



ACHIEVING VALUE FOR MONEY IN PUBLIC PROCUREMENT

Frank Mante, LL.M, MBA, MCIPS, CMILT, CPSM

Country Manager, Crown Agents Ghana Ltd

Abstract

The quest to achieve Value for Money (VFM), is cardinal and a central theme in every procurement regime and without doubt, has become a topical issue in recent public procurement discourse in Ghana. It is pertinent to note that, even though VFM as a policy objective in public procurement is consistently being referred to in public procurement discourse in Ghana, it is revealing to note that it is not specifically cited as one of the policy objectives of public procurement under section 2 of the Public Procurement Act, 2003 (Act 663) (As Amended). For clarity, section 2 of this Act is reproduced hereunder “the object of the Authority is to harmonise the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory, environmentally and socially sustainable manner”. This notwithstanding, VFM which is usually described as the ultimate objective of every procurement system, is referred to in many of our procurement literature. To put this into context, the words economic and efficient as stated above, are construed to mean VFM. Thus, VFM consists of economy, efficiency and indeed, one can add effectiveness in procurement. Please note that unless otherwise stated, all references stated in this article, are in respect of the Public Procurement Act, 2003 (Act 663) (As Amended).

KEYWORD: Value for Money, Public Procurement, Procurement Auditing, Procurement Tendering

INTRODUCTION

In terms of definition, VFM can be defined in public procurement to mean: ***“The optimum combination of whole-life cost and quality to meet the customer’s requirements”. It also refers to successfully acquiring the goods, works or services concerned at the best possible terms over its life-cycle.*** From the above definitions, one can deduce the following key words:

Customer’s requirements: which covers the very critical and fundamental issue of developing specifications and Terms of References (ToR) which should ultimately, meet the set requirements of a procuring entity. Thus, a Supplier’s/ Contractor’s/Consultant’s tender or proposal, should be able to meet these set requirements in order to be responsive. In the case of a conformance specification for instance, the failure of the submitted offer to meet the requirements will be best described as being technically nonresponsive in line with section 58 and therefore, not suitable for further consideration. An attempt to “massage” such a tender with the view to making it responsive, will eventually be reflected in the Supplier’s/

Contractor’s/ Consultant’s inability to perform the contract as required thereby, negating one of the fundamental importance of procurement which is hinged on increasing profitability through cost cutting.

Quality: this in the business sense refers to the subject matter of the procurement being **fit for the intended purpose** or **fit for use**. Thus, quality can be measured by fitness for purpose, delivery, completion time and reliability of what is offered. This implies that, where a final product or service does not fit the intended purpose, as in the recent alleged case of the SSNIT software procurement, then all things being equal, one could conclude that VFM has not been achieved due to the lack of quality. It should be noted that the quality of goods or works is generally stated in the specifications or ToR and remains the “architecture” or foundation on which a final product or works is measured. Thus, a failure to describe the required quality as best as possible, could eventually expose the lack of VFM in a particular procurement.

Whole-life cost analysis: This is critical to a good number of procurements and appears to be an



area most procuring entities, overlook when developing specifications and conducting evaluations. The key components of whole-life cost which should be borne in mind in the early stages of every procurement activity include: **purchase cost** which covers the initial or one-time cost of procuring goods works or services; **operation cost** which covers the on-going and expected costs of operating and maintaining the goods or works; **residual cost** which covers the costs associated with the disposal of the goods or works; **exit cost** which covers the cost of discontinuing use of the goods or works. This cost can be the cost of opting out of a contract; and **transition cost** covering the cost of switching from one type of goods or works to another at the end of the life of the original goods or works. The transition cost for instance, is critical in the procurement of ICT related goods particularly as system “handshake”, upgrades and integration are critical and valuable in the achievement of VFM. It is therefore unwise and imprudent to focus only on the initial acquisition cost as other costs which were not taken into consideration at the outset, will begin to show up leading to unprecedented and incessant change requests and subsequent amendments to contracts. At this juncture, the quest to achieve VFM would have been lost by such future unplanned cost and possible delays in the delivery or completion of a project.

