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**CHALLENGES TO THE IMPLEMENTATION OF THE PUBLIC
PROCUREMENT ACT, 2003 (ACT 663) AT STATE OWNED
ENTERPRISES (A CASE STUDY OF GHANA PORTS AND HARBOURS
AUTHORITY)**

**BY
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TECHNOLOGY IN PARTIAL FULFILMENT OF THE REQUIREMENT
OF THE DEGREE (MSC PROCUREMENT MANAGEMENT)**

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DECLARATION

I hereby declare that this study is the result of my own work towards the award of MSc in Procurement Management and that to the best of my knowledge, it contains no material previously published by another person nor material which has been accepted for the award of any degree of the University except where due acknowledgement has been made in the text.

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ABSTRACT

The Public Procurement Act of 2003, Act 663 was enacted in 2003 to harmonise public procurement process, secure judicious, economic and efficient use of state resources and ensure that public procurement functions undertaken within the public sector are fair, transparent and non-discriminatory. Public procurement accounts for about 50% to 70% of total government expenditure, represents 14% of Gross Domestic Product and accounts for about 24% of total imports of Ghana. Since the coming into effect of the Act a number of challenges have been affecting its effective implementation. There, also, have been difficulties in the application of the Act in state owned Enterprises some of which seek freedom from the Act because their activities are not funded from the consolidated fund and they compete in private sector environments. The objectives of this study, therefore, are to identify the implementation challenges at the Ghana Ports and Harbours Authority (GPHA) (a state owned enterprise) and also identify remedies to address these challenges. Quantitative research approach was employed. Purposive sampling method was used to select respondents who were directly involved in procurement activities at the GPHA to take part in the survey. Structured questionnaires were used to collect the relevant data from the participants. The results of the study show the main implementation challenges include : lengthy procurement process due to the several layers of approving structures, low procurement thresholds for entity tender committee, incorrect interpretation and application of some provisions of the ACT and lowest evaluated mindset in the award of contract. The following recommendations were made to address the challenges: the Act should be revised to reduce the number of approving structures, the thresholds should be revised, ambiguities in some of the sections should be clarified and entity tender committees should be empowered to verify the reasonableness of major rates submitted by bidders.

DEDICATION

Firstly, I dedicate this research work to the Almighty God by whose grace and protection I have been able to reach this level of education.

Secondly, to my late father Anthony Kofi Adugu and my octogenarian mother Priscilla Akoete-Adugu both of whom sacrificed immensely for me and siblings to reach wherever we have all gotten to in life.

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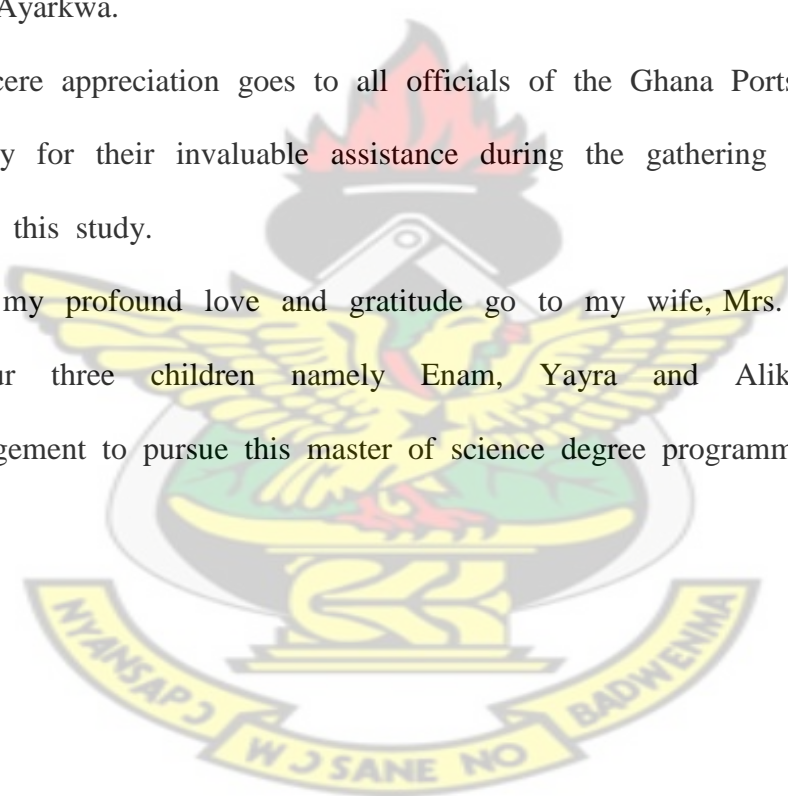


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ABBREVIATIONS AND ACRONYMS

PPA.....	Public Procurement Authority
GPHA.....	Ghana Ports and Harbours Authority
PUFMARP.....	Public Financial Management Reform Programme
MDA.....	Ministries Departments and Agencies
ODPP.....	Office of the Director of Public Procurement
DA.....	District Assemblies
GDP.....	Gross Domestic Product
OECD.....	Organisation for Economic Co-operation and Development
DAC.....	Development Assistance Committee
IBRD.....	International Bank for Reconstruction and Development
PWD.....	Public Works Department
GSC.....	Ghana supply commission
GNPC.....	Ghana national procurement agency
FIDIC.....	International Federation Of Consulting Engineers
SOEs.....	State Owned Enterprises
ICT	International Competitive Tendering
NCT.....	National Competitive Tendering
UNCTAD.....	United Nations Conference For Trade And Development
PPDA.....	Public Procurement and Disposal of Assets Authority
PDE.....	Procuring and Disposing Entities
SME.....	Small And Medium Scale Enterprises
PNDC.....	Provisional National Defence Council
GRC.....	Ghana Railways Company
GPA.....	Ghana Ports Authority

GCHC.....	Ghana Cargo Handling Company
TLC.....	Takoradi Lighterage Company
SPSS.....	Statistical Package for Social Sciences
ECG.....	Electricity Company Of Ghana
SAP.....	Structural Adjustment Programme
ERP.....	Economic Recovery Programme
DIC.....	Divestiture Implementation Committee

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

Governments of both developed and developing countries spend money on the acquisition of goods, works and services. To ensure judicious, economic and efficient use of state resources public procurement is necessary (Public Procurement Act, 2003).

Public procurement is the process by which organizations acquire goods, works and services using public funds. It includes planning, inviting offers, awarding contracts and managing contracts (Public Procurement Authority, PPA, 2007).

According to the PPA (2007) public procurement has a direct impact on the successful delivery of government projects and public services. It ensures sound public financial management by delivering value for money in government expenditure. It also encourages private sector growth and investment and reduces corruption.

The PPA (2007) further states that public procurement accounts for 50% to 70% of the national budget, 14% and 24% of gross domestic product and total imports respectively.

Thai (2001) noted that public procurement is an important function of government as the huge procurement outlays have great impact on the economy of any country.

Arrowsmith (1998) also asserts that procurement is an important tool for the achievement of the economic, social and other objectives of governments.

The Government of Ghana, launched the Public Financial Management Reform Programme (PUFMARP) in 1996 with the aim to improve overall financial management in Ghana (PPA, 2007). PUFMARP identified weaknesses in the procurement system. Some of these weaknesses included: lack of comprehensive public policy, lack of central body with technical expertise, absence of clearly defined roles and responsibilities for procurement entities, absence of comprehensive legal regime to safeguard public procurement, lack of rules and regulations to guide, direct, train and monitor public procurement. (Ameyaw et al, 2012).

Before the commencement of this reform programme, procurement was guided by many different rules. Government officials struggled to identify which rules to follow due to lack of policy framework for public procurement, (Suleima, 2010) as cited by Gnanih (2012).

In 1999, the Government of Ghana established the Public Procurement Oversight Group to steer the development of a comprehensive public procurement reform programme. (PPA, 2007)

As a result, the Public Procurement Bill was drafted in 2002 and this was passed into law on the 31st of December 2003 as the Public Procurement Act of 2003, Act 663. (PPA, 2007)

The act established the Public Procurement Authority (Section 1 of Act 663) with the main object of harmonizing the processes of public procurement in the public service to secure a judicious economic and efficient use of state resources and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner.

The Act also provides procedures and processes for the procurement of Goods, works and Consultancy services. It requires Procurement Entities to prepare procurement plan for each fiscal year and prepare quarterly updates for approval by the Entity Tender Committee. The Act, further, outlines procedures for the preparation of specifications, bid invitation, bid evaluation, award of contract and contract management. Since the implementation of the Act a number of challenges have been identified which have been affecting the effective implementation of the Act (Auditor Generals Report, 2011).

This study looks at the implementation challenges to the implementation of the Act at the Ghana Ports and Harbours Authority.

1.2 STATEMENT OF THE PROBLEM

The Public Procurement Act has been in enforcement since 2003 but since its formulation and implementation compliance to the law by various entities has been very challenging (Adjei, 2006).

Evidence in literature suggests that procurement challenges relating to Ghana are similar to the situations in many African and some Asia countries (Kumaraswamy, 1994, cited in Collins, Mensa and Osei Tutu 2012).

The National Public Procurement Authority of Sierra Leone in its 2005 report outlined several challenges affecting the work of the Authority. Some of these were inadequate funding, deficient staff strength and organizational and logistical limitations (Ameyaw et al., 2012).

Wilson (2004) cited in Ameyaw et al., (2012), argued that laxity in the legal and administrative systems and extensive powers in the hands of politicians affect the enforcement of procurement laws.

The country Procurement Assessment Report Ghana (World Bank, 2003b) revealed that most staff members of Ministries, Departments and Agencies (MDAs) and District Assemblies (DAs) responsible for procurement were not procurement proficient even though they have been trained.

Forgor (2007) agrees that lack of proper training of managers on the process is a challenge that confronts procurements reforms.

Azeem (2007) supports the assertion that poor dissemination of procurement law also militate against procurement reforms (World Bank, 2003b)

Poor records keeping (World Bank, 2003b), delays in payment of contractors and suppliers are also crucial factors that challenge reform implementation (Azeem, 2007).

Low level and absence of capacity building for service providers inhibit successful public procurement in Malawi (ODPP Annual Report, 2007).

A lot of studies have been conducted into the challenges to the implementation of the Act in the Metropolitan, Municipal and District Assemblies in Ghana. However, not much study has been conducted into the challenges to the implementation of the Act in State Owned Enterprises. The object of this research is to identify the specific challenges that militate against the implementation of the Act in a typical state owned enterprise and provide solutions to address these challenges.

1.3 AIM:

The aim of the study is to identify the challenges facing the implementation of the Public Procurement Act 2003, Act (663) at the Ghana Ports and Harbours Authority

1.4 OBJECTIVES

The specific objectives of the study are:

- To identify the challenges to smooth implementation of the Procurement Act at the Authority.
- To identify remedies to resolve the challenges.

1.5 RESEARCH QUESTIONS

The following key research questions will be used to facilitate the study:

- What are the challenges to the implementation of Procurement Act at the Authority?
- What are the remedies to resolve the challenges?

1.6 SIGNIFICANCE OF STUDY

There have been difficulties in the application of the Act in state owned enterprises some of which seek freedom from the Act because their activities are not funded from the Consolidated fund. This has occurred with particular reference to commercially oriented state owned enterprises that have to compete in a private sector environment.

This study is, therefore, relevant for three (3) major reasons

- 1) It would help the Ghana Ports and Harbours Authority adopt practices that would conform to the provisions of the Act.

- 2) It would also provide an analytical perspective for understanding the challenges to the implementation of the Act in similar state owned enterprises.
- 3) The recommendations would complement the Public Procurement Authority (PPA) efforts at removing challenges to the implementation of the procurement Act especially in State Owned Enterprises.

1.7 SCOPE OF STUDY

This survey covers only the Ghana Ports and Harbours Authority. The study is also limited to the implementation challenges confronting the Authority in its procurement activities using the Public Procurement Act 663 of Ghana.

1.8 METHODOLOGY

1.8.1 Study Population

Ghana Ports and Harbours Authority employs about three thousand (300) staff made up of about 300 senior staff and about 2700 junior staff (Bortey, 2011). They constitute the study population. The focus however would be on those who were directly involved in procurement activities.

1.8.2 Research Approach

A quantitative research approach was adopted.

1.8.3 Analysis of Data

The data collected was analysed using weighted mean and standard deviations. Descriptive statistics in the form of tables and charts were also used where necessary..

1.9 LIMITATION OF STUDY

The following were some of the constraints encountered during the study.

1. The unwillingness of some of the respondents to release information that could enrich the study. The participants are public sector workers and would not want their identities to be revealed and thought the answers they provided might be used against them. This was mitigated by assuring them that the study was for academic purposes only and that they should not indicate their names on the questionnaire.
2. The researcher had to combine academic work with his regular office work and family life.
3. The results of this research, however, are a good foundation for more detailed study which may lead to amendments to some sections of the Act 663.

1.10 STRUCTURE OF THE REPORT

The dissertation is organized into five (5) chapters. viz

Chapter One

This covers the introduction, background, problem statement, objectives of the study, research questions, significance, and organization of the study.

Chapter Two

This chapter reviews literature on public procurement in general and then focuses specifically on public procurement in Ghana including: how procurement functions were undertaken before the public procurement reforms in Ghana; the legal framework of public procurement Reforms in Ghana, the

procurement cycle, the Public Procurement Act, 663 procurement challenges, remedies to the challenges and state owned enterprises .

Chapter Three

This describes the methodology including study population, sampling procedure, data collection procedure and mode of analysis.

Chapter Four

This chapter summarises, analyses, and discusses the findings of the research

Chapter Five

This chapter comprises summary of the findings, conclusions and recommendations.



CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

Literature review accomplishes several purposes. It shares with the reader the results of other studies that are closely related to the one being undertaken. It relates a study to the larger ongoing dialogue in literature filling in gaps and extending prior studies (Cooper, 1984; Marshall & Rossman, 2006). It provides a framework for comparing and establishing the importance of the study as well as a benchmark for comparing the results with other findings (Creswell, 2009). This chapter reviews literature on public procurement in general and then focuses specifically on public procurement in Ghana including: how procurement functions were undertaken before the public procurement reforms in Ghana; the legal framework of Public Procurement Reforms in Ghana; the Procurement Cycle; the Public Procurement Act, 663, sanctions for non-compliance; and procurement challenges and remedies to address the challenges.

