

An analysis of impediments to procurement in selected public procurement entities in the Kingdom of Eswatini

Leroy Hlope¹ and Happyson Bimha²

¹ University of Eswatini, Department of Business Administration

² University of Eswatini, Department of Business Administration

Abstract:

Public procurement uses public funds; hence stakeholders expect it to be executed effectively. In 2016, the Eswatini government embarked on public procurement reforms to improve its effectiveness. Utilising the case study design and in-depth interviews, the researchers collected and analysed data on challenges facing Eswatini public procurement system. Eight (8) procurement respondents purposively selected from lead procuring entities were interviewed. Results of the study revealed that a number of challenges impeded public procurement. Regulations are outdated; hence, timely updating of regulations must be done whenever conditions change. Documenting processes was necessary to facilitate public procurement system audits. Centralisation, lack of coordination and non-existence of procurement departments in procuring entities were noted. Therefore, restructuring the system in line with international best practices is recommended to contain costs and the treatment of procurement professionals must commensurate the millions of government expenditures which they handle. Recruiting qualified procurement professionals and rewarding them in line with the strategic decisions they make is recommended. Computerising the public procurement system can improve speed and accuracy in processing procurement transactions. Government entities that are involved in public procurement activities must be aggressively marketed so that stakeholders are knowledgeable and aware of their roles in public procurement.

Keywords: Public procurement; Lead procuring entities; Public funds; Public procurement reforms; The Kingdom of Eswatini

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I. Introduction

Procurement is a function of business management that ensures identification, sourcing, access and management of external resources which an organisation needs in order to fulfil its strategic objectives (Kidd, 2005). The procurement process ensures that the buyer receives goods or services or works in accordance with the seven rights of procurement. That is, getting the right product of the right quality and right quantity at the right place and right price at the right terms and right time (Badenhorst-Weiss, van Biljon & Ambe, 2017). Public procurement is characterised by principled processes, procedures, regulations and statutes established by government to manage procurement processes in public entities (Arrowsmith, 2010; Ambe & Badenhorst-Weiss, 2012). Public procurement uses public funds hence it attracts interest from different stakeholders who expect transparency and accountability in public procurement processes. However, public procurement is vulnerable to mismanagement and corruption (Mahmood, 2010; Telgen, vander Krift & Wake, 2016). Several countries have instituted public procurement reforms to promote efficiency and value for money; equality and fairness; ensure integrity in the procurement system; promote competition among vendors services; ensure accountability; ensure efficient implementation of industrial, social and environmental policies in procurement; and, to open public markets to international trade [Basheka, 2008; Arrowsmith, 2010; Nicholas, 2011; UNCITRAL, 2011; Komakech, 2016; OECD, 2018 & WTO, 2019).

Developing countries such as Ghana, Tunisia, Kenya, South Africa, Nigeria, Botswana, Uganda and Tanzania, have implemented public procurement systems reforms, including decentralizing government procurement, enacting legislative frameworks to govern public procurement and establishing independent procurement authorities to oversee public procurement systems (Dza, Fisher & Gapp, 2013; Ndercaj & Ringwald, 2014). Ndercaj and Ringwald (2014), state that, the reforms in sub-Saharan African countries take place under crisis or under pressure from international organizations, not in proactive anticipation of the strategic importance of effective public procurement systems to economic growth. Thus, the reforms are seen as technical and administrative processes, rather than strategic initiatives by the affected countries (Mahmood, 2010; Ndercaj & Ringwald, 2014; Williams-Edge, 2015). The government of Eswatini implemented public procurement reforms in 2016 with the aim of controlling costs and achieving better management of public

procurement, to strengthen the integrity of the public procurement system and make it more reliable and transparent (Swaziland Government Gazette,2011; ESPPRA,2017).

As an indicator of ineffective public procurement, Basheka,2008; WTO,2015), posit that, purchases of goods, services and works continue to exceed 20% of Government expenditure in developing countries. In most industrialized countries the percentage varies between 5% and 8% of gross domestic product (GDP) (UNCITRAL, 2011). According to WTO (2019), during the period from 2009 to 2014 procurement by the central Government of Eswatini represented 12.2 % of GDP on average and this is considered high when compared to countries from other regions of the world: North America (11.70% of GDP); Middle East and North Africa (11.38% of GDP); and East Asia and Pacific (9.26% GDP) (WTO, 2015; Djankov, Islam & Saliola, 2016).Outstanding payables from public enterprises amounted to E30, 404,635.50 and E90, 616, 208.61 in the financial years 2017 and 2018 consecutively (ESPPRA, 2017). Even though governmental entities, policy makers and professionals have shown great support for public procurement reforms, the public procurement system of Eswatini continued to underperform (ESPPRA, 2017).It is against this background that the research sought to study the public procurement system of Eswatini to mitigate the continued deterioration of public sector procurement. Owing to limited resources, the study focus was limited to lead procuring entities only.According to Swaziland Government Gazette (2011), a lead procuring entity is designated to procure a certain category of items or common use items. Common use items are items which are used by different ministries, such as, vehicles and computers. Therefore, it makes procurement sense to have such items sourced by one Ministry on behalf of all of the procuring entities.

The aim of the study was to analyse the challenges in the public procurement system of Eswatini. The objectives were: to identify public procurement policy provisions that were not effectively implemented; to identify the challenges faced by lead procuring entities in implementing the public procurement policy; and to suggest recommendations for improvement.

