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## Accessing Public Contracts in Ghana: The Case of Small and Medium Enterprises

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### **Abstract:**

*Public procurement is seen as an avenue to increase business opportunities by Small and Medium Enterprises but this goal has been hindered due to the challenges in accessing public contracts in Ghana. The study sought to ascertain the depth of knowledge in procurement practices by the owner/managers of SMEs in Ghana and also identify and or examine the challenges faced by SMEs in the public procurement process, so as to know where government interventions would be needed. The study was conducted in the Greater Accra Region. A Focus Group Discussion was organised for the owner/managers of SMEs. This sub-sample were members of the Ghana National Chamber of Commerce and Industry (GCCCI) in Accra. A total of 112 owner/managers were available for the last quarter meeting, 9 groups of 14 members each were organised for the focus group discussions. It was discovered that the content of the tender documents were totally or to a large extent left at the discretion of the one procuring it. This could lead to subjective buying and the buying of inferior items. It could also be concluded in this study that the Act had fallen short in bringing the needed transparency with respect to the use of public funds by entity officials. There exist numerous allegations of dishonest deals and lack of openness in procurement practices in Ghana. Furthermore, this research revealed that the actions of procurement entities fall short of the provisions of the Act and that the suppliers and contractors (SMEs) were not privy to these decisions.*

**Keywords:** Public contracts, Small and Medium Enterprises, Procurement

### **1. Introduction**

In many countries Small and Medium Enterprises (SMEs) represent the majority of local businesses (Amarteifio & Frimpong, 2019), this is not different for most developing countries and for that matter Ghana. Despite the popularity of SMEs in Ghana, in the public marketplace, the share of contract value awarded to SMEs often falls short of their share of economic turnover (Thomassen et al., 2014). SMEs are vital cogs in the functioning of any market economy. Existing literature suggests an increasing role of public procurement in the supply chain of the local markets and economy (Lindgreen, Swaen, Maon, Walker & Brammer, 2009). SMEs in many countries are regarded as an important focus for policy makers. Public procurement that prioritises SMEs and source from local suppliers has greater impact locally and promotes social well-being (Bovis, 1997, Nijboer, Senden, & Telgen, 2017). For example, in the UK, the Small Business Service (SBS) in 2014 reported that small businesses accounted for 99 percent of the 3.8 million services; it employed 56 percent of the workforce and was responsible for 52 percent of turnover. For this reason, the UK government's focus was on increasing procurement purchases from local SMEs.

Fee et al. (2002), suggests that there was always the need for central governments and local authorities to engineer innovative methods for promoting the use of SMEs in bidding procedures and the granting of public engagements. Some of these options included the use of margin of preferences to a contractor for use of locally produced materials and labour in public contracts as found in many legislative instruments of a number of developing countries. From the various scholarly studies elsewhere, SMEs have proven to be game changers when it comes to innovation, employment, wealth creation among others. But very few studies exist on the accessibility of SMEs to public procurement particularly for developing nations.

Given the centrality of SMEs, regulations and policies that foster their involvement in public procurement have been recognised as beneficial in achieving the goals of fostering GDP and employment. In addition, SME friendly public procurement was expected to increase entrepreneurship and support innovation, given that SMEs were generally regarded as more dynamic and innovation-prone than large enterprises (Erridge, 2005; Knutsson & Thomassen, 2014; Murray, 2009; Preuss, 2011). Notwithstanding the important role played by the SMEs, little is captured about their participation in the local processes of public procurement. Walker et al. (2009) in a study to ascertain the role of SMEs in public procurement suggested that not much had been written regarding motivations of the public-sector procurers' use of SME providers or indeed the conditions influencing decisions with respect to buying from the SMEs at the organisational

and buyer levels. The government of Ghana's ingenuity to help SMEs through the public procurement process has uncovered a number of challenges including administrative issues with e-procurement systems, cancelled tenders and exclusive contract conditions.

According to New Institutional Economics (NIE) theory, regulators play vital role in a competitive market to correct market failures (Bozeman, 2002). In public procurement context, market failure could occur when the bulk of public spending is being awarded to big firms, whereas relatively smaller public contracts are awarded to small companies (Akenroye & Aju, 2013). SMEs are continually sidelined from participating in public procurement considering their qualifications, sizes and levels of production. Many government institutions have been identified as being conservative in their approach to procurement largely because of their policies and processes. The perceived complexity of the process, combined with government regulation issues causes SMEs either ignore the market of government contracts or submit poorly researched applications.