2.2 DEFINITION OF PUBLIC PROCUREMENT

Public procurement is the process by which large amounts of public funds are utilized by public entities to purchase goods and services from the private sector (Hunja, 2003). According to the Public Procurement Authority of Ghana, public procurement is the process by which the Government purchases goods, works and services using public funds. It includes planning, inviting offers, awarding contracts and managing contracts (PPA, Training module 1, 2007). It further states that, it involves the acquisition of goods and/or services and works at the best possible total cost of ownership in the right quantity, quality,

time and place and in the right way i.e in accordance with the Act (PPA Module 3, 2007).

Ayitey (2012) emphasizes that public procurement is a comprehensive process that runs from proper procurement planning ,budget allocation, bids invitation, bids evaluation, award of contract, contract management, performance management, monitoring, auditing and reporting.

2.3 OVERVIEW OF PUBLIC PROCUREMENT

2.3.1 The History of public procurement

The earliest known public purchase order, written on a red clay tablet dated between 2400 and 2800 BC, comes from Syria. The order was for 50jars of fragrant smooth oil in return for 600 small weights in grain. Other evidence of early procurement includes the development of the silk trade between china and a Greek colony in 800 BC (Thai, 2001). Through the years, the importance of procurement in the modern state has grown exponentially.

2.3.2 Importance of Public Procurement

Pegnato (2003) asserts that public procurement involves huge financial outlays. He pointed out that in the United States of America, about US \$ 200 billion a year is funneled through the federal procurement system to buy everything from stealth fighters to paper clips per annum while Coggburn (2003) puts the combined level of state and local government's value of procurement at over US \$ 1 trillion. Thai and Grimm (2000) estimated governments' collective purchasing at around 20% of Gross Domestic Product (GDP) while for developing countries, Nicol (2003) puts the figure at 15% of GDP. The Organisation for Economic Co-operation and Development (OECD)

Development Assistance Committee (DAC) (2003) estimated the volume of global public sector procurement at 8 percent (US \$ 3.2 trillion) of the worldwide GDP of US \$ 40 trillion. Thai (2001) noted that public procurement is not only perceived as an area of waste and corruption but also is considered as an important function of government because the huge procurement outlays have a great impact on the economy and have to be well managed. Arrowsmith (1998), also asserts that procurement is an important tool for the achievement of economic social and other objectives of governments. According to PPA(2007), public procurement has a direct impact on successful delivery of government projects and public services; enhances sound public financial management by achieving value for money in government expenditure, reduces corruption and encourages private sector growth and investment.

Thai (2001) observes that due to the importance of public procurement in both economic and social development, the World Bank's Procurement under IBRD loans and IBRD credits specifies four major concerns or objectives of public procurement for projects it finances:

- Ensuring that the loan is used to buy only those goods and services needed for the project
- Ensuring fair competition for all qualified bidders from World Bank's eligible countries
- Promoting transparency and
- Encouraging development of indigenous contractors and manufacturers by allowing local buyers to build in a margin of preference for local contractors and manufacturers

2.4 PROCUREMENT PRINCIPLES AND ETHICS

2.4.1 Basic objectives of good procurement

According to PPA (Training Module 3, 2007) good procurement objectives are to procure the right quality of goods, works or services from a reliable supplier in the right quantity whilst ensuring cost effectiveness.

2.4.2 Factors affecting achievement of procurement objectives

The following factors affect the achievement of good procurement objectives (a) professionalism (b) Transparency (c) value for money (d) competitiveness (e) accountability (f) fairness (g) Efficiency (h) Ethical Approach (PPA , 2007).

2.4.2.1 Professionalism

Professionalism is the discipline whereby educated, experienced and responsible procurement officers make informed decisions regarding purchase operations. The role of procurement professionals is therefore critical to Ghana's economic development. The public procurement act recognizes this by stating that the Public Procurement Authority should develop, promote and support training and professional development of persons engaged in public procurement and ensure adherence by the trained persons to ethical standards.

2.4.2.2 Value for money (economy)

This is to secure a judicious economic and efficient use of state resources at a reasonable cost (Act 663). Value for money is not only about achieving the lowest initial price; it is defined as the optimum combination of whole life costs and quality (PPA training manual, 2007). It therefore takes into account

not only the price but also the quality of the product, the length of service that can be expected the after-sales service and other aspects of conditions of sale.

Value for money therefore is a critical measure of the effectiveness of the procurement process, its outputs and outcomes.

2.4.2.3 Competitiveness

Competitiveness means actively encouraging greater supplier participation in the tendering process through advertising, sourcing reviews, prequalification and transparent procedures. The merits of competitiveness include;

- ❖ Potential for cost savings
- ❖ Increases the potential supplier base
- ❖ Greater awareness of new developments
- ❖ Greater understanding of the Act and confidence in the public sector

2.4.2.4 Accountability

Accountability can be described as the process of holding an individual or an organization fully responsible for all aspects of the procurement process over which they exert authority.

Accountability

- strengthens the perception of transparency and fairness
- reduces the incidence of corruption

2.4.2.5 **Fairness**

Fairness in public procurement implies showing consideration and impartiality at all stages of the procurement process especially demonstrating equality in tender evaluations.

It results in

- Development of mutual trust
- Increases the potential supplier base

2.4.2.6 **Efficiency**

This means a system which operates in a timely manner with a minimum of bureaucracy, while being responsive to the needs of the ultimate users of the goods or facilities procured.

2.4.2.7 **Ethical Approach**

This is concerned with moral principles and values which govern our beliefs actions and decisions. Ethical approach implies exemplary approach to all procurement processes that cannot be questioned or criticized.

2.4.2.8 **Transparency**

This means that the same rules apply to all suppliers of goods, works and services and that these rules are publicized as the basis of procurement decisions prior to their use.

According to Schooner (2002) cited in Opong (2013), in procurement, transparency is maintained and achieved in many ways. These include

- 1) Publishing all the statutes, regulation and rules that define the procurement process of an organization
- 2) Announcing government requirements – what is expected to be purchased – for all the world to see
- 3) Clearly articulating in every solicitation on how vendors and contractors will be evaluated
- 4) Notifying all of the unsuccessful vendors and contractors (and members of the public who request the information) which vendors and contractors received the award and for what amount and
- 5) Debriefing unsuccessful vendors and contractors and explaining to them how all of the rules and regulations were followed

Shadrach and Ekyeanyanwu (2003) suggested that Information and Communication Technology (ICT) and e-commerce systems help in the enhancement of transparency through effective audit for the great volume of simple low value transactions while for high value complex procurement processes, the key transparency features included: public access to up-to-date policies; information on bidding programs; standardized documentation and lodgments of bids, progress of tender evaluation and announcement of outcomes. They therefore concluded that for high value procurement processes transparency is strengthened through direct public disclosure of all stages of the procurement processes; while for low value procurement transparency is strengthened primarily through improved audit capabilities.

2.5 PROCUREMENT ACTIVITIES BEFORE THE PUBLIC PROCUREMENT REFORMS IN GHANA

Ghana has accumulated considerable and valuable experience in public procurement under civil and military administrations (World Bank, 2003). Agbesi (2009) noted that in the pre-independence era, that is prior to 1957 there was a public procurement policy in which public procurement was treated as part of the colonial administrative process in the British Empire. The colonial administration engaged Public Works Department (PWD) for procurement of works and Crown Agents for procurement of goods. From independence (1957) to 1967 Government of Ghana relied less frequently on Crown Agents for procurement of goods and procured goods directly through Ministries Departments and Agencies (MDAs). For procurement of works, Government set up the Ghana National Construction Corporation (GNCC) to carry out works and reduced the force account component of PWD. In 1960, the Government established the Ghana Supply Commission (GSC) for procurement of goods for all public institutions. In essence, GSC took over the functions of Crown Agents. In 1976, the Government established Ghana National Procurement Agency (GNPA) for procurement of bulk items such as sugar, fertilizers, auto parts etc for sale to the public and private sectors.

By 1996, the Ghana Supply Commission (now Ghana Supply Company Ltd since 2000) and the Ghana National Procurement Agency which were the main governmental procurement agencies became inefficient as a result of the lack of qualified personnel, lack of planning for the required goods and long delivery times. As a result some sector ministries such as the Ministry of

Health decided to conduct their own procurement functions which led to some individual procurement programs in these ministries with some input from the Ministry of Finance and some donor agencies (Verhage et al, 2002). It is important to note that prior to the enactment of the Public Procurement Act, 2003 (Act 663) there was no comprehensive guidance on the scope and procedures for the procurement of goods, works and services in Ghana (Anvuur and Kumaraswamy 2006). For instance the procurement of construction works and services had been regulated mainly through circulars from the Ministry of Finance. This complemented a set of procedures evolved by convention in connection with the control of procurement exercised by the Ministry. Central, Regional and District Tender Boards supervised the tendering process and award of contracts within thresholds defined by the Ministry of Finance (Anvuur and Kumaraswamy, 2006). World Bank projects used the World Bank Procurement Guidelines (World Bank, 1995) and World Bank Consultant Guidelines (World Bank, 1997) for the selection of consultants. The procurement method used for public works is the traditional method, with design split from construction. There is a provision for mandatory registration and classification of contractors under guidelines administered by the Ministry of Works and Housing. These arrangements notwithstanding the Ministries Departments and Agencies (MDAs) and District Assemblies (DAs) maintained separate lists for the pre-qualification of contractors and used different standard conditions of contract for works procurement (Adjei, 2006) cited in (Glavee-Geo, 2008). World Bank administered projects used the International Federation of consulting Engineers (FIDIC) conditions of contract for works contracts and shortlists for the selection of consultants.

Glavee-Geo (2008), quoting World Bank (1996) and Eyiah and Cook (2003) explained that the classification of contactors by the Ministry of Water Resources, Works and Housing were observed to be too general and obsolete and the registration criteria, lists of contactors and monetary thresholds were not updated regularly. Except for major and complex assignments, most government-financed architectural consultancy services and project supervision were assigned to the Architectural and Engineering Service Limited on sole source basis (World Bank, 1996). The shortlists used on World Bank – administered projects for the selection of consultants were observed to be repetitive, with the same firms selected for civil engineering and building works supervision. Many instances of a single contractor buying and pricing all the bidding documents and of the award of a number of contracts (or lots) to the same contractor/supplier, under different company names were also observed (Crown Agents, 1998; Westring, 1997). Studies have shown that public procurement represents about 24% of total imports of Ghana and apart from personnel emoluments, it represents between 50 – 70% of the national budget (Adjei, 2006) and thereby contributing about 14% to Ghana's Gross Domestic (GDP). This undoubtedly justifies why management of public procurement has assumed a very important place in national development.

2.6 THE LEGAL FRAMEWORK OF PUBLIC PROCUREMENT REFORMS IN GHANA

The Government of Ghana launched the Public Financial Management Reform Program (PUFMARP) in 1996 with the aim of improving the overall public financial management in Ghana. In 1999, the Government of Ghana established

the Public Procurement Oversight Group to manage the development of a comprehensive public procurement reform program. The Public Procurement Bill was drafted in 2002 and this was passed into law on 31st December 2003 as the Public Procurement Act of 2003, Act 663 (Adjei, 2006)

2.7 THE OBJECTIVES AND SCOPE OF THE PUBLIC PROCUREMENT

ACT 663

The main objectives of Act 663 are to harmonise public procurement processes in the public service; secure judicious, economic and efficient use of state resources and to ensure that public procurement functions undertaken within the public sector are fair, transparent, and non-discriminatory. The Act applies to procurement financed wholly or partly from public funds; procurement of goods, works, services, and contract administration; disposal of public stores and equipment, not forgetting procurement financed by funds or loans taken by the government of Ghana, including foreign aid funds. The Act however have some exceptions and does not apply to some situations such as: where the Minister decides that alternative procedures are in the national interest; where a loan or funding agreement specifies alternative procedures and excludes stores management and/ or distribution (Glavee-Geo, 2008).

2.8 STRUCTURE OF THE LEGAL FRAMEWORK AND REGULATORY FRAMEWORK FOR PUBLIC PROCUREMENT IN GHANA

The basic structure of the legal and regulatory framework of public procurement in Ghana consists of the Public Procurement Act 663 of 2003; Public Procurement Regulations ; Public Procurement Manuals; Standard tender

documents and Guidelines to assist public procurement practitioners. Table 2.1 below shows the structure of the legal framework of public procurement in Ghana. Under the Act 663 regulations are issued by the Minister for Finance in consultation with the Public Procurement Authority under section 97 of the Act. They contain detailed rules and procedures for all aspects of the procurement system; the operations of the Public Procurement Authority and the procurement entities and the conduct of procurement activities. (Public Procurement Authority, 2007). As part of the legal framework, Public Procurement Authority (PPA) is authorized to issue guidelines and to provide supplementary guidance on specific topics that are needed to help streamline the conduct of public sector procurement in Ghana. Some specific topics have to do with guidelines on the disposal of public assets, single source or restricted procurement or margins of preference. The legal framework also covers the issue of standard tender documents and manuals for the conduct of procurement by the Public Procurement Authority services, while the manuals issued by the Public Procurement Authority provides practical guidance and step by step procedures for undertaking of procurement functions in accordance with the Act 663 and with standard form to assist in procurement record keeping (PPA,2007).. The Standard documents are issued by the Procurement Authority and are listed in Schedule 4 of the Act 663. The standard tender documents comprises standard invitation documents for goods, works and consultancy services.

