

## **THE LEVEL OF COMPLIANCE WITH THE PUBLIC PROCUREMENT ACT (ACT 663) IN GHANA**

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### **Abstract**

*The Public Procurement Act (Act 663) 2003 was introduced in Ghana to streamline the anomalies in public procurement. The objective of the law is to promote fairness, transparency and ensure that public procurement is non-discriminatory. The implementation of the Public Procurement Act 2003 (PPA) has been quite challenging coupled with a number of inefficiencies. The aim of this study is to observe and compare the extent to which selected public procurement entities have complied with the processes and requirements of the Law during the year 2008. The entities were chosen from the Ashanti and Brong Ahafo regions of Ghana. Structured questionnaire and face-to-face interviews were used to obtain data for this study. The overall compliance levels in the Ashanti and Brong Ahafo Regions lies at 19.58% and 17.8% respectively. This indicates low compliance levels of public entities. The study confirms that the Public Procurement Act 2003 (Act 663) is observed to proffer solutions but not without challenges. In the pursuit to improve compliance with the Act the study recommends that public entities recruit procurement personnel and organize intensive and regular procurement training for the personnel handling public procurement especially in the area of procurement processes.*

**Keywords:** Ghana, Public Entities, Public Procurement, Public Procurement Act, Compliance

### **INTRODUCTION**

In Ghana, the Public Procurement Act (Act 663) 2003, was enacted to harmonize public procurement processes in the public service, secure judicious, economic and efficient use of state resources, and furthermore, ensure that public procurement is fair, transparent and non discriminatory (Ministry of Finance, 2001). This new Act, was constituted after years of foul play and abuse as far as procurement was concerned in the country. This necessitated a thorough review of the existing procurements regulations. The enactment of the law in 2003 further



ensured that modern trends in procurement was adopted to bring about the much needed sanity to local procurement system which had been flawed by bad procurement practices such as corruption and other malfeasances (Osei-Tutu *et al.*, 2010).

In Ghana, public procurement accounts for 50%-70% of the national budgets (after personal emoluments), 14% of GDP and 24% of imports. Implicitly, public procurement therefore has both social and economic impact on the country (World Bank, 2003a).

### **Assessment of Public Procurement Entities**

Increasing the effectiveness, efficiency and transparency of procurement systems is an on-going concern of governments and the international development community. All countries have recognized that increasing the effectiveness of the use of public funds, including funds provided through official development assistance (ODA) requires the existence of an adequate national procurement system that meets international standards and that operates as intended.

The regular and continuous assessment of procurement entities in countries of their national procurement systems with regard to their compliance with the procedures, rules and regulations setup in the Public Procurement Laws has been embraced worldwide.

The baseline indicator assesses the strengths and weakness of National Procurement Systems. The indicator covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulation, procedures and bidding documents formally in use. These indicators can be broken down into eight sub-indicators which are individually scored. These are: Scope of application and coverage of the legislative and regulatory framework, Procurement Methods, Advertising rules and time limits, Rules on participation, Tender documentation and technical specifications, Tender evaluation and award criteria, Submission, receipt and opening of tenders and Complaints (OECD-DAC/World Bank, 2006).

Performance indicators includes: Implementing regulation that provide defined processes and procedures not included in higher-level legislation, Model tender documents for goods, works, and services, Procedures for pre-qualification, Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion, User's guide or manual for contracting entities and General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements (OECD-DAC/World Bank, 2006).

For a public entity in a developing country to conduct procurement performance assessment, there are numerous challenges that are encountered. Notably among them are: i) there are many ways of measuring that may be in use, ii) most measures are irrelevant iii) there is no way of standardizing the measurements and iv) conducting performance measurement is costly (Kakwezi & Nyeko, 2010) .



