

CORRUPTION

surrounds public procurement in Sierra Leone

► Background

Public procurement is the process by which Government acquires goods, works and services at the right price, place, time, quantity and the right quality using public funds. Public procurement has only recently engaged the attention of the people of Sierra Leone. Not many people know all that needs to be known about this new trend of doing business with government entities. It is a mechanism established by government to curtail corruption within government institutions as most of the corrupt cases in the country are procurement related. This is so because 70% of government budget hinges on procurement.

Public procurement has evolved in Sierra Leone since colonial times. During those periods procurement in the public sector was completely centralized whereby Crown Agent was appointed by the British to manage our procurement processes. After independence in 1961, public procurement was decentralized to the ministries with the permanent secretaries in charge as they were the vote controllers. In the provinces, provincial secretaries administered procurement and were assisted by the district officers. Upon the dissolution of district councils in 1972, public procurement was again centralized within the Ministry of Finance where a Central Tender Board (CTB) was located to carry out all procurement in the country on behalf of the government. From 1972 to 2002, it became increasingly clear that there were serious corruption issues surrounding the centralized procurement system. This prompted the inauguration of the present procurement system in the country.

In early 2002, when the decade long civil conflict in Sierra Leone was officially declared over, former President Ahmad Tejan Kabbah requested that the UNDP provides help for a comprehensive reform of the nation's procurement. The Inter-Agency Procurement Services Office (I.A.P.S.O) of the UNDP held series of consultations with the Ministry of Finance, Auditor General, Accountant General and the Sierra Leone Chamber of Commerce, Industry and

Agriculture in January 2003. The E.U., DFID and World Bank were also engaged. The outcome of the consultation was the establishment of a procurement reform steering committee chaired by the then Honourable Vice President. The committee was tasked to examine the various reform options and to oversee the implementation of the agreed activities for the procurement reform. In June 2004, the World Bank produced an Issue Paper on procurement that highlighted several recommendations, principal among them, was the creation of a public procurement regulation, strengthening the auditing and the establishment of the Anti-Corruption Commission. The government subsequently enacted the Public Procurement Act (PPA) in 2004 which contains many of the major features that meet international best practices in public procurement.

► Procurement Process

The NPPA decentralized procurement to the various Ministries, Departments and Agencies (MDAs) as well as to the Local Councils. The Act established the National Public Procurement Authority (NPPA) to regulate the procurement processes in the country. Going through the Act, I understand that the NPPA does not procure for any entity. It performs oversight functions, monitor and build the capacity of procuring entities. The NPPA is governed by a Board of Directors appointed by the President and approved by Parliament. The day to day activities of NPPA is run by a secretariat headed by a Chief Executive Officer. There are such other departments as the Monitoring and Evaluation that checks the excesses of the procuring entities. There is also the arbitration wing which is known as the Independent Procurement Review Panel (IPRP) that has the power to adjudicate on breaches of procurement rules.

Every institution does its own procurement in line with the PPA stipulation. This has not entirely rid the system of corruption. Accountants and the procurement officers are always in tussle as to who undertakes procurement. Also, the procurement

methods used sometimes circumvent the procurement rules.

The Act states that if the threshold is over sixty million Leones (Le 60,000,000.00) the method to be used could be National Competitive Bidding (N.C.B); this method mandates the procuring entity to advertise the tender in a widely circulated newspaper for about four weeks so that service providers or business people could buy the Bid document and submit their bids. For works, however, it becomes N.C.B if the threshold is above Le 150,000,000.00 (one hundred and fifty million Leones). In case of contract for the procurement of services N.C.B can be used if the threshold is above sixty million.

However, the Head of Monitoring and Evaluation Unit at NPPA, Mr. Mohamed J. Musa informed SierraEye that International Competitve Bidding (I.C.B) could be used to solicit services from international or foreign business service providers. He highlighted that I.C.B can be used when estimated value of the procurement of goods exceeds six hundred million Leones (Le 600,000,000.00). In case of works I.C.B is used when the threshold is above nine hundred million Leones (Le 900,000,000.00) whereas for services the sum is six hundred million Leones (Le 600,000,000.00). He was quick to note that if the value of contract is below the threshold i.e. Le 60 million for the procurement of goods, a restricted method could be used which is Request For Quotation (R.F.Q). In this case, quotations would be solicited from at least three service providers in which they will indicate their prices for the goods. The same goes for services. However, if the value for the procurement of works is below Le 150 million, RFQ is used.

