



## E-Bulletin

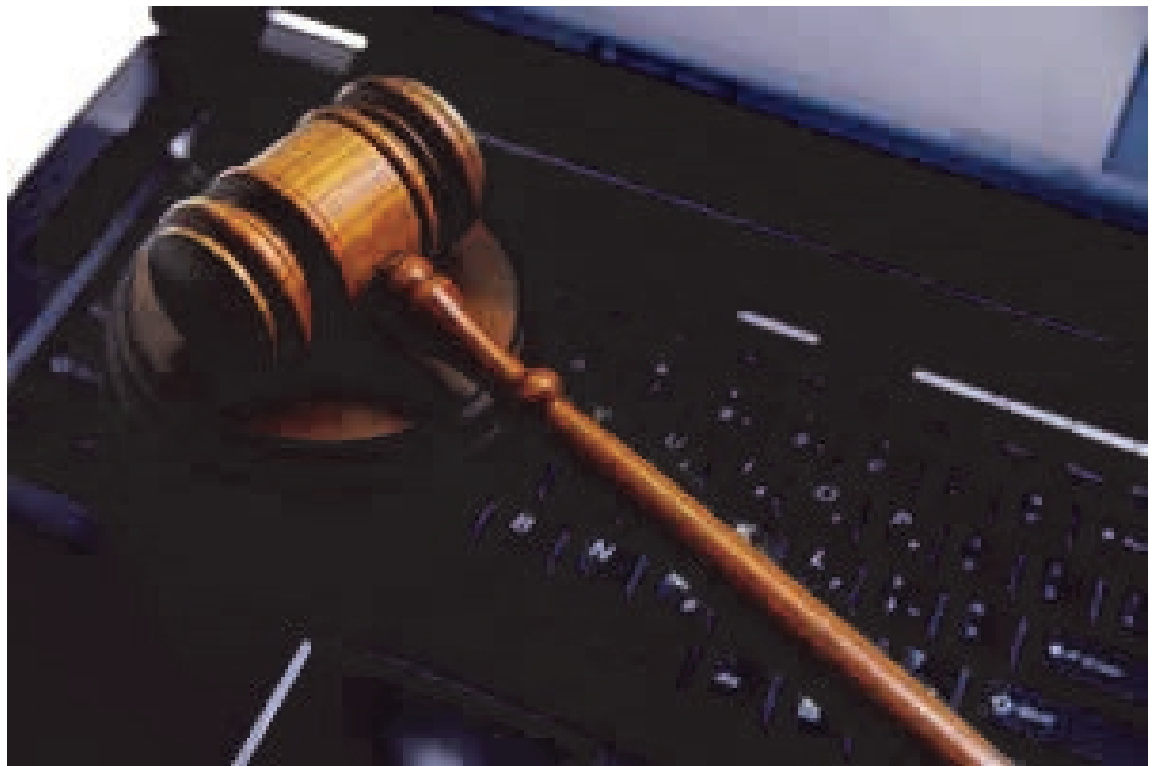


P u b l i c P r o c u r e m e n t A u t h o r i t y

# CHALLENGES OF THE REGULATOR IN THE IMPLEMENTATION OF ACT 663

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It is said that “challenges make life interesting and overcoming them makes life meaningful” and such is the story of Ghana’s Public Procurement Reforms which began a decade ago.

With the intention to harmonize the processes of public procurement and ensure a fair and transparent procurement system in the country, the Public Procurement Act, 2003 (Act 663) is yet to fully realize its set objectives,

although it is needless to say, that the law has brought about more clarity and some sanity into public procurement practices.

As a sole institution established by the Act 663 to regulate the activities of public procurement in Ghana, the Public Procurement Authority (PPA) has since its inception approached its responsibilities with a high sense of duty and commitment to excellence.

