



Report on Government Procurement Systems

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ABBREVIATIONS

| | | |
|------|---|--|
| CIPS | - | Chartered Institute of Purchasing and Supply |
| NCC | - | National Council for Construction |
| NGO | - | Non-Governmental Organization |
| PSU | - | Procurement and Supplies Unit |
| SPSS | - | Statistical Package for the Social Sciences |
| TIZ | - | Transparency International – Zambia |
| ZNTB | - | Zambia National Tender Board |

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1.0 INTRODUCTION

The welfare of citizens in any given country is promoted through both public and private choice mechanisms. The primary instrument for public choice in Zambia is the central government through its array of Ministries, Departments and Agencies. With regard to private choice mechanism it can be stated that anyone who sells his goods for the best price he can get or who shops around for the cheapest source of supply is operating effectively in the market (Stokey and Zeckhauser, 1978).

It is important to recognize, however, that there are potential imperfections in the market that necessitate government intervention in the provision of goods and services. The market imperfections can, among other things, be due to the imperfect flow of information; transaction costs; and the non-existence of markets for some goods and services. In order to provide the necessary goods, service and works to its citizenry and generally to keep the machinery of government running the government, through its various Ministries and Departments procures huge amounts of goods, services and works worth billions of Kwacha from various institutions and business houses.

Transparency International ranks Zambia as the eleventh most corrupt country in the world according to the perceptions index 2003 ratings. The administration of President Mwanawasa immediately after assuming office declared zero tolerance on corruption and subsequently appointed a task force to investigate the plunder of national resources especially during the previous regime presided over by former President Chiluba. This stance constitutes an official recognition and admission of the high levels of corruption in Zambia from the highest office in the land. As a result of the above concerns, the current Administration has appointed a task force on 'revitalizing integrity in public procurement'. This was set up under the auspices of Cabinet Office and has since submitted a report outlining comprehensive measures aimed at streamlining public procurement and making

it less susceptible to corruption¹. Corruption in the procurement process may occur in various forms. It may, for example, occur among the bidders through collusion and bid rigging or between bidders and government officials in the procurement process. Bribery in the procurement process, for example, may be manifested by the inclusion of a supplier or firm on a restricted list or encouraging a client to write specifications in a way that would clearly enhance that client's winning chances of a bid. In other words, corrupt government officials can devise various ways to subvert procurement guidelines with a view to reaping personal gains. The need to ensure that public financial resources are not mismanaged, misappropriated or indeed abused for personal gain cannot, therefore, be overemphasized.

An effective, efficient, transparent and accountable procurement system should be able to deliver the goods, services and works required by government in a timely manner, with the right quantities, specifications and at fair prices. The system should be able to create a level playing field in which contracting opportunities are widely advertised and tenders awarded only to bidders that make the best offers and are able to meet the stated needs criteria and standards. Generally the rules governing procurement systems should be competitive, clear and fair enough reflecting a process that is transparent and whose results can be predicted. Features of a competitive bidding process include public notification of bidding opportunities; availability of bid documents that clearly spell out the needs, bidding process, contract terms and conditions, and criteria for selecting the winner and the award of contract to the bidder that complies with all requirements and who makes the best offer as defined by the published criteria or instructions.

The procurement system should, as much as possible, be internally safe with regard to its vulnerability to corrupt practices. Underlying the system should be

¹ Paper presented at the workshop on the Role of Parliament and Parliamentarians in Combating Corruption by Leslie Mbula (2003) – Secretary to the Cabinet.-

the notion that public officials, in the procurement process, can be held to account for the improper use of public funds and that there are adequate monitoring mechanisms and sanctions to ensure adherence to rules and regulations that are tailored to govern the procurement system. Major costs of corruption in procurement include excessive government spending; diverting of resources; non-supply of goods and services; supply of low quality goods and services; shoddy work, for example, in the construction of roads, schools or health centers; and high cost of goods, services and works (Lungu, 2003). Generally, therefore, a public procurement system needs to be effective and transparent in order for civil society, at large, to have confidence in it.

The Zambia National Tender Board (ZNTB), established under the ZNTB Act CAP 394 of the Laws of Zambia, is responsible for regulating and controlling the procurement of goods and services for government and parastatal bodies. In this respect the Board may:

- formulate rules and regulations governing the procurement of goods and services for the Government and parastatal bodies;
- advertise locally and abroad tenders for the procurement of goods and services for the Government and parastatal bodies;
- regulate the procedures relating to the award of contracts on behalf of the Government and parastatal bodies; and
- formulate the conditions under which any rules and regulations governing the procurement of goods and services for the Government and parastatal bodies may be varied or waived.

