

Research indicates shift in rules of procurement is hampered by tender policy

Professor Douglas Boateng of the UNISA Graduate School of Business Leadership (SBL) is Africa's first Professor Extraordinarius for Supply and Value Chain Management. Prior to his *Executive Insights into Negotiations in Supply Chain Management* workshop to be held at the SBL on 2 and 3 July 2015, he provides some research-based insight into the rules of procurement.



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How global corporations and governments view supply chain procurement, in the context of contract development, can have a profound impact on the practice of procurement. From the sustainability of corporations to countries' socio-economic growth, the power leveraged through optimal supply chain procurement should never be underestimated.

Over the past eight years, purposive research has been undertaken on director-level perceptivities of aspects of supply chain management. Over the period, the research has tracked a shift in the approach to supply chain procurement among the study's target audience, many of whom sit at the helm of global corporations (some of which are worth over \$400 billion). This shift means that procurement is increasingly being viewed as a specialised area, which requires specialist personnel to successfully drive the process for long-term benefit.

It is helpful to consider that there are three main activities that make up the procurement, be it tangible or intangible: the first is negotiation, the second is reaching agreement on specificities, and the third is legal contracting. While legal professionals would argue that these activities are all one and the same thing, decision makers from the world's top companies and policy-making corridors believe that these are three discrete activities. The research indicates that the perceptions of each of these three areas influence what happens at the negotiating table and beyond.

Negotiation

The first activity in supply chain procurement is negotiation. During the negotiation phase, parties must gain an understanding of one another's requirements so as to reach an agreement that is of mutual benefit. Negotiations should lead to the formation of an agreement based on requirements. It is during this stage that the specificity of the agreement should be articulated. What has tended to happen in practice, however, is that insufficient time is spent on specificity. That is, far too regularly, parties move swiftly into the contracting process, with an emphasis on the protection of interests, rather than exploring common ground.

In the developing world, this hasty, often ill-considered, jump from negotiation directly into contracting has been compounded by convoluted tendering processes that are often initiated to support development challenges. This jump to contracting has not always had the desired effect, as can be seen in South Africa, for example, where 20 years into democracy the government still grapples with socio-economic challenges. In particular, albeit inadvertently, the Preferential Procurement Policy Framework Act (PPPFA) limits the space to negotiate and agree specifics. This is, however, not unique to South Africa - in fact, all over the continent, governments are struggling with tendering processes that tend to stifle rather than encourage innovation in procurement.

While 96% of the research respondents agreed that negotiations are integral to value chain performance, product, and service quality; the findings of the study indicate that not enough time is spent on negotiation and agreement, and too much time is spent on contracting. Furthermore, half of those surveyed in the 2013 research sample identified the need to spend more time on specifics. By focussing more time on the specifics of an agreement, top-level decision makers will be able to distinguish between agreements and contracts effectively, and, subsequently, reduce the widespread litigation issues synonymous with procurement in Africa.

A legal contract is not always necessary

While the specificity of an agreement should inform any legal contracts, it could be argued that a good, solid agreement might not even require a contract. Though the legal fraternity might heartily disagree, the Japanese automotive sector has proven that a legal contract is not always necessary to govern business relationships. In particular, they have developed the notion of the Service Level Agreement (SLA) which has been adopted successfully around the globe.

When entering into a negotiation, all of the parties involved must know unequivocally what it is that they want. A lack of planning and preparation can lead to a weakened position at the negotiating table. While 58% of the research respondents viewed bargaining and negotiation as one in the same thing, bargaining and negotiation are two inherently very different activities, and a lack of planning often results in a deterioration of negotiation into bargaining.

Unfortunately, in the African context, we often fall short in the negotiating process: we don't know what we want, or what we require; we fail to undertake adequate research, either of potential partners or even our own resources; and we gather together the negotiation team as little as 48 hours prior to the negotiation. It is for reasons such as these that a number of African procurement professionals tend towards bargaining. Do not be fooled: the moment bargaining begins, negotiation is over. That is, the conversation no longer centres on finding a mutually agreeable position, because the main driver in bargaining is price. While bargaining can produce short-term wins, long-term gains come from the fruits of negotiation. Africans must heed the warning that bargaining can have a hugely negative impact on entire industries. Consider the clothing industry in South Africa: favouring short-term price gains led down a path towards seeking ever-cheaper providers beyond the country's borders, thus decimating the local industry.

Finance and legal directors

In addition to this, the research data also points out that the most powerful team players in the negotiation process are finance and legal directors. This gives rise to a number of challenges. Legal and finance directors have, quite rightly, their own agendas: the financial director will be concerned with monitoring cost implications, while the legal director must consider the agreement from a contracting perspective. In contrast, supply chain procurement professionals view the

potential agreement from a broader perspective that includes development aspects, long-term value creation, and the total cost of ownership.

While legal and finance directors occupy an important role in the procurement process, the research highlights an increase in the prominence of supply chain directors in procurement negotiations. Indeed, since most supply chain directors hail from procurement departments, and are thus better suited to leading negotiations, it is not surprising that they are increasingly being recognised as the rising stars at the negotiation table. However, despite this recognition, the procurement specialist is still not being invited into the boardroom. But why is this the case?

According to the research, procurement professionals are excluded from negotiations globally, not only in South Africa and the continent. The reason for this exclusion is linked to a number of issues. In many instances, the procurement specialist is viewed less as a professional and more as a practitioner. In addition to this, policy makers and directors are not always aware of the procurement specialist's ability to add value to a negotiation, or to be the strategic link between value chain performance, service delivery and competitiveness. This means that both the professionalisation of the discipline, as well as the driving of the procurement 'brand' are critical to long-term negotiation success. This drive for professionalism is currently being facilitated by the global Chartered Institute of Procurement and Supply (CIPS), which is developing requirements which oblige procurement specialists to hold a licence in order to practice. Undoubtedly, if negotiations are the trigger for long-term economic development, then it is critical for procurement specialists to become expert negotiators.

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