*(Continued on page 4)*

## Online Activities

### List of entities that have submitted their 2014 Procurement Plans Online As At April 30, 2014

- |  |   |
|--|---|
| 1. Accra Polytechnic                                   | 55. Ghana Cocoa Board                                       |
| 2. Agona West Municipal Assembly                       | 56. Ghana Cocoa Board - Quality Control Division            |
| 3. Achantaman Senior High School                       | 57. Ghana College of Physicians and Surgeons                |
| 4. Ajumako-Enyan-Essiam dist. Hospital                 | 58. Ghana Education Service                                 |
| 5. Akontombra Senior High School                       | 59. Ghana Free Zones Board                                  |
| 6. Akuse Government Hospital                           | 60. Ghana Grid Company Ltd.                                 |
| 7. Akwapim South District Assembly                     | 61. Ghana Institute of Journalism                           |
| 8. Amenfi West (Wassa Amenfi) District Assembly        | 62. Ghana Institute of Management And Public Administration |
| 9. Amenfiman Senior High School                        | 63. Ghana Investment Fund For Electronic Communications     |
| 10. Aowin Suaman District Assembly                     | 64. Ghana Library Board                                     |
| 11. Apam Senior High School                            | 65. Ghana National Fire Service                             |
| 12. Atua Government Hospital                           | 66. Ghana National Petroleum Corporation                    |
| 13. Bank of Ghana                                      | 67. Ghana News Agency                                       |
| 14. Bibiani / Anhwiaso / Bekwai District Assembly      | 68. Ghana Police Service                                    |
| 15. Birim Central Municipal Assembly                   | 69. Ghana Ports And Harbours Authority                      |
| 16. Bolgatanga Municipal Assembly                      | 70. Ghana Railway Development Authority                     |
| 17. Bolgatanga Polytechnic                             | 71. Ghana Railways Company Limited                          |
| 18. Centre for Scientific Research Into Plant Medicine | 72. Ghana Reinsurance Company Ltd                           |
| 19. Cocoa Marketing Company (Ghana) Limited            | 73. Ghana Revenue Authority                                 |
| 20. College of Health Sciences                         | 74. Ghana School of Law                                     |
| 21. Community Health Training School - Tanoso Sunyani  | 75. Ghana Standards Authority                               |
| 22. Controller And Accountant General Dept             | 76. Ghana Statistical Service                               |
| 23. Copyright Administration                           | 77. Ghana Tourist Board                                     |
| 24. Council for Scientific and Industrial Research     | 78. Ghana Water Company Limited                             |
| 25. Council of State                                   | 79. Ghana-India Kofi Annan Center of Excellence             |
| 26. Dabobase Secondary Technical School                | 80. Grains And Legumes Development Board                    |
| 27. Dental School                                      | 81. Half Assini Senior High School                          |
| 28. District Assembly Common fund                      | 82. Health Assistant Training School - Lawra                |
| 29. Driver and Vehicle Licensing Authority             | 83. Ho Polytechnic  |
| 30. Dunkwa District Hospital                           | 84. Holy Child College of Education                         |
| 31. Dunkwa Nursing Training College                    | 85. Internal Audit Agency                                   |
| 32. East Akim Municipal Assembly                       | 86. Jasikan District Assembly                               |
| 33. Economic and Organised Crime Office                | 87. Judicial Service  |
| 34. Effa Nkwanta Regional Hospital                     | 88. Jukwa Senior High School                                |
| 35. Effutu Municipal Assembly                          | 89. Keta Business Senior High School                        |
| 36. Electoral Commission                               | 90. Keta Senior High School                                 |
| 37. Ellembelle District Assembly                       | 91. Ketu District Hospital                                  |
| 38. Encyclopaedia Africa Project                       | 92. Kikam Technical School                                  |
| 39. Energy Commission                                  | 93. Koforidua General Hospital                              |
| 40. Environmental Protection Agency                    | 94. Komenda/ Edina/ Eguafu /Abirem District Assembly        |
| 41. Export Development and Investment Fund             | 95. Komfo Anokye Teaching Hospital                          |
| 42. Financial and Intelligence Centre                  | 96. Korle Bu Teaching Hospital                              |
| 43. Foods and Drugs Board                              | 97. Kumasi Academy  |
| 44. Forestry Commission                                | 98. Kumasi Polytechnic                                      |
| 45. Ga East Municipal Assembly                         | 99. Kumasi South Hospital                                   |
| 46. Ga South Municipal Assembly                        | 100. Kwabre District Assembly                               |
| 47. Ga West (Ga) Municipal Assembly                    | 101. Kwabre District Assembly                               |
| 48. Ghana Academy of Arts And Sciences                 | 102. Kwahu West District Assembly                           |
| 49. Ghana Aids Commission                              | 103. La Polyclinic  |
| 50. Ghana Airports Company Limited                     | 104. Lands Commission                                       |
| 51. Ghana Atomic Energy Commission                     | 105. Lawra District Hospital                                |
| 52. Ghana Audit Service                                | 106. Lawra Senior High School                               |
| 53. Ghana Broadcasting Corporation                     |   |
| 54. Ghana Civil Aviation Authority                     |   |