Table 2.1 Structure of the legal and Regulatory Framework for Public Procurement in Ghana

Public Procurement Act, 2003 (Act 663)	<p>Passed by parliament</p> <p>Establishes: the Public Procurement Authority (PPA) as a regulatory body and specifies functions of Tender Committees and Tender Review Boards in procurement entities</p> <p>Specifies: outline rules for procurement methods, procedures, appeals by tenderers and disposal of stores</p> <p>Defines: offences under the Act and applicable penalties</p> <p>Specifies: thresholds, which require regular updating, in schedule to the Act</p> <p>Authorises: the issue of Regulations, which are enforceable in the same way as the Act</p>
Public Procurement Regulations	<p>Issued by the Minister for Finance in consultation with PPA</p> <p>Contains details rules and procedures for all aspects of the procurement system, including the operations of the PPA and procurement entities and the conduct of procurement activities</p>
Guidelines	<p>Issued by the Public Procurement Authority under the Act</p> <p>Provide supplementary guidance on specific topics eg. Disposal single source procurement</p>
Standard Tender Documents	<p>Issued by the Public Procurement Authority in accordance with a schedule to the Act</p> <p>Contains standard invitation and contract documents for procurement of all values from tender documents to requests for quotations</p> <p>Includes separate documents for goods, works and services</p>
Public Procurement Manual	<p>Issued by the Public Procurement Authority</p> <p>Provides practical guidance and step by step procedures to assist entities to undertake procurement in accordance with the Act</p> <p>Contains standard forms to assist with procurement record keeping</p>

Source: PPA Training Manual, Module 1, 2007

2.8.1 Procurement Structures

Part II of Act 663 sets out the structures which are to be set up to carry out procurement in the Public Sector. Each of these structures is set up in

accordance with the relevant provisions outlined in schedule 1 and 2 of the Act 663.

The main structures which fall within the scope of this study are :

1. Public Procurement Authority
2. Procurement Entity
3. Head of Procurement Entity
4. Procurement Unit
5. Entity Tender Committee
6. Entity Review Boards
7. Tender evaluation Panel

2.8.2 Public Procurement Authority (PPA)

The Act 663 establishes the Public Procurement Authority as the regulatory body for procurement in Ghana. The Public Procurement Authority's objective is to secure a judicious, economic and efficient use of public funds in a fair, transparent and non-discriminatory manner whilst promoting a competitive local industry . The Public Procurement Authority is itself not involved in the conduct of procurement except that it has the authority to approve requests from public procurement entities seeking approval to use single source procurement and restricted tendering. The various functions the Public Procurement Authority undertakes are enumerated below (PPA, 2007)

- Policy: eg reporting on the public procurement matters relating to procurement. It is also responsible for promoting anti-corruption initiatives and developing measures to protect the environment.

- Monitoring: eg promoting compliance with the Act and Regulations by procuring entities recommending any corrective actions required and referring breaches to the relevant oversight and law enforcement bodies, where appropriate.
- Regulation and Standards: eg. Recommending regulations and issuing standard tender documents, suspending suppliers and managing the complaints and appeals process.
- Capacity-building and Professional development: eg. Coordinating sensitization and capacity building activities in the area of procurement, set professional standards and develop procurement staff.
- Information Management and dissemination: eg maintaining a database of potential suppliers, collecting and analysing statistics on public procurement and maintaining a website for the publication of tender notices and other procurement information.

2.8.3 Procurement Entity

This means any entity conducting public procurement under the Act. Section 15 of the Act establishes the responsibility of a procurement entity for all procurement activity of the entity in compliance with the law, and any regulations or administrative instructions issued by the Minister for Finance acting in consultation with the Public Procurement Board.

2.8.4 Head of Entity

According to the Act, head of entity means in relation to

- i. The central management agencies and ministries; the sector Minister.

- ii. Subvented agencies; the Director-General, Executive Director Secretary of Chief Executive
- iii. The Regional co-ordinating Councils; the Regional Minister
- iv. The District Assemblies; the District Chief Executive
- v. State Owned Enterprises; the sector Minister.

Section (15) (2) adds that the head of an entity and any officer to whom responsibility is delegated are responsible and accountable for action taken and for any instructions with regard to the implementation of this Act that may be issued by the Minister acting in consultation with the Authority. He shall appoint or designate a proficient procurement person as head of the procurement that to undertake the detailed activities of procurement on behalf of the entity (PPA, Regulations, 2007)

2.8.5 Procurement Unit

The Act defines this as the person or unit in the procurement entity that is dedicated to providing technical procurement services for the procurement entity. It shall be responsible for undertaking and co-ordinating all detailed procurement activity within the procurement entity. PPA Regulations 12 enumerates its main functions as follows;

- a) Receiving procurement requests from originating officers, checking that the proposed procurement is within the approved procurement plan and that budgeted funds are available prior to commencement of procurement proceedings.
- b) Ensuring that funds are properly committed prior to issue of any contract or purchase order

- c) Co-ordination the preparation of specifications terms of reference, bills of quantities, drawings, shortlists or advertisements and prequalifications, tender or request for quotation documents. Where so required by the Tender Committee, submission of documentation for review and approval by the Tender Committee prior to issue.
- d) Arranging the publication of advertisement and notices of contract award
- e) Co-ordinating the process of opening of tenders and quotations and ensuring the preparation of formal records of tender or quotation opening in accordance with section 56 of the Act. Interested Members of the Entity Tender Committee may attend openings as observers.
- f) Participating in evaluation activities of the Evaluation Panel and assisting in preparation of formal evaluation reports
- g) Preparing submissions for approval of award of by the appropriate authority in accordance with the threshold values established in Schedule 3 of the Act
- h) Maintaining and updating the database of suppliers, contractors and consultants
- i) Participating in negotiations with consultants or other tenderers where expressly permitted in the Act or these Regulations
- j) Preparing notification of awards and contracts
- k) Arranging publication of notices of contact awards
- l) Preparing contract documents and purchase orders, in line with the award decision
- m) Preparing and issuing tender rejection and tenderer debriefing letters
- n) Preparing contract variations and modifications

- o) Assisting with the inspection and acceptance of goods, works and services and where necessary use a member of the user department in conducting technical inspection .
- p) Maintaining procurement records in accordance with section 28 of the Act and the Regulations.

2.8.6 Entity Tender Committee

Section 17 of the Act States that every procurement entity shall establish a Tender Committee in the manner set out in Schedule 1 of the Act. Tender committees are to be established at the following:

- a) Central Management Agency/Ministry/Subvented Agencies
- b) Regional Co-ordinating Councils
- c) Metropolitan/Municipal/District Assemblies
- d) State owned Enterprises
- e) Tertiary Institutions
- f) Colleges and Schools
- g) Hospitals/Health Institutions

The Act defines Tender Committee as the body within the entity with the responsibility for planning, processing and generally taking procurement decisions and ensuring compliance with the public procurement law amongst others. Section 17 of the Act explains that in the performance of its functions, a Tender Committee shall

- a) Ensure that every stage of the procurement activity, procedures prescribed in this Act have been followed

- b) Exercise sound judgment in making procurement decisions and
- c) Refer to the appropriate Tender Committee for approval any procurement above its approval threshold, taking into consideration the fact that approval above the Entity Committee is a one-step only approval.

For the purpose of this research, emphasis is being put on state owned enterprises.

2.8.7 State Enterprises Tender Committee

The committee membership is as follows:

- 1) Chairperson: the sector Minister or chairman of Board
- 2) Members :
 - a) the Chief Executive
 - b) the Financial Controller
 - c) the head of Technical Services
 - d) representative of the Ministry of Justice not below Senior State Attorney
 - e) two members of the Board and
 - f) three heads of Department appointed by the minister.
- 3) Secretary: the head of procurement
- 4) Quorum five

The Act 663 lists the functions of the committee as follows:

- a) Review procurement plans in order to ensure that they support the objectives and operations of the entity
- b) Confirm the range of acceptable costs of items to be procured and match these with the available funds in the entity's approved budget

- c) Review the Schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidance
- d) Ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract
- e) Facilitate contract administration and ensure compliance with all reporting requirements under this Act and
- f) Ensure that stores and equipment are disposal of in compliance with the Act 663

2.8.8 Tender Review Boards

Section 20 of the Act stipulates that there shall be established at each level of public procurement the following Tender Review Boards in the manner set out in Schedule 2 of the Act.

- a) Central Tender Review Board
- b) Ministerial/Headquarters Tender Review Boards
- c) Regional Tenders Review Boards
- d) District Tender Review Boards

The functions of a Tender Review Board are as follows:

- a) In relation to the particular procurement under consideration, review the activities at each step of the procurement cycle leading to the selection of the lowest evaluated bid, best offer, by the procurement entity in order to insure compliance with the provisions of the Act and its operating instruments and guidelines

- b) Subject to subsection (2) (a) give concurrent approval or otherwise to enable the procurement entity continue with the procurement process
- c) Furnish the board with reports in a prescribed format
- d) Participate in public procurement for a and
- e) Review decisions of heads of entities in respect of a complaint.

2.9 PROCUREMENT PROCEDURES

2.9.1 Procurement Cycle

Procurement cycle is the road map of the procurement process. It establishes the key activities required at every stage of the procurement process. Not only does it give direction and step-by-step approach to the implementation of the procurement activity but it also provides useful benchmark for procurement monitors and evaluators to carry out their duties effectively. The module lays emphasis on the entire supply chain and not just procurement. The activities consist of the following: planning , sourcing , contracting , contract management storing, distribution, disposal and evaluation. (PPA, Training Manual, 2007)

2.9.2 Procurement planning

In the area of procurement, the Public Procurement Act 663 of 2003 provides for the activity of planning. Under Part 3 Section 21, it stipulates as follows:

1. A procurement entity shall prepare a procurement plan to support its approved programme and the plan shall indicate.
 - Contract packages
 - Estimated cost for each package
 - The procurement method and

- Processing steps and times
2. A procurement entity shall submit to its tender committee not later than one month to the end of the financial year the plan for the following year for approval.
 3. After budget approval and at quarterly intervals after that, each procurement entity shall submit an update of the procurement plan to the Tender Committee.
 4. The procurement entity shall send to the Tender Review Board, procurement notices for contracts and procurement plans above the thresholds stipulated in Schedule 3 for publication in the Public Procurement Bulletin.
 5. A procurement entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in the Act.

What the foregoing means is that it is imperative that procurement entities would need to plan their procurement for the coming year by the 30th of November of the preceding year. The plan would be reviewed and approved by their Entity Tender Committees after which the plans are updated every quarter (PPA, Manual 2007). It is equally important to note that the procurement opportunities are to be published in the Public Procurement Bulletin and there should be no room for splitting of contracts so as to avoid the application of the procedures stipulated in the Act (Public Procurement Act, 663)

2.9.3 Sourcing Contracting and Contracts Management

The sourcing phase in the procurement cycle follows from the selected method of procurement. Activities within this phase includes prequalification of potential suppliers; preparation and issue of tender documents; requests for quotations and the selection of the successful tenderers. However, negotiations may be required at this stage. After this, a formal contract document is prepared based on the agreed terms and conditions for both parties to sign.

Purchase order is used for simple requirements and in cases of framework contract, contracting may consist of a call-off order under the existing contract.

The awarded contract should be properly administered to ensure that the supplier and buyer execute their obligations in accordance with the contract.

Tasks here may include: expediting delivery establishing letters of credit; making arrangements for receipt and installation of goods, verifying documents and making payments. In the case of works contracts technical supervision by an engineer may be required whilst consultancy services often need direct participation of the buyer or client organization especially in the case of training technical advice or feasibility studies (Public Procurement Authority, Training Manual, Module 5, 2007)

2.9.4 Storage, Distribution and Disposal

When goods procured are not going to be used immediately storage becomes necessary. This is to avoid loss or damage to the goods. The timely availability of goods especially medicines can be crucial to an organization's operations. Specialized storage facilities may be needed and in the case of goods with limited shelf life effective storage, handling and management of inventory levels

are important. Goods in storage have to be transported to the end-user. Distribution may involve delivery to multiple regional storage facilities or to end-user sites. With respect to disposal, unserviceable, obsolete or surplus stocks may have to be disposed of. The nature of the goods and/or their conditions may determine how they should be disposed off: by public tender, auction, transfer to another public organization or destroyed (PPA, 2007)

2.9.5 Evaluation of Procurement Activity

Evaluation of the procurement process is important so that the entity will see how effective and efficient the procurement process has been. Weaknesses and problems identified would determine corrective measures to be implemented in future procurement. (PPA, 2007)

2.9.10 Statutory Audits

Section 91 of the Act stimulates that

1. The Auditor-General shall conduct annual audits of the procurement activities of entities and shall furnish copies on the audits to the Authority upon request from the Authority.
2. The Auditor-General shall also carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants with the procurement requirements in the Act, regulations made under the Act at the request of the board.
3. The statutory audit of procurement activities may be relied upon by the Authority to institute measures to improve the procurement system.

2.10 METHODS OF PROCUREMENT

Depending on the value of the package, an appropriate procurement method (bearing in mind the thresholds as indicated in schedule 3 of Act 663) could be selected to acquire the items.

2.10.1 International Competitive Tendering (ICT) (Section 35)

Procuring through ICT procedures requires advertising internationally as well as in local newspapers with very wide circulation. For large specialized contracts, invitations should be advertised in well-known technical magazines, newspapers and trade publications of wide international circulation.

2.10.2 National Competitive Tendering (NCT)

This consists of competitive tendering advertised locally and in accordance with local procedures. Advertising is usually limited to local newspapers.

2.10.3 Restricted Tendering (Section 38 – 39)

This is a procurement method with limited competition. A maximum of six(6) and a minimum of three shortlisted. Specific approval is needed from the Public Procurement Authority (PPA) before an entity can use this method. This method is applicable where the procurement item is of a specialized nature and available evidence indicates that there is limited sources of supply. PPA Annual Report (2009) showed that in 2009 out of 179 entities which applied for approval 167 of them were given the nod to use this method of procurement.

2.10.4 Two-Stage Tendering (Section 36-37) of Act 663

This method is used where it is not feasible for the procurement entity to formulate detailed specifications from the goods or works. In the case of services it is used to obtain proposals or offers on various options to meet the entity's procurement needs.

