

**KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY, KUMASI**

**DEPARTMENT OF BUILDING TECHNOLOGY**

**ASSESSING THE LEVEL OF COMPLIANCE OF THE PUBLIC PROCUREMENT**

**ACT 2003 (ACT 663) IN PUBLIC INSTITUTIONS:**

**A CASE STUDY OF KOFORIDUA POLYTECHNIC**

**BY**

**HARRISON SEGLAH BSc. (Hons)**

**A THESIS SUBMITTED TO THE DEPARTMENT OF BUILDING TECHNOLOGY,  
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THE REQUIREMENT FOR THE MASTER OF SCIENCE (MSc.) DEGREE IN  
PROCUREMENT MANAGEMENT**

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## DECLARATION

I declare that except portions where references have been duly cited, this thesis is an outcome of my research and Dr. Theophilus Adjei-Kumi, and that it has not in part or whole been presented for an award of a degree anywhere.

**Harrison Seglah**

(PG 7173912)

.....  
Signature Date

**Certified by:**

**Dr. Theophilus Adjei-Kumi**

(Supervisor)

.....  
Signature Date

**Certified by:**

**Professor. Joshua Ayarkwa**

Head of Department

.....  
Signature Date

## DEDICATION

To God be the glory and wonderful things He has done. This work is dedicated to my dear wife, Patience Nana Yaa Seglah (Mrs.), she has been the backbone of my life and has been there for me and supporting me mentally, spiritually and physically and to all well-wishers for their prayers and support throughout this period, I say thank you to you all.

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## ABSTRACT

Public Procurement in Ghana has undergone several reviews since independence with the intent of strengthening Public Financial Management Systems. Major review of public expenditure system, in 1993, revealed huge and unsustainable foreign debt, excessive budget deficits, huge contractual payment arrears, poor construction performance, and corruption. The Public Procurement Act (Act 663) 2003 was introduced in Ghana to streamline the anomalies in public procurement. The objective of the law is to promote fairness, transparency and ensure that public procurement is non-discriminatory. However compliance by the entities has been the greatest challenge in the attainment of the said objectives. The research therefore assessed the level to which the Development Office of the Koforidua Polytechnic's procurement operations comply with the provisions of the PPA 2003 Act 663 and identified implementation challenges confronting the smooth implementation of the Act. Structured questionnaire and face-to-face interviews were used to obtain data for this study. The study confirms that the Public Procurement Act 2003 (Act 663) is observed to offer solutions but not without challenges. In the pursuit to improve compliance with the Act the study recommends that public entities must recruit qualified procurement personnel and organise intensive and regular procurement training for the personnel handling public procurement especially in the area of procurement processes, and expediting action on the review process of the Procurement Act, 2003 (Act 663). Proposed projects could be designed such that the construction or implementation could be done in phases to meet the prevailing approved threshold. Nonetheless, the proposed increase in thresholds will give Procurement Entities greater control over procurement decision to reduce lead time and needless delays caused by Tender Review Boards (TRBs).

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# CHAPTER 1

## INTRODUCTION

### 1.1 Background

Public Procurement is defined as the acquisition by public bodies, such as government department and municipalities of various goods, works and services that they need for their activities using public funds by making a contact with another entity (Srinivasan, 1999) be it public or private. Procurement can be used as a mechanism to further the economic, social and environmental development of recipient countries and/or regions. (Davison, 2004). As such, sustainable procurement should incorporate a number of safeguards and checks in the procurement process to positively assist in the following areas: human rights, labour rights, environmental impacts, local entrepreneurship, poverty eradication and governance. The ultimate objective of procurement is to add value to the organization in fulfilling its mandate, goals and objectives. (UN, 2006). The object of the Public Procurement Act, 2003 (Act 663) is to harmonise the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner. (PPA, 2003) Competition conducted in a fair and transparent manner is the heart of procurement in the UN. In order for competition to work best, it must guard against collusion and be conducted on the basis of clear and appropriate regulations, rules and procedures that are applied consistently to all potential suppliers. The procurement process should be carried out in a manner that gives all interested parties, both inside and outside the organization the assurance that the process is fair. (UN Procurement Practitioner's Handbook, 2006)

Procurement Entity is defined by the Public Procurement Act, 2003 (Act 663) of Ghana, as any entity conducting public procurement under the Act.

Over the past decades, Public procurement is often in the media headlines around the world for various reasons- fraud and corruption dominates in some countries. Nations where process reform has largely eradicated such crimes are dogged by reports of other failures. (Louis Knight et al 2007). It is unsurprising therefore that public procurement has risen up the political agenda in most countries and major reform programmes are planned and being implemented.

Given the variety of function of government, Public Procurement covers a wide range of transaction varying from goods, works and services. The procurement body must therefore have the legal powers to undertake the transaction; obtain any relevant approval within the government hierarchy and arrange the necessary funding (Srinivasan, 1999). This requires the enactment of Public Procurement Laws, to provide the legal framework for public procurement.

In Ghana, the Public Procurement Act (Act 663) 2003, was enacted with the objective of harmonizing public procurement process in the public service, securing a judicious economic and efficient use of state resources, and also, ensuring that public procurement is fair, transparent and non-discriminating (Ministry of Finance, 2001)

This Act came into being after several years of poor procurement and abuse as far as procurement was concerned in the country. It is in the light of these challenges that the government after many review of its public expenditure system decided to establish a comprehensive public financial reform programme designed to strengthen its Public Financial Management System. The Government of Ghana then launched the Public Financial Management Reform Programme (PUFMARP) in 1996.

PUFMARP under its review identified among other things the following weaknesses in the procurement system:

- No rules and regulations to guide, direct, train and monitor public procurement
- No independent appeal process to address complaints from tenders

- There was no central body with technical expertise to oversee/regulate sound procurement practice
- No authority to dispose off public assets
- No comprehensive Public Procurement Policy

Consequently, the Ministry of Finance and Economic Planning in 1999 established the Public Procurement Oversight Group to steer the development of a comprehensive Public Procurement reform programme. A draft public procurement bill was presented as a result in September, 2002. This was passed into law on 31<sup>st</sup> December, 2003 as the Public Procurement Act of 2003 (World Bank 2003). The enactment of the law in 2003 further ensured that modern trends in procurement was adopted to bring about the much needed sanity and to address the real and perceived weaknesses in the public procurement system.

In Ghana, Public Procurement account for 50%-70% of the national budget (after personal emolument). 14% of GDP and 24% of total imports. Implicitly, Public Procurement therefore has both economic and social impact on the country (World Bank 2003).

This thesis would seek to explore and access the level of compliance of the law by Koforidua Polytechnic as a public institution and identify the various challenges confronting the implementation of the Act.

## **1.2 The Problem Statement**

Government is a big buyer and can positively influence the market by insisting on products that are ethically sourced. Mention the word 'procurement' to most people and you will likely be met with an expression somewhere between boredom and indifference. Procurement (or 'buying') is not an exciting topic, like social innovation or social media. Yet, it is one of the most important tools in developing the market for social enterprises and remains a vast, largely untapped resource. (OECD, 2000),



Increasing the effectiveness, efficiency and transparency of procurement systems is an on-going concern of governments and the international development community. All countries have recognized that increasing the effectiveness of the use of public funds, including funds provided through official development assistance (ODA) requires the existence of an adequate national procurement system that meets international standards and that operates as intended (Osei-Tutu et al, 2011)

Transparency means unimpeded visibility. Because public procurement involves the use of and accountability for public funds, transparency is, perhaps, paramount in all procurement activities. Transparency ensures that any deviations from fair and equal treatment are detected very early, and makes such deviations less likely to occur. It thus protects the integrity of the process and the interest of the organization. (Ukalkar, 2000)

Regular and continuous assessment of procurement entities in countries of their national procurement systems with regard to their compliance with the procedures, rules and regulations setup in the Public Procurement Laws has been embraced worldwide. (Osei-Tutu et al 2011). Non-compliance to procurement laws is considered as a major hindrance to the effectiveness of the laws (Gelderman et al, 2006).

The lack of knowledge of the legal framework caused by the poor dissemination of the Act and regulations and lack of incentives to follow proper procedures caused by the weak monitoring and enforcement has also resulted in the non - compliance of the Act 663. (Agbesi, 2009)

The Public Procurement Authority (PPA), researched into the performance of hundred procurement entities. The result showed an overall procurement performance of 47.61% in program design (52.3%), management systems (40.8%), procurement processes and contract management (46.1%). The study also revealed that there was a low advertisement of tender opportunities and low awareness of publication of contract award which indicates a level of non- compliance of the law (Adjei, 2006).



The object of the procurement reform in Ghana is to harmonize the processes of procurement in the public entities to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner while promoting a competitive local industry and achieving value for money. However, various allegations regarding public procurement issues relating to irregularities in procurement processes were leveled against Public Entities (PE) and other stakeholders involved directly or indirectly in procurement were among the findings of the reforms. These allegations include corruption, fraud, over budgeting, inefficiency, delay in procurement due to long procurement processes, high cost of projects, lack of fairness, transparency, and non-discrimination in the selection and award of government contracts, as well as not delivering to specified performance levels. Public Entities are also confronted with procurement issues such as professionalism, limited career development opportunities for procurement staff in the public service, and weak contract management (CPAR 2003).

Non-compliance will defeat the overriding objectives of the Public Procurement Act of 2003, Act 663 to deliver economy and efficiency in the use of public funds, value for money, quality of services, goods, and works while adhering to the fundamental principles of non-discrimination and equal treatment, due process, access to information and transparency. (Agbesi, 2009). There is a knowledge gap on how the procurement assessment can contribute to improved performance of the procurement function in developing countries. Only when the procurement function is well planned, that it is easy to identify areas where it is performing well, and where there is need for improvement (Kakwezi & Nyeko, 2010).

The study would be conducted to determine whether the Public Procurement Act, 2003 (Act 663) has been complied with by Public Entities (PE) and whether the reform has helped in addressing the challenges prior to the implementation of the Public Procurement Act, 2003 (Act 663).

### **1.3 Aim and Objectives of the Research**

This section begins with the research aim, research objectives and research questions.

#### **1.3.1 Aim**

The main research aim was to assess the level to which the Development Office of the Koforidua Polytechnic's procurement operations comply with the provisions of the PPA 2003 Act 663.

#### **1.3.2 Objectives**

In order to answer the research questions and to achieve the overall research aim as stated above, the following research specific objectives will be articulated:

1. To document the processes and procedures adopted by the Koforidua Polytechnic Development Office during their procurement operations;
2. To determine the extent of compliance with the Public Procurement Reform by public entities; and
3. To identify factors affecting implementation of the Public Procurement Act, 2003 (Act 663)

#### **1.3.3 Research Questions**

The following key research questions will be articulated to facilitate the enquiry:

- Has the Koforidua Polytechnic established the structures and procedures outlined in the Act 663?
- What is the level of compliance/performance with the Public Procurement Act, 2003 (Act 663) by the Koforidua Polytechnic?
- What are the implementing challenges of the Act 663?

#### **1.4 Significance of the Study**

This study is important because it will contribute to knowledge and development of literature in the subject area under investigation; and serve also as a basis for further research for all those interested in the topic. It will also provide a framework for ensuring effective procurement practices in Koforidua Polytechnic so as to enhance good corporate governance through transparency and accountability.

It is expected that the study will help the government especially the Ministry of Education and Polytechnic Council in regulating procurement activities of public polytechnics in the area of efficient procurement practices. It would also influence national and corporate procurement policies which would be of relevance to other public institutions and would also serve as a guide on what strategies to adopt in efficient procurement practices.

#### **1.4 Research Methodology**

The review will be preceded with sourcing of credible and scientific data from the extant literature through journals and books. The enquiry will largely depend on personal interviews, discussions and a self-administered structured survey questionnaire to assemble empirical primary and secondary data based on the results obtained from literature from the field. The questions on the questionnaires shall include open and close-ended questions which would be designed and administered to procurement practitioners within the development office of Koforidua Polytechnic. Purposive sampling method will be used in selecting the sample sizes from various actors and stake holders engaged in procurement in the Polytechnic. Descriptive and ranking analytical tool and SPSS version 16 for windows data analysis technique and excel would be used. The relevant conclusions will be drawn after the analysis, followed by research report.

## **1.6 Scope of the Research**

The survey will cover procurement practices of the Development Office of Koforidua Polytechnic., a public tertiary institution in the Eastern Region. The study will zone into assessing the level of compliance of Act 663 and the implementation challenges associated with procurement. The study relates to procurement of works to determine whether or not they are in conformity with guidelines set out in the Public Procurement Act, Act 663. The target population from whom data will be sourced will be the Development Office including the Estate department which falls under the development office.

## **1.7 Limitation of the Study**

Under the Public Procurement Act, Act 663, all MDAs and MMDAs are to procure works, goods and services in compliance with the Act. Unfortunately not all MDAs and MMDAs will comply with the provisions of the law.

This study is limited to Koforidua Polytechnic because the researcher has a close association with it. It is also limited to Koforidua Polytechnic to watch with close eyes the quantum of money spent on procurements. The institution incurs big sums of money in procurement of works, goods and services to enable it meet vision, mission and objectives stated in its strategic plan. The study considers that an efficient and effective procurement system is sine qua non of growth and expansion of the Polytechnic.