## **Performance/Compliance of Procurement Entities**

The Public Procurement Authority in its review in 2006 identified the weakness in the public institutions that need urgent attention. These are: Lack of qualified procurement personnel, incorrect interpretation and application of some provisions of the procurement Act, slow pace in regularizing the Draft Regulations, lack of clear procedures for Emergency Procurement, lack of Training Avenues or Institutions, poor Record Management (scattered files), poor handling of Suppliers' Complaints, poor Procurement Planning, Mobilization & Implementation, poor Contract Management and high cost of Advertisement (PPA, 2007).

Country Procurement Assessment Report (CPAR), prepared by a team of Government officials, World Bank and donor staff, and national consultants, reveals substantial inefficiency in public procurement and concludes that the principle of "value for money" is not achieved. This is true for both governments financed and donor financed procurement. The main findings of the 2002 Country Portfolio Performance Review of World Bank projects also reviewed slow project implementation and disbursement among other factors due to, a large extent of inadequate procurement planning, non-transparent procurement procedures and poor contract management. A review in 2002 of 132 works contracts which constitute an important part of public expenditure indicated that about 84% incurred cost-overruns of up to 30% of the initial amount (World Bank, 2003b). Similar findings of public procurement weaknesses were recorded in the 1996 Country Procurement Assessment Report (World Bank, 1996).

Successive waves of management and financial reforms have, inter alia, focused on improving public procurement efficiency, effectiveness and outcomes (Calendar & Matthews, 2002). Requirements for greater performance produce a refocusing of procurement management away from accountability for compliance through rule-bound codified processes (McCue & Pitzer, 2000) towards accountability for outcomes.

## **Public Procurement Law and Implementation Challenges**

In most developing countries, the procurement function is transitioning from a clerical non strategic unit to an effective socio-economic unit that is able to influence decisions and add value (Knight et al, 2007). Developing countries in one way or another have reformed their public procurement regulations. The reforms have not been limited to regulations only; they have included public procurement process, methods, procurement organizational structure, and the workforce. The reforms have been as a result of joint efforts with various development partners like the World Bank, International Trade Centre, WTO, and UNCTAD varying from country to country.

In addition, public procurement is faced with the challenges imposed by a variety of environmental factors (external factors) such as market, legal environment, political environment, organizational and socio-economic environmental factors. Regardless of the effort by the central government and its related agencies and the acknowledgement that the procurement department is capable of adding value to the organization, still a large number of the internal customers act on their own and more frequently bypass the procuring department



(Schiele & McCue, 2006). This problem requires establishment of clear procurement procedures and performance standards. Performance when adopted will provide the decision-makers in the procurement department with unbiased and objective information regarding the performance of the procurement function (Knudsen, 1999).

Several countries have instituted reforms in their public procurement processes (Hunja, 2003). This is aimed at purging the public procurement sectors, encouraging competition, transparency, efficiency and ensuring accountability. These reforms have not come without difficulties (Hunja, 2003). The challenge include poor dissemination of the procurement law (Azeem, 2003), lack of proper training for the managers of the procurement process (Forgor, 2007).

The Country Procurement Assessment Report of Ghana in 2003 revealed that most Ministries, Departments and Agencies (MDAs) and District Assemblies (DAs) staff responsible for procurement were not procurement-proficient, even though they have been trained. The report contended that, application of the PPA and the Standard Tender and Contract Documents will not be successful without broad training and “refresher” programs and encouragement of officials in charge of procurement. In view of this, the PPA initiated a training programme in 2007 throughout the country with the aim to build the capacity of personnel responsible for the management of procurement in various institutions. This exercise unfortunately could not be sustained due to financial difficulties thereby leaving most Procurement Managers completely ignorant in the application of the law.

Building the capacity of service providers has been identified as one of the success factors of public procurement reforms. Many bidders are limited in various capacity issues including: lack of basic knowledge in the law, inadequate capacity to appreciate the standard tender documents, poor access to tender information and insufficient technical and managerial skills to be competitive in the tendering process (ODPP, 2007).