2.10.5 Request for Quotations (Section 42 of Act 663)

This method is normally applied when the value of the contract is below a particular threshold indicated in Schedule 3 of the Act 663. The main idea is to allow procuring entities to use a simplified procedure in those instances where the contract value is small that the administrative effort related to a full-fledged tendering procedure appears out of proportion. The method is based on comparing price quotations obtained from several suppliers, usually at least three to ensure competitive prices. Standard Request for quotation documents are particularly suitable for procuring readily available off-the-shelf goods that are small in value and in some cases simple civil works.

2.10.6 Single Source Procurement (Section 40 – 41)

This method involves procurement from a supplier without any competition. Sometimes procurement entities find themselves in situations where competition is absent or where the conditions are such that it would be impractical to try to generate competition. Some of these conditions are:

1. The absence of tenders in response to and advertisement
2. Situations where competition is absent for technical reasons such as patent or other exclusive rights

3. Cases of extreme urgency
4. Additional deliveries by the original supplier where the addition is small and the original contract was won under competition
5. Additional construction works or conditions similar to (4)
6. Product or prototype development or similar research and experiments and
7. Some other unique situations.

In 2009 323 out of 360 single source applications received were either approved or conditionally approved as against 318 out of 342 in 2008 by the Public Procurement Authority (PPA, Annual Report, 2008, 2009)

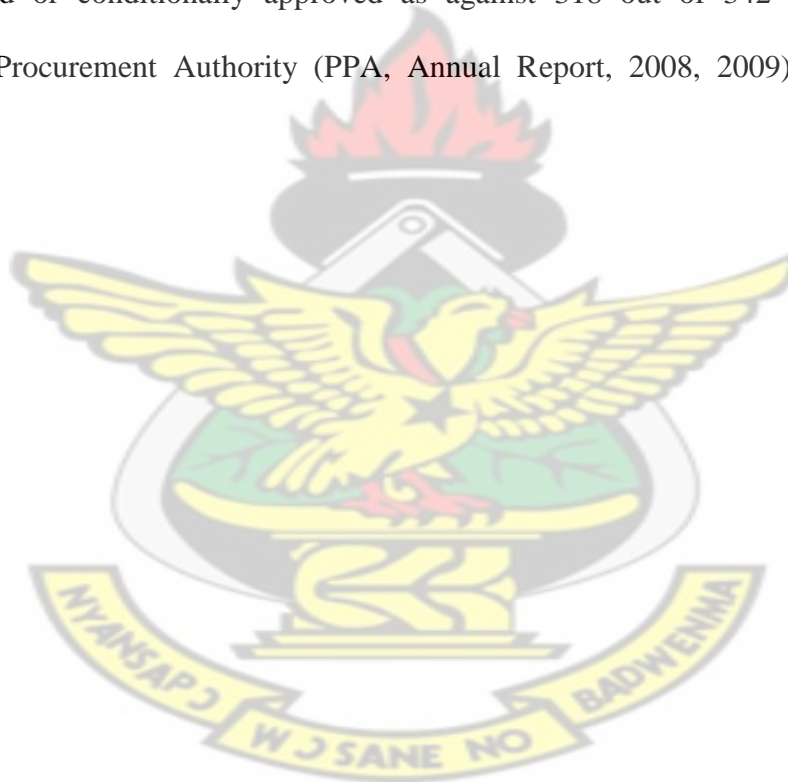


Table 2.2 Thresholds for procurement methods

Procurement Method/Advertisement	Contract Value Threshold
1) Pre-qualification	
a. Goods.....	Above GH 3,500,000.00
b. Works.....	Above GH 7,000,000.00
c. Technical Services.....	(not more than 10% of cost of works)
2) International Competitive tender	
a. Goods.....	Above GH 1,500,000.00
b. Works.....	Above GH 2,000,000.00
c. Technical Services.....	Above GH 200,000.00
3) National Competitive Tender	
a. Goods.....	More than GH 20,000.00 up to GH 200,000.00
b. Works.....	More than GH 50,000.00 up to GH 1,500,000.00
c. Technical Services.....	More than GH 20,000.00 up to GH 200,000.00
4) Restricted Tendering	Subject to Approved by PPA
5) Price Quotation	
a. Goods.....	Up to GH 20,000.00
b. Works.....	Up to GH 50,000.00
c. Technical Services.....	Up to GH 20,000.00
6) Single source procurement and selection	Subject to Approved by PPA
7) advertisement for Expressions of interest for consulting services	Up to GH 70,000.00
8) Least-cost selection	Up to GH 70,000.00
9) Selection based on consultants qualifications	Up to GH 35,000.00
10) Single source-selection	Subject to approval by PPA

Source: PPA Training Manual, Module 6, 2007

2.10.7 Right to Review

Part VII, Review Section 78 of Act 663 deals with procedures for handling complaints. It stipulates that any supplier contractor or consultant that claims to have suffered or that may suffer loss or injury due to a breach of a duty imposed on the procurement entity by the Act, may seek review in accordance with this section. The Public Procurement Authority of Ghana in 2007 established a seven (7) member Appeals and Complaints Panel comprising legal procurement experts and representatives from the private and public sectors. The Panel successfully concluded 31 cases as at May 2009 (World Bank, 2010). Ayitey (2012) observed that the appeal and complaints procedures and process allowed bidding firms the chance to show their disapproval before the procurement process is completed as well as thereafter.

2.10.8 Sanctions for non-compliance

Adherence to the provisions of the Act and regulations by public officers is obligatory and failure to do so will be considered an offence subject to sanctions (PPA Manual Module 3, 2007)

Section 92 of the Act 663 states that any person who contravenes any provision of the Act commits an offence and where no penalty has been provided for the offence, the person is liable on summary conviction to a fine not exceeding 1000 penalty units or a term of imprisonment not exceeding five years or both. Whilst section 92 of Act 663 (2003) establishes that contravention of any provision of the Act defines corrupt practices in terms of article 284 of the constitution and the criminal code of Ghana, Act 29 (1960). Act 663 also prescribes any tenderer supplier, consultant who attempts to

influence a procurement process or the administration of contract unfairly, will be sanctioned which may include rejection of a tender, offer, proposal or quotation and debarment of the company from Government of Ghana Contracts (Act 663, 2003)

2.11 PUBLIC PROCUREMENT ACT AND IMPLEMENTATION

CHALLENGES

In many developing countries public procurement has not been viewed as having strategic impact in the management of public resources. It was largely treated as a process-oriented, “back-office” support function often implemented by non-professional staff of the buying agencies. Recently however this has been changing. In the face of shrinking budgets and the need to fight corruption governments are realizing that significant savings can be gained by well-organized procurement systems. Many developing countries have therefore instituted reforms aimed at making the procurement system more transparent and efficient and increasing the accountability of public officials (Hunja, 2001). These reforms are not limited to the regulations only but also include reformation of procurement processes, methods of procurement, organizational structure, and human resource capacity building. Development partners viz World Bank, International Trade Centre, World Trade organization, UNCTAD are at the forefront of these reforms by providing funds and technical skills to help the reforming countries. Reforming public procurement system has however proven to be difficult. Reasons for this lack of success in implementing reforms are varied but also interlinked.

According to Hunja (2001) the most difficult challenge is the lack of political will at the highest levels of Government to significantly overhaul an existing system. Another challenge is lack of adequate knowledge on the part of those implementing the changes on the key ingredient of a well functioning, modern legal and institutional public procurement framework. Ideally, the team managing the reforms should also be well versed in overcoming challenges inherent in implementing reforms in an environment that may not be fully supportive of such reforms. Hunja further suggested that ambiguities and gaps in the law also lead to different interpretations and practices.

2.11.1. The Uganda Experience

In Uganda the implementation challenges can be grouped under the following headings, according to Tumutegyereize (2013) director of training and capacity building of the Public Procurement and Disposal of Public Assets Authority (PPDA).

2.11.1.1 Professionalism challenges

Some professionals are not doing a professional job but cannot be disciplined. PPDA does not have the mandate to discipline these professionals other than make a recommendation for disciplinary action by the appointing authorities.

2.11.1.2 Capacity challenges

There are too many procuring and disposing entities (PDE) to be monitored by the PPDA.

2.11.1.3 Social impact

Failure to achieve social policies on the public procurement practices (such as ensuring procurement practices of government contract going to women , Small and Medium Scale Enterprises (SMEs) or economically disadvantaged people or regions).

2.11.1.4 Service providers

Inadequate capacity of local providers where they cannot compete favourably and also do shoddy and substandard work.

2.11.1.5 Funds

Lack of adequate funds to cater for all budget activities i.e unpredictable cash releases.

2.11.1.6 Institutional challenges

- ❖ Resistance to adhere to the procurement reforms by some stakeholders
- ❖ Uncertain economic changes that affect the implementation of some legal provisions (eg escalating price changes)
- ❖ Conflict between the PPDA and other oversight agencies such as the Auditor General

2.11.1.7 Efficiency challenges

Delays caused by

- a) Late commencement of procurement
- b) Failure to consolidate submissions for approval

- c) Pro-longed evaluation process
- d) Complaints by bidders

2.11.2 Other challenges

2.11.2.1 Bribery and Corruption

The OECD (2007) observes that bribery and corruption in public procurement may have multiple negative effects, leading notably to unnecessary, unsuitable, uneconomic or even dangerous projects. The organization added that procurement rules and procedures do not represent an effective obstacle to bribery. Ineffective or inadequate public procurement rules and procedures can create a multitude of opportunities for bribery. These opportunities may be deliberately created. Effective and efficient controls of the procurement agent or the procurement authorities may be lacking. Complications in the procurement process as well as the nature and technicality of purchased goods, works and services may be exploited. OECD further observes that corruption in public procurement is particularly debilitating because it creates leakages in a governments financial and budget systems that lessen the impact of much needed spending on health education infrastructure, agriculture and other programs. In addition to reducing the effectiveness of public service delivery, it may also negatively impact the investment climate.

2.11.2.2 Environmental factors

Thai (2001) also noted that public procurement practitioners have always faced challenges imposed on them by a variety of environmental factors including

market, legal environment, political environment, organizational environment socio-economic and other environmental factors

2.11.2.3 Political environment

In a democracy many individuals, groups and organizations in the private sector including trade associations, professional associations and business firms or companies (commonly known as interest groups) are actively involved in all aspects of the public procurement system. Having various interests, objectives and beliefs, interest groups are involved in the public system in several ways such as lobbying legislative bodies to pass or alter procurement statutes, influencing implementation of these statutes and influencing budget allocation and appropriation process.

2.11.2.4 Social and Economic Factors

While some countries impose social policies on their public procurement practices (such as a policy placing a fair proportion of government acquisitions with woman/minority owned small business or economically disadvantage areas), most government entities use their large procurement outlays for economic stabilization or development purposes by preferring national or local firms over firms from other countries.

2.11.2.5 Legal Environment

Apart from public procurement regulations and rules, legal environment refers to a broad legal framework that governs all business activities including research and development (regulations dealing with safety and health of new products) manufacturing (safety and health regulation at work place and

pollution control) marketing (regulations dealing with deceptive advertising, disclosure of product characteristics) personnel (regulations dealing with equal opportunities for women and minorities) and contracts.

2.11.2.6 Market Environment

Market conditions have a great influence on public practitioners effort to maximize competition. As markets become more globalized through regional and international trade agreements and treaties public procurement practitioners face a greater challenge.

In addition to compliance with their government's procurement laws and policies and international trade requirements as mentioned above, they face additional challenges including communication, currency exchange rates and payment, customs regulations, lead-time, foreign government regulations, trade agreements and transportation.

The country Procurement Assessment Report of Ghana in 2003 revealed that most Ministries Departments and Agencies (MDAs) and District Assemblies (DAs) staff responsible for procurement were not procurement-proficient, even though they were trained. The report emphasized that implementation of Act 663 and the use of the Standard Tender and Contract Documents will not be successful without broad training and refresher programmes and encouragement of officials in charge of procurement. According to World Bank (2010) in order to disseminate the Public Procurement Act and to ensure compliance with its provisions, PPA has implemented a comprehensive short-term training program. Based on 25 targeted training modules in 2007 and 2008, 3840 procurement

practitioners, 4222 members of tender committees and Tender Review Boards, 200 service providers and 353 staff of oversight institutions totaling 8615 people were trained.

The lack of career development path and low salaries of procurement personnel also militate against procurement reforms implementation (World Bank, 2003a). World Bank (2010) therefore strongly recommended the implementation of the 2006 report on the establishment of a career path and procurement professionals and practitioners into the public and civil service.

Poor reward keeping (World Bank, 2003a; ODPP, 2007) and delays in payment of contractors and suppliers are also challenges that negatively affect reforms implementation (Azeem, 2007).

According to the PPA (2013) some of the challenges to the effective implementation of the Act are as follows:

a) Funding

Sufficient funding is not available to support its activities and programs. It explained that 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.

b) Procurement Planning and Implementation

Most entities have met this legal requirement in accordance section 21 of the Act 663. However, the budget releases have been erratic and inadequate making implementation of the plans difficult. Entities are not able to discharge their contractual obligations on time resulting in threat

of legal suits and lacks of trust and confidence in the Public Procurement System.

c) Strategic function of procurement

Most entities find it difficult to accept procurement as a strategic value - added function. Before the passage of the act, procurement was handled by chief executives and their trusted cronies. With the advent of the law it has become difficult for such persons to accept the challenge. According to the PPA there are 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.

d) Age of procurement practitioners

The average age of practitioner is about 35 years with a greater majority less than 30years. Some entities perceived these cadres as too young and should not be allowed to take strategic decisions and more importantly leading the procurement process.

e) lack of professionals

there are entities without procurement professionals and therefore the practice is handled by others without the requisite background or experience.

f) Training curriculum

Curriculum of Polytechnic trained Procurement and Supply officers (HND) is skewed towards private procurement. Graduates therefore need lots of coaching and monitoring to enable them function effectively.

g) Embargo on recruitment

There are several vacancies for the recruitment of procurement practitioners but the reluctance of the Ministry of Finance to grant financial clearance to aid recruitment has constrained the recruitment process.

h) Approval thresholds

Thresholds appear to be too low and entities have to refer all competitive tenders to the next approval level where approving authorities meet once a month. Some entities are made to bear the cost of convening the meetings of the approval committees. This increases the procurement lead time and also the cost of transacting business.

i) Political interference

Interferences in the procurement process from politicians, public officials and the general public is high. This puts pressure on procurement practitioners and limits their ability to run fair transparent and competitive tendering.

j) Tender securities

Most local firms fail to raise the relevant securities to support their tenders.

k) Bank credits

Accessing funds from the Banks to finance contracts are unattractive due to the very high interest rates and other terms of lending. The situation is worsened if after contract delivery payment is unduly delayed. The negative 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.

