

Public Procurement In Zambia:

How to Get It Right?



1. Introduction

Public Procurement refers to the process through which governments and state owned enterprises acquire goods, services and works to support public service operations. Globally, public procurement is seen as an important tool for achieving socio-economic development and is one of the most vital components of expenditure by the Government of Zambia as it accounts for an estimated 10 percent of the Gross Domestic Product (GDP).

According to the World Bank, governments spend USD \$9.5 trillion annually in procuring goods and services from the private sector, making public procurement the largest global marketplace. While accounting for a substantial portion of the taxpayers' money, OECD (2018) notes that governments are also expected to carry out procurement processes efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest, (OECD, 2018),

Procurement takes many forms and encompasses the acquisition of consumables, property, capital equipment such as computers, built assets such as hospitals, roads, major facilities, services such as accommodation, security and cleaning.

Generally, the procurement process begins with a design phase in which needs are identified, scope of works determined, costs estimated and bid packages prepared. This is then followed by the tendering phase in which offers of supply are invited, evaluated, and accepted or rejected. Award of the contract is followed by the implementation phase in which the performance of the contract is managed. A procurement project spans from the establishment of a need, to the delivery and then ongoing management of a supplier delivering a good or service. This perspective highlights that every procurement process' goal is to achieve goals and deliver benefits.¹

Procurement should be economical and based on the principle of "value for money", resulting in the best quality of goods and services for the price paid or the lowest price for the acceptable quality of goods and services; not necessarily the lowest priced goods available nor the absolutely best quality available but the best combination to meet the particular needs. Public procurement is at the interface of the public and private sectors, which requires close co-operation between the two parties to achieve value for money.² Public funds should not be abused and used to provide favors, while noting that standards and specifications must be non-discriminatory, suppliers and contractors should be selected on the basis of qualifications

and the merit of their offers; there should be equal treatment of all in terms of deadlines, confidentiality and so on.

However, there are major impediments in achieving effective and efficient public procurement systems in developing countries like Zambia caused by the limited scope of laws, implementation of regulations, procedures and perceived corruption among others. This has given rise to inconsistency, confusion and lack of accountability in the procurement process.

Inefficiencies presented within the systems of operations have further restricted the ability for political leaders to meet their promises of economic and social improvements which is strongly related to how well procurement systems function. Failure to properly manage the procurement process and systems has extended effects with regards to wasted effort and poor development results with implications for increased poverty and deprivation of social and economic rights of the citizenry.

2. Legal Framework For Public Procurement

Public procurement in Zambia is principally regulated by the Zambia Public Procurement Authority (ZPPA) and guided by the Public Procurement Act of 2008, the Public Procurement Amendment Act No 15 of 2011, the Public Procurement Regulations Statutory Instrument No 63 of 2011 and the National Council for Construction Act No 13 of 2003 of the Laws of Zambia. Additionally, public funds are funds received by an officer by virtue of the officer's employment or any other person directly or indirectly for the purpose of government, including public moneys.³ For example, Section 3 (1) of the Public Procurement Act stipulates that the Act applies to procurement carried out by procuring entities using public funds. These procuring entities include government agencies, parastatals and units established and mandated by the government to carry out procurement using public funds.

Despite the laws put in place in governing public procurement and relevant institutions supervising the process and management of the public funds from several stakeholders and the general public, the procurement process has several challenges. Over the years there has been concerns about Zambia's procurement processes and the management of public funds. This concern has come from reports which have revealed loopholes in the use of public resources. The Auditor General's annual reports, for instance, over the years has shown continued misuse of public funds as it reveals issues such as failure to follow procurement procedures, wasteful

expenditure and undelivered materials among other issues. The latest Auditor General's report for instance shows that over 23.5 million kwacha was lost due to non-delivery of materials.⁴ This wastage is costing the Government treasury and making it more difficult for the country to achieve its development goals if funds are not translating to quality service provision.

Over the years there have been concerns about Zambia's procurement processes and the management of public funds from several stakeholders and the public. Consequently, there has been consistent public outcry over public procurement in Zambia emanating from the supposedly high cost and poor quality of goods and services coupled with corruption claimed to be practices by those that hold public office. Nevertheless, there is general concern owing to the fact that, despite the existence of laws and regulation that govern public procurement, there has been continuous misappropriation of public funds through the acquisition of goods and services whose prices are highly inflated and does not reflect value for money. The loopholes in the procurement system are partly linked to flaws or weaknesses in the legal statutes governing public procurement in the country. Owing to the above matters, these brief attempts to shade light on some of the impediments affecting the achievement of an efficient procurement process. Key to this brief are issues of competition, consumer welfare as it relates to the social sector's health and education sector and the agricultural sector that are key to reduce poverty and improve the livelihoods of 60% of Zambians living below the poverty line and 42 % that are classified as extremely poor. Although all sectors require the consideration of efficient procurement processes, the areas for concern for this brief are emphasized due to their impact of the well-being of the majority of citizens in the country.

