
Revisiting Public Procurement Law in Mainland Tanzania

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Abstract

Public procurement is an important function of the Government which is estimated to cost about 70% of the national budget in Tanzania. It has a great impact on the country's economy and governance. Because of such importance, the Government of Tanzania has undertaken a series of legal reforms to improve its public procurement system that has resulted into the present public procurement law that lays down stiff control and regulatory mechanisms of public procurement. Nonetheless, literature shows that Local Government Authorities (LGAs) and other procurement entities (PEs) in Mainland Tanzania fail to comply with the said law. It is unknown why LGAs fail to comply with the said public procurement law. This article intends to examine the present public procurement law with a view to determining the reasons for LGAs non-compliance and suggests possible measures thereto. Data obtained through documentary review and in-depth interviews reveal that the present public procurement law is unnecessarily cumbersome; some enforcement institutions have no powers to enforce their decisions and others have conflicting roles. LGAs non-compliance with the law is caused by such weaknesses of the law and its enforcement mechanisms, lack of national public procurement policy and stakeholders' ignorance of the law. The article argues for amendment of the law to remove its cumbersomeness, empower and remove conflicting roles of some enforcement institutions, establish an independent oversight authority, decentralise the PPRA, ensure independence of public procurement boards and committees, formulate national procurement policy and provide training on public procurement law to all stakeholders.

Keywords: Compliance, Local Government Authorities, Mainland Tanzania, Public Procurement, Public Procurement Law.

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1.0 Introduction

Public procurement means buying, purchasing, renting, leasing or acquiring goods, works or services by a government procuring entity and includes all the processes involved in obtaining such goods, works or services such as describing the requirements, selection and invitation of tenderers, preparation and award of contracts by the procuring entities.³ As such, Public procurement connotes the practice used by the public sector to acquire goods, services and works from suppliers by using government funds or donor funds. It also extends to non-public institutions where public funds are involved for particular activities, projects or programmes.⁴

Public procurement is an important function of the government which involves a magnitude of government expenditure and has a great impact on the country economy.⁵ For instance, it has been estimated that about seventy percent (70%) of the national budget is spent for public procurement in Tanzania, hence the need for its regulation and proper management.⁶ Because of the importance of public procurement in the country's economic growth, poverty alleviation and good governance, the Government has made several efforts and initiatives to improve its public procurement system.⁷ Such initiatives include the undertaking of a series of legal reforms that has resulted into the present public procurement law in Mainland Tanzania.⁸ The present public procurement law was enacted to control and regulate public procurement with the view to achieve value for money.⁹ It is for such reason that the Public Procurement Act 2011 and its Regulations of 2013 require all procurement entities (including local government authorities) to ensure the best value for money in their procurement process.¹⁰ In the same spirit, the Constitution and the Public Audit Act require the Controller and Auditor

³ The Public Procurement Act 2011, s 3.

⁴ *ibid*, s 2(1)(b).

⁵ Maria Mgani, 'Evaluation of Public Procurement and Performance in Tanzania' (Master Dissertation, Mzumbe University 2014) <http://scholar.mzumbe.ac.tz/bitstream/handle/11192/775/MSc_PSCM_Maria%20Mgani_2014.pdf?sequence=1> accessed 12 June 2019.

⁶ *ibid*

⁷ Happiness Anton Huka, Alban Dismas Mchopa and Johnson James Kimambo, 'Analysis of Procurement Procedures in Local Government Authorities: Experience after Procurement Reforms and Case Analysis from Selected Councils in Kilimanjaro Tanzania' (2014) 6(18) *European Journal of Business and Management* 704-714. <<https://pdfs.semanticscholar.org/0258/b8b7e6d0fdb8c9e269266270a982b7f71001.pdf>> accessed 12 July 2019.

⁸ The present public procurement law in Tanzania includes the Constitution of the United Republic of Tanzania 1977, the Public Procurement Act 2011 (as emended in 2016), the Public Procurement Regulations 2013 (as amended in 2016), the Local Authorities Tender Boards (Establishment and Proceedings) Regulations 2011, the Local Government Finance Act 1982 and the Public Audit Act 2008.