## **1.8 Organization of the Research**

The structure of the research shall be divided into five (5) interdependent chapters, and shall conform to the following outline. Chapter 1, labelled “General Introduction to the Research”, presents the background to the research and states the problem meriting research efforts. The working hypothesis, research questions, research aim, objectives, and scope are all contained in this chapter. Chapter 2 shall contain the literature review. The review shall provide and extend coverage on earlier works. Chapter 3 shall presents the methodology to be used for collecting

data, questionnaire design and development, the determination of sample size and administration of questionnaires. Chapter 4 shall present the empirical analysis of data from the field survey that answered all the research objectives and questions. Chapter 5 which shall be labelled “Findings, Conclusions and Recommendations” shall wrap up the entire research endeavour by reviewing the main contributions of the research to knowledge. Pointers as to where future research attempts should be directed shall also be clearly defined.

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## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter delves in to the reviews undertaken on Public procurement theoretically. The review focuses on the overview of Public reforms in Ghana. The public Entities, who are major stakeholders of the reform, have expressed varied perceptions about the implementation of the reform. The Public Procurement Authority (PPA) has also given some responses to some of the key issues raised by the public and the entities. In this chapter, a number of relevant literatures on the impact of public procurement Act 663 in Ghana are presented in order to establish and provide answers to the research question.

#### **2.2 Evolution of Public Procurement**

Public procurement has a long history. A red clay tablet dating from between 2400 and 2800 B.C in Syria is believed to be the earliest existing procurement order. 50 jars of fragrant smooth oil for 600 small weight in grain was the order (Coe, 1989). Other evidence of historical procurement includes the development of the silk trade between China and a Greek colony in 800 B.C.

##### **2.2.1 Public Procurement and the Public Sector**

Once viewed as a peripheral support activity (Dary, 2003), public procurement is now recognized as one of the central elements of good governance. According to the OECD, procurement is much more than a process or procedure. It is a fundamental and integral part of the governance and public financial system (OECD, 2005 p. 9). Increasingly, government and supranational organisation are looking to public procurement as a means of bringing about social and economic reforms and promoting trade and foreign investment. Although potential cost saving account for much of this sudden interest, it has been argued that the heightened



awareness of public procurement has been driven by a further three factors (Asia Development Bank, 2002)

- A. Increased number of players created by the decentralization of government and the outward movement of public procurement into agencies and local government.
- B. Demand of transparency from both the tax payer and contractors and suppliers calling for a clear and equitable procurement process.
- C. Trade and investment. Developments where foreign firms prefer to deal with nations operating a national procurement policy that is non-discriminatory and respects the rule of law.

### **2.2.2 Importance of Public Procurement**

The sheer magnitude of the public procurement dollar expenditure outlay has a dramatic impact on the economy and thus, needs to be well managed (Thai, 2009). In all countries in the world, estimates of the financial activities of public procurement officials are believed to be on the order of 10% - 30% of the GNPC (Calendar & Mathews, 2000). The total expenditure for all levels of government in 24 industrialized nations ranges between 29.8 and 55.9 percent of gross Domestic Product (OECD, 2006). The significance of public procurement cannot be overemphasized considering the huge financial commitment that is usually involved in the procurement process. (Ayitey, 2012)

[Ayitey, 2012 cited Thai, 2001] that the public procurement is an integral function of governments in both developed and developing countries as the huge financial outflows has a great impact on their economies that needs prudent management.

Public procurement has a direct impact on the following: the successful delivery of government projects and public services, sound public financial management by achieving value for money in government expenditure, reducing corruption, encouraging private sector growth and investment. In Ghana, statistics show Public Procurement account for 50%-70% of the national



budget (after personal emolument). 14% of GDP and 24% of total imports. Implicitly, Public Procurement therefore has both economic and social impact on the country (World Bank 2003).

### **2.2.3 Definition of Public Procurement**

Public Procurement is defined as the acquisition by public bodies, such as government department and municipalities of various goods, works and services that they need for their activities using public funds by making a contact with another entity (Srinivasan, 1999) be it public or private.

The definition of the overall purchasing task is “to obtain materials, goods and services at the right quality, in the right quantity from the right source delivered to the right place at the right time at the right price, to achieve an organizational objective.

Public Procurement, according to the Public Procurement Act, 2003 (Act 663), is ‘the acquisition of goods, works and services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place for the direct benefit or use of governments, corporations, or individuals, generally via a contract’ (PPA Module, 2007). In other words, Public Procurement is the process by which organizations acquire goods, works and services using public funds. It is a comprehensive process that runs from proper procurement planning, budget allocation, bids invitation, bids evaluation, award of contract, contract management, performance measurement, monitoring, auditing and reporting. (Ayitey, 2012)

### **2.3 The public procurement reforms in Ghana**

Prior to the enactment of the Public Procurement Act, 2003 (Act 663), Ghana National Procurement Agency (GNPA) and Ghana supply Company Limited (GSCL) were the main agents that procured all public goods for the government since there was no comprehensive

procurement guidance (Ayitey, 2012). These bodies do not regulate procurement but purchase goods and services on behalf of public entities.

The Government of Ghana launched the Public Financial Management Reform Programme (PUFMARP) in 1996. The aim was to improve overall public financial management in Ghana.

PUFMARP identified the under-mentioned weaknesses in the procurement system:

- No comprehensive public procurement policy
- There was no central body with technical expertise to oversee/regulate sound procurement practice
- There was no comprehensive legal regime to safeguard public procurement
- Absence of clearly defined roles, responsibilities and authority for procurement entities
- No rules and regulations to guide, direct, train and monitor public procurement
- National Procurement Agency (NPA) and Supply Company Ltd procure on behalf of government for PEs
- No independent appeals process to address complaints from aggrieved tenderers
- No authority to dispose of public assets, and
- No independent procurement auditing and monitoring function.

As there was no comprehensive legal regime and a central body with the responsibility to harmonize procurement process in the country, more and more sector ministries such as the Ministry of Health (MOH) have decided to implement their own procurement system. (Ayitey, 2012)

World Bank Procurement Guidelines were also used for World Bank projects (World Bank, 1995/1997). Traditional procurement methods were used for public works with provisions for compulsory registration and classification of suppliers and contractors administered by the

Ministry of Water Resources, Works and Housing. Contractors classified by the Ministry of Water Resources, Works and Housing were too general and outdated and their registration criterion - contractors lists and monetary thresholds - were not regularly rationalized as indicated by the World Bank (1996) and Eyiah and Cook, (2003). Since 1999, the Ministry of Finance has been working on the development of a national Procurement Code using the achievements in procurement at the Ministry of

Health as an example to largely regulate procurement through the issuance of circulars. This complements a set of procedures that evolves from conventions that are connected with procurement control by the Ministry.

Major or complex contracts that were financed by the government through architectural consultancy services and project supervision were assigned to the Architectural and Engineering Services Limited (AESL) on single basis without recourse to fair competition (World Bank 1996). These uncoordinated and unregulated systems of procurement were the consequences of poor procurement situation leading to the much acclaimed reform of public procurement practices to instill trust and confidence in the public and the donor community (Ayitey, 2012).

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 act, 2003, (Act 663) has established Public Procurement Authority (PPA) as a body corporate charged with the oversight responsibility for the effective implementation of the Act. The object for PPA is to secure a judicious, economic, and efficient use of public funds in a fair, transparent and non-discriminatory manner while promoting a competitive Local industry.

## **2.4 Introduction of the Public Procurement Act, 2003 (Act 663)**

### **2.4.1 Objectives of the Act 663 of 2003**

1. The main objectives of Act 663 are given in section 2 and are to:

- Harmonise public procurement processes in the public service;
- Secure judicious, economic and efficient use of state resources; and
- Ensure public procurement is fair, transparent and non discriminatory.

### **2.4.2 Scope of Act 663**

Act 663 applies to the following (Section 14 (1)):

- Procurement financed from public funds-wholly or partly;
- Procurement of goods, works, services and contract administration;
- Disposal of public stores and equipment; and
- Procurement financed by funds and loans taken by the Government of Ghana, including foreign aid funds.

#### **The EXCEPTIONS are:**

- Where the Minister decides that alternatives procedures are in the national interest;
- Where a loan or funding of agreement specifies alternatives procedures e.g. some aid agreements; and
- The Act does not apply to stores management and distribution.

### **2.4.3 Who does the Act 663 apply to?**

The following institutions come under the ambit of Act 663 (Section 14(2)):

- Central Management Agencies;
- Ministries ,Departments and Agencies;
- Sub - vented Agencies;
- Governance Institutions;
- State-owned enterprises (when using public funds);
- Public universities, schools, colleges and hospitals;
- The Bank of Ghana and financial institution owned or majority -owned by Government; and
- Institutions established by Government for the general welfare of the public.

### **2.4.4 Functions of Act 663**

The Public Procurement Act has the following functions:

- Establishes the Public Procurement Authority, Entity Tender Committees and Tender Review Boards;
- Specifies, outline rules for procurement methods, procedure and appeals, by tenderers and disposal of stores;
- Defines offences and applicable penalties;
- Specifies thresholds in Schedules to the Act; and
- Authorises the issues of Regulations, which are enforceable under the Act.

### **2.4.5 The Legal Framework**

The legal frameworks covering public procurement are:

- Public Procurement Act 663 of 2003;
- Public Procurement Regulation;
- Public Procurement Manual;
- Standard Tender Documents; and
- Guidelines

#### **2.4.5.1 Regulations**

Regulations are issued by the Minister for Finance in consultation with PPB, under section 97 of the Act. They contained detailed rules and procedures for all aspect of the procurement system, the operations of PPA and procurement entities and the conduct of procurement activities.

#### **2.4.5.2 Guidelines**

The guidelines are issued by the Public Procurement Authority (PPA) under the Act and provide supplementary guidance on specific topics, for example:

- Disposal;
- Single source procurement;
- Margins of preference; and
- Further guidelines are issued as required by the PPA.

#### **2.4.5.3 Standard Tender Document**

These are issued by the PPA and listed in Schedule 4 of the Act. They comprise standard invitation and contract document for procurement of all values. They are separate standard tender document for goods, works and services.



#### **2.4.5.4 Public Procurement Manual**

This is issued by the PPA. It provides practical guidance and step-by-step procedures for undertaking procurement in accordance with the Act. It contains standard forms to assist with procurement record keeping.

### **2.5 Procurement Structures**

Part II of Act 663 sets out the structures which are to be set up to carry out procurement in the Public Service. Each of these structures is set up in accordance with the appropriate composition outlined in Schedule 1 and 2 of Act 663.

The main structures as outlined in Part II and which fall within the scope of this work are:

- i. Public Procurement Authority;
- ii. Procurement Entity;
- iii. Head of Procurement Entity;
- iv. Procurement Unit;
- v. Entity Tender Committees;
- vi. Entity Review Boards; and
- vii. Tender Evaluation Panel

#### **2.5.1 Public Procurement Authority (PPA)**

The Public Procurement Authority acts as the statutory advisory and co-ordinating body on procurement (Part I of Act 663). All Procurement Entities, Tender Committees and Tender Review Boards are required to abide by the technical guidelines and regulatory instructions issued by the PPA. The PPA has responsibility for the overall co-ordination, direction and development of Government procurement practices and procedures. The Authority is entrusted with 21 functions under Section 3 of the Act which are summarized as follows:



- Formulation/Development of public procurement policy, setting standards, rules, instructions and other regulatory instruments on public procurement;
- Monitoring compliance with requirements established by legislation;
- Obtaining and ensuring dissemination of information relating to public Procurement;
- Facilitating and supporting capacity building in public procurement;
- Organising and participating in administrative review of complaints and appeals on public procurement;
- Maintaining registers of procurement entities, members and secretaries of tender committees, and of suppliers, contractors, consultants, and records of prices;
- Investigating and debarring from public procurement suppliers, contractors and consultants who have contravened the provisions of the Act and Regulations, and communicating a list of debarred firms to procurement entities;
- Through an annual procurement forum, providing a platform for discussion of issues relating to public procurement; and
- Assisting the local business community to become competitive and efficient suppliers to the public sector.

### **2.5.2 Procurement Entity**

A Procurement Entity is an organization or person that has legal/administrative mandate for procurement purposes (Chapter 2.2, Procurement Manuel). In order words, any entity conducting public procurement under the Act. A Procurement Entity is responsible for all procurement activity of the entity in compliance with the law and any regulations or administrative instructions issued by the Ministry of Finance in consultation with the Authority (Section 15, (1) Act 663). Section 15 (2) provides the role and responsibilities of the head of an procurement entity.

### **2.5.2.1 Head of Entity**

Each Procurement Entity has a head that is responsible for taking decisions on procurement and all matters arising there from (Section 15(2)). The head of entity is required to establish a procurement unit to undertake all activities related to procurement within the entity in accordance with the Act and shall appoint or designate a proficient procurement person with the requisite qualifications, experience and skills as head of the procurement unit to undertake the detailed activities of procurement on behalf of the procurement entity (Regulation 15).

