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PROCUREMENT REFORMS IN ZIMBABWE: EMERGING ISSUES AND IMPACT ON SERVICE DELIVERY IN THE PUBLIC SECTOR

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Abstract

Public Procurement in Zimbabwe was reformed in a bid to address various issues and challenges. This paper explores the emerging issues in public procurement in light of these reforms. A desktop study was done with extensive review of Legal Instruments, Circulars, Government Directives and existing literature. The paper analysed the impact of several emerging issues such as natural disasters and pandemics, regulatory changes, value for money, currency distortions, inflation, the buy Zimbabwe campaign, trade agreements, globalisation, geo-political environment as well as black listing of suppliers. The paper concluded that some of the emerging issues like the buy Zimbabwe campaign and the value for money concept could assist the country and have a positive impact if properly governed. The overall emerging issues negatively affected public procurement environment. The paper *proffered recommendations such as extensive engagements between government departments before directives are issued to avoid misalignments in policy positions and interpretations. The government should align certain policy positions for the benefit of local companies to improve the social economic status. The paper proposes further research studies targeting other emerging issues such as sustainability, supplier development and the National Development Strategy 1 and 2 and their possible effects in view of the reforms.*

Keywords: Due diligence, globalisation, circulars, transparency, accountability

INTRODUCTION

Procurement reforms have been a norm worldwide to try and respond to emerging issues related to transparency, accountability, integrity and fairness in the way public procurement is conducted. These pertinent proponents ensure the attainment of public procurement objectives which ultimately act as an indicator to determine the performance of the organisation as a whole (Kakwezi & Nyeko , 2019).

Public Procurement Reforms in Europe had emerging issues such as the need to achieve sustainable procurements wherein the goal was to strive to make it mandatory in procurement processes as compared to making it an option (Sapir, Schraepen , & Tagliapietra, 2022). In the UK the concept of sustainable procurements as well aided in the development of laws such as The Modern Slavery Act 2015 which had to be incorporated in procurement practices as part of the due diligence processes. Bribery issues were also another emerging issue which lead to the enactment of the UK Bribery Act 2010 to curb such anomalies in the UK (Yanga, 2014). The need for increased transparency in term of the open data infrastructure was also another emerging issue (Fazekas & Dávid-Barrett, 2015). The need to be more involved in corporate social responsibility initiatives was also an emerging issue with EU member states (Ankersmit, 2020).

In Africa reforms were done to countries such as Nigeria, Ghana, South Africa, Tanzania and Uganda in view of emerging issues such as transparency, value for money, need for competition amongst bidders, accountability and corruption (Dza, Fisher, & Gapp, 2013), (Komakech, 2016). In south Africa emerging issues such as empowerment of black South Africans as a policy position (Ambe, 2016) led to some tenders being reserved for black south Africans under the Broad-Based Black Economic Empowerment (B-BBEE) banner (Fourie & Malan, 2020). This was also the same with Namibia which had to adopt a similar policy of preferential treatment referred to as the Transformation Economic and Social Empowerment Framework (TESEF) (Botlhale, 2017).

In Zimbabwe public procurement reforms were done through the introduction of the Procurement Act Chapter 22:23 (Munyede & Mapuva, 2020). The Act brought about a raft of reforms chief among them issues to deal with transparency issues which were missing in Zimbabwe's public sector (Jachi, Makumbe , & Mandongwe, 2019). Despite reforms having been done to address several challenges within the public procurement space there has been a raft of emerging issues affecting service delivery.

In view of the above this paper interrogates the emerging issues that are currently bewildering the public procurement environment and the impact of these emerging issues on service delivery in the public sector.

METHODOLOGY

This paper adopted a qualitative study done through a desktop review wherein various legal frameworks and instruments were interrogated. The study also extensively reviewed other published literature, and also analysed policy directives and circulars from the government as well as the print media.