⁹ PPA 2011, ss 8, 47, 49 and 63.

¹⁰ *ibid*

General (CAG) to audit all government accounts including the accounts of local government procurement entities.¹¹

Notwithstanding the presence of the said public procurement law which lays down stiff control and regulatory framework of public procurement, reports of the Controller and Auditor General (CAG) and the Public Procurement Regulatory Authority (PPRA) have repetitively shown that procurement entities (PEs) compliance with the public procurement law in Mainland Tanzania is not impressive.¹² The CAG and the PPRA reports identified a number of issues and weaknesses on PEs compliance with the public procurement law particularly in LGAs.¹³ PEs non-compliance with the public procurement law causes serious loss of government moneys and poor implementation of development projects.¹⁴

It is unknown why PEs and LGAs in particular fail to comply with the requirements of the public procurement law. This article therefore seeks to examine the law governing LGAs' public procurement in Mainland Tanzania in a view to find out the reasons for LGAs non-compliance with the public

¹¹ The Constitution of the United Republic of Tanzania 1977, Art 143 (2) & (3). *See also* the Public Audit Act 2008, s 10.

¹² *See* Saada Mkuya Salum, 'Annual Performance Evaluation Report for the Financial Year 2013/2014' (PPRA, 2014) <<https://ppra.go.tz/index.php/about-joomla/annual-reports>> accessed 12 June 2019; Saada Mkuya Salum, 'Annual Performance Evaluation Report for the Financial Year 2014/2015' (PPRA, 2015) <<https://ppra.go.tz/index.php/about-joomla/annual-reports>> accessed 12 June 2019; Philip Mpango, 'Annual Performance Evaluation Report for the Financial Year 2015/2016' (PPRA, 2016) <<https://ppra.go.tz/index.php/about-joomla/annual-reports>> accessed 12 June 2019; Philip Mpango, 'Annual Performance Evaluation Report for the Financial Year 2016/2017' (PPRA, 2017) <<https://ppra.go.tz/index.php/about-joomla/annual-reports>> accessed 12 June 2019; and Philip Mpango, 'Tanzania Annual Performance Evaluation Report for the Financial Year 2017/2018' (PPRA, 2018) <<https://ppra.go.tz/index.php/about-joomla/annual-reports>> accessed 12 June 2019.

¹³ *ibid* (n12). Among the identified weakness includes: inadequate preparation and implementation of procurement plans; lack of competitive procurement process; excessive use of petty cash and imprest in procurement process; lack of proper documentation; corruption, lack of competition due to lack of transparency and fairness in tendering process; use of false accounts; signing contracts without assurance of availability of funds and without tender board approval, repairs and maintenance of motor vehicles at private garages without approval from Tanzania Electrical, Mechanical and Electronics Service Agency (TEMESA); and disregard of the Attorney General's comments.

¹⁴ *ibid*. Some of the development projects which have not been completed because of LGAs non-compliance with the public procurement law include construction project in Chamwino District Council whereby TZS 106,403,000 was paid to two contractors for works not done and in Dodoma Municipal Council, TZS 627,006,057 was paid to three contractors for works not done in the 2014/15 fiscal year. Review of literature revealed the same trend in other LGAs. For instance, in 2015/16 fiscal year, TZS 21,198,600/ was overpaid to contractors for works not done in Bukoba Municipal Council. In Dar es Salaam City Council, 43,030,000/ was overpaid for Pugu Kinyamwezi Dumpsite project and 3,000,000 for construction of New Block of Work Dust Bin, Concrete Channel and Rehabilitation of Drainage System at Ubungu Bus Terminal. Likewise the Controller and Audit General (CAG) Report for 2014/15 fiscal year revealed that, in Morogoro District Council, TZS 57,979,200 was lost because the evaluation committee unreasonably disqualified the lowest bidder. The same report revealed that out of 163 LGAs, 36 LGAs which is equivalent of 22% did not comply with the public procurement law.

procurement law and the possible solutions thereto. The article provides qualitative information collected from Dodoma City Council and Chamwino District Council. Dodoma City Council and Chamwino District Council were selected as the case study from which qualitative data was collected through documentary review and in-depth interviews. In-depth interviews involved a sample of 48 respondents selected through stratified random sampling and purposive sampling. Documentary review involved content analysis of legislative texts and secondary sources. The information collected from both, in-depth interviews and documentary review were analysed and interpreted qualitatively.