The Republican President appoints the Director, Chairman and members of the Board, other than ex-officio members. The following are the members of the Board:

- Minister of Finance and National Planning - Chairman
- Minister of Works and Supply
- Minister of Legal Affairs and Attorney General
- Minister of Home Affairs
- Minister of Education
- Minister of Communication and Transport
- Minister of Agriculture and Co-operatives

The following are the ex-officio members of the Board:

- Secretary to the Cabinet
- Governor – Bank of Zambia
- Secretary to the Treasury
- Solicitor General
- Permanent Secretary – Ministry of Works and Supply
- Commissioner General – Zambia Revenue Authority

In order for the Board to carry out its functions, the Act also provides for the establishment of tender committees to facilitate and authorize procurements at Ministries, Provincial, Parastatal and District levels. Procurements above the required thresholds of respective levels are referred to the Central Tender Committee for authorization. This committee is composed of the following:

- Permanent Secretary (Financial Management & Administration) – Ministry of Finance and National Planning
- Permanent Secretary (Budget & Economic Affairs) – Ministry of Finance and National Planning

- Permanent Secretary – Ministry of Local Government and Housing
- Permanent Secretary – Ministry of Agriculture and Co-operatives
- Permanent Secretary – Ministry of Works and Supply
- Permanent Secretary (Administration) – Cabinet Office
- Permanent Secretary – Ministry of Education
- Director General – Central Board of Health
- Director General – Zambia National Tender Board
- Deputy Governor (Administration) – Bank of Zambia
- Commissioner General – Zambia Revenue Authority

Section 16 of the Act provides for the establishment of an Inspectorate unit whose responsibility is to “monitor, in accordance with the rules or regulations made under the Act, all contracts placed by the Board, any committee established by the Board, any Government Department or any parastatal body”. According to Section 18 of the Act every Controlling Officer and Chief Executive Officer shall be accountable for failing to comply with prescribed procedures in which event the Board may take such appropriate corrective or punitive measures as it may consider necessary.

However, experience has shown that tender procedures in many instances have been grossly interfered with and flouted. Examples include the irregular purchase, by the Ministry of Works and Supply, of motor vehicles for District Administrators in 1999/2000 which resulted in the delivery of the wrong type of motor vehicles; the importation of oil feedstock by ZIMOIL, a parastatal, in which the state lost over \$100 million; and the selection by government in 1997 of a Canadian company, Carlington Sales Limited, to source maize for Zambia that was never delivered in spite of \$7 million being paid for the purpose (Chanda, 2002).

In order to guide the authorization for the procurement of goods, services and works the tender regulations (Part VI) clearly outline the thresholds, the authorizing officers, and the type of tender (informal or formal). The table below shows the current thresholds as revised through the ZNTB circular No. 3 dated November 2002.

Procurement Thresholds for Government Ministries and Councils

| | Authorising Office | Threshold (K) | Type of Tender |
|---|-------------------------------------|--|-----------------------|
| 1 | Senior Officer | Up to 500,000.00 | Informal |
| 2 | Head of Department | 5000,000.00 – 5 million | Informal |
| 3 | Controlling Officer/Chief Executive | 5 million – 15 million | Informal |
| 4 | Tender Committee | | |
| | 4.1 Uncertified PSU/no PSU | 15 million – 100 million | Informal |
| | 4.2 Category 'A' PSU | (i) 15 million – 100 million (ii) 100 million – 500 million | Informal Formal |
| | 4.3 Category 'B' PSU | (i) 15 million – 100 million (ii) 100 million – 1.0 billion | Informal Formal |
| | 4.4 Category 'C' PSU | (i) 15 million – 100 million (ii) 100 million – 3.0 billion | Informal Formal |

Source: Zambia National Tender Board Circular No. 1 of 2003

1.1 OBJECTIVES OF THE STUDY

The main goal of Transparency International-Zambia (TIZ) is to contribute to the reduction of corruption through, among other things, undertaking research on various aspects of corruption, good governance and integrity; and advocating and lobbying for zero tolerance towards corruption. In line with the above goal the main objective of the study was to gather information from various key stakeholders that would help to highlight possible weaknesses in the Government Procurement systems. It has been noted, for example, that: “the public procurement system in the last ten years left a lot to be desired. Generally there was simply no accountability and transparency in public procurements because of the weaknesses in the legislative framework as well as lack of political will to implement the rule of law”, (Chanda, 2002). In this respect the overall aim of TIZ is to develop recommendations, based on the findings of the study, aimed at strengthening the Procurement systems with a view to promote transparency and accountability in the public sector.

