

A Critical Evaluation of the Public Procurement Act in Its Capacity to Defeat Corruption in Ghana

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Abstract: In addition to the standards applicable in the whole public service, specific standards for procurement officials may mitigate the specific risks related to the complexity and characteristics of the public procurement process. The standards for procurement officials - in particular specific restrictions and prohibitions - aim to ensure that officials' private interests do not improperly influence the performance of their public duties and responsibilities. Transparency in public procurement not only promotes accountability and ensures access to information, it also serves an important role in levelling the playing field for businesses and allowing small and medium enterprises to participate on a more equal footing. The purpose of the study was to critically evaluate the public procurement act in its capacity to defeat corruption. A descriptive survey was used for the study based on mixed method of research-qualitative and quantitative. A purposive sampling method was adopted in the collection of data. A 16-item interview guide was developed -made up of 15 closed ended items with 3 follow up questions and 1 open-ended item. The study revealed that there was not much weaknesses in public procurement activities, practices that seems to encourage corruption were minimal due to the use of the public procurement Act, due diligence was followed during procurement. The study recommended that, even though the Act seems to have defeated corruption, there should be continues capacity building for procurement officers to improve on their efficiency.

Keywords: Corruption, Public Contract, Public Procurement, Procurement-Proficient, Sustainability

1. Introduction

Across the world, in order to acquire the materials and labour necessary to carry out public projects, governments and other public entities generally adhere to standardised procedures. To better serve the government and other public institutions, the government of Ghana has taken steps to reform the public procurement system. However, procurement activities are hampered by a variety of factors, including a lack of funds, bureaucracy, unqualified procurement staff, corruption, and so on. Reforms in procurement practises are often motivated by the desire for a more effective, transparent, and accountable public purchasing system. Since Ghana gained its independence, a number of financial laws, rules, and policies have been put in place to fight public procurement system problems and corruption.

Procurement reforms have been introduced through changes

to the constitution, enactments of parliament, legislative instruments, administrative directives, and financial circulars. Before the Public Procurement Act of 2003 (Act 663) was passed, the Ghana National Procurement Agency (GNPA) and Ghana Supply Company Limited (GSCL) were in charge of buying all government goods [15]. These organisations made purchases for the public sector without instituting regulations on the practise. To safeguard public funds during purchases, the government passed the Ghana Supply Commission Act in 1960, which was revised in 1990 by PNDC law 245.

Act 25 of 1960, which regulates contracts, was also revised that year. In 1976, the SMCD 55 National Procurement Agency Decree was ratified by the Supreme Military Council. A second law was enacted in 1979 to deal with flaws and corrupt practises in public procurement; this one was called the Financial Administration Decree, SMCD 221, and the Financial Administration Regulation (FAR) (LI. 1234) 1979. There was a failure to achieve government procurement goals despite the existence of numerous laws,

decrees, and instruments intended to provide such a framework and regulate public sector procurement. [1].

The Public Procurement Board, Entity Tender Committees, and Tender Review Boards are all formed by the Public Procurement Act. There are rules laid out for how to go about making purchases, as well as what to do if an appeal is filed by a tenderer. It outlines prohibited actions, consequences for those actions, and minimum requirements for purchasing. Central management agencies; Ministries, Departments, and Agencies (MDAs); subverted agencies; and governance institutions are all named in the Act and given specific responsibilities. In addition, the Bank of Ghana and other financial institutions are either wholly owned by the government or have the government as a majority shareholder. Public universities, schools, colleges, and hospitals are also included. In an effort to make government contracts more open, efficient, and equitable, five foundational principles of public procurement were established by Act 663 of 2003 [3]. The research seeks to analyse the weaknesses in the public procurement Act and the practices that seems to encourage corruption. The effects on the general economy, impact on sustainability and the future of Ghana.

1.1. Statement of the Problem

The PPA 663 which was enacted in 2003, has formalized all forms of procurement related activities in the public sector over the years from Pre-Independence era which dealt with the Crown Agents as the sole agent for public procurement to post-independence era of Ghana Supply Commission and by 1960, the first law of public contract was enacted (Act 25). The PPA 663 integrated these various paths toward the common goal of acquiring goods and services for the public sector. The Act has touched on all aspects of professional procurement standard practice. However, little attention has been given to the ethical standard of behaviour of the practitioners which has created an avenue for corruption and its related activities. Lack of accountability and transparency, weak capacity training for staff, independent procurement auditing functions and sanctions of officers who bridged the act. These practices created negative public perception and lack of confidence in the act.