This Article is organized into five sections. The first section provides the introduction; the second section briefly provides the background to and analysis of the present public procurement law in Tanzania; the third section addresses the reasons for LGAs non-compliance with the public procurement law; the fourth section suggests what to be done to ensure PEs compliance with the Public procurement law; and the fifth section provides the concluding remarks.

2.0 Background to and Analysis of the Present Public Procurement Law

The present integrated public procurement law in Tanzania may be traced from 2001, when the Parliament enacted the Public Procurement Act 2001.¹⁵ Before 2001, public procurement in Tanzania was governed and regulated by scattered pieces of legislation, rules and regulations. Among the legislation used before 2001 were the Medical Stores Tender Board Act¹⁶ which regulated the procurement of medicals by the Central Medical Stores Department; the Local Government (District Authorities) Act 1982, the Local Government (Urban Authorities) Act 1982 and the Local Government Finances Act 1982¹⁷ which regulated public procurement in the LGAs; the Executive Agencies Act 1997,¹⁸ the Executive Agencies (Finance, Procurement and Stores) Regulations 1999,¹⁹ and the Exchequer and Audit Ordinance which regulated public procurement in the executive agencies;²⁰ and the Financial Orders Part III (Stores Regulations) of 1965.

Such non-integrated legal framework of public procurement was considered ineffective because of being fragmented, absence of oversight and regulatory

¹⁵ Act No 3 of 2001.

¹⁶ Act No 13 of 1993.

¹⁷ Act Nos. 7, 8 and 9 of 1982 respectively. These Acts regulated the District and Urban Authorities' procurement process in Mainland Tanzania.

¹⁸ Act No 30 of 1997.

¹⁹ G N No 77 of 1999.

²⁰ CAP 439 of 1961.

body to set standards and guidelines to monitor and enforce compliance and non-regulation of procurement of works and selection of consultants.²¹ These weaknesses necessitated the enactment of the Public Procurement Act 2001 and a number of regulations including the Public Procurement (Selection and Employment of Consultants) Regulations 2001,²² the Procurement of Goods and Works Regulations 2001,²³ the Local Government (Selection and Employment of Consultants) Regulations 2003²⁴ and the Local Government (Procurement of Goods and Works) Regulations 2003.²⁵

Unlike the preceding legal framework, the Public Procurement Act 2001 established a centralised system of public procurement under the Central Tender Board (CTB) which had dual functions as a tender board unity and as a regulatory authority.²⁶ The concentration of powers into the CTB made it inefficient and susceptible to corruption.²⁷ The weaknesses of the Public Procurement Act 2001 led to enactment of the Public Procurement Act 2004²⁸ and its regulations of 2005.²⁹ The Public Procurement Act 2004 established the Public Procurement Regulatory Authority (PPRA), the Procurement Management Unit (PMU) and the Public Procurement Appeals Authority (PPAA) in order to regulate and ensure PEs compliance with the public procurement law.³⁰

The Public Procurement Act, 2004 had also some loopholes and weaknesses such as lack of procurement planning, advertisement of tenders, lack of contract award procedures criteria, and weak complaints and administrative review process. The PPRA was both a regulatory and administrative review body.³¹ Because of the noted loopholes and weaknesses, the Public

²¹ Nkinga Ntando Said, 'Public Procurement Reforms-The Tanzania Experience' (the Joint WTO-World Bank Regional Workshop on Procurement Reforms and Public Procurement, Dar es Salaam-Tanzania, 14 January 2003) <www.wto.org/english/tratop_e/gproc_e/wkshop_tanz_jan03/tanzaniacase3_e.doc> accessed 12 June 2019.