3. Public Procurement and Competition

Competition is a particularly important aspect in the market system, which is good for consumers as it leads to the production of better-quality products and services for the average Zambian citizen at low prices. Also, various manufacturing companies will be pushed to find creative ways to attract customers in order to keep their businesses afloat. In the light of this, vigorous competition requires businesses to strive to lower the prices of their products and services. Competition stimulates firms to lower their own costs and run their businesses as efficiently as possible.

Nevertheless, public procurement frequently involves large value projects, which present attractive opportunities for collusion and corruption. Firms in competition are best

placed in innovating and identifying irregularities in public procurement, thereby getting more businesses involved which leads to less collusion and corruption. Therefore, the promotion of competition in public procurement is one principle that is of great importance in order to lower corruption, exploitative practices and the production of low-quality goods and services for the consumers. Although public procurement accounts for 10 percent of the GDP in Zambia, the procurement process is marked by significant departures from competitive bidding which is seen in the following abuses like the absence of standard contracts and tender document, absence of public access to tender documents and pre-qualifying criteria, short timelines and no enforced publishing of tender results. Therefore, there is an urgent need for the government to follow transparent open procurement procedures that are aimed at ensuring fair conditions of competition for suppliers.

4. Public Procurement and Consumer Welfare

Public procurement plays a substantial role in achieving sustainable improvement in consumer welfare in Zambia. It cannot be overemphasized that key to achieving consumer welfare is the consideration of how procurement processes within education, health and various social protection programs play a vital role with regards to livelihoods options for the ordinary citizens of Zambia. enhanced Yet, the simplified Auditor General's annual report has shown continued misuse of public funds as it discloses issues such as failure to follow procurement procedures, wasteful expenditure and undelivered materials among other issues particularly within the sectors of Health, Education, Agricultural and the various social protection programs

4.1. Health Sector

The health sector is mandated to provide effective and quality health care services to the citizens. Therefore, public procurement plays a big role in ensuring that the consumers or citizens receive good and quality health care services. However, it is important to note that the public procurement system has had some inadequacies in the delivery of good and quality health care services these include, the questionable supply of unregistered goods the contract requires that goods supplied under the contract shall be registered for use in the procuring entity's country, procuring of medicines and medical supplies from unapproved manufacturers, dubious responsiveness on manufacturers' registration. Therefore, the mismanagement of public resources in the sector can lead to the purchase and supply of defective medical supplies which would be of

potential danger to consumers. Due to inadequacies in the public procurement system, various government medical facilities continue to experience mass shortages of medications and hospital equipment, thus making it difficult for citizens to receive quality health services.

4.2. Education Sector

Procurement in the Ministry of Education is the responsibility of the Procurement and Supplies Unit (PSU). The procurement procedure involves the user department raising a purchase, the purchase requisition is then authorized by the Head of Department and submitted to the procurement and supplies unit that verifies the budget allocation, specifications, determines the procurement or selection method, and proceeds with inviting offers or proposals. Upon receipt of offers, the procurement and supplies unit coordinate the evaluation of the offers and obtains the necessary authorities to proceed with the procurement. The procurement and supplies unit then arranges for the signing of the contract.⁵ Despite the sector adopting some of the best procurement practices, the institutional arrangements tend to delay procurement processes during the approval of draft bidding documents and contracts. Poor procurement processes affects the quality of education and this comprises the quality of public education for citizens.

4.3. Agriculture Sector

With the Auditor General's report revealing unaccounted for FISP inputs, the Ministry engaged ten companies to supply, deliver and distribute seed varieties. However, a substantial amount remained undelivered. Furthermore, demand and supply are important forces in the procurement process because they can reduce shortages if goods and services are delivered to consumers in sufficient amounts and in good time. For instance, late deliveries and shortages of agricultural inputs can lead to reduced agricultural productivity thus increasing food insecurity for the citizens. This broadly means that key development programs like FISP will struggle to achieve national development goals such as vision 2030 which aims to see Zambia as a prosperous healthy nation by the year 2030.

4.4. Social Protection

Social protection being a grave component in the process, aims at improving the wellbeing of vulnerable citizens in society at risk of food insecurity and poverty. With the aid of notable programs such as the Food Security Pack and the Social Cash Transfer play a huge role at providing assistance to the

vulnerable farmers and incapacitated households. Therefore, a functional procurement system in the sector is of great benefit to the vulnerable groups. In addition, the system is heavily affected by late, uncertain and inadequate funding makes planning difficult for the various programmes to be well executed. However, all consumers benefit from Government procurement but low income consumers in particular have access to free medicine in hospitals, text books for pupils and farming inputs.

Additionally, the lack of a proper public procurement system can lead to shortages in essential commodities such as fuel shortage whose impact is heavily felt by various citizens as there are unforeseen increases in fuel pump prices and commodity prices when this essential commodity cannot be acquired by the public. With reference to consumer welfare and public procurement, a well-established system has a trickle-down effect on the consumer as they have unlimited access to good quality goods and services, also it helps gain credibility in the public procurement system and stimulates various businesses which is of long-term benefit to the society at large. This entails that there is a great need for provision of goods and services in proper condition as it may cost lives of many citizens, thus making it of utmost importance to the consumer.