2.0 RESEARCH METHODOLOGY

2.1.0 Study Sample

The study employed a systematic random sampling technique to select eight (8) of the targeted eleven (11) ministries. Three (3) Ministries, namely Works and Supply, Health, and Education were conveniently sampled by virtue of the fact that they are among the few ministries that do a lot of procuring of goods, services and works. Every Controlling Officer (Permanent secretary); two heads of user departments; head of Procurement unit; and two Procurement Officers were interviewed in the selected ministries. Consulting firms, contractors, traders and non-governmental organizations (NGOs) were also represented in the study. Other key stakeholders included in the study were officials from the Zambia

National Tender Board, the National Council for Construction and the Office of the Auditor General. A total of 76 respondents were interviewed representing the aforementioned categories. Due to, among other things, financial and time constraints the study was designed to conduct inquiries in Lusaka only. However, given that field administration is heavily dependent on decisions based at Ministry headquarters in Lusaka and that big contractors and consulting firms are also based in the capital city it may be argued that the results of the study are fairly representative of national views on the subject under investigation.

2.1.1 Data Collection Instruments

Appropriate sets of questionnaires, consisting of both close-ended questions with preset response categories and open-ended questions were used to gather data from the various categories of officials from the ministries (other than the controlling officers); contractors; consultants and traders. Guiding research questions, to facilitate discussion, were utilized to solicit for information from the remaining respondents, namely the Office of the Auditor General, Permanent Secretaries, ZNTB officials and non-governmental organizations.

2.1.2 Data Analysis

Data was computed and analyzed using the Statistical Package for the Social Sciences (SPSS) computer software.

3.0 FINDINGS AND DISCUSSION

3.1.0 Procurement Personnel's Qualifications

With regard to academic qualifications the distribution was somewhat even with 30 percent of the 19 procurement officers interviewed having obtained a certificate, 35 percent had a diploma while the remaining 35 percent obtained a university degree. Most (94.7 percent) of these respondents indicated that they had obtained professional qualifications while the remaining 5.3 percent did not have. It is important to note, however, that only 50 percent of those that claimed to have professional qualifications indicated the nature of such qualifications while the rest either did not or were not entirely specific. This group of respondents only indicated that the professional qualifications were in the field of "procurement". The validity of this information is somewhat questionable when it is considered that all (100 percent) of the respondents in this category indicated that they required further training to enhance their capacity to function more effectively.

3.1.1 Familiarity with the Zambia National Tender Board Act

All respondents in the procurement function interviewed, including heads of procurement units and heads of selected user departments indicated that they were familiar with the ZNTB Act and the procurement guidelines. Concerns were raised, however, that there seemed to be a lack of appreciation for professionals on the part of government with regard to remuneration, a situation that was not only de-motivating but also a potential factor in terms of promoting corrupt practices. The respondents also bemoaned the lack of adequate facilities including office equipment (computers, direct telephones, fax machines etc), and transport.

With regard to the ZNTB Act respondents noted that the legislation was 20 years old and has limited scope and unclear enforcement mechanisms. Like any other regulations respondents in the study noted that although the Procurement guidelines provided for a transparent system for procuring goods, services and works they were still vulnerable to abuse and manipulation by corrupt officials. It was observed, among other things, that the ZNTB Act has not changed with time to take into account various policies and other internationally accepted procurement laws and practices. Although the Act provides sanctions for the breach of its provisions the general perception is that these sanctions have not been enforced mainly due to the lack of appropriate instruments in the Act itself. Consequently many cases involving the breach of the Act have had to be referred to the office of the Auditor General. It was noted that the general provisions of the Act are not adequate to penalize individuals or institutions that override Tender procedures. The overriding of tender procedures was, in some cases, deliberate and also due to the lack of knowledge on the part of some officials.

