

WJMS Vol. 1, Issue 7, Page: 32-43,  
July 2019, ISSN: 2676-2811  
Impact Factor (SJIF): 8.232  
Journal DOI: 10.15373/22501991  
International Peer Reviewed & Refereed  
Journal with Indexed Journal Platforms

web: [www.damaacademia.com](http://www.damaacademia.com)  
email: [editor@damaacademia.com](mailto:editor@damaacademia.com)  
[Download from Journal site](#)  
<https://damaacademia.com/wjms/>

#### Author(s)

#### Adjenim Boateng Adjei

School of finance & Financial Mgtt.  
Business University of Costa Rica  
Email: [abadje@yahoo.co.uk](mailto:abadje@yahoo.co.uk)

#### Correspondence

#### Adjenim Boateng Adjei

Chief Executive Officer  
Public Procurement Authority  
Airport, Accra - Ghana  
Email: [abadje@yahoo.co.uk](mailto:abadje@yahoo.co.uk)

## The Effect of the Public Procurement Act 663 on Public Contracts

Adjenim Boateng Adjei

### Abstract

The aim of this project was to delve into the effect of the Ghanaian Public Procurement Act on Public Contracts in the Birim North District Assembly. Qualitative Survey Analysis was used to investigate why the need arose for the procurement law, its applicability to the local government sector and the challenges associated with it in the delivery of public contracts in the Birim North District. Possible ameliorations to the public procurement act to make it more sustainable, effective and beneficial to all stakeholders in the procurement process. The main challenges the district assembly is faced with were lack of funds for the timely delivery/execution of contracts, and bureaucracy in the procurement process. During the interview, it was noted that due to lack of funds for prompt delivery of projects and bureaucracy in the procurement procedure; the law has not been efficiently, and effectively implemented. Recommendations were made to tackle the challenges the assembly faced in procurement and contract management. The Local Government Service should endeavor to link contract management to the Act cohesively, for the timely delivery of contracts/projects. The assembly must also establish an independent procurement and project management team, to be manned by qualified personnel with the requisite knowledge, training and competence in procurement project management

**Keywords:** Public Procurement Act, Public Contracts

### 1.0 INTRODUCTION

Governments of both developed and developing countries spend a lot on works, goods and services to deliver public service effectively and efficiently, as well as to achieve value for money for taxpayers. To make efficient and effective use of the state's resources; public procurement is needed. Public procurement is a practice that is used by public sector organizations to acquire goods, services and works from third parties. —It includes money spent by the public sector to provide key services directly to citizens (Sarfo, 2011). Public procurement is the act of providing goods, services or awarding work assignments by a state body, organization, institution or some other legal person regarded as a procuring entity in the manner and under the conditions prescribed by a nation's law (PPB, 2003). A tender is essential for procurement. This is a formal document in which the proposals and requirements of work to be done are set out (Republic of Ghana, 2006). The tendering process allows the buyer [in this case the Birim District Assembly] to set out her requirements to propose their offers and to show how they intend to meet the requirements set by the bidders. The Procurement Act was enacted to ensure efficiency, effectiveness, accountability and transparency. The main objectives of procurement include but are not limited to supplying organizations with stable flow of works, goods and services, aiding in efficient and effective purchasing and ethically obtaining the best value for money. Others include managing stock, enabling the service provider offer their best service at a low cost and at the same time protecting the government cost structure (Barly, 1994). The public procurement methods and process applicable to procuring bodies are dependent on the total purchase value or threshold values of each purchase

activities. These differ depending on the nature of goods, services and works. All procurements above the threshold values apply procurement directives and must be advertised in the Official Journal for public tenders. There were many different procurement procedures to use, depending on whether it is a purchase above or below the threshold values. Minor purchases as in the case some office stationeries are subject to —direct procurement; these purchases do not have to be publicly advertised. However, due to principles of market competition, direct procurement should not be encouraged, and purchases should not be broken into smaller components to avoid exceeding the threshold values. Following from this, it is proposed that district assemblies use it as a guide for their procurement activities. The effects of the Public Procurement Act on Public Contracts in the Birim North District: is aimed at unearthing how procurement and public contract management impacts on local governance. However, the value and nature of these works, services and goods are very huge and specialized that; it involves some different procurement methods namely the national competitive tendering, request for quotation and restricted tendering and sole sourcing (these methods are further explained under section 1.4). The study thus proved that, the existing procurement law does not set out clearly any post contract management activities, hence the numerous delays in the delivery of public contracts. The District Assemblies are heavily subsidized by the government and are therefore accountable to 3 the citizenry. However, with the current situation where the huge expenses incurred by assemblies are not reimbursed by the central government, local service delivery (local governance), becomes extremely difficult. With all the above in mind, it is pertinent to note that procurement is still an undervalued process in the public sector in some economies such as Ghana (Verhage et al., 2002). Using the example of the Ghana health sector, it has been reported that health services and hospitals do not have qualified procurement personnel resulting in corrupt behaviors running from the top management to employees (Verhage et al., 2002). Based on the fact that the health sectors as well as district assemblies operates within the public sector, conclusions can be drawn that the problems faced in the assemblies are the same as that of other public sectors. The issue of corruption in public procurement and contract management is critical to the nation because it has resulted in inefficiency, and unfairness. Corruption in the nation is evidence of deeper problems that resulted in the payment of additional claims by contractors, consultants and suppliers. The purpose of this paper is to unearth the effect of the procurement act on public contracts in the Birim North District Assembly, in the Eastern Region of Ghana. The district assemblies are part of the institutions that have had issues with corruption and bribery in procurement and contract/project management. The study revealed that some MMDCEs and management had issues with procurement and contract management because there was no regulatory body to monitor their operations. According to the Public Procurement Authority, some procurement staff procured from people they know and are in contact with. This has favored kickbacks 4 leading to delay and poor delivery of contracts. With the introduction of the procurement act, some level of fairness, transparency and accountability has been achieved. This research established the relevance of the act to the management of public contracts in the Birim North District Assembly