2.12 REMEDIES TO ADDRESS IMPLEMENTATION CHALLENGES

Although no public procurement system will likely ever be fully free of implementation challenges some researchers have made a number of suggestions to reduce these challenges.

2.12.1 Stakeholder Involvement

Public procurement malpractices could be limited through the employment of stakeholders such as civil society organizations to be part of the procurement process (Badenhorst – Weiss, 2011). He asserts that the current status of the procurement system requires the creation of three bid committees namely the bid specification committee, the evaluation committee and the adjudication/tender committee. For the purpose of compliance and to minimize unethical and corrupt practices stakeholders should be involved in the evaluation and adjudication process. Stakeholder involvement will also encourage public servants to be more circumspect about decisions they take and will provide citizens to hold their leaders accountable. It will improve the efficiency of government institutions, reduce fraud and waste of public finances, strengthen the management of natural resources and ensure better service delivery.

2.12.2 Bid Protests

Bidders especially the losing bidders should be encouraged to use the complaint mechanism enshrined in Act 663.

Waynes (2005), asserts that complaints by disappointed bidders of government/entity actions before and after contract award allow the government process to improve. This is an important self-policing mechanism to ensure

good governance by allowing people most affected by the system to call attention to its short-comings. Meritorious grievances of suppliers force a review of questionable or improper actions so that the procurement system is strengthened and the integrity and accountability of governance is maintained. Bid protests will remind procurement officers why they must be accountable for how they spend the tax payer's dollars and in doing so prevent abuse (Liebermann in Drabkin David et al, 2004)

2.12.3 Method Thresholds

Agyekum-Kwatiah (2011) observes that the procurement method thresholds prescribed in the Act 663 since its promulgation in 2003 are now woefully unrealistic. He proposes that they should be increased to conform to prevailing market. According to Ayitey (2012), the proposed increase in thresholds will give procurement entities greater control over procurement decisions to reduce lead times and needless delays caused by Tender Review Boards.

2.12.4 Processing Steps

Currently there are so many layers of approving structures namely head of entity, entity tender committee, and review boards. Gnanih (2012) proposes that the PPA in consultation with the Minister of Finance should take steps to review the Act to limit the number of processing steps in the procurement process to reduce the level of bureaucracy in the system. Bureaucracy delays the smooth procurement process and management since it adds more cost to contractors operations and government if they are to pay interests.

2.12.5 Breach of Act 663

Punitive measures should be strictly applied as stipulated in the Act to deter officers and service providers who breach the procurement process (Ameyaw et al., 2012)

2.12.6 Recruitment of Procurement Professionals

The PPA together with the Public services Commission, office of the Head of Civil Service and other relevant bodies have developed a scheme of service for the recruitment, motivation, and retention of qualified procurement professionals into the Public Service in Ghana. This scheme of service is currently being implemented (PPA, 2013)

2.12.7 Rate Reasonableness Checks

The Act should be reviewed to empower entities to examine major rates of tenderers to ensure that the rates are consistent with current prices. If major rates are unrealistic, such bids can be rejected (Aquaye, 2011)

2.12.8 Other Remedies

Agbesi (2009) asserts that

- 1) The establishment of a unified procurement unit
- (2) record keeping
- (3) Information dissemination
- (4) Early payment
- (5) training and capacity building
- (6) rate reasonability analysis would address some of the procurement challenges

2.12.8.1 Establishment of Procurement Unit

Procurement entities should ensure that unified procurement units are established manned by qualified and experienced professionals. This will prevent the current lack of clarity and subtle conflict amongst some departments as to who should co-ordinate procurement activities in the entity.

2.12.8.2 Record Keeping

All documents relating to a particular procurement contract should be filed together and kept in a filing cabinet. The file should contain the following documents

- Procurement plan
- Signed and approved procurement requisition
- Confirmation of available funding
- Tender documents
- Tender invitation advertisement
- Sale or issue of tender documents
- List of tenders received
- Evaluation report
- Contract approval
- Public notice of Award
- Signed contract
- Notification to unsuccessful tenderers
- Appeals/reviews of award of contract received if any
- Minutes of meeting resolving appeals/reviews
- Approval of interim certificates

- Minutes of site meetings approval of contractual payments made
- Final certificate
- Handing over reports

2.12.8.3 Information Dissemination

The Public Procurement Authority should undertake vigorous information dissemination on local Fm stations, televisions and the print media to stakeholders including the public service providers, entity committees, academia, non-governmental organizations and beneficiaries of public services. Procurement entities should always disseminate procurement information at tender openings.

2.12.8.4 Early Payment

Entities should provide realistic estimates in their annual budgets. Adequate resources should be provided and availability of funds should be confirmed before the initiation of procurement contracts.

2.12.8.5 Training and capacity building

- Procurement entities should be equipped with information technology systems capable of collection, storing and reporting the data relating to procurement operations.
- Those undertaking procurement activity should possess a good combination of good legal skills and sustainable knowledge of good procurement practices and procedures (Hunja, 2003)

- Skill levels of existing staff should be upgraded through extensive programmes of professional training and development at GIMPA, polytechnics and the universities
- Training of procurement entities and service providers in specific areas in procurement planning, compliance, audit contract management and record keeping should be done.
- The PPA should be adequately resourced to implement its mandate.

2.13 STATE OWNED ENTERPRISES

A government-owned corporation, also called state own enterprise is a legal entity that undertakes commercial activities on behalf of an owner government. The defining characteristic is that it has a distinct legal form and is established to operate in commercial affairs. While it may also have public policy objectives, a state owned enterprise should be differentiated from other forms of government agencies or state entities established to pursue purely non-financial objectives (Wikipedia, 2014).

Esseks cited in Srem-Sai (2014) observes that in March 1957, when Ghana gained independence, over 90% of the country's import trade was in the hands of foreign firms: two British Banks shared about 90% of all banking businesses; expatriate companies held 96 percent of total timber concessions; foreign investors owned all functioning gold mines and controlled about half of the annual diamond production; general insurance was entirely in the hands of expatriate firms; and foreign companies earned the bulk of total receipts in the small manufacturing sector.

Srem-Sai continues that the overarching aim of the fight for independence was to take control of our own affairs. Attaining this goal required that Ghana should catch up with global players, who were at the time a couple of centuries ahead. Catching up required well-coordinated and a more aggressive development plan.

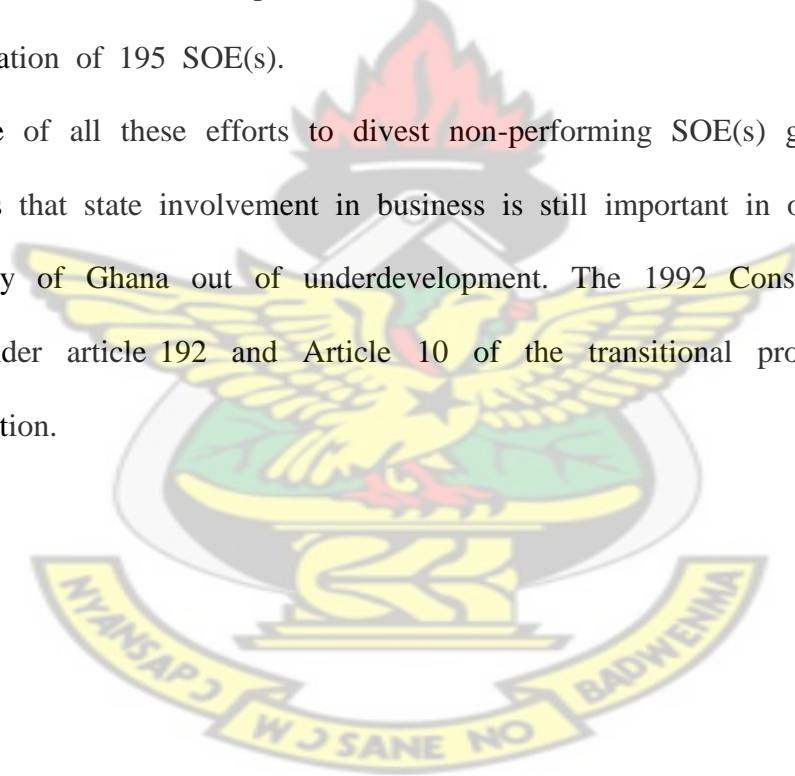
State ownership and control of the factors of production, it appeared, were the only plausible way that Ghana could catch up and launch itself unto the much developed and far more sophisticated global market. Therefore Ghana, like most former colonies, began its statehood with an economy which rested almost entirely on State Owned Enterprises. The state became a major player in almost all the sectors of the economy: transportation, aviation, agriculture, fishing, education, manufacturing, commerce and even entertainment.

By the close of the 1970(s), most of the public corporations had been run down. The country was heavily engrossed in debt owed to the countries and institutions of the industrial west.

The PNDC military government invited the World Bank and the IMF. They came with the Structural Adjustment Programme (SAPs). Ghana's version of the SAP was christened the Economic Recovery Programme (ERP). The ERP contained a series of prescriptions – trade liberalization, price deregulation in industry and agriculture, currency devaluation, drastic cutbacks on government on health, education, financial liberalization and privatization/divestiture. Divestiture programme was intended to shrink the public sector and to improve the performance of enterprises by mobilizing private sector management and capital.

In 1987, the State Enterprises Commission was established under State Enterprise Commission Law (PNDC law 170) to supervise the SOE reform programme. The divestiture programme, however, took off in 1988 under the State-owned Enterprise Reform Programme. There were more than 350 SOE(s) when the reform programme took off. By 1993 the first round of the programme had seen some 55 SOE(s) privatised. Then came the second round which was implemented by another government agency the Divestiture Implementation Committee (DIC). The DIC was established by the Divestiture of State Interests (Implementation) Act, 1993. The DIC supervised the privatization of 195 SOE(s).

In spite of all these efforts to divest non-performing SOE(s) government still believes that state involvement in business is still important in order to lift the economy of Ghana out of underdevelopment. The 1992 Constitution ensures this under article 192 and Article 10 of the transitional provisions of the constitution.



CHAPTER THREE

RESEARCH METHODOLOGY

3.1 INTRODUCTION

The previous chapter viz chapter 2 discussed public procurement in general followed by a detailed exposition on public procurement specifically in Ghana detailing the legal and regulatory framework; the processes, systems, principles and procedures and finally procurement challenges. The current chapter explains the methodology that was employed in the study of the problem at hand: the implementation challenges to the procurement law, 2003 Act 663 in the Ghana Ports and Harbours of Authority. The chapter includes the following: description of the study organization; study design, population, sampling, methods of data collection and analysis of data.

3.2 STUDY ORGANIZATION

Ghana Ports and Harbours Authority (GPHA) is a statutory corporation established under the Provisional National Defence Council Law (PNDCL 160) of 1986 to build plan, develop, manage, maintain, operate and control ports in Ghana. The Authority is a port facility and service provider which began as Ghana Railway and Harbours Company in 1928 with only the Port of Takoradi.

The port of Tema was built in 1962. In 1972 the company was divided into four separate public organizations as follows:

- Ghana Railway Company (GRC)
- Ghana Port Authority (GPA)
- Ghana Cargo Handling Company (GCHC)

- Takoradi Lighterage Company (TLC)

In 1986 GRC remained separated while the other three were merged into the Ghana Ports and Harbours Authority.

3.2.1 Nature of business

The Authority manages and operates the Port of Tema and the Port of Takoradi in conjunction with a host of private service providers in the areas of vessel handling, stevedoring, transfer, storage, receipt and delivery of containerized and general cargoes.

3.2.2 Main Functions

The Authority has the following statutory functions: plans, builds, manages, maintains, operates and controls ports in Ghana and in particular:

- i. Provides such port facilities as appear to be necessary for the efficient and proper operation of the port
- ii. Maintain the port facilities, extend and enlarge any such facilities as it shall deem fit;
- iii. Regulates the use of any port and of the port facilities
- iv. Maintains and deepen as necessary the approaches to and the navigable waters within and outside the limits of any port and also maintain lighthouses and beacons and other navigational service and aids as appear to be necessary
- v. Provide facilities for the transport, storage, warehousing, loading, unloading and sorting of goods passing through any port, and operate road haulage services for hire or reward

- vi. Carries on all the business of stevedoring, master portorage and lighterage services; and
- vii. Generally discharge any other functions which are necessary or incidental to the above functions

3.2.3 Vision Statement

GPHA's vision is to make the ports of Ghana the regional maritime hub and become the dominant oil and gas centre in the West African Sub-region.

3.2.4 Mission Statement

GPHA's mission is to provide efficient port facilities and ensure quality service delivery to customers.

3.2.5 Administration of GPHA

The Authority is administered by a Nine Member Board of Directors which include the Director General and the Directors of the Ports at Tema and Takoradi. The Board reports to the Ministry of Transport for the formulation of policies relating to the Authority's operations. The day-to-day administration of the ports however devolves on the Director General and the Directors of the following divisions: Port of Takoradi, Port of Tema, Administration, Business development, Special Projects, Legal Services, Operations, Harbour Master Tema, Audit, Fishing Harbour, Finance and Health Service.

3.2.6 Projects

In pursuit of the GPHA's vision to make the seaports of Ghana the leading maritime hub and the beacon of trade and commerce in West Africa,

management of the Authority has initiated series of expansion and modernization projects in the ports of Tema and Takoradi to be implemented between 2012 and 2018.

These include infrastructural expansion, business and operational automation, procurement of modern plant and equipment as well as human resource development projects. Sources of funding include the Authority's own funds, commercial loans and public private partnership arrangements. The projects when completed will ensure high efficiency and productivity, provide adequate capacity to handle the growing traffic, improved quality of service delivery, facilitate the flow traffic through the ports and lower the cost doing business.