Regulation 22 of the ZNTB Tender Regulations (Part V) states that “where a dispute between a tender committee and a contractor arises and the two parties fail to resolve the dispute amicably, either of the parties may refer the dispute to the Board for a decision”. Many people, however, regard the Board as part of the procurement system and therefore do not expect it to resolve such disputes fairly. In this respect some respondents noted the need to establish an Appeals Tribunal with the participation of various stakeholders including the private sector and civil society to enhance transparency and build stakeholder confidence in the procurement system.

3.1.2 External and internal influences and corrupt practices in Government procurement

The study noted the general feeling that in some instances public servants engaged in the procurement function were subject to unacceptable influence and pressure from their superiors to violate laid down procurement procedures. The abuse of power by some senior officials was attributed to the lack of formal protection from victimization for employees who wish to resist directives bordering on corruption and the general misuse of public resources.

Generally, respondents were of the view that the Procurement procedures were transparent and efficient although it was intimated in some circles that the procedures caused delays in the procurement process and that there was a tendency, in some cases, to shift goal posts when it came to the evaluation of bids.

A sizeable majority of the respondents (52 percent) in the procurement function were satisfied with the system of supplier registration. Reservations from those (37 percent) that were not happy with the way the system was working included the short advertisement periods, and the lack of physical verification of the suppliers' operating premises. The remaining 11 percent were either not sure or simply did not respond to the question. This category of respondents also observed that the system, for some reason, fails to get responses from reputable suppliers. Some respondents were, however, quick to mention that at times some reputable suppliers do not register and just end up complaining that the procurement process is only interested to deal with 'brief case' companies.

The tendency by some officials, other than those in the procurement function, to procure goods and services for ministries was cited as an anomaly that not only created confusion but enhanced inconsistencies and fostered corrupt practices in the procurement system. The general perception is that such officials have a

hidden agenda bordering on selfish motives rather than ensuring that ministries and departments procured goods and services of high quality as and when required. It was also noted that in many instances some procurement requests from user departments were not justified. Such requests were, among other things, based on personal desire to give business to colleagues, and the desire to compete with other departments having similar goods. In this respect respondents observed that Permanent Secretaries should help by ensuring that only Procurement units were involved in the procurement of goods, services and works for the ministries and departments. It was also noted that Permanent Secretaries and other personnel holding key positions who play a part in the procurement process need to be appraised on the procurement procedures, rules and regulations to ensure that they acted within the confines of the law. Such officials should, for example, be made aware of the serious implications associated with forcing certain procurements or procurement decisions in favour of certain suppliers.

External interferences in the operations of procurement units were noted by the majority (63 percent) of the relevant respondents interviewed. It was noted, among other things, that there was “the anyone can buy” mentality where the collection of quotations was not viewed as a preserve of the procurement and supplies unit. Some officers outside the procurement and supplies unit (PSU) are fond of procuring goods or services without involving personnel in the PSU. Sometimes payments were initiated by officers outside the PSU for goods or services without purchase requisitions and purchase orders. Generally, the interference, whether from within or outside the Ministries, amounted to sidelining the respective procurement units that are formally charged with the procurement function in the respective Ministries.

Inconsistent and ineffective inspections by the ZNTB, to ensure adherence to procurement procedures and regulations was cited as one of the major drawbacks to the realization of an efficient, effective and transparent

procurement system. Section 16 of the ZNTB Act provides for the establishment of an inspectorate unit to monitor, in accordance with the rules or regulations made under the Act, all contracts placed by the Board, any committee established by the Board, any Government Department or any parastatal body to ensure that tender procedures are followed. It is important to note, however, that in order to ensure efficiency and effectiveness in government procurement procedures ZNTB is, among other things, strengthening its inspectorate unit (increase the number of inspectors); ensuring availability of logistical support such as transport; training of staff to be seconded to various institutions; and is conducting awareness workshops/seminars.

3.1.3 Government Procurement Procedures

Procurement procedures, in themselves, were generally considered to be transparent except that because of dishonest on the part of some individuals it was possible, like in many other situations, to manipulate them. It was noted that dishonest officials may, for example, get only one quotation instead of the required three and because of laxity in the monitoring process goods or services may be procured on the basis of only one quotation. It was also possible for corrupt and dishonest officials to connive with suppliers in order to get commissions by obtaining two quotations from expensive sources and the third one from the supplier that is willing to offer them a commission. In this case such a supplier would be asked to provide a quotation that will appear cheaper than the first two. Consequently most (78.2 percent) of the respondents in the procurement function were of the view that the procurement system was vulnerable to abuse and manipulation by corrupt officials. These sentiments were supported by (87.5 percent) of the controlling officers interviewed in the selected Ministries. Reasons advanced for this state of affairs include the lack of strict supervision; failure to declare interest when awarding tenders; excessive discretion when obtaining quotations especially for informal tenders; and the temptation to overlook procedures especially on the part of those that view the