## 2.0 STRUCTURE OF THE PUBLIC PROCUREMENT ACT OF GHANA

The PPA in its effort to make public procurement transparent, efficient, and fair, established five basic pillars of the public procurement (Kumaraswamy, 2006). One is the comprehensive transparent legal and institutional framework, two is the clear and standardised procurement procedures and standard tender documents, three is the independent control system, four is the proficient procurement staff and five is the anticorruption measures. The legal and institutional framework stipulates that the PPA establishes the public procurement board as a legal corporate entity. This entity would comprise of ministries, departments agencies and all para-statal establishments that utilizes public funds. In each entity, one would find tender committees that are in charge of giving approvals, awards and management of procurement activities. The Act stipulates that procedures must be followed for the sizing of tender packages, soliciting and evaluation of tenders and for the award of contracts. In addition, it states that all contracts must be tendered on an open competitive basis; thus, all tenders must be competitive enough for all eligible firms to participate, unless otherwise stated in the Act.

The Public Procurement Authority is a corporate body created under the Act 663, 2003 to make the processes of public procurement in the public service secure a judicious, economic and efficient use of state resources. It also guarantees that procurement activities are carried out fairly, and in a transparent and non-discriminatory manner (Public Procurement Act, 2003). Thus, several methods of procurement exist in Ghana. There is the competitive tendering, the two-stage tendering, the restricted tendering, the single-source procurement, quotations, low value and minor procurement (introduced recently). These methods are there to be used based on the situation and threshold. Competitive Tendering involves the use of standard tender documents to draft tender documents, inviting potential suppliers, contractors or consultants to tender for public procurement opportunities. Advertisement is opened to all eligible bidders to participate. Request for Proposal is a method suitable for the purchase of consultancy services and involves a two-stage approach when value is above what is stated in schedule 3 of Act 663. Stage 1-Seeking expression of interest Stage 2-Formal request for proposal It can be done by using restricted tendering or sole sourcing procedures to obtain proposals from pre-qualified consultants. Two-stage tendering is only allowed when the optimal solution is unknown and tenders are solicited to provide it.

Restricted Tendering is a procurement method that is limited to only short - listed contractors or suppliers. This method stipulates that parties involved must go through a formal procedure with detailed invitation to tender documents. Tender documents are available to short-listed supplies with minimum of three and maximum of six suppliers and it requires specific approval from Public Procurement Board (PPB). With this method, awards should be published in the Procurement bulletin. 8 Restricted tendering under the Act can only be used if it provides greater economic efficiency and is subject to approval by the Board. Single Source Procurement is a method that involves procurement from a supplier without any competition. It is used for procurement of sole or single sourced requirements. This method is only used when the work, good or service to be procured is deemed very urgent or can only be provided by a single source. Request for Quotations is a method used where the items to be bought are readily available for technical services that are not specially produced or provided to a particular specification of the procurement entity.

Under this system each supplier is required to give only one price quotation. No negotiation is allowed to take place between procurement entity and supplier prior to the evaluation of the quotation. This method is mostly used by schools although it does not always apply because the threshold for this method is between GH. 5,000 and 20,000. Under these pillars, the public procurement board 's duty is to provide policy and regulatory oversight, provide training and capacity building for procurement officials, hear appeals and complaints, and assist local industries to become competitive and efficient suppliers to the public sector. Basically these pillars say that the board must make sure that information is given out to the civil society and business entities so as to enable a competitive environment to improve the economy. In doing this, it means that a database of all suppliers, contractors and consultants will be kept. This means that the board of directors have nothing to do with procurement practice under the Public Procurement Authority (PPA).

