Effectiveness of Anticorruption Measures in Public Procurement: The Case of Tanzania and China

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Abstract
Public procurement is an important function of any government and the magnitude of procurement outlays has significant socio-economic impact and therefore needs to be well managed. It has been estimated that financial activities of government procurement in all countries in the world account for 10% – 30% of the country’s GDP. Demonstrating proper stewardship while spending public funds demands openness and legal compliance from the public sector purchasers. Demonstrating proper stewardship remains a great challenge because in many countries public procurement is highly infected with corruption with detrimental effects on governments’ functions. This paper examines the allocative inefficiency caused by corruption in public procurement using Tanzania as a case study. The paper further appraises the effectiveness of anticorruption measures based on Tanzania and China’s experience.

Key Words: Public procurement, anticorruption measures, regulatory reforms, e-procurement

1. Introduction:
Public procurement refers to the activity of acquisition of goods, works and services through purchase, lease, rental, and hire purchase for public consumption. Procurement in the public sector encompasses public, quasi-public and autonomous public organizations (Woods et al, 2000). It is through public procurement that the State, or its territorial or functional subdivisions, undertakes public works, builds roads and cares for health, education and public security and order (Padhi and Mohapatra, 2011). Public procurement is an important function of any government and the magnitude of procurement outlays has significant socio-economic impact and therefore needs to be well managed. It has been estimated that financial activities of government procurement in all countries in the world account for 10% – 30% of the country’s GDP (Woods et al, 2000; Mlinga, 2009; Auriol, 2006; Padhi and Mohapatra, 2011).

In Tanzania, public procurement accounts for about 70% of the government’s entire expenditure (World Bank, 2005). On one hand, the primary objective for public procurement entities is the same as in the private sector namely to identify sources of needed materials and services and to acquire those items when needed, as economically as possible within accepted standards of quality while observing policies and regulations in force. On the other hand, public sector purchasing entails a stewardship function since it involves spending someone else’s money i.e. the public funds (Woods et al, 2000). Demonstrating proper stewardship while spending public funds demands openness and legal compliance from the public sector purchasers. Demonstrating proper stewardship remains a great challenge due to the fact that in many countries public procurement is highly infected with corruption. Procurement related corruption has been widely documented in former communist states and developing countries (Grodeland and Aasland, 2011; Padhi and Mohapatra, 2011; Mahamood, 2010; Celentani and Gauza, 2002). In Tanzania, corrupt practices have been reported or suspected in different public procurement projects. These projects includes purchase of presidential jet, security systems (radar) and leasing of power generation systems as well as aircraft charters for civilian use. Such practice frustrates the general public as they lose trust in the government.

The 2011 Corruption Perceptions Index by Transparency International shows that public frustration is well founded. No region or country in the world is immune to the damages of corruption, the vast majority of the 183 countries and territories assessed in the TI study scored below five on a scale of 0 (highly corrupt) to 10 (very clean.) New Zealand, Denmark and Finland top the list, while North Korea and Somalia are at the bottom (Transparency International, 2011).

2. Corruption in Public Procurement
Corrupt behavior for purchasers manifest itself in two major forms namely capture and extortion (Auriol, 2006). Capture occurs when a firm bribes a public official to obtain a trading advantage in form of being favored to get the tender or for the procuring entity to receive goods or services below the value for money. On the other hand,
extortion occurs when purchasers in the public organizations compels suppliers of goods and services to comply with demands for bribes in order to avoid being excluded in the procurement process. With regard to extortion, purchasers are considered to be uniquely powerful due to the purchasing power they hold for spending money of their employers. As stated by Woods et al. (2000) the purchasing power held by public purchasers can be used to reward or punish suppliers. They can reward by giving orders, by not being a tough negotiators, by accepting low quality products or services or by freely granting concessions. Likewise, they may punish suppliers by withholding orders or by excluding them from the purchasing process. As stated by Miller et al. (2001) the extent to which the purchasing official is likely to extract or to be offered a bribe depends on the strength of a government official’s bargaining power in terms of the resources they control and the information they posses. The power to reward or punish thus makes public procurement contracts highly lucrative and susceptible to corruption (Grodeland and Aasland, 2011).