Political interference with the procurement process is also a big challenge to the implementation process and public procurement reforms. A good number of politicians think that they have the right to intervene in the procurement procedures thereby leading to a capricious procurement decisions (World Bank, 2004b).

The lack of career development path and low salaries of procurement personnel also militates against procurement reforms implementation (World Bank, 2003a). Poor records keeping (World Bank, 2003a), (ODPP, 2007) and delays in payment of contractors and suppliers have also been cited as some of the crucial factors that challenges the procurement reforms implementation (Azeem, 2007).

### **Corruption and Inefficiencies in Public Procurement**

It is vital to make a distinction between instances of corruption and cases of inefficiency or lack of competence. While these problems occasionally go hand-in-hand, and some solutions are helpful in all areas, there are also trade-offs. For example, choosing to speed up a Procurement process might condense its transparency, making it very efficient but more prone to corruption. Moreover, it is important to realize that there is no single solution to the problem. Procurement processes need to be permanently monitored. Supervision and control play a key role since good



rules are necessary but not always enough to curb corruption. It is also important to have clear and publicly available procedures and to have regular audits by external parties.

Also, the 2009 Corruption Perception Index (CPI) released by Transparency International (TI) shows Ghana not making progress in the fight against corruption through passing of legislations. The country maintained its 2008 score of 3.9 in the 2009 CPI report. Ghana's score in the Transparency International's report, points to the fact that corruption is still deeply rooted in the country's procurement process (Transparency International, 2009). For example, a 2002 internal audit report revealed significant procurement irregularities in some of the major hospitals in Ghana.

There is a knowledge gap on how the procurement assessment can contribute to improved performance of the procurement function in developing countries. Only when the procurement function is well planned, that it is easy to identify areas where it is performing well, and where there is need for improvement (Kakwezi & Nyeko, 2010). Organisations which do not have performance means in their processes, procedures, and plans experience lower performance and higher customer dissatisfaction and employee turnover (Artley & Stroh, 2001, Amaratunga & Baldry, 2002 and CIPS Australia, 2005).

Thus the objective of the study was to find out the level of compliance of public procurement entities in Ghana with the Procurement Law, which was instituted to address some of these observed anomalies.

## **RESEARCH METHODOLOGY**

The methodology for assessment of national procurement systems jointly developed by the Organization for Economic Co-operation and Development (OECD)/Development Assistance Committee and World Bank has been adopted in this research.

The methodology presented herein includes a numeric scoring with defined criteria that will enable the monitoring of indicators providing a qualitative scoring of the procurement system in place in procurement entities.

The indicators are intended to provide harmonized tools for use in the assessment of procurement systems. Although the indicators are designed for use in the assessment of the central government or national procurement system in a country, they can be adapted for use in sub national or agency level assessments. There are two parts of the indicators: baseline indicators (BLIs) that deal with the formal and functional features of the existing system; and compliance/performance indicators (CPIs), that deal with monitoring performance data to determine level of compliance with the formal system. The CPI's associated with the baseline indicators have been adopted since the authors intend to determine the level of compliance with the Procurement Law.

The suggested Compliance/Performance Indicators (CPIs) used has been summarized in Table 1 below. The CPIs help identify those areas where compliance or performance is weak. Based on review of the CPI data, analysis and findings were recorded.



The authors adopted four main Compliance Areas in the study. Indicators that designated compliance were also used. Specific information or records that designated the indicators were also identified and rated on a scale of 0 – 5; “0” rating indicates absence of the required information whilst “5” indicates that the information available is satisfactory.

The analysis was carried out by aggregating the statistics obtained from the rating. In all instances, a minimum of 20 contracts were sampled to enable subsequent analysis. Analysis of the data helped to determine the degree of compliance, measured in terms of percentage, within a given compliance area. Obtaining a 100% would imply that the entity fully complies with requirements of the procurement law in the particular area.