### 2.1 Problem Statement

A public procurement law is a set of rules that guide a government 's act of purchasing goods, services, and works (Azeem Vitus, 2007). A reform is done to guide all purchases from small goods, services and works to large scale goods, services and works. According to the Public Procurement Authority, corruption has declined due to potential punitive measures such as debarment from government contract (for five years) and any other remedies the

court may seek. However, the corruption perception index published by Transparency International says otherwise. According to Figure 1 below, in 2002, the perception index was 3.9, but drastically reduced in 2003 to 3.3. The possible reason for this would be because of the perceived punitive measures mentioned by the Public Procurement Authority. However, from 2004 to 2010 it was generally on the increase. If the perception index is a reliable source, it proves that corruption is still a problem; hampering the smooth implementation of public contracts in Ghana, in spite of the existence of the Public Procurement Law.

Using the Health sector in Ghana as an example, research showed that the financial impact of health care was significant (Verhage et al. 2002). According to the World Health Organisation, drugs and other health related items expenditure ranged from 25% to 50% of the total health care cost. The World Bank was the only financier of health in developing countries (Falkenberg & Tomson, 2000). The Ministry of Health in partnership with international donors, financial institutions, the private sector, and NGOs implemented a Medium-term Health Sector Strategy for Ghana for the period of 1997 to 2001 (Verhage et al., 2002). Ministry of health decentralized the procurement process from the national level to regional, district and sub-district levels. They have put up purchasing measures such as Procurement Committees that were charged of looking after and making decision concerning the acquisition. However, shortcomings such as lack of a procurement law, inadequate procurement strategy, planning and management capability, unqualified procurement staff, poor procurement administration and procedures, poor inventory management, lack of funds came up.

These challenges created the need to take a deeper look into the current procurement law at large to suggest whether the way forward would be to opt for E-Procurement. In the past, it was difficult to procure goods, services or works due to ubiquity in the procurement procedures and unwillingness of suppliers to give credit. This was due to lack of funds, bureaucracy, and unqualified procurement staff. These have had negative effects on procuring activities of District Assemblies because it hindered their operations, and created a general tendency to discourage proper procurement procedures. Thus, these incapacitated the functioning of the district assemblies. Considering all the above, previous procurement practices seemed to benefit the few business men and women who had built a relationship with decision makers at the local government ministry. District assemblies that benefited from the status quo, had no incentives to welcome the procurement act because it must foster competition between people who provide the same product and/or services that the public sector is in need of. The decision makers that enjoyed bribes and kickbacks were not ready for any change. This could not help the growth and development of the nation, it would rather drain the system and nobody benefits after all the hard work. (Nortey Emilia)

### **3.0 LITERATURE REVIEW**

An effective public procurement system is essential for the smooth running of an institution. A poor procurement system results in higher costs to government and the public. It interrupts the implementations of projects, and increases the overall costs any project. It also causes poor execution of projects and delays in the delivery of purchases to the beneficiaries. Poor procurement also increases the likelihood of corruption, spawns concerns about the effectiveness of the law and its process. It also dampens the possibility of competent firms either national or international from participating in bids; this goes a long way to rob an economy of receiving the best goods, works and services at the best price (World Bank, 2000). As this research looked at the procurement law effects on public contracts in the Birim North District Assembly, it took a look at some literatures discussed below.

#### **3.1 Procurement Reforms in the Local Government Service**

The Ghana Supply Company Limited (GSCL) was the agency in charge of all public goods purchases since January 2000. However, unqualified personnel, absence of proper planning for the necessities, lack of a proper database, and delays in the acquisition of government subventions led to extended delivery times. Because of these problems, other ministries decided to implement their own procurement structure to be followed. Further reading proved that the solutions enacted by the ministries were not successful; each ministry dealing with buying goods and services for the good of all does not help the 15 country. The government is obliged to serve the ministries. Thus each ministry having its own procurement process meant the government had to provide each ministry with its needs separately, thereby creating inefficiencies in the system. From 1999, the Ministry of Finance took the development of a national procurement procedure importantly, in an effort to mend the situation.

The Ministry of Local Government and Rural Development was one of the first ministries to remedy its procurement practices. Decentralization was their main strategy because they understood shifting responsibilities from

the national level down to the district level, to help ease the burden of procurement activities. The research suggested that it was a good idea because it meant that more responsibility was given to the people that were in charge of local service delivery. This may have allowed and given more opportunity for quality planning and execution. However, shortcomings were still identified in this procedure. Examples are: unqualified personnel, non-adherence to proper procurement procedures and inadequate policy guidelines in procurement. To combat these problems, the ministry collaborated with the World Bank to set up a Procurement Unit and Works Department in 2011; under the local service delivery pilot programme. They developed a set of rules, actions and standard documents to be followed. Interestingly the procurement guidelines and procedures that were laid out were not just a replication of the ones the World Bank issued (World Bank, 1997) but addressed problems faced in Ghana as and when procuring was needed.