Corruption surfaces in these methods in very many ways. Firstly, vote controllers who act as chairmen of the procurement committee sometimes split the bulk sum of the procurement action so that it would fall before the threshold. Mr. Mathew Robert, System Analyst at the Anti Corruption Commission conceded to the fact that if the contract for the procurement of goods is, say, one hundred and ten

million Leones (Le 110,000,000.00), procurement officers in concert with their vote controllers will split the action into two so that the estimated value would be fifty-five million Leones (Le 55,000,000.00). This action could be done twice in a month, circumventing the N.C.B. so that RFQ could be developed. "This is where we fall out with most of the entities as only those service providers on their data base are invited to bid," he explained.

The procurement method to be used is determined by the procurement committee of the procuring entity. This committee presides over procurement actions. The committee approves actions and authorizes the tendering of bids. The vote controller of each entity acts as the chairman while the procurement officer is the secretary. The committee opens bids in the presence of bidders or their representatives and does the preliminary qualifications as contained in the Bidding document. After that, the committee appoints the Technical Evaluation Committee (T.E.C) that goes beyond the preliminaries and delves into the technical capability of the service providers. This is also another fertile area for corruption as evidenced in the saga that engulfed the Ministry of Defense in the procurement of rice for the military in June 2010. There was a presidential declaration during the unveiling of the monument at State Avenue in Freetown that there was going to be an increase in the quantity of rice for each soldier of the Republic of Sierra Leone Armed Forces from sixty (60) cups to a full bag of 50kg. By a letter dated 30th June 2010, the Ministry of Defense sought permission from NPPA to conduct a restrictor bidding process for the urgent procurement of eight thousand and five hundred bags of rice (8,500) per month for a period of four months in 2010, that is, June, July, August and September. NPPA gave clearance and the Ministry of Defense invited five bidders, namely, African Sunshine, Awa Enterprise, Evergreen Trading, Harmony Trading Company and Nationwide Logistics to bid for the supply of the stated bags of rice for four months.

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The contract was awarded to African Sunshine on the 20th July 2010. This angered Sierra Commodities and appealed to the IPRP on the 13th August 2010, citing that Harmony Company Limited was invited to bid for the supply of the rice and that the company had notified the Ministry that Harmony Trading Company is now trading as Sierra Commodities Company Limited. The company also stated in a letter dated 14th July 2010 that it is Sierra Commodities Limited that will send supporting documents in respect of the bid in lieu of Harmony that had been invited. They stressed that when the decision for the award of the contract was taken, the documents for Sierra Commodities were not considered, and that there had not been communication between the company and the Ministry of Defense. The Ministry of Defense argued that they did not consider Sierra Commodities because there was no authentic certificate of change of name issued by the Administrator and Registrar General to show that Harmony Trading (S.L) Ltd had changed its name to Sierra Commodities Company Limited. They also said that there was no evidence such as a copy of the gazette and or local newspaper publishing the change of name which according to them was a total breach of section 30(10 and 11) of Act No. 5 of 2009 (the Company Act). The TEC of the Ministry of Defense also stated that the bid submitted by Sierra Commodities was not initiated by the Chairman and members of the procurement committee and therefore rejected the bid document from Sierra Commodities and dropped them out of the race. The IPRP under the chairmanship of Sulaiman Kabba Koroma Esq stated in its ruling that Harmony is existing differently from Sierra Commodities although the former's asset and liabilities are being taken over by Sierra Commodities and that it does

not amount to a change of name. Also, the certificate of incorporation of Sierra Commodities shows that it is incorporated as Sierra Commodities company Limited and not a merger or change of name of Harmony Trading S.L. Ltd. Quoting section 53 (5) of the NPPA Act 2004, he maintained that the Ministry of Defense should have sought clarification as to whether Sierra Commodities and Harmony were separate and distinct entities. The IPRP also said that the Ministry did not follow due process as the contract awarded to Sunshine was not signed by the appropriate authority and therefore contract was declared null and void. The Ministry of Defense was mandated by the IPRP ruling to start the bid process all over again and should include all potential service providers.