The study was guided by a number of initiatives which advocated the following pillars of public procurement: effective procurement laws and regulations, procurement organisation, procurement operations and procurement workforce (Thai, 2001; US Government Accountability Office, 2005; Telgen,van der Krift & Wake,2016; OECD, 2018). Increasing the effectiveness, efficiency and transparency of public procurement systems and increasing the effectiveness of the use of public funds, as well as funds provided through official development assistance requires the existence of robust procurement systems that meet international best practices (UNCITRAL, 2011). The frameworks used in public procurement systems reforms were adopted from rules governing international trade (Nicholas, 2011). The most widely used international public procurement frameworks which guide governments when establishing or reforming public procurement law and systems are: the United Nations Commission on International Trade Law (UNCITRAL), and the World Trade Organization (WTO) Agreement on Government Procurement (GPA) (Thai, 2001; Arrowsmith et al., 2011 Nicholas, 2011).

The UNCITRAL seeks to facilitate international trade through the harmonisation of national laws on procurement. This is based on the principles of transparency and competition. It is generally less demanding with regards to international competition, and more flexible on the protection of national suppliers (Nicholas, 2011). It supports the harmonisation of international standards and takes into account the provisions of the WTO GPA, the EU Directives (on procurement and remedies), the UN Convention against corruption, the Procurement Guidelines and Consultant Guidelines of the World Bank and equivalent documents or provisions of other international financial institutions (UNCITRAL,2011). It is intended to assist governments in developing a modern procurement policy. The main users of the UNCITRAL, 1994 were developing countries and states whose economies were in transition. However, UNCITRAL, 2011 reflects international best practice and is designed to be appropriate for all states (De La Harpe, 2015). UNCITRAL template is available to national governments seeking to introduce or reform procurement legislation for their domestic economies. It is intended to provide all the essential procedures and principles for conducting various types of procurement proceedings in a national system, with a view to the achievement of value for money for the taxpayer and avoiding abuse or corruption (Nicholas, 2011).

Disparities among procuring entities in application of procurement regulations and uncertainty about national legislation governing procurement may contribute to limiting a state's ability to access competitive price and quality benefits available through procurement procedures (UNCITRAL, 2011; De La Harpe, 2015). The ability and willingness of suppliers and contractors to sell to governments is hampered by the inadequate or divergent state of national procurement legislation in many countries(UNCITRAL,2011). Although the UNCITRAL was negotiated through an intergovernmental body, it is not an international agreement (Nichollas,2011; De La Harpe,2015). Therefore, governments or states that enact the UNCITRAL in formulating their public procurement systems do not have to notify the UN when the text of the UNCITRAL is used. This has the implication that, no monitoring and/or auditing will be conducted to force states to assess the level of compliance of their public procurement system to that of the UNCITRAL (De La Harpe,2015).

The World Trade Organization (WTO) through its Agreement on Government Procurement is the only global international organization dealing with the rules of trade between nations (WTO,2019). As regards procurement, a number of WTO member states have negotiated the Agreement on Government Procurement (GPA) to ensure open, fair and transparent conditions of competition in the government procurement markets (Dza, Fisher & Gapp, 2013). The GPA is a plurilateral agreement between 28 members whose purpose is to open up public procurement to international competition, through making laws and regulations, as well as defining procedures and practices relating to government procurement (Bothale, 2017). This promotes more transparency by ensuring that governments do not protect domestic products or suppliers, or discriminate against foreign products or suppliers (Nicholas, 2011; Dza,Fisher &Gapp,2013). Eswatini is not a member of the World Trade Organization Agreement on Government Procurement therefore, it is not bound by the provisions of this agreement (Dza,Fisher &Gapp,2013).

The WTO Agreement contains a number of detailed procedural obligations which procuring entities have to fulfil in order to ensure the effective application the principles of transparency and non-discrimination. (Nicholas, 2011). The agreement allows for the use of open, selective and limited tendering procedures. Open tendering procedures allow for all interested parties to submit tenders. Under the selective tendering procedure, only those suppliers invited to do so by the entity may submit a tender. The limited tendering procedures allow procuring entities to contact the potential suppliers individually (Arrowsmith et al.,2011; WTO,2019). The Agreement allows procuring entities to hold negotiations with tenderers, if provisions for such are indicated in the initial tender notice or if it appears that no one tender is the most advantageous following tender evaluations. It also prescribes certain minimum deadlines that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering (WTO, 2019).

The Agreement provides mandatory requirements for the establishment of a domestic bid challenge system which gives suppliers who believe that procurement has been handled inconsistently with the requirements of the GPA, a right of recourse to an independent domestic tribunal. The GPA also includes provisions on technical assistance, including the establishment of information centres that provide information on procurement practices and procedures in developed countries (Nicholas, 2011).

Objectives Of Public Procurement.

Besides the fiduciary obligation to deliver goods and services to the constituents of the particular government, public procurement addresses a wide range of objectives. (Ambe and Badenhorst Weiss (2012), state that public procurement has been used by governments as a socio-economic tool to stimulate economic activity (preferring domestic or local firms, assisting minority and woman-owned business concerns); protecting national industries from foreign competition; improving the competitiveness of certain industrial sectors; and remedying inequalities. The procurement policy requirements normally include economic goals (preferring domestic or local firms), environment protection or green procurement (promoting the use of recycled goods), social goals (assisting minority and woman-owned business concerns), and international trade agreements (Arrowsmith et al.,2011). Thai (2001), posits that it is very difficult for policy makers and public procurement practitioners to make an optimal decision, as there are always trade-offs among these goals. The objectives of public procurement systems aim to ensure efficient and corruption-free management of public procurement by encouraging transparency, accountability, value for money, efficiency, economy, equality and fairness (Arrowsmith et al.,2011;Georgieva,2017).