REVIEW RESULTS

Natural disasters, Outbreaks and Pandemics

Post implementation of the Public Procurement and Disposal of Public Assets Act Chapter 22:23 the country including Mozambique and Malawi was faced by a natural disaster in the form of cyclone Idai which killed at least 900 people (Mutsaka, Dlugosz, Kani, Harris-Sapp, & Juillard, 2019) and greatly strained the effectiveness of the procurement laws in a bid to strike a balance between transparency in procurement systems and the ability to efficiently and effectively provide the much needed services and resources. The regulator PRAZ had to issue guidance on how procurement was to be conducted to try and bring sanity as well as avoid corrupt tendencies. Apart from Cyclone Idai there was also cholera outbreaks which lead to the death of people. Various issues were raised as the ability to respond to the provision of health commodities was reduced with issues and faults being directed to procurement units as the chief culprits facilitating the untimely death of people due to non-provision of the required products (Madziva, Msipah, & Tukuta, 2022). As if these issues were not enough the country was hit very badly with COVID-19 which caught the government off guard just like in most other countries wherein responses to this deadly pandemic had to be reactionary as a result there were a lot of shortages of medical requirements in public health facilities (Munharo, Edet, Friday, Maradze, & Lucero-Prisno, 2021). Once more it was proved that the reformed Act as much as having been benchmarked by other companies was still failing to address emergency procurements whilst maintaining the necessary safe guards to protect the public funds (Madziva, Msipah, & Tukuta, 2022). In a bid to also try and cover the gaps within the new Act PRAZ then issued guidance in terms of Section 7 of the Public Procurement and Disposal of Public Assets Act Chapter 22:23 (PRAZ/B/15/4, 2020), this was also subsequently supported by Treasury as well (MoFED/C/47/81, 2020). It was however, unfortunate that both circulars brought inefficiencies in terms of supply lead times, quality as well as costs for products being bought due to lack of due diligence modalities to actually ascertain the capacity of the suppliers (Madziva, Msipah, & Tukuta, 2022).

Regulatory Changes

In a bid to ensure stability and control within the market environment several statutory instruments were gazetted since the promulgation of the Act. The government gazetted about ten Statutory Instruments between 2018 and 2021 to try and stabilise the market environment. (Madziva, Msipah, & Tukuta, 2022)

Despite the fact that the regulatory changes were meant to stabilise the environment the opposite on the ground was true as these changes led to further distortions in terms of prices, litigations due to contractual disputes as well as non-compliance with some provisions of the regulations due to the continuous changes thereby causing a lot of confusion to practitioners (Madziva, Msipah, & Tukuta, 2022). Stock-outs of essential health commodities (Modisakeng, Matlala, Godman, & Meyer, 2020) were also evident.

Value for Money

The principle in a normal situation involves an analysis of all the stages of the procurement cycle and streamlining all the requirements and process to ensure that value for money is achieved. Value for money does not necessarily refer to the price only (Komakech, 2016), however given the Zimbabwe public procurement space the government represented by the Permanent Secretary for Finance issued a directive to freeze payments for all the contracts (MoFED/C/99/1/18, 2022) that had been submitted for payment as well as another directive on due diligence exercises (MoFED/C/98/2, 2022) to be conducted on all contracts through the use of internal audit officers. In the same directive procuring entities were directed to re-negotiate the contracts which had already been concluded and on some partial or full fulfilment of the contracts had already been done. This directive apart from disadvantaging the contractors and directly violating contract terms and conditions in terms of payment time lines was in direct violation of section 52 of the Public Procurement and Disposal of Public Assets Act Chapter 22:23. Technically the directive created a collision course for the ministry of finance and the regulator PRAZ as all those contracts that had been submitted for review by the Special Procurement Oversight Committee would need re-submission to the regulator in the event of any deviations from the original positions. PRAZ as the regulator was not approving the negotiated positions as directed by the ministry of finance to procuring entities as this was in direct violation of the act which they protect, however failure to do so would warrant non-payment of the contract by the same government. As a result of this inconsistency in policy direction procurement officers doing public procurement remained vulnerable and ended up being victims of the misalignments in polices being adopted. The likely hood of the government losing a lot of money through litigations was very high. A potential time bomb was also created as most SMEs could end up closing shop because capital would have been tied up for too long with delayed payments and also currency distortions within the country. This position ultimately causing a reversal of the initial gains that the Public Procurement and Disposal of Public Assets Act Chapter 22:23 was anchored on in terms of socio-economic development.

Currency Distortions

Various statutory instruments were promulgated to try and control the various market shocks (Ncube, 2019) which were affecting the supply market (Madziva, Msipah, & Tukuta, 2022), this resulted largely in a negative effect with currency distortions being exhibited in the market. Various rates and charges were being charged depending on the currency used. The market had rates for USD cash, USD paid at interbank rates, USD paid as Nostro, RTGS or transfer, eco-cash and the cash local currency.