PILLARS OF VALUE FOR MONEY

Having looked at what VFM is in the context of public procurement, we shall now proceed to look at some of the pillars or drivers of VFM. Apart from economy, efficiency and effectiveness, there are other key policy objectives of public procurement such as transparency, fairness, accountability and competition which are critical *means* to achieving the *end* which is VFM. The following paragraphs will focus on these key policy objectives which are also covered under the preamble to the UNCITRAL Model Law on Public Procurement (2011), out of which Ghana’s Public Procurement Act was promulgated.

Transparency: Transparency in the context of public procurement refers to the idea that

procurement procedure should be “characterised by clear rules and by means to verify that those rules were followed”. (Arrowsmith and Davies, 1998). Arrowsmith, Linarelli and Wallace (2000), suggest the following interrelated ways through which transparency can be used to support other policy objectives of public procurement: (a) Publicity of contract opportunities; (b) Publicity for the rules governing each procurement procedure; (c) Limits to control the discretion of procuring entities or officers in making public procurement decisions; (d) The possibility for interested parties to verify the application of the public procurement rules and to enforce them. These are also contained in Article 9 of the UN Convention against Corruption (2004).

Greater transparency is achieved through open publication of procurement rules and procedures, publication of procurement opportunities in line with section 47, responses to requests for clarifications in line with section 51 of the , public opening of tenders in line with section 56, debriefing by telling unsuccessful tenderers why they were not successful in line with section 65(9), publication of contract award so that the public including other tenderers will know who the successful tenderer is in line with section 31(1) and above all, meeting the requirements under section 28 by ensuring that proper records of procurement proceedings are kept. Thus, any procurement which is devoid of any of these critical activities will not be deemed to be transparent. Remember the lack of transparency will create a breeding ground for possible unethical practices such as bribery and corruption which negate the achievement of VFM.

Fairness: this relates to showing consideration and impartiality in all stages of the procurement process. Discriminatory tendencies, precipitated by a quest to favour a particular tenderer over others, could potentially hamper the achievement of VFM since it is most likely that the most competitive offer might not be awarded the contract.

Accountability: this refers to the level to which an individual or organisation is held responsible



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for all aspects of the procurement process over which they hold authority. Trepte (2005), relates the role of such officials in the procurement process, to that of an agent who has a lot of discretion in defining procurement needs, designing the procurement process and making decisions consistent with budgeted responsibilities. A failure to hold someone accountable for procurement decisions can present an opportunity for corruption.

It is instructive to note that, Section 17(1), provides that the head of procurement entity and any other officer to whom responsibility is delegated are responsible and accountable for actions taken with respect to the Act. Similarly, Section 18 (2) provides among others that notwithstanding the grant of concurrent approval by a tender review committee, the head of entity will be ultimately held accountable for a contract that may be determined to have been procured in a manner that is inconsistent with the Act. These provisions should be of interest to heads of entities of public institutions particularly, as they could be prosecuted for any proven wrongs in line with section 92(1). This section prescribes the penalties for any contravention of the provisions of the law and puts the penalty at 5 years imprisonment or 2500 penalty units or to both. Also, it should be in the interest of heads of entities to engage qualified procurement professionals to manage procurements within their entities. Where procurement professionals have no capacity to manage that complex procurements, qualified external consultants should be engaged.

It should be emphasised that, members of review bodies such as Entity Tender Committees (ETC) and Central Tender Review Committee (CTRC) or Regional Tender Review Committee (RTRC) have responsibilities to ensure that all procurements by entities as long as they fall within their thresholds, are carried out in line with the provisions of the Act. Thus, their conducts if established to be inimical to the achievement of VFM or flouts the provisions of the law, could potentially lead to a review by the PPA or an action in court in line with the provisions of Section 20G of Act 663 (as Amended). Thus, the

writer is of the considered opinion that, the acts of review committees, cannot be said to be immune from prosecution should there be evidence to prove that they misconducted themselves in granting approvals for procurement within their entities.

Competition: competition in public procurement means that the procuring entities determine from whom to buy goods, works and services and for that matter, with whom to contract by soliciting offers from two or more competing tenderers, comparing their offers and accepting one based on its relative value. The fact that, the Act under section 25, provides that the default method for procurement is open competition, gives credence to the importance of such a principle in public procurement.

Economy: relates to managing the procurement process to achieve maximum value at a reduced cost.

Efficiency: a procurement system which operates at a minimum cost, in a timely manner, with a minimum bureaucracy, while being responsive to the needs of the ultimate users of the goods, works or services procured.

