



APPLICABILITY OF FORCE ACCOUNT APPROACH IN PROCUREMENT OF WORKS IN TANZANIA

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Abstract:

Force account has emerged to be an important procurement method in public procurement due to its potentials towards improving efficiency and cost reduction. As a result, the Government of Tanzania directed force account to be given precedence in the procurement of renovations, repairs, rehabilitation and remodelling works. Despite the potentials and initiatives undertaken, still there is a dilemma on whether most of the stakeholders understand clearly the concept, procedures and practices associated with force account. In response to the observed ambiguities, the study aimed to examine the existing guidelines on force account and practices and thereafter identify challenges experienced in the implementation of force account. The study was guided by cross-sectional surveys design whereby data was collected using key informant interviews, focus group discussions and documentary review. Thereafter, data was analysed using constant comparative approach through coding process used for categorising and comparing qualitative data. Findings indicated that the poor performance was attributed by the absence of a standardised force account guideline applicable throughout the country by the respective procuring entities. Also, the legal provisions on force account are insufficient for the sake of enforcing best practices. Therefore, regulatory authorities should ensure that the newly introduced force account guidelines are enforced accordingly so as to improve effectiveness and efficiency. Furthermore, there is a need for continued rigorous trainings on force account undertakings among stakeholders involved in order to continue improving practices and performance.

Keywords:

Force Account, Public Procurement, Procurement of Works, Procurement Methods, Practices.

1. Introduction

Public procurement always must be done efficiently and effectively while complying with principles of good governance and professional etiquette. This in turn restores and maintains trust in the public sector which is critical towards qualifying the legitimacy of public procurement in terms of integrity, fairness and transparency (Organisation for Economic Co-operation and Development - OECD, 2009). The span of public procurement in Tanzania covers the acquisition of goods, works, services (consultancy and non-consultancy) and disposal of public assets by tender. Currently, such undertakings are regulated by the Public Procurement Act 2011 (United Republic of Tanzania- URT, 2011) and Amendments 2016 (United Republic of Tanzania- URT, 2016) as well as Public Procurement Regulations of 2013 (United Republic of Tanzania- URT, 2013) and 2016.

The statutes highlight principles, approaches and methods of public procurement with emphasis on fairness, accountability, fair competition, integrity and transparency in the public procurement undertakings. The Regulations (URT 2013 and 2016) have provided a number of procurement methods including tendering, shopping, direct contracting, force account, community participation as well as public private partnerships. However, as provided in section 64 of URT (2016) more preference must always be given on competitive methods (tendering and shopping) in order to enforce transparency and competition in public procurement. Hence, unless otherwise, other methods such as force account should be given an upper in order to smoothen the procurement of works whether construction, repairs, rehabilitation, remodelling or renovations. As a result, force account has emerged to be an important procurement method in public procurement since it enables the procuring entity to execute works much faster (efficiency gains); enhance internal capacity of the procuring entity since works are executed and supervised by its own staff; it is cheaper to execute the works in house as compared to contracting out (cost savings) but also

works can still be executed conveniently without interrupting regular operations (Public Procurement and Disposal of Public Assets Authority - PPDA, 2014).

Therefore, it is becoming much emphasised in the public sector to use force account in implementation of various construction projects to ensure cost-effectiveness and value for money in spending scarce resources (France, 2019). For example, since 2016 the government of Tanzania has been providing funds for renovation and remodelling of its building infrastructures using force account as a procurement method (Shengeza, 2017). Under this method, procuring entities are required to procure all supplies and materials for the project from the suppliers and use of local technical labours for implementation. Among the institutions made use of force account were the fifty-four (54) Folk Development Colleges (FDCs) under the Ministry of Education Science and Technology (MoEST). The Permanent Secretary (MoEST) in 2018 pointed out that "...force account should be used in the rehabilitation and renovations of FDCs infrastructure since it has proven to be cost effective and efficient towards timely completion of works..." Previous works on rehabilitation and renovations of Schools' infrastructure using force account enabled the Ministry to save almost TZS 1 Billion unlike when the works would have been contracted out (MoET, 2018).

