Public sector procurement in Kenya

By: David Fellows, John Leonardo [1]

Earlier this year, PFMConnect launched a global survey programme of public sector procurement practice. The first project was in collaboration with the Kenyan Federation of Women Entrepreneur Associations[2] (FEWA). The initiative commenced with questions directed at a group of FEWA members and the results were then compared with evidence gathered by other organisations.

The FEWA responses are summarised in the table below:

	Yes %	**No %**	**Not Sure %**
Do the laws and court system support fair competition	10	90	–
Are the laws on purchasing readily available on the internet	70	20	10

Are invitations to bid readily available on the internet or in the press	60	20	20
Are contract awards adequately announced on the internet or in the press	50	40	10
Is the bidding process handled competently	30	70	–
Does Government get value for money from procurement	10	80	10
Is there fairness in the selection of successful tenderers	10	90	–
Do businesses engage in collusion and bribery	90	10	
Do you know of criticisms of procurement process in audit reports or public enquiries	90	10	_
Do you know of complaints by tenderers about the administration of procurement	100	–	_
Do you consider that tenderers are satisfied with how complaints about the awarding of contracts are handled	10	80	10
Do you consider that SMEs get reasonable opportunities to win contracts	30	70	_
Are additional measure required to support women owned businesses despite recent legislation for this purpose	70	30	–

This made it clear that there are serious concerns about the integrity of Government procurement processes with regards to bidding invitations, the awarding of contracts, the handling of complaints, the fairness of the approvals process and failure to prevent collusion between bidders. It would seem that there is discontent within the contractor community about these issues and an awareness that similar concerns are shared by some official bodies. There is also a feeling that the legal measures taken to improve opportunities for women owned businesses are not yet achieving the hope for impact.

FEWA members were asked to suggest improvements to the Government’s approach to purchasing goods and services. Their suggestions included:

- Better access to credit
- Company vetting to weed out collusion
- Fairness in administration
- Transparency including support from a centralised online computer system

Corruption, credit and good administration

The recent World Economic Forum Report on African Competitiveness for 2015 deals with some of these issues. It identified the most problematic inhibitors to doing business in Kenya as being:

	%	Ranking
• Corruption	20	Ranked first
• Access to financing	18	Ranked second
• Inefficient government bureaucracy	8	Ranked sixth

These factors, amounting to 44% of the impediments to trade, lend weight to the concerns reflected in our survey. The report suggests a deteriorating situation compared to 2013 when concern for corruption and access to financing stood at 13% and 14% respectively. Overall the report ranks Kenya ninth most competitive amongst African countries, ninetieth worldwide.

Kenya's ranking in Transparency International's Corruption Perceptions Index has deteriorated over the last two years with its ranking declining from 139th equal to 145th equal. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) in its 2014 report on the national economy makes the telling point that corruption has a direct impact on poverty levels and the entire quality of life for citizens.

Progress for the disadvantaged

As from September 2013 under the provisions of the Public Procurement and Disposal Act 2005, the Kenyan Government directed that a rather ambitious 30% of all government tenders should be awarded to micro and small enterprises (MSEs) owned by women, youth and the disabled and directed that such MSEs should be paid by public sector organisations within 30 Days. Subsequently, prequalification registration stipulations and surety requirements for such groups were simplified and a minimum allocation was set for disabled tenderers with a maximum allocation of 15% to any one of the three groups. Youths were defined as those between the ages of eighteen and thirty-five years. Government has admitted that at present only 3% of procurements are being awarded to preferential groups.

KIPPRA suggests that the Government should allow micro and small enterprise (MSE) associations to organise group bids for public procurement tenders involving MSEs with the Government's public procurement technical advice service lending support.

Regulation 34 stipulates that payments made under the Act shall be made within thirty days. A circular of the Public procurement Oversight Authority issued earlier this year advised that the main preferment conditions were often being ignored. What hope therefore for the thirty day rule? Prompt payment is essential to mitigate the problems of access to credit identified by disadvantaged groups. It is noteworthy that FEWA has recently taken the initiative of establishing a credit facilitation operation, SACCO, to support its members with professional advice on business funding.

FEWA members also offered two ideas not suggested by KIPPRA. One was the need to simplify tender documentation requirements, at least for smaller contracts; the other was the need to give formal recognition to the role of women's representative bodies in an engagement process with Government during the introductory phase of the new MSE arrangements. These measures would make a major statement by government about its commitment to MSEs and its support for women in business.