Georgieva (2017:7), states that, transparency is generally viewed as the concept of ensuring “*openness and publicity at the various stages in a process, to enable participants and supervisory authorities to observe its progress and ascertain that the contract has been awarded and be satisfied that the process was conducted legitimately and fairly*”.

Accountability means ensuring that the rules and objectives of the public procurement system can be monitored and enforced. It also provides for interested parties to ascertain if the government is meeting its objectives (Nicholas, 2011). According to (Arrowsmith et al.,(2011) and OECD (2018), the legislative framework for public procurement should promote accountability across the entire procurement process.

Value for money entails acquiring goods, works and services that are needed, in order to carry out government activities, on the best possible terms. It is also referred to as efficiency or economic efficiency (Arrowsmith et al.,2011). Value for money is the achievement of a desired procurement outcome at the best possible price, not necessarily the lowest price. Value for money involves ensuring the goods, works or services acquired are suited for the requirements of the task in question (Bothale,2017).

Efficiency involves procurement processes being conducted in a timely manner without wasting public entity resources, and without unreasonable costs to suppliers (Arrowsmith et al., 2011). It also entails practicing care and due diligence when utilising public funds so that prices paid for goods, services and works represent value for money (Tajarlou & Darabad, 2017).

Arrowsmith et al. (2011), state that, competition is a key means to achieving various objectives of the procurement system. Competition amongst suppliers in the procurement system entails awarding contracts on merit after a fair tender adjudication process. Competition is a vital means to achieving value for money and transparency in public spending (Arrowsmith et al., 2011; Tajarlou & Darabad, 2017). It is a core feature of the procurement process, particularly with regard to the methods of procurement, and it ensures that suppliers will offer the best product at the best price.

Equality and fairness encourage the best firms to participate in public procurement, again improving value for money (Arrowsmith et al., 2011). According to Georgieva (2017), the principle of equality ensures that all candidates in public procurement processes are subjected to exactly the same conditions for submission and evaluation of tenders and must be treated in exactly the same way, including ensuring that they receive equal and satisfactory information about the object of a contract.

Challenges in public procurement in African context

The World Bank (2004; Mamiro (2010), explained that, in most of the developing countries in Africa, public procurement has not yet been considered as a strategic function of government. Instead of becoming a strategic mechanism that supports government efforts to achieve its economic and social goals, procurement is seen as an obstacle because it generates corruption, bribery and confines competition between private bidders and the public sector [30]. According to Ndercaj and Ringwald (2014), previous studies contend that the failure by Sub-Saharan African governments to achieve value for money and economic growth is due to incomprehensive regulatory rules and inefficient processes of contract administration. This result in failure to achieve value for money and economic growth, and further exacerbated by widespread corruption and fraud (Anvuur & Kumaraswamy,2006; Ware et al., 2007; OECD,2018). Similarly, (Burguet (2004); and Hanks, Davies and Perera (2008), added that, uncompetitive practices and restriction of formal competition, are the other challenges faced by African countries in their procurement systems.

Hanks, Davies and Perera (2008), argues that, the limited capability of small suppliers make it difficult for them to participate and successfully bid for public sector contracts which are based on formal policies because the latter do not accommodate uncompetitive practices. Similarly, (Uromi (2014), found that in some countries in the African region, potential domestic bidders such as contractors, suppliers and consultants, have not built enough capacity to participate in high-value tenders, and they often do not have the capacity to raise credit from local banks, due to high interest rates. This challenge becomes greater for small suppliers when they operate in monopoly markets that limit purchasing choices (Hanks, Davies & Perera, 2008).

Ndercaj and Ringwald (2014), state that, in Sub-Saharan Africa the legislative framework and control systems are ignored by powerful suppliers. Mamiro (2010), on the other hand, argues that public procurement systems are highly regulated and their implementation rarely assures attainment of value for money for governments because they are not efficient and effective. Dzuke and Naude (2015), and Williams-Edge(2015)found that in many developing countries, including those in Africa, non-compliance with regulations was a common challenge which threatened the integrity of public procurement systems.

Takuta and Saruchera (2013), conducted a study on the challenges facing procurement professionals in African economies. The authors used a sequential literary analysis which was complemented by cross-country qualitative data gathered from one hundred diverse procurement practitioners from Botswana, Namibia and Zimbabwe. The findings of the study hinted that limited recognition, increasing unethical behaviour, poor supplier service delivery, poor regulatory environment, varying supplier standards and poor corporate governance were the main challenges faced by the procurement profession in these countries. The authors concluded that, the study's findings implied that there was limited understanding of the role of procurement in government and non-government institutions in developing economies (Takuta & Saruchera,2015). Among the suggested solutions to unlock the potential value in the procurement function were: building sound supplier relationships, enhancing professionalism and corporate ethical procurement, and implementing global sourcing (Takuta & Saruchera, 2015).

In a related study, Mamiro(2010), assessed the challenges facing the effective operations of the Nigeria Public Procurement Act of 2007. The authors were of the view that the public procurement Acts of most nations, especially developing nations, have not been able to achieve their desired purpose. Implementation challenges faced by the stakeholders were linked to the economic, social and political environment where the Act was operating (Familoye,Ogunseni & Awodele,2015). The findings of the study indicated that the most significant challenges were: the size and complexity of procurement, political interference by the executive and shortage of public procurement practitioners (Familoye, Ogunseni & Awodele, 2015). The paper then recommended incorporating procurement studies in tertiary institutions and treating public procurement as a strategic level activity in corporate structures to give the procurement profession better recognition by stakeholders.