Since SMEs play a significant role in employment creation and innovation (Edler et al., 2006), it is important to identify and or examine the challenges faced by SMEs in the public procurement process, so as to know where government interventions may be needed. The study also sought to ascertain the depth of knowledge in procurement practices by the owner/managers of SMEs in Ghana.

### 1.1. Overview of SME in Ghana

In Ghana, different organisations and institutions have attempted to define SMEs and the most commonly used criterion is the number of employees of the enterprise. In applying this definition, confusion often arises in respect of the arbitrariness and cut off points used by the various official sources. The Ghana Statistical Service (2005) considered firms with less than ten employees as small-scale enterprises and their counterparts with more than ten employees as small and medium-sized enterprises. Ironically, the GSS (2005) in its national accounts considered companies with up to 9 employees as SMEs. The value of fixed assets in the firm has also been used as an alternative criterion for defining SMEs (Kayanula & Quartey, 2000). However, the National Board for Small Scale Industries (1990) applied both the 'fixed asset and number of employees' criteria in its definition. It defined a Small Scale Enterprise (SSE) as a firm with not more than nine workers, having plant and machinery (excluding land, buildings and vehicles) not exceeding 10 million Ghanaian cedis (US\$1-9506 cedis, using 1994 exchange rate). The Ghana Enterprise Development Commission also used a 10 million Ghanaian cedis upper limit definition for plant and machinery. It is important to caution that the process of valuing fixed assets poses a problem.

Furthermore, the continuous depreciation of the local currency as against major trading currencies made such definitions outdated (Kayanula & Quartey, 2000). Steel and Webster (1991), and Osei et al. (1993) defined SMEs using an employment cut-off point of 30 employees. Osei et al. (1993), however, classified small-scale enterprises into three categories. These are:

- Micro – employing less than 6 people
- Very small – employing 6–9 people
- Small – between 10 and 29 employees.

A more recent definition was the one given by the Regional Project on Enterprise Development Ghana manufacturing survey paper; the survey report classified firms into:

- Micro Enterprise, Less Than Five Employees
- Small Enterprise, 5–29 Employees
- Medium Enterprise, 30–99 Employees
- Large Enterprise, 100 And More Employees

The idea behind this employee base principle was due to the fact that firms could easily be identified by their number of employees and in part because the process of valuing fixed assets, posed as problem since the mode of accounting system used by one enterprise varied from one to the other as well as the continuous depreciation in the exchange rate often made such definitions obsolete. Therefore, SMEs in this study was defined as businesses with number of employees between 0 and 100 (Amarteifio & Frimpong, 2019).

### 1.2. The Genesis of Ghana's Public Procurement System

The public procurement reform programme was part of a wider reform agenda targeted at improving public financial management. The objectives of the procurement reform proposals were to promote national development; enhance harmony with other local and international laws; foster competition, efficiency, transparency and accountability; facilitate ease of procurement administration; and, ensure value for money (Ministry of Finance, 2001). As a country, Ghana's history in procurement dates back to pre-independence and has survived both military and elected governmental post-independence. Public procurement was an essential function of the administrative process during colonial rule of the British. This responsibility was under the purview of the Crown Agents, Her Majesty's outfit, and delegated locally by the Public Works Department (PWD).

PWD was responsible for procurement that kept the colonial government machinery functioning. Immediately after independence up until 1967, the government of Ghana came to rely on its own MDAs for buying goods and services thus reducing dependence on the Crown Agents. Around that time, an important development was government's setting up the Ghana National Construction Corporation (GNCC) to undertake the important mandate of construction works which the newly independent country needed to modernise its economy. The GNCC took away the bulk of the construction-related procurement activities of PWD. Government also saw the need to establish a unit tasked with procurement of non-

construction goods and services. This led to the establishment in 1960 of the Ghana Supply Commission (GSC) for procurement of goods for all public institutions. This effectively brought any relationship that government had with the Crown Agents to an end (Aryeetey & Fosu, 2003).