### **2.5.3 Procurement Unit**

A Procurement Unit is an outfit in a procurement entity with the responsibility of superintending procurement. The head of the Procurement Unit (and his/her team) shall be responsible for undertaking and co-ordinating all detailed procurement activities with the procurement entity.

#### **2.5.3.1 Functions of Procurement Unit**

The functions of the procurement unit include:

- a. Receiving procurement requests from originating officers, checking that, the proposed procurement is within the approved procurement plan and that, budget funds are available prior to commencement of procurement proceedings;
- b. That, funds are properly committed prior to issue of any contract or purchase order;
- c. Co-ordinating the preparation of specifications, terms of reference, bills of quantities, drawings, shortlist or advertisements and prequalification, tender or request for quotation documents. When so required by the Tender Committee, submission of documentation for review by the tender committee prior to issue;
- d. Arranging the publication of advertisements 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;
- f. Participating in evaluation activities of the tender evaluation panel where necessary and assisting in preparation of formal evaluation reports;
- g. Preparing submissions for approval of award 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 where necessary or other tenderers where expressly permitted in the Act or Regulations;
- j. Preparing notification of awards and contracts;
- k. Arranging publication of notices of contract 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 inspection and acceptance of goods, works and services; and
- p. Maintaining procurement records in accordance with Section 28 of the Act and the Regulations.

#### **2.5.4 Entity Tender Committee**

Section 17 of the Act; mandate each procurement entity to establish a Tender Committee in the manner set out in schedule 1.

Establishment of Entity Tender Committee

Tender Committee is established at the following levels:

- a. Central Management Agency/Ministry/Sub vented Agency;
- b. Tender Committee for Regional Co-ordinating Council; and
- c. Metropolitan/Municipal/District Tender Committee.

For the purposes of this research, emphasis is being put on Tertiary Institutions Tender Committee

#### **2.5.5 Tertiary Institutions Tender Committee**

The committee is made up of eight (10) members.

#### **Functions**

The functions of Tertiary Institutions Tender Committee are:

- (a) Review procurement plans in order to ensure that they support the objectives and operations of the Institution, Faculty, Department or Entity;
- (b) Confirm the range of acceptable costs of items to be procured and match these with the available funds in the 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 guidelines;
- (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 disposed of in compliance with this Act.

### **2.5.6 Tender Evaluation Panel**

Section 19 of the Act establishes a Tender Evaluation Panel by each procurement entity to evaluate tenders and assist the tender committee in its work. A panel is an ad hoc body (Regulation 19(20)) of not more than five members constituted for a specific procurement package. The panel includes members with skills, knowledge and experience relevant to procurement requirements.

## **2.6 Brief Review of Procurement Procedures**

### **2.6.1 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, it also provides useful benchmark for procurements monitors and evaluators to carry out their duties effectively. The cycle begins with Planning, Sourcing, Contracting, Evaluation and Contract Administration.

#### **2.6.1.1 Planning**

During this first phase of the procurement cycle, procurement requirements are determined and specified by the user. The approach or strategy is decided, including considerations such as whether to provide the product (s) in-house or source them externally. A timetable for the procurement process will be prepared.

#### **2.6.1.2 Sourcing**

This phase follows the appropriate process for the selected method of procurement. Activities may include pre-qualification of potential suppliers, preparation and issue of tender documents, requests for quotation or requests for proposals, evaluation of responses and the selection of the successful tender.

### **2.6.1.3 Contracting**

A contract will be made. A formal Contract Documents will be drawn up, using the agreed terms and conditions, and signed by both parties.

### **2.6.1.4 Contracts Management**

The awarded contract must then be managed, to ensure that both the buyer and supplier perform their contractual obligations. Activities may include expediting delivery, technical supervision.

### **2.6.1.5 Storing**

Where goods are not being used immediately, there is often a need to store them, ensuring that no damage or loss occurs. The value of stock can be high and timely availability can be crucial to an organisation's operations. Goods may require particular storage conditions or have limited shelf life, so effective storage, handling and management of stock levels are essential.

### **2.6.1.6 Distribution**

Goods in storage need to be delivered to their final destination, in accordance with customer requirements. Distribution may involve complex in-country supply chains, with delivery to multiple regional stores facilities or end-user sites. There may be a need to respond to varying user demands and transport goods through difficult environments with poor infrastructure.

### **2.6.1.7 Disposal**

Unserviceable, obsolete or surplus stocks need to be disposed off. Depending on the nature of the goods and their condition, they may be sold by public tender or auction, transferred to another public organisation or destroyed. Appropriate adjustments must be made to accounts to reflect the value of the goods disposed and any income received.

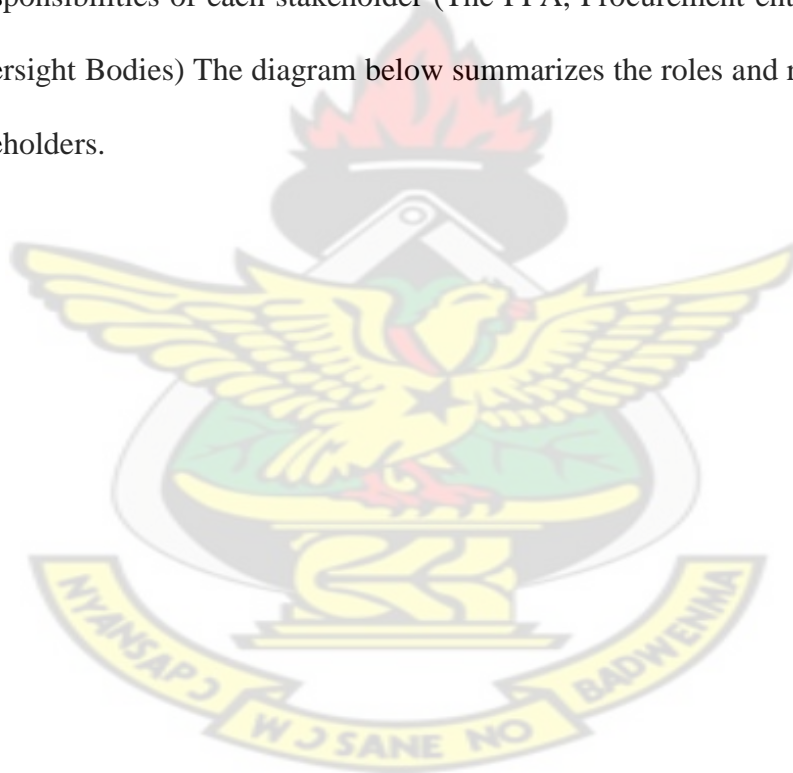


### **2.6.1.8 Evaluation**

Controlling the performance of the purchasing function and ensuring its efficiency and effectiveness is essential to the management of the procurement process. It is vital to evaluate how well the procurement process has gone, identify any weaknesses or problems and agree actions to prevent similar problems in the future. Evaluation may include a formal procurement audit.

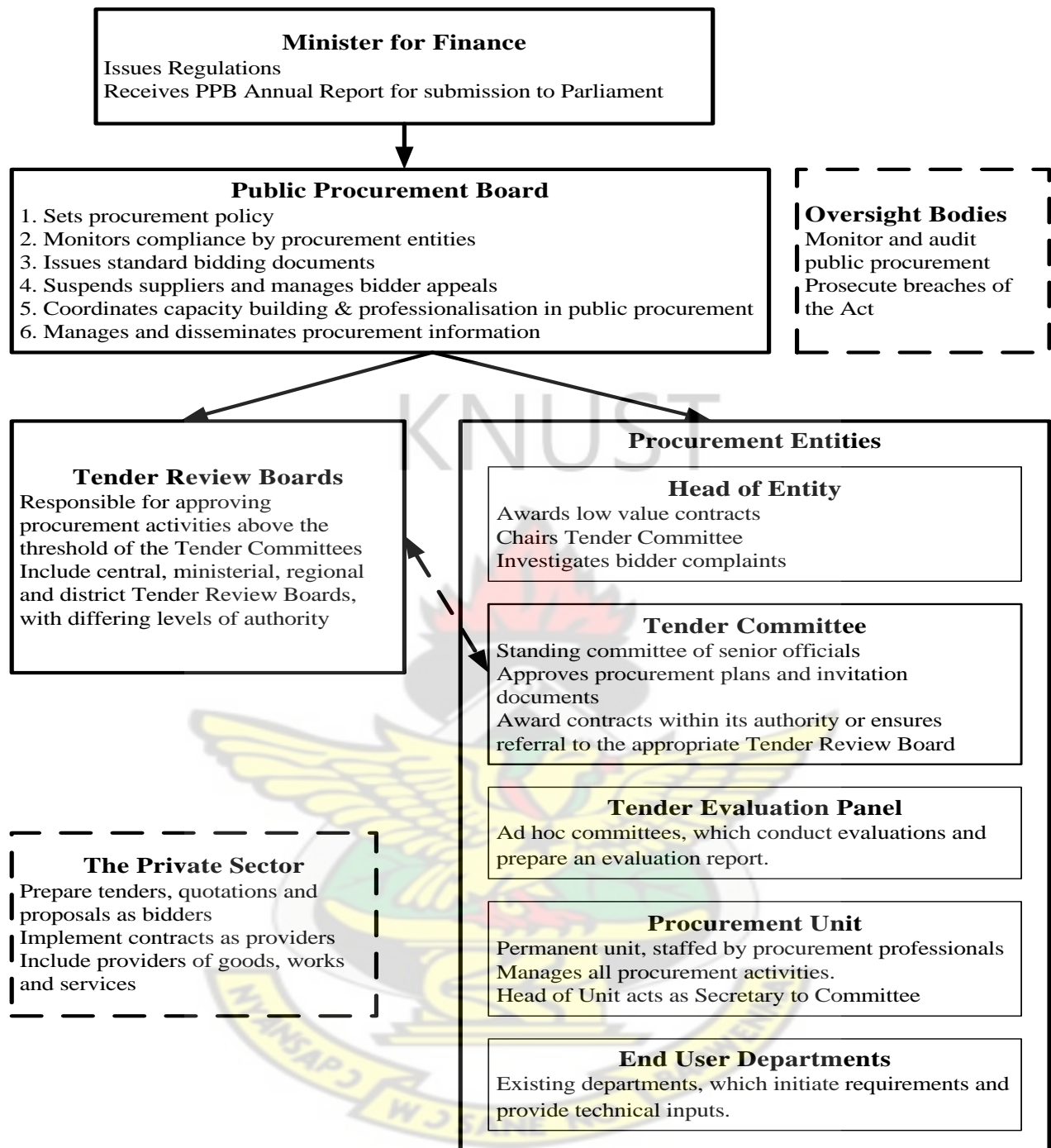
### **2.7 Procurement Structures, Roles and Responsibilities**

The Act and Regulations define the institutional framework for public procurement in Ghana – the roles and responsibilities of each stakeholder (The PPA, Procurement entities, The Private Sector, And Oversight Bodies) The diagram below summarizes the roles and responsibilities of the various stakeholders.





**Figure 1: Procurement Structures, Roles and Responsibilities**



Source: PPB Procurement Training Module 2

## 2.8 Procurement Methods, Thresholds and Procedures

There are various methods of procurement provided under the law for use by public procurement entities. The choice of particular method is based on the amount involved (threshold) and the circumstances surrounding the procurement.

### **2.8.1 Procurement Methods and thresholds**

Competitive Tendering (Section 35 & Part V of Act 663).

The Act and Regulations endorse the use of competitive tendering method for standard high value procurement for goods, works and consultancy services. The two types of competitive tendering methods include (1) International Competitive Tendering (ICT) which is used when effective competition cannot be achieved without the inclusion of foreign firms (s.45). (2) National Competitive Tendering (NCT) is used when the procurement entity so decides (s.44) and subject to contract value thresholds specified in Schedule 3. It is the most preferable methods under the law, as it encourages maximum competition in the procurement system. The invitation to tender is always advertised and opened publicly.

#### **2.8.1.1 Request for quotations (Sections 42-43 of Act 663)**

The process of organizing a fully fledged tendering or other competitive tendering procedure is normally a time consuming and costly exercise which can be dispensed with when the contract value is small. The main idea is to allow procuring entities to use a simplified procedure in those instances where the contract value is so small that the administrative effort related to a full-fledged tendering procedure appears out of proportion (Acts 663, 2003). The method is based on comparing price quotations obtained from at least three foreign or local suppliers for goods/works that are small in value.

#### **2.8.1.2 Two-Stage Tendering (Sections 36-37 of Act 663)**

Two-stage tendering is only allowed where detailed specifications cannot be made available before going to tender (s.36) or the optimal solution is unknown. In the case of services, it is used to obtain proposal or offers on various means to meet its procurement requirements.

### **2.8.1.3 Restricted Tendering (Sections 38-39 of Act 663)**

This is a procurement method with limited competition. A maximum of six and a minimum of three short-listed suppliers are invited to tender. To apply this method, a procurement entity requires specific approval from the Public Procurement Authority (PPA). The Restricted Tendering method is applied mainly where procurement requirement is of specialised nature and there is enough evidence to show that there is limited number of potential suppliers. In 2009 a total of 167 out of 179 entities received approval to use this method of procurement as compared to 2008 approval of 166 out of 173 applications received (PPA Annual report, 2009).

