



# **IMPACT OF PRAZ CIRCULAR 01 OF 2020 ON PROCUREMENT PERFORMANCE OF THE PUBLIC SECTOR IN ZIMBABWE DURING THE COVID-19 PANDEMIC**

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## **Abstract**

*Globally, COVID-19 negatively affected livelihoods of many societies with serious disruptions of supply chains resulting in more pressure on public procurement to effectively and efficiently deliver. Governments had to institute various measures to adequately respond. In America they amended and activated the Defense Production Act, boosting supply chains and making it mandatory for suppliers to have formal contracts clearly guiding the process. In Europe, the Organization for Economic Co-operation Development (OECD) produced a three phased guide (RE-ACTION, RE-ASSESS and RE-BUILD). In most African countries circulars were issued with countries such as South Africa, Morocco, Cameroon shortening their procurement processes whilst Mozambique, Sudan and Togo appointed special committees and ministers to*

*head the procurement of COVID-19 requirements. In Zimbabwe, the Procurement Regulatory Authority of Zimbabwe (PRAZ) issued Circular 01 of 2020 and Ministry of Finance issued Treasury Circular No. 7 of 2020 to guide the procurement process. The paper interrogates the policy position taken, acknowledges and highlights the intensions and objectives in a bid to save lives. This paper concludes that value for money was not achieved, PRAZ was not responsive to developments in the market and there is need to have a specific clause in the legislature covering pandemics.*

*Keywords: Public Procurement, Personal Protective Equipment, Pandemic, Transparency, Value for Money*

## **INTRODUCTION**

The world over COVID-19 has absolutely destroyed economies and the general social well-being of various people (Maulani, Nyadera, & Wandekha, 2020). The reports from World Health Organisation as of 5 August 2020 showed that more than 600 000 people had lost their lives to this pandemic globally (World Health Organization, 2020) and hundreds displaced. In this vein Public Procurement has not been spared from this nightmare, procurement systems have generally been affected as suppliers tend to overprice their goods and services due to the high demand of medical equipment and consumables. Most companies around the world had to close, some had to change the way they used to operate to align to the new normal. In the US the Défense Production Act had to be activated to compel the private companies to manufacturer for the state to boost the availability of the necessary medical requirements (Sadiq & Ruth Kessa, 2020). Despite all these constraints Public Procurement still has an obligation to ensure that social justice is achieved (McCrudden, 2007) but given such drastic changes in the market environment coupled with a lot of uncertainties, a lot of pressure was left on the shoulders of public procurement officials to deliver satisfactorily whilst in compliance with the basic objectives of public procurement which include transparency in procurement processes, accountability and most importantly value for money. Just as much as the pandemic struck developed countries, developing countries were also reeling from the effects of this pandemic in most African states. To a larger extent the developing countries suffered a major blow in terms of the public procurement performance as most developing countries were not highly industrialised and relied heavily on developed countries such as the US and China for medical equipment and supplies. Whilst some of the medical consumables coming to Africa were from India, again the virus took a toll on that country hence their supply chain systems were greatly affected as well. Given all these disruptions in the supply chains there was a negative impact on

public procurement performance and the public procurement officials. In the African context serious issues emerged with regards to the public procurement of Personal Protective Equipment (PPEs) meant for the support of various frontline workers. Most of these COVID-19 procurements were marred by corrupt activities (Cuadrado, 2020). In Malawi an audit report highlighted that some of the principles of public procurement such as transparency and competition were not achieved as more closed methods of procurement were adopted as compared to open methods which increase competition. In some cases, some of the suppliers awarded were heavily linked with some top government officials with fumigation services directly contracted by the Office of the President (National Audit Office, 2021). In Kenya a 'special audit report' at Kenya Medical Supplies Agency (KEMSA) a government-controlled institution reviewed non-compliance issues with regards to the Procurement Act. Direct procurements were done in retrospect, commitment letters were issued without budgetary support and purchases bought were more than what had been requested, tenders were awarded to novices in terms of supplying medical equipment and inflated prices were charged (Office of the Auditor-General, 2020). In South Africa a report produced in view of Proclamation No R23 of 2020 unearthed non-compliance issues with unqualified bidders being awarded, nepotism, and exorbitant prices (Special Investigating Unit, 2021). Given all these developments happening in the global and African perspective Zimbabwe was not spared as well from this pandemic. The pandemic also affected public procurement as the public sector inclusive of hospitals had to respond with the appropriate gear to safeguard the frontline workers. PRAZ had to issue Circular No. 01 of 2020 to try and provide direction in terms of the procurement of PPEs meant for the pandemic, this position was also supported by a Treasury Circular No. 7 of 2020 to ensure that consolidated procurement be done through the Ministry of Health and Childcare particularly the National Pharmaceutical Company (NatPharm).