3.3 RESEARCH DESIGN/STRATEGY

Research strategy refers to the plan that the researcher will pursue to execute an investigation to address the research questions. It specifies sources of data and constraints that may hamper the research and how they will be addressed (Saunders et al, 2007). Yin (1994) emphasized that the research strategy explains how the researcher collects and analysis data gathered. This research will employ both qualitative and quantitative approaches in the data collection and analyses of the responses.

3.3.1 Study Population

Ghana Ports and Harbours Authority employs about three Thousand (3000) staff made up of 300 senior staff and 2700 junior staff (Bortey 2011). They constitute the target population. The focus, however, would be on those who are directly involved in procurement activities at the Headquarters, Tema where major projects are initiated and implemented.

3.3.2 Sampling Size and Sampling Procedure

In conducting this research study, it is practically impossible, time consuming and too expensive to test every element in the entire population of 3000. According to Punch (1998) one cannot study everyone, everywhere, do everything and so sampling decisions are required not only about which people to interview or which events to observe, but also about settings and processes.

The process of sampling, involves any procedure using a small number of items or parts of the whole population to make conclusions regarding the whole population. There are two main types of sampling techniques namely: probability sampling and non-probability sampling. In probability sampling each and every unit within the population has an equal chance of being selected. In non-probability sampling, the selected sample is not representative of the population because the units in the population are not given equal chances. The purposive sampling technique which is a non-probability sampling technique was used. This is because the study is to elicit views from persons who have specific expertise, experience and knowledge in the procurement activities at the GPHA (Sarantakos, 2006).

Therefore for this study the following officials were purposively selected to take part in the research.

a. Chairman of the Entity Tender Committee.....	1
b. General manager, engineering services.....	1
c. Acting Procurement manager.....	1
d. Project engineers.....	11
e. Procurement Officers.....	7
Sample size.....	21

3.3.3 Sources of Data

Both primary data and secondary information were used for the study. The primary data were obtained from the respondents through the administration of questionnaires and interviews. The primary data provided reliable and accurate first hand information relevant to the study.

The secondary information was obtained from the Public Procurement Authority, library, internet, journals articles and research reports. The secondary data provided the necessary information to guide the conduct of the research project to either confirm or reject the primary data.

3.3.4 Research Instrument

In order to achieve the aim and objectives of the study, a series of questions that are easy and convenient to answer but describe the identified challenges and remedies to address these challenges were formulated into a questionnaire. Shao (cited in Dakyira, 2014) defines a questionnaire as a formed set of questions or statements designed to gather information from respondents that accomplish research objectives. The questionnaire may have either structured semi-structured or unstructured questions. For the purpose of this research, the questionnaire contained structured questions. The structured questions are convenient, easy and take less time to answer because options are those that best describe the practices, options or attitudes of the respondents. They also help researchers to analyse the data obtained easily. However the disadvantage is that they restrict the respondents choice. The available options from which they have to select may not be exhaustive to describe the situation of the respondent.

The questionnaire consisted of four main parts. The first and second sections dealt with the demographics of the respondents, such as age, gender and the professional background including number of years with GPHA and years of procurement experience. The background information is important to ascertain the likely reliability and credibility of the data. The third part of the questionnaire provided the respondents with the opportunity to give their level of agreement or disagreement with the variables they consider as challenges to the implementation of the Act 663 in GPHA. The final section gave opportunity to the respondents to express their views on the remedies to resolve the procurement challenges.

3.3.5 Questionnaire Testing and Administration

A pilot study was conducted in preparation for the study. Bell (cited in Coleman 2011) describes a pilot study as getting the bugs out of the instrument so that the subject in the main study would experience no difficulty in completing the instrument. The piloting would also show whether the wording and format of the questions will present any difficulties when the main data is analyzed.

The questionnaires were administered to the Head of Procurement and The Head of Projects of the Electricity Company of Ghana (ECG). The ECG is a state owned enterprise similar to the Ghana Ports and Harbours Authority.

After making modifications and improvements to make the instruments more effective, the questionnaires were administered to the respondents by means of personal contact.

3.3.6 Ethical Considerations

In order not to violate the rights of the subjects to free consent, all potential research participants were duly informed that the study was for academic purposes only and that any information disclosed would be treated with utmost confidentiality. To ensure anonymity they were asked not to indicate their names and staff numbers on the questionnaires.

3.3.7 Data Analysis and Presentation

The respondents rated both the implementation challenges and remedies to resolve these challenges on a five point Likert scale of 1 to 5. The scaling was v as follows:

- 1= strongly disagree
- 2= disagree
- 3= not decided
- 4= agree
- 5= strongly agree

Likert scaling was adopted because it has been widely used by researchers as an instrument for measuring opinions, beliefs, and attitudes. It also facilitates the analysis of data (Coleman, 2011). Quantitative methods were used to analyse the data collected. Computer data analysis tools such as weighted mean and standard deviations were used to analyse the data. Tables and charts, percentages and textual write-ups were also used to show and explain the results where necessary.

CHAPTER FOUR

RESULTS AND DISCUSSIONS

4.1 INTRODUCTION

This research sought to identify the challenges to the implementation of Act 663 at the Ghana Harbours And Ports Authority. This chapter is devoted to the analyses of the data collected from the field by means of self-administered questionnaires.

The first section deals with the background of the respondents. This covers their gender, age, number of years with GPHA, educational qualification and experience in procurement process.

The second section covers the analyses of the data using weighted mean and standard deviations to rank the variables. This is followed by the discussions of the results of the findings.

4.2 BACKGROUND OF RESPONDENTS

The study used a sample size of twenty one. The sample units were purposively selected and were those directly involved in procurement activities at the Headquarters of the GPHA. Table 4.1 shows the list of the respondents.

Table 4.1 List of Respondents

category	Number of respondents
Chairman (entity tender committee)	1
Director, Engineering services	1
Ag Procurement Manager	1
Project Engineers	11
Procurement Officers	7
TOTAL	21

Source: Authors fieldwork, 2014

4.3 RESPONSE RATE

A total number of twenty one questionnaires were administered to the respondents out of which sixteen were retrieved and considered for the data analyses. This represents a response rate of 72% which is quite high.

4.4 DEMOGRAPHIC CHARACTERISTICS

The demographic characteristics of the respondents used in the study included gender, age, educational level, years with GPHA, and number of years of experience in procurement activities.

4.4.1 Gender of respondents

Table 4.2 Gender of Respondents

Gender	frequency	percentage
male	13	81.25
female	3	18.75
TOTAL	16	100

Source: Authors fieldwork, 2014

Table 4.2 shows that 81.25% of the respondents are male whilst 18.25% are female. There is no indication from the survey that this gender imbalance has affected procurement activities at GPHA. However in an era of gender balance GPHA can employ more women in the area of procurement in future.

4.4.2 Procurement Training of Respondents

The study asked the respondents whether they had any training in procurement. Table 4.3 summarises the response from the participants.

Table 4.3 Procurement Training Of Respondents

Training in procurement	frequency	percentage
yes	16	100
No	0	0
TOTAL	16	100

Source: Authors fieldwork, 2014

Table 4.3 indicates that all the respondents have had training in procurement.

4.4.3 Source Of Training

The researcher sought to know who organised the procurement training for respondents. Table 4.4 shows that 75% i.e twelve of the respondents benefited from internal training organised by consultants engaged by GPHA. One respondent was trained by consultants engaged by the World Bank. The PPA trained two of the participants. One also had training in procurement at Logos Training School.

Table 4.4 Source of Procurement Training

Source of training	No of respondents	percentage
GPHA	12	75.00
World Bank	1	6.25
PPA	2	12.50
Logos Training School	1	6.25
TOTAL	16	100

Source: Authors fieldwork , 2014

From the results PPA , which has been mandated by the Act to build the capacity of entities in procurement is yet to have any significant impact on the training of GPHA staff. According to the procurement unit GPHA usually engages private consultants to train their staff involved in procurement.

4.4.5 Procurement Training Frequency

From table 4.5 31.25% respondents prefer training every quarter whilst 68.75% , the majority will prefer a yearly training.

Table 4.5 Procurement Training Frequency

Response from respondents	No of respondents	percentage
Weekly	0	0
monthly	0	0
quarterly	5	31.25
yearly	11	68.75
TOTAL	16	100.00

Source: Authors fieldwork, 2014

4.4.5 Experience In Procurement Process

Respondents were asked about their experience in the procurement process. Table 4.6 summarises the response from the participants. The table 4.6 indicates that 31.25% of respondents have less than five years experience. 18.75 % of participants have 5-10 years experience whilst 50 % have other ten (10) years experience whilst 50% have over five (5) years experience. So the majority of the participants have adequate experience.

Table 4.6 Experience in procurement

No of years	No of respondents	Percentage
Less than 5yrs	5	31.25
5 – 10 yrs	3	18.75
Over 10yrs	8	50.00
TOTAL	16	100.00

Source: Author's Fieldwork: 2014.

4.4.6 Years of working at GPHA

Participants were to provide their number of years of working at GPHA. Table 4.7 shows the relevant details on the respondents. Five (5) or 31% had worked for less than five years, three (3) or 18.75% had worked for between 6 – 10 years whilst eight (8) or 50% had been with GPHA for over ten (10). This shows procurement activities are undertaken by staff who have been with GPHA for long periods of time.

Table 4.7 Years of working at GPHA

Length of service (yrs)	No of respondents	Percentage
0 – 5	5	31.25
6 – 10	3	18.75
10yrs and over	8	50.00
TOTAL	16	100.00

Source: Author's Fieldwork: 2014.

4.4.7 Age of Respondents

Table 4.8 shows the age distribution of the respondents. Two (2) or 12.5% are below thirty years, five (5) or 31.25 are between 31 – 45 years, whilst nine (9) or 56.25% are between 46 – 60years. Thus there is a good blend of the young and the old. It appears GPHA is very serious about succession planning.

Table 4.8 Age Distribution of Respondents

Age	No of respondents	percentage
16 – 30	2	12.50
31 – 45	5	31.25
46 – 60	9	56.25
TOTAL	16	100.00

Source: Authors Fieldwork: 2014.

4.4.8 Procurement knowledge of Service providers has impact on procurement functions performed at GPHA

Respondents were asked whether they thought the procurement knowledge base of service providers has impact on procurement activities at GPHA.

Majority of them ie thirteen (13) representing 81.25% answered in the affirmative whilst three (3) or 18.75% disagreed with the statement. It can be inferred that knowledge of the Act is very important if service providers are to perform well. Table 4.9 is a summary of the responses

Table 4.9 Procurement knowledge of Service providers has impact on procurement activities of GPHA

Response from participants	No of respondents	Percentage
Yes	13	81.25
No	3	18.75
TOTAL	16	100.00

Source: Authors Fieldwork: 2014.

4.4.9 Public Procurement Reform has helped to reverse problems existing before introduction of Act 663

The researcher sought to know from the respondents whether the implementation of the Act has helped reverse some of the problems that existed before. From Table 4.10, twelve (12) or 75% indicated that it had whilst four (4) or 24% indicated that it had not. One can conclude that the Act has reversed some of the problems it sought to correct.

Table 4.10 Has Public Procurement Reform helped to reverse some of the problems before introduction of the Act?

Response from participants	No of respondents	percentage
Yes	12	75
No	4	25
TOTAL	16	100

Source: Authors Fieldwork: 2014.

4.4.10 Awareness of Administrative Review provision in Act 663

Majority of the respondents ie fifteen (15) or 93.75% indicated that they were aware of the administrative review provision in the Act. An insignificant number i.e one (1) person said he did not know about such provision in the Act. This is surprising because they have all been receiving internal training from consultants hired by GPHA.

4.4.11 Co-ordination of Procurement Process

The respondents were asked about how procurement activities were co-ordinated in GPHA.

All of them indicated that procurement of works and related consultancy services were co-ordinated by the engineering services department. Procurement of goods and related services were co-ordinated by the procurement unit.

Thus there is no single procurement unit for the co-ordination of works, goods and services. This state of affairs is not in accordance with the regulations which stipulates the creation of a single procurement unit to co-ordinate the procurement of works, services and goods.

4.4.12 Educational Background

All the respondents have tertiary qualification: a degree or higher. Thus they have the intellectual capacity to understand the theory and practice of the procurement Act, given the necessary and relevant training.

4.5 RESPONSES ON CHALLENGES TO IMPLEMENTATION OF ACT

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Table 4.11 shows a summary of the weighted mean, the standard deviations and the ranking of the variables the participants responded to.