Four main compliance areas were adopted for determination of the compliance levels. Compliance levels in the areas were assessed based on certain indicators, which were used as sub-criteria for assessing the four main compliance areas adopted. Specific information were included in the questionnaire to aid in the assessment of the indicators. In developing countries, Ghana not being an exception, data on the baseline information are not available. Hence, the authors restricted themselves to assessing compliance levels based on the four main compliance areas.

### Sampling Procedure and Data Collection

A purposive sampling was adopted for the survey. The study purposively targeted public entities in the categories of local government, education and health as representation of procurement activities of the regions for the financial year 2009. The simple method of calculating averages was employed in the computations. The ratings of the performance under each procurement area were done by the authors using a predetermined key Compliance Indicators (KCI's). In all a total key of 85 and 61 entities were assessed in both Ashanti and Brong-Ahafo Regions respectively.

Main Compliance Areas	Key Compliance Indicators	Information rated on a scale of 0-5
MANAGEMENT SYSTEMS	Effectiveness of Leadership	<ul style="list-style-type: none"> <li>• Training programme(s) in place</li> <li>• Seeking technical support from the body with oversight role</li> <li>• Carrying out internal procurement auditing</li> <li>• Good record keeping</li> </ul>
	Human Resource Development	<ul style="list-style-type: none"> <li>• Having Staff with professional procurement qualification</li> <li>• Putting internal auditors in place and giving them procurement training</li> <li>• Evaluation of performance of procurement staff</li> </ul>
	Monitoring and Control Systems	<ul style="list-style-type: none"> <li>• Putting proper payment systems in place for every contract</li> <li>• Capturing procurement transactions in Cash budgets</li> <li>• Putting in place quality control mechanisms for contracts</li> <li>• Effective use of available procurement information dissemination systems</li> </ul>
	Compliance with ethics and regulatory framework	<ul style="list-style-type: none"> <li>• Appropriate use of procurement plans and contract documents</li> <li>• Use of Standard Tender Documents (STD) and Manuals</li> <li>• Use of right procurement methods</li> <li>• Anti-corruption measures put in place</li> </ul>
	Complaints system, structure and sequence	<ul style="list-style-type: none"> <li>• Fairness and transparency in resolution of cases within the terms established in the legal framework</li> </ul>
INFORMATION AND COMMUNICATION	Procurement Information searching and Dissemination	<ul style="list-style-type: none"> <li>• Awareness of use procurement website, procurement internal notice boards and newspapers</li> <li>• Capacity to use and using the procurement information dissemination systems</li> </ul>



COMMUNICATION	Interaction with the marketplace	<ul style="list-style-type: none"> <li>• Having knowledge of and interacting with the marketplace</li> <li>• Interacting with all procurement stakeholders</li> </ul>
PROCUREMENT PROCESSES	Procurement Planning	<ul style="list-style-type: none"> <li>• Having an adequately defined procurement plan</li> <li>• Posting plan on the net</li> </ul>
	Procurement Publicity	<ul style="list-style-type: none"> <li>• Advertising tender invitations</li> <li>• Sending information for placement in procurement bulletin</li> <li>• Using internal notice boards to display procurement information</li> </ul>
	Bid Preparation and Invitation	<ul style="list-style-type: none"> <li>• Use of STDs</li> <li>• All bid documents containing same evaluation criteria</li> <li>• Stating reasonable date and time for bid opening</li> </ul>
	Submission, opening and evaluation of bids	<ul style="list-style-type: none"> <li>• Stating date, time and venue for bid submission</li> <li>• Stating date, time and venue for bid opening</li> <li>• Having secured tender box in place</li> <li>• Having tender opening register</li> <li>• Keeping minutes of bid opening including all opening records</li> <li>• Evaluating tenders in accordance with tendering requirements</li> </ul>
	Award of Contract	<ul style="list-style-type: none"> <li>• Notifying Winner of Contract</li> <li>• Publicizing contract awards</li> <li>• Notifying losers of bid</li> </ul>
CONTRACT MANAGEMENT	Project Planning and Mobilization	<ul style="list-style-type: none"> <li>• Taking Works Programme from executors</li> <li>• Taking Advance payment Guarantees for advance payments made</li> </ul>
	Project Implementation and Supervision	<ul style="list-style-type: none"> <li>• Preparation of project monitoring reports</li> <li>• Organization of project progress meetings</li> <li>• Comparing and analysing planned progress against actual</li> </ul>
	Inspection and Inventory control	<ul style="list-style-type: none"> <li>• Preparation of Handing over certificates</li> <li>• Preparation of completion or delivery reports</li> <li>• Use of appropriate stock control record system</li> </ul>
	Disposal	<ul style="list-style-type: none"> <li>• Forming the required membership of Board of survey</li> <li>• Keeping minutes of meetings of Board of survey</li> <li>• Keeping records of items disposed</li> </ul>