5. Challenges with Zambia's Public Procurement System

Given the sectors and programs affected by an inefficient procurement system in Zambia, the following challenges are presented as key issues for consideration:

5.1. Anti-Competitive Bidding

Some of the weaknesses faced by the procurement system in the country are because of government procurement still being bureaucratic, prolonged and opaque. Consequently, resulting in anticompetitive bidding seen in abuses such as, inadequate timelines, no compulsory publishing of tender results and restrictive tendering practices. However, the biggest weakness is that public procurement is still seen by the government as a regulatory function rather than an opportunity to deliver value-for-money public services, which has resulted in unusual bidding processes and anticompetitive practices.

The procurement system suffers from bid rigging and market allocation where enterprises enter into illegal agreements during the pre-contract stage to share price information with

a view to overcome the competitive process. In addition, the agreements are primarily for collusive purposes and are usually made in secrecy, therefore exceedingly difficult to detect as there is no accurate available data.

5.2. Procurement of goods and Services at Exorbitant Prices

The government procuring goods and services at exorbitant prices above the market value, implies that despite adhering to the correct procurement procedure in accordance with the law, goods and services are being procured at highly inflated prices which do not reflect value for money. Consequently, the inflation of prices by suppliers deprives the country of resources which could be directed to other projects and programs that require government funding.

5.3. Incoherent Legal Framework

Despite the various laws and regulations that govern the procurement system in Zambia, the system needs keen policy coherence which is critical in ensuring the sound management of public finances whilst maximising impact for consumers or the Zambian citizens.

5.4. Lack of Transparency and Accountability

The procurement system is hindered by poor procurement procedures which lead to corruption and lack of transparency when procuring goods using public funds. However, issues of non-compliance in procurement regarding procedures, rules and regulations have also led to fraud and misuse of public funds in the procurement process. The Auditor General's annual reports reveal non-compliance of procurement procedures which is seen in the undelivered goods, misuse of public funds and wasteful expenditure.

5.5. Limited Monitoring Mechanisms

With the increase in public sector expenditure, there is need for

accountability and transparency in government procurement as it involves huge sums of money as earlier mentioned. Hence the need for the development of monitoring mechanisms in procurement activity as it is faced by procurement fraud. Therefore, monitoring mechanisms are essential in ensuring issues of fraud and corruption are dealt with in the procurement system.

Ensuring that the aforementioned challenges are addressed, can bring about massive change in the economy of a developing country like Zambia as well as improve the public procurement system in the country by virtue of fostering credibility in the system.

6. Recommendations to Strengthen the Procurement System

Owing to the aforementioned challenges inherent in Zambia's procurement processes, the following recommendations are forwarded as part of the resolve to curb some of the weaknesses outlined above

6.1 Increased Transparency and Accountability

However, there is a lack of credibility, transparency and accountability in public procurement management which needs to be addressed in order to correct the procurement system. Further, the law should require that the people found wanting from the misuse of public funds are punished stiffly. Also, clear stock-taking by the government in the wake of the extensive corrupt practices in public procurement, given the insufficient state of competition in the current procurement situation in Zambia.

6.2 Need for Competitive Bidding

The government must address issues of competition by broad basing of bidders through satisfactory publicity on procurement opportunities or objective pre-qualifying criteria for bidders, fixing timelines for processing the bids to obviate interference in the procurement process. Government procurement authorities should put together strategies aimed at detecting anti-competitive practices and unusual schemes

in the bidding processes to ensure value for money in the procurement of goods and services. Further, the law with the right resources must ensure the implementation of competition in public procurement which is critical given it plays a key role in creating an enabling environment that guarantees free competitive markets, transparent procurement processes and poverty reduction.

6.3 Consideration for Public Procurement at Competitive Prices

The government must ensure that it sources and procures quality affordable goods and services from suppliers to ensure value for money thus significantly reducing the misuse of public funds. Additionally, public procurement must focus on the timely and quality service delivery from the suppliers to consumers in an effort to achieve sustainable consumer welfare.

6.4 Need for Monitoring Mechanism

The government through the Ministry of Finance, must strengthen and come up with monitoring mechanisms such as good procurement procedures and internal control systems and the development of a fraud prevention programme to reduce fraud and non-compliance. Also, the use of tools like e-Procurement which aims to simplify the buying process to help achieve transparency through competition in procurement activities of the government and suppliers to promote competition in public procurement.

6.5 Need for Enhanced for Legal Framework

Government must ensure policy coherence when it comes to public procurement in the country for the appropriate management of public finances while maximising impact for citizens. The government must also develop provisions in the regulatory and legal framework to adequately enforce as well as promote accountability and transparency. The government must foster the engagement of citizens and Civil Society Organisations (CSOs) in procurement oversight.

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