²² G N No 137 of 2001.

²³ G N No 138 of 2001.

²⁴ GN No 48 of 2003.

²⁵ GN No 49 of 2003.

²⁶ The Public Procurement Act 2001, ss 5 and 7.

²⁷ Tanzania Country Procurement Assessment Report Volume II (CPAR 2003) 29.

²⁸ Act No 21 of 2004.

²⁹ Public Procurement (Goods, Works, Non-consultant Services and Disposal of Public Assets by Tender) Regulations 2005.

³⁰ Public Procurement Act 2004, ss 5, 6, 34, 77, 78 and 82.

³¹ Public Expenditure and Financial Accountability Review Mission (PEFAR, 2006) 17. *See also* Annika Engelbert, 'Administrative Review Systems in Public Procurement and their Potential for Anti-corruption Impact: Kenya, Uganda and Tanzania in a Comparative Perspective' (Ruhr-University Bochum) 8 <www.nottingham.ac.uk/pprg/documentsarchive/phdconference2014/%20engelbert.pdf> accessed 12 June 2019.

Procurement Act 2004 and its Regulations of 2005 were repealed by the Public Procurement Act 2011³² and its Regulations of 2013.³³

Unlike the Public Procurement Act 2004, the Public Procurement Act 2011 and its Regulations of 2013 introduced the Public Procurement Policy Division (PPPD) in the Ministry of Finance with the responsibilities of developing a National Procurement Policy,³⁴ integrated the preparation of Annual Procurement Plan (APP) with the financial budget process,³⁵ elevated the status of head of procurement unit (department) by ensuring it has a sub-vote and is allocated funds in the budget to carry out its responsibilities under the Act,³⁶ and introduced Public Private Partnerships (PPP) procurement arrangements.³⁷

The Public Procurement Act 2011 further establishes oversight bodies such as the PPRA which is mandated to monitor compliance and separated the PPAA from the PPRA.³⁸ The Act establishes various bodies and committees for implementation of public procurement process and sets out public procurement controls, audit and appeals mechanisms so as to ensure PEs compliance with the public procurement law.³⁹ Such mechanisms include the establishment of the Budget Approving Authority which is responsible for, among other things, review and approval of annual procurement plans of the PEs, review of quarterly procurement reports submitted accounting officers and ensuring organizations complies with the provisions of the Act and its regulations.⁴⁰

The Public Procurement Act 2011 requires every PE to seek approval of the Government Procurement Services Agency (GPSA) established under the Executive Agency Act⁴¹ before proceeding with any emergency procurement.⁴² GPSA in collaboration with the PPRA and the department responsible for technical audit in the Ministry of Finance may also advice the Pay-Master General on the appropriate action to take in respect of emergency procurement.⁴³ Besides GPSA, there is the Prevention and Combating of Corruption Bureau (PCCB) established under the Prevention and Combating

³² Act No 7 of 2011.

³³ GN No. 466 of 2013.

³⁴ PPA 2011, s 5.

³⁵ *ibid*, s 49.

³⁶ *ibid*, s 37(5).

³⁷ *ibid*, ss 79-82.

³⁸ *ibid*, ss 7, 8(c) and 88.

³⁹ *ibid*, ss 27, 28, 29 and 88.

⁴⁰ *ibid*, ss 33(2), (3) and 49(2).

⁴¹ CAP 245 R.E 2002.

⁴² PPA 201, s 65(3).

⁴³ *ibid*, s 65(7).

of Corruption Act 2007.⁴⁴ The PCCB is, among other things, mandated to combat corrupt transactions in procurement contracts and impose penalties to any person convicted for any offence under the Prevention and Combating of Corruption Act.⁴⁵

The Public Procurement Act 2011 also sets mandatory procedures for PEs. Accordingly, the Act requires every PE that intends to procure goods, works or services to advertise the tender in the newspaper of a wide circulation in Tanzania after approval by the Tender Board (TB) in order to inform prospecting bidders to bid.⁴⁶ This process is very important not only to the bidders but also to the PEs because it enables the PEs to procure a reliable bidder from a widely competitive bid and enhances transparency in the procurement process.