## Online Activities

107. Ledzokuku-Krowor Municipal Assembly  
 108. Legal Aid Board  
 109. Mamprobi Polyclinic  
 110. Management Development And Productivity Institute  
 111. Margaret Mary High School  
 112. Medical School  
 113. Mfantisiman Senior High School  
 114. Minerals Commission  
 115. Ministry Of Education  
 116. Ministry of Energy and Petroleum  
 117. Ministry of Environment Science and Technology  
 118. Ministry of Fisheries and Aquaculture Development  
 119. Ministry of Foreign Affairs and Regional Integration  
 120. Ministry of Health  
 121. Ministry of Justice and Attorney General  
 122. Ministry of Local Government and Rural Development  
 123. Ministry of Roads and Highways  
 124. Ministry of Tourism Culture and Creative Arts  
 125. Ministry of Youth and Sports  
 126. Mpohor District Assembly  
 127. Mpohor Wassa East District Assembly  
 128. Namong Senior High School  
 129. Nandom District Hospital  
 130. Narcotics Control Board  
 131. National Accreditation Board  
 132. National Board for Professional And Technical Examinations  
 133. National Cardiothoracic Centre  
 134. National Commission For Civic Education  
 135. National Development Planning Commission  
 136. National Disaster Management Organization  
 137. National Health Insurance Authority  
 138. National Insurance Commission  
 139. National Lottery Authority  
 140. National Peace Council  
 141. National Petroleum Authority  
 142. National Population Council  
 143. National Road Safety Commission  
 144. National Service Secretariat  
 145. National Theatre of Ghana  
 146. National Vocational Training Institute  
 147. New Juaben Municipal  
 148. New Tafo Hospital  
 149. Non Formal Education Division  
 150. Nursing and Midwifery Council of Ghana  
 151. Office of the Regional Health Directorate – Ashanti Region  
 152. Office of the Regional Health Directorate – Brong Ahafo Region  
 153. Office of the Regional Health Directorate – Central Region  
 154. Office of the Regional Health Directorate – Eastern Region  
 155. Office of the Regional Health Directorate – Greater Accra Region  
 156. Office of the Regional Health Directorate – Northern Region  
 157. Office of the Regional Health Directorate – Upper West Region  
 158. Offinso College of Education  
 159. Opoku Ware Senior High School

160. Parliament  
 161. Peki Senior High Technical School  
 162. Peki Training College  
 163. Pharmacy Council  
 164. Precious Minerals Marketing Corporation  
 165. Prempeh College  
 166. Presby College of Education - Akropong  
 167. Psychiatric Nursing Training School  
 168. Public Procurement Authority  
 169. Public Service Commission  
 170. Public Utilities Regulatory Commission  
 171. Registrar Generals Department  
 172. S.D.A. College of Education - Asokore  
 173. Savannah Accelerated Development Authority  
 174. School of Allied Health Sciences  
 175. School of Public Health  
 176. Sekondi Senior High School  
 177. Sekondi-Takoradi Metropolitan Assembly  
 178. Shama District Assembly  
 179. SIC Life Company Limited  
 180. Social Security and National Insurance Trust (SSNIT)  
 181. St. Augustine's College  
 182. St. Joseph's College of Education  
 183. St. Monica's College of Education  
 184. St. Theresa's Hospital - Nandom  
 185. Students Loan Trust Fund  
 186. Suhum Government Hospital  
 187. Suhum Municipal Assembly  
 188. Sunyani General Hospital  
 189. Sunyani Polytechnic  
 190. Swedru Senior High School  
 191. Tain District Assembly  
 192. Takoradi Polytechnic  
 193. Tamale Polytechnic  
 194. Tarkwa Nsuaem Municipal Assembly  
 195. Tema Development Corporation  
 196. Tema Metropolitan Assembly  
 197. Tetteh Quarshie Memorial Hospital  
 198. University Ghana School of Pharmacy  
 199. University Of Cape Coast (UCC)  
 200. University of Energy and Natural Resource  
 201. University of Ghana Business School (UGBS)  
 202. University of Health and Allied Sciences  
 203. University of Mines -Tarkwa  
 204. University of Professional Studies Accra  
 205. University Of Science And Technology (KNUST)  
 206. University Prac. Senior High School  
 207. Upper Denkyira East Municipal Assembly  
 208. Volta Regional Hospital  
 209. Volta River Authority  
 210. Wa General Hospital  
 211. Wa Polytechnic  
 212. Water Resources Commission  
 213. Wenchi East District Assembly  
 214. Wesley College of Education  
 215. Wesley Girls Senior High School  
 216. West Mamprusi District Assembly  
 217. Yaa Asantewa Senior High School