In a study conducted in Zimbabwe, Musanzikwa (2013), revealed that a number of challenging factors such as corruption, delays in implementation of projects, incompetence of those tasked with the procurement functions, political interference and indigenization policy hindered the effective implementation of public procurement in the country. He then argued that, in order to deal with these challenges, public institutions should adopt strategies such as professional procurement practices, training, transparency and decentralization of their procurement activities.

Ameyaw, Mesnah and Osei-Tutu (2012), assessed implementation challenges to the 2003 public procurement law in Ghana. The challenges which they identified included: poor capacity of procurement professionals, low interaction between procurement entities and the Public Procurement Authority of Ghana, deliberate controlling of competition, non-compliance with provisions of the law, splitting of contracts into smaller lots, lack of funds and non-cooperation of suppliers. The study recommended that, essential steps must be taken to sanitize the procurement process through training of procurement officers, suppliers, contractors and consultants to enhance their understanding of procurement processes (Ameyaw, Mesnah & Osei-Tutu, 2012). Punitive measures were also recommended so as to prevent officers from deliberately abusing the procurement process (Ameyaw, Mesnah & Osei-Tutu, 2012).

Ambe and Badenhorst-Weiss (2012), explored and identified several challenges in the sphere of procurement within the South African public sector. The authors utilized a conceptual analytical approach to examine relevant literature and public procurement practices. They came to the conclusion that, public procurement in South Africa was plagued with challenges which included: lack of knowledge, skills and capacity constraints; non-compliance to the national treasury policies and regulations; inadequate planning; lack of proper accountability; fraud and corruption; inadequate response to an inconsistency in risk management; inadequate measures for monitoring and evaluation of supply chain management; unethical behaviour; and too much decentralization (Ambe & Badenhorst-Weiss, 2012). The study recommended consideration of important factors such as employment of qualified procurement practitioners, training and internship programmes, development of an effective monitoring and evaluation tool, and the creation of incentive programs to motivate good performance.

II. Materials and Methods

The case study design allows researchers to explore single or multiple cases through comprehensive, in-depth data collection involving multiple sources of information such as observations, interviews, audiovisual material, and documents and reports, and produces a description of the case as well as case-based themes (Astalm, 2013; Creswell, 2014 & Myers, 2014). In line with Creswell (2014), the multiple-case design was used with the logic of multiplicity of perspectives from lead procurement entities in their areas of specialisation.

Research data was collected from 8 civil servants who were strategically located in procurement departments of leading procurement entities. Creswell (2014), states that, purposefully selecting participants or sites will best help the researcher understand the problem and the research question because participants are selected on the basis of the researcher's judgment about which participants will be the most useful. The chosen 8 officials could provide valuable strategic and operational insight that could create new knowledge.

As suggested by Neuman (2014), the targeted organizations were initially contacted through formal letters seeking permission to conduct the research and access to the public officers responsible for managing and carrying out procurement within the organizations. The letters also outlined the purpose and nature of the study. In parenthesis with the research objectives, the interview guide included five topical areas which emanated from the literature review, namely: the legislative and regulatory framework; the organizational structure of public procurement; the procurement workforce, and the procurement operations.

III. Results

Results from the eight (8) in-depth interviews which lasted between 1 and 2 hours each, were presented based on Creswell (2014)'s data analysis spiral. In the first stage data was organised using Nvivo software. Second, researchers peruse through data to get a sense of what the data contains. Thirdly, the identification of general themes and categories is recommended. Finally, data are integrated and summarised to show any relationships among categories. These stages were followed to make sure that no segments of the data were left out of the analysis. This process continued until no new codes emerged from the data (saturation).

Apart from the biographical data section, the final template generated 4 first-level themes, which were outlined and used to structure the results of the analytical process. These themes are incorporated with quotes from participants, which were selected because they are pertinent illustrations of particular points that were made by the interviewees.

Conceivable misconceptions, misinterpretations or predispositions in judgement with regards to various questions in the interviews were checked by pre-testing the instrument on two procurement professionals. The validity and reliability of data were also managed through triangulating data sources. A thorough review of

existing local and international regulations, observations made at interview sites and the interviews themselves also helped. The member checking process, whereby respondents are asked to confirm accuracy and adequacy of recorded results, was also conducted.

The following ethical considerations were adhered to in order to avoid misunderstandings with the respondents and authorities concerned, and to safeguard the interests of the participants. Permission to collect data was first sought from government authorities before the interviews were conducted. This was done in order to make the government officials aware of the researchers' engagement with their subordinates. It was also important to make the participants aware that their superiors had endorsed their involvement in the research. Respondents were educated on the purpose of the study and they also signed the consent forms. To protect the privacy of the participants and ensure confidentiality, pseudonyms were used to conceal their identities. The participants were only identified as participants 1, 2, 3, 4, 5, 6, 7 and 8.

However, a limited number of public sector procurement stakeholders participated in the study. Only public officials were considered as participants for the study. Thus, the perspectives of stakeholders such as vendors and tax payers were not collected owing to resource constraints. The views of vendors and tax payers could have provided more valuable insight into public procurement operations.

Themes

Major themes and sub-themes identified for the study are summarised in Table 1.

