water and Rural Development Chinese tender scandal
- k) Harare Airport Scandal



What is most sad about the Zimbabwean situation is that there is confirmable and demonstrable lack of political commitment to fight against corruption on the part of the government.

### **8.3.2 Political Interference**

Major tenders are influenced by ministers. This is at variance with the principle of politics-administration dichotomy which provides that ministries are mainly responsible for policy making and not implementation. Contract negotiations should not be soiled with political peddling. A contract should be awarded to the bidder who satisfies the minimum financial, technical, organisational and legal standards required by the relevant Act and has submitted the lowest bid and most favourable terms of the project.

### **8.3.3 Prolonged Delays in Service Delivery**

It is a fact well proven that bureaucratic channels between decentralised entities such as local authorities and central government are cumbersome and time-wasting. Councils are experiencing delays in getting to fund the provision of services because the Ministry of Local Government, Public Works and National Housing has to approve the council budget first. SPB buys for more than thirty government entities. Adding the local authorities has burdened the board and resulted in delays in the procurement of important things like the water chemicals resulting in the councils failing to carry out their duties or getting the board as their excuse for service delivery failure.

### **8.3.4 Indigenisation Policy**

The need to comply with indigenisation policy has resulted in tenders being awarded to incompetent companies. Some tenders won by foreign owned companies have actually been cancelled due to indigenisation policy. For example, in October 2012, Grain Marketing Board (GMB) cancelled a US\$1 million flour milling tender it awarded to a Pakistan owned company, Mylo Foods, following intense pressure from black empowerment lobby groups who wanted an indigenous miller to be contracted to do the job (Musanzikwa, 2013).

### **8.3.5 Dissonance Between Public Finance Management System and Procurement Laws**

One key informant informed the study that the current public procurement laws do not have a relationship with the public finance management system and, hence, project management is compromised. The value for money principle of the procurement process is reviewed with reference to the budget and post-project activities of contract management.

## **9. Conclusions**

Given that from 2009 National Budget Statement through the 2014 National Budget and the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim-Asset) are demanding values for money (VFM) in public procurement, all the blemishes that paint negatively the public procurement in Zimbabwe should be addressed as a matter of urgency. Zimbabwe seems to have lost its value systems (ubuntu/ unhu). Without this, national socio-economic development will be hampered. Presenting the 2014 National Budget, the Minister of Finance and Economic Development reported that the public procurement was affecting project implementation in Zimbabwe and part of the solution was the review of the procurement laws. Transparent and efficient procurement ensures that appropriate quantities, quality and prices are realised over public spending on goods and services. The need to ensure accountability and value for money, coupled with recognition of resource constraints to implement government programmes, make it imperative that efficient public procurement arrangements be put in place to improve service delivery.

## **10. Recommendations**

- a) Conflict of interest. Nakamura (2004); Mangan et al. (2008); Caldwell et al. (2009) and Shaw (2010) all contend that organisations should have clear written guidelines that define when board members or officers must declare a personal interest that may be deemed to be in conflict with their office.

In its source Book, Transparency International (1997, ix-x) identifies some of the methods that could be used to combat lack of transparency in government. Some of them could also be appropriate for Zimbabwe and the following could be modified to suit the needs of Zimbabwe:

- a. Developing internal financial management systems that ensure adequate and effective control over the use of resources;
- b. Establishing other types of internal oversight mechanisms to provide speedy and effective review of contentious decisions;
- c. Reviewing and enforcing appropriate "conflict of interest" regulations or codes of conduct and introducing ethics programmes and periodic group discussions by politicians and bureaucrats of real-life ethical dilemmas drawn from their own experiences.

The success of these possible measures in facilitating transparent operations in the public and private sectors in Zimbabwe highly dependent on the political will of the government.

In the specific case of Zimbabwe, an independent anti-corruption agency with powers to investigate, prosecute and recover ill-gotten wealth from convicted culprits.



- b) Training: In the survey conducted by TIZ, most of the respondents indicated that that they view training unethical ethical behaviour as the primary solution that needs to be undertaken to curb lack of transparency. It is, probably, cheaper for Zimbabwe to have some of its bureaucrats and political trained than to engage in periodic investigations and audits of these staff and public institutions. UZ, professional membership, for example, Chartered Institute of Purchasing and Supply (CIPS).
- c) Transparency: Zimbabwe should formulate balanced public procurement objectives of value for money; integrity, that is, avoiding corrupt and conflict of interest, accountability, equal opportunities and equal treatment for providers, fair treatment of suppliers. (Nyasha). Objectives of public procurement are all centred on the value for money principle, such as, elimination of corruption; competitive bedding among others. National strategies to fight corruption should contain values such as integrity, transparency and accountability in all our transactions. Efforts should be harnessed revitalise professional behaviour and groom young people to refrain from corruption.
- d) Decentralisation. There is need to decentralise public procurement so that decisions can be made in time. Bureaucratic pathologies frustrate procurement processes at the grassroots levels. Also, having a centralised procurement policy has failed to contain corruption; instead corruption has phenomenally increased in Zimbabwe.
- e) Government should introduce punitive penalties to plug the rampant financial leakages bleeding the economy. In a hard-hitting report titled "Investigations Report on the Procurement Process by Government Hospitals under the Targeted Approach", the National Economic Conduct Inspectorate disclosed that the hospital bosses were fined a paltry US\$900 by the SPB for flouting tender regulations and rules willy-nilly. Deterrent measures such as stiff jail sentences on those found corrupt. Government officials found breaching the Procurement Act should be charge in terms of the Public Service Act while contractors which overprice commodities and favoured suppliers be blacklisted and banned from supplying all Government departments and local authorities.

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