1.2. Objectives of the Study

Corruption seems to be endemic and an acceptable practice in the public sector which the procurement reforms seem to check. The research seeks to analyse the weaknesses in the public procurement Act and the practices that seems to encourage corruption. The effects on the general economy, impact on sustainability and the future of Ghana.

1.3. Research Questions

The study sought to find answers to the following questions:

- 1) What are the weaknesses in the PPA 663?
- 2) What are the corrupt practices in the PPA663?

- 3) What are the effects of Public Procurement on the economy of Ghana?
- 4) What is the impact of Public Procurement on sustainability in Ghana?
- 5) How is the future of Public Procurement in Ghana?

1.4. Significance of the Study

The study would among other things address the weaknesses in the act such as corruption, transparency and accountability of procurement officers in the public service, how to build capacity of staff in the profession to exhibit good standard practices of procurement. Implement the act to the latter to improve on the general economy, impact on sustainability for a brighter future of Ghana. In addition, the study would serve as a guide to improve on efficiency in public procurement in Ghana.

2. Literature Review

The research reviewed literature related to the study under the following headings: weaknesses in public procurement, corrupt practices in public procurement, effects on the general economy, impact on sustainability and the future of Ghana.

2.1. Weaknesses in Public Procurement

To ensure that public procurement is conducted in a fair, transparent, and nondiscriminatory manner, the Parliament of Ghana enacted and promulgated the Procurement Act of Ghana (2003), Act 663. The purpose of the law was to establish bodies and principles that would standardise the public procurement process in an effort to make it more rational and consistent. Since its inception, the Act has introduced a number of applicable modern procurement principles that are meant to fix the widespread corruption and irregularities that have long been associated with public procurement. Several obstacles have arisen during the act's implementation, however, threatening the success of its goals.

Low capacity of procurement professionals, low interaction between procurement entities and the Public Procurement Authority (PPA), deliberate controlling of competition, non-compliance with provisions of law, contract splitting into smaller lots, lack of clear procedures for emergency procurement, high cost of advertisement, slow pace in regularising the draught regulations, and lack of funds and non cooperativeness of suppliers were all identified as problems [2]. However, [6] argued that the public procurement act's failure to clearly provide for emergency procurement procedures despite the existence of guidelines, principles, and tender committees to oversee the act's goals. As a result, in times of crisis, procurement officers must now rely on their own judgement, which is fraught with the possibility of error.

Furthermore, the system suffers from a severe lack of trained procurement specialists, which causes numerous inaccuracies and ultimately undermines the effectiveness of

the idea as a whole [6]. The public procurement act requires the procurement board to "develop, promote, and support training and professional development of persons engaged in public procurement and ensure adherence to ethical standards," as stated in Section 3 (k). While this may be true in theory, it appears to be at odds with reality. It was determined that the principle of "value for money" is not met due to the widespread inefficiency of public procurement [2]. Inadequate procurement planning, non-transparent procurement procedures, and poor contract management also contribute to problems with implementation and disbursement.

2.2. Corrupt Practices in Public Procurement

Using one's position of authority for one's own benefit is the definition of corruption [7]. The term "public procurement" refers to the process by which governments and other public institutions buy goods and services at the lowest possible overall price. It is estimated that between fifty percent and seventy percent of all government spending goes toward public procurement [1]. Corruption, collusion, and government contracts have all been linked by researchers [14]. The opportunity to bribe officials was cited as a reason for their belief that corruption affected how government dollars were doled out. Spending on health and education takes a back seat to massive building projects, and the reverse is also true when it comes to operation and maintenance budgets. Corrupt public officials, in their view, have shown complete disregard for the rules and regulations already in place regarding procurement.

Politicians may be influenced to enact wasteful regulations if doing so will increase their own rents [14]. A conflict of interest, bribery, or kickback can arise in public procurement when an official uses their position to benefit personally from the actions of one or more bidders [7]. Abuse of authority for personal gain can also take the form of a clandestine horizontal relationship between bidders, especially if a corrupt inside official is involved. A public contract is awarded on a fraud basis other than fair competition and the merit of the successful contractor, resulting in less-than-optimal value for public money. Corruption and collusion often occur together and have the same ultimate effect.