(Continued from page 1)

Among the myriad of challenges that confronted the PPA soon after its establishment was that of low levels of capacity among procurement practitioners within the public sector. *After all, what good is it to have a good law in the hands of unskilled people!* This therefore caused PPA to commission its first Training Needs Assessment (TNA) study which identified among others, huge capacity gaps and consequently lead to the development of a comprehensive set of training modules which are currently in use across the country.

**S**addled with logistical and other financial challenges, the Authority has not been able to establish offices as practically necessary across the country to monitor public procurement activities. However, with a passion to excel in its core function of monitoring and evaluation the PPA has developed one of its flagship IT software dubbed the Public Procurement Module of Excellence (PPME) tool which is able to capture and analyse annual public procurement data in a comprehensive manner and reveal the true state of public procurement in Ghana. It is expected that as the years go by, the system will become web-based to allow Entities to conduct their own public procurement self-assessments. In addition to this, the Authority has also provided a call centre which makes it more accessible to both the procurement entities and service providers and offer advisory services to its wide clientele base.

As a regulator of public procurement, one of our major challenges with the effective implementation of the Act 663 is with ensuring that entities procurement activities are planned and linked to budget releases for effective fiscal discipline. To proactively manage this situation, the PPA has developed a yet another IT application which is the public procurement planning software which uses IT to enforce the business rules of Act 663 by providing contract package numbers, prevent the tendency to break bulk in procurements and prescribe appropriate procurement methods for each procurement activity. Presently, the procurement planning software serves as an important source of information for the approving of single source procurement applications of entities by ensuring that contract values match up with what is captured as planned. With the view of establishing appropriate interfaces to other public financial management systems, the soft-



ware will be able to prevent these challenges and bring about efficiency and restore public confidence in the public procurement system in Ghana.

Furthermore, like many government institutions, the PPA has challenges with sufficient funding to support its activities and programmes. For instance, considering the need for continuous training of all functionaries within the public procurement system, the Authority needs to have its own office accommodation with an appropriate training environment to support its training activities. Perhaps it's time the procurement law is amended to allow PPA raise its own Internally Generated Funds to run its operations.

Although the challenges of PPA may seem daunting, the Authority is resolved to face these challenges head-on and squarely deal with them in order to ensure the total realization of its vision of becoming a "A world-class, efficient, transparent, accountable and professionally managed public sector procurement system in Ghana, which enjoys high level of business confidence, and ensures consistent attainment of best value for money in the procurement of goods, works and services, in support of national development and fiscal policies".

*Mrs. Rhoda Appiah*

**PPAO—PPA**





# THE CHALLENGES OF IMPLEMENTATION OF ACT 663 OVER THE LAST DECADE – PERSPECTIVE OF THE PUBLIC SECTOR



## Introduction

The Public Procurement Act, Act 663 of 2003 was passed to address the weaknesses observed in the implementation of the Public Financial Management Reform Programme (PuFMARP) in 1996. PuFMARP observed among other things:

- ⇒ Lack of structures to facilitate the procurement function.
- ⇒ Fragmented rules, regulations and procedures governing public procurement.
- ⇒ Lack of transparency and competition in the award process.
- ⇒ Perceived corruption in the award of contract.

Generally, Public Procurement process was seen to be inefficient and not linked to the achievement of corporate objectives. As a country, its citizenry did not benefit from good governance usually associated with Best Practices in Public Procurement.