As correctly stated by Transparency International, corruption is largely a hidden activity which is difficult to measure. Thus, by its nature, quantifying the effects of corruption upon procurement is virtually impossible. However, studies have established that the total amount of bribery in public procurement is well over 200 billion USD per year or around 3.5% of the world procurement spending. However, this figure represents only one part of the overall cost of corruption because corruption usually involves allocative inefficiency on top of the bribes (Auriol, 2006). One corruption case involving senior government official in Tanzania is detailed below to highlight the magnitude and severity of corruption and its impacts on socio-economic well being of the nation.

3. The Radar Deal Case - Tanzania

Between 1999 and 2001, an arms company BAE Systems of UK negotiated and sealed a deal and sold a US$ 46 million military Watchman Air Traffic Control System to Tanzania for civil aviation use. The deal was backed by then UK Prime Minister Tony Blair, but was strongly opposed by UK Cabinet ministers Claire Short and Robin Cook as well as the World Bank (Ihucha et al, 2010). Several controversial issues arose out of this deal. In 2002 the International Civil Aviation Organization and World Bank confirmed that the system used out-of-date technology and was not adequate for civil aviation but for military use (Evans and Lewis, 2010). Secondly, the system was grossly overpriced as one outspoken UK Member of Parliament (Lamb MP) stated that a modern system could have been provided for 10 per cent of the cost. The Serious Fraud Office (SFO) of UK confirmed that during the period of negotiation BAE Systems paid US$ 12 million ahead of winning the radar contract to Shailesh Vithlani a businessman and BAE’s former marketing adviser based in Tanzania. It is alleged that Vithlani used the money to bribe government officials at the Central Bank of Tanzania, the Attorney General and Ministry officials in order to capture the radar deal. Investigations revealed that the Attorney General at the time of the radar purchase had deposited £500,000 in a Jersey bank account in UK.

In order to save its face and end the matter amicably the BAE systems entered a plea bargain by admitting that it was guilty of “false accounting” and agreed with the SFO to repay £29.5 m (US$ 46 million) to Tanzania (Elinaza, 2010). The SFO then dropped its charges against those involved in the scandal including Tanzanian officials.

Consequently, an agreement was entered between Tanzania, BAE Systems, the UK’s Serious Fraud Office and the Department for International Development (DFID) that the money returned to Tanzania be spent on education projects. The project would cover 16,000 primary schools in Tanzania by providing 4.4 million textbooks, two million desks, syllabi and teachers’ guides for 175,000 primary school teachers. It is estimated that 8.3 million children would benefit from the money returned to the people of Tanzania (Daily News, 2011; The Guardian, 2012). The money spent on this costly and pointless air traffic control system at the expense of the educational needs of 8.3 million children gives a clear picture of the true cost of corruption to the socio-economic wellbeing of the society. Yet, while the alleged bribe payer (BAE Systems) was penalized, the receivers in Tanzania (public procurement officers) walked away freely without any action being taken against them.

4. Anticorruption Measures in Public Procurement

Many countries have realized that public procurement is an area vulnerable to mismanagement and corruption and have thus instituted measures to combat corruption. In Tanzania, such measures include:

4.1 Regulatory Reforms

Tanzania has made big stride on the regulatory and institutional framework governing public procurement. Tanzania enacted public procurement legislation in 2001 i.e. the Public Procurement Act (PPA) in order to address
the problem of inadequate and fragmented procurement laws. The PPA of 2001 was replaced by the Public Procurement Act 2004, which entered into force in May 2005. The new Act included abolition of the Central Tender Board which had assumed the two conflicting roles of both a tender board and a regulator, replacing it with a regulatory body. Likewise, the new Act made full devolution of procurement operations to procuring entities themselves. The 2004 Act also established two important bodies namely the Public Procurement Regulatory Authority (PPRA) and Public Procurement Appeals Authority. The Public Procurement Regulatory Authority is charged with regulatory functions and vested with oversight powers and responsibilities on all public procurement activities carried by all public bodies in the mainland Tanzania. As far as the regulatory framework is concerned, Tanzania can be said to have the most comprehensive regulatory regime for governing public procurement.