### **3.2 The EU Public Procurement Rules**

In the European Union, the governments and public utilities procurement of goods, services and public works are of significant value. 16% of EUs GDP is accounted for by public procurement contracts (Matthew, 2010). The EUs public procurement law sets out the regulations that govern the award of contracts. The law is rooted in the Treaty of Rome of 1957 established by the European Economic Community (EEC), of which six states were members. The Maastricht Treaty of 1992 altered the name of the EEC to European Commission (EC) for simplicity. The European Commission is a civil servant to the European Union, but is also one of the four institutions of the EU. The ECs main roles are to propose legislations to the European Parliament and the council of the European Union, administer and implement EU policies, enforce EU laws and negotiate international agreements. However, it also has three roles that are distinct to the public procurement law. First, the commission proposes legislation, and engages in related consultations. Secondly, it provides guidance on the law through publishing explanatory notes. Lastly, it enforces the law using its legal powers under the EC Treaty.

The European Commission uses its powers to investigate and proceed against infringements in those states of the EC public procurement law. The commission's power is rooted in Article 226 of the EC Treaty and the procedure taken to make their power reign is referred to as the infringement procedure (Matthew, 2010). When a country does not apply the rules set out, the commission demands an explanation of the issue at hand. If it was not satisfied with the answer it makes formal request to the Member State to comply with the law within a fixed period. However, when the commission notices that the country is not complying, it can then with its power take actions before the ECJ for judgment on the matter. Clearly these set of rules would push the Member States of the EU to abide. The ECJ may grant permission for the pending contract to be suspended based on the merits of the project even after it has been awarded. Member states under the article 228 of the EC treaty obliged to comply with the ECJ judgment.

For effective public procurement, EUs public procurement law is also referred to as a guide for Ghana to follow, so that its public procurement Act would be as efficient, effective, and transparent. It was also to show that the Ghana public procurement act lacks punishment for those who go against the act or simply do not take actions against rule breakers. It was to show that simply having a public procurement act, does not solve the problems of effectiveness, accountability, efficiency and transparency, but enforcing the rules would go a long way just as the EUs public procurement rules does.

### **3.3 Fighting Bribery in Public**

Procurement in Asia & the Pacific Public procurement accounts for about 20% of government expenditure worldwide (ADB/ OECD, 2008). According to (ADB/ OECD, 2008), one quarter of the amount is lost due to corruption. Some reasons for this loss were complex procedures, broad discretion, weak oversight, and limited implementation capacity. These are clearly the 18 problem that this research has collated from its interviews and questionnaires conducted with the head of schools, teachers, bursars and procurement units. Asia-Pacific Countries are said to have made huge efforts to combat corruption and its causes in their procurement framework and practices. In their quest to solve the problem, the Asian-Pacific countries mainly Indonesia and China conducted a Regional Seminar. Despite significant efforts, corruption and bribery in procurement remained widespread. Why have all these efforts not changed anything? All hope was not lost though after all these efforts. The Asian-Pacific countries resorted to other ways of solving the issue of corruption and bribery. China and Indonesia made use of international instruments such as the UN Convention against Corruption and the OECD anti-bribery instrument set standards for anticorruption policies in procurement frameworks. (World Bank 2004) Bangladesh and the Philippines made use of institutional,

technical and legal ways to prevent corruption in public procurement. They made use of their central procurement oversight authorities to develop and coordinate procurement policies, supervise decentralized procuring entities and disseminated good practices and trained or organized training of officers who carried out public procurement. These measures, successfully engaged governments and public administrators.

However, the supply side of bribery must also be included for the fight to have a long lasting effect and not a short term one. (IMF 2004) 19 This research has mainly provided us with concrete examples from the Asian- Pacific countries on what procurement was like before the reform and how the reform has contributed to the fight against bribery in public procurement. This paper was deemed important to this study because it gave example of how the issue of corruption and bribery that affected public contracts were addressed. In the district assemblies, the reason why the procurement act not being totally effective was due to the fact that; it does not have a direct linkage to contract management. Thus, looking at this article gave possible procedures that could be adopted to address the anomaly.

### 3.4 Public Procurement Lessons from Kenya, Tanzania & Uganda

This research compares the public procurement systems of Kenya, Uganda and Tanzania. The comparison helped to analyze the initiatives they each took, to make their procurement process efficient, and transparent in line with international guideline of what a procurement law should look like. Though they have departed on the same basis, they have experienced different reforms. Tanzania moved fast and has putting in place a legislative framework for the public procurement. Yet, Kenya and Uganda each enacted her procurement legislation. Though Kenya enacted a number of changes through a ministerial gazette pending the coming into force of a Procurement Act. The requirements discussed where to make the democratic political process, civil society and public accountability stronger. It also included, creating real market conditions, and improving work ethics which would increase the value of public good rather than individual interests. 20 The East African countries share similar political and economic history. (Odhiambo et al., 2003) said that until the 1970s, external entities such as the Crown Agents were in charge of public procurement.

The reason was that, the needs of the colonial government and the new incoming government could only be met from external sources because local suppliers were still not adequate. Adequate in the sense that was no local personnel trained in the field of procurement to be able to provide the governments with necessary information. What made them inadequate has been a recurring question. Possible reasons for local suppliers not being adequate could be that their awareness about the public procurement is insignificant. Another reason could also be that, due to the fact the governments are colonial, they believed only external sources have the answers to their problems. Thus, for the governments to rely on the local suppliers may make procurement more inefficient, and unreliable. As procurement needs were increasing, they came up with the idea of transferring responsibilities to ministries, so that they each take charge of their purchasing activities.