## PUBLIC PROCUREMENT ACT, ACT 663

The Public Procurement Act was passed in 2003 and was fully implemented in August 2004. A decade into its implementation it can be said to have made significant impact on the procurement environment. Notable among these achievements are:

- ⇒ Professionalization of procurement practice with the establishment of the procurement class in the Public Service.
- ⇒ Visibility of the procurement function in Entities.
- ⇒ Establishment of procurement structures.
- ⇒ Increased competition and transparency in the contracting process.
- ⇒ Established appeals procedures.
- ⇒ Opportunities for continuous professional education through PPA facilitated capacity building activities.
- ⇒ An informed Private Sector through yearly interactions with entities.

⇒ Improved records management in Public Procurement.

On the whole, the Public Procurement processes have been streamlined culminating in a high level of sanity in the procurement environment. These positive strides have not been made without challenges.

These challenges include, inter alia, Procurement Planning and Implementation. Section 21 of the Public Procurement Act enjoins entities to prepare and submit their procurement plans by a month of the year preceding the implementation of the plan. Most entities have met this legal requirement. However, the budget releases have been erratic and inadequate making implementation of the plans difficult. Entities are not able to discharge their obligations under contracts on time resulting in threats of suits and lack of trust and confidence in the Public Procurement System. The culminating effect is that service providers build into their prices the cost of capital which eventually compromises on the principle of efficiency and value for money.

The second challenge is the difficulty of entities to accept procurement as a strategic value added function. Until the passage of the Act, procurement was handled by Chief Executives and their trusted cronies. With the advent of the law, it has been difficult for such persons to accept the change. There are, therefore, several cases of procurement decisions taken outside the ambit of the procurement unit. Goods, Services and Works are procured ahead of the process and the procurement unit only comes in to do damage control.

Closely linked with this challenge is the youthful nature of procurement practitioners in the public sector. The average age of practitioners is about 35 years with a greater majority less than 30 years. Some entities perceive these cadres as too young and should not be allowed to take strategic decisions and more importantly leading the procurement process.

Again the capacity of the practitioners in terms of knowledge, experience and numbers is challenged. There are entities without procurement professionals and therefore the practice is handled by others without the requisite background and or experience. In most hospitals Pharmacists have taken over the procurement of medicines even where appointed procurement professionals exist.

A study of the curriculum of the Polytechnic trained Procurement and Supply officers (HND Procurement and Supply) has revealed that the training is skewed towards private procurement. Graduates therefore require lots of coaching and mentoring to enable them function effectively.

The embargo on recruitment also poses a challenge. There are several vacancies for the recruitment of Procurement practitioners but the reluctance of Ministry of Finance to grant financial clearance to aid recruitment has constrained the recruitment process.

Another challenge in the implementation of the Law relates to the approval thresholds. These thresholds appear to be low as entities have to refer all competitive Tenders to the next approval level where the approving authority meets once a month. In some instances, entities are made to bear the cost of convening the meeting of the approved authority and pay allowances for such Board members. The cost of organizing one such meeting ranges from GHc 5,000 - GHc 7,000 This increases the procurement lead time and also the cost of transacting business.

Interferences in the procurement process from politicians, public officials and the general public is phenomenal. This puts pressure on procurement practitioners and limits their ability to run fair, transparent and competitive tendering. The general interest in public procurement can also not be wished away. From advertisement through evaluation and award, politicians, technocrats and other members of the public make demands for favours that challenge the transparency, competitiveness and overall sanctity of the procurement process.

The Private Sector capacity to compete with their foreign counterparts also remains a challenge. Completion and submission of tender documents remain the bane of the private sector. The inability of the service provider to appreciate the instructions to tenderers and to submit the relevant information at tenders, often render their offers/proposals non-responsive.

Also linked is the challenge of submission of Tender Securities. Most local firms fail to raise the relevant securities to support their tenders. Accessing funds from the Banks are unattractive due to the very high and prohibitive interest rates and other terms of lending. The situation is worsened if after contract delivery payment is unduly delayed.



The discourse on the challenges in the implementation of the public procurement law would be incomplete without a mention of the low level of remuneration and motivation for the procurement professional. An average procurement entity (a district hospital) will have a yearly procurement spend of above GHC 50,000. The procurement professional managing this procurement is however on a paltry salary of GHC 721.45, Level 14, and Point 1 on the Single Spine Salary structure. This certainly cannot attract, retain and motivate an officer whose job attracts lots of opportunities for making money. It is therefore no wonder that some practitioners compromise their positions to serve their personal interest.