procedures as cumbersome. An example that was cited as bordering on breaking procedures was that of the way air tickets were bought. This was said to be open to abuse in that only one air ticket quotation was allowed, hence giving room for inflating the price, a recipe for facilitating illegal commissions. The provision, in the ZNTB Act, for special formal tenders that are not advertised in the *Gazette* or any other publication is another avenue that has potential to enhance corrupt practices in the procurement process. It has been duly noted that in most cases justifying circumstances, for this tendering method, are claimed that do not really exist but simply meant to cover up, and permit corruption (Kupela, 2002).

Measures to help deter indiscipline in procurements units, for example, were regarded as very effective by only 25 percent of the heads of procurement units interviewed, somewhat effective (50 percent), not effective (12.5 percent), and the remaining 12.5 percent did not respond to the relevant question. It was also noted that sometimes 'urgency' was used as an excuse to evade tender procedures, a situation that greatly compromised the quality and sometimes even the quantity of goods and/or services. In this respect 94.7 percent of the respondents, from selected ministries, that were requested to respond to the relevant question agreed that there was need for a general code of conduct for procurement personnel, other than codes of conduct specific to professional institutions.

3.1.4 Funding to Procurement Units/Departments in Government Ministries

Concerns were also raised with regard to the need to ensure adequate funding for the ministries/departments; regular reviews of the Act in general and the procurement thresholds in particular in order to reflect the changed circumstances internally (economic) and externally (procurement practices). The lack of adequate funding makes it difficult for government ministries and

departments to, among other things, advertise tenders, produce tender documents, and procure goods, services and works. The delayed and/or non-payment of suppliers and contractors, by government, is an issue that was a source of serious concern by all the categories of respondents in the study. In order to ensure the continuity of operations ministries and departments, in some instances, have had to make use of suppliers that were willing to provide goods and services on credit. In such situations the quality of goods and services may not only be greatly compromised but there is also a great danger that the suppliers are tempted to unduly inflate their prices.

The shortage of staff with expertise in procurement in most of the ministries including the Provinces was a source of concern to most stakeholders interviewed in the study. It was revealed, for example, that only two Provinces and very few ministries have qualified staff in their procurement units seconded by the ZNTB. Consequently, it is only ministries with seconded ZNTB staff that are fairing well with regard to effectively following procurement guidelines. The quality of work from such ministries, with regard to the preparation of procurement/tender documents, is quite good. This state of affairs is exemplified by reports from the ZNTB inspectors, which indicate that generally institutions with qualified staff in procurement tend to have no difficulties with following the procedures and guidelines compared to institutions that do not have qualified staff. It is gratifying to note, however, that the general plan is to ensure that eventually every ministry has qualified staff seconded to its procurement unit by the ZNTB.

Respondents, mainly from government ministries, noted that the procurement function was very crucial to the operations of any given ministry or department. In order to enhance the integrity of the Procurement process in general and the effective procurement of quality goods, services and works in particular it was strongly felt that Procurement units and the ZNTB should be headed by individuals that hold the CIPS qualification in order to uphold procurement ethics

such as confidentiality during the evaluation process. Most stakeholders were of the view that capacity building for procurement officers should be an ongoing exercise through seminars and workshops aimed at updating such officials on the current and best practices in the field of procurement.

4.0 PERCEPTION OF PROCUREMENT AND TENDER PROCEDURES BY NON-GOVERNMENT INSTITUTIONS

As expected all the Contractors, Traders and Consultants interviewed indicated that they were conversant with the tendering procedures of government. However, the common concerns raised by these respondents hinged on the lack of transparency, uneven playing field, and the delayed, piecemeal or even non-payment, on the part of government, for works done or goods and services provided. It was noted that in certain instances the tendering process is deliberately biased in favour of foreign contractors and consultants. The information that consulting firms are required to indicate in their expression of interest to undertake certain projects clearly showed that only foreign consulting firms could win such tenders. A project under the Ministry of Finance, where interested firms were expected to show that they had undertaken two projects in the last five years worth a total of 26 million US dollars was cited as a case in point. It was also observed that most Zambian consulting firms were struggling in terms of financial resources and such requirements, therefore, clearly meant that Zambian firms were automatically eliminated in the tendering process.