## **PURPOSE OF THE CIRCULAR**

The major purpose of the circular was to try and create value for money in public procurement through consolidated procurements which meant that heavy discounts would be provided by the suppliers as the country would then benefit from the economies of scale. Apart from the financial angle, the circular was meant to ensure that equipment and consumables bought as a direct response to the COVID-19 pandemic would conform to the standards required since the responsibility had been placed under the Ministry of Health and Child Care which arguably possess the requisite expertise as far as the medical equipment and consumables were concerned. The circular also meant to reduce the cycle time required to respond to the disaster as the consolidated procurements would ensure a nation-wide quick

response to the disaster at hand. Lastly but not least the circular wanted to provide guidance and direction in terms of procurement processes to be followed by procuring entities in terms of acquisition of COVID-19 requirements.

## **EFFECTS OF PRAZ CIRCULAR NO.1 OF 2020 ON PUBLIC PROCUREMENT OF PPEs IN ZIMBABWE**

As much as the circular was meant to achieve economies of scale and promote value for money in procurement processes during such a pandemic the opposite was true. The circular was generally received by the practitioners with a lot of questions and more clarifications required than answers hence different interpretations of the same position led to more confusion in terms of guiding the procurement of items meant for the COVID-19 pandemic. Various efforts made by most procuring entities to seek guidance and clarity on COVID-19 procurements fell on deaf ears as procuring entities were still being referred to the same circular which they were failing to properly comprehend. As a result, some negative positions became evident.

### **Feasibility of the policy position**

The major challenge that public procurement officials had as a result of implementation and adoption of the policy position was, how feasible was it given the nature of the emergency for all procuring entities which include 20 ministries, 107 parastatals, 14 state universities, 36 Urban Councils and 58 Rural District Councils (United Cities and Local Governments; OECD, 2016), all converging at the Ministry of Health to ensure that their requirements are met. Indeed, it was much more complicated as most of these institutions are geographically spread and to try and co-ordinate such requirements became a nightmare on the part of the practitioners. The policy position was also in conflict with the devolution agenda being promoted by the government as NatPharm has a centralised Procurement Management Unit (PMU) based in Harare; hence procurement of PPEs under Ministry of Health would mean all procurements had to be directed to the PMU in Harare from all over the country.

### **Transparency in line with the policy directive**

Various governments came up with a raft of emergency measures in the form of directives and circulars to try and respond adequately to the demands of the pandemic. This however to a larger extent compromised one of the key principles of public procurement which is transparency. In Britain from a total of 17.3 billion pounds over 60% was awarded through direct procurement and not subjected to any form of competition posing a great risk of corruption and favouritism in awards. To add to that in some instances due diligence