Additionally, the government in 1967 set up Central, Regional and District Tender Boards to steer all matters related to contracts for public works. These boards were changed into contract awarding bodies in 1996. The 70s was a time of economic upheaval in Ghana following the Arab oil embargo and famine which led to low harvest (Aryeetey & Fosu, 2003). Prices of everyday items skyrocketed. The country was in turmoil as organised labour went on strike for increased wages to cope with the high cost of living. To stem the tide of the rampant shortages, the military regime of the day quickly established the Ghana National Procurement Agency (GNPA) which was responsible for the wholesale procurement of selected items for sale to public and private sectors of the economy.

The GSC and GNPA therefore had some shared responsibility in the procurement of goods and services for public and private use. The government of Ghana also established, among others, the Architectural and Engineering Services Corporation (AESC), tasked with consulting and supervision of all public contracts. With the exception of some state institutions that were specifically exempted by law, the rest were mandated to go through the GSC, GNPA, GNCC, and AESC for public contracts. Over time, the GSC was overburdened and became inefficient in carrying out its mandate. Allegations of wrong doing were rife in its activities. Delays in procurement were the order of the day. Against this background, MDAs took up the slack and started purchasing their own needs directly under the guidelines of the Financial Administration Regulation (FAR) rules, albeit without proper institutional mechanisms in place. Public contracts worked although it continued through the Central, Regional and District Tender Board procedures.

### *1.3. Public Procurement and SMEs*

Despite the preferential treatment to SMEs by government, comparative tallies of public contracts secured by SMEs in Ghana against those secured by large enterprises are still relatively very small. Evidence suggested that SMEs had varied degree of obstacles which were hindering their success: the internal capacity and capability of the SME, the vision of the owner, and the external environment (BIS, 2013b). The latter category, which was the most frequently reported, included concerns about access to public procurement (Perry, 2011). Kidalov and Snider (2011) wrote that given the important share of SMEs in the overall economy as well as their potential for job creation and innovation as well as the teleological importance accorded to a level playing field and competition consensus has arisen that SMEs merit special policy attention (cited in Sarter, Fuchs & Sack, 2014).

Sarter, Fuchs and Sack (2014) noted that GWB in Germany is dedicated to the participation of SMEs in public tendering. It stipulated that the interests of SMEs are primarily to be taken into account and lays out requirements for public tendering. In 2015, the Government of the United Kingdom (UK) set a new target for the amount of central government spending attributed to SMEs. In 2013/2014, the UK central government spent GBP 11.4 billion on collaboration with SMEs (companies or organisations employing 250 employees or fewer). This amount was equivalent to 26 percent of UK central government spending, of which 10.3 percent involved SMEs directly and 15.8 percent indirectly, i.e. through the supply chain that ended with SMEs. By 2020, the UK Government wants to increase this SME spending to one third of central government spending, which would mean an extra GBP 3 billion per year (in 2013/2014 terms) attributed to SMEs directly or indirectly through the supply chain (European Commission, 2016). The UK Government has made changes to assist SMEs in bidding for public sector contracts. These changes include: requiring that all economic operators in the public sector supply chain be paid within 30 days; purchasing in a simpler and quicker way, e.g. by abolishing pre-qualification questionnaires for low-value public sector contracts requiring all contracting authorities to publish information about contract opportunities and contract awards on a national database.

In 2013, the Office of Government Procurement in Ireland (OGP), in conjunction with the Department of Jobs, Enterprise and Innovation, established the High-level Group on SME access to public procurement. The focus of this group was to develop and monitor strategies for SME access to public procurement, ranging from tendering skills development to opportunities to 'Meet the Buyer'. As there was a perception amongst some SMEs that the centralization of procurement would negatively impact on their sector, the High-level Group aimed to address SME concerns by identifying and, where possible, removing structural obstacles to SMEs competing in the procurement space. Another objective of the group was to raise SME awareness on available public sector procurement opportunities. Since its establishment, the high-level Group has introduced a number of initiatives aimed at assisting and supporting SMEs as they do business with the public sector. Key amongst these initiatives was the publication of Initiatives to Assist SMEs in Public Procurement (OECD, 2016).

Various studies have cautioned against treating SMEs as a homogeneous grouping (Martin & Staines, 1994; Morrissey & Pittaway, 2006). Therefore, this study is providing evidence about the challenges of SMEs within the sector.