4.2 Implementation and Monitoring of Procurement Practices

The enactment of the Public Procurement Act 2004 represents an important step in the evolution of Tanzania’s public procurement system. Based on the PPA 2004 the regulatory authority and appeal authorities have been formed and are both operational. Likewise, procurement activities have undergone full devolution. Under the new law, procuring entities assume full responsibility for procurement decisions and administration. Procurement needs are identified by User Departments, which initiate the procurement process. The User Department liaises with the Procurement Management Unit, which administers the process, with its recommendations scrutinized by an Evaluation Committee. The entity’s Tender Board makes the final procurement decision. In the past, under the Public Procurement Act 2001 tenders valued above US$ 360 thousands were subject to the approval of the Central Tender Board, which has since been abolished. Open tendering or competitive bidding through RFQ is the most favored method of procurement in the Act. Under competitive bidding, procuring entities invites sealed technical and financial bids from each contractor against each project. In such a process, bidders compete with one another by quoting low bid price to outbid their rivals and win the projects (Marshall and Marx, 2007). Whenever quotations are used, the law requires that at least three quotations be obtained before a supplier is selected and a purchase is made (Procurement Journal, 2012). Single sourcing is allowed but under very strict conditions.

Apart from PPRA, compliance with the Public Procurement laws and regulations is overseen by the Controller and Auditor General (CAG). The CAG has played a key role in unearthing dubious and controversial public procurement activities in Local Governments, Ministries, Departments and Agencies. The Prevention and Combating of Corruption Bureau (PCCB) is another government body which fights corruption across all sectors in Tanzania. It was established under the Prevention and Combating of Corruption Act of 2007. PCCB aims at working with all stakeholders to fight corruption by making it high risk with low returns through education, prevention, detection and prosecution. Other government bodies involved in monitoring of public procurement activities and prevention of corrupt practices are the Public Accounts (Parliamentary) Committee (PAC) and the Good Governance Coordination Unit (GGCU).

5. The Missing Links

Even though Tanzania has in place the requisite regulatory framework and oversight bodies for governing transparent and efficient public procurement, corruption is still rife. Annual reports by the Controller and Auditor general shows widespread corrupt activities and breach of the procurement regulations (Procurement Journal, 2012). Achieving transparent, corruption free and value for money procurement is constrained by the following obstacles:

a) Excessive intervention by the state and politicians in the procurement activities of autonomous procuring entities. Such intervention leads to award of contracts to incompetent suppliers favored by the stated or the politicians for their vested interest. The widely reported Richmond scandal in Tanzania verifies the impact of political intervention in public procurement.

b) Administrative and regulatory immunity of senior public officials and politicians inhibit the well-intended fight against corruption. The mechanism for prosecution of corrupt officials in Tanzania is lengthy, slow, bureaucratic, inefficient and lacks political will. For example, once the parliamentary committee or the Controller and Auditor General investigates and uncovers procurement irregularities the same case have to be submitted to the Prevention and Combating of Corruption Bureau (PCCB) for re-investigation. PCCB subsequently reports to the Director of Criminal Investigation (DCI) for further investigation and before the wrongdoer is brought to the court of law, PCCB needs to get approval from the Director of Public Prosecution (DPP). Such conduct has resulted in poor general perceptions and respect of laws by purchasers. Such kind of phenomenon has been observed in other countries especially the former
communist states and is a hindrance to the process of combating corruption (Grodeland and Aasland, 2011).

