

GHANA INTEGRITY INITIATIVE (GII)

(Local Chapter of Transparency International - TI)

Presentation

at a

Special Forum

on

IMPROVING EFFICIENCY AND TRANSPARENCY IN PUBLIC PROCUREMENT THROUGH INFORMATION DISSEMINATION

*Topic: “Impact of the Public Procurement Act, 2003 (Act 663)
in GII’s Perspective”*

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Delivered by:

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TOPIC: “IMPACT OF THE PUBLIC PROCUREMENT ACT, 2003 (ACT 663) IN GII’S PERSPECTIVE”

Mr./Madam Chairperson, Honourable Minister for Finance and Economic Planning, Honourable Ministers and Members of Parliament, the Chief Executive of the Public Procurement Board, Development partners, distinguished guests, ladies and gentlemen, GII is very grateful for your invitation to deliver a paper at this very important Forum and the launching of the PP Bulletin. We are very happy to be part of this event because GII is fighting a war against corruption of which public procurement occupies the enviable position of being responsible for over 70% of all public sector corruption worldwide. GII cannot fight this war alone and we are happy that the calibre of participants here indicates that we have a host of crusaders from all sectors of society joining us in this fight.

ABOUT TI/GII

Mr. /Madam Chair, before proceeding to the main issue, please permit me to give a brief history of Transparency International (TI) and its local Chapter, the Ghana Integrity Initiative (GII). TI was founded in 1993. It is the leading international non-governmental organisation devoted solely to curbing corruption. TI currently has about 90 national chapters (NC) around the world, with its international Secretariat in Berlin, Germany.

GII was launched in December 1999 as the local chapter of TI. It is a non-partisan, non profit civil empowerment organisation, focused on delivery of essential themes necessary for the creation of a National Integrity System. GII’s vision is to make Ghana a corruption-free country in all spheres of human endeavour where people and institutions act with integrity, accountability and transparency. GII has three main objectives specifically aimed at achieving its vision. These objectives include:

- To continuously create awareness about the negative effects of corruption;
- To empower citizens to demand responsiveness, accountability and transparency from people and institutions in Ghana; and
- By working with people and institutions, to build a culture of integrity, where corruption is unprofitable for people working in government, politics, business and civil society organizations.

Since its creation GII has established itself as a growing force for independent, non-partisan and objective advocacy. Our anti-corruption programme is organised around the following broad headings: Research, Public Education, Publications, Networking, Lobbying and Advocacy.

DEFINITION OF CORRUPTION AND PROCUREMENT

Mr. /Madam Chair, ladies and gentlemen, now to the main topic of my presentation, **“Impact of the Public Procurement Act, 2003 (Act 663) In GII’s Perspective.”** Public procurement is the acquisition of goods and services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place for the

direct benefit or use of governments, corporations, or individuals, generally via a contract. It can be said to be the purchase of goods, services and public works by government and public institutions. It has both an important effect on the economy and a direct impact on the daily lives of Ghanaians as it is a way in which public policies are implemented. To the GII, improving efficiency and transparency in public procurement means curbing corruption in the procurement process in the country.

Mr. /Madam Chair, many people may differ in their opinions as to what corruption is. For example, a public official who decides to award contracts only to those who contributed to his/her election campaign may not view that as corruption. Similarly, a company vying for a contract may decide to organise a party for the tender committee without seeing it as corruption. Whether we accept such an act as a corrupt act or not, corruption refers to any situation whereby one misuses entrusted power for private gain.

Mr./Madam Chair, there are various forms of corruption, but they include bribery, extortion, cronyism, nepotism, patronage, graft, and embezzlement. While corruption may facilitate criminal enterprise such as drug trafficking, money laundering and trafficking, it is not restricted to these organized crime activities. In some countries, corruption is so common that it is expected when ordinary businesses or citizens interact with public officials. When a public official awards a contract to a company that isn't the best bidder, or allocates more than the cost of the contract, the company benefits, and in exchange for betraying the public, the official receives a kickback payment, which is a portion of the sum the company received. A wider definition of corruption includes illegal transfers of profits into offshore Accounts and the evasion and/or avoidance of tax. To what extent has Ghana's PPA been able to minimise this? What positive impacts has the PPA brought to Ghanaians and the Ghanaian economy? I will try to address a few of these issues.

POSITIVE IMPACT OF PPA (ACT 663), GII'S PERSPECTIVES

Mr. /Madam Chair, most government spending is in the area of procuring goods and services and, therefore, any improvement in the public procurement system would have a direct and substantive impact on the economic situation of the country. This would also result in budgetary savings and efficiency in government expenditure. The extent to which the PPA has succeeded in doing this may not meet our expectations but there are some benefits.