A concern was raised that sometimes tenders were advertised in only the foreign press effectively eliminating Zambian firms in the process. There are times when one would hear of a tender from a colleague from outside the country meaning that such a tender was never advertised in the Zambian press. This was noted as a very unfortunate state of affairs when it is considered that in many countries, for example, in neighbouring South Africa, local firms are given priority adding

that it was very difficult for a foreign company to win a tender in South Africa. It was noted that local institutions, other than government Ministries or Departments, also sometimes advertised their tenders only in the foreign press. It was also observed that foreign firms usually brought their own skilled staff, vehicles and equipment (duty-free), seldom registered with the local contractors' association, operated without withholding tax, and at the end of the day left the country without any social responsibility at all.

The respondents advised that it was necessary to take into consideration the fact that outside consultants may not usually know the existing local infrastructure hence their proposed solutions and methods of work may not be realistic to the Zambian situation. The provision of certain goods and services or the carrying out of various works may require that the trader, contractor or consultant is fully aware of the state of existing local infrastructure such as the road, rail and/or telecommunications network. Local firms are better placed to know this kind of information than their foreign counterparts. Respondents felt there was need for the Procurement system to deliberately favour local firms in order to facilitate the development of local industry with a view to build indigenous capacity.

The use of different tendering criteria (to suit a preferred contractor); awarding of contracts to bidders that did not meet the pre-qualification criteria; the use of ill-qualified evaluators; and the acceptance of higher prices, by government, for the provision of the same goods and services were perceived as contributing factors to the lack of transparency and general ineffectiveness of the procurement systems of government. The respondents also noted that government owed contractors, traders, etc., huge sums of money running into hundreds of billions of Kwacha in some instances. It was noted that foreign suppliers and contractors were, in most cases, paid in full in United States dollars before delivery while their Zambian counterparts were paid in Zambian Kwacha several months or even years after the delivery of goods, services and/or works. This state of affairs, it was observed, could influence over-pricing of goods and services by

some local suppliers, a situation that not only promotes dishonesty in the tendering process but most importantly is undesirable for government. Generally, it was felt that there was need for professionalism and the practice of ethical standards on the part of institutions and individuals tasked with the responsibility of conducting tenders on behalf of government.

It was also bemoaned that some controlling officers and user departments, in most government ministries, were not usually conversant with the specifications of their requirements. They may, for instance, request for the supply of computers but do not clearly indicate the specifications of the computers that will meet their intended use. This not only makes the work of the supplier difficult but it may also result in the supply of inappropriate equipment. The failure to follow business standards was also noted as a hindrance to the realization of an effective and efficient procurement system. When a tender is being awarded there is need, for example, to state clearly that the job should be done according to such and such standards. At the end of the project a certificate of completion should be issued taking into account that the agreed standards were followed. Unfortunately respondents observed that a lot needed to be done by government in this area. The lack of quality assurance was another issue of concern noting that controlling officers needed to appoint qualified quality assurance personnel whose task would be to ensure that a given project was done according to the agreed specifications. It was observed that currently there was a tendency to worry about the price rather than the quality of goods or services and that after sales service and care was not highly considered.

The National Council for Construction (NCC), an institution whose general task is to promote the construction industry in Zambia is concerned about ensuring that construction firms are conversant with the tendering procedures of government contracts. In this respect the NCC is involved in conducting capacity building workshops and seminars, sometimes in collaboration with the Zambia National

Tender Board, to build capacity among local contractors and professionals in the field of construction.

The perception from the National Council for Construction (NCC) is that the construction industry is not fairing very well especially with regard to local expertise. Foreign contractors and consultants carry out most major works. Local firms have no financial capacity and borrowing from banks is quite prohibitive given the high interest rates. Foreign-based firms are financially capable because they are able to borrow at reasonable interest rates in their home countries. The tax regime in Zambia is not favourable to local contractors. Foreign firms are able to get tax exemptions in line with the current liberalisation policies of government. It was observed that these were critical issues that government needed to deal with in order to promote the local industry.

