



BPRA's position on centralization of tender processes and procurement

As proposed by the General Laws Amendment
Bill 2010

Introduction

The Minister of Legal and Parliamentary Affairs in the government of National Unity, Patrick Chinamasa introduced the General Laws Amendment Bill of 2010 to Parliament for discourse, deliberation and if agreed upon, ratification into law. The Bill is set to be presented at public hearings across the country in the upcoming months. The Parliament of Zimbabwe, having passed a paltry seven Acts in 2010 by Zimbabwean standards, is set to amend a number of laws so as to centralize all procurement and tender allocation by local authorities to fall under one national body. Currently, all government Ministries in need of goods to undertake their various mandates have to go through the State Procurement Board empowered by the Procurement Act (22:14) while local authorities procure their goods through Municipal Procurement Boards as stipulated by the Urban Councils Act(29:15). The implications of this amendment do not bode well for residents, policy implementation and cities across the country because of a number of reasons that shall be outlined below.

Problem statement

The Urban Councils Act of 1995 is the law governing the calling for tenders by municipalities. Basically, this act places the responsibility for appointing the Municipal Procurement Board for the municipality (and its members) on the municipal council. To quote:

Every municipal council shall appoint a municipal procurement board consisting of not less than five and not more than seven members, which shall be responsible for arranging tenders in terms of section *two hundred and eleven* and for making recommendations to the council in regard to the acceptance of tenders and the procurement of goods, materials
and services.(Urban Councils Act 29:15 *Section 210*)

The Procurement Regulations are based on the Model Law on Procurement of Goods and Construction adopted by the United Nations Commission on International Trade Law in 1993.

Of concern to the BPRA are clauses 12, 18 and 19 of the Bill.

Clause 12 amends the Procurement Act [Chapter 22:14] so that all local authorities are deemed to be procuring entities in terms of the Act. The clause amends Section 2 (“interpretation”) (2) of the Procurement Act by the repeal of the proviso and the substitution of the following: “Provided that the Minister shall not make any such declaration in relation to a person other than a body corporate wholly owned or controlled by the state without that person’s consent.”

Clause 18 repeals section 79 of the Rural District Councils Act [Chapter 29:13] which provides for contracts and tenders of councils. The tendering process will be done in terms of the procurement Act [Chapter 22:14].

Clause 19 repeals sections 210 and 211 of the Urban Councils Act [Chapter 29:15] which provides for the Procurement Board and the tender process respectively, which is proposed to fall under the ambit of the Procurement Act.

What these three clauses 12, 18 and 19 seek to do is to centralize all procurement of local authorities, both urban and rural. Whereas there are 91 procurement boards from Zimbabwe’s 91 local authorities, the Bill seeks to abolish the procurement boards so that all the councils fall under one procurement board, the State Procurement Board.

Implications

Proponents of the suggested amendments are calling for a single national body to control all tender processes by central and local government. They argue that municipal procurement boards are reduplication of the State Procurement Board hence creating parallel structures that would otherwise be undertaken by a single entity.

However, BPRA, after extensive consultation and intensive research, finds fault in this proposed move primarily on the basis of the following:

a) ***Centralization in the era of devolution*** – The attempted move negates global trends that dictate that systems of governance, administration and power serve the interests of residents better when resources and power are devolved from the centre to the grassroots. Central government, in implementing decentralization, seeks to strengthen financial, human and material resource capacities of rural district councils so as to make them effective institutions in the provision of the social and infrastructural services needed for sustainable local government. It also helps in minimizing bureaucracy by reducing levels of decision making and thereby achieving greater efficiency of operations. Also, Minister Chinamasa lone voice is unsound as the cry for devolution during the ongoing constitution making process was too overwhelming to be ignored. The general contention being that having all public offices and officials in the capital city alienates residents and creates bottlenecks that inconvenience the ordinary citizen.

b) ***Increased relocation and closure of factories***

Centralization of procurement will also disadvantage local businesspeople and companies that have been supplying Municipalities for years in the sense that once tender processes and procurement procedures are done at one central point, there is a strong likelihood that companies from the capital city will benefit at the expense of local indigenous people. Centralization of procurement by Local Authorities would therefore create the continuation of the perpetuation of marginalization of 'Smaller towns'.

c) ***Loss of jobs and shifted employment opportunities***

Small-scale businessmen, individuals and the marginally employed will also suffer as a result of factories relocating or closing. Possible employment opportunities from companies that usually supply councils will disappear as businesses migrate to the capital city where the State Procurement Board meets. Companies located outside the capital city will lose out since tender forms and procurement procedures will always advantage those in the capital. The unemployment rate will increase and countless families all across the country will lose their livelihoods.