**Table 1: Rating of Compliance Indicators**

Source: Adopted from World Bank/OECD/DAC, 2004

Structured questionnaire were used to obtain the data required for determining the compliance levels in all the compliance areas. To obtain further data on the actual practices and challenges encountered in applying the procurement law, the key personnel members responsible for procurement were engaged in face-to-face interviews for all the entities.

## ANALYSIS AND DISCUSSION OF RESULTS

The aggregated compliance levels of all the entities obtained under the main compliance areas are as presented in tables 2 and 3 below:

MAIN COMPLIANCE AREAS	LOCAL GOVERNMENT (%)	HEALTH (%)	EDUCATIONAL (%)	OVERALL (%)
MANAGEMENT SYSTEMS	35.00	31.58	15.56	27.38
INFORMATION AND COMMUNICATION	20.54	10.53	1.39	10.82
PROCUREMENT PROCESS	37.50	23.95	5.83	22.43



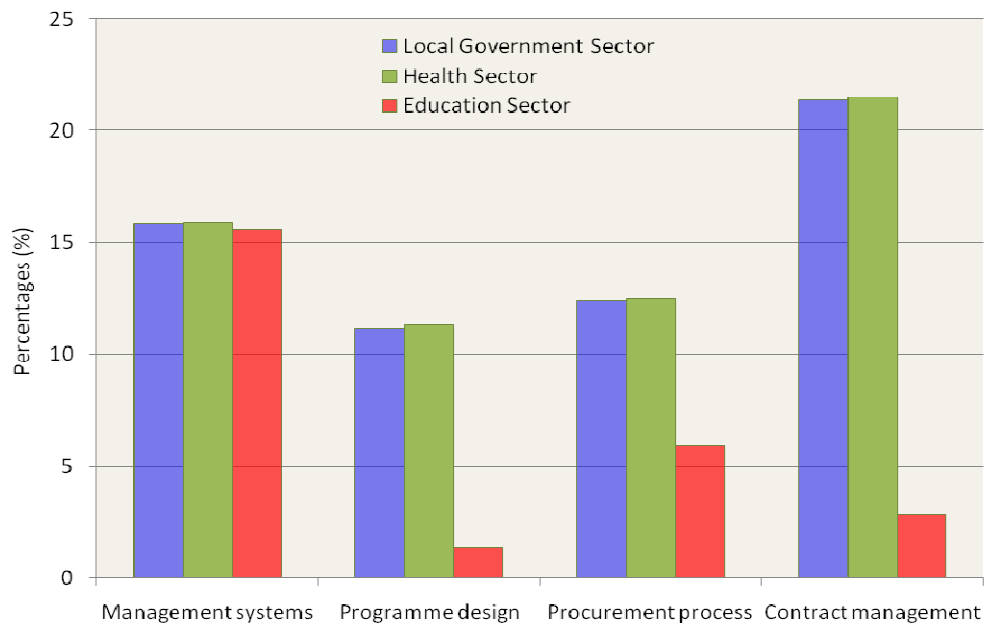
CONTRACT MANGEMENT	41.07	9.21	2.78	17.69
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**Table 2:** Compliance level of Public entities in Ashanti Region