### **2.8.1.4 Single Source Procurement (Sections 40-41 of Act 663)**

This system involves procurement from a supplier without any competition. It is normally used for procurement of sole or single sourced requirements. The law allows this method where: procurement is for justifiably urgent items, requirements can only be supplied by one source, additional requirements for purposes of standardisation, purposes for research, experiment, study or development, procurement that concerns national security. 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 PPA (PPA Annual report, 2008/2009). This method has often been abused by entities and political leaders over the years. According to the Finance Minister, public procurement appears to be one of government's activities most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction it brings between the public and private sectors. On that note, the PPA Board was urged to examine very carefully the conditions for approving sole-source procurement applications with the view of making it more of an exception rather than the norm. All contracts must be tendered on an open competitive basis, except otherwise provided for in the Act (s.35). All procurement must use the appropriate standard tender documents provided in Schedule 4 and modifications can only be introduced through contract data sheets or special conditions of contract (s.50). The successful tender for works contracts shall be the lowest

evaluated tender price ascertained on the basis of criteria specified in the invitation documents, which shall include (s.59): (1) the tender price subject to any margin of preference for domestic contractors (s.60); (2) the potential for economic development, local involvement or technology transfer; and (3) national security considerations. The selection of consultants shall be on quality and cost-based criteria (s.75) with the price component assessed in a similar manner as for works (s.69). Quality-based selection is allowed for complex or highly specialized assignments (s.72), and least-cost selection is reserved for small value assignments.

**Table 1: Thresholds for Procurement Methods**

No.	Procurement Method/Advertisement	Characteristics	Threshold for Application
1	Prequalification a. Goods b. Works c. technical services	Public advertisement to select tenderers who are qualified prior to the submission of tenders.	Above GH ₵3.5million Above GH₵7.0million (not more than 10% of cost of works)
2	International competitive tender a. Goods b. Works c. Technical services	Public advertisement of tender in international paper	Above GH₵1.5million Above GH₵2million Above GH₵200,000
3	National Competitive tendering a. Goods b. Works c. Technical services	Public advertisement of tender in the procurement Bulletin and two national papers	More than Gh₵20,000 up to Gh₵200,000 More than gh₵50,000 up to Gh₵150,000 More than Gh₵20,000 up to Gh₵200,000
	Restricted tendering a. Goods b. Works c. Technical services	Direct procurement method without advertisement where goods, works, or services are unavailable from a limited number of contractors	Subject to approval
	Price Quotation a. Goods b. Works c. Technical services	Without advertisement. A minimum of three bids from a shortlist	Up to Gh₵200,000 Up to Gh₵50,000 Up to Gh₵20,000
	Single source procurement	In emergency situations and when only one supplier or contractor is available.	Subject to approval by PPA

Source: Act 663.

## **2.8.2 Procurement Procedures**

### **2.8.2.1 Planning Procurement**

Generally, planning enables organizations to, among other things, determine performance standards, establish overall direction, anticipate and avoid future problems and reduce the risks of uncertainty, identify and commit resources towards the achievement of goals, determine and develop performance standards, and effectively coordinate various activities in the organization (PPB Manual, 2005). The Public Procurement Act 663 provides for the activity of planning under Part 3 section 21. 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 (ETCs), after which the plans are updated every quarter. The list of entities who submitted their procurement plans are published in the Public Procurement Bulletin. In 2010, only 164 entities out of over 1000 entities across the country submitted their annual procurement plan. As at October, 2011 only 199 entities submitted their plan to Public Procurement Authority (PPA Procurement Bulletin 2010/2011).

### **2.8.2.2 Tendering Process**

The requirement to advertise the intention to buy goods and works is spelt out by Section 47 of Act 663 for procurement using International and National Competitive Tendering. Advertising is required for invitations to tender if there is no pre-qualification. The object of advertising is to provide wide and timely notification of tendering opportunities so as to obtain maximum competition by informing all potential tenderers and to afford equal opportunities to all qualified and eligible tenderers without discrimination. For reasons of transparency, fairness and impartiality, tender documents should be provided for all eligible tenderers by the procuring entity. Procurement entities are to provide tender documents to suppliers and contractors in accordance with procedures and requirements that were stated in the advertisement. The price at which the tender document is sold should be enough to recover the



cost of printing and the document being made available to suppliers and contractors. Sufficient quantities of tender documents should be made available as many as there are tenderers. It is an offence to deny any supplier or contractor the opportunity to participate in any tender simply because stocks of documents are exhausted. Tenders should be opened immediately after the close of tenders. The Procurement Unit will need to ensure smooth operation of the proceedings, prepare minutes of the opening and advise the chairman of the opening session on procedural issues if requested.

A Tender Opening Committee is usually constituted and is made up of at least three persons including the Chairperson. The Chairman of the Tender Opening Committee controls and directs the /Tender Opening and does not allow tenderers representatives to interfere with the work of the Committee. Any objections by a Tenderer to the procedures or decisions of the tender opening should be made in writing to the Head of the Procurement Entity. Section 55 of the Act states that the provision of tender security is required for all International and National competitive tenders for procurement of goods, and works. In the case of Procurement of consultants services tender security is not required. The use of security is important, in particular, in international trade where the Purchaser may not know the Tenderer or Supplier's professional ability, financial position and credibility. Therefore it is normal for the Purchaser to demand that the Tenderer's or Supplier's ability to perform in accordance with the instructions or contractual obligations be secured with a financial guarantee.

#### **2.8.2.3 Contracts Management**

A formal contract document will be drawn up, using the agreed terms and conditions, and signed by both parties. Simpler requirements may use a purchase order or where existing framework contracts exist, contracting may consist of placing a call-off order under the existing contract.

The awarded contract must then be managed, to ensure that both the buyer and supplier perform their contractual obligations. Activities may include expediting delivery, arranging



inspection or freight forwarding, checking bank guarantees, establishing letters of credit, making arrangements for receipt and installation of goods, verifying documentation and making payments. Works contracts will often require technical supervision by an engineer/project management team to ensure quality, time schedule and cost. Contracts for consultancy services often require the direct participation of the buyer or client organisation, as the recipient of training or technical advice or in responding to studies or reports. According to PPA Annual report (2009) Contract completion rate for the year is about 68%. This signified that contract management is a major challenge for most entities.

#### **2.8.2.4 Monitoring and Evaluation**

Controlling the performance of the procurement function and ensuring its efficiency and effectiveness is essential to the management of the procurement process. It is vital to evaluate how well the procurement process has gone, identify any weaknesses or problems and agree actions to prevent similar problems in the future. Evaluation may include a formal procurement audit. Procurement monitoring is an essential part of procurement management and control linked to compliance with Act 663 and performance outcomes such as value for money, professionalism and code of conduct in procurement. This will involve the management of entity, staff of PPA, private sector, oversight bodies (internal and external audit), civil society (including NGOs), project beneficiaries, and media (PPA Annual Report, 2008).

#### **2.8.2.5 Appeals and Complaints**

Part VII – Review -Section 78 of Act 663 deals with the procedures to be used in handling complaints received from aggrieved parties involved in the procurement process. 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, may seek review in accordance with this Part. Procurement decision-making process needs to be properly followed and documented so that complaints can be investigated within the strict time frame. Those involved in audit and in

the prosecution of procurement related offences may be able to provide examples of where sanctions could not be applied as a result of poor or inadequate procurement records.

In Ghana, the Authority established seven (7) member Appeals and Complaints Panel comprising legal procurement experts, and representatives from the private and public sectors which was inaugurated in 2007. In the same year the Panel successfully concluded fourteen (14) cases out of twenty (20) cases received (PPA Annual report, 2007). The appeal and complains procedures allowed bidding firms with the chance to show their disapproval before the procurement process is completed, as well as thereafter (Ayitey, 2012).

## **2.9 Ghana Procurement Assessment Report (GPAR)**

The World Bank in its 2003 CPAR made specific recommendation to the Government of Ghana, among other things, transition arrangements for establishing the public procurement board, establishment of procurement units by procurement entities, improving on stores management, reducing the bureaucracy involve in the processing of payment certificates for contractors and suppliers and ensuring that value for money is achieved in sole source contracts (CPAR, 2003). Subsequently, the Public Authority has been conducting annual procurement assessment via its Benchmarking, Monitoring and Evaluation Directorate. The main objective of the assessment is to find out how the procurement ‘good practices’ enshrined in the Act 663 and its accompanying documents are being employed in the public entities and to inculcate into the public sector Entities the need to monitor and evaluate procurement performance. It is therefore hoped that ultimately, public entities will adopt this assessment approach and use it on their own for procurement assessment. (Ayitey, 2012)

## **2.10 Assessment of Public Procurement Entities**

Increasing the effectiveness, efficiency and transparency of procurement systems is an on-going concern of governments and the international development community. All countries have recognized that increasing the effectiveness of the use of public funds, including funds

provided through official development assistance (ODA) requires the existence of an adequate national procurement system that meets international standards and that operates as intended.

The regular and continuous assessment of procurement entities in countries of their national procurement systems with regard to their compliance with the procedures, rules and regulations setup in the Public Procurement Laws has been embraced worldwide. As indicated in (OECD-DAC/World Bank, 2006), the baseline indicator assesses the strengths and weakness of National Procurement Systems. The indicator covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulation, procedures and bidding documents formally in use. These indicators can be broken down into eight sub-indicators which are individually scored. These are: Scope of application and coverage of the legislative and regulatory framework, Procurement Methods, Advertising rules and time limits, Rules on participation, Tender documentation and technical specifications, Tender evaluation and award criteria, Submission, receipt and opening of tenders and Complaints Performance indicators includes: Implementing regulation that provide defined processes and procedures not included in higher-level legislation, Model tender documents for goods, works, and services, Procedures for pre-qualification, Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion, User's guide or manual for contracting entities and General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements (OECD-DAC/World Bank, 2006).

For a public entity in a developing country to conduct procurement performance assessment, there are numerous challenges that are encountered. Notably among them are: i) there are many ways of measuring that may be in use, ii) most measures are irrelevant iii) there is no way of standardizing the measurements and iv) conducting performance measurement is costly (Kakwezi & Nyeko, 2010) .

## **2.11 Public Procurement Law and Implementation Challenges**

In most developing countries, the procurement function is transitioning from a clerical non strategic unit to an effective socio-economic unit that is able to influence decisions and add value (Knight et al, 2007). Developing countries in one way or another have reformed their public procurement regulations. The reforms have not been limited to regulations only; they have included public procurement process, methods, procurement organizational structure, and the workforce. The reforms have been as a result of joint efforts with various development partners like the World Bank, International Trade Centre, WTO, and UNCTAD varying from country to country.

In addition, public procurement is faced with the challenges imposed by a variety of environmental factors (external factors) such as market, legal environment, political environment, organizational and socio-economic environmental factors. Regardless of the effort by the central government and its related agencies and the acknowledgement that the procurement department is capable of adding value to the organization, still a large number of the internal customers act on their own and more frequently bypass the procuring department (Schiele & McCue, 2006). This problem requires establishment of clear procurement procedures and performance standards. Performance when adopted will provide the decision-makers in the procurement department with unbiased and objective information regarding the performance of the procurement function (Knudsen, 1999). Several countries have instituted reforms in their public procurement processes (Hunja, 2003). This is aimed at purging the public procurement sectors, encouraging competition, transparency, efficiency and ensuring accountability. These reforms have not come without difficulties (Hunja, 2003). The challenge include poor dissemination of the procurement law (Azeem, 2003), lack of proper training for the managers of the procurement process (Forgor, 2007).

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 have been trained. The report contended that, application of the PPA and the Standard Tender and Contract Documents will not be successful without broad training and “refresher” programs and encouragement of officials in charge of procurement. In view of this, the PPA initiated a training programme in 2007 throughout the country with the aim to build the capacity of personnel responsible for the management of procurement in various institutions. This exercise unfortunately could not be sustained due to financial difficulties thereby leaving most Procurement Managers completely ignorant in the application of the law.

Building the capacity of service providers has been identified as one of the success factors of public procurement reforms. Many bidders are limited in various capacity issues including: lack of basic knowledge in the law, inadequate capacity to appreciate the standard tender documents, poor access to tender information and insufficient technical and managerial skills to be competitive in the tendering process (ODPP, 2007).

Political interference with the procurement process is also a big challenge to the implementation process and public procurement reforms. A good number of politicians think that they have the right to intervene in the procurement procedures thereby leading to a capricious procurement decisions (World Bank, 2004b).

The lack of career development path and low salaries of procurement personnel also militates against procurement reforms implementation (World Bank, 2003a). Poor records keeping (World Bank, 2003a), (ODPP, 2007) and delays in payment of contractors and suppliers have also been cited as some of the crucial factors that challenges the procurement reforms implementation (Azeem, 2007).



## 2.12 The EU Public Procurement Rules

In the European Union, the governments and public utilities procurement of goods, services and public works are of significant value. “16% of EUs GDP is accounted for by public procurement contracts” (Matthew, 2010). The EUs public procurement law sets out the regulations that govern the award of contracts. The law is rooted in the Treaty of Rome of 1957 established by the European Economic Community (EEC), of which six states were members. The Maastricht Treaty of 1992 altered the name of the EEC to European Commission (EC) for simplicity.