By 1974, the three countries (Kenya, Uganda and Tanzania) were using the same procurement system. Their delivery offices were within the ministries, requiring the recruitment of supply officers to be in charge of purchasing activities. Every institution in these economies had its own self-governing and independent supply system. However, major goods, services and works were purchased through the Central Tender Boards (Odhiambo et al. 2003). Due to the joint procurement of the three East African countries, the countries government came together to create a shared 21 procurement manual, the East African Supplies Manual. This was a good idea, however was it sustainable? From the article we learnt that, the manual ceased to exist because the East African Community collapsed in 1977. The three countries thus reversed to their status quo. Each country designed new procurement guides which did not last long before they also collapsed. Obviously, you can see that there is a problem with their system.

All the solution they have implemented has failed. This to the researcher was due to the fact that there was no planning involved in the creation of the procurement systems; also civil servants easily manipulated the process. (Odhiambo et al., 2003) affirmed that since the independence in 1961, the Finance and Ordinance Act of 1961 guided public procurement in Tanzania. It stipulated the procedures that must be followed when conducting purchasing activities. However, the Act did not provide specific process of procurement. It gave brief information on how to acquire goods, and mentioned where procurement must take place. Yet, there was no tool made available to control and regulate activities of different procurement entities, though the Central Tender Board existed. Could this not be another reason why public procurement in Tanzania had problems? In their quest for an efficient and transparent procurement system and getting it in line with international procurement guidelines, serious bottlenecks have continued to delay the efforts to implement a competitive and fair procurement processes. The estimation of size of

public procurement encountered a number of conceptual as well as technical problems. These problems emerged due to lack of data and the method utilized in keeping data and reporting problems. The authorities of the East African Community responsible for procurement activities do not keep information in relation to public procurements. Instead, the procuring entities in the different ministries, department, and local authorities kept the information. Thus the quality of information kept varies and is not necessarily of quality.

Over the years the public sector grew significantly in size and role in economic activities. This required a new system to be put in place because the existing ones were not working. Public procurement reforms then came up as a result of finding the best way of resolving the problems that came up with the old public procurement systems. In Kenya, in 1986, SGS Consultants evaluated the public procurement system, and found that a reform was needed, because the existing procurement system was not efficient in its operations. According to the SGS Consultants, the state lost large amount of money through shoddy deals. The article revealed that the procurement system in Kenya lacked transparency and fair competition, procurement staff were not adequately trained and lacked professionalism (Odhiambo et al., 2003). In the late 1990s, government bodies and the international donors in union with the Government of Kenya introduced the public procurement reform process. This reform created a structure that allowed appropriate passing on of authority, incentives, purchase measures, planning and development of supplies manuals. The intention behind the reform was to bring about transparency and create trustworthy institutions. In Uganda, the procurement reform was seen as a strategy that focused on ways to eliminate poverty by creating a conforming policy framework and re-orienting government spending to needy sectors. The basis of the reform was that Uganda's public procurement was not helpful, because existing laws were scanty. How? There was a need for the reform because the existing procurement law was characterized by malpractices such as under-invoicing, unqualified personnel that would regulate the action of procurement officers.

The reform then brought about the establishment of a National Public Procurement Unit that looked over all matters of public procurement (ECF 2005 PDF File) In Tanzania, the reforms were enacted on the basis of a study conducted by the Crown Agents, an international consultant. They recommended that, Tanzania must establish a self-regulating and autonomous body to control procurement, and also separate the Central Tender Board from the Ministry of Finance (T.I Global Corruption Report 2009) Basically, the procurement systems in Kenya, Uganda, and Tanzania were similar. Their significant difference is in the nature and the extent of their reforms due to the various ways they implemented the reform. The research concludes that public procurement is globally and an essential issue in economic and business circle. This is seen in the growing interest of donors, government, civil society, professional Organizations and the private sector, and the general public on matters of public procurement.

### **3.5 Procurement, Contract Delays and Local Governance**

The Local government service is one of the largest public sectors in the country (support). According to the Ghana Guide, there are about 225 MMDAs in Ghana and the number keep increasing every four years. From the research, it was found that there was a lack of information on procurement and education. However, because there is a linkage between procurement contract management; this study looks at the issue of public procurement and its effect on Public and Contracts. In the local government service, people who are involved in procurement are confronted with project management skills. The reasons for this are that contract management is a specialized area which must be handled by experts. The international agenda with the adoption of the OECDs 1999 Convention on Combating Bribery (resulting in poor delivery and delay) by Foreign Public Official in International Business Transaction and the adoption of the 2003 United Nations Convention Against Corruption (UNCAC).