MAIN COMPLIANCE AREAS	LOCAL GOVERNMENT (%)	HEALTH (%)	EDUCATION (%)	OVERALL (%)
MANAGEMENT SYSTEMS	22.61	22.67	28.18	24.49
INFORMATION AND COMMUNICATION	8.69	18.33	18.64	15.22
PROCUREMENT PROCESS	17.39	10.67	5.91	11.23
CONTRACT MANAGEMENT	45.65	11.67	3.41	20.24

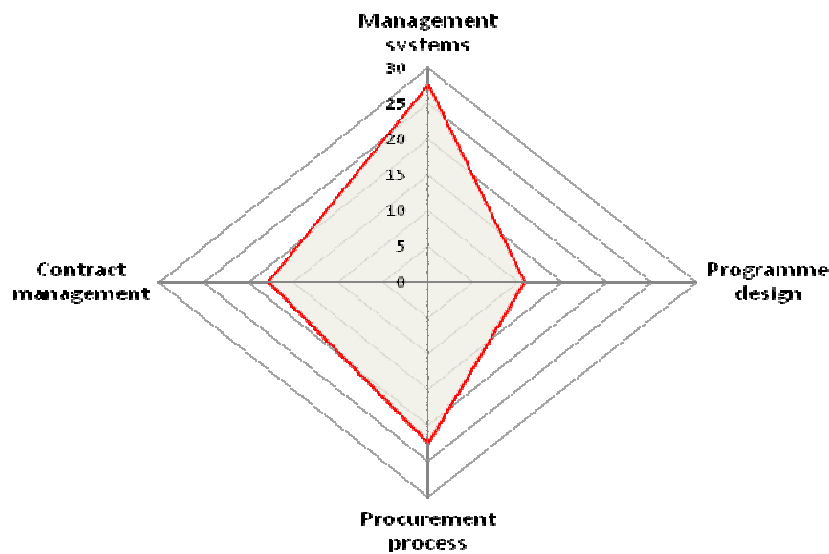
**Table 3:** Compliance level of Public entities in Brong Ahafo Region

In both regions, compliance levels observed were very low as indicated by the percentages obtained in tables 2 and 3. The procurement entities had comparatively better procurement management systems in place when compared to the other three main compliance areas. However, the compliance levels of all the three sectors were below average as none was able to attain 50% in all the four main compliance areas.