Table 1: Themes and sub-themes from interviews

Theme	Sub-theme
Legislative and Regulatory framework	Lack of updated regulations to conform with the Act
	Lack of up-to-date procurement manuals
	Inadequate response to irregularities in the public procurement system
Public Procurement organization	Centralized structure prolongs procurement process
	Lack of procurement department within procuring entities' structure
	Poor institutional coordination among government units involved in public procurement
Public Procurement Operations	Low level of qualified government procurement practitioners
	Lack of consistent government-wide procurement training
	insufficient workforce for procurement workload
Public Procurement Processes	Long procurement process
	Manual procurement system
	Lack of procurement planning
	Interference in public procurement process
	Tender collusion
	Price Inflation

Table 2: Biographical summary of participants

Participant	Gender	Age	Type of institution	Position held
1	Male	36 to 45	Ministry	Head of Department
2	Male	36 to 45	Ministry	Operational
3	Female	36 to 45	Department	Head of Department
4	Male	46 to 55	Department	Head of Department
5	Male	46 to 55	Department	Head of Department
6	Female	36 to 45	Ministry	Head of Department
7	Male	36 to 45	Department	Operational
8	Female	36 to 45	Ministry	Operational

Table 2 shows that public procurement is male dominated with only 25% of staff being female. 5 of the participants occupy managerial positions but the ages of all participants range between 36 and 55 years.

Table 3: Procurement background of participants

Years in current position		Years in Procurement		Highest level of qualification		Possess procurement qualification	
Years	Participants	Years	Participants	Qualification	Participants		Participants
1-3	2	1-6	5	Diploma	2	Yes	4
4-6	5	7-12	2	Bachelors	3	No	4
Above 6 above	1	Above 12	1	Masters	3		
Total	8	Total	8	Total	8	Total	8

Table 3 shows that all participants were new to their positions. Only one had stayed in current position for 12 years. Half (4) did not have procurement qualifications although 6 of the participants had degree qualifications.

Legislative and Regulatory framework

To address the issue of policy provisions which were not effectively implemented and ascertain awareness and comprehension of procurement policies and their implementation, the researchers asked participants specific questions about public procurement legislation and regulations.

All 8 participants stated that they were aware of the Public Procurement Act (2011) and the Public Procurement Regulations (2008). All participants were able to articulate the objectives of the Public Procurement Act and Public Procurement Regulations (2008) but they bemoaned the lack of updated procurement regulations. Participants 2, 3, 4, 5 and 7 were of the view that the inconsistencies between the 2008 Regulations and the Act, and the delay in approving the new procurement regulations, compromised accountability, enforcement and compliance of the Act.

Participant 3 was of the view that, using 2008 regulations to operationalise a 2011 Procurement Act was the biggest discrepancy because the regulations are outdated and not in line with the Act.

So some of the policies, you know, first of all there were the 2008 Regulations. And then 2011 there was the Procurement Act, However, it was discovered that there were discrepancies. The regulation is not in line with the Act. On the 7th [March 2019] we are having a meeting with the ESPPRA, they are trying to align and harmonize the document. (Participant 3)

Comprehension of the procurement policy was not the issue, but its effective application was (Participants 2, 6 and 8). However, participant 1 and 5, added that, not all the procurement practitioners in their entities had a proper understanding of the regulations and they seek advice from the Technical Secretariat office when they are uncertain about the application of some clauses. Participants 3, 4 and 7 stated that there are variations in the application of the regulations by some lead procuring entities.

All the participants (100%) said that there were no functioning public procurement manuals to supplement the Procurement Act. They also indicated that they used standard tender documents issued by the Ministry of Finance when executing public procurement. However, participants 4 and 7 stated that the current standard bidding documents being applied are not from the Procurement Act, and as such, procuring entities are not obliged to use them. The participants remarked that they apply the 2008 Procurement Regulations because there are no procurement manuals or instructions that have been issued under the current Procurement Act.

However, it emerged that ESPPRA had developed Public Procurement Procedures in 2016 as a guide to the implementation of the Act, but these have not been distributed due to pending approval of the new public procurement regulations. Even though all the participants from the lead procuring entities stated that they have no difficulties in interpreting and applying the procuring policies, participants 1, 3, 4, 6 and 7 were of the view that the lack of up-to-date public procurement manuals presented a challenge when it comes to complying with the Act because the 2008 Public Procurement Regulations are not entirely in line with the Act.

Participant 1 said:

Because now we refer to the regulations, but they are not from the procurement Act, they are from another Act...the old Finance Act. So we get help from the procurement section, there at the Ministry of Finance whenever we have difficulties interpreting the law.

Inadequate responses to irregularities in the public procurement system emerged as another issue. Regarding the legislative and regulatory framework for public procurement, participants 4, 5, 6 and 7 cited inadequate responses by government authorities to address irregularities affecting the public procurement system as a challenge. Participant 5 stated that, even though procurement personnel informed high ranking officials in government about the potential for conflicted interests associated with inadequate segregation of duties as a result of stores departments being responsible for inventory management and procurement, no action has been taken to address the issue:

But basically, we requested them to make it professional; that there should be a department that focusses strictly on procurement, and another to focus on stores. And what happened? It's been more than 10 years now, and there is still no difference... (Participant 5).

Participants 4 and 7 perceived the prolonged delay in approving the new procurement regulations as a sign of low will to improve the public procurement system. These participants accredited this to the involvement of politicians and officials in public procurement.

Participant 4 said:

Honestly speaking, there never is time, unless you make time. There never is time to do this and that, unless you prioritize it. So, unless certain people prioritize certain things, we are going to be where we are going to be. And I strongly believe, honestly, to some extent, they are delaying on purpose, because to be perfectly honest...do your research, how many politicians are supplying parastatals? Do it. Come up with it. That should tell you something. There is an extreme conflict of interest (sic).