In conclusion, I would like to place on record the transformation the passage of the Public Procurement Law has bestowed on the Public Procurement System. The structures are in place, procedures are largely followed and the procurement system seems to be sanitized. However, it would be worth the effort if the Public Procurement Authority would commission an evaluation to assess the extent of implementation and address the challenges associated therewith.

*Dr. Kwesi Addai Donkor*

*Ghana Health Service*



# THE CHALLENGES OF IMPLEMENTATION OF ACT 663 OVER THE LAST DECADE – PERSPECTIVE OF THE PRIVATE SECTOR



**T**he Public Procurement Act, Act 663 of 2003, principally seeks to ensure the judicious and economic use of state resources in public procurement. Within this context we have three key entities that play vital roles in its implementation. These are;

- ⇒ The Board, whose functions among others, is to make proposals for the formulation of policies on procurement and to ensure policy implementation;
- ⇒ The procurement entity, which is an agent or assign of the board responsible for procurement, subject to the Act and
- ⇒ The Supplier, Contractor and the Consultant forming the third party.

A look at the practical experiences encountered with the implementation of Act 663 over the last decade will thus require an assessment of these three stakeholders. However, since the role of the Board is mainly policy making, this article will concentrate more on the two interacting entities, namely the procurement entity and service providers who relate daily in the field of procurement.

The task of the Board of the Public Procurement Authority is principally to formulate policies to ensure efficient and effective use of state resources in public procurements and in a fair, transparent, and a non-discriminatory manner. I feel the object of the Act 663 should also have captured the interest and well being of service providers, as stakeholders in “the economic, judicious, and efficient use of state resources’ to ensure their own profitability to enable them to remain and grow in their businesses or enterprises.

The mutual interest of the two parties (State and the Service Provider) cannot be separated and should be of great concern to all stakeholders. The non-existence of this understanding is the cause of most of the problems that both the purchaser and supplier face in the implementation of Act 663. I will not dwell too much on the problems but look at how the two entities, with the best of intentions, can collaborate to ensure that either way, the best interest of the people of Ghana, will be paramount.

My views therefore are a representation of most of the players in the sector which collaborate the efforts of PPA



in the achievement of their objectives. I refer to the Suppliers of Goods and Services, Contractors and Consultants who offer their expertise, knowledge, resources and service to ensure the judicious, economic and efficient use of state resources in public procurement while ensuring a favourable return to the supplier.

The objective as enshrined in ACT 663 is very laudable in my estimation because to all intents and purposes I see myself, first as a Ghanaian and therefore part of what ACT 663 refers to as the state or public interest which we all strive to ensure for our mutual benefit.

I personally believe that a lot has been achieved by ACT 663 and I will try to enumerate some of the achievements vis-à-vis their attendant challenges;

One obvious achievement of the Act is the transparency that it has brought to the procurement of goods and services for the public sector. The public advertisement or circulation of information on tenders in the media, especially in the print media, has gone a long way to offer equal opportunities to all stakeholders to participate in a tender in a transparent manner. However, sometimes, this very laudable provision becomes somewhat veiled and leaves the impression that, though a tender invitation has been publicized, it was not really meant for general consumption. Some of these doubtful publications are placed in the media on public holidays or in prints with limited circulations. Those of us who have been part of the civil service sector and even those of the private sector will attest to the fact that most people read the newspapers at work from Monday to Friday. Any advertisement therefore made outside these days is often missed, hence the impression is created that it was intentionally placed as such, to exclude certain Tenderers. It is my hope that public organizations will take account of this to make publications of tenders most visible and accessible..

Another associated challenge to Act 663 is the availability of tender documents to be purchased by prospective suppliers at the time promised. Experiences have been shared about prospective suppliers who travel from one part of the country to another to purchase tender documents only to be told that the documents are not ready. The frustrations arising from this make prospective and interested parties abandon their plans of participation.

The description of items in tender publications some-

times clouds the actual of what the publication is all about. Cases are when equipment such as computers and laboratory equipment are bundled together and placed in a publication headed “Tender for the Supply of Stationery”, though the details of the tender can be sought in the tender document; one is not attracted to pay for a document whose publication fails to clearly state what is being looked for.