Corruption has been shown to disrupt market mechanisms and slow economic development in countries where it is pervasive. Corruption in public procurement, as argued by [13], leads to decision-makers opting for the best bribery offer rather than the best price-quality ratio. The result was always extremely pricey building projects and the purchase of items that weren't necessary. Since corruption is a system of mutually beneficial exchange, it is often challenging to ascertain whether or not a public official has participated in corrupt activities.

2.3. The Effect on the General Economy

Successful completion of national projects; prudent management of limited financial resources to accrue value for

money in the area of public expenditure; rapid corruption control; improved competition among potential suppliers; budgetary savings encouragement; significant debt reduction; and motivation of the private sector within the national economy are all significantly impacted by the implementation of good public procurement systems. Improvements in social sector services, increased likelihood of achieving other government objectives, increased opportunity for local contractors to participate in government contracts, and an enhanced image of the government and its agencies are all additional social effects of implementing a good public procurement law.

As a result, it's crystal clear that public procurement laws have far-reaching effects on the economy as a whole. Unfortunately, the economy suffers if these economic indicators aren't put into place as soon as possible. Governments in developing countries like Ghana must ensure strict compliance and implementation of the Public Procurement Act, 2003 (Act 663) and remove all obstacles to this end [10].

2.4. Impact on Sustainability

Organizations can reduce their financial and environmental impacts by using public procurement to get the goods, services, works, and utilities they need [11].

Synergies between innovation, market growth, and environmental protection could be created through procurement. For example, speeding up the adoption of cleaner technologies is just one way that strategic government spending can stimulate market demand for sustainably produced goods and services. Whole-life cost savings is another possible outcome of procurement. Investing in LED bulbs, for instance, may seem like a waste of money at first, but they actually end up saving money in the long run. Procurement officials can use sustainable development procurement guides to learn the best practises [11]. The competition process may be distorted, for instance in the form of hidden trade barriers, when countries use procurement to support environmental or socio-economic objectives, so they must weigh the costs and benefits of doing so.

2.5. The Future of Public Procurement in Ghana

According to research, literature, and experts, the future of public procurement in Ghana is bleak. This is due to the fact that most of the MDA and DA staff responsible for procurement in Ghana are not procurement-proficient despite having received training, as reported in the 2003 Procurement Assessment Report of Ghana. The report argued that widespread training and 'refresher' programmes for officials in charge of procurement are necessary for the successful application of the PPA and the Standard Tender and Contract Documents [2]. [8] concurs that inadequate management training in the procurement process is a barrier to procurement reform.

This lends credence to the argument that a poor

widespread awareness of procurement law is a hindrance to its effective application [2]. There is a risk that public procurement reforms, and their implementation, will be hampered by political interference in the buying process. Many politicians feel they have the authority to meddle in the procurement process, which leads to arbitrary choices being made [17]. Procurement staff lack a clear path to advancement, and they are compensated poorly, both of which work against the successful implementation of reforms [16]. Difficulties in keeping accurate records and paying contractors and suppliers on time are also cited as major obstacles to implementing procurement reforms [5]. Public procurement in Ghana faces a number of obstacles that need to be overcome before it can contribute to economic growth and development, but these problems can be overcome if government officials strictly adhere to the PPA.

3. Methodology

The research study covered the study area, research design, sources of data, sample population and sampling procedure, data collection instrument and data processing and analysis.

3.1. Study Area

The focus of the study area was the Greater Accra Region. This was because majority of the public institutions used in the research study were located in the region and all the researchers were also based in the region which made the data collection convenient.

3.2. Research Design

The study employed a descriptive survey design to grasp how respondents felt the public procurement act worked from their point of view. The primary goal of a descriptive study is to record and describe real-world phenomena as they occur [4]. The design was based on a combination of qualitative (involving in-depth analysis of data for a more thorough grasp of the topic) and quantitative (involving the use of statistical tools to answer research questions, gather evidence, and draw conclusions) approaches to research [12].

3.3. Sources of Data

The study's data came primarily from the following two places: First-hand accounts from a representative cross-section of the public sector's working population. To supplement this primary research, we also looked at a variety of secondary resources, such as books, journals, and newspapers.