Contracting in public procurement often times is a lengthy, time-consuming process and more costly depending on the nature of procurement (Valdovinos & Lorick, 2013). Force account as an emergent procurement mechanism provides a cushion for lead time optimisation and improvement in service delivery (tailored services) depending on the availability of equipment, materials and supervision within the procuring organisation (Mbabazi and Mugurusi, 2018). However, despite the observed potentials, still force account model exposes the government to the greatest degree of procurement and supply risk since it cannot pass risk on to any other entity besides itself. Also, there are still dilemmas on whether most of the Procuring Entities (PE) and other Stakeholders at large understand clearly the concept, procedures and challenges of force account (France, 2019).

Similarly, Mbabazi and Mugurusi (2018) observed that aside from what is currently known from the professional literature, force account mechanism in procurement of works is still a mystery in both theory and practice. Thus, empirical literatures suggest a need for more rigorous studies of the existing practices and come up with concretised evidences towards improving performance of force account in procurement of works. In response to the observed ambiguities, the study aimed to examine the existing guidelines on force account and practices in the procurement of works and thereafter identify challenges experienced in the implementation of force account in public procurement.

2. Methodology

The study was guided by a cross-sectional survey design whereby data was collected at one point in time from a sample selected to represent a larger population of procuring entities. A repeated mini-survey was conducted in 2016 and 2017 to grasp the practices and challenges in the applicability of force account approach. The surveys were done purposely to complement the existing data from the secondary sources. Data was collected using key informant interviews (in 2016 and 2017), focus group discussions (in 2016) and documentary review (in 2018 and 2019). The interviews were done with selected procurement officers, headmasters of secondary schools, doctors in charge at health centre/dispensary, ward and village executive officers. The focus group discussions were done with members of school committees as well as health centres/dispensaries committees in the selected wards/villages. Documentary review was conducted to collect data from published and grey literatures. Grey literatures normally provide data not found within commercially published literature (Paez, 2017; Pappas and Williams, 2011). The surveyed grey literatures helped to reduce publication bias and fostered a balanced picture of available evidence. The articles reviewed included Public Procurement Law and Regulations, Force Account Guidelines issued by Ministries, Public Procurement Regulatory Authority (PPRA) and Controller Auditor General (CAG) Audit Reports, Public Procurement Circulars and Guidelines, Conference and Research Papers, and Baseline Reports. Data were analysed using constant comparative approach through coding process used for categorising and comparing qualitative data for analysis purposes as recommended by Kolb (2012). The method was not used in the strictest sense, but more as a basis for reflections on the survey data in order to develop proposition(s) that emerged from field data which were then complemented with secondary data.

3. Findings and Discussions

3.1. Guidelines and Procedures of Force Account

Force account being an alternative procurement method has been captured in Regulation 167 of URT (2013) and URT (2016) as well as in the 7th Schedule (to qualify the categories of its application). The method is solely used in the procurement of works (mostly medium and minor works) whereby the procuring entity itself or use of public or semi-public agencies or departments concerned using its own personnel and equipment or hired labour to execute the works accordingly. However, prior to decisions on choosing force account the procuring entity has to make cost and benefit analysis in order to determine whether it is cheaper to use force account than to execute the works by contracting out. Public Procurement and Disposal of Public Assets Authority (PPDA) (2014) of Uganda provides guidelines on making cost analysis in terms of scrutinising personnel cost to be used (using the applicable rates of the procuring entity). The analysis of indirect overheads (costs) using the rates provided by a competent authority should also be done along with equipment and supplies to be used basing on the prevailing market rates. The analyses will enable the procuring entity to make informed decisions before venturing into force account undertakings which may backfire if not well analysed.

Notwithstanding the preliminary cost analyses, a review of regulation 167 of Regulations (URT, 2013) guides procuring entities towards considering the context and milieu of the works through which force account can be applied. The legislation indicates that force account can only be used when the required works are scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable prices; works are required to be carried out without disrupting ongoing operations; or risks of unavoidable work interruption are better borne by a procuring entity than by a contractor. Also, the method is useful when there are emergencies which require a prompt attention; the procuring entity has qualified personnel to carry out and supervise the required works; or the maintenance or construction is part of the routine activity of the procuring entity. Thus, the applicability depended much on the circumstances, convenience and/or directives. For example, the Ministry of Education, Science and Technology directed force account to be given priority in the procurement of renovations and rehabilitations works in Secondary Schools and Colleges.