Also, Zenith Enterprises protested over the way and manner in which the Ministry of Education Science and Technology awarded contract to Lawassa Enterprises in November 2009. The manager of Zenith Enterprise, Mr. Abdul Karim Noah appealed against the undue disadvantage which he claimed he suffered in the evaluation and awarding of a contract for the supply of primary and supplementary readers under the World Bank project from the Ministry. He further complained about the responsiveness of his bid and being dissatisfied with the bidding and evaluation process carried out by the Ministry.

Zenith Enterprises applied for a bid for a contract to supply the Ministry with supplementary readers on 15th July 2009, along with a number of other firms. A total of 6 Lots formed part of the bidding process. Zenith Enterprise applied for LOT 4. Bid documents were obtained and the firm attended the bid opening ceremony and subsequent to that bid opening ceremony, the Technical Evaluation Committee (T.E.C) carried out an evaluation exercise into the

bids submitted and identified one Lawassa Enterprise as the lowest priced responsive bidder in respect of Lot 4 and recommended the said Lawassa Enterprise for the award of the contract. This was on account of the findings of the T.E.C. which concluded that bid submitted by Zenith Enterprises was technically not responsive owing to a failure to meet the minimum technical evaluation criteria of the Ministry of Education Science and Technology. Mr. Noah claimed in his letter of complaint to the IPRP that the actions of the Ministry are without any procurement justification and that he had been unduly disadvantaged by the action of the procuring entity. Despite writing to the Ministry about this issue, the Ministry failed to respond to his letter.

However, the T.E.C having selected Lawassa Enterprises as the technically responsive bidder for the proposed award in November 2009, it was for the procurement committee to issue a notification of award letter to the successful bidder which it eventually did on the 1st March, 2010. Prior to the notification of the award, the NPPA produced a report on the evaluation recommendation for the award of contracts and that report was copied the Minister of Education, Chairman of the Procurement Committee and the Procurement Officer of the Ministry of Education upholding the award of the contract to Lawassa Enterprises.

Mr. Noah, in his complaint, mentioned the conversation he had with Mr. A.B. Carew, the then procurement officer of the Ministry of Education, who on the other hand having written to Zenith to extend his bid validity, refused to accept the extended bid validity when it was submitted and then proceeded to inform him (Mr. Noah) that the contract was going to be awarded to Lawassa Enterprises, even though results had not been officially published. The IPRP noticed

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that the TEC of the Ministry of Education used completely different evaluation criteria in evaluating the bid from that expressly set out in the bidding documents.

It was also identified that delays occur in the procurement process. It was noted that excessive delays are costly not only to bidders but also the Government who may have to pay higher price which is inflation related if the procurement is to be concluded. Needless costs are incurred and those responsible for the delay do not compensate the Government or bidders for such needless loss. The Manager of Zenith Enterprises further complained that Lawassa bid price was four hundred and seventy eight thousand, eight hundred and eighty five British Pound and sixty-one pence or equivalent in Leones at Le 2,802,993,528,75) while his bid price remained at Le 1,109,709,525. IPRP ruled in favour of Zenith Enterprises and demanded the Ministry to award the contract to Zenith Enterprises.

MAK Enterprises also appealed against the inconsistency which took place in the evaluation and awarding of a contract for the supply of teaching and learning materials for primary schools from the same Ministry of Education Science and Technology. In the complaint addressed to the I.P.R.P, the Manager of MAK Enterprises, Mr. Mohamed A. Kamara stated that the contract of any of the lot must be awarded to the lowest responsive evaluated bidder. He said his firm applied for and bid for the contract on 15th July 2009. He said a total of 6 Lots formed part of the bid and he bid for Lot 2 along with some other 19 bidders. He stated in his letter dated 26 February 2010 to IPRP that the TEC of the Ministry carried out an evaluation exercise into the bids submitted and identified Musa Sharaffdeen and Sons as the most responsive and lowest priced bidder. The T.E.C observed that MAK's bid was commercially non-responsive owing to a failure to perform on previous contracts. He said he was dissatisfied with the decision of the Ministry to award the contract to a bidder whose bid price was Le 178,500,000 over and above that of his own bid price. He said