Still on the challenges of publications which to me derail the object of ACT 663 is the mixture or combination of items which have no relations at all in a lot. How do you for instance put under one lot a mixture of computers, air conditioners and medical consumables and direct that a tenderer can bid for all?

So far I have been talking about some experiences that we have had regarding the publication or notification of suppliers about tenders.

I think there are many more experiences that we may need to address ourselves to in ensuring that the full benefits or the objects for ACT 663 are achieved. It is a fact that ACT 663 stipulates a period not exceeding four weeks and at least six weeks for NCT and ICT respectively. Sometimes however, the period for response as publicized goes contrary to the terms of ACT 663. Time to respond to tenders is at times too short. Section 45 (C) of ACT 663 states, inter-alia that, a period of at least 4 weeks and six weeks be allowed for the submission of tenders to allow for sufficient time for the invitation to get to all and preparations made for the tender. Short response time makes it difficult for suppliers to do proper sourcing for the best in terms of quality and price and the ultimate loser becomes the state that we strive to protect.

In all instances, the collaboration of third parties whose consent in the provision of one form of certificate or the other can jeopardize a suppliers desire to participate in a tender. Recently we were forced to pull out of a tender because a body that was supposed to provide us a certificate had its computer system and power down for weeks. Can we find an answer to this with the acceptance of a letter from the issuing authority rather than penalizing an innocent supplier who has nothing to do with the power supply or computer systems of a public organization?

Sole sourcing as a means for procurement in recent days, though ACT 663 permits that, has raised concerns in various circles in the selection and approval for such procurement methods. The perception has been that these sole sourcing methods are often skewed to benefit various inter-



ests without necessarily considering the value for money concept. One wonders why at times, material and human effort are wasted in the preparation and submission of tender only to be told that the procurement entity has a preferred supplier. Lots of savings could have been made by both the purchasing entity as well as the supplier if approval had been sought for the sole sourcing of the items.

The document and processes in public tendering must be made tender friendly in its understanding and implementation.

Procurement thresholds need to be reviewed upwards to allow for purchases that are of urgent nature without resorting to breaking up or purchasing items in parts just to avoid the whip of the state. The problem associated with this practice is that, most often the supposed pieces of a whole, purchased in parts may not be compatible. The quality of the equipment purchased under such a situation is also compromised. The recent depreciation of the cedi against the major currencies makes such a call very relevant.

Delays in evaluation of tenders and its associated cost of participation in Tenders are seriously impacting on the number of companies which subject themselves to the frustrations and disappointments in tender participation. A few examples to explain this problem can be mentioned for appreciation and possible solutions. In doing this I will try to delve into what goes into a typical participation in a tender process.

1. Cost of Tender Document: Is it possible that purchasing entities can have procurement plans at the commencement of a procurement year, and based on that negotiate a one package deal with a supplier through competitive tendering, rather than advertising for every single item at different times of the year. The duplicated publications, sale and purchase, the processes of preparation of the tender document, securing bid securities, tax and SSNIT Certificates, Registrar Generals certificates, evaluation and notifications all make the cost of participating in tenders not attractive, thus keeping some potential suppliers out of the race.
2. Evaluation of Tenders are also over delayed by some institutions and where a respondent has not been responsive or loses the tender, it takes forever to be notified. (Though, Section 29(5) of ACT 663, requires that Tenderers should be notified soon after the contract has been awarded and the securities retired). This notification in most cases

is not done and the securities are held by the procurement body till the supplier goes to demand the retirement of the security. The charges and interest accruing from the delay in notifying suppliers is not just acceptable, but what can the supplier do? The whole scenario is like the supplier is always at the mercy of the purchaser.