## **2. Methodology**

This research was situated within an explanatory approach paradigm. Gay (1990) contends that explanatory research had to do with data collection related to the subject under study taking into consideration the status quo and what is projected to be achieved with the study. The study area which was the Greater Accra Region is the smallest of the 10 administrative regions in Ghana in terms of area, occupying a total land surface of 3,245 square kilometres, or 1.4 percent of the total land area of Ghana ([www.ghanadistricts.com](http://www.ghanadistricts.com)). A Focus Group Discussion (FGD) was organised for the owners and managers of SMEs. This sub-sample were members of the Ghana National Chamber of Commerce and Industry (GCCCI) in Accra. The FGD discussion was to ascertain the challenges faced by SMEs in the implementation of Public Procurement Laws that affected their development. GCCCI is the umbrella group of businesses in Ghana. It is an independent and non-governmental grouping that serves and promotes the commercial and industrial interest of small

and large businesses in the country. With the permission of GCCI, the SMEs present at the quarterly meeting participated in the FGD. A total of 112 owners and managers were available for the last quarter meeting, 9 groups of 14 members each were organised for the focus group discussions.

### 3. Analysis and Discussion of Results

Ghana has made a lot of strides to fix the problems associated with its public procurement system over many years by passing of a lot of legislations. These initiatives have taken several forms from administrative instructions, constitutional and legislative instruments to financial circulars. This paper explains the problems and challenges SMEs' face in accessing public contracts; awarding body's understanding of the potential challenges of the SMEs; and the actions taken by such authorities to improve SMEs' chances in the participation in the procurement processes.

#### 3.1. SMEs Knowledge of the Public Procurement Act at the District Level

Table 1 displays the procurement staff knowledge of SME operations in relation to the Public Procurement Act. A total of 112 SMEs was grouped in the FGD to answer questions about the knowledge areas of the Act.

Knowledge Areas of the PPA	Agree	Neutral	Disagree
The Act is applicable to the businesses within the district	105	2	5
All contracts are awarded by the tender committee	100	0	12
All contracts must pass through the procurement process	100	0	12
Procurement process is supervised by a tender committee	100	0	12
Goods and services required for emergency purposes do not go through tender	42	30	40
A procurement plan must be prepared and approved	102	0	10
A tender evaluation committee check all tenders	102	0	0
The assembly tender committee needs five members to form a quorum	89	3	20
There are training programmes on the Act	79	4	29
Are you familiar with the Public Procurement Act, Act 663 on reforms on Ghana	98	2	12

Table 1: Knowledge of Public Procurement Act

Source: Fieldwork N= 112

From Table 1, SMEs are generally knowledgeable of the Act. The Act requires all public-sector entities and agencies to comply fully to the Act for every public purchases. About 94 percent of SMEs agreed that the Act was applicable to their businesses. Also, 100 out of the total 112 agreed that all engagements through the tender board in the districts and these contracts pass through the procurement process as stipulated by the Act. This result was consistent with Van Greuning (2005), that the procurement committee's members of MMDAs were fully informed (as stated in the Act) that all procurements must be conducted through a procurement process in keeping with the specifications of the Act. This would guarantee a transparent and corruption-free process. More than half of SMEs owner/managers did indicate that they were aware that products required for exigencies are exempted from the tendering process. Some respondents disagreed with the above provisions claiming they are unsure of its conformity with the provisions of the Act. It is noteworthy that the tender assessment committee evaluated all tenders in line with its supervisory role (69 out of 112).

In spite of the experiences of the tender board on the job, owner/managers of SMEs suggested periodic training workshops to update their knowledge of the Act which would be beneficial. One respondent said:

*'They sometimes give some form of training but this is not enough to give us the needed skills'.*

The respondents were asked about the compliance of the Procurement Committee Members of the sampled MMDAs with the Act by assessing the variety of methods of assessment utilised in the procurement process. The result agreed with section 19 of the Act (2003) requiring any contract for any supply to be advertised in any national newspaper to ensure transparency. All the respondents affirmed that all engagements for purchases within the law were advertised to ensure compliance. When owner/managers of SMEs were asked whether they were familiar with the PPA, majority (98 respondents) of respondents did indicate that they were really familiar with the PPA. Responses given by focus group clearly showed that SMEs were sanctioned for failure to keep their side of the contract agreements especially for non-fulfilment of contract provisions on time. In the discussion that followed, a member of the group intimated that:

*'Contracts are either terminated or the owner/manager risk being blacklisted'. The SMEs were asked to pay the liquidated damages in some cases. On the other hand, the district assembly fails to sanction SMEs because of delays in payment of the contractor'.*

#### 3.2. Perceived Challenges of the Act

Institutions in the public sector in Ghana face a lot of challenges (Antwi, Analoui, & Nana-Agyekum, 2008) and Public Procurement Authority is no exception. Participants were asked to enumerate some of the problems faced in the implementation of the procurement law since it came into being in 2003. The results of owners/managers perceived challenges of the PPA is presented and discussed in Table 2.

Challenges	Agree	Neutral	Disagree
	Freq	Freq	Freq
Failure of entities to post their procurement plans	95	3	14
Frequent changes in membership of tender board affect the procurement process	95	3	14
Membership of the board conflict	102	8	2
High cost of advertisement	90	6	16
Lack of clear procedures for emergency procurement	74	18	20
Lack of funding	112	0	0
Lack of qualified procurement personnel	87	4	21
Limited logistics (computers, office space, etc.) Slows down the work of tender committee	45	23	44
Negotiations with suppliers and contractors	93	7	10
Slow pace in regularizing the draft regulations	90	8	14
Tender committee members do not have the requisite skills and training in the procurement process	85	5	22
Tender committee members do not receive rewards for their	89	9	14
The procurement process is very bureaucratic	78	23	11
Most suppliers and contractors cannot obtain the needed documents	85	9	18

Table 2: Problems Faced in Implementing the Act  
Source: Fieldwork

Table 2 present key challenges SMEs and public officials faced in complying with the Public Procurement Act. There were 95 responses agreeing to the fact that there was sometimes a delay from entities in posting their procurement plan to public officials. According to Section 21 (1 and 2) of the PPA 2003, 'a procurement entity shall prepare a procurement plan to support its approved programme. A procurement entity shall also submit to its Tender Committee not later than one month to the end of the financial year the procurement plan for the following year for approval'. So, when these procurement plans get delayed, it slowed down the procurement process.

Respondents also agreed that there were frequent changes in the membership of the tendering board and also some conflict among members was prevalent. The act in an attempt to institute working bodies to carry out its object as a working document, established a public procurement board, herein referred to as the board, to harmonise the process of public procurement in the public sector. Section 4 of the Procurement Act (2003) spells out that 'the board shall have a membership numerical strength of nine (9) comprising of a chairman, four appointees from the public sector (a representative of the attorney general, a woman and two men), three appointees from the private sector (at least one woman and two men) and a chief executive'. However, the Act has not been clear on the issue of membership. This is because in an event that the representative of the attorney general is a woman, will the minister continue to appoint yet another woman from the public sector? This raises serious gender political concerns. This is particularly so because of the ever-rising numerical strength of youthful political enthusiasts in the Ghanaian society.

High cost of advertisement was agreed as one of the challenges facing procurement officials. The Act in Section 66; notice of invitation of expressions of interest and preparation of shortlists has directed that notices be given in a widely circulated local and international newspaper. However, this endeavour has over the years increased the cost of procuring materials, logistics and services for public entities, some of which, the cost of advertisement out-weighs the real cost of the item. It is not an overstatement to opine that such transactions, economically, amounts to financial loss to the state and owner/managers of SMEs.

The Act from Section 14 - 20 has spelt out procurement structures, guidelines, principles and tender committees to take charge of its object, it has, however, failed to clearly provide for emergency procurement procedures, 74 respondents agreed to this fact. This has culminated in procurement officers resorting to their own discretion during emergency procurement, which is subject to immense human error. This was evident in the gargantuan judgment debts paid by the Government of Ghana to individuals and corporate bodies.