c) Poor procurement management. Poor procurement management practices manifest itself in the form of lack of transparency (Mitra and Gupta, 2007), procurement of goods and services without following procurement procedures and procurement of service without valid contract as well as resorting to restricted tendering exceeding authorized limit as reported in the CAG report (Procurement Journal, 2012).

d) The regulatory authorities as well as most of procuring entities lacks sufficient and adequately qualified staff to carry out procurement related activities effectively. This contrasts the generally accepted norm that purchasers in public sector organizations should possess the fundamental and specialized knowledge, skills, and abilities that are required of effective purchasers in any type of organization (Woods et al, 2000).

e) Absence of e-procurement mechanism limits the country from benefiting from ICT capabilities in public procurement. Many countries in the world have recognized that E-procurement systems can be helpful in purchasing goods and services most reasonably and deter corruption (Mi Jung Lee, 2010; Concha et al, 2012). E-procurement is the online purchasing of goods and services through electronic channels whereby all procurement related information is available online (Asser and Boughzala, 2008). Public e-procurement is an important stage in e-government development and its economic stakes are considerable.

6. The lessons from China

Like other countries, China is not immune to corruption in public procurement however, it has taken anticorruption measures which can be useful for a country like Tanzania in its drive to fight corruption. As reported by Transparency International (2011) China has undertaken major reforms in government procurement aimed at introduction of greater degree of transparency and competition in the acquisition process in order to achieve the objectives of fairness, efficiency and equity. Upon the accession to WTO, China has agreed to work towards Government Procurement Agreement (GPA) through conducting government procurement in a transparent and non-discriminatory manner (Chou, 2006). In 2007 the Central Government Anti-Business Bribery Leading Group, which has the responsibility for combating bribery under the Central Committee of the Communist Party of China (CPC), circulated a document entitled ‘Suggestions on Deepening the Fight against Business Bribery’. This document aims at intensifying inspections and speeding up the processing of business bribery cases. The people’s supreme court in China has enlarged the scope of the individuals involved in corruption by including the spouse, relatives, lovers of corrupt officials and people with whom the public official has a common interest. As such, the crime of bribery is not only extended to those with entrusted power but to their associates. This measure provides a clearer definition and closes the institutional loopholes of accepting bribes through intermediates.

Transparency International (2011) revealed that China previously put emphasis on fighting the demand side of corruption – generally public officials – while ignoring the role of suppliers. However, following the US-based Diagnostic Products Corporation (DPC Tianjin) which was accused of paying US$1.6 million in bribes to staff employed by China’s state-owned hospitals the country as intensified focus on the corruption supply side. Since then the rate of prosecution of corruption related cases has increased.

Despite these efforts, it is acknowledged that discovery and prosecution of bribery is still a challenging task since bribery is often well hidden and difficult to detect by agencies, as the powers of investigation are dispersed among many government authorities and the provision of resources is limited. Business bribery is often disguised as, for example, technical service fees, consulting fees, trips and research. This calls for higher coordination between the People’s Procuratorate, the public security authority, the People’s Court, the administration for industry and commerce, the tax authority, the discipline supervision authority and the auditing authority.

7. Conclusion

Considering the disastrous effects of corruption in public procurement, such evil should be uprooted from the society. However, effective measures to combat corruption require a combination of approaches and coordinated efforts among stakeholders. As shown in this paper, it is not sufficient to have in place comprehensive regulatory framework. It takes a combination of laws, regulations, competency, effective enforcement and ethical conduct to fight corruption. More importantly, the political will for detection, speedy investigation and prosecution is prerequisite to any successful war against corruption. Therefore the quality of public administration must be improved to enforce accountability, transparency and the rule of law. Likewise, developing countries must strive to
embraces e-procurement practices in order to benefit from capabilities offered by ICT in deterring corruption in public procurement.

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