The Act further provides for competitive tendering for purposes of providing equal opportunity to tenderers of the required goods, works and services.⁴⁷ Nonetheless, the Act allows the PE to select an appropriate alternative method of procurement in any case where competitive tendering is not considered to be the most economic and efficient method of procurement and, where the nature and estimated value of the goods, works or services permit.⁴⁸ The alternatives available are single source tendering, shopping, micro value procurement, force account and community participation.⁴⁹

In a view to ensuring effective control of the procurement process, the Public Procurement Act 2011 establishes an intricate structure of decision making processes. Various organs and stakeholders are involved in the procurement processes including; Tender Boards, Budget Approving Authorities, Accounting Officers, Procurement Management Units, User Departments, Internal Audit Units and Legal Departments.⁵⁰ Moreover, a series of committees are usually appointed for each procurement stage. They include ad-hoc tender opening committees, tender evaluation committees, contract negotiation teams and special teams for conducting post-qualification or due diligence where required. As noted above, at some stages, external control bodies such as the PPRA, the GPSA, the Paymaster General and the Attorney General (AG) are involved in granting some approvals or legal advice required under the law.

⁴⁴ Act No 11 of 2007.

⁴⁵ *ibid*, ss 16 and 17.

⁴⁶ PPA 2011, s 68.

⁴⁷ *ibid*, s 67. *See also* the Public Procurement Regulation 2013, reg 76.

⁴⁸ *ibid*, reg 149(4).

⁴⁹ *ibid*, reg 159, 163, 166, 167 and 168.

⁵⁰ PPA 2011, ss 30, 31, 33(2), 38 and 39.

The Public Procurement Act 2011 also makes it a mandatory requirement for all PEs to prepare and submit to the PPRA annual procurement plans (APP), information on tender notices, invitations for quotations, request for proposals, contract award, contract termination and, monthly, quarterly and annual procurement implementation reports in the prescribed format and through such systems developed by the PPRA.⁵¹ Besides all, the Act requires every official and experts engaged in services delivery and those involved in the procurement decision making to subscribe to the Code of Ethical Conduct.⁵² It requires all tenderers to sign a declaration of compliance with the Codes of Ethical Conduct.⁵³

The requirements established by the Public Procurement Act 2011 and other relevant legislation are very important in the public procurement as are meant to monitor and ensure PEs (including LGAs) compliance with legal procedures in Mainland Tanzania. Notwithstanding such legal requirements and the established mechanisms for ensuring control and PEs compliance with the public procurement law, reports by the CAG and the PPRA (as noted in the introductory section) suggest that LGAs compliance with the public procurement law is very low.

The CAG and PPRA reports have frequently reported several weaknesses in LGAs' procurement system including inadequate preparation and implementation of procurement plans; ineffective Procurement Management Units (PMU) and Tender Boards (TB); lack of competitive procurement process; use of petty cash and imprest in procurement beyond the set threshold; lack of proper documentation for goods procured, received and issued for consumption; corruption and lack of transparency and fairness in tendering process; use of falsified accounts; and signing contracts without assurance of availability of funds and tender board approval.⁵⁴ The next section addresses the reasons for the said LGAs non-compliance with the public procurement law as explored in Dodoma City Council and Chamwino District Council in Mainland Tanzania.

3.0 Reasons for LGAs Non-compliance with Public Procurement Law

The findings obtained from content analysis of public procurement legislative texts and secondary sources as well as the interviews conducted with the selected respondents from both Dodoma City Council and Chamwino District

⁵¹ *ibid*, s 87.

⁵² *ibid*, s 102.

⁵³ *ibid*

⁵⁴ *ibid* (n 12 & 13). *See also* Mizengo Peter Pinda, 'Responsible Supply Chain: An opening speech' (2nd Annual Conference of the Procurement and Supplies Professionals, AICC Arusha-Tanzania, 2011) and the Controller and Auditor General, (Annual General Report for the Financial Year 2010/11) 77-88.