The European Commission is a civil servant to the European Union, but is also one of the four institutions of the EU. The ECs main roles are “to propose legislations to the European Parliament and the council of the European Union, administer and implement EU policies, enforce EU laws and negotiate international agreements”. However, it also has three roles that are distinct to the public procurement law. First, the commission proposes legislation, and engages in related consultations. Secondly, it provides guidance on the law through publishing explanatory notes. Lastly, it enforces the law using its legal powers under the EC Treaty. (Gnanih, 2012) The European Commission uses its powers to investigate and proceed against infringements in those states of the EC public procurement law. The “commission’s power is rooted in Article 226 of the EC Treaty and the procedure taken to make their power reign is referred to as the ‘infringement procedure’” (Matthew, 2010). When a country does not apply the rules set out, the commission demands an explanation of the issue at hand. If it was not satisfied with the answer it makes formal request to the Member State to comply with the law within a fixed period. However, when the commission notices that the country is not complying, it can then with its power take actions before the ECJ for judgement on the matter. Clearly these set of rules would push the Member States of the EU to abide. The ECJ may grant permission for the pending contract to be suspended based on the merits of the project even after it has been awarded. Member states under the article 228 of the EC treaty obliged to comply with the ECJ judgement.



As cited in (Gnanih, 2012), the reason behind looking at the EUs public procurement law was to show that it was possible for Ghana to follow their strategy, so that its public procurement act, would be as efficient, effective, and transparent as they want it to be. It was also to show that the Ghana public procurement act lacks punishment for those who go against the act or simply do not take actions against rule breakers. It was to show that simply having a public procurement act, does not solve the problems of effectiveness, accountability, efficiency and transparency, but enforcing the rules would go a long way just as the EUs public procurement rules does.



## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

The chapter begins with a brief profile of Koforidua Polytechnic followed by the research design, study area, research population and sampling procedures as well as analytical procedures were presented. The chapter further dealt with the presentation of data gathered, sampling techniques, instruments for data collection, questionnaire design and administration, data analysis.

#### **3.2 Profile of Koforidua Polytechnic**

Koforidua Polytechnic which was established in the year 1997. The Polytechnic, which was founded with the vision of producing high-level, career-focused and skilled manpower to support the country's industrial growth, has since 1999 turned out graduates with Higher National Diploma (HND) in Accountancy, Marketing, Purchasing and Supply Statistics and Computer Science.

##### **3.2.1 Vision**

The vision of Koforidua Polytechnic is to be a leading Polytechnic offering high quality, career-focused education for National development

##### **3.2.2 Mission**

- A. To train career-focused middle level manpower in the areas of Applied Sciences and Technology, Commerce and Engineering in close partnership with Industry.
- B. This is done through:
  - B1. Academic programmes i.e. Applied Sciences and Technology, Commerce and Engineering.

B2. Applied Researches concerning the academic programmes offered: This is important in order to develop relevant and pragmatic training and teaching approaches.

B3. Consultancy Services to private and public organizations: This service is vital to the polytechnic as it makes the polytechnic meet the needs of organizations at the same time generate income for the institutions and individuals.

B4. Outreach/Community services: This is aimed at providing services to meet the social and economic needs of the community.

B5. Continuing Professional education: This learning and development opportunity is offered to the general community.

The Polytechnic currently has three Schools and one Institute namely, the School of Business and Management Studies, School of Applied Science and Technology, the School of Engineering and the Institute of Open and Distance Learning (IODL). The Polytechnic has increased its academic programme offerings significantly from two (2) at the inception of 1997 to a total of fourteen (14) HND programmes. Out of the fourteen (14) HND programmes, six (6) are from the School of Business & Management Studies, six (6) are from the School of Engineering and the remaining four (4) programmes are from the School of Applied Science and Technology.

In keeping with its Strategic Plan (2010 – 2014) to increase access to tertiary education for many prospective students, the Polytechnic plans to introduce Bachelor of Technology (B. Tech) programmes for the existing HND programmes. The polytechnic currently runs two Bachelor of Technology (B. Tech) programmes in Procurement and Automotive Engineering. Other programmes are also at various stages of the accreditation process.

The Polytechnic is committed to rapid staff development to meet the needs of the growing student population which currently stands at 5,708 for the 2012/2013 academic year. Through several collaborations, a significant number of staff members are pursuing further studies in Ghana and abroad.

In pursuing its vision and mission, the polytechnic is guided by the core values of: Creativity, Determination and Team Work. In addition, Commitment, Honesty and Innovation are the supporting values of the Core Values.

### **3.3 Research Design**

This research is a systematic field investigation into assessing the level of compliance of the public procurement act 2003, (Act 663) of public institutions. (Koforidua Polytechnic). It is intended to provide information for procurement policy reform within the Polytechnic.

It is a field of study which adopts descriptive and exploratory approaches for data collection. It identifies the relevant research population made up of stakeholders such as head of the development office and procurement practitioners within the development office of the polytechnic.

The study uses non-probability or judgment random sampling approach to select a sample size and respondents for data collection. Various research instruments are used to collect data from primary and secondary sources. Both structured and semi-structured questionnaires, observations and in-depth interviews were used to collect primary data by adopting the survey approach in collecting data on the assessment of the level of compliance of the public procurement reform on public sector organizations in Ghana.

For secondary data, annual reports, articles, textbooks and journals and procurement manuals were collected on public procurement. The data was analyzed using both qualitative and quantitative analysis. Tables, figures, and graphs are used to present and analyze the research data gathered from primary and secondary sources.

### **3.4 The Study Area**

The study area for the purpose of this research focused on the Development office of Koforidua Polytechnic, which is a Public Institution in the Eastern Region of Ghana.

### 3.5 Research Population

A research population can be defined as the totality of a well-defined collection of individuals or objects that have a common, binding characteristics or traits. The population for this study comprised all those who are involved in public procurement activities within the development office of Koforidua Polytechnic. The main reason for using this category of people is that their activities directly or indirectly has a bearing on public procurement within Polytechnic which is the scope for the study.

The research population included head of the development office, quantity surveyors, engineers architects, estate managers within the development office of the polytechnic.

### 3.6 Classification of Respondents and Sample Size

For the purpose of this study, respondents were classified into the following categories.

**Table 2: Classification of Respondents**

Category of Respondents	Number selected
Head of Development Office	1
Estate Manager	1
Quantity Surveyors	3
Civil Engineers	1
Technician Engineers (Estate)	3
Technician Engineers (Development)	3
Structural Engineer	1
<b>TOTAL</b>	<b>13</b>

Source: Researcher's Fieldwork, 2013

### **3.7 Sample and Sampling Procedure**

Koforidua Polytechnic is a polytechnic of the public sector and it will be very difficult and impossible to undertake such as survey without sampling. Purposive sampling techniques were therefore used to determine the sample size. In conducting a research study, it is practically impossible, time-consuming and too expensive to test every individual in the entire population. Therefore smaller chunks of a unit sample are chosen to represent the relevant attributes of the whole of the units (Graziano & Raulin, 1997). In view of this, purposely selected procurement practitioners from these department were selected for the study.

The purposive sampling technique was adopted. The intention was to gain an insight into the phenomena hence, the need to choose personnel who are connected with the procurement practices in the polytechnic.

Prior to the administration of questionnaires and interviews the Heads of the Development office – was contacted for permission. A request for procurement practitioners and professionals list were sought and obtained from the head of the department.

### **3.8 Data Collection Instrument**

The data collection methods or techniques formed an important part of this research.

According to Patton (2002) using more than one data collection instrument strengthens and gives credibility to the study. The use of more than one data collection instrument portrays a true picture of the case under study. In this regard, the researcher gathered the required data from two (2) different sources. This approach was used because it revealed issues that could not be raised in using only one data collection instrument. The study made use of primary and secondary data sources in order to gather relevant information for the study.

#### **3.8.1 Primary Data**

The main research instruments used were questionnaires, in-depth interviews, and field observations. This was done with the focus on the objectives set in the study. The primary data



were collected from the selected respondents within the sample frame in the research population. The analysis of the study was substantially based on this data.

### 3.8.2 Secondary Data

The researcher himself referred to various publications of foreign and Local Origin, books, journals, articles, newspapers, reports obtained from libraries, PPA, Public Entities, and the internet on the subject to obtain additional information in order to answer the questions set in the problem definition.

### 3.9 Questionnaire Design

The research questions were developed by the researcher and were reviewed by some experts in academia and in procurement practice. Subsequently, a pilot test of the questionnaire and interview was conducted for five (5) participants in order to identify and eliminate potential ambiguity in the questionnaire. Generally, the questionnaire is designed to collect general data from the staff and officers at the development office of the polytechnic. These questions were grouped in categories to collect data on implementation of procurement reforms, state of compliance, as well as the implementing challenges of the procurement reform on public entities.

Items on implementation challenges were rated by participants on a four-point likert scale. The instrument for procurement practioners consisted of the following sections: Section A, solicited personal and general information from the participants using objective test. Section B, solicited information on respondent's knowledge on the implementation of the public procurement reform. In section C each item was scaled from 1-4 with the statement: **Strongly Agree, Agree, Disagree, and Strongly Disagree** respectively. Questions in this section solicit data on the implementation challenges of the reform. Additionally, the methodology for assessment of national procurement systems jointly developed by the organization for Economic Co-

operation and Development (OECD)/Development Assistance Committee and World Bank has been adopted in this research.

### **3.9.1 Questionnaire Administration**

The initial questionnaires and interview guide developed was pilot tested to ensure that the questions were clear and not ambiguous, such that responses would be consistent with the purpose of the study. Few questions were reviewed as a result of non response from the respondents of the pilot study. This was done to improve the reliability and validity of the questionnaire. The questionnaires were self administered on one-to-one basis to the respondents willing to fill or provide answers to the questionnaire at the entities premises. The completed questionnaire was taken by the researcher after frequent visits to the offices of the respondents. The primary data collected was reviewed by the researcher to ensure maximum accuracy, legibility, completeness, consistency and to reduce ambiguity.

### **3.10 Data Analysis**

In this study, both quantitative and qualitative methods were employed in the data analysis. The Statistical Package for Social Sciences (SPSS) version 16 and excel were used for data entry and analysis of the data collected. Data preparation was the initial step to convert raw data into structured format that was more appropriate for the analysis. Tasks in this stage included data editing, data coding and data entry, frequency distributions, percentages, and descriptive analysis of assessing the level of compliance of the Act 663. Data collected were collated and analyzed using various quantitative statistical models such as tables, bar chart and pie chart to illustrate the

### **3.10.1 Exploratory Interviews**

This stage of the research process was to gather information from the prime respondent, the Head of Development office to gather data on the departments compliance of the public procurement act 663. Interviews were used because, according to Patton (2002), they yield direct quotations from people about their experiences, opinions and feelings. The interviews were, therefore, very credible way of obtaining information from the head of development office.

### **3.10.2 Interview Guide**

An interview guide is also an essential component for conducting interviews. An interview guide is the list of questions, topics, and issues that the researcher wants to cover during the interview. The interview guide should be clear and avoid ambiguity. The researcher ought not ask personal or illegal questions and be comfortable with silences and wait for the respondent to speak.

### **3.10.3 Types of Interviews**

Interviews are used when data are to be collected to understand complex behaviours and processes in depth (Patton 2002; Schensul et al. 1999). Interviews, therefore, follow given lines of enquiry but are fluid in nature rather than rigid. Interviews vary in their nature and can be structured, semi-structured or unstructured (Legard et al. 2003; Patton 2002).

The main characteristics of the three main interview types are summarized in Table 3.

**Table 3: Main Characteristics of Interview Types**

Type of interview	Main characteristics
Structured	<ul style="list-style-type: none"><li>- data collected through formal style of questioning;</li><li>- little scope for probing responses;</li><li>- supplementary questions required to obtain more details and pursue new aspects;</li><li>- respondents choose an answer from alternatives; and</li><li>- same wording and question for all interviewees;</li></ul>
Semi- structured	<ul style="list-style-type: none"><li>- data collected through both formal and informal styles of questioning;</li><li>- responses can be written and supplemented with recording;</li><li>- responses limited to subject in question but interviewee is free to add more details if the need be;</li><li>- provides more details about issue being investigated;</li><li>- respondents provide topical answers; and</li><li>- all respondents receive the same major issues.</li></ul>
Unstructured	<ul style="list-style-type: none"><li>- data collected through informal style of questioning;</li><li>- recording responses is most suitable;</li><li>- respondents say as much as they wish after a brief introduction by the interviewer;</li><li>- they can be monologues with few prompts to ensure completion of statements;</li><li>- answers are provided by respondent in any order they so wish; and</li><li>- brief introduction of same key issues to all respondents.</li></ul>

*Sources: Bryman (2004), Fellows and Liu (2003),  
Legard (2003), and Patton (2002)*

This research followed a semi-structured interviews approach to allow in-depth and free flow of information from interviewees. The flexible nature also encouraged the interviewee to participate fully and more comprehensively (Fellows and Liu 2003; Patton 2002; Schensul et al. 1999).