Along with the provisions in the statutes, the Ministry of Education, Science and Technology (MoEST) and the President's Office, Regional Administration and Local Government (PO-RALG) prepared standardised Force Account Guidelines that are used by Institutions, Departments and Agencies working under the respective Ministries. The Guidelines have been very instrumental and useful in the rehabilitation and renovations works as well as construction works mainly at the Lower Local Government Authorities (LLGAs) (Villages and Wards), Schools, Colleges, Hospitals and Health Centres. The Guidelines provide provisions on the basic principles, conditions for using force account, benefits of force account, appointment of committees and their responsibilities, proceedings, approval organs and prohibitions. Among others, the guidelines have highlighted a number of prohibited practices including frauds, corruption, collusions and conflict of interests. Procurements are supposed to be done competitively, transparently while observing fairness, objectivity and integrity.

Procedures of force account like any-other procurements, start from procurement plans whereby the procuring entities highlighted the works to be acquired and associated materials and/or services. A review of the plans (Annual Procurement Plans) showed that the plans stipulated the methods to be used to acquire the materials and/or services, budgeted costs and timeframe which were critical towards successful works completion. Through plans, the requirements were consolidated (where possible) in order to economise transactions and lead times during implementation. Force account being a facilitating procurement method, a number of associated methods were used depending on the context, timing and expected outcomes. The methods used included shopping/competitive quotation (reg. 163); mini-competition (reg. 131-5)); minor value procurement (reg. 165); micro value procurement (reg. 166); and community participation (reg. 168).

Since force account proceedings are not exceptional from the conventional procurement procedures, project committees were always required to ensure that all the necessary approvals are obtained at every stage of project execution. The approvals were obtained using procedural forms and circular resolutions while observing the jurisdictions of organs as required by section 41 (URT, 2011). Also, findings indicate that regular meetings were conducted between committees/organs in order to track works progress and streamline the implementation activities as per action plans. The meetings both on-site and off-site were important to share new ideas that might have

resurfaced but also certify the works completed after rigorous inspections. At the lower local governments, engineers and experts from the Council (District and/or Municipal) were invited in order to certify the works since the LLGAs and Schools had no qualified experts. Likewise, record keeping is essential and throughout proceedings the committees/organs are required to keep intact all records pertaining to transactions for verification and auditing. Regardless of the achievements made using the guidelines that have streamlined the procedures to be followed by entities falling under the Ministries, there are number of shortfalls inherent to the guidelines. A review of the MoEST Guidelines showed that it does not provide details concerning appointment and composition of bids evaluation team as per section 40 of the URT (2011); how the evaluation of bids will be done as well as submission and approval of evaluation report as required by regulation 220 and 231 of the URT (2013) respectively. Also, the guideline does not provide the procedure to be followed by the procurement committee in purchasing building materials from the surrounding community of the project and procedure for quality control as observed by the PPRA (2019). Likewise, the PO-RALG Guideline as observed by the PPRA (2019) does not adequately qualify the composition procurement committee, goods inspection committee and works committee within the health centres. Also, the guideline was not exhaustive on procedures to be followed to acquire local mason, labourers as well as procedures to be followed for procurement of goods and quality control parameters.

The provisions provided in the Regulations (URT, 2013 and 2016) are also not sufficient towards guiding the procuring entities on the appropriate use of force account. Apart from mentioning the conditions of using force account and circumstances the regulations are silent on the proceedings to be followed thereafter. The regulations hardly provide guidance on cost analysis parameters, accountability and quality assurance parameters, performance guarantee parameters and inter-linkage of force account and other procurement methods. The Ugandan procurement legislation on force account is a little bit improved as it was amended to come up with separate provisions namely Execution of Works by Force Account (2014). The amendments are more exhaustive in terms of making provisions to guide procuring and disposing entities in making thorough cost-benefit analysis so as to determine whether it is cheaper to use force account compared to executing the works by contracting out. Also, the provisions guide entities on how to ensure that the works undertaken are properly executed and minimising sloppiness as a result of back-sourcing.