**Figure 1:** Compliance level of the three sectors (Ashanti Region)



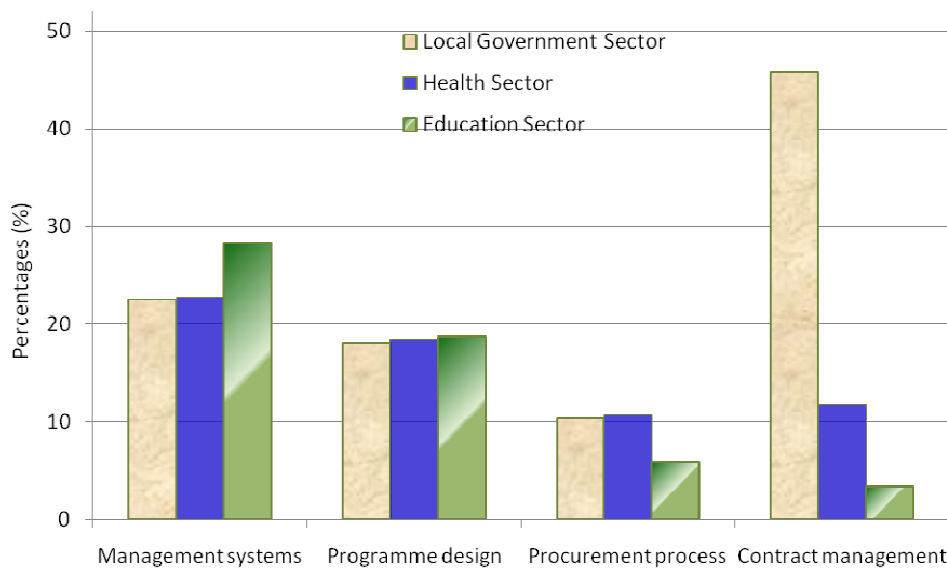


**Figure 2:** Compliance levels under the Four Main Compliance Areas (Ashanti Region)

#### Overall Compliance Level

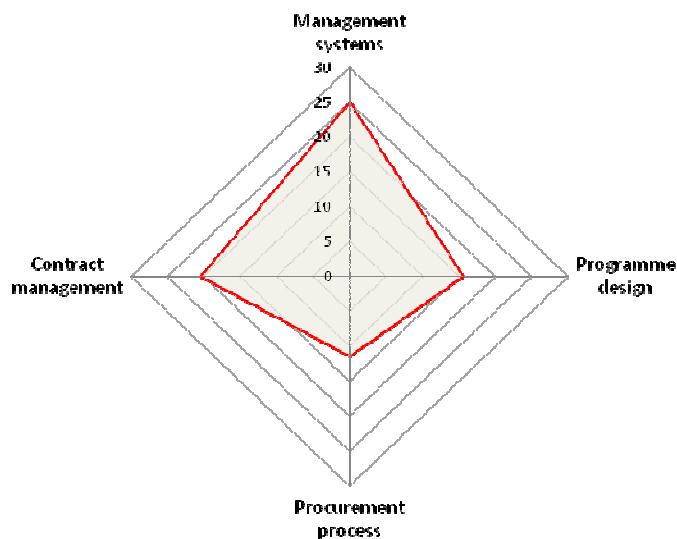
The local government sector had a comparatively higher compliance figures as compared to the other sectors. The personnel at the Metropolitan, Municipal, and District Assemblies (MMDAs) are well familiar with contract management as most of the government construction projects are executed through the local government. Some supply contracts such as supply of school tables and chairs are also executed through the district assemblies. Contracts involving construction of hospital buildings are occasionally executed through the MMDAs.

#### Overall Compliance Level



**Figure 3:** Compliance level of the three sectors (Brong Ahafo Region)





**Figure 4:** Compliance levels under the Four Main Compliance Areas (Brong Ahafo Region)

Moreover, it was found out that most of the staff members under the local government sector had the opportunity of participating in the first organized procurement training by the PPA. Hence, most of the procurement staff members are more familiar with contract management procedures resulting in better compliance level. This notwithstanding, the compliance level for this sector is found to be below average.

The health sector complied relatively better than the education sector (see figs.1 and 3). This is due to the fact that, most of the procurement undertaken by the schools (mostly second cycle and few tertiary institutions) dealt with the supply of low value procurement (perishables like tomatoes, okro, etc). In most cases personnel available were not procurement-proficient. This was evident where heads and their accountants and matrons double as procurement officers one time or the other. The procurement staff in most of the second cycle institutions complained of difficulty in following required procurement processes when dealing with such kind of procurements. This is evident by the compliance levels of 5.83% and 5.91% obtained by the education sectors in the Ashanti and Brong Ahafo regions respectively. Suggestions about developing peculiar procurement guidelines for the second cycle institutions came up in most cases.

Generally, the compliance levels of the entities under the area of procurement information and communication were on the lower side as overall percentages obtained fell at 10.28% and 15.22% for the Ashanti and Brong Ahafo regions respectively. This is probably due to the absence of access to Internet facilities in most of the district capitals. Also the authors identified that due to the absence of regular procurement training for staff of most of the procurement entities, there was lack of know-how with regards to the use of the Internet to post plans, retrieval of procurement information and other standard documents from the Internet and even the use of internal notice boards to disseminate procurement information.