## CHAPTER 4

### DATA PRESENTATION, ANALYSIS AND DISCUSSIONS

#### 4.1 Introduction

The focus of this chapter is on the analysis of data gathered from the field with the aid of questionnaires and in-depth interviews. Collection of data for this study is centered on the procurement practices of the development office of Koforidua Polytechnic. This was mainly done to gather information to assess the level of compliance of public procurement reform by public organizations in public institutions. It was however necessary to consider issues that concerns compliance/performance and challenges facing Public Institutions in the implementation of the act 663.

#### 4.2 Background of Respondents

The study used a sample size of eleven respondents from the case department of the institution. These respondents were drawn from the development office. This included the head of the department, staff and procurement practitioners within the department. Table 4 depicts the classification of the selected respondents. Respondents were drawn from staff of Development Office including the estate department which also falls under the development office. Their responses were analyzed with tables, figures and graphs.

**Table 4: Classification of Respondents**

Category of Respondents	Number of Respondents
Head of Development Office	1
Estate Manager	1
Quantity Surveyors	3
Civil Engineers	1
Technician Engineers (Estate)	2
Technician Engineers (Development)	2
Structural Engineer	1
<b>TOTAL</b>	<b>11</b>

**Source: Researcher's Fieldwork, 2014**



### 4.3 Response Rates

A total number of thirteen (13) questionnaires were administered to the respondents out of which eleven (11) were obtained and valid for the data analysis. These valid questionnaires used for the analysis yielded 85% of response rate. This indicates that, the response rate was quite high and reflects the views of the entire population.

The success of the responses was achieved as a result of frequent visits to the various Offices to ensure that the questionnaires were answered, completed and retrieved.

### 4.4 Demographic Characteristics

The demographic characteristics of respondents used in the study include gender, age, education level and area of specialization. Discussing these relevant variables provide an overview of the sampled eleven from the various categories of respondents in the research area. As indicated in Table 5, 3 respondents, representing 27% were within the age interval (18-30) years, 7 respondents representing 64% of the respondents fell within the age bracket (31-40), 1 respondent representing 9% of the respondents was within (40-50) and none of the respondents fell within the age bracket (51-60).

This age distribution depicted in Table 5 shows that, majority of the respondents sampled were within the age interval 31-40 years. Also an appreciable number of the respondents were aged within 18-30 years interval which in general shows somehow youthful aged workers within the Development Office.

Table 5 indicates that, all the respondents selected were educated, this was expected, since the respondents were already working in the departments which have a required educational level for its minimum qualification. From the Table 5, it was found that, majority of the respondents were holders of university degrees, which constituted 64%, this was followed by Masters degree holders which also constituted 18% and Diploma holders also constituted 18%. All the respondents were regular participants in public procurement activity and can really give good



assessment of the effect of the procurement reform and how to improve on the compliance of the reform.

The breakdown of all selected respondents with respect to the demographic characteristics is shown in Table 5.

**Table 5: Demographic characteristics of Respondents**

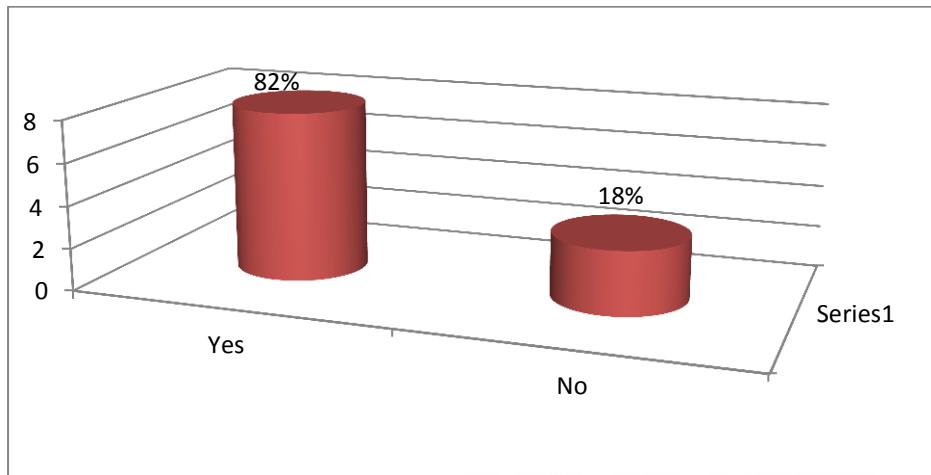
<b>Variable</b>	<b>Category</b>	<b>Number</b>	<b>Percentage</b>
Age	18-30	3	27
	31-40	7	64
	41-50	1	9
	51-60	-	-
<b>Total</b>		<b>11</b>	<b>100</b>
Gender	Male	10	91
	Female	1	9
<b>Total</b>		<b>11</b>	<b>100%</b>
Level of education	Masters	2	18
	Degree	7	64
	Diploma	2	18
<b>Total</b>		<b>11</b>	<b>100%</b>

**Source: Survey data, 2014**

#### **4.5 Responses on implementation of the Public Procurement Reform**

This section examines whether the respondents have had any formal training on the procurement Act 663. As indicated in figure 2, 2 respondents constituting 18% said they have had formal procurement training and 9 respondents representing 82% of the responded said they have not. The study revealed that most of the respondents who responded YES had only been introduced to act 663 through school. Although (Public Procurement Act, 2003) has mandated Public procurement Authority to develop career paths for procurement to attract qualified staff and to give them opportunities to gain professional procurement qualifications, majority of them have never had a “post school” formal education on the act. This confirms the position held by (EOCD/DAC, 2007) in a study that some procurement officials lack some level of skills and knowledge to manage the procurement cycle effectively. Thus simple issues like bid evaluation and selection were only based on lowest price and not the lowest evaluated price.

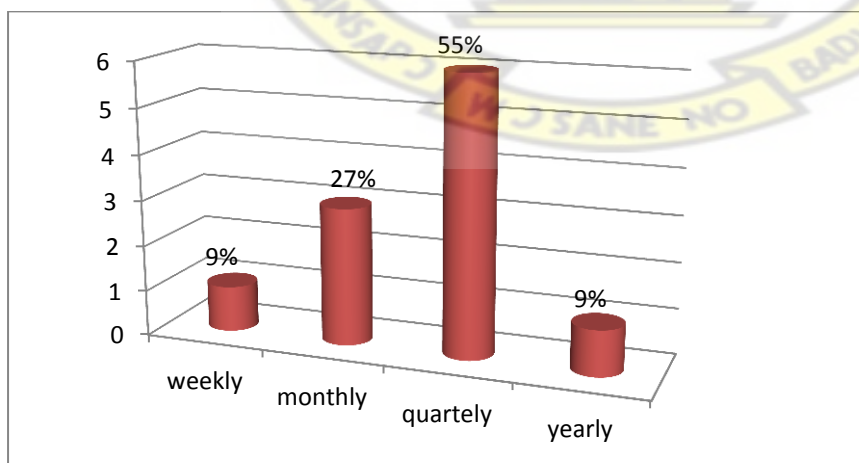
**Figure 2: Formal Procurement Training of Respondents**



**Source: Survey data, 2014**

Figure 3 indicate that, all the respondents agreed to the fact that procurement training should often be organized for the staff. From Figure 3, it was found that; majority of the respondents said procurement training should be organized quarterly, which constitute 55%, 27% said monthly and 9% said weekly and yearly respectively. Majority of respondent attested to the fact that the procurement knowledge base of other stakeholders (suppliers, contractors, consultant etc) has an impact on procurement functions organized in development office.

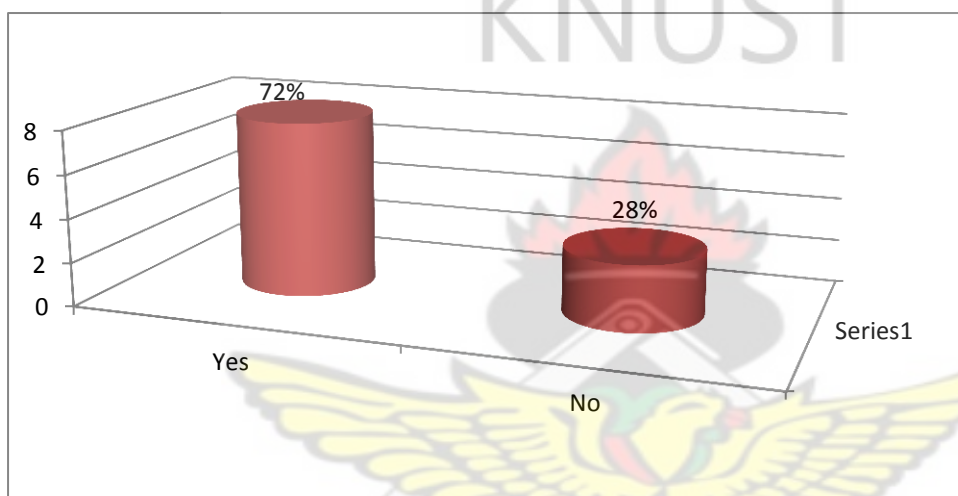
**Figure 3: Procurement Training Programme Schedule for staff**



**Source: Survey data, 2014**

Figure 4 indicates that majority of the respondents affirmed positively to the question on whether the public reform has helped to reverse the problem that existed before the introduction of the Act 663 in 2003. The questionnaires revealed that 72% agreed that it has significantly helped the public procurement practices by reducing corruption, helped public institutions to achieve value for money, improving transparency and has introduced competition. 28% also thinks it has not helped to reverse the problems.

**Figure 4: Procurement Training Programme for Staff**



**Source: Survey data, 2013**

#### **4.6 Performance/Compliance Assessment of Public Entities**

Compliance with the Public Procurement Act (Act 663) is supreme in the execution of duties of those individuals entrusted with procurement functions. The study undertake the assessment of public entities to find out how the procurement 'good practices' enshrined in the Act 663 and its accompanying documents are being employed in the public entities in order to determine performance or compliance levels of public entities.

##### **4.6.1 Responses on Procurement Structure**

The development office engages in activities and works and services are most procured. Section 17 of the Act 663 stipulates that each procurement entity shall establish a tender

committee in the manner set out in schedule 1. Data collected indicated that the department did not have its individual tender entity committee but rather relies on the institution's tender entity committee of which the Rector - Head of Institution – chairs the committee. Responses revealed that members of the committee were statutory members and they numbered up to about 24 members. The research revealed that as stated in the Act 663, the tender entity committee meets every quarter for deliberations.

#### **4.6.2 Procurement Procedures**

Section 21 of the Act 663 stipulates that a procurement entity shall prepare a procurement plan to support its approved programme and the plan shall indicate a) contract packages, b) estimated cost for each package, c) the procurement method, and d) processing steps and times. The Act further gives directives as to where and when it should be submitted. Data collected through the researcher's interview revealed that the development office usually submits its procurement plan to the tender committee not later than one month to the end of the financial year the procurement plan for the following year for approval as the Act requires. It was also established that other projects which are not captured in the procurement plan are undertaken alongside with projects captured in the plan. These intermittent projects do sometimes put pressure on the budget and subsequently affects the execution of budgeted for projects.

Sub section (B) under Sub-indicator 1(b) of Ghana: Assessment of Stage 1– World Bank - Use of Country Systems in Bank Supported Operations — Procurement Methods – headed

“Competitive procurement is the default method of public procurement” defines Competitive Tendering as the default method of public procurement as section 35 (3) states, “if the procurement entity uses the method of procurement other than competitive tendering, it shall include in the record required a statement of the grounds and circumstances on which it relied to justify the use of that method.” According to sections 38 and 40, restricted tendering and single-source procurement are subject to approval by PPA.

#### **4.6.2.1 Responses on Procurement Procedures**

Data collected from the interview revealed that procurement methods used in procuring of works in the department were National Competitive Tendering, Two-Stage Tendering and Restricted Tendering. The research established that the department often seeks approval for the use of any method of procurement other than competitive tendering. This goes to confirm the recommendations given in the Country procurement assessment report 2007, that entities met the conditions under sub section (a) “Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable” of sub-indicator 1(b) – procurement methods.

#### **4.6.2.2 Responses on Model tender documents for goods, works, and services.**

Findings from the Ghana: Assessment of Stage 1– World Bank - Use of Country Systems in Bank Supported Operations, 2007, using the OECD/DAC methodology indicated that most public entities met the conditions under Sub-indicator 2(b)- Model tender documents for goods, works, and services. This is confirmed when data collected under this section indicted that the department uses Standard Tender Documents (STDs) in procuring works and services.

#### **4.6.2.3 Responses on information dissemination**

From the responses received, it was established that one (1) month / 4-weeks period is usually allowed for National Competitive Tendering following the date of the first advertisement to allow adequate preparation for tender submission as enshrined in the Act 663, section 53 (2). Responses also indicated that dissemination of procurement information such as NCT invitations are placed in news papers with wide circulation. Daily Graphic was specifically mentioned. Advertising rules and time limits under sub-indicator 1(c ) of the country assessment scored 1 as against required OECD/DAC mandatory score of 3 which indicated that most public entities do not adhere to this provision.