Secondly, the parties involved in local governance and service delivery feared the fact that the image of the sector might be tarnished and so resources allocated to the sector might be reduced. The article focuses on procurement activities and contract management in local governance due to new challenges that emerged such as rapid growth in number of assemblies, resource allocation, decentralization processes and management. These challenges according to (Poisson, 2010) present new opportunities for large scale delays and fraud. The article dwelt on how to deal with the issue of procurement and contract delays in the local government sector, how to improve accountability and transparency in each assembly of the local government planning and management (Wereko, T.B and Cletus Dordunoo) Finally the article demonstrated that to improve accountability and transparency in the assemblies, action must be taken on three thematic areas, namely: the development of transparent regulation systems and standards, the building of management capacity and the promotion of greater ownership of administrative and financial processes. It is therefore interesting to know how procurement goes a long way to affect public contract in the management and local

governance in the Birim North District. This study of this paper which is aimed at how public procurement act affects public contract. This is because the effectiveness of the procurement law is based on its transparency, and accountability. If these two are achievable, management and delivery of public contracts must be effectively done.

### **3.6 Conclusion to Literature Review**

In Ghana, procurement is still undervalued compared to the other key areas of Public Sector Reforms (Verhage et al, 2002). The paper sought to bring together the views of the effect of the procurement law passed in different countries and its effect on public contract. It unearthed the entire variable in this subject to enable analysis and discussion of the situation in the area. (Verhage et al, 2002) look at the procurement reforms in Ghana and procurements role, and also discussed the interventions made and their impact. In 2008, the African Development Bank focused on the various instruments used to fight procurement challenges. China and Indonesia were said to have used international instruments such as the UN Convention against Corruption and the OECD anti-bribery instrument set standards for anti-corruption policies in procurement frameworks to achieve major national infrastructural development. Bangladesh and the Philippines made use of institutional, technical and legal ways to prevent corruption in public procurement. (Odhiambo et al, 2003) looked at the reforms of three East African countries, namely Kenya, Uganda and Tanzania.

The paper compared their reforms and identified a common ground. These were that the three countries identified the importance of the procurement law, thus they decentralized their procurement activities, and they have put in place regulatory organs to oversee public procurement activities to achieve projected national development. These three papers (Simon J. Evenett and Bernard M. Hoekman, 2005, Wereko, T.B. and Dordonu and Global Corruption Report, 2009) all focused and discussed the different aspect to this study. This study looked at how bribery and corruption affect the procurement law negatively, and how it affects the smooth running of district assemblies; it considered the challenges that MMD assemblies faced in their service delivery and why the procurement law was not considered completely efficient and effective to them; finally it looked at the procurement law's positive impact. All these, helped determine the effect of the procurement act on public contracts in the assemblies. The various papers discussed here were useful as they uniquely touched on the various aspects that proved whether procurement law has a positive or negative impact on Local Governance and Service Delivery

### **4.0 METHODOLOGY**

The research is based on interviews conducted on sample population and came up with this framework. The framework shows the process assembly go through to conduct procurement activities. First of all, the different departments submit their procurement plans to the procurement unit of the assembly. This is done at the end of the year so that the budget for the ensuing year would be prepared and submitted to central government before 30th November, of the year under review. Reviewing of the plans was conducted to check for fairness, and competition, efficiency and effectiveness, and finally it is also checked to ascertain that, the procedures followed are transparent. Procurement plans of the various departments are checked for fairness and competition to ensure accountability from the heads of department.

Efficiency and effectiveness is checked as the procurement act stipulates that all procurement must give value for money, meaning that whatever is budgeted for; is of quality, at appreciable cost, to control expenditure. The procurement units also check for transparent procedure as it avoids personal interest, and promotes public interest. The unit also determine which procurement method applies to each of the items to be procured and thus; group them according to their procurement methods. The entity tender committee then approves of it. It is subsequently subjected to the executive committee's concurrent approval after which the procurement plan is finally approved by the general assembly of the district for adoption for the ensuing year.

### **4.1 Research Design**

According to Gay (1990) explanatory research involved collecting data in order to test hypothesis or to answer questions concerning the current status of the subject of the study. It was economical and convenient for the study of this nature. Yin (1993) stated that explanatory research explained causal relationship between cause and effect of a phenomenon. It aimed at explaining causal relationship between variables. Explanatory research emphasized detailed contextual analysis of a limited number of events or conditions and their relationships. Researchers used the explanatory research method for many years across a variety of disciplines. Social scientists, in particular, made wide



use of this explanatory research method to examine contemporary real-life situations and provided the basis for the application of ideas and extension of methods.

Yin (1993) defined the explanatory research method as —an empirical inquiry that investigated a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which 29 multiple sources of evidence are used. In order to investigate the effect of the Public Procurement Act on Public Contracts, explanatory research was used to explain the effect of the Public Procurement Act on Public Contracts in the Birim North District Assembly. Qualitative and quantitative analysis was used for this study. Quantitative analysis according to (Borrego et al., 2009) is for the researcher to project her findings onto larger population through an objective process. It allows the researcher to make generalizations or inferences based on the answers given.