Table 4.11 Implementation challenges to Act 663

ITEM	Implementation challenges to Act 663	MEAN	STANDARD DEVIATION	RANK
1	Lengthy procurement process due to the several layers of approving structures (head of entity, tender committee, review boards)	4.47	0.640	1st
2	Low procurement thresholds for Entity Tender Committee	4.45	0.743	2nd
3	Lowest evaluated bid mindset in the award of contract	4.44	0.814	3rd
4	Incorrect interpretation and application of some provisions of the Act	4.31	1.014	4th
5	Inadequate capacity of local service providers to compete against international companies	4.27	0.799	5th
6	The public procurement act is not flexible, ie appropriate only for traditional procurement	4.19	0.834	6th
7	Interference in procurement process from the public	4.16	1.340	7th
8	Inability of service providers to access funds from banks to pre-finance contractors	4.06	0.966	8th
9	Lack of appropriate punishment to public officials who breach provisions of the Act and regulations	4.0	1.038	9th
10	Delay in the formation of unified procurement unit staffed with qualified professionals	3.88	1.204	10th
11	Inadequate capacity to appreciate and understand standard tender/contract documents on the part of service providers	3.80	0.775	11th
12	Lengthy and complex procedures for emergency procurement	3.80	1.146	12th
13	Allegation of conflict of interest,			

	bribery and corruption against some procurement process	3.75	0.683	13th
14	Lack of basic knowledge of the procurement law on the part of service providers	3.73	1.280	14th
15	Delay in payment of works and/or services provided by service providers	3.67	0.976	15th
16	Lack of trust and confidence in the Public Procurement system by service providers	3.67	1.113	16th
17	Inadequate and erratic release of funds for planned procurement activities	3.63	1.025	17th
18	Public Procurement process involves too much unnecessary forms filling by service providers	3.60	0.910	18th
19	Governments current embargo on employment into the public sector	3.60	1.056	19th
20	Inadequate funding to PPA to undertake capacity building of entity committee service providers	3.60	1.183	20th
21	Difficulty of entities to accept procurement as a strategic value added function	3.56	0.964	21st
22	Low level of interaction between procurement entities and the public procurement authority	3.50	1.033	22nd
23	Low level of knowledge of legal framework due to poor dissemination of the procurement act and regulation	3.47	1.060	23rd
24	Inadequate record management systems for the procurement process	3.38	0.957	24th
25	Difficulty in obtaining bid performance securities and mobilization advance guarantees by service providers	3.38	1.147	25th
26	Insufficient technical and managerial skills on the part of service providers	3.33	1.113	26th
27	Lack of career development path and low level of remuneration and motivation for procurement professionals in public sector	3.31	1.078	27th
28	High lost of Advertisement	3.31	1.195	28th
29	Lack of adequate training of			

	procurement staff on the procurement process	3.27	1.100	29th
30	Youthful age of most procurement practitioners	3.27	1.223	30th
31	Lack of adequate qualified procurement professional staff	3.13	1.025	31st
32	Procurement graduates from polytechnics lack adequate knowledge in public procurement	3.13	1.088	32nd
33	Splitting of procurement activities into smaller units to avoid seeking concurrent approval from review boards	3.06	1.167	33rd
34	Deliberate effort by procurement entity to limit competition by refusal to print more tender documents to all prospective bidders once the documents are finished	2.94	1.124	34th
35	Poorly prepared tender evaluation reports	2.93	0.829	35th
36	Poor handling of suppliers complaints by entity	2.80	0.862	36th

Source: Authors fieldwork , 2014

The results show that there are several important factors challenging the implementation of the public procurement act at GPHA. The ten most important factors agreed to by the respondents are as follows:

1. Lengthy procurement process due to the several layers of approving structures (head of entity, entity tender committee, review boards)
2. Low procurement thresholds for Entity Tender Committee
3. Lowest Evaluated bid mindset in the award of Contract
4. Incorrect interpretation and application of some provisions of the Act
5. Inadequate capacity of local service providers to compete against international companies
6. The public procurement act is not flexible i.e appropriate only for traditional procurement

7. Interference in procurement process from the public.
8. Inability of service providers to access funds from banks to pre-finance contracts
9. Lack of appropriate punishment to public officials who breach the provisions of the Act and Regulations
10. Delay in the formation of a unified procurement unit staffed with qualified professionals

The factors are discussed below:

4.5.1 Lengthy procurement process due to several layers of approving structures.

The respondents agreed that this is the most important factor affecting the implementation of the Act. This variable had a mean score value of 4.47.

According to the PPA (2013) some of the approving authorities meet once a month. This increases the procurement lead time and also the cost of transacting business. Acquaye (2011) stated that a typical International Competitive Tendering (ICT) may require a minimum of 24 weeks (6 months), from the invitation of Tenders to commencement of works.

A typical National Competitive Tendering (NCT) may require a minimum duration of 18 weeks (4.5 months), from the invitation of Tenders to commencement of works.

A reduction in the number of approving structures can result in considerable cost savings. GPHA sometimes takes loans to implement its projects. Any delay in the approval process can result in high interest payments on these loans.

4.5.2 Low procurement thresholds for Entity Tender Committee

This factor was ranked second with a weighted mean score of 4.45. Schedule 3 of the Act 663 sets out the various thresholds for procurement methods. Several researchers have noted that since the enactment of the law these thresholds have never been reviewed. PPA (2013) also notes that the thresholds appear to be too low and entities have to refer all competitive tenders to the next level to seek concurrent approval. This increases the procurement lead time and cost. Respondents indicated that this state of affairs frustrates simple procurements.

4.5.3 Lowest Evaluated Mindset in the award of contract.

This factor was ranked as the third most important factor that constrains the implementation of the act. It had a weighed mean score value of 4.44.

Bidders in an attempt to win Contracts, offer low bid prices with the result that projects are sometimes abandoned midway through the Contract period.

Halil (2007) cited by Seglah (2013) asserted that this method of awarding contract based on the lowest evaluated price or quantity surveyors estimates is seriously flawed and should be replaced with more systematic and efficient approach that ensures that the price quoted are based on current market prizes.

4.5.4 Incorrect Interpretation and application of some provisions of the Act.

The respondents ranked this fourth with a mean score of 4.31. Some sections of the Act 663 are not clear and therefore leads to incorrect interpretation and application.

Section 64 (1) of the Act states that no negotiations shall take place between the procurement entity and supplier or contractor with respect to the tender

submitted. Section 64(2) states that if the lowest evaluated responsive tender exceeds the budget for the contract by a substantial margin, the procurement entity shall investigate the causes of the excessive cost and may consider requesting new tenders or subject to approval by the relevant Tender Review Board and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract. Unfortunately the tender review boards have no guidelines for contract negotiations making it difficult to negotiate a contract under such circumstances. Section 64 (2) refers to substantial margin but without defining what it means by substantial margin. The Act must be clear and free from any ambiguity to ensure effective interpretation and implementation.

4.5.5 Inadequate capacity of local service providers to compete against international companies

With a weighted mean of 4.27 the respondents identified the inadequate capacity of local service providers to compete against international companies as another factor which adversely affects the implementation of the act.

Section 3 (5) enjoins the Public Procurement Authority to assist the local business community to become competitive and efficient suppliers to the public sector. Section 60 (1) of the Act encourages the granting of a margin of preference to local service providers. Unfortunately most of them lack the minimum human resources, plant and equipment to take advantage of this provision.

This also confirms the observation by Tumutegyereize (2013) that local service providers do not have adequate capacity to compete favourably.

4.5.6 The public procurement act is not flexible, i.e appropriate only for traditional procurement.

Another equally important factor affecting the implementation of the Act is that the Act applies only to the traditional mode of procurement where the client provides all the funding for the execution of work.

GPHA does not depend on the Consolidated Fund and sometimes has to consider the use of Public Private Partnership (PPP) to implement some of its major projects. Unfortunately the Act has no provisions for PPP arrangements. Government has realised this and has prepared a draft bill for passage by parliament as separate Act for PPP.

4.5.7 Interference in procurement process from the public

Interference in procurement process from the public with a weighted mean of 4.06 was identified as the seventh variable affecting the implementation of the Act.

Thai (2001) confirmed this by noting that in a democracy many individuals, groups organisations are actively involved in all aspects of the public procurement system. They influence the implementation of procurement stutes.

In Ghana, politicians, friends, service providers use all manner of strategies to influence the procurement process. This is a breach of the Act. Section 92 (1) b of the Act 663 states that directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract is an offence.

4.5.8 Inability of Service Providers to Access funds from banks to pre-finance contracts.

The eighth (8th) factor stated by the respondents is the inability of service providers to access funds from banks to pre-finance contracts.

PPA (2003) observes that accessing funds from banks to finance contracts are unattractive due to the very high interest rates and other terms of tending. The situation is worsened if after contract delivery payment is delayed.

This seriously affects the ability of local service providers to execute and complete contracts awarded to them.

4.5.9 Lack of appropriate punishment to public officials who breach provisions of the Act and regulations.

With a weighted mean of 4.0, lack of appropriate punishment to public officials who breach provisions of the Act and Regulations was identified as the ninth (9th) factor that negatively affects the implementation of the Act. Section 92 (1) of the Act made it clear that any person who contravenes any provision of this Act commits an offence and where no penalty has been provided for the offence, the person on summary conviction to a fine not exceeding 1000 penalty units or a term of imprisonment not exceeding five years or to both. This researcher has not come across any information on an official being punished for a breach of the Act. Laws are of no effect if they are not enforced and enforcement is of no consequence if it does not prevent future occurrence of wrongly act.

4.5.10 Delay in the formation of unified procurement unit staffed with qualified professionals

This is the tenth factor with a weighted mean of 3.8. identified by respondents as a major factor hindering the effective implementation of the Act.

GPHA does not have a unified procurement unit. The Engineering Services Department handles all works and related services whilst the Procurement Department handles goods and related services. According to the respondents sometimes this arrangement creates subtle conflict between the two departments.

4.6 REMEDIES TO ADDRESS IMPLEMENTATION CHALLENGES

The respondents were also asked to express their level of disagreement or agreement to a number of factors that could address the challenges to the implementation of the Act.

Table 4.12 Remedies to address implementation challenges.

ITEM	Remedies to address Implementation challenges to Act 663	MEAN	STANDARD DEVIATION	RANK
1	Act 663 should be reviewed to limit the number of steps in procurement process to reduce the level of bureaucracy in the system	4.56	0.629	1st
2	Method thresholds in the Act 663 are unrealistic and should be reviewed to conform to prevailing market trends	4.56	0.729	2nd
3	Procurement entities should be empowered to conduct rate reasonability tests on unrealistic rates submitted by bidders	4.50	0.632	3rd
4	Method thresholds for SOE(s) should be different from District,			

	Municipal and Metropolitan Assemblies because they handle high value contracts	4.44	0.727	4th
5	All entities should set up a single procurement unit to undertake and co-ordinate all procurement activities within the activities within the entity	4.38	0.619	5th
6	Government should provide adequate office accommodation and appropriate training environment to PPA to enhance its activities	4.38	0.719	6th
7	Government should set up a special revolving fund to develop the capacities of local service providers to compete against their international counterparts	4.37	0.617	7th
8	Bidders especially disappointed or losing bidders should be encouraged to use the complaint reporting mechanism enshrined in the Act 663	4.37	0.885	8th
9	SOE(s) should be empowered to award all contracts without approval from review boards, commercially oriented and operate in private sector environments	4.33	1.175	9th
10	Public officials and service providers who breach provisions of the Act and regulations should be severely punished to serve as a deterrent	4.31	0.719	10th
11	Incentive programmes should be developed to motivate and reward good performing procurement entities	4.19	0.834	11th
12	Government should lift the current ban on employment especially employment of procurement professionals into the public sector	4.06	0.772	12th
13	Procurement entities should ensure that evaluation panel members have the requisite knowledge, skills and experience in tender evaluation	4.0	0.632	13th
14	The PPA should intensify its education programs to sensitize			

	the public and politicians on the consequences of interfering in procurement process	4.0	0.966	14th
15	The PPA should increase awareness and application of procurement rules and controls and cultivate better understanding among professionals of the detrimental effects of bribery and corruption	4.0	1.414	15th
16	Government should conduct a need assessment and resource polytechnics and universities to train more procurement professional	3.94	0.929	16th
17	Procurement entities that limit competition by refusing to print more tender documents to prospective bidders should cancel affected procurement process	3.94	0.998	17th
18	Procurement practitioners and entity heads should be adequately trained in complaint handling practices and procedures	3.94	1.181	18th
19	Entities should ensure that adequate funds are available before contracts are awarded	3.94	1.210	19th
20	Stakeholders such as civil society organizations should be involved in the evaluation and adjudication process	3.68	0.957	20th
21	To reduce cost of advertisement procurement opportunities should be advertised only at PPA websites and notice boards	3.38	1.147	21st

Table 4.12 is a summary of the remedies ranked according to their weighted means and standard deviations.

The ten (10) most important remedies identified by the respondents are as follows:

1. Act 663 should be reviewed to limit the number of steps in procurement process to reduce the level of bureaucracy in the system

2. Method thresholds in the Act 663 are unrealistic and should be reviewed to conform to prevailing market trends
3. Procurement entities should be empowered to conduct rate reasonability tests on unrealistic rates submitted by bidders
4. Method thresholds for SOE(s) should be different from District, Municipal Assemblies because they handle high value contracts
5. All entities should set up a single procurement unit to undertake and co-ordinate activities within the entity
6. Government should provide adequate office accommodation and appropriate training environment to PPA to enhance its activities
7. Government should set up a special revolving fund to develop the capacities of local service providers to compete against their international counterparts
8. Bidders especially disappointed/or losing bidders should be encouraged to use the complaint reporting mechanism enshrined in the Act 663
9. SOE(s) should be empowered to award all contracts without approval from review boards because they are self-financing, commercially oriented and operate in private sector environment
10. Public officials and service providers who breach provisions of the Act and regulations should be severely punished to serve as a deterrent.

The remedies are discussed below

4.6.1 Act 663 should be reviewed to limit the number of steps in procurement process to reduce the level of bureaucracy in the system.

4.6.2 method thresholds in the Act 663 are unrealistic and should be reviewed to conform to prevailing market trends.

The Act in its wisdom stated under Section 94 that the method threshold levels for specified in schedule 3 shall be reviewed by the Public Procurement Authority and presented by the Minister for the approval of Parliament. The economic situation in Ghana since 2003 when the Act was passed has changed significantly making the current levels unrealistic.

Various authors suggest that the revision of both the act and the number of processing steps would reduce the lead time and also the cost of procurement. Gnanih (2012) also proposes the review of Act to limit the number of processing steps to reduce the level of bureaucracy in the system which delays the smooth procurement process.

4.6.3 Procurement Entities would be empowered to conduct rate reasonableness tests on unrealistic rates submitted by bidders

Acquaye (2011) observes that most clients have incorporated clauses in Tender Documents to ensure verification of price reasonableness during evaluation of tenders. The contractor who is awarded the contract may have little or no control over suppliers of construction inputs during performance of the contracts and therefore the client has to ensure that the contract price can meet the price demands of the suppliers.

4.6.4 Method thresholds for SOE(s) should be different from District, Municipal Assemblies because they handle high value contracts.

Respondents intimated that most of their contracts are high value projects and to legislate that they should operate within the same method thresholds as district assemblies is rendering their entity tender boards redundant. This is because almost all their contracts have to be sent to the ministerial and/or central review boards for concurrent approval. They propose that SOE(s) with high value contracts be re-categorised into thresholds that would allow their tender boards to handle some of these contracts.