#### **4.6.2.4 Responses on evaluation panel and award criteria**

Act 663, section 50 (3) defines that the tender invitation documents shall include the criteria and procedures for the evaluation of the qualifications of suppliers and contractors. It further elaborates that the *“criteria to be used by the procuring entity to determine the successful tender, including any margin of preference or any other criteria other than the price to be used under section 59 (4) (b) (c) or (d) and the factors apart from the price to be used to determine the lowest evaluated bid, shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the tender documents”*.

Data collected on evaluation panel and award criteria indicated that an adhoc evaluation panel is always set up for every project as stipulated in the Act 663. The researcher through observation witnessed the evaluation of a proposal for consulting services in accordance with proceedings in the Act. On the issue of evaluating tenders based on the setting the criteria and procedures for the evaluation of the qualifications of suppliers and contractors in the tender documents, tenders examined during data collection revealed that the department adheres to the provisions in the act.

#### **4.6.2.5 Responses on Submission, receipt and opening of tenders**

Findings from the Ghana: Assessment of Stage 1– World Bank - Use of Country Systems in Bank Supported Operations, 2007, using the OECD/DAC methodology indicated that most public entities met the conditions under Sub-indicator 1(g) — Submission, receipt and opening of tenders –This is confirmed when data collected revealed that tenders are submitted and received into a locked box placed in the Registrar’s office until the closing date of the tender and subsequent opening immediately in the presence of tenderers and representatives who choose to be present.



#### **4.7 Evaluation of Implementation Challenges of Act 663**

The questionnaire listed 21 challenges/constraints of the implementation of Act 663. Each respondent was asked to rate each factor based on his/her experience. The factors challenging the implementation were analyzed and ranked.

The rank, mean standard deviation, coefficient of variation was obtained for each factor as shown in the Table 6



**Table 6: Ranking of the challenges to the implementation of the Act.**

Rank		SI%	WM	SD	COV
1	Delay in payment of works executed by service providers	91.30	2.7422	0.2433	8.77
2	Inadequate capacity by procurement entities to implement the very comprehensive Act and Regulation	91.16	2.738	0.2348	8.89
3	Inadequate training of procurement staff	90.20	2.7093	0.2371	8.99
4	Low bid prices offered by bidders due to award of contract to the lowest evaluated bidders	89.71	2.6943	0.243	9.20
6	The delays in establishing full time operational Procurement Units with the full complement of staff	87.70	2.607	0.2447	9.25
7	Low level of ceilings set for Entity Tender Committees to operate within.	87.69	2.6288	0.27799	10.23
8	Illiteracy and inadequate contract management skills among some service providers	86.50	2.6	0.2631	10.45
9	Inadequate capacity in effective procurement planning	86.50	2.6	0.2843	10.77
10	Lack of sanctions to public officials for poor performance, non-compliance with the law and code of ethics	84.56	2.5198	0.3021	11.45
11	Difficulty in obtaining tender security (i.e. Bid Bond/ Guarantee, Performance Bond/ Guarantee and Mobilization Bond/ Guarantee)	84.45	2.4934	0.3822	15.21
12	Lack/ Lost of confidence in the procurement process by suppliers, contractors and other service providers	83.67	2.483	0.3205	13.86
13	Lengthy and cumbersome procurement process	83.51	2.4802	0.3201	13.91
14	Shortage of experience professional staff	82.16	2.4585	0.2865	5.12
15	Inadequate/lack of funding to execute	82.10	2.4065	0.2899	13.05
16	Lack of career development path been established for procurement in the civil service	81.58	2.3275	0.3448	14.81

**Source: Survey data, 2014**

The result that emerged from the coefficient of variation computation revealed that the minimum co-efficient of variation of 5.12% and maximum of 15.21% indicates a high degree of agreement to a moderate level of agreement among respondents.

**The main factors the respondents moderately agreed to were as follows:**

- Difficulty in obtaining bid security with co-efficient of variation of 15.21%
- Low level of ceilings set for Entity Tender Committees to operate within with co-efficient of variation 14.81%.

**The factors that most respondents agreed to with minor deviation are as follows:**

- Shortage of experience professional staff with coefficient of variation 5.83%,
- Delay in payment of works executed by service providers with coefficient of variation 8.77%.

The results show that, there are several important factors constraining the implementation of the procurement Act, Act 663. The Nine (9) most important factors agreed by respondent were (see table 4.6).

- 1) Delay in payment of works executed by service providers;
- 2) Inadequate capacity by the procuring entities to implement the very comprehensive Act and Regulation;
- 3) Inadequate training of procurement staff;
- 4) Low bid prices offered by bidders due to award of contract to the lowest evaluated bidder
- 5) The delays in establishing full time operational procurement units with full complement of staff;
- 6) Illiteracy and inadequate contract management skills among some service providers ;
- 7) Low level of ceilings set for Entity Tender Committees to operate within.

The factors are discussed below:

#### **a) Delay in Payment of Works executed by Service Providers**

The second most important factor perceived to be constraint to the implementation of the Act, was delay in payment of works executed by service providers.

Respondents ranked it second scoring SI of 91.30%. The coefficient of variation of 8.77% indicates fairly high agreement among the respondent. According to Aaron Anvur (2006), government contracts are characterized by insecurity of funding, payment delays and extensive arrears. The results are that many projects are abandoned, many contracts are forced into liquidation and the projects have to be re-tendered.

Respondents attributed delay payments to delay in releases of funds from the central government, unrealistic estimates in the budget formulation process and inadequate budget allocation for projects.

#### **b) Inadequate Capacity by the Procuring Entities to Implement the very Comprehensive Act and Regulation**

Inadequate capacity by the procuring entities to implement the very comprehensive Act and regulation was ranked third scoring S.I of 91.27%. There was fairly a high degree of agreement among respondent (COV 8.58%). According to Office of the Director of Public Procurement Malawi, (2007) procurement capacity covers a wide range of areas from the legal frame work in place and a core understanding of what is considered good procurement practice to a detailed technical understanding of how to use the standard tender documents, how to develop technical specifications, and how to apply evaluation criteria. However the entities lack these essential requirements to successfully implement the Act. This has resulted in the delay of the procurement process and thus, the value for money is not realised.

#### **c) Inadequate Training of Procurement Staff**

The third important factor identified was inadequate training of procurement staff. The coefficient of variation of 8.89% gives an indication of high level of agreement among the

respondents. Untrained staffs that lack the full range of procurement planning and implementation skills and experience were in charge of the procurement functions. This supports the assertion by Kwagbenu (2003) that procurement staffs lack range of skills and expertise require to handle the full complement of procurement function within public entities, and departmental heads. However the findings of the survey reveals that the Public Procurement Authority was currently organising short term training aimed at upgrading the procurement proficiency of procurement officers. The Public Procurement Authority with assistance from the Millennium Development Authority is developing a strategic procurement capacity plan including the development of curricula and modules to be used for various categories of procurement training by tertiary institutions in Ghana.

Although these arrangements are coming in late their introduction/implementation will assist in providing training and skills of procurement professionals.

**d) Low Tender Prices Offered by Tenderers due to Award of Contract to the Lowest Evaluated Tenderer**

This was ranked forth important factor with score of 84.45%. There was a fairly high level of agreement among the respondents. Bidders in attempt to win contracts, offer low bid prices with the results that projects are abandoned midway of the contract.

This confirmed Halil (2007) observation that the method of awarding project based on the lowest price or Quantity Surveyor estimate is seriously flawed and should be replaced with more systematic and efficient approach that ensures the price quoted will be based on current market prices. The emerging treat to the Ghanaian construction industry is low bid price offered by Chinese construction firms, Mc Donald (2008). This is due to the low wages combined with access to cheap credit and raw materials in China thus, allowing Chinese construction firms to undercut what the local construction firms' quotes.



**e) The Delays in Establishing Full Time Operational Procurement Units with the Full Complement of Staff**

This factor is ranked seventh by the respondent with a SI score of 87.79%. The Coefficient of variation of 9.25 indicates high degree of agreement among respondent.

There are no procurement units responsible for procurement. The non-establishment of the procurement unit means procurement function are diffused in other administration function so there is no emphasis on expertise. Data collected indicates that the institution has a separate unit called the procurement unit whose main task is procurement of goods whilst the development office procures works and services.

**f) Illiteracy and Inadequate Contract Management Skills among some Service Providers.**

This factor was ranked sixth by the respondent with a SI score of 86.51%. The Coefficient of variation of 10.45 indicates high degree of agreement among respondent. According to respondents most service providers lack staff with the requisite skills in contract management. The inadequacy in contract management skills leads to increased costs, delay in completion and non completion of procurement contracts.

**g) Low level of ceilings set for Entity Tender Committees to operate within.**

This factor was ranked sixth by the respondent with a SI score of 87.69%. The Coefficient of variation of 10.23 indicates high degree of agreement among respondent. Schedule 3 of the Act 663 sets out the various thresholds for procurement methods. It has been established that since the enactment of the law these thresholds have never been reviewed. Respondents indicate that current threshold being applied now is woefully inadequate. This therefore frustrates simple procurements.



## **CHAPTER 5**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

This study began with a set of objectives and review of literature. Data was collected using questionnaires and in-depth interviews. The data was analysed to arrive at findings.

The chapter outlines the summary of findings followed by conclusions of the study. It further gives recommendations to improve the level of compliance and address the implementation challenges of the Procurement Act.

#### **5.2 Summary of Findings**

##### **5.2.1 Procurement Structures and Procedures**

The Public Procurement Act, 2003 (Act 663) specify the establishment of procurement structures that will support and strengthen the execution and supervision of the procurement functions. These structures include Entity Tender Committee (ETC), Head of Entity, Evaluation Panel, and Procurement Unit. These structures have varied activities to perform in the procurement cycle. The study established that these structures, especially ETCs and Procurement Units have been established by the Institution. It was again established that the department fell on these structures in their procurement operations.

It was evident through data collected that majority of staff in these department have not had any formal training in procurement and even more importantly on the Act and therefore are not fully abreast with provisions in the Act.

##### **5.2.2 Adherence to Procurement Procedures**

It is discovered that the department in its procurement procedures use appropriate Standard Tender Documents (STDs), provided for by Public Procurement Authority in its procurement activities. It was also established that the department advertised its tender invitation mostly in a

news paper with a wider national circulation. The Daily Graphic was mentioned specifically as been the medium used for the publications. Even though some tenders and contract award were posted awards on PPA website, some were not.

### **5.2.3 Submitting and Posting of Procurement Plan**

Public Entities are supposed to prepare and submit annual procurement plans to PPA. These plans must also be posted at PPA website. The study has established that this legal requirement has not been complied with. From the analysis in the previous chapter, although the development office submits procurement plan to the ETC, not all projects undertaken are captured in the plan. This eventually puts pressure on the budget.

### **5.2.4 Determination of Level of Compliance**

The findings indicate a high level of compliance in the areas of use of procurement methods, submission of tender, tender opening and tender evaluation. Areas indicated low and absolute non compliance included procurement plan and award of contract and submission of reports to Public Procurement Authority.

### **5.2.5 Implementation Challenges**

#### **5.2.5.1 Procurement Practice versus Value for Money**

High cost of public procurement process due to high cost of advertising in the two most widely read newspapers, payment of sitting allowances for ETC meetings and refreshment during tender opening and evaluation panel meetings. This makes public sector procurement more expensive to entities compared to the private sector procurement process. These Publishers have taken advantage of the provision to over-charge the public entities as a result of the high demand for advertising procurement.

### 5.2.6.2 Procurement Thresholds

Schedule 3 of the Act 663 sets out the various thresholds for procurement methods. It has been established that since the enactment of the law these thresholds have never been reviewed. The study revealed that the current threshold being applied now is woefully inadequate. This therefore frustrates simple procurements.

From the study, the following major factors in order of ranking were identified as challenging the implementation of the procurement Act in Ghana:

- Delay in payment of works executed by service providers;
- Inadequate capacity by the procuring entities to implement the very comprehensive Act and Regulation; Inadequate training of procurement staff;
- Inadequate training of procurement staff;
- Low bid prices offered by bidders due to award of contract to the lowest evaluated bidder;
- The delays in establishing full time operational procurement units with full complement of staff;
- Illiteracy and inadequate contract management skills among some service providers; and
- Low level of ceilings set for Entity Tender Committees to operate within.

## 5.3 CONCLUSIONS

Compliance to Act 663 by procurement entities remains the biggest challenge to realize the objectives of transparency, competition, economy, fairness and accountability in public procurement in Ghana. The survey concluded that a varying level of compliance existed in the procurement operations of the department. It established that, whereas there was a high level of compliance in areas of procurement methods, submission of tender, tender opening and tender evaluation, areas including procurement planning and submission of reports to Public Procurement Authority shows low level of compliance.

The adherence in areas of submission of tender, tender opening and tender evaluation has enhanced transparency and fairness in the procurement process.

Short/long term training must be organized and improved so as to improve capacity of the personnel, and other key stakeholders to operate efficiently and effectively in the procurement system.

Public Procurement Authority (PPA), Cabinet and Parliament must hasten to amend the Act to ensure smooth implementation and compliance to curb corruption and unethical behavior in public procurement. PPA should enforce blacklisting bidders who have contravened the provisions of the Act and hold public officials who engage in irregularities accountable.

The results of the study have also concluded that, there are a number of implementation challenges which ranges from issues of information dissemination, capacity, and procurement proficiency.