processes and contract signing were conducted in retrospect resulting in lack of transparency in the procurement systems (National Audit Office, 2020). In the US transparency was also misty with more than 50% of the contracts having been awarded without following a competitive process (United States Government Accountability Office, 2020). The lack of due diligence and transparency also led to the acquisition of inflated goods and services in Malawi (Malawi, Office of the Ombudsman, 2020). The Zambia Public Procurement Authority (ZPPA) issued several circulars to guide procurements however, transparency was also compromised as collusive bidding was noted, bids submitted had the same emails, contact details and in some instances they even had the same directors (Zambia Auditor General, 2020). In Botswana there was no value for money in terms of the PPEs procured as items bought exceeded their actual market values (Botswana Auditor General, 2021). In Zimbabwe like other countries PRAZ also issued a policy guideline in the form of Circular 01 of 2020 also supported by a Treasury Circular 7 of 2020 to try and respond to the pandemic. The policy position though directing entities to observe the principles of public procurement such as transparency also provided for 48 hours for the calling of framework agreements without necessarily adjusting some of the stringent measures contained in the procurement laws such as bid validity periods of 60 days for domestic procurements and 90 days for international tenders. Given such provisions prices were hiked to accommodate the inflationary environment in Zimbabwe, as such a gap was created where reputable companies did not participate since prices were continuously changing as provided for under the gazetted list published by NatPharm.

### **Value for money in line with the policy directive**

Contrary to the intentions of the policy position, various issues arose from the procurement of COVID-19 requirements by the Ministry of Health with various issues before the courts, the former Minister of Health was implicated in a \$60million dollar scandal alongside the chief supplier DRAX International who was accused of falsifying company documents as well as other senior government officials (Duri, 2021). The major complaint raised was that value for money could not be established as the Ministry of Health bought various items at exorbitant prices for example masks which were bought for USD28 yet the comparative market value was less than a dollar (Nyadera, Nyaburi, & Wandekha, 2020) and the Zimbabwe Anti-Corruption Commission (ZACC) was seized with the matter to bring to book all elements implicated in the scandal. This was also the case in Botswana where PPEs were bought at exorbitant costs above the market rates without proper due diligence having been conducted (Botswana Auditor General, 2021) It was also strongly argued by

most practitioners who felt that the tenders had been awarded to fly by night companies popularly known for tenderpreneurism and were charging exorbitant prices thereby defrauding the citizenry of Zimbabwe. This was also noted by (Atkinson, McCue, & Atkinson, 2020) in their study that middle man ended up being awarded tenders and counterfeit products dominated the supply chains hence lacking value for money.

### **Accountability in line with the policy directive**

The policy position mandated that the COVID-19 requirements be procured using shared procurement arrangements using the Ministry of Health, a standing list created by the Ministry would then be used. The major challenge in this policy position was that the policy position failed to clearly define who would be held accountable in the procurement of overpriced PPEs using a standing list created by another procuring entity. Also, the policy position created a vacuum in terms of the actual service delivery it became very difficult to hold the Accounting Officers accountable for ensuring that social justice is achieved, blame for the late response in availing the PPEs and poor quality of products bought were attributed to the framework agreement. Given the above just as highlighted by (Komakech, 2016), that if goods and services are not procured at the right price, right quality and right time then the performance of government is compromised and the ability to effectively respond to such disasters is diminished.

### **Service delivery after the policy position**

Just as outlined above, confusion with regards to the policy position was evident hence some of the procuring entities wasted valuable time advertising for bids when they were simply supposed to use framework agreements established under the Ministry of Health and administered through NatPharm. Service delivery was also compromised as debates on issues related to pricing delayed processes and agreements as per contracts not adhered to. In the UK the Cabinet Office issued a directive to try and create safeguards and this scenario whereby all contracts were to be reviewed and obligations in terms of payments were supposed to be met without fail (UK Cabinet Office, 2020).

To add to the above, medicines and medical equipment in major hospitals in Zimbabwe were still in short supply (Munharo, Edet, Friday, Maradze, Ahmadi, & Lucero-Prisno III, 2021). This is a position that has generally prevailed in most countries as the world was heavily depended on China which also had several restrictions due to lockdowns and shortages of raw materials (OECD, 2020).