3.2 Force Account Practices in Procurement of Works

The practices of procurements under force account somehow are different depending on the nature of the procuring entity and the guidelines used. It suffices to say the practices were not very much standardised throughout the entities. At the LLGAs (villages and wards), schools (primary and secondary), and health centres or dispensaries the practices were dependent on committees since they didn't have a well-informed institutional procurement structure as required by procurement legislation. The aforementioned entities hardly had a well-established Procurement Management Unit (PMU) to manage their daily procurement activities and Tender Board (TB) to oversee and approve the respective procurements and award of contracts as required by sections 37 and 38 (for PMU) and 31, 33, 35 and 35 (for TB). Hence, in absence of the organs, the entities had to follow the guidelines provided by the Ministries to appoint committees for overseeing and execute force account procedures without contradicting public procurement legislation.

A review of the guidelines indicated that there are three basic committees namely Project Committee, Procurement Committee and Inspection and Acceptance Committee. Findings from the surveyed entities indicate that the project committee is in-charge of identifying the needs and channelling them to procurement committee, charting out action plans for implementation, supervising all works to be undertaken and prepare project progress reports as well as the final project report. The procurement committee was responsible for managing all procurement activities of the project including preparation of procurement plan, sourcing of sources of materials supply, preparation of solicitation and contract documents, obtaining all the necessary approvals and procuring the required goods and materials in the project. Inspection and acceptance committee was responsible for inspecting all delivered goods and materials by suppliers, checking compliance with local purchase order/contract and preparing inspection reports that were among the prerequisites before approving payments.

Therefore, LLGAs (villages and wards), schools (primary and secondary), and health centres or dispensaries relied much on the expertise and guidance of experts (officials) from the Ministries or Local Government Authorities (LGAs). For example, during interviews the Procurement Officers (at LGAs) pointed out that their role is to guide the administrators of schools, health centres/dispensaries, wards and villages to follow the required procurement

procedures. The PMU (at LGAs) gave the LLGAs list of potential local contractors and suppliers who have been screened and prequalified by the Government Procurement Service Agency (GPSA). In collaboration with the District Engineer(s) they assisted LLGAs in preparation of Bill of Quantities (BOQs), supervision and certification of works executed. Also, at some point the District Education Officer (DEO) and District Medical Officer (DMO) played the role of reviewing and endorsing the submitted procurement requirements for schools and health centres/dispensaries respectively. Other roles played by LGAs Officers included provision of training and guidance staff and committee members on force account guidelines, procurement planning, and preparation of procedural documents (requisition note, purchase order, quotation documents and minor procurement contracts).

On the other side, procuring entities such as Colleges which had a well-established procurement institutional structure (as stipulated in Part IV of the Public Procurement Act, 2011) their procedures were not necessarily implemented entirely as per Ministerial Guidelines. Through documentary review it was established that the aforesaid entities had the normal procurement governance structures. Therefore, the formation of some committees was optional since they had institutional organs to handle functions of some committees effectively unlike in the LLGAs. The entities had a well-established PMU, TB and User Departments to oversee all the procurement transactions and supervising all the respective works during implementation. However, if need be, the entities had options of hiring part time experts from the neighbouring entities or private firms as stipulated in the Public Procurement Act (URT, 2016).

Therefore, force account procedures and practices in entities with well-established institutional structure were more effective unlike their counterparts who struggled with compliance though not all the time. During focus group discussions with the committees it was realised that some of the members were inadequately knowledgeable of the public procurement proceedings associated with force account but were supposed to oversee the undertakings. Mostly there was overreliance on experts available at the LGAs and in their absence sometime decisions could hardly be made in the meetings. Thus, presence of experts and qualified officials is pivotal which also gave the Colleges an upper hand (unlike Schools) towards making proper interpretation and applications of Ministries Guidelines as well as the Procurement Legislation. Further, presence of experts within a reach smoothened force account processes by infusing and/or making compromises with the best professional practices where the Guidelines and Legislation fall short or contradicted each other.