In brief this indicated that the prolonged delay in approving the new public procurement regulations by parliament was an indication of lack of commitment to improve the public procurement system by politicians. The challenges associated with the legal and regulatory framework are summarized in Table 3 below.

Table 3: Challenges associated with the legal and regulatory framework

Common challenges cited	Participants
Lack of updated regulations to conform with the Act	2, 3, 4, 5 and 7
Lack of up-to-date procurement manuals	1, 3, 4, 6 and 7
Inadequate response to irregularities in the public procurement system	4, 5, 6 and 7

Public Procurement Organization

The objective of this section was to find out from the participants, the organizational structure of procurement in their respective entities. The aim was to establish the challenges faced by participants, regarding the manner in which public procurement is structured. Table 7 presents the responses by the participants:

Table 4: Organizational structure of procurement in lead procuring entities

Lead procuring entity	Organizational structure	Procurement department
1.	Centralized	No
2.	Centralized	No
3.	Centralized	Yes
4.	Centralized	No
5.	Centralized	Yes
6.	Decentralized	No

Majority (83%) of the procurement entities had centralised structures, yet their operations were spread out to the four geographical regions of Eswatini. In addition, it emerged that requests for orders above E20 000 for goods and services and E50 000 for works, required Government Tender Board approval. The participants informed the researchers that they have the discretion of evaluating submitted tenders, but the final decision rests with the Government Tender Board. Participants 1, 2, 3, 4 and 6 concurred that the requirement for centralized authorization by the Government Tender Board for procurement above the E20 000 and E50 000 value threshold prolonged the procurement process. On the other hand, participants 1, 3 and 4 were of the view that the centralized structure is necessary as a means to maintain some degree of control and accountability of public procurement. Participant 1 felt this had particular challenges because there were too much red tape hence the bureaucratic structures caused delays.

All the participants from the lead procuring entities, save for the participants from two entities, indicated that their entities did not have a procurement department or procurement officers within their organizational structure. The employees at one of the entities conduct both, stores and procurement functions. Participants 3, 4, 5, 6 and 7 expressed concerns that the absence of a procurement function within the lead procuring entities results in procurement decisions being made by individuals not suitably qualified in procurement. Participant 5, who shared the same view with participants 4, 6 and 7, stated that this situation compromised accountability and the quality of procurement decisions, and results in unethical procurement as there are no structures to ensure separation of duties to guard against situations of conflicted interests.

Poor institutional coordination among government units involved in public procurement was rife in the system. Participants 1, 2, 6 and 8 cited insufficient coordination between the government units involved in the procurement process as another challenge. The participants explained that tender documents have to be accompanied by certain additional approval documentation that has to be provided by other government departments (from the Ministry of Finance and the Ministry of Economic Planning and Development) that are involved in the public procurement process. The challenge indicated by the participants is that, getting the required documents from the relevant government units can take a long time as they have no control over the operations of those government units. Participant 1 was of the view that the coordination needs to be improved; this response indicated that there are delays caused by the inadequate coordination of government units involved.

Right as we speak I have documents that have to be submitted today as it is the last day of submissions to the Tender board, but I could not submit them because I am waiting for stuff from another Ministry. They could have lost it or misplaced it. I don't know, but I am not getting what is required (Participant 1).

This is an indication that the coordination of government units involved in the public procurement process is weak and cannot facilitate an efficient procurement process.

Organisational structure challenges cited by the participants are summarized in Table 5.

Table 5: Challenges associated with organizational structure

Challenges with organizational structure	Participants
Centralized structure prolongs procurement process	1, 2, 3, 4, 6
Lack of procurement department within procuring entities' structure	3, 4, 5, 6 and 7
Poor institutional coordination among government units involved in public procurement	1, 2, 6 and 8

Public Procurement Operations

Public procurement operations were scrutinized to: (1) establish whether procuring entities had sufficient manpower and capacity to carry out public procurement; and (2) find out how the procurement process is undertaken, and what types of challenges are associated with these areas. The participants were asked about the level of qualified procurement practitioners within their entities and the procurement training opportunities availed to procurement staff. They were also asked whether procurement qualifications were a requirement for recruitment and whether they have sufficient numbers to handle the procurement workload. Table 6 indicates the results of this section.

Table 6: Profile of procurement practitioners in lead procuring entities

Lead Procuring entity	Level of qualified procurement practitioners	Procurement qualification requirement for recruitment	Sufficient manpower for procurement
1.	None	No	Yes
2.	None	No	Yes
3.	All	Yes	No
4.	None	No	No
5.	Some	Yes	No
6.	Some	Yes	No

There were highly qualified staff, all of them with diplomas and degrees, but not all the qualifications were in procurement. Participants indicated that there were no suitably qualified public procurement practitioners in their entities except at entity 3 and partially at entities 5 and 6. Participants 3, 4, 5, 6, and 7 were of the view that the low number of qualified procurement practitioners is a concern because it led to a lack of understanding of public procurement, procurement regulations and procedures.

Participant 7 said:

Every Ministry needs a procurement officer that would do their due diligence. If given the small amount that they are given, especially with the financial constraints that the country is facing. So you want somebody who would just look at [procurement], who would also have the priorities in procuring, and know where to get these things and get the value for money. So if it's somebody from out there who does not even know the value for money aspect they would just buy anyhow, willy-nilly. They would procure the 'traditional' way.

Participants 1, 2 and 8 however, were of the view that the lack of procurement qualifications did not hinder their ability to understand and interpret the Public Procurement Act (2011) and Regulations (2008). All, save for participant 2, indicated that their entities did not have a human resource policy that stipulates procurement qualifications as a requirement for employees to be recruited into positions involved in public procurement.