Council revealed a number of reasons that contribute to LGAs non-compliance with the public procurement law in Mainland Tanzania. Such reasons include weaknesses of the law itself, weaknesses of the law enforcement mechanisms, lack of comprehensive National Public Procurement Policy and ignorance of stakeholders. These weaknesses are discussed hereunder.

3.1 Weakness of the Law

Analysis of the Public Procurement Act 2011 and its Regulations of 2013 (as amended in 2016) shows that PEs are given the discretion to use alternative methods of procurement instead of competitive tendering. As noted in the preceding section, the alternative methods include the use of single source tendering, shopping, micro value procurement and force accounts. Even though this allows flexibility, yet there are no hard and clear rules or criteria set for the PEs to resort to the said alternative methods of public procurement. Such discretion vested in the PEs opens the possibility of non-transparency, unfairness, corruption and potential abuse of the law.

The Public procurement Act 2011 and other related legislation establish a lengthy and cumbersome structure of decision making processes. There are various organs and stakeholders involved in the procurement decision making processes such as tender boards, budget approving authorities, accounting officers, procurement management units, user departments, internal audit units and legal departments. There are also several committees appointed at different procurement stages including ad-hoc tender opening committees, tender evaluation committees, contract negotiation teams and special teams for conducting post-qualification or due diligence where required. As noted under section 2 above, at some stages, external control bodies like the PPRA, GPSA, Paymaster General, the AG, the CAG and the PCCB are involved in provision of some approvals, advice or checking LGAs compliance with the provisions of the law.

Even though such multifaceted set up is meant to ensure effective control of the tendering process to achieve value for money, the same creates unnecessary hierarchical structure and bureaucratic decision making processes which may dilute individual accountability hence making every official covered by collective decisions even if the intended results are poor. In other words, nobody owns the procurement process and thus everyone may have a good excuse. Should such a phenomenon happen, there can be inefficiencies due to high transaction costs, wastage of time in completion of procurement cycle and failure to achieve the intended outcomes. This view was also shared by three (7.5%) out of 40 respondents who considered the law governing public procurement in Tanzania to be inefficient. Despite being a few compared to the thirty four (85%) respondents who regarded the law to be efficient, their

views are in line with documentary review hence superseding the majority view.

To cement their views, the three (7.5%) respondents argued that the set up of the PPRA does not provide adequate monitoring mechanism that can ensure LGAs compliance with the public procurement law because it is highly centralized. The Public Procurement Act and its regulations do not provide a room for the PPRA to establish offices at the Region, District or Zone levels. This kind of set up cannot guarantee efficiency and effective monitoring of LGAs compliance with public procurement law. They also argued that the law governing LGAs' procurement is unnecessarily complex. For instance, besides the Public Procurement Act 2011 and its regulations, there are the Local Government Finance Act 1982⁵⁵, the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014 and other guidelines and standard documents issued by the PPRA.

The Public Procurement Act 2011 also requires every official and experts involved in procurement process to adhere to the Code of Ethical Conduct. The Act further requires all tenderers to sign a declaration of compliance with the Codes of Ethical Conduct. Despite such requirements, the Act and its Regulations do not define the term integrity and does not provide an effective mechanism for imparting ethical values and detecting violation of integrity and ethics among the procurement stakeholders. Such lacuna creates loopholes for PEs non-compliance with the integrity and ethical values. The weaknesses in the provisions of the law contribute to the weaknesses of the law enforcement mechanisms discussed in the next item hereinafter.