3. The two percent (2%) Bid Security requested is too high: I have a friend who has participated in a tender whose value was way above \$13 million and he was, as part of the conditions for submission, to provide 2% bid security which amounted to \$260,000. His problem was not with the \$13 million, because his principals could supply him with the equipment on a 60 days credit terms basis but not the \$260,000 bid security and the associated cost which could arise, if the evaluation and offer of the tender was unnecessarily delayed. I wish I could offer a solution to this particular problem because much as bid securities are essential in Tendering, the percentage is too much on the high side. Can we consider black listing and the circulation of the names of non performing companies for a period of time as an option to the current two percent bid security?
  4. Public procurement, by ACT 663 is to ensure that procurement is carried out in a fair, transparent and non-discriminatory manner. What about instances when the opening is not done as publicized because the procurement entity claims they are busy with other responsibilities and that the submitted document would be opened at a later date when they are less busy to do that. In a situation like this the element of transparency is obviously sacrificed and cast in a frame of doubts and suspicion.
- Though there are a lot more we can address ourselves to regarding the publications and evaluation of tenders, I think as businessmen our greatest concern should be how to reduce cost and get profitable returns after submitting ourselves to the processes of a Tender. What is in it for me, and what do I get in it becomes very paramount.
5. Delays in Payment for jobs well executed: In all instances the terms for payments for offers are well stated, and unlike the penalties and sanctions which are easily and readily invoked and applied by the procurement entities for non responsiveness on the

part of the supplier, the same zeal, vigor and interest is not applied when it comes to payments to contractors and suppliers. Much as ACT 663 finds it necessary to impose penalties for breaches in the execution of awards so should it be relevant for compensations to be made to suppliers when payments are delayed. The problem of payments becomes more compounded when funding is from Government. More often than not, and much as the funding from external sources may be delayed, the counterpart funding from internal sources could take forever. I know a company which fully supplied and installed equipment worth millions of dollars and for over two years it has not been fully paid. All that the suppliers and contractors can do, is to make hundreds of calls, thousands of visits, beg for mercy and end up with the remark "we will try and pay you when we get our next release". When is the next release?, no one seems to know. Meanwhile the cost of the money invested keeps on mounting but the supplier is not permitted to vary the contract price till it resorts to court action which also comes at a cost of money and time to the supplier. Is this the best reward that the supplier, the contractor and service provider can get for accepting to serve his/her country? I don't think so.

6. Will it be prudent and justifiable then if suppliers despite its illegality start "dollarizing" quotations to secure their investments.
7. Can we imagine what it means when the scarce capital of a supplier is blocked for the period of processing and evaluation and the undue delays suffered contrary to the terms of the contract? Can we consider what the losses are with the current depreciation of the local currency against the currencies of our sources of supply? As a businessman what I know as a basic investment principle is that, capital must not be left idle, but must be made to work and yield more. Where is my detained capital, when will be released to enable it to be vested in other ventures which could provide competitive returns with less difficulties and frustrations.

Are there other investment opportunities the supplier can put his money in and forget about the rigours and uncertainties in tender preparations

and participation, avoid the headache of employment of human capacity and its related problems, enjoy tax exemptions and still get margins over twenty percent rather than margin that can go as low as zero percent in tender situations. The answer is yes. Care must therefore be taken to avoid a shift of bodies with the capacity and competencies of supplying goods and services into other areas of investments rather than being part of the public procurement process.

Probably we can consider the establishment of an arbitration and complaint department under the umbrella of PPA where matters relating to delays can be arbitrated and enforcement and compliance measure taken to remedy breaches in the terms of contractual agreements.

8. What we must realize is that we (both the purchasers and the supplier) are in the same boat and that we float and sink together. ACT 663 in its present form is to ensure that state resources are judiciously used to avoid losses and ultimately make gains for the state. What we forget is that the contractor/supplier also aims at making the best use of his resources to make more money and pay all relevant taxes to the state. At the end of it all the common factor here is the state that we are all part of.

I know that this short write-up cannot bring out all the experiences and challenges of the various stakeholders in public procurement but lead into a probe and further discussions on making the implementation of Public Procurement Act, Act 663 of 2003 a means of getting the best in terms of goods and services to the state and the best in investment returns to the investor in the next decade.

The collective and collaborative effort of both the procurement and supplying entities, working under the supervision of the Board in satisfying the needs of each other will be to the mutual benefit of our Motherland, Ghana and all stakeholders.

We are in the same boat; we float and sink together.

**Tony N.N. Baffour**

*Ultimate Supplies Limited*





## Tendering and Contract Information for Periods Indicated

[Tendering Opportunities for May - Jun 2014](#)

[Contracts Awarded for Jan - Dec 2014](#)

[Restricted Tender Awards Jan - Dec 2014](#)

[Expression of Interest Requests May - Jun 2014](#)

The links above will take you directly to the PPA Website Reports for the months of period indicated.



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