The participants were also asked whether procurement training and development opportunities were made available to procurement practitioners. All participants indicated that there is a lack of consistent government-wide training and development programs for public procurement practitioners. The participants indicated that the ESPPRA has had a few workshops that they are aware of, but they claimed that the workshops were not consistent and did not extensively cover all public procurement practitioners in government. Participant 2 further indicated that the entity the participant came from did not have a training budget dedicated specifically to public procurement training. Participants 3, 4, 5 and 6 opined that, regular procurement training is essential to closing the skills gap among procurement practitioners, as most are not qualified in procurement.

Out of all the participants, only participants 1 and 2 stated that they were adequately staffed to handle the procurement workload in their Ministries. Participants 3, 5, 6 and 8 all indicated that their entities did not have sufficient staff members for their procurement workload.

Participants 3, 4, 5, 6 and 7 attributed the low number of qualified practitioners, the lack of consistent procurement training and the lack of a procurement recruitment policy in most lead procurement entities to the

fact that there is no professional procurement cadre or function within the government structure. The Procurement operations challenges raised by the participants are summarized in Table 7.

Table 7: Summary of challenges associated with procurement operations

Common challenges cited	Participants
Low level of qualified government procurement practitioners	3, 4, 5, 6, 7 and 8
Lack of consistent government-wide procurement training	1, 2, 3, 4, 5, 6, 7 and 8
Insufficient workforce for procurement workload	3, 4, 5, 6, 7 and 8

Public Procurement Processes

Questions asked about procurement processes sought to ascertain the participants' knowledge of public procurement processes discover the level of technological integration into the procurement process, and to ascertain the level of procurement planning undertaken by the entities. The aim was to find out from the participants, what challenges are associated with the procurement process.

All participants were able to describe the stipulated procedures and processes to be adhered to when carrying out the various procurement methods. The descriptions by participants 1, 2 and 6 once again highlighted the bureaucratic processes which cause delays in the procurement process. Participant 2 said:

It could be that we are waiting for authority to commit from Ministry of Finance, we are stuck waiting, sometimes as long as a month or two before you can go to the Government Tender Board. There is a budget, but Ministry of Finance needs to confirm that there is cash, so we maybe waiting for a month or two months. So having a procurement plan is useless in this system that we are in at the moment. Even the processes of approval that side, that is where the problem is, you cannot control what is happening in other ministries. That is why you find that sometimes a project is awarded early in the year but authority to commit comes two months before the end of the financial year.

All participants concurred that all the operations of the public procurement system were carried out manually and they involved documents that had to be sent back and forth between the procuring entities, the Technical Secretariat and the Government Tender Board. Participant 5 remarked that:

...the extent of technological integration in the public procurement process is the use of emails for communicating with successful tenderers and the Government Tender Board (occasionally), and posting notices of tender opportunities and lists of awarded tenderers on the government website only. The 'e' stuff has not yet arrived in a sense that I can even access maybe a tender board portal. This can cause limitations in terms of tracking the progress of your procurement and so on.

All participants were of the view that the manual system prolonged the procurement process and caused delays. They also indicated that it was prone to human error and weak controls, used up a lot of resources such as paper and printer toner (ink), resulted in lost or misplaced documents which sometimes led to starting over the process again, and limited the ability to track and monitor procurement progress and processes. Speaking of challenges related to the manual procurement system. Participant 2 said:

It is not a computerized system. It is a manual based system involving papers, stamps, sending ten copies there and there. It is tedious. And it can cause delays because maybe there are no papers to print, or the machine is dead and all those things. And errors can also be present; you go back and forth, starting again, papers getting lost. So this can also cause a waste in papers and resources.

The participants also bemoaned the lack of planning owing to insufficient provision of procurement training and insufficient harmonization of government systems. Participants 2, 3, 4, 6, and 7 indicated that the lack of procurement planning can result in rushed procurement towards the end of the government financial year, which may not be approved due to time constraints. It also emerged that the lack of procurement planning negatively affected the ability of the ESPPRA to monitor public procurement because the procurement plans could be used as tools to audit the procuring entities procurement activities.

Interference in public procurement process was another issue that was raised during the interviews. Participants 1 and 2 agreed that they were aware of its occurrence and that it depended on the project. Participants 4 and 7 indicated that some controlling officers sat on the tender evaluation committees which are meant to adjudicate tenders. They felt this was a conflict of interest because the controlling officers are the ones who were meant to approve the decisions of the entity tender committees before sending them to the Government Tender Board for further review and approval. Commenting on interference in the procurement process, Participant 5 narrated how a high ranking public official once interfered in the procurement process:

...another one came to me once after we submitted the tenders. He was the chairperson and said that, "There are other companies that you did not include here in the tender, and they failed?" And I said yes they failed. And he said "No. go back and include those companies and come back once they have been included".

In addition, participant 4 also mentioned how, at times, tenders at one of the lead procuring entities are awarded without being advertised, and that there had been instances where they were told who to award tenders to.

It emerged that collusion among suppliers was also an issue. While participants 3, 6 and 8 said they would not be in the position to substantiate if tenderers collude or not, participants 1, 2, 4, 5 and 7 indicated that they were aware of the occurrence of collusive tendering. Participant 1 said:

Yes, tenderers even do that. What tenderers do is that, I come to you and I say Chief, I really need this job I am going under. If you let me have the job I'll give you E20, 000. Ok fine, how do we do it? I'll tell you what my price is so that you put your price in higher. The tenderers do it.