The NCC is concerned that some government ministries, other than the ministry of works and supply, are sometimes involved in advertising tenders for services or works to be done. From the NCC's point of view this constituted a serious anomaly that needed to be addressed urgently because it is only the Ministry of Works and Supply that has the mandate to invite tenders for the procurement of goods, services and works for public institutions. The administrative structure of the Ministry of Works and Supply provides for the appropriate channeling of various tendering requests from the various ministries hence there was absolutely no need for individual ministries to do their own tenders. It was also noted that some donors that prefer to deal with procurement units of individual ministries sometimes exacerbate this scenario. It is important to note that the involvement of several ministries in the tendering process impacts negatively on accountability and transparency.

Although the procurement procedures in themselves do not have 'built-in' mechanisms that facilitate the winning of government tenders by the same bidders it was noted, however, that other factors could probably help to explain

the persistent winning of government tenders by certain firms. Information leakage within the procurement process, for example, may lead to a contractor knowing the level at which other firms are bidding. Such a contractor or consultancy firm would usually ensure that they offered the lowest bid to increase their chance of winning the tender although having the lowest bid was not a guarantee for winning a government tender.

It was revealed that common complaints in the construction industry included government's acceptance of higher bidders without due justification and the unnecessary delays in processing the results of the bidding process. The so-called standard period for the bidding process was perceived to be too long. Firms needed to get results quickly and be able to decide on the next strategy.

Although there is an element of knowledge transfer, through the engagement of local staff, when tenders were won by foreign firms it was noted, however, that there was need to avoid conditions in the tendering process that unnecessarily tended to favour foreign firms even in situations where local expertise was available.

Generally the performance of the Zambia National Tender Board is perceived to have fallen far short of what is enshrined in the ZNTB Act, noting that the Board was not in a position to effectively control and regulate procurement in public institutions. The ZNTB lacks resources and is perceived to be practically under the sway of the Ministry of Finance, hence vulnerable to abuse and/or manipulation by corrupt senior officials. The inclusion of senior government officials and parastatal executives, who are appointees of government, does not give the necessary autonomy to the Board. The lack of autonomy has had a negative impact on how tenders are awarded, thereby exposing the institution to charges of corruption. The awarding of the contract for the registration of voters in 1995 to NIKUVU computers of Israel, the most expensive bidder, was cited as a case in point.

5.0 CONCLUSION AND RECOMMENDATIONS

The procurement of goods, services and works for public institutions takes up a huge proportion of the government expenditure that is mainly funded by both public and private taxpayers. It is, therefore, important that such public resources are utilized in an efficient and effective manner. Officials charged with the responsibility of procuring goods, services and works for public institutions need to display high levels of integrity exemplified by their commitment to the basic principles of accountability and transparency in the course of discharging their duties. It is incumbent upon such officials and institutions to conduct their affairs in a manner tailored to win public confidence in the procurement system. The need to ensure integrity in the procurement system cannot be overemphasized in a country that is rated as the eleventh most corrupt country in the world. Corruption and any other related malpractices in the procurement system is counter-productive, impacts negatively on national development, and generally erodes the society's moral fiber. Institutions and individuals involved in the procurement process have a very critical role to play in any efforts aimed at ensuring an efficient, effective, accountable and transparent procurement system.

The adequacy of the legislation governing procurement procedures, with regard to its comprehensiveness is a critical factor in the whole process of ensuring an effective and transparent procurement system. The governing legislation should, among other things: provide for clear guidelines; reliable and unbiased mechanisms for appeals; and adequate and explicit sanctions for the breach of procurement procedures.

The study has revealed that the effectiveness of the Zambia National Tender Board (ZNTB), an institution charged with the responsibility of regulating and controlling the procurement of goods, services and works for government and parastatal bodies, leaves much to be desired. The ZNTB Act, that provides for

the establishment of the Tender Board, is very old and does not adequately reflect the economic, social and political realities prevailing in the country on the one hand and the current international procurement procedures on the other. The current thresholds given to various tender committees, for both formal and informal tendering, are not realistic in the present economic circumstances. Inadequate qualified staff; ineffective inspectorate; the lack of professional ethics among procurement staff; inadequate funding to Ministries and departments; insufficient office equipment and transport; internal and external interference in the procurement process; and the lack of explicit sanctions for the breach of procurement procedures constitute some of the many factors that have contributed to the ineffectiveness and lack of transparency in the procurement system in Zambia.

Public confidence in the procurement system has been severely eroded due to ,among other things, the uneven level playing field created through tenders that are only advertised in the foreign press, and unpublicized tender results. In fact advertising tenders only in the foreign press contravenes section 7 (2b) that requires tenders to be advertised locally and abroad. The study also noted that the method of appointment and subsequent composition of the National Tender Board greatly compromises institutional autonomy and undermines public confidence with regard to its impartiality in dealing with appeal cases.