Figures 2 and 4 indicate the overall compliance levels obtained by the entities with respect to the four main compliance areas. The average overall compliance level of entities in the Ashanti and Brong Ahafo regions were 19.58% & 17.80% respectively.

Under each of the four main compliance areas are key compliance indicators. Improving the management system in a public entity requires effective leadership i.e. putting in place training programs and seeking regular technical support from apex bodies. It was observed that there was lack of continuous staff capacity improvement in the procurement processes. For instance, it was found out that most of the staff in charge of procurement were not procurement proficient and have little or no knowledge of the existence of standard tender documents to be used for a given procurement as required by the Procurement Law.

Compliance with the public procurement Act, is anchored on how entities are able to conform with the outlined processes in the Act. There is a general outcry about the delays in the award of contract due to lengthy procurement processes. It is observed that, most entities are unable to award contracts on time due to inadequate planning of the procurement processes. World Bank, (2002) intimated that “misapplication of the procurement procedures and delays is as a result of uneducated procurement staff.

Generally, low compliance with some of the processes including notifying successful bidder, publicizing contract awards, notifying unsuccessful bidders, using internal notice boards to display procurement information and the use of standard tender documents is attributed to inadequate capacity of procurement personnel. In March 2005, The Paris Declaration on Aid Effectiveness highlighted the need to develop the procurement capacity of developing nations (OECD, 2005). Training of procurement managers in public entities should be on top of the agenda in the bid to ensure compliance with the law.

Contract management recorded a very low compliance level. It was observed that most entities take contract management for granted and thus are not enthusiastic at the contract management stage as compared to the award stage. There is a complete lack of information on ongoing contracts. Reports expected from procurement managers like project implementation and supervision reports, project monitoring reports, delivery reports, keeping of records of items disposed of and the use of appropriate stock control record system were generally not adequate in most of the institutions surveyed.

## **CONCLUSIONS**

Based on the four main compliance areas adopted in this paper, the overall compliance levels in the Ashanti and Brong Ahafo Regions lie at 19.58% and 17.8% respectively. The study confirms the low level of compliance as indicated in earlier reports by the World Bank and the Public Procurement Authority. This paper affirms these findings and concludes that there is generally low compliance with the Public Procurement Act 663. The Local government sector however had higher compliance level compared to the other sectors. The Education sector has relatively low compliance level which is attributed to the kind of supplies this sector deals with. It was discovered that the sector deals with perishables and also lack storage facilities to encourage bulk purchase, hence the poor compliance level. The paper argues that the generally poor compliance with the law is due to lack of procurement proficient personnel to man public procurement, lack of resources to purchase in bulk, lack of understanding of the law, lack of Internet facilities to facilitate accessing of information from PPA and also to post adverts and procurement plans.



It is recommended that specific procurement guidelines tailored to suit the nature of procurement commonly carried out in the second cycle institutions should be developed to enable smooth compliance, frequent assessment of all entities, engaging of procurement professionals by all entities and encouraging entities to organize in-house procurement training to specifically address their peculiar needs.

The study confirms that the Public Procurement Act 2003 (Act 663) is observed to proffer solutions but not without challenges. It pencils out weaknesses and threats of the various sectors. In the pursuit to improve compliance with the Act the study recommends that public entities have to recruit procurement personnel and organize intensive and regular procurement training for the personnel handling public procurement especially in the area of procurement processes.

The paper has implications for policy makers in an attempt to strategize to improve the overall compliance level with the public procurement law. Complete conformance to the recommendations of this paper would guarantee maximum adherence to the law, enhance efficiency in Public Procurement, increase public confidence in the procurement process, the protection of public resources and grant equal opportunity for all. Though, the paper admits that its findings cannot be generalized due to the limited nature of the sample size, it also believes that the recommendations can be benchmarked to improve on the compliance level in the nation as a whole.

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