All respondents agreed that lack of funds was a major problem of procurement officials and this could slow down the procurement process. Delays were experienced with funding releases, even where prior approval for the GoG funds had been secured, resulting in the delayed implementation of programmes and projects. One respondent had this to say during the focus group discussion:

*'As a result of this delay, projects are slowed because payments are not made on time. Sometimes when you finally receive your payments, time value of money and inflation may have depreciated the value of the money. If it involves international goods, then you are sure of experiencing a rapid devaluation of the currency as a result of devaluation in currency.'*

According to Kikwasi (2013), project completion times are delayed as a result of modification of project. This has huge cost implications in terms of time overruns, budget overruns, debilitating social impact, idle resources and disagreements

between parties to the contract. The Act also made provision for the development of procurement personnel through education and training programmes. This has been stated in Section 3(k) of the Act. It was revealed however that the qualification of those charged with execution of the procurement function is still very low. The PPA found in its review in 2006 inconsistencies in the knowledge and skills of personnel in the sector. It was revealed, for example, that about 63 percent of procurement officials held a bachelor's degree but with varying grasp of the core knowledge of public procurement.

The questionnaire sought to know the role played by logistical constraints on the smooth functions of the work of the procurement committee. Forty-five respondents agreed logistics limit their work compared to forty-four of the respondents. Twenty-three were undecided on the issue. The findings call on the assemblies to be adequately equipped in order to be compliant with the Art. Section 64 (1) of the Act states that, no negotiations shall take place between the procurement entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor. This section prohibits procurement entities from negotiating with suppliers/contractors in order to obtain a satisfactory contract. However, Section 64(2) was of the view that if the lowest evaluated responsive tender exceeded the budget for the contract by a substantial margin, the procurement entity should investigate the causes for the excessive cost and may consider requesting new tenders or subject to approval by the relevant Tender Review Board and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract. A respondent had this to say:

*'Section 64 of the Act is a little confusing in the sense that sub-section (1) clearly prohibit negotiation and sub-section (2b) negotiation is allowed' the tender review boards has no guidelines for contract negotiations making it difficult to negotiate with contractors if their tender price exceed the entity budget. Again, section 64(2) talks about a substantial margin, at what percentage is considered a substantial margin are not clear'.*

Procurement activity requires specialist skills and competencies. Therefore, training is at the core of public procurement function. As seen in Table 2, 85 out of 107 respondents said some of the members of the tender lacked the specialist know-how and competencies in procurement processes. This situation depicts a worrying prospect because of its potentially negative impact on the operations of the Act. The Act gave the sector minister the authority to formulate and institute regulations by legislative instrument to operationalise the Act. This was to be done in consultation with the Public Procurement Board. However, this provision has not been fully implemented leaving gaps in the implementation of the Act. These gaps have left the room for exploitation and wrong interpretation leading to low levels of compliance of the various public procurement entities nationwide. Osei-Tutu (Osei-Tutu et al, 2011) found, for instant, the levels of compliance in Ashanti and Brong Ahafo regions to be about 18.69% on average. This was at variance with the spirit of the Act.

A very important function of procurement is the preparation of contract documents. This is by law the responsibility of committee members who must see to it that it is done properly. Respondents were questioned on the access of the bidding documents by the suppliers and contractors in the procurement tender stage. 85 of the respondents were of the view that suppliers and contractors sometimes could not obtain the needed documents. This was an indication of the lapses in the effectiveness of the procurement committees in safeguarding the integrity and transparency of the processes. The assemblies were thus mandated to have an efficient information system that made all documentation available to the suppliers and potential bidders.

#### 4. Conclusion

Adherence to the Act (2003) by procurement entities remains a big challenge to achieving the goals of accountability, fairness and openness in the public sector in the country. However, substantial progress has been made in aspect of procurement such as submission of tender, tender security, tender opening and tender evaluation. However, it was discovered that the content of tender documents was totally or to a large extent left at the discretion of the one procuring it. This could lead to subjective buying and the buying of inferior items. It could also be concluded in this study that the Act had fallen short in bringing the needed transparency with respect to the use of public funds by entity officials. There were numerous allegations of dishonest deals and lack of openness in procurement. Furthermore, this research revealed that the actions of procurement entities fall short of the provisions of the Act and that the suppliers and contractors (SMEs) were not privy to these decisions. It is expected that PPA officials would organise regular training sessions to educate stakeholders in the procurement process on the provisions and methods underpinning the Act. This would go a long way to sharpen the capabilities and expertise of the procurement officers, contractors and their suppliers (SMEs) in the implementation of the Act.

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