The relationship between the USD, USD Paid at Prevailing Interbank Rates and Parallel Market Rate

In view of the various market shocks within the supply market in 2019 extending into 2020 the government through the MoFED introduced the RTGS currency which continued to lose value against the USD (Reserve Bank of Zimbabwe , 2019) ultimately pushing the month to month inflation close to 13% with year on year at 98%. Due to these various shocks the domestic market became uncompetitive and most monetary policy instruments were failing to effectively address the challenges (Ncube, 2019). The continuous increases in the parallel market rates saw a sustained price in USD which was also very scarce (Ncube, 2019) hence prices of goods and services remained very high for the ordinary citizen (Reserve Bank of Zimbabwe , 2020). Apart from the above the market also had different pricing regimes where prices were being charged differently in actual USD with prices charged at interbank rates being higher due to the 20% (Reserve Bank of Zimbabwe, 2020) and subsequently increased to 40% which had to be liquidated into RTGS

As the Interbank rates gained on the USD the parallel market rates stabilized and the impact was that the prices remained stagnant for a while in the local currency, however due to market shocks over prolonged periods prices increased again due to fluctuations in the parallel market rates.

Inflation

Zimbabwe's supply chain environment for the past decade has been hit hard by runaway inflation due to global pressures (Ncube, 2022) as well as internal pressure which threatened service delivery in terms of electricity supply, water supply and medicines. Annual Inflation rates of over 250% were noted since 2021 up to the first half of 2022 and this also increased prices by the same margins (Zimstat, 2022). Due to the high inflation and increased prices the supply environment was impacted negatively and this hugely also affected the health sector causing serious shortages in health facilities (Munharo, Edet, Friday, Maradze, & Lucero-Prisno, 2021).

Buy Zimbabwe Campaign

The government of Zimbabwe went on to reform the public procurement Act in a bid to try and support the local industry (Madziva, Msipah, & Tukuta, 2022) and also amending the Indigenisation and Economic Empowerment Act Chapter 14:13. These reforms augmented the government's vision of not leaving anyone behind in pursuant of vision 2030. The government implemented several policy initiatives (Ncube, 2022) to promote the buy Zimbabwe campaign through loans as well as the setting up of manufacturing units in an endeavour to whine off the country off the dependency syndrome. In pursuit of this vision the government was however, blamed by some medical sectors as contradicting itself after issuing directives to the national government procuring agent responsible for procuring medicines and medical supplies to procure only from local and international manufacturers thereby directly removing distributors (MoHCC, 2020) which had originally constituted the bulk of the major suppliers and also aided in employment creation. The directive was meant to reduce the costs of medicines in Zimbabwe through the removal of middleman, however as much as the initiative was good it also contradicted the same buy Zimbabwe campaign that the government was pursuing as the outright removal of distributors implied that all the companies which had employed the local Zimbabweans would end up closing and the unemployment rate would rise. Shortages of medicines were experienced at the medical health facilities since the prevailing medical manufacturers did not have the capacity to supply the local industry and contributing only 12%

in terms of medicines manufactured and consumed (Xinhua, 2021). To add to this abnormally surgicals such as sutures which are very critical to health service delivery are also not manufactured locally. This position ultimately constrained the country as more reliance on international manufacturers resulted in an increased demand for foreign currency on an already constrained economy due to the negative impact of COVID-19 which had resulted in a contracted economy (Bertelsmann Stiftungs" Transformation Index, 2022).

Trade Agreements

Zimbabwe signed both bilateral and multi-lateral agreements with several countries and international blocks, bi-lateral agreements African countries such as Botswana, Namibia, South Africa, Malawi and Mozambique were signed (Sunge & Mapfumo , 2015). Under these agreements exporters from member states have certain privileges such as reduced tariffs if their products have at least a 25% component proving that the products being exported were actually manufactured in the trade countries (Sunge & Mapfumo , 2015). It can however be noted that there has been minimum trade in terms of companies from these countries trading with Zimbabwe especially the medical sector were most of the procurements are done in favor of Indian companies. Apart from the bi-lateral agreements Zimbabwe also has 3 multi-lateral agreements with Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA) and Interim Economic Partnership Agreement (iEPA) with the European Union (Mahiya, Maradze, & Nyoni, 2020). Despite these agreements the manufacturing sector has been on the decline hence the ability to export severely reduced and increased tariffs making goods more expensive (WTO Secretariat, 2020).

Globalisation

With the world fast becoming a global village wherein countries have increased dependence on each other whilst negative tremours which affect the global platforms also affect other countries. Zimbabwe also belongs to the same global village and negative impacts such as the the Russia and Ukraine war which has greatly affected global economies (Tank, 2022) also have a direct bearing on supply chains. This is also the same with projected contractions on the US and European economies (Ncube, 2022). As a result of the war there was a notable increase in prices of fuel and oil since Russia is one of the biggest producers of oil (Tank, 2022) and Zimbabwe was also not been spared in terms of the ripple effects as prices of commodities was high in 2022 and projected to be on the same trajectory in 2023 (Ncube, 2022). Due to globalisation Zimbabwe is also a signatory to the Paris agreement on climate change which will also put more pressure on supply chains as the world shifts to using more environmentally friendly products as compared to the traditional ones. One of the main goals was to achieve a balance in terms of emissions as well as reducing emissions by 2030 (UNFCCC, 2017) unfortunately in Zimbabwe due to the existence of thermal power as the major source of electricity supply just as in other lower states with more pressure being applied to dump fossil fuels ahead of clean energy sources (Mani, Hussein, Gopalakrishnan, & Wadhwa, 2018). Also in Zimbabwe this would also impact adversely in terms coal suppliers and even the existence of certain communities and towns.