4.6.5 All entities should set up a single procurement units to undertake and co-ordinate all procurement acitivities

This will forestall the subtle conflicts that occurs as to who should co-ordinate procurement activities.

A unified procurement unit means there will be one unit responsible for the planning and co-ordination of all works, services and goods. Agbesi (2009) also asserts that entities should ensure that unified procurement units are established manned by qualified and experienced professional.

4.6.6 Government should provide adequate office accomodation and appropriate training environment to PPA to enhance its activities.

This is in line with the observation by PPA (2013) that to ensure the continuous training of all functionaries within the public procurement system the Authority needs to have its own office accomodation with appropriate training environment.

4.6.7 Government should set up a special revolving fund to develop the capacities of local service providers to compete against their international counterparts.

This was ranked 7th by the respondents as one of the ways to address the inability of local service providers to compete with international companies. GPHA handles high value contracts which require highly skilled manpower and specialised equipment.

For local service providers to effectively compete against their foreign companies, local companies had to be resourced. Government can provide loans for some of these companies to buy the required level of equipment and help them build the professional and technical competence of their workforce.

4.6.8 Bidders especially disappointed or losing bidders should be encouraged to use the complaint reporting mechanism enshrined in the Act 663.

Section 78 (1) of the Act 663 stipulates that any supplier, contractor or consultant that claims to have suffered or that may suffer loss or injury due to a breach of a duty imposed on the procurement entity by this Act, may seek review in accordance with this part.

Unfortunately, most of the service providers are not very familiar with this provision and therefore rather makes allegations of bribery and corruption against entities. They should be encouraged to take advantage of this provision and submit whatever complaints they have to the head of the procurement entity. If the head of the entity does not issue a decision within

twenty-one days as specified in the law the affected service provider can refer the matter to the PPA for administrative review.

4.6.9 SOE(s) should be empowered to award all contracts without approval from review boards, because they operate in private sector environments.

The respondents are of the view that GPHA does not depend on the Consolidated Fund. They generate their own revenues, take loans and engage in public private partnership arrangement to procure some of its major projects. They even generate profit and pay tax to the government. They should be allowed to award all contracts. This will drastically reduce the lead time and delays in the award of its contract.

4.6.10 Public officials and service providers who breach provisions of the Act and regulations should be severely punished to serve as a deterrent.

Respondents were of the view that those who breach the law are either not adequately punished or punished at all. A number of approaches can be adopted to guard against the breaking of procurement laws with impunity. For instance people who are found to have benefited from violation of the procurement regulations must not be left to enjoy their loots, they should be made to refund what has been misappropriated, mismanaged or stolen with high interest rates.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter presents the summary of the study, conclusions reached and recommendations.

The aim of this research was to identify the challenges to the implementation of the public procurement Act (Act 663) at the Ghana Ports and Harbours Authority.

In order to achieve this aim two research questions were posed:

- What are the implementation challenges at the Ghana Ports and Harbours Authority?
- What are the remedies to resolve the challenges?

5.2 IMPLEMENTATION CHALLENGES

The ten most important challenges to the implementation of the Act are:

- Lengthy procurement process due to the several layers of approving structures
- Low procurement thresholds for Entity Tender Committee
- Lowest evaluated bid mindset in the award of contract
- Incorrect interpretation and application of some provisions of the Act
- Inadequate capacity of local service providers to compete against international companies
- The public procurement Act is not flexible ,i.e appropriate only for traditional procurement
- Interference in the procurement process from the public

- Inability of service providers to access funds from banks to pre-finance contracts
- Lack of appropriate punishment to public officials who breach provisions of the Act and Regulations
- Delay in the formation of unified procurement unit staffed with qualified professionals

5.3 REMEDIES TO RESOLVE CHALLENGES

The ten most important remedies to resolve the challenges are:

- Act 663 should be reviewed to limit the number of steps in the procurement process to reduce the level of bureaucracy in the system
- Method thresholds in the Act 663 are unrealistic and should be reviewed to conform to prevailing market trends
- Procurement entities should be empowered to conduct rate reasonability tests on unrealistic rates submitted by bidders
- Method thresholds should be different from District , Municipal and Metropolitan Assemblies because they high value contracts
- All entities should set up a single procurement unit to undertake and co-ordinate all procurement activities within the entity
- Government should provide adequate office accommodation and appropriate training environment to PPA to enhance its activities
- Government should set up a special revolving fund to develop the capacity of local service providers to compete against their international counterparts

- Bidders especially disappointed or losing bidders should be encouraged to use the complaint reporting mechanism enshrined in the Act 663
- SOEs should be empowered to award all contracts without approval from review boards because they are self-financing, commercially oriented and operate in private sector environments
- Public officials and service providers who breach the provisions of the Act and Regulations should be severely punished to serve as a deterrent

5.4 CONCLUSIONS

Based on the findings of this study the following conclusions can be drawn:

1. There is no unified procurement unit at the GPHA. Separate departments undertake and co-ordinate works, and goods and related services. The engineering services department handles works and associated services whilst the procurement unit handles goods and associated services. This state of affairs sometimes affect the effectiveness of the procurement process.
2. The method thresholds are too low and unrealistic. This has led to most of their projects being sent to the ministerial or central tender board. Because a lot of other entities face similar problems the review boards are always congested leading to delays in approvals and subsequent awards.
3. The application of the same thresholds to all entities hinders smooth implementation of the Act. GPHA like most SOEs handle high value contracts and using those thresholds results in virtually all their projects

going to review boards even though such contracts can be handled by the entity tender committee.

4. Some sections of the Act are not very clear leading to misinterpretation and misapplication. For example section 64 (2b) failed to define what a substantial margin is when it comes to the negotiation of a contract with a bidder who quotes very high.

5.5 RECOMMENDATIONS

From the results of the findings of the study the following recommendations are being made:

1. The Public Procurement Authority in consultation with the Minister of finance should review the current thresholds for the approval of Parliament.
2. What constitutes substantial margin under section 64(2b) on negotiations should be clearly defined including allowable percentage.
3. To build the capacity of the local service providers , government can set up a special fund. The fund can be used to buy equipment for interested provider.. part of the fund can be used to build the professional and technical competence of their workforce.
4. Government should resource PPA adequately so that it can deliver its mandate to develop, promote and support training and professional development not only of public officials but also local service providers involved in public procurement.
5. GPHA should set up a unified procurement unit to undertake and co-ordinate all procurement activities (works, goods and services). It

should be headed by a procurement specialist very conversant with works, goods and services.

Future Research : The effect of bid protests on transparency and accountability in public procurement



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APPENDICES

QUESTIONNAIRE

Introduction

This research is to identify the challenges to the implementation of the Public Procurement Act 2003(Act 663) in state owned enterprises- A Case Study of The Ghana Ports and Harbours Authority . It is for academic purposes only and information provided will be kept confidential and anonymous. Your inputs will however contribute knowledge to the crafting of policies to address challenges in the implementation of the Public Procurement Act, 2003(Act 663)

Section A: Personal Data

1. Gender: Male (☐) Female (☐)
2. Age Group: 16-30yrs (☐), 31-45yrs (☐) 46-60yrs (☐) 61yrs and above (☐)

Current position:

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3. Level of Education

.....
..

4. How many years have you been with Ghana Ports and Harbours Authority:

.....
...

Section B: Implementation of the Public Procurement Reform

6. Have you had any formal training on the Public Procurement Act, Act 663?

Yes [☐] No [☐]

7. If Yes, who organized the training?

.....

8. How often should procurement training programs be organized for the staff?

Weekly [☐] Monthly [☐] Quarterly [☐] Yearly [☐]

9. The procurement knowledge base of other stakeholders (suppliers, other buyers, etc) has an Impact on procurement functions organized in this office. True [☐] No [☐]

10. Please indicate your years of experience in procurement process

(a) less than 5yrs [] (b) between 5 and 10yrs [] (c) more than 10yrs []

11. Do you think the Public Procurement reform has helped to reverse some of the problems that existed before the introduction of the reform in 2003?

Yes [] No []

12. Are you aware of the administrative review provision in Act 663? Yes []

No []

13. Do you have a single procurement unit to co-operate all procurement activities for GPHA Yes [] No []

14. Which unit co-ordinates procurement of goods

Procurement Unit [] Engineering Unit [] others

.....

15. Which unit co-ordinate procurement of works

Procurement Unit [] Engineering Unit [] others

.....

16. Which unit co-ordinates procurement of services

Procurement Unit [] Engineering Unit [] others

.....

Section C: implementation Challenges

Please indicate whether you (1) strongly disagree, (2) disagree, (3) are undecided, (4) agree or (5) strongly agree with each of the following implementation challenges to Act 663.

(Please tick the appropriate cell)

Scale: 5 – Strongly Agree, 4 – Agree, 3 – Undecided, 2 –Disagree, 1 – Strongly Disagree

	Implementation Challenges to Act 663					
		1	2	3	4	5
1	Lack of adequate training of procurement staff on the procurement process					
2	Low level of knowledge of legal framework due to poor dissemination of the procurement Act and Regulations					
3	Delay in the formation of unified procurement unit staffed with qualified professionals					
4	Inadequate funding to PPA to undertake capacity building of entity tender committees/service providers					
5	Lack of basic knowledge of the procurement law on the part of service providers					
6	Inadequate and erratic releases of funds for planned procurement activities					
7	Delay in payment of works and/or services provided by service providers					
8	Inadequate capacity to appreciate and understand standard tender/contract documents on the part of service providers					
9	Insufficient technical and managerial skills on the part of service providers					
10	Poor handling of suppliers complaints by entity					
11	Allegation of conflict of interest, bribery and corruption against some procurement process					
12	Lack of trust and confidence in the Public Procurement System by service providers					
13	Lengthy procurement process due to the several layers of approving structures (head of entity, entity tender committee, tender review board).					

14	Poorly prepared tender evaluation reports					
15	The public procurement Act is not flexible i.e. appropriate only for traditional procurement					
16	Lack of career development path and low level of remuneration and motivation for procurement professionals in public sector					
17	Lack of appropriate punishment to public officials who breach provisions of the Act and regulations					
18	Low procurement thresholds for Entity Tender Committees					
19	Inadequate record management systems for the procurement process					
20	Lack of adequate qualified procurement professional staff					
21	High cost of advertisement					
22	Lowest evaluated bid mindset in the award of contract					
23	Interference in procurement process from politicians and public					
24	Difficulty in obtaining bid, performance, securities and mobilization advance guarantees by service providers					
25	Inability of service providers to access funds from banks to pre-finance contracts					
26	Splitting of procurement activities into smaller units avoid seeking concurrent approval from review boards					
27	Lengthy and complex procedures for emergency procurement					
28	Incorrect interpretation and application of some provisions of the Act					
29	Low level of interaction between procurement entities and the public procurement authority					

30	Difficulty of entities to accept procurement as a strategic value added function					
31	Youthful age of most procurement practitioners in the public sector					
32	Public procurement process involves too much unnecessary forms filling by service providers					
33	Governments current embargo on employment into the public sector					
34	Deliberate effort by procurement entity to limit competition by refusal to print more tender documents to all prospective bidders once the documents are finished					
35	Procurement graduates from polytechnics lack adequate knowledge in public procurement					
36	Inadequate capacity of local service providers to compete against international companies					

Please state and rate below on a scale of 1 to 5 any challenges not listed above

		1	2	3	4	5

SECTION D

Measures to address implementation challenges. Please indicate whether you (1) strongly disagree (2) disagree (3) are undivided (4) agree or (5) strongly agree with

The following measures to address the implementation challenges.

Please tick appropriate cell

Item	Remedies to address implementation challenges to Act 663	1	2	3	4	5
1	The PPA should increase awareness and application of procurement rules and controls and cultivate better understanding among professionals of the detrimental effect of bribery and corruption					
2	Act 663 should be reviewed to limit the number of steps in procurement process to reduce the level of bureaucracy in the system					
3	Government should lift the current ban on employment especially employment of procurement professionals into the public sector					
4	All entities should set up a single procurement unit to undertake and co-ordinate all procurement activities within the entity					
5	Government should provide adequate office accommodation and appropriate training environment to PPA to enhance its activities					
6	Procurement practitioners and entity heads should be adequately trained in complaint handling practices and procedures					
7	Procurement entities should ensure that evaluation panel members have the requisite knowledge, skills and experience in tender evaluation					
8	Procurement entities that limit competition refusing to print more tender documents to prospective bidders should cancel affected procurement process					
9	Procurement entities should be empowered to conduct rate reasonability tests on unrealistic rates submitted by bidders					
10	Government should conduct a need assessment and resource					

	polytechnics and universities to train more procurement professionals					
11	To reduce cost of advertisement, procurement opportunities should be advertised only at PA website, procurement bulletins, entity websites and notice boards					
12	Public officials and service providers who breach provisions of the Act and regulations should be severely punished to serve as a deterrent					
13	The PPA should intensify its education programs to sensitize the public and politicians on the consequences of interfering in procurement process					
14	Stake holders such as civil society organizations should be involved in the evaluation and adjudication process					
15	Method thresholds for SOE(s) should be different from District, Municipal and Metropolitan Assemblies because they handle high value contracts					
16	SOE(s) should be empowered to award all contracts without approval from review boards, because they are self-financing commercially oriented and operate in private sector environments.					
17	Act 663 should be amended					
18	Entities should ensure that adequate funds are available before contracts are awarded					
19	Method thresholds in the Act 663 are unrealistic and should be reviewed to conform to prevailing market trends					
20	Government should set up a special revolving fund to develop the capacities of local service providers to compete against their international counterparts					
21	Procurement malpractices can be limited through the involvement of stakeholders such as civil society organizations in the procurement					

	process					
22	Bidders especially disappointed or losing bidders should be encouraged to use the complaint reporting mechanism enshrined in the Act 663					
23	Incentive programs should be developed to motivate and reward good performing procurement entities					
	Indicate other remedies to the implementation challenges that are not listed above and rank them accordingly					
1						
2						
3						