Problems and possibilities

The Kenyan Parliament passed a Bill on 27th May 2015 that sets out new enabling legislation for public procurement but the President refused to assent the Bill into law. This Bill has been returned to Parliament for reconsideration but the Parliament has not completed this action. The Bill confirms the role of the Public Procurement Oversight Authority to drive procurement reform and establishes an Administrative Review Board to deal with complaints. It also provides for special arrangements being made in support of disadvantaged groups. There is some concern amongst women's representative bodies that they may lose the specially defined status they already have because women are not specifically mentioned in the Bill as a necessary component of disadvantage.

The modern world runs on enabling legislation to give governments flexibility to address changing circumstances but the Government and the President will obviously need to give the necessary reassurances of their continued commitment to the support of women-owned businesses. Perhaps they would also hear the calls for the simplification of tendering documentation for smaller contracts, further work on bidding arrangements and strong representation of women within the designated oversight structures.

Kenyan media coverage over the last few months suggests that the implementation of an enhanced procurement regulatory framework will continue to be constrained by corruption. Ambassadors to Kenya have on several recent occasions banded together to warn the Kenyan government and public of the grave dangers posed by the current levels of corruption and have threatened to refuse visas to Kenyan nationals engaged in such practices. Kenyan corruption is widely documented[3] and toxic.

Conclusions

Most governments are beginning to regard small business development and the increased prominence of women entrepreneurs as essential contributors to economic diversification and growth. Public sector procurement is clearly an important tool to help facilitate this yet the Government of Kenya has not followed up effectively behind their preferential procurement initiative and needs to do so.

Rampant corruption must also be effectively addressed. We shall return to this and to the subject of procurement administration in a more general context in coming months.

As for the ambitions of women entrepreneurs, their voices are essential to rallying the preferential groups behind the Government's initiative. We wonder whether they should also demand from Government a clear commitment to a 50% minimum allocation to female-owned MSEs within the preferential allocations to the youth and disability groups.

Postscript

As we write, the Kenyan President has just set out a series of additional measures to combat corruption and has called on religious leaders to support his campaign. The test of the intent will clearly be in the number of prosecutions that flow through the courts and particularly those of high officials and politicians.

[1] The authors David Fellows and John Leonardo are Principals of PFMConnect. They have been engaged on projects in Africa, Asia and the Pacific funded by the World Bank, EU, ADB and DfID.

[2] See: http://fewa.or.ke

[3] Kenya's corruption problem: causes & consequences, Sr Kempe Ronald Hope; Dfid's anti-corruption strategy for Kenya '13

The need to improve the PEFA methodology

We have prepared a SlideShare presentation that recommends improvements to the current Public Expenditure and Financial Accountability (PEFA) methodology for assessing public financial management. You can view the presentation at: http://www.slideshare.net/johnleo/the-need-for-improvement-in-public-expenditure-and-financial-accountability-pefa-assessment-methodology. This presentation supplements the material presented in our recent blog at: Proposals for PEFA reform.

Proposals for PEFA reform

Posted by David Fellows and John Leonardo[1]

The problem

Failings in public financial management span the breadth of the Public Expenditure Financial Accountability (PEFA) scores. Our work suggests that numerous African governments that had very low scores from initial PEFA assessments[2] conducted up to nine years ago for some Performance Indicators (PIs) still present low or failing scores – 'C', 'D+' or even 'D' – for many of the same PIs in the most recent assessments.

PEFA assessments and PEFA-based reforms do not seem to be working for all PIs. Why? There are two main problems.

First, the current PEFA methodology results in assessments often giving little attention to some of the broader institutional causes of poor performance, including:

- **Staff capability:** The selection, availability, training, ambition and management of staff are typically ignored. Even when they are considered, boundaries are often too narrowly drawn around central finance functions.

- **Finance professionalism:** PEFA assessments do not consider the capacity to adapt PFM practice to local characteristics and pressures, to share knowledge and promote essential values.
- **Management:** PEFA assessments rarely question the fitness of the management chain to carry the burden of the finance function and its reform or the commitment of top management and ministers to facilitating this task.
- **ICT capacity:** This is increasingly important – affecting both the ability to operate current processes and an organisation's improvement potential – but completely overlooked.
- **Extraneous policy effects:** requires discipline to avoid concurrent policy changes that will pose unsustainable demands on top of the combined burden of PFM reform activities and the daily routine.
- **The behaviour of politicians and top officials:** In what is the most glaring limitation, corruption at a senior level, capricious decision-taking, unreasonable favouritism and lack of apparent consideration for staff or citizens can have disastrous implications, but features nowhere in the PEFA.