3.4. Sample Population and Sampling Procedure

Table 1 shows categories of sample population of state institutions sampled from the public sector for the study with a total sample population of 14. Two respondents from each of the seven institutions sampled - (the Director and the procurement officer). The institutions sampled were close to

the co-researcher's place of work. They were sampled for convenience and for the researchers to understand how procurement works in their institutions. A purposive sampling procedure was used to select the respondents and the institutions for the study. In purposive sampling, the researcher handpicked the respondents to respond to the questions on the bases of the specific knowledge of the issue under study [4].

Table 1. Sample Population.

Sample Population	Number
Ghana Civil Service	2
Ministry of Trade and Industry	2
Public Utility Regulatory Commission	2
Electoral Commission	2
Small Arms Commission	2
Electoral Commission	2
Ghana Education Service	2
Total	14

Source: (Fieldwork, 2022)

3.5. Data Collection Instrument

The instrument used for the study was interview guide. The interview guide was developed based on the literature reviewed. It contains six sections with 14 items. Section A contained biographic data of respondents, section B looked at the weaknesses in the public procurement Act, section C described the practices that seems to encourage corruption, section D examined the general effects on the economy, section E dealt with the impact on sustainability and section F looked at the future of Ghana in relation to public procurement.

3.6. Data Processing and Analysis

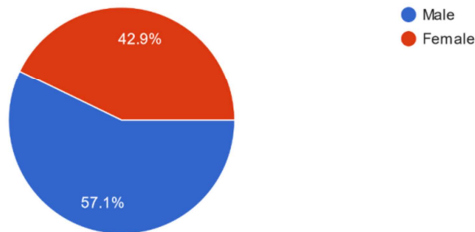
The data collected was summarised into information using the simple statistics, pie chart method of data analysis, discussed and inferences made to arrive at the findings, conclusion and recommendations.

4. Analysis and Results

Data collected were analysed, results discussed based on the literature reviewed. The key components discussed include sex, educational background and status of respondents. Additionally, weaknesses in the Procurement Act, corrupt practices in public procurement, effects on the economy, impact in sustainability and finally the future of Ghana were also discussed.

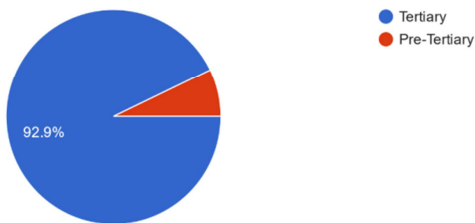
4.1. Sex Distribution

Figure 1 represents the sex distribution of respondents. Males were 42.9% and 57.1% females. It was evidently clear that more females were involved in procurement activities than males.

Sex
14 responses**Figure 1.** Sex Distribution of Respondent.

4.2. Educational Background

Figure 2 shows the educational background of respondents. Respondents with tertiary educational background were 92.9% while the remaining 7.1% were with pre-tertiary educational qualifications. This tells that majority of the respondents were having some kind of knowledge in procurement.

Education
14 responses**Figure 2.** Educational Background of Respondents.

4.3. Status

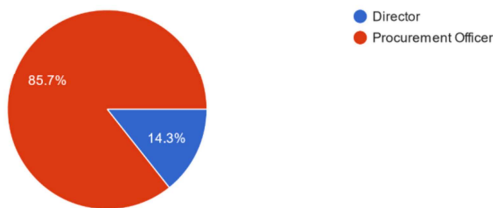
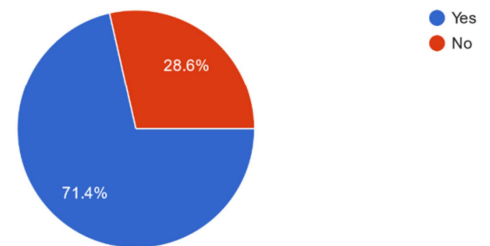
Status
14 responses**Figure 3.** Status of Respondents.

Figure 3 tells the status of respondents. Directors were 14.3% while procurement officers were 85.7%.

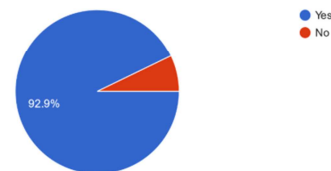
4.4. Weaknesses in the Procurement Act

Figure 4 shows that, 71.4% of the respondents had requisite knowledge in procurement related activities while 28.6% had little or no knowledge in procurement related activities.

Do you have the requisite background in procurement?
14 responses**Figure 4.** Weaknesses in the Procurement Act.