The Public Procurement Act (Act 663) set out the legal, institutional and regulatory framework to secure fiscal transparency and public accountability since the sole reliance on traditional contracting and price-based selection limits the scope for the value for money in the awards of contracts. The Act also tends to expand reforms to cover procurement and project delivery methods and strategies with a focus on best value intended to increase the potential and likelihood of achieving value for money in public procurement in Ghana. To some extent, something has been achieved in this direction.

Thus, Government should be recommended for passing PPA which has clearly spelt out certain measures to minimize public procurement-related corruption, such as the issuance and monitoring of public expenditures and determining ceilings for the Ministries, Departments, and Agencies etc. involved in procurement activities.

TRANSPARENCY AND DISCLOSURE OF PROCUREMENT INFORMATION

Distinguished invited guests, information dissemination is very vital for the success of any policy reform, the procurement process not being an exception. Information dissemination in public procurement encompasses several things, including education about the legislation on procurement as it is often couched in legal language, educating the key stakeholders on the process and procedures for tendering, etc. as well as the basic requirement for a successful bidding. It also means providing interested parties with information on the considerations for selecting one bidder out of several. Furthermore, with the increasing interest of civil society organizations and ordinary citizens in the budget process and the utilization of public resources, one would expect that information on the costs of contracts and supplies as well as the specifications for such supplies be made public. This will be enhanced by appeals systems that seek to address aggrieved parties. Such systems must be simple, easy to access and quickly resolved. The question is: Is this the case with Ghana's PPA? One cannot say a definite 'Yes' to this.

The law provides our PPB discretion not to disclose information if it is not "in the public interest" to disclose the said information. This is an opportunity for possible abuse. The Act even enhances this opportunity by absolving procurement entities of any liability for failing to maintain records of procurement proceedings. If they deliberately fail to keep record of the proceedings of their meetings because they can not be held liable then there is no information to be disclosed. **Moreover, the Act requires that reasons are given for rejection of a tender but procurement entities are not required to provide justification for such rejection.**

The main objective of the Public Procurement Act, 2003 (Act 663) (PPA) is to ensure a judicious, economic and efficient use of state resources in public procurement that is carried out in a fair, transparent and non-discriminatory manner. In other words, one can say that the main aim is to reduce or eliminate corruption in the procurement process.

The existence of Freedom of Information legislation is a necessary starting point for curbing corruption. This is lacking in the case of this country and something needs to be done sooner than later if we are eager to have a workable procurement system that is fair, non-discriminatory and free of corruption. This, among other factors, is why GII is tempted to view the PPA as a cumbersome, delay-oriented, corruption-friendly law and recommends that some parts of it are reviewed.

ISSUES THAT NEED TO BE ADDRESSED

Mr. /Madam Chair, having said this, permit me to mention a few problems that tend to limit the positive impacts of the PPA on efficiency and transparency in the use of public resources. Many stakeholders of the procurement system in the country have identified a

number of problems that have arisen from the passage of the PPA and its delayed implementation. The actual implementation has often led to delays in procurement processes partly due to donor insistence on certain procedures and sometimes the use of certain service providers. Moreover, until today, some Ghanaian public officers still cannot find their way clear as to how to implement the Act. The definition of procurement entity and what it refers to has been argued about even among lawyers.

Furthermore, in some cases, procurement committees do not have the required professional base and rather tend to be based on partisan political considerations. In fact, the heads of the procurement entities are the political heads of the various MDAs, which has led to political patronage and allegations of corruption. Power is given to the Minister of Finance and Economic Planning to declare that a procedure other than prescribed in the law can be used because it is in the national interest. This does not make for a good procurement practice as it leaves much discretion in the hands of one person.

Moreover, the Tender Committee of a Central Management Agency or a Ministry is headed by a minister who is also required to appoint a Member of Parliament from the region and another MP chosen by the Regional Caucus of MPs. This already gives an upper hand to a ruling party that also has a majority in Parliament. Also, the Head of the Procurement Unit is only a Secretary to the Committee. In the case of the Regional Tender Committee, the technical person is not even part of its meetings. The situation is no different at the MMDA level. This tends to leave the professionals out of the tendering process and concentrates a lot of power in the hands of the political heads such as ministers and DCEs and their senior civil servants, mainly Chief Directors and Coordinating Directors. This gives cause to worry in a country where party faithfuls are complaining of being ignored by politicians whom they helped to bring to power.