Geo-Political Environment

Whilst globalisation promotes the free flow of information, goods services through removal of any barriers the opposite was true as governments' grappled with the COVID-19 pandemic (Madziva, Msipah, & Tukuta, 2022). Due to geo politics when the COVID-19 pandemic hit hard on supply chains governments in countries were Zimbabwe sources its products from such as India, China and South Africa imposed special restrictions on the exportation of certain health commodities (KarishmaBanga, Keane, Mendez-Parra, Pettinotti, & Sommer, 2020) such as oxygen to avoid shortages in their own countries. Such geo-political decisions led to increased pricing (Ncube, 2022) of all commodities including health commodities and also shortages within the borders of Zimbabwe. The Russian-Ukraine war also negatively affected supply chains in terms of wheat shortages (Tank, 2022), increased production costs as well as imported inflation as a result of the use of the USD (Masiyandima, Ngundu, Kupeta, Moyo, & Ngwenya, 2018).

Blacklisting of Suppliers

The government through the Ministry of Finance and Economic Development as the custodian of the resources issued to public institutions instituted a raft of measures to try and achieve value for money in public procurement. Firstly they banned all payments of suppliers and ordered due diligence to be done on all contracts and negotiations on prices downwards on all the contracts in violation of Section 52 of the Public Procurement and Disposal of Public Assets Act Chapter 22:23. The government further blacklisted 19 companies through a press statement issued by the Minister of Finance and Economic Development on the 9th of November 2022 (The Herald, 2022). Despite the Finance Minister blacklisting the companies (MoFED, 2022), the Public Procurement Regulations provides for a procedure for blacklisting of companies under Section 70 wherein the recommendations should be forwarded to the Authority who in turn would come up with a committee in terms of Section 71 of the same

Regulations. Contrary to these provisions provided for under Section 70 -75 of S.I. 5 of 2018 the Minister had already blacklisted the bidders.

RECOMMENDATIONS

Government authorities have to engage each other in the event that there are certain misalignments in this case before the permanent secretary issued a directive they should have engaged the regulator PPRAZ to establish the facts and map out a joint solution which does not cause more confusion leaving practitioners and suppliers vulnerable.

The government to amend the current policy position directed to the national government procuring agency such that there is the inclusion of third party companies who have exclusive distributorships with the main manufacturers. In doing so a due diligence process should be conducted and parameters should be set on the participating conditions in tenders which should then be restricted to the domestic distributors and in terms of prices a cap should be introduced such that the general public is not exploited as well and continue to get medicines at an affordable cost. The government should also try to invest in the local pharmaceutical industry through direct capital injection as this would promote the continuous production of medicines and even expand the production lines of the major required medical products in Zimbabwe.

Apart from just signing the bilateral and multi-lateral agreements efforts should be made to ensure that trade actually happens with the promotion of companies from member states to actively participate in tenders of other trade countries. There is need of establishment of an e-platform were tenders are advertised and the procurement laws to also incorporate a bi-lateral and multi-lateral preference with at least 10% preference ahead of international companies such that member states can fully benefit from the agreements.

CONCLUSIONS

The emerging issues generally have a negative impact on public sector procurement as most of the emerging issues are not in compliance with the current provisions of the Act particularly the value for money concepts which requires post tender negotiation contrary to the provisions of the procurement laws and subsequent blacklisting. The buy Zimbabwe campaign as much as it would assist the country needs to be guided by extensive research and consultations as well as proper principles to avoid supply chain gaps. The country as much as it is part of the global village it should also thrive to promote the local industry through enacting of laws which enhance supplier development as well as exposing more of the local bidders to the international markets.

Despite the above, the study was limited to secondary data and did not have primary data which could have lead to the establishment of more emerging issues directly affecting the public procurement environment.

Going forward future researchers should broaden the scope to also cover other emerging issues such as sustainability in public procurement, supplier development and even government blue prints which encompass the National Development Strategy 1 and 2 and analyse how these are affecting and will affect the public procurement environment given the reforms already done to date in the public procurement environment.

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