4.5. Procurement and Processes and Methods

Figure 5 shows that, 92.9% of the respondents followed the processes and methods of procuring goods and services in their respective organizations as laid down according to the procurement Act and only 7.1% did not follow the processes and methods due to emergencies.

Do you follow the procurement methods and processes according to the act when procuring goods and services?
14 responses**Figure 5.** Procurement and Processes and Methods.

4.6. Emergency Procurement

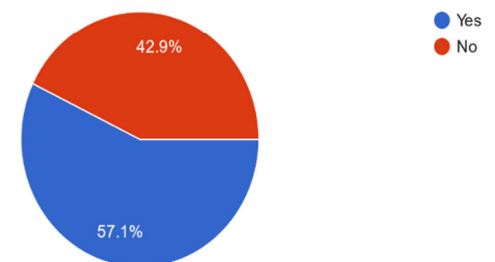
Do you engage in emergency procurement?
14 responses**Figure 6.** Emergency Procurement.

Figure 6 represents emergency procurement, 57.1% of respondents mentioned that, they engaged in emergency procurement while 42.9% said they did not engage in emergency procurement. The respondents mentioned that, sometimes the communication comes late. No advanced notice for proper procedure to follow. All procurements are planned for, while some procurements come as and when. All procurements are done on planning basis because we buy enough to last for that particular period or quarter. When it became urgent. Because we need the items urgently. When there is an urgent need for that good or service we write to the necessary authorities for approval. The Act should be

followed. In cases of unforeseen circumstances. Urgent procurement is done to ensure restoration of service delivery for unanticipated breakdown. Emergency situations needs to be attended to. Because is emergency. These were some of the reasons given by respondents during emergency procurement. It could be deduced that; emergency procurement was not intentional but due to the situation at hand. [6] argued that emergency procurement procedures weren't explicitly spelled out in the act.

4.7. Corrupt Practices in Public Procurement

Figure 7 shows that, 21.4% of respondents gave priority to procuring construction projects than any form of project in their respective organizations while 78.6% did not. They explained that, these are specific and detail out. All projects are priority. They are done on priority bases. All procurement must follow the standard and lay down principles. We procure for the benefit of a particular project and gives priority to all project not only construction. Unless it is been budgeted. Because it is demanded. The literature review established the opinions of [14] and [9] that corruption affects the allocation of public spending because bribery opportunities influence investment decisions. Because of this, important social initiatives like healthcare and education often take a back seat to massive building projects. However, the data obtained shows that, the trend was shifting to the fact that, procurement was based on priority as estimated in the budget of their organizations.

Do you give priority to procuring construction projects than any other form of project in your organization?
14 responses

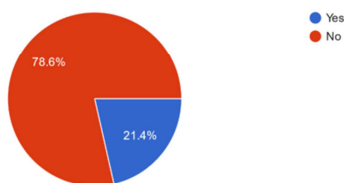


Figure 7. Corrupt Practices in Public Procurement.

4.8. Conflict of Interest

Do you engage in procurement that results in conflict of interest?
14 responses

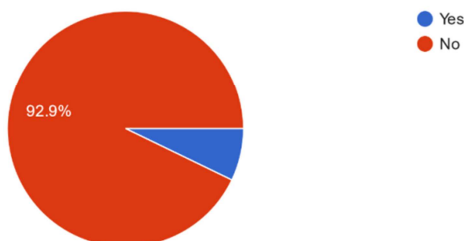


Figure 8. Conflict of Interest.

From the pie chart presented, it could be seen that, 92.9% of respondents did not engage in procurement that results in conflict of interest while only 7.1% said they did some form

of procurement that resulted in conflict of interest. All the respondents (100%) said they procure from the bidder or best price-quality of products. Again, all the respondents (100%) mentioned that, corrupt practices affect market mechanisms badly. In addition, the respondents said standard practices affects the economy positively while (21.4%) said it affects it negatively. All the respondents (100%) said they achieved value for money as an institution after procurement of goods and services. It could be seen that; the respondents followed the standard practice of procurement as stipulated in the Act 663 of 2003 and this might be defeating corruption in its capacity.