#### **5.4 RECOMMENDATIONS**

In light of the discussions, findings and the conclusions, the following recommendations are hereby coined;

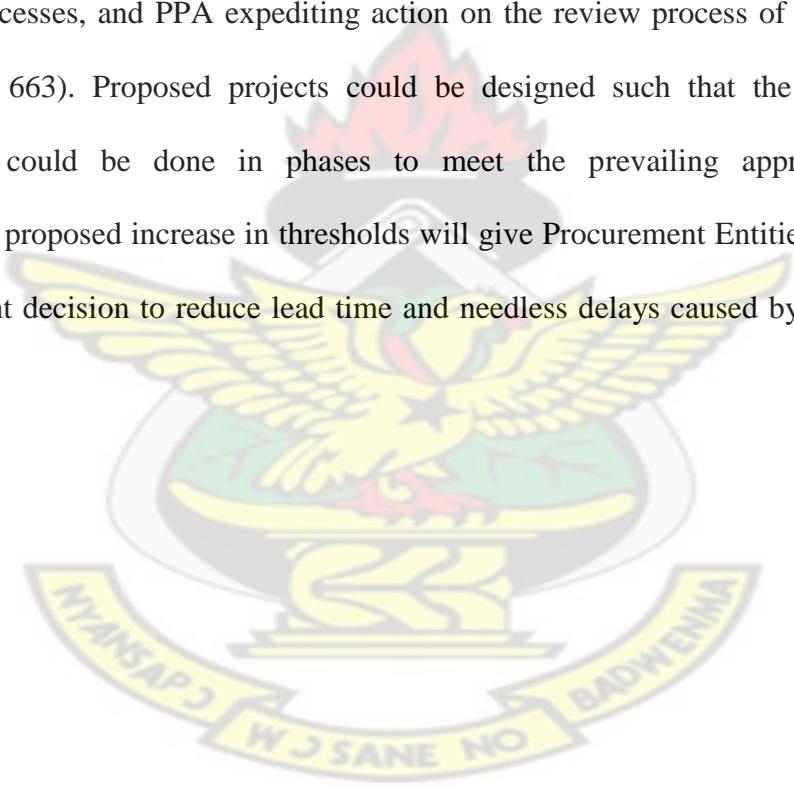
The Public Procurement Act makes provision for the establishment of structures such as Procurement Units to manage procurement activities in all entities and to engage persons proficient in procurement. Out of the eleven respondents within the department none of them have a formal education in public procurement.

The study, therefore, recommends the establishment of permanent Procurement Unit to be managed by qualified procurement experts to ensure an improved overall procurement performance and compliance with the Public Procurement Act, 2003.

The Public Procurement Act must be amended to address the eminent difficulties facing smooth implementation. To improve on compliance of the various institutions PPA must, as a

matter of urgency, expedite action on the review process of the Procurement Act, 2003 (Act 663). The proposed increase in thresholds will give Procurement Entities greater control over procurement decision to reduce lead time and needless delays caused by Tender Review Boards (TRBs).

The study confirms that the Public Procurement Act 2003 (Act 663) is observed to proffer solutions but not without challenges. It pencils out weaknesses and threats of the various sectors. In the pursuit to improve compliance with the Act the study recommends that public entities must recruit qualified procurement personnel and organise intensive and regular procurement training for the personnel handling public procurement especially in the area of procurement processes, and PPA expediting action on the review process of the Procurement Act, 2003 (Act 663). Proposed projects could be designed such that the construction or implementation could be done in phases to meet the prevailing approved threshold. Nonetheless, the proposed increase in thresholds will give Procurement Entities greater control over procurement decision to reduce lead time and needless delays caused by Tender Review Boards (TRBs).





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## APPENDICES

### APPENDIX 1

#### Interview Guide.

##### Introduction:

The research is to examine the assessment of the level of compliance of the public procurement act 2003 act (663) in public institution (Koforidua Polytechnic). It is strictly for academic purpose and information given will be kept confidential and will go a long way to help the successful analysis of the work. Please read through the following questions and answer them accordingly. Your response will be needed and your anonymity will be ensured.

##### Section A: Personal Data

1. Gender: Male ( ) Female ( )
2. Age Group: 16-30yrs ( ), 31-45yrs ( ) 46-60yrs ( ) 61yrs and above ( )
3. Position Held: .....
4. Level of Education and your area of specialization: .....

##### Section B: Procurement Structures

1. Do you engage in procurement activities?
2. Which of the following do you procure most?
  - a. Goods
  - b. Works
  - c. Services
3. Do you have an Entity Tender Committee in place?
4. Who are the members of the entity Tender Committee?
5. How often does the Tender Entity Committee meet?
6. Do you set up an adhoc Tender Evaluation Panel for every contract?
7. Do you have an established procurement unit for the department?
8. Do you seek approval from the appropriate review board on regular bases?

##### Section C: Procurement Procedures

9. Do you prepare annual procurement plans?
10. Where and when do you normally submit your procurement plans?
11. Which procurement methods are often used in procuring works in the department
  - a) International Competitive Tendering (ICT)

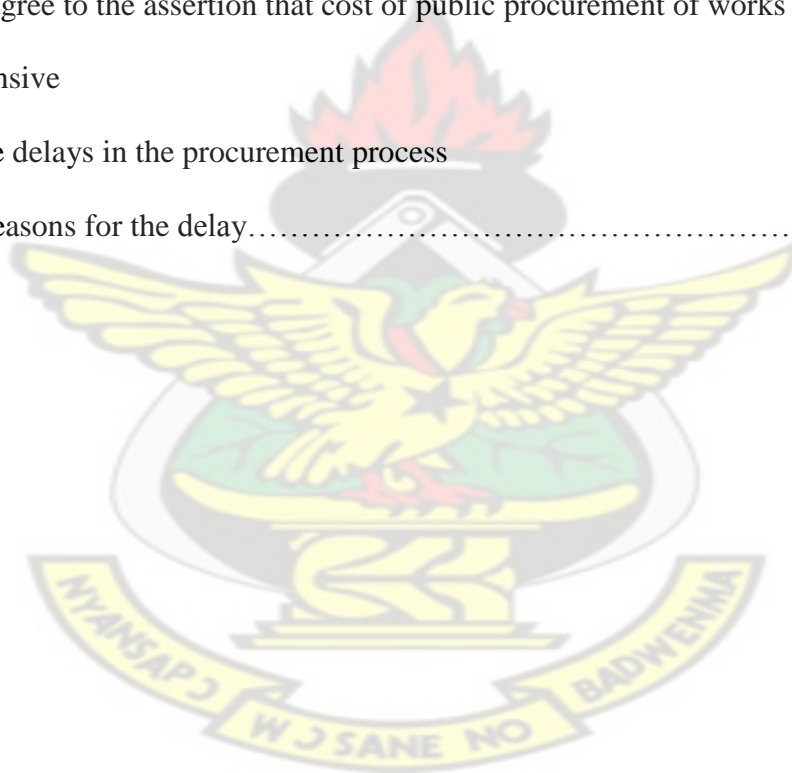
- b) National Competitive Tendering (ICT)
  - c) Two-Stage Tendering
  - d) Restricted Tendering
  - e) Single Tendering
12. Which Standard Tender Documents (STD) do you use in procuring of works for the department?
- a) STD issued by PPA
  - b) Other International STD
  - c) Not at all
  - d) Other, (Specify)\_\_\_\_\_
13. How often do you invite tenderers for prequalification?
14. Through which medium do you invite tenderes for prequalification?
15. Does your organization have a website?
16. Does your outfit advertise formal bids on your website?
17. Which of the following systems does your organization use for the dissemination of procurement information?
- a) PPA's Bulletin
  - b) News papers with wide circulation
  - c) Radio stations
  - d) Notice Boards
  - e) Others, (specify).....
18. What period is usually allowed for NCT following the date of the first advertisement?
19. Do you charge tenderers after issuing them with the tender documents?
20. If Yes, how much do you charge per document?
21. If the stock of tender document is exhausted, do you print additional copies?
22. Are prospective tenderers allowed to briefly inspect the tender document if requested, before committing to purchase of the document?
23. have you ever had to extend the tender closing date? If yes, were these the some of the reasons
- a) Modification of the tender document after issue?
  - b) Request for extension by tenderer
  - c) Order from superiors
  - d) Other, (Specify)\_\_\_\_\_
24. Where are tenders usually deposited?
25. When are tenders submitted opened?
26. How often do you request for tender security from tenderers?
27. Do you usually base your tender evaluation on the criteria set in the tender documents?
28. How long does it usually take for the preparation of the evaluation reports?

29. Do you inform tenderers of the tender results after evaluating?
30. Do you publish contract awards as enshrined in the law?
31. Are monthly reports submitted to the public procurement authority on various projects being undertaken?
32. Do you keep records of every procurement process?

#### **Section D: Challenges in the Implementation of the Act**

33. Are any weaknesses in the public procurement system
34. The general perception is that Public Procurement process is too long
35. The Public Procurement process is too expensive or otherwise?
36. The Public Procurement process is too expensive or otherwise?
37. Do you agree to the assertion that cost of public procurement of works and goods are too expensive
38. There are delays in the procurement process

If yes state the reasons for the delay.....





## APPENDIX 2

### Questionnaire for Procurement Practitioners.

#### Introduction:

The research is to examine the assessment of the level of compliance of the public procurement act 2003 act (663) in public institution (Koforidua Polytechnic). It is strictly for academic purpose and information given will be kept confidential and will go a long way to help the successful analysis of the work. Please read through the following questions and answer them accordingly. Your response will be needed and your anonymity will be ensured.

#### Section A: Personal Data

1. Gender: Male ( ☐ ) Female ( ☐ )
2. Age Group: 16-30yrs ( ☐ ), 31-45yrs ( ☐ ) 46-60yrs ( ☐ ) 61yrs and above ( ☐ )
3. Position Held:.....
4. Level of Education and your area of specialization: .....

#### Section B: Implementation of the Public Procurement Reform

5. Have you had any formal training on the Public Procurement Act, Act 663? Yes [ ☐ ] No [ ☐ ]
6. If Yes, who organized the training? .....
7. How often should procurement training programs be organized for the staff?  
Weekly [ ☐ ] Monthly [ ☐ ] Quarterly [ ☐ ] Yearly [ ☐ ]
8. The procurement knowledge base of other stakeholders (suppliers, other buyers, etc) has an Impact on procurement functions organized in this office. True [ ☐ ] False [ ☐ ]
9. Have you participated in any tendering process Yes [ ☐ ] No [ ☐ ]
10. Where do you get the information about the tenders? News Papers [ ☐ ] Notice Board [ ☐ ]  
Invitation Letters [ ☐ ] Others (specify) .....
11. Do you think the Public Procurement reform has helped to reverse the problems that existed before the introduction of the reform in 2003? Yes [ ☐ ] No [ ☐ ]  
If yes which ways? .....



12. Are you aware of the administrative review provision in Act 663? Yes [ ] No [ ]
13. a) Have you had a problem with the procurement process? Yes [ ] No [ ]
- b) If yes who did you 3 Head of Entity [ ] PPA [ ] ETC/TRB [ ]
- c) Was the issue addressed? Yes [ ] No [ ]
- d) Were you satisfied with the outcome Yes [ ] No [ ]

### Section C: Implementation Challenges

**HOW SIGNIFICANT** is each challenge of implementation to the Procurement Act, Act 663(2003).

(Please tick the appropriate cell)

**Scale: 1 – Strongly Agree, 2- Agree, 3 –Disagree, 4 – Strongly Disagree**

Implementation Challenges of Act 663 Relative Significance		Relative Significance			
		1	2	3	4
1	Lack of knowledge of legal framework caused by poor dissemination of the Procurement Act and Regulation				
2	Inadequate training of procurement staff				
3	Inadequate capacity by the Procuring Entities to implement the very comprehensive Act and Regulation				
4	Lack of incentives to follow proper procedures, caused by weak monitoring and enforcement				
6	The delays in establishing full time operational Procurement Units with the full complement of staff				
7	Inadequate/lack of funding to execute procurement activities				
22	Delay in payment of works executed by service providers.				
9	Illiteracy and inadequate contract management skills among some service providers				
10	Inadequate capacity in effective procurement planning				
11	Accusation of conflict of interest, bribery and corruption in some procurement processes.				
12	Lengthy and cumbersome procurement process				
13	Inconstancies in tender evaluation and interference in the contract award process by unauthorised parties.				
14	Lack of career development path been established for procurement in the civil service				
16	Lack of sanctions to public officials for poor performance, non-compliance with the law and code of ethics.				
17	Low level of ceilings set for Entity Tender Committees to operate within.				
18	Inadequate record management systems for the procurement process				
19	Lack/ Lost of confidence in the procurement process by suppliers,				

	contractors and other service providers				
20	Shortage of experience professional staff				
22	Delay in payment of works executed by service providers.				
23	Low bid prices offered by bidders due to award of contract to the lowest evaluated bidder				
24	Difficulty in obtaining bid security (i.e. Bid Bond/ Guarantee, Performance Bond/ Guarantee and Mobilization Bond/ Guarantee)				
25	Do you think the Act should be amended?				

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