3.2 Weakness of the Law Enforcement Mechanisms

As noted in section 3.1 above, the weaknesses noted in the provisions of the law contribute on the weaknesses of the law enforcement mechanisms established under the said law. Analysis of the Public Procurement Act 2011 and its Regulations of 2013 shows that some regulatory authorities meant to ensure PEs compliance with the public procurement law like the PPRA are vested with conflicting roles. For instance, the PPRA is required to conduct training to procurement officials and the same training is among the criteria used for measuring and assessing PEs compliance with the public procurement law. Not only that, but also the PPRA is vested with mandate to formulate criteria, indicators, guidelines and standards for monitoring PEs compliance with the public procurement law. The same PPRA is responsible for making procurement audit through periodic review and monitoring of PEs' procurement activities. Worse still, some of the compulsory regulatory functions of the PPRA require payment of fees by the PEs. Such conflicting roles create possibilities of the Authority to be biased and concentrate more on

⁵⁵ CAP 290 RE 2002.

satisfying its budget forecast interests than regulatory interests. Nevertheless, this study found no any oversight organ to check and monitor the PPRA performance. The multiple roles and absence of oversight institution to monitor the PPRA performance raises questions of organizational conflict of interest, especially where training of PEs is also a source of revenue of the PPRA. The possibility of conflict of interest minimises the credibility of the PPRA hence watering down its capacity to ensure PEs compliance with the public procurement law.

The PPRA, like the case of the CAG have also been viewed as being toothless bodies because the law does not empower them to take action against defaulters. This view was supported by thirty three (82.5%) respondents who argued that the law only requires PPRA and the CAG to propose and recommend to the government proper action to be taken against the defaulters. The government may decide to take action or not. Such weakness causes repeatedly LGAs non-compliance with the public procurement law especially where the defaulters find godfathers in the Government. This argument is in line with the findings obtained from documentary review that the PPRA and other oversight institutions set to ensure PEs compliance with the law are toothless bodies.

Besides the PPRA and the CAG, there are also weaknesses on the GPSA. The Public Procurement Act 2011 and its Regulations of 2013 require every PE to obtain approval of GPSA before proceeding with any emergency procurement. Also GPSA in collaboration with the PPRA may provide advice to the Paymaster General on the appropriate action to taken in respect of emergency procurement. Nonetheless, its effectiveness in ensuring value for money in public procurement is questionable. This study revealed that the price of goods and services provided by GPSA is relatively higher with low quality compared to the market value. Such a discrepancy creates confusion among the public right-minded thinkers.

The Public Procurement Act 2011 also establishes the Appeals Authority with original and appellate jurisdiction over complaints against PEs where procurement or disposal of contract is already in force. It also deals with appeals arising from administrative decisions made by the accounting officers especially where the contract is not yet in force. However, the law does not give access to the general public to complain. Access to complaint review mechanism is only available to bidders and other parties in the procurement process while ignoring the public which might be the victims of poor service delivery in case of PEs non-compliance with the public procurement law.

3.3 Lack of Comprehensive National Public Procurement Policy

This article also argues that one of the reasons for LGAs non-compliance with the public procurement law in Mainland Tanzania is lack of comprehensive

national public procurement policy. That is, notwithstanding the Public Procurement Act's requirement for establishment of a public procurement policy by the Public Procurement Policy Division (PPPD) under the Ministry of Finance, interviews with stakeholders revealed that the PPPD has yet developed any public procurement policy. Such a lacuna has been ascribed to among the reasons for PEs non-compliance with the public procurement law in Tanzania. About thirty three (82.5%) respondents argued that absence of public procurement policy creates inconsistencies in the procurement of works and goods. It is however curious why or whether such a department ought to exist if since its creation under the Public Procurement Act 2011 to date, has yet managed to formulate a comprehensive national public procurement policy in Mainland Tanzania.

3.4 Stakeholders' Ignorance of the Public Procurement Law

Majority of procurement entities have insufficient knowledge of the procurement rules and regulations. For instance, interviews with stakeholders found twenty five (62%) out of the 40 respondents were not conversant with the public procurement rules and regulations notwithstanding being involved in the routine public procurement process. Only fifteen (37.5%) out of 40 respondents seemed to be conversant with the public procurement rules and regulations. Ignorance of the public procurement law is likely to affect the LGAs compliance with the law because, it is inconceivable how, if the key actors in the procurement process are not familiar with the governing law and regulation, they may comply with the same. This finding is in agreement with existing literature. For instance, Gelderman, Ghijssen and Brugman⁵⁶, in their study on the causes of non-compliance with the European Union procurement directives, stated that unfamiliarity with the procurement regulations hampers PEs compliance with the law.