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"Also Lot 2 for Geometry set is awarded to Musa Sharaffdeen and Sons again who is the highest evaluated responsive bidder, leaving out M.A.K Enterprises Limited who is the lowest evaluated responsive bidder for that lot with a difference in price of Le 178,500,000.00 Musa Sharaffdeen and Sons is above that of MAK Enterprise Limited. The bid price for MAK Enterprise Limited is Le. 178,500,000.00 while that of Musa Sharaffdeen and sons is Le 2,006,000,000.00 I have not heard from the Ministry, three months have almost elapsed after the Bid opening on 31st August 2009 and my bid security will soon expire. Please inform me about the outcome as soon as possible," MAK Enterprise manager wrote.

The IPRP noted that the procuring entity failed to respond to correspondences forwarded to it and also failed to provide documents from its procurement records. The Ministry however quoted section 35 of the Public Procurement Act 2004 to disqualify MAK Enterprises for "having failed to perform on previous contracts awarded to it by the Ministry of Education". However section 35 of NPPA 2004 provides that "The Authority may exclude a bidder or a supplier from participation in public procurement for a minimum period of one year and a maximum period of

six years after (a) consultation with the affected procuring entity to consider all the facts of the case, (b) reasonable notice to the bidder or supplier involved of the cause of the proposed action, and (c) reasonable opportunity for the bidder or supplier to respond to the proposed action". It is clear from the wordings of section 35 that the Ministry has no power or authority in law to exclude, debar or otherwise disqualify a bidder from participation in public procurement. It is only the NPPA that has the power and authority to do so.

The IPRP annulled the contract awarded to Sharaffdeen and overturned the debarment of MAK Enterprises and recommended that MAK Enterprises be substituted for Musa Sharaffdeen.

► Challenges

Assessing the aforementioned cases, it becomes certain that public procurement in the country is fraught with a lot of challenges. Speaking to the service providers, they confirmed to me that the procurement process is cumbersome, not many suppliers understand the NPPA or the standard Bidding Document. Most of them agreed that they cannot interpret the bid documents.

The action of the procuring entities to delay the procurement process has

been another bottle neck forestalling procurement in the country. It is stated that delays are costly not only to bidders but also to Government. Delays without any corresponding reasons are clearly an abuse of the process and on unfair manipulation of the entire process. There is also delay in information dissemination from the procuring entities to the bidders.

Normally, procurement officers act as secretaries to the procurement committee and even to the Technical Evaluation Committee. Some of the procurement officers disclose classified information to their favoured bidders, giving them undue advantage over the others.

The NPPA can do more in this direction by mounting massive sensitization of the NPPA Act. Not many people understand the Act. So it could be expedient on the part of the Authority to explain the laws to the procuring entities and service providers.

Collusion among the service providers is also another impediment to the procurement process. Bidders would come together and increase their bid prices so that a particular supply whose bid price would be low would be awarded the contract.

► Recommendations

The Headquarters of the NPPA should be decentralized to meet the challenges faced by service providers in the provinces. The secretariat should be opened at regional levels. This will speed up the monitoring of the procurement process. As it is currently, the secretariat is headed by a Nigeria born, Dr. Adeyemi Sulaiman who is acting as Chief Executive and is not abreast with the laws of Sierra Leone. Government should appoint a substantive Chief Executive Officer to run the secretariat. The IPRP should be giving a full prosecutorial power similar to that of the Anti-Corruption Commission to identify, chase and judge corrupt procurement officers and service provider.

► Conclusion

Thus, the procurement process is still shrouded in procure practices. Corruption shows its ugly head when procuring entities decide to use the restricted method thereby inviting only those service providers connected to them. This was what obtained when the Central Tender Board was the sole procurement body. And this was what the new NPPA Act 2004 sought to correct. Anti-Corruption Commission and NPPA should complement each other in the fight to bring sanity into the procurement process. ■

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