Effectiveness: ability to produce intended results through the use of available limited resources.

FACTORS INFLUENCING THE ACHIEVEMENT OF VFM

Having looked at what VFM is and other policy objectives which collectively promote the achievement of VFM, it is of essence to take a brief look at the structural factors influencing the achievement of VFM in public procurement in Ghana. These encompass:

Formal Structural Factors: these cover published government policy (stated developmental priorities) on procurement such as set-asides or the application of margin of preference under section 60 aimed at developing local firms or deprived groups. A current example is the quest by the Ministry of Procurement to reserve 70 percent of contracts to local firms and



30 percent of such contracts to women, people with disabilities and businesses set up under the Youth Employment Scheme; Procedures and Guidelines such as Act 663 (As Amended), regulations, manual and guidelines such as the guidelines on single source procurement, guidelines on margin of preference, guidelines on disposal of vehicles and unserviceable stores and standard tender documents among others. For instance, it is revealing to note that, the guidelines on single source procurement succinctly require that all applications for single source procurement submitted by procuring entities to the PPA, must demonstrate the achievement of VFM. Indeed this is one of the three key requirements for the grant of PPA approval for all single source procurement; and Contract-specific international financial agreements which will usually fall under Section 96. This section applies to a situation where the conduct of a particular procurement is determined by an international obligation arising out of a grant or concessionary loan to the Government of Ghana. Most of such, government-to-government credit agreements (e.g. *tyed aid*) will typically require the successful completion of a VFM audit as a condition precedent to the effectiveness of a particular contract under consideration. Thus, without the conclusion of a VFM process, the funding agency will not advance the funds meant for such projects. The majority of past contracts in the health, energy, education and water have gone through such VFM audit processes with significant savings being achieved for the Government of Ghana. Indeed, between 2000 and 2016, the Government of Ghana working with Crown Agents Ghana Limited, have been able to identify potential savings of USD 1billion across 125 contracts with an aggregate contract value of USD 5.6 billion. This statistics goes to prove that, without VFM assessments, the government would have spent much more than it should have spent.

Informal Structural Factors: apart from formal structural factors, the need to achieve VFM in public procurement can greatly be influenced by informal factors such as organisational culture of a particular procuring entity with respect to the

conscious efforts they make in ensuring that every procurement they undertake is hinged on the need to achieve VFM. Of course, the personal quest for VFM by professionals in the field of procurement, could potentially instil in the whole procurement entity, the need to demonstrate VFM in all methods of procurement, and not just for single sourced contracts. Another major important informal factor pushing for VFM in public procurement is the incessant and unprecedented interests by the public for greater transparency and accountability in public procurement. The ongoing debates and discussions about the perceived corruption and lack VFM in the various procurements by SSNIT, Cocobod and the Ministry of Local Government with respect to the bins among others, are all attributable to the yearning demand by the citizenry for the protection of the public purse through the achievement of VFM in public procurement. Thus, whether or not the need for VFM is prescribed by legislation, the overwhelming quest by the public for VFM can't be overemphasised or ignored.

ACTS THAT MILITATE AGAINST THE ACHIEVEMENT OF VFM

The quest to achieve VFM in public procurement can be eluded through the following acts. In the first place, the achievement of VFM is derailed when goods, works or services are **over-specified**. This is evident where some aspects of goods, works or services procured are either under utilised or not utilised. This is particularly evident in situations where *needs* ordinarily do not exist, but are created with the view that, such unscrupulous persons will benefit through the procurement process. Thus, a procurement entity spends more than it should have actually spent in respect of such procurements. It is therefore pertinent to ensure that, the specific requirements or scope for a particular procurement, are designed bearing in mind fitness for purpose and within the bounds of the required specifications. A need should also be justified within the context and contraits of existing budgets.

Secondly, the manifestation of corruption including collusive practices, can serve as a snag



in the achievement of VFM. This is typified and exemplified in the current wrangling and allegations of over-inflated prices of contracts and *low balling*, resulting in copious variations in project scope and contract prices. A reduction in perceived or actual corruption will indubitably, result in price reasonableness. Indeed, various corruption schemes such as collusive tendering, tender rotation, tender suppression, market allocation and the use of front and shell companies, are but a few examples of corruption related schemes in the context of public procurement. It is a generally accepted fact that corruption is a canker and a “cardinal” sin in the context public procurement and should be condemned with all seriousness. The fact that some schools of thought are of the view that corruption is in existence because of the very existence of procurement, should without doubt, give us a course to be concerned. An assessment of whether our current procurement laws are adequate in tackling procurement related corruption, will be looked at in a subsequent piece.