4.0 Measures to Ensure LGAs Compliance with the Law

To ensure LGAs compliance with the public procurement law in Mainland Tanzania, the following measures need to be taken aboard:-

- a. The definition of the word compliance be provided in the Public Procurement Act 2011. The Act is missing the legal definition of the word compliance. Lack of precise legal definition of compliance makes PEs compliance with the public procurement law a weak concept.
- b. Establishment of a comprehensive national procurement policy. It is recommended that national procurement policy be established in order to

⁵⁶ Cees J. Gelderman, Paul W. Th. Ghijssen and Marc J. Brugman, 'Public Procurement and EU Tendering Directives – Explaining Non-Compliance' (2006) 19(7) *International Journal of Public Sector Management* 702-714 <www.researchgate.net/publication/228641209_Public_Procurement_and_EU_Tendering_Directives_-_Explaining_Non-Compliance> accessed 12 June 2019.

govern and guide the procurement system. The policy should reflect the local circumstances, local business or other economic development goals, and aim at achieving the social and environmental procurement objectives.

- c. An oversight authority should be established. It is recommended that, an independent authority be established to oversee and check the functioning of the PPRA. The established oversight body should be empowered to make and determine the procurement audit indicators. This body should be composed of representatives from key stakeholders including the Parastatals, LGAs, the private sector and regulatory bodies.
- d. For effective monitoring and giving effect to the decentralization by devolution (D by D) policy, the Public Procurement Act 2011 and its Regulations of 2013 should be amended to allow the PPRA to establish offices at the Regional, District and Zone levels. The current set up of the PPRA doesn't guarantee an effective monitoring of compliance because the authority seems to be far from most of the LGAs as it is highly centralised.
- e. For purposes of eliminating complexity of the law, the Act and its Regulations be amended to put in place legal provisions which are reader friendly. The procurement process be shortened and clearly stated for everyone to understand and implement it.
- f. For purposes of ensuring independence of some of the boards and committees involved in procurement process, it is recommended that, appointment of such members be done by an independent body not involved in the procurement undertakings. Accounting Officers should not be involved in appointing them but let to be an overseer of the process.
- g. For effective enforcement mechanism, it is recommended that the law be amended to reduce and remain with few organs assigned to ensure enforcement of compliance instead of assigning several bodies which are not effective in ensuring PEs compliance with the law and end up creating mismatches between the establishments of the organs and the legal positions in dealing with the key activities within the procurement system.
- h. In order to create awareness to stakeholders, it is very important to conduct training to council employees in all LGAs on the public procurement Law.

5.0 Conclusion

This article examined the present law governing public procurement in Mainland Tanzania with a view to determining the reasons for LGAs non-

compliance with the said public procurement law and the possible measures thereto. It has been noted in the discussion of this article that although the public procurement law is generally adequate to ensure LGAs compliance with the same, yet, the said legal and regulatory framework is unnecessarily cumbersome and may as such cause confusion to the stakeholders. It has also been noted that some of the institutions created for enforcement of compliance are less powerful as they have no powers to enforce their decisions and, some of them are vested with conflicting roles which makes them susceptible to bias. LGAs non-compliance with the law is therefore caused by such weaknesses of the law and its enforcement mechanisms. The other reasons for LGAs non-compliance with the public procurement law are lack of comprehensive national public procurement policy and stakeholders' ignorance of the public procurement law.

In all the noted weaknesses, the article suggests for amendment of the law in order for among other things to remove its cumbersomeness and simplify the provisions of the law, to define the term compliance, to empower and remove conflicting roles of some enforcement institutions, to establish an independent oversight authority, to decentralise the PPRA, to ensure independence of the boards and committees involved in procurement process, to reduce the organs involved in the enforcement of PEs compliance with the public procurement law and to create awareness to stakeholders especially council employees on the public procurement Law in Mainland Tanzania.

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