Admittedly, the Central Tender Review Board has several professionals or at least people conversant with procurement principles and procedures as members. Even then some of them have to be appointed by the Minister. The chairperson of the Board is appointed by the President on the advice of the Minister of Finance. The case is the same with the Ministry and Regional Tender Review Boards with the key players at these places being members of the Boards. In addition, the Heads of the Procurement Entities have the power to procure goods and technical and consulting services that amount to not more than GH¢5,000 and works up to a value of not more than GH¢10,000. This raises some concerns about checks and balances. Granted, these Review Boards can use consultants and other experts to help them in the evaluation of tenders but it is not out of place to worry about reviews after the decisions have been taken.

It must be stated that a good and workable procurement act should highlight only governmental guiding principles of public procurement while barring ministers from involving themselves in public procurement.

In the past, GII made clear its position on the Public Procurement law, which was that the PPA is not a panacea against corruption but it can assist in the fight against corruption by providing guidelines for public procurement in the form of a procurement manual.

Unfortunately, Ghana's PPA does not come with such a manual. Rather, it is a product of several confusing terms of reference aimed at meeting the demands of specific donors and not able to address procurement problems and corruption in Ghana's public procurement processes.

Mr. /Madam Chair, some contractors and suppliers have often complained about long delays in their payment after they have executed the projects or supplied the goods. The process for payment to contractors, and suppliers is long [over thirty steps from invoice to receipt of check] and often over-centralized, thus sometimes forcing contractors to come from upcountry to follow-up payments in Accra. This process is adding to cost of public contracts and undermines the efficiency of the private sector. These contracts are increased by the costs of tender documents which are sometimes much higher than the actual costs of the tendering process. Some contractors have gone through several tenders and paid huge fees without ever securing any contract.

Distinguished guests, the provisions for sole sourcing is an opportunity for abuse by entity heads who might have made their minds about whom to award the contract to long before the act. An example of a less transparent procurement process that gave rise to a lot of speculation was the case of the MOESS which requested for a single source procurement in August 2005 to procure textbooks for the 2005/2006 academic year and used "unforeseen circumstances giving rise to urgency" as a reason. It is unthinkable for the MOESS which fixes the re-opening dates of schools to wait until August to procure textbooks for schools re-opening in September. The MOESS went further to justify the use of sole sourcing, in this case, to Messrs Macmillan Ltd for which the Procurement Board accepted as good grounds for granting them the permission.

Mr./ Madam Chair, one needs to visit project sites and stores to determine whether the PPA is ensuring the efficient utilization of public resources and to ascertain the causes of shoddy and/or abandoned work. Several questions come to mind: Are the service providers who win the bids qualified to carry out these projects? If so, why the shoddy work or why do they abandon the work? Are they paid for the shoddy work? What has happened to the officers who supervise these projects and those who certify payment certificates for payments? Is the PPA achieving its aims? A genuine desire to derive maximum benefits from the PPA would require frank answers to these questions and genuine actions taken to address the problem areas.

CONCLUSION

While not condemning the PPA that has been operating for a few years, there are some problems with its implementation that need to be addressed. GII recommends that the law be reviewed by the various stakeholders such as the representatives of the Tender Committees, the contractors, procurement professionals and other professionals as well as civil society groups working on corruption issues.

In public procurement, any violation of standard procurement principles and procedures is considered willful and, therefore, construed as fraudulent and causing financial loss to

the state. To prevent corruption in public procurement persons responsible for such acts should be sanctioned. GII recommends the following:

1. The public procurement board should, as a matter of urgency, come out with regulations and guidelines to help in the implementation of the law. In the regulations and guidelines, PPB should make provision for civil society tracking of resource flows and monitoring procurement processes and project execution. This would ensure the necessary cooperation from local authority officials and also access adequate information on contract specifications and costs. It would further compel public officials to be transparent and also provide information when it is requested by civil society organisations and ordinary citizens.
2. GII recommends that the PPB decentralizes contract payment without losing accountability or at least provides an advanced timetable for payments to interested partners to reduce the time and cost of chasing payments.
3. For transparency, bidders should disclose all commission and similar expenses paid by them to anybody in connection with the contract and sanctions applied in cases of violations. This can be done through a desk officer in the minister's office and treated as confidential to avoid victimization.
4. PPB should seriously consider blacklisting for future bidders who have contravened the provisions of the PPA and take disciplinary action against public officials who engage in irregularities.

Thank you for your attention.