4.9. Impact on Sustainability

Figure 9 represent impact on sustainability. (85.7%) were of the view that, they weigh the cost and benefit during procurement which confirmed the assertion that, standard practice positively affects procurement while (14.3%) said they did not follow the lay down procedure which sometimes were due to emergency. The respondents said that, (14.3%) of directors procure the goods and services on behalf of their organizations while (57.1%) of the procurement officers procure the products themselves and sometimes both the director and the procurement officer (28.6%) procure together. They explained that, he or she knows best and how to handle the process. He is in charge. He is a professional. The Director supervises the process. The procurement officer because he has been trained to do so and it is his responsibility. For the junior officials to learn. To avoid future problems. It is the procurement officer responsibility to procure goods and services with the approval of the Director. It is the responsibility of the procurement officer. It could be deduced that; the procurement office does the procurement on behalf of the institution. This had affected the value for money positively because standard procedures are followed and cost benefit analysis conducted because the procurement officer who was the professional trained was in charge of affairs without interference from the superior.

Does your organization weigh the cost and benefit during procurement?
14 responses

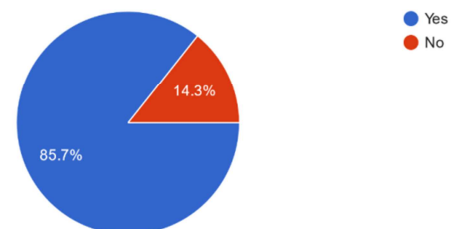


Figure 9. Impact on Sustainability.

4.10. The Future of Ghana

The 10th figure on the future of Ghana, (57.1%) of the respondents were of the view that, the future of Ghana looks bright when it comes to procurement while (42.9%) believe otherwise. They explained that, procurement procedures are not

followed, corrupt procurement practices. People are not punished for procurement breaches, hence embolden others to do same. Ghanaian workers as a whole do not really understand the procurement process and our politicians are most culprits. A lot of people do not follow the procurement Act. The Laws of procurement are not followed due to the parochial interest of some leaders because of political interference when it comes to procurement. However, it was clear that, the future of procurement in Ghana is bright. What could be done to improve on public procurement in Ghana? More education, correct procurement procedures, more checks and balances, transparency and competition, strict enforcement of procurement laws, follow the process with a positive mind set, insistent on value for money, more education, sanctions for not following procurement laws. Both politicians and officers should be held responsible and punished when the procurement laws are breached in course of their duties, taking legal action against those who default, strict adherence to the procurement Act, ensuring strict adherence to the procurement law, implementation should be done well. There are officers who have no knowledge in procurement but because they think there is money there, they tend to do procurement and abuse the office. The right people have to be employed to do the job of procurement. We must stop political interference and prosecute those who are found capable.

Does the future of Ghana looks bright when it comes to procurement?
14 responses

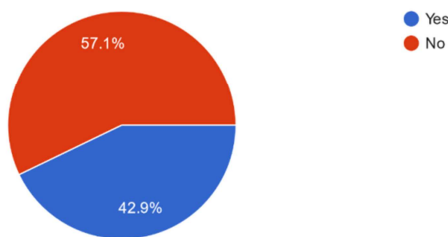


Figure 10. The Future of Ghana.

5. Summary of Findings

Based on the literature reviewed, analysis of data, results and discussions, the following findings were obtained:

More than 50% of the respondents had knowledge in procurement and they follow the standard processes and methods according to the Act even under emergencies. Procurement related activities based on priority as estimated in the budget of the organizations. There was no conflict of interest during procurement and there was value for money. Cost-benefit analysis was always conducted during procurement which affects the general economy positively. There was transparency and accountability in procurement related activities which leads to efficiency.

6. Conclusions

Based on the findings, the following conclusions were made:

There was not much weakness in the public procurement activities according to the study. Practices that seem to encourage corruption were minimal due to the implementation of the Act by the professionals with limited interference from the superiors. The cost and benefit analysis conducted were good because it had impacted the general economy positively and sustainability. The future of Ghana is bright when it comes to public procurement because the Act is followed to the latter.

7. Recommendations

Based on the conclusion, the following recommendations were made:

- 1) There should be continues capacity building for procurement officers to improve on their efficiencies to eliminate all forms of weaknesses.
- 2) Procurement officers who do not follow practice should be sanctioned according to the law.
- 3) Standard practice should always be followed in procurement related activities.
- 4) Professionals in procurement should be employed to perform the roles to achieve positive impact on procurement, sustainability to secure the future of Ghana.

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