To reform the government procurement system with regard to ensuring its efficiency, effectiveness, accountability and transparency the study, on the basis of the findings, has made the following recommendation that, among other things requires reviewing the ZNTB Act.

1. Strengthening the Zambia National Tender Board legal framework in order to seal loopholes for corruption. In this regard activities related to the procurement of goods, services and works should be the preserve of

officials in the procurement function. Adequate, explicit and enforceable sanctions should be provided to deal with officials found wanting.

2. Formal tenders should, at all times, be advertised in the local press. Where necessary additional advertisements in the foreign press may be instituted. Advertisement of tenders only in the foreign press must be preceded by a comprehensive justification in the local press. In other words there must be sufficient compelling grounds for such an action that are sufficiently publicized locally.
3. There is need to create a special category of contracts to be reserved for “emerging” small-scale local contractors to enhance equity of opportunities in the award of government tenders. This will not only contribute to the development of local expertise but also reflect a sense of social responsibility on the part of the procurement system.
4. The appointment of the Zambia National Tender Board (ZNTB) should be done by a board of independent members from civil society and ratified by Parliament. This would enhance the autonomy of the Board and allay the fears that the Board is vulnerable to interference from the appointing authority.
5. Members of the Central Tender Committee should not be government appointees such as Permanent secretaries. The composition and subsequent ratification of the committee should be done in the same way as the ZNTB. However, relevant government appointees should be called as and when necessary to offer technical advice and any other important information to the committee.
6. Contractors, Consultants and Suppliers, bidding for formal tenders whose approval is done by the Central Tender Committee must be duly

- registered members of a professional Association and/or affiliated to the National Council for Construction. This would help to ensure that only competent and recognized institutions are invited to bid for formal tenders.
7. Independent people should also be involved in the evaluation of bids at the various levels i.e. Central, Ministry, Provincial etc.. This would ensure the availability of evaluation skills, in the procurement process, that may not be present among the authorized evaluators.
 8. Pre-qualification requirements must favour local companies at all times. Only when local institutions clearly do not satisfy the conditions should there be need to call for foreign firms. This would help to build local capacity and reduce the externalization of financial resources.
 9. The Engineering Institution of Zambia should scrutinize the papers of project personnel, whose organization has won a tender of an engineering nature, for validity. This will, among other things, enhance the quality of work.
 10. Results of the bidding process should be adequately publicized in order to enhance transparency and accountability.
 11. Losing bidders must be informed about the nature of technical errors, in their bids, if any, so that similar errors are not repeated in future bids. This will not only help build capacity with regard to the standard presentation of bids but also reflect transparency in the bidding process.
 12. A debriefing mechanism for unsuccessful bidders should be provided so that such bidders are fully aware of the reasons for not winning the bid. Besides promoting transparency such a mechanism would help improve the quality of future bids.

13. The various authorization thresholds, in the procurement process, must be reviewed upwards to reflect the changed economic circumstances in the country.
14. Training and development of procurement staff must be stepped up to ensure that all procurement units at the Ministry, Provincial and District levels are staffed by qualified personnel.
15. The ZNTB inspectorate must be strengthened to ensure effective and timely monitoring of procurement activities. In this respect there is need to step up training of inspectorate staff and ensure the availability of support equipment.
16. In order to mitigate corrupt practices in the procurement system the ZNTB Act should provide for the protection of whistle blowers. This would help to promote confidence and trust among the would-be whistle blowers that they would not be intimidated for reporting corrupt practices in the procurement process.
17. Although individual procurement personnel may be members of Professional institutions that have their own codes of conduct there is need to develop and implement a general code of conduct for all procurement personnel. This will enhance the use of professional ethics and promote transparency and accountability in the course of discharging their duties.
18. There is need to establish an Appeals Tribunal with the effective participation of various stakeholders including the private sector and civil

society to enhance transparency and build stakeholder confidence in the procurement system.

19. Procurement units/departments must be well funded. This, among other things, will ensure that the quality of the desired goods, services and works is not compromised because of inadequate financial resources.

20. The Government must strengthen the system of sanctioning companies that fail to fulfill procurement contractual obligations. The ZNTB should have powers to penalize such companies. There must be a specific section in the ZNTB Act for this purpose.

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