This type of analysis was needed for my study because the objective opinion of the assembly, subject to the procurement act, was needed to prove the effect of the procurement act on the management of development projects in the district. Again (Borrego et al., 2009) said that quantifiable results as they pertain to opinions, attitudes or trends are one of the goal of conducting a survey. The goal of this paper was also to see the trend in the answers given by the respondents. Qualitative analysis was used for this study. Qualitative analysis according to (Borrego et al., 2009) is characterized by the collection and analysis of textual data which are surveys, interviews, focus groups, conversational analysis, observation on the context within which the study occurs. It allows the researcher to make connection between the study and the situation. Because this research is an explanatory research, both quantitative and qualitative analysis were needed. The qualitative results served to explain the quantitative results according to (Borrego et al.2009).

#### **4.3 Sources of Data**

Both primary and some secondary sources of data were obtained for the study. The primary data was obtained directly from respondents through structured interviews. The primary data provided reliable and accurate first-hand information relevant to this study about the implementation of the Procurement Act in relation to its effect on contracts delivery in the district. Secondary information was obtained from the library, internet, journal articles, newspapers and research reports. The idea of secondary data was to gather necessary information to guide the conduct of the research project in order to confirm the primary data.

#### **4.4 Sample and Sampling Procedure**

The target population for the study was made up of 20 procurement staff of tender, procurement, evaluation, units of the assembly and 10 key staff each of —contractors, suppliers and consultants of good business standing with the Birim North District Assembly. From Table 3.1 below, the response rate was: 80% from the assembly, 55% from contractors, 50% from consultants and 50% from suppliers.

#### **5.0 CONCLUSION**

This study was set out to investigate the effect of the Public Procurement Act on Public Contracts in the Birim North District Assembly. The research work was undertaken not only to fulfil academic pursuit but also out of interest of how procurement and contract management are interwoven. The study revealed that the public procurement act is very useful. However, while procurement procedures were adhered to, contracts were poorly managed; resulting in high additional claims due to price fluctuation and delayed payments by the District Assembly, defeating the principle of value for money (VFM) It has helped the District Assembly work within their procurement plan. The respondents revealed that; before the pilot project, there were many times they have exceeded their budget due to procuring outside the procurement plan and from expensive sources.

The implementation of the Procurement Act also brought about transparency in the award of contracts and helped minimize corrupt practices. 46 It was also revealed that summaries of information about the public procurement were not available to everyone. It was available to the head of entity and the key procurement staff only. The reason for this is unknown because respondents gave no answer to questions relating to the information. It came to light that: the policies and procurement procedures outlined in the Public Procurement Act, do not totally apply to the district assembly. This is because some of the goods, work and services they acquire do not fall under the threshold of the procurement methods. Examples of such goods are sanitary tools and equipment. It also came to light that Procurement

authorities have attempted solving the issue by introducing a policy known as the low value procurement and minor procurement.

These two policies have been useful however, need revision. The act has helped the district assembly to obtain some level of value for money. This is because it followed the laid down procedures for the preparation of procurement plans. However, the process of preparing procurement plans was deemed to be delaying procurement activities. Auditing is crucial in every organization. This study reveals that procurement entities go through quality control and auditing. This achieved accountability. A significant challenge that the study revealed is in respect of late payment upon completion of project. The study revealed that contractors, suppliers and service providers are not paid on time and this affected the management of most projects, resulting in court suits. The effects were that the district assembly ended up paying high contract sums as a result of fluctuation claims submitted by contractors, service providers and suppliers.

Another major challenge of the procurement, is the bureaucracy in the procurement process. Respondents stated that delays in the procurement activities made the procurement process cumbersome. Thus they believe that reducing some of the processes would go a long way to make the process more efficient and effective. Some other challenges the research revealed are: bureaucracy in the system, preventing good management of the contracts, unskilled professional procurement officers, and delay in the release of funds for the execution of projects.

### **5.1 Conclusions**

The Procurement Act, 2003 has been enacted to bring about efficiency, effectiveness and accountability. The study revealed that although the government is making frantic efforts to bring about efficiency, and effectiveness into the procurement process; challenges are still being encountered. The Procurement Act, has brought sanity in the procurement process of the district assembly as well as transparency in the use of state resources. Thus, one can say that the procurement act is having both a positive and a negative effect on the delivery of public contracts in the assembly. The act has sanitized the system but changes are still needed to make the system fully effective, efficient and transparent.

### **5.2 Recommendations**

The following recommendations are necessary to improve procurement and contract management activities in order to achieve the purposes of efficiency, effectiveness, transparency, accountability and value for money, for effective local service delivery. The procurement law was implemented to improve efficiency, effectiveness, transparency and accountability. Based on the study, the law is effective and is improving budgetary allocation of the assembly. Thus; it is recommended that government endeavors to review the Act to limit the number of steps in the procurement process so as to reduce the level of bureaucracy in the system. Bureaucracy delays the smooth process of procurement and affects the management of the assembly.