d) *Prolonged delays in service delivery* – It is a fact well proven that bureaucratic channels between decentralized entities such as local authorities and central government are cumbersome and time-wasting. Councils are experiencing delays in getting to fund the provision of services because the Minister of Local Government, Rural and Urban Development has to approve the Council budget first. During the economic collapse of the past decade, Municipal projects that were quoted at relatively low prices fell victim to inflation such that by the time the Minister put his signature of approval to the budget, the costs of the project would have multiplied tenfold. In other words, a crack on a council road will have become a pothole by the time Council gets approval to use levies collected to repair it. This example points to the possible bottlenecks that will affect service delivery if the Bill pushes through. As it is the State Procurement Board is currently buying for more than 30 government entities. Adding the local authorities would burden the board and result in delays in the procurement of important things like the water chemicals resulting in the council failing to carry out its duties or getting the board as its excuse for service delivery failure.

- The 32 government ministries,
- Parastatals such as;
 - Net One,
 - Tell One
 - ZIMPOST
 - Air Zimbabwe

- Civil Aviation Authority
- Grain Marketing Board
- Zimbabwe Broadcast Holdings
- Zimbabwe Revenue Authority (ZIMRA)
- Zimbabwe National Water Authority (ZINWA)
- Zimbabwe Electricity Supply Authority (ZESA)
- Zimbabwe National Roads Authority (ZINARA)
- Post and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ)

e) Enhanced corruption- The tender process in Zimbabwe has become a hotbed for corruption where government officials responsible for the allocation of tenders, together with powerful politicians in the different lines Ministries, have benefitted from kickbacks and bribery. The current dubious empowerment wave has meant that very few Zimbabweans from one political parties have been benefitting from government programmes and tender processes on behalf of all Zimbabweans. By centralizing all purchases of government, the amendments will increase the base upon which these corrupt officials feed as they will have towns and cities in the list of areas to gain wealth and power through. History has taught Zimbabweans that where tender processes take place, companies belonging to influential people some of which use the accrued wealth to sponsor militias to carry out acts of violence, are the ones that benefit.

f) Absence of accountability- Members of the State Procurement Board are appointed by the President hence they are political appointees who are only accountable to the criminally immune Head of State. Centralizing the tender processes will mean that the Board, inaccessible to the general public for accountability purposes, cannot be questioned on negligence, delays, corruption or incompetence. *The current status quo where tender processes are carried out by the local authorities ensures accountability and participation of residents both as tender seekers and monitors. It is easy for residents to bring*

councilors to account rather than appointed members of the procurement board who are answerable only to their appointer.

g) ***Election and composition of the State Procurement Board –***

Unlike the Municipality Procurement Board, the state entity is chosen by the Head of State, leaving room for patronage and abuse of office to further political ends. Besides, the process by which the President appoints the Board is not elaborate in the Act hence making the Board accountable to a limited few. Such a scenario is an affront to the principles of accountability and transparency since the members of the Board are political appointees' rather professional technocrats.

- a) ***Flawed aspects of the Procurement Act –*** There is a wide schism of consistency between the laws governing national procurement and municipal procurement in the sense that some aspects are specified and enforced in one act while being silent and lenient in others. For example, unlike the Urban Councils Act (which governs municipal tenders), the Procurement Act & Regulations do not spell out the minimum period from publication to closing date and the prerequisite publication of the tender in two local newspapers. In this sense, the legislation is stricter on municipalities than it is on central government departments and public enterprises. Once municipality procurement boards are assimilated into the national body, the laxity in the processing of tenders will filter down to local authorities leading to more corruption and worse service delivery. The Act also says that a municipal council may compile a register of contractors, this is not a prescribed requirement for municipalities while the Procurement Act and Regulations are stringent on the State Procurement Board. What this implies is that the procedure for calling for tenders by municipalities needs to be in line with the national government

guidelines provided by the first three laws as it is not advisable for such anomalies being open to manipulation by corrupt officials.

Also, no effort has been taken to explain or demystify problematic terms such as “locally based” or “previously economically disadvantaged” in the Regulations. Such terms can easily be misrepresented or misconstrued to fit the political landscape of the day or to favour business initiatives of the ruling party or its members. For example, a local company with political connections but little expertise can be favored against a well equipped and experienced foreign firm. This compromises service delivery while enriching the politically connected and their cronies. Also, the 10% preference given to “previously economically disadvantaged contractors” is open to abuse just as the affirmative action agenda has been abused by politicians for mileage. Centralizing municipal procurement will then complicate the issue further as “local” in local governance terminology means a resident of the locality while “previously economically disadvantaged contractors” can also refer to marginalized ethnic groups.

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