3.3 Flaws and Challenges in the implementation of Force Account

As observed by Mbabazi and Mugurusi (2018), the introduction of the force account mechanism in public procurement; the concept appeared rather alien to most of the practitioners in the surveyed procuring entities in Uganda. Likewise, in Tanzania the findings are not much different from the neighbouring country partly contributed by presence of insufficient and fragmented guidelines as well as provisions on force account undertakings. Experience shows that cost and benefit analysis as proposed by PPDA (2014) were not thoroughly done prior the decisions to adopt force account as a procurement method for construction, renovation and rehabilitation works. The PPRA (2019) observed a number of flaws including weaknesses in quality control for works among which include lack of inspection reports of works done and testing the quality of works done, and quality assurance plan was not prepared. The flaws jeopardised chances of value for money achievement among the respective entities and raises doubts as to whether the works were certified accordingly by the experts.

Findings also indicate that there is good awareness of force account mechanism as popularised by the Ministries but some stakeholders involved particularly at the LLGAs as committee members are hardly trained on public procurement laws and guidelines. As a result, the guidance and instructions received from LGAs and Ministry experts seemed too many, not clear and confusing sometimes due to their inability to comprehend. In one of the focus group discussions, a committee member pointed out that "...we were not very well trained on force account proceedings but supposed to oversee projects implemented under the method within our locality, make decisions and ensure effectiveness regardless of our limited knowledge...as a result we are held accountable regardless of our little understanding..."

Through media it has been witnessed that some committee members in lower local government being questioned without tentative answers about their role to oversee/supervise the projects in their jurisdiction. As a response, the Ministries (MoEST, PO-RALG) have taken initiatives to build capacity of committees and officials through trainings on force account.

Procurement of building materials and/or supplies in some entities was not done properly using the framework agreements (contracts) as required by the URT (2013) since they were among the Commonly Used Items and Services (CUIS). As noted by PPRA (2019), the procedures provided under regulation 131 (4) (b) (URT, 2013) as amended by regulation 42 of Amendments (URT, 2016) were not followed. The procuring entities were required to conduct mini-competition on prices of required building supplies and materials from at least three suppliers (approved by the respective TB) with framework agreements issued by GPSA. This was supposed to be done prior provision of local purchase order to the lowest priced supplier within the prevailing market prices.

Compliance with the guidelines and standard documents issued by the PPRA was also among the weaknesses observed in the procurement of works using force account mechanism. The audit done by PPRA (2019) revealed that solicitation documents used in the procurement of materials were not as per the issued guidelines; the documents missed necessary information relating to the tender; and the evaluation criteria provided in the solicitation document were ambiguous. In some instances, the required approvals as required by the Ministerial Guidelines, URTs (2011, 2013 and 2016) were hardly obtained either from Tender Board or Chief Executive Officer of the respective procuring entity. The observed incompliance defeat the good intentions of using force account since without compliance it was very likely that there were loopholes for transgressions with implications on cost and efficiency.

4. Conclusion and Recommendations

Effective application of force account in procurement of works requires preparedness in terms of resources and careful cost-benefit analysis in order to improve efficiency. Thus, the expected outcomes (timely completion, cost optimisation and quality delivery) are not spontaneous but rather achieved through scrupulous processes. The implementation process calls for supervisory organs and committees' commitment and accountability while avoiding conflicts of interest and collusions. However, the participants require rigorous trainings on force account undertakings in order to continue improving the practices and performance towards achieving value for money. The Ministries have taken initiative to training but more is needed particularly at procuring entities without a well-structured procurement institutional framework to oversee governance and implementation of force account processes. Findings indicated that there is poor performance was attributed by the absence of a standardised force account guideline applicable throughout the country by the respective procuring entities. Since the PPRA has taken the initiatives to prepare the guidelines, it is recommended that once they become effective, adequate trainings and capacity building should be done accordingly so as to improve effectiveness and efficiency. The guidelines in particular will be instrumental for procurement through force account particularly at LLGAs in order to improve to be effectiveness and efficiency. As a result of incompliance, it is recommended that, there should be a compliance committee (apart from the conventional committees and organs) that will ensure compliance at every stage of the process. The committee members should be those with knowledge or well trained on public procurement and related laws, regulations and guidelines. Among others, the committee will be responsible for verifying all payment claims before being approved by the Chief Executive Officer in order to make sure all compliance issues are intact and the submitted claims are genuine to avoid frauds and possible collusions.

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