Last but not the least, the issue of inflated prices was also raised. Participants 2, 4, 5 and 7 stated that, inflating of prices by suppliers was another challenge affecting the public procurement system. This behaviour was accredited to government's delays in paying its suppliers. The participants indicated that government has a financial system which is supposed to issue a purchase order only if funds are available for that procuring entity. They stated that late payments to government suppliers was an indication that the system was not working as intended or that individuals were able to by-pass the system. Participant 5 was of the view that:

Late payments to government suppliers discourage competitive vendors from tendering with government, which results in mostly uncompetitive vendors responding to opportunities to tender for government yet these companies inflate their prices. Some of these suppliers corrupt government officials in order to expedite their payment (it is called fast payment)

The challenges associated with the procurement process that were highlighted by participants are summarized in Table 8 below.

Table 8: Challenges associated with procurement process

Challenges associated with procurement process	Participants
Long procurement process	1, 2 and 6
Manual procurement system	1, 2, 3, 4, 5, 6, 7 and 8
Lack of procurement planning	2, 3, 4, 6 and 7
Interference in public procurement process	1, 2, 4, 5 and 7
Tender collusion	1, 2, 4, 5 and 7
Price Inflation	2, 4, 5 and 7

IV. Summary, Conclusions and Implications.

The study revealed that efforts have been made to transform the country's public procurement system in line with developments around the globe. However, many challenges were also revealed in light of the purpose of the study. There is disharmony among existing policies, particularly, the Procurement Act of 2011 and the Procurement Regulations of 2008. Despite claims of high levels of awareness and understanding of these policies by respondents, policy implementation was being hampered by factors such as: inconsistencies, outdatedness of issues addressed, incompleteness and lack of commitment or capacity to enforce policy implementation by authorities, among other things. All this in line with what researchers found in other developing countries (Ambe& Badenhorst-Weiss, 2012; Musanzikwa, 2013; Dzuke & Naude,2015; Takuta & Saruchera,2015; Familoye,Ogunseni & Awodele,2015). The implication of all these is the continued financial leakages from the fiscuss and a deteriorating public procurement system which is characterised by lack of transparency, accountability and professionalism. The study recommends commitment on the part of Government authorities to review public procurement laws such as the dual approval of the Act and Regulations. Those involved in the enforcement and implementation of public procurement must be empowered and given enough resources so that they can play their roles more effectively. The study further recommends participation by all relevant stakeholders (Government, procuring entities, vendors, tax payers and regulatory agents) in the development of public procurement policy.

It also emerged that the several challenges affecting public procurement are found at different levels: legislative framework, organisation, operations (HR) and processes. Structural challenges like lack of procurement departments in procurement entities, centralisation, procurement not being viewed as a strategic component of government administration and procuring entities not recruiting qualified procurement professionals were common. International institutions that assist countries in improving their public procurement have already raised the same issues (US Government Accountability Office,2005; World Bank,2015; OECD,2018). Implications of such flaws include, poor procurement decisions, weak and ineffective procurement systems. Restructuring public procurement in line with the public procurement profession's best practices is recommended

When procurement is not recognised as a critical component of government administration poor procurement decisions are made owing to lack of procurement structures that offer professional guidelines. Bureaucracy and lack of coordination as cited by Thai, (2001; Arrowsmith et al., 2011; Dzuke & Naude, 2015; Komakech, 2016), can cause delays and complicate decision making. As a result, public procurement will remain ineffective and financial leakages in government entities will continue unabated. Ministries are encouraged to computerise the costly manual system and send procurement staff for training in order to improve

efficiency. The manual system is responsible for the poor quality of decisions made and makes it difficult to trace human error as a result of personnel handling huge amounts of information. Manual systems also lack speed. Ultimately, procuring entities continue to experience operational inconsistencies, unethical practices and costly procurement transactions.

There is total agreement that the country's public procurement processes are generally inefficient and ineffective because they provide expensive deliverables late, owing to non-aligned budgetary processes and cash flow management. Ineffectiveness as a result of interference by those who have power to influence decisions was heavily cited while collusive behaviour by unscrupulous vendors and price inflation by suppliers who want to punish Government for late payment of their invoices are some of the critical findings. These findings support what [Ameyaw, Mensah & Osei-Tutu,2012; Musanzikwa,2013; Dzuke & Naude,2015; Takuta & Saruchera,2015),said require serious attention to stabilise public procurement processes. In line with these findings the study recommends that people hired to do procurement tasks must be allowed to play their respective roles independently with minimum interference and they should be empowered to make the right decisions and need to be supported from the top. That being the case, the Government is urged to have a relook at the role of public procurement and the need to professionalise the practice capacitating regulatory authorities which are custodians of the Procurement Act and Regulations.

Regulators remain like toothless bulldogs if they are not empowered and well-resourced to play their procurement oversight role. De-bureaucratising and computerising the public procurement systems is overdue and need urgent attention. Devolution of procurement decision making to regional centres where most of the public services are offered has to be done in line with decentralisation which is being implemented for other crucial Government services. Technology can be expensive to acquire but it is a necessity when managing and controlling resource leakages, collusive behaviour, ensuring transparency in the tendering processes of government and managing large amounts of information often associated with public procurement transactions.

Finally, the study recommends that activities of government entities which are central to public procurement in the country be aggressively marketed to create public procurement awareness. International organisations that promote professionalization of public procurement [UNCITRAL (2011; World Bank,2015; WTO,2019), must be heavily consulted because they are always willing to offer support and advice. Further research in public procurement practices is also recommended as a vehicle for generating information, knowledge and capacitating stakeholders who have interest in public procurement.

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