There should be a review of the policies set out in the procurement procedures so that the district assembly, has some specific policies that apply to it, so as to make procurement competitive in its jurisdiction. Contract/project management should be included in the procurement procedures. Additional information gathered during the study revealed that the district assembly does not have a well-structured independent procurement unit. It is recommended that the assembly establishes an independent procurement unit; managed by qualified professional personnel, with requisite knowledge, training and competence in procurement.

These officers in charge of procurement, should have frequent training opportunities to gain professional procurement qualifications. This would help achieve more value for money, and transparency. Some studies have been done to prove whether E-Procurement is the way forward; however, these studies are preliminary, not systematic or detailed as they do not offer viable recommendations. E-Procurement also referred to as E-Government Procurement (EGP) is a comprehensive process in which government makes use of IT systems to establish agreement for the acquisitions of products and services (Rose-Ackerman). This may be the way forward because it will bring in huge transformations in how organizations, both public and private conduct business. It may eradicate on field corruption acts and bring about higher growth and development for the nation. Annual budgetary allocation to the district should be fully honored by the central government timely enough, to save the state purse from additional claims and judgment debts to contractors, suppliers and consultants.

## References

U of Hong Kong, 2002. *Porkfulam: Centre for Infrastructure & Construction Industry Development, Department of Civil Engineering, n.d. PDF file.*

ADB/ OECD. *Fighting Bribery in Public Procurement in Asia and the Pacific. Bali: Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, 2008. PDF file.*

Anvuur, Aaron. *Taking Forward Public Procurement Reforms in Ghana. MS thesis.*

Auerbach, Kenneth D., and Yoshinobu Yonekawa. "The United Nations Development Program: Follow-Up Investment and Procurement Benefits" *International Organization* 33.4 (1979): 509-524. PDF file. Borrego, Maura,

Elliot P. Douglas, and Catherine T. Amelink. "Quantitative, Qualitative, and Mixed Research Methods in Engineering Education." *Journal of Engineering Education* 98.1: 53-66. PDF file.

Business Anti-Corruption. "Anti-corruption Profile- Ghana." *TrustLaw. Thomson Reuters Foundation, 2012. Web. Mar. 2012. Hall, Matthew.*

"EU Public Procurement Rules." *The International Comparative Legal Guide To: Public Procurement 2010. Global Legal Group, n.d. Web. 11 Apr. 2012.*

International Monetary Fund. *Public Expenditure Management- Country Assessment and Action Plan (AAP) Ghana. World Bank and IMF, 2004. PDF file.*

Lokko, Carl, and Thomas K. Bondzi. "Building Relevant Skills for Public Procurement." *Editorial. Public Procurement Authority 2.1 (Jan.-Feb. 2011): 1-6. PDF file.*

Mensah, Sam, et al. *Corporate Governance and Corruption in Ghana: Empirical Findings and Policy Implication. African Capital Markets Forum, 2003. PDF file.*

Nortey, Emelia. "Enhancing Transparency in Public Procurement." *Editorial. Public Procurement Authority: Electronic Bulletin 2.4 (July-Aug. 2011): 1-9. PDF file.*

Odhiambo, Walter and Kamau, Paul. *Public Procurement: Lessons from Kenya, Tanzania and Uganda. OEDC. Development Centre, 2003. PDF file.*

Oduro, Abena D. *A Note on Public Expenditure and Poverty Reduction in Ghana. Accra: ISSER, CEPA, and Cornell University, 2001. PDF file.*

Oduro, Kojo N. *Results-Oriented Public Expenditure Management- Case Study of Ghana. London: Overseas Development Institute, 2003. PDF file.*

Osei, Robert Darko, et al. *Public Spending in Ghana: An Assessment of National Level Data (1995- 2005). Accra: International Food Policy Research Institute, 2007. GSSP 0004. PDF file.*

Rasheed, Howard S. "Capital Access Barriers to Public Procurement Performance: The Moderating Effects of Ethnicity, Gender and Education." *Journal of Entrepreneurial Development* 9.2: 1-28. PDF file.

Republic of Ghana. *Ministry of Finance and Economic Planning. Joint Review of Public Expenditure and Financial Management. Accra: Republic of Ghana, 2011. PDF file.*

*Republic of Ghana. Public Procurement Authority. "Procurement of Goods." Public Procurement Act, 2003 (Act 663). Accra: Public Procurement Board, 2006. Chapter 4. PDF file.*

*Rose-Ackerman, Susan. "The Political Economy of Corruption— Causes and Consequences." Public Policy Journal 74 (Apr. 1996): 31-60. PDF file.*

*Saunders, Mark, Phillip Lewis, and Adrian Thornhill. Research Methods for Business Students. 7th ed. England: Pearson Education Limited, 2007. 356. Print. Thai, Khi V. "Public Procurement Re-Examined." Journal of Public Procurement 1.1 (2001): 9-50. PDF file.*