## RECOMMENDATIONS FOR PROCUREMENTS DURING PANDEMICS AND DISASTERS

The Policy position with regards to such procurements must be enshrined in the Procurement Act. The Act Chapter 22:23 under Section 33 (c) outlines that direct procurements can be done in cases of extreme emergencies but it then falls short as the deciding factor will only be a single procuring unit and this is not completely applicable to address such a nationwide scale disaster such as this pandemic. The Act therefore *MUST* have a provision for national disaster responses such as pandemic related procurements. There must be an Independent Inter-ministerial committee established for directly responding to disasters in terms of planning and execution of procurement requirements especially procuring directly from the source to create value for money, if drug manufacturers are in India, they should just be procured directly from the source instead of trying to promote small businesses at the expense of the nation. The committee should be comprised of various stakeholders which include representatives from Ministry of Finance, Local Government, Defence Forces, PRAZ, Justice, Health, Labour and Social Welfare, Transport and Energy who must convene within 48hrs after a declaration by his Excellency the President that it's a national disaster, to directly respond in terms of consolidation of requirements, the budgetary support required, mode of transport required, the expertise required, legal requirements and source of the requirements that is the actual source/manufacturers and not middle man.

Quick Implementation and adoption of an Integrated E-Procurement system should top the list of the government's priorities as this system would ensure that there is transparency in the way public procurement is done particularly in cases that involve people's lives and huge sums of money. As such a provision should be clearly articulated in the regulations as a guiding policy on how the system operates. The Integrated system would also assist in the management of inventory especially in the case of the COVID-19 reagents used for testing the virus. The system could be customised in such a scenario that it integrates with the supplier such that they are in a position to monitor the inventory levels hence alert relevant authorities once the minimum inventory levels have been reached and this would also reduce the supply lead timeframes as they can adequately plan in advance.

The Regulator should exercise its regulatory functions provided for under Section 6 and 7 and ensure that as a Regulator they are alive to the changes happening in the market which have a direct bearing such as inflation with relation to some of the provisions set out in the Act just like in Zambia the Zambia Public Procurement Authority issued a price reasonableness circular as a safeguard in terms of pricing (Zambia Public Procurement Authority, 2021). The Regulator should ensure that there is fairness in the way procurement is achieved and should play a much more leading role unlike a situation where you have local authorities having their

specific exemption (PRAZ/D/M/4), exempting them from complying with Section 19 of the Regulations which stipulates the bidding periods yet the procurement environment is the same with all other public entities hence standardisation of such directives is required (PRAZ, 2019)

The Regulator should also advocate for amendments in the current Act to cater for supplier development, whereby lead entities such as NatPharm mandated with the responsibility to collectively procure are able to engage big organisations such as CAPS, VARICHEM are given the much needed foreign currency and Active Pharmaceutical Ingredients for the production of specific drugs required by the nation to adequately deal with pandemics of this magnitude just as noted by (Munharo, Edet, Friday, Maradze, Ahmadi, & Lucero-Prisno III, 2021) in their study that Zimbabwe need to be independent and not overly depend on other countries for support in terms of the acquisition of medical requirements in such pandemics.

## CONCLUSION

This paper interrogated the policy directive issued by PRAZ as the Regulator to direct procurement activities under the COVID-19 pandemic. Given the above it can be strongly argued that the policy position given to procuring entities as much as it was meant to promote a consolidated respond to the pandemic failed to clearly articulate the implementation parameters and that the Authority failed to properly exercise their powers as provided for under Section 6 (a) in which case they are suppose to guide procuring entities especially given such levels of disasters which end up with the tax payers through the government losing a lot of funds. Given the above it is also evident that as much as Section 33 (c) of Chapter 22:23 can be used for the procurement of extreme emergencies there is need to create a provision dealing specifically with national disasters such as pandemics to ensure that value for money is enhanced.

The way forward other researchers should focus on the health sector and come up with a detailed comparative analysis of the impact of this policy position focussing on the various levels of health provision which include primary, secondary, tertiary and quaternary levels. The comparative analysis would help to check if a one size fits all approach to policy is recommended or a level specific approach would solve the problems bewildering the sector.

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