Thirdly, a failure to adhere to the key procurement principles of transparency, accountability, fairness, and competition as discussed above will without doubt, militate against the achievement of VFM.

Fourthly, improper and inadequate preparation for procurement tasks which is evident in a situation where the scope of works for a project, is constantly changing. The media reportage on the SNNIT procurement of an ERP system could potentially, depict such a situation. From a project procurement perspective, knowledge in the iron triangle or triple constraint (scope, cost and time) have ripple effects anytime there is a change request. This undoubtedly, has serious consequential implications on prices, completion time and quality of the subject matter of the procurement.

Fifthly, lack of Due Diligence (DD) on successful tenderer before the award of a contract, could culminate in the award of a contract to a company which either has no capacity at law, or has no

capacity to deliver on the required contract. It is therefore crucial to carry out DD on the businesses and owners or officers of the businesses which intend to do business with the public. The outcome of a DD process will help reveal the past conducts and performances of a tenderer’s business, and any potential ethical issues including conflicts of interest between any actor in the procurement process and the potential tenderer. It is the expectation of the writer that, the new e-procurement system will have features to address these concerns.

Lastly, the lack of capacity and understanding of procurement processes and documentations is a major factor militating against the achievement of VFM. Entities must be interested in building the capacities of their staff so as to equip them with the requisite competences, required for their jobs. We need to avert our minds to the fact that, in some cases, the of lack of VFM in a particular procurement may not be due to corrupt practices, but rather, due to the lack of the required competences by the various actors in the procurement processes. Such actors might not even know that their acts are inconsistent with the provisions of the Procurement Act.

KEY AREAS TO ASSESS FOR VFM

In order to enhance the potential for the achievement of VFM in public procurement particularly, for single source procurement, it is important that the following areas of a tenderer’s offer are reviewed:

- Suppliers/Contractor’s/Consultant’s capability and relevant experience. Where required, visit previous buyers and confirm the performance of the supplier/contractor or consultant;
- Commercial terms relating to the mitigation of risks such as liquidated damages, advance payments, performance guarantee, Incoterms etc, should be reviewed;
- Contract terms including Conditions of Contract covering both General Conditions of Contracts (GCC) and Special Conditions of Contract (SCC) and in the case of FIDIC, the Particular



Conditions of Contract (PCC) should be reviewed to ensure risk areas are highlighted ahead of any negotiations.

- Technical Specification/Terms of Reference relating to a particular procurement should as previously discussed, be developed with care. An Employer's requirements for a works contract for example, must contain all the required details to inform tenderers about how and how much they should tender. The tenderer's submitted offer, should be scrutinised to ensure that all the required specifications or scope of the works have been satisfactorily addressed in the tender or proposal.
- Contract price should be reviewed bearing in mind market rates and an assessment of whether the proposed contract price reflects the contents of a specification or scope of works. To do this, detailed price summary should be obtained from the tenderer.

From the above, it is imperative that mechanisms are required to offset the disadvantages of single source procurement due principally to its lack of competition. As intimated above, this is why the Guidelines for Single Source procurement require procurement entities to demonstrate the achievement of VFM. A fundamental mechanism is commissioning a VFM audit for specific projects. However, in order to get the best results and impact, it is advisable to ensure that VFM audits are conducted before the commencement of a contract.

Additionally, VFM audit is most successful where: the procuring entity takes full control of their procurement; a well-qualified **Procurement Team** led by a qualified and experienced **Team Leader is in place**; a rigorous, clear project plan and requirements driven by the procuring entity and a clear division of responsibility between procuring entity, Supplier, Contractor or Consultant.

CONCLUSION

From the above, it can be concluded that the importance of VFM in every procurement undertaking cannot be gained said. It requires a lot of commitment and dedication from all actors within a procuring entity. Remember that, VFM is not synonymous with achieving low price as there are a myriad of other factors to be taken into consideration in any VFM assessment. After all, of what use is a low price if for instance the item procured is not technically compliant?

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