Such omissions can result in PFM reform programs failing to address fundamental problems.

Second, there is a disconnect between analysis and reform, with the two stages often developed by different groups, and reforms often having little relation to key underlying problems.

The very mixed history of PFM reform is a testament to these two problems.

An unacceptable state of affairs

Poor PFM performance is not unique to an African environment or developing nations in general or indeed to developed nations throughout the world. The problem for developing nations is that they are by their very definition less richly resourced. The administrative basis from which they play out their current experience is lower and the safetynets are less robust. They can less readily afford their mistakes and recover from them less rapidly.

The questions that we pose from our analysis are these: (i) is it reasonable to continue to do such a limited evaluation of the overall PFM environment given the evident complexity of the PFM context as we have set out in very brief terms in this note; (ii) given that the PEFA methodology has been in operation for almost ten years and numerous major countries are making relatively little progress with some key PFM functions, is the PEFA methodology and its underlying scope entirely satisfactory; (iii) are not assessments being underutilised in that their scope and the circulation of completed work is often restricted to finance ministries – even where activities outside the central finance function are subject to review there is often limited involvement of staff from such areas in assessment planning, task team membership and post hoc discussion; and (iv) is the best use being made of the insights gained by review teams given that there is no assured linkage between the assessment study and any consequent reform proposals?

A way forward

We believe that at least for those governments in serious difficulty the scope of the PEFA methodology is too narrow and that there must be a more wide-ranging diagnostic review at the PEFA assessment stage that helps concentrate minds on the root causes of serious PFM shortcomings.

It is not uncommon for governments to express doubt about the failings identified in PEFA assessments and reaffirm the validity of plans already made for the future that do not address fundamental problems. Such conclusions are more easily reached when causation is not addressed.

The current PEFA methodology requires the preparation of concept notes to inform decisions concerning the scope of proposed PEFA assessments. We suggest that the merits of undertaking a broader institutional assessment should represent an additional topic to be addressed in the preparation of future concept notes. If evidence of widespread poor performance emerges unexpectedly during an assessment, then the possibility of undertaking a wider institutional review should be considered at that stage.

Whilst it is accepted that political economy factors will have a material influence on PFM outcomes in many countries, that is no reason to ignore them.

Proposals

Once the PEFA diagnosis is complete, and the underlying performance factors laid bare, the same reviewers should be asked to present views on reform priorities, time scales and the reasons for previous reform failures. This work differs from the main assessment process and should therefore be included in an accompanying memorandum.

An extended review process – under which the traditional assessment and an examination of underlying factors are both examined, and reform priorities discussed – would make much better use of the assessment experience as a whole. Such an approach would be more conducive to strong, informed advocacy for prompt and effective decision-taking.

We also believe that assessment reports should be more widely circulated and that a wider group of staff involved in key PFM work activities should be consulted during the assessment process.

Conclusion

The proposed broader-based and extended PEFA assessment methodology falls far short of creating a design tool for PFM reform. It does, however, make better use of the effort and expertise employed and the collaborative environment established during the assessment process. Consequent reform strategies should, therefore, become more effective.

Notes:

[1] The authors are Principals of PFMConnect. They have been engaged on projects in Africa, Asia and the Pacific funded by the World Bank, EU, ADB and DfID, including PEFA assessments. They are grateful to Rajiv Sondhi, Head Loans and Grants at the International Fund for Agricultural Development, who reviewed the draft and offered helpful guidance; nevertheless views expressed remain the responsibility of the authors.

[2] See: www.pefa.org

[3] A slightly abbreviated version of this blog is available at the Devpolicy Blog from the Development Policy Centre based at the Australian National University's Crawford School of Public Policy: Proposals for PEFA reform

Trends in African finance ministries' social media usage

We have prepared a SlideShare presentation that highlights the response levels achieved recently by African finance ministries in their social media activities. You can view the presentation at: http://www.slideshare.net/johnleo/african-finance-ministries-social-media-and-public-financial-managementAfrican finance ministries, social media and public financial management. This supplements the material presented in our recent blog. African-finance-ministries-social-media-and-public-financial-management