

The Contractor

Keeping the Industry Informed



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From the Editor

Revisiting factors that hinder performance of local contractors brings to life persistent issues

If construction projects could speak, we would be rich in the knowledge of how contractors perform on site. But, unfortunately, they can't speak! Still, we must discuss factors that impact a contractor's performance – in particular, that of a local contractor. We can do this basing on the parameters used in judging whether a project has been implemented successfully: timely delivery of a project that has been executed within budget and meets client's expectations - without harming the environment. Obviously, factors that affect these parameters also affect a contractor's performance. *The Contractor* has explored some of them.

Fortunately, the task was straightforward as most of the factors partly informed the content of nearly all issues of *The Contractor* since 2003 and which make an interesting reading. This column has selected mostly external factors and others which got a cursory mention elsewhere in this issue.

Ideally, the period of interest should be after contract signing; however, we have found it worthwhile to include activities prior to that, on discovering that they quite often have a bearing in the implementation. And we have centered the discussion on public projects.

Top on the list of factors has to be corruption. Essentially, the first wind to contractors that a public entity will implement a project comes via an advertisement of the entity's annual procurement plan. Our sources suggest that if the entity is led or staffed by corrupt officers, this is when plotting of misdeeds starts, tainting subsequent activities, including selection of the procurement method, preparation of the tender document and selection of the evaluation committee. Of course, on the outside, it is the call for tenders that will set contractors on a flurry of activities whereas, for the corrupt, the matter of

winner is probably settled by the tender submission deadline, the sources add. A contractor who wins in this style would try cutting corners in many areas and with a lackluster performance, in order to recoup the bribery monies. They may even fail to deliver. The negative outcome has basis in both sides – client and contractor.

Next to corruption is estimation – a professional activity that helps a contractor in preparing a proper bid for the works and facilitates arrangement of resources needed for the project. Sometimes there arises a contractor who won the works 'fairly', but by quoting an unrealistically low price – deliberately or out of ignorance: he too will struggle and may try to cut corners and to bribe his way into getting interim certificates. He will be impacted negatively by both a failure to do estimates professionally and bribery.

Weather patterns also can have an impact on the performance of a contractor who can witness projects getting wrecked by unusual heavy rains when they pour out of season. Of course, some rains come as a relief for contractors who tend to perform poorly, providing them with a cover for their poor performance and inferior/inadequate materials used -which they would claim have been washed away or degraded.

Scarcity of projects should not obscure an unlikely factor, namely the number of projects being implemented simultaneously. Such a situation can arise when the projects are separated by long distances, making it difficult to use the same equipment and personnel.

It is not misplaced to suggest that contractors should strive towards eliminating persistent impediments to their performance.

Cover photo: Minister for Works, Innocent Bashungwa (Left), gives a package containing work tools to the Chairman of the Contractors Registration Board (CRB), Eng. Joseph Nyambanga, when he launched the Board in Dodoma on November 06, 2023

From the Desk of the Registrar



Dear Readers,

I salute you all in the name of the United Republic of Tanzania! Although this is February, allow me to wish you all, a happy New Year 2024 - since it is the first time we are seeing one another through this column in the year. I hope you are all well and busy to your liking. I take this opportunity to once again, welcome you to this issue which focuses on factors that impact the performance of local contractors in Tanzania. As we often feel obliged to justify the theme selected for each issue, it is probably right to also do it here notwithstanding the fact that performance of local contractors is so central to their chances of getting hired. It follows then that if we seriously wish to perform well, we need to first explore all factors that may hinder that performance before we can seek ways to improve.

Of course, one could say exploring the issue is a pointless endeavor as the Board, after all, registers contractors to perform! True, a contractor has to perform and short of that, the contractor is in deep trouble with the Board - and with the law, to be precise. However, the Board derives no pleasure whatsoever from the fact that a contractor is in trouble on account of failure to perform; it defeats the whole purpose of registering that contractor. I hope it is clear now why we are on this never-ending theme.

One would also, may be wish to ask, why local contractors? Well, It is not uncommon nowadays, to see or hear our political leaders and Government officials, blaming some local contractors for poor

performance in public projects. And since local contractors are about 96% of the country's registered contractors and they implement about 97% of all its projects, in terms of numbers, the theme is not out of place.

Different stakeholders have contributed in the identification of factors that impact on performance of contractors in construction projects. It is important since, to many people, failure of a contractor to perform on a project is totally blamed on that particular contractor! From a layman's point of view, this is very correct but alas, to those who understand that to every project there are parties to a contract to implement a project, the view is totally wrong. Success of any project demands that all parties to the project contract meet their obligations as per the contract. While it is true that a contractor is responsible for the main execution of the project, its successful implementation highly depends on how the other parties enable the contractor to effectively charge his responsibilities, through meeting their obligations. From project inception, planning, design and procurement of contractors' services to project supervision stages, the contractor is not directly responsible but, no doubt, the aforementioned steps directly affect the contractor's ability to perform in the particular project.

Numerous factors can singly or in combination impact a contractor's performance. Of course, the factors that can affect the contractors' performance, positively or negatively, range from those within the contractor's control to those outside the contractor's control. Fortunately, the articles contributed herewith have adequately covered both scenarios. It is worthy therefore, for stakeholders of the Construction Industry, to continuously engage in such discussions aimed at addressing the challenges facing the Industry but affecting the stakeholders differently. The Contractor is one of the forums for such discussion.

I wish you a happy reading – and, please, do contribute to the discussion!

Warm regards,

R. Nkori
Registrar

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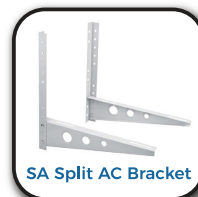
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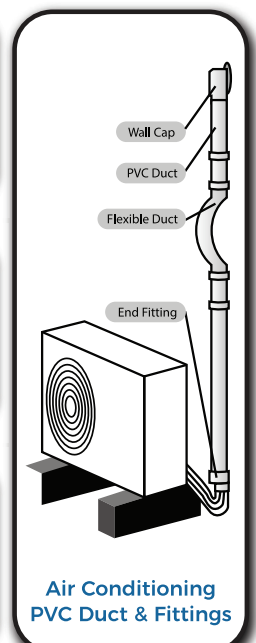
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Board helps local contractors come to grips with management of joint venture contracts

The Contractors Registration Board (CRB) continues with its endeavours of enabling local contractors come to grips with modern ways of managing works contracts, as a strategy in improving their chances of implementing successfully big-value projects involving partnerships, The Contractor can report.

The latest in such endeavours was a two-day training session which was offered by CRB for local contractors based in Mtwara Region, on 25 and 26

January, 2024 which emphasised, among other things, the importance of conducting all their construction operations while embracing fully the country's laws and regulatory frameworks.

Executive Director of Future Century Ltd, Eng. Helene Massanja, uses own experience as she presents on challenges and successes of joint ventures, during training in Mtwara

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Executive Director of Future Century Ltd, Eng. Helene Massanja, uses own experience as she presents on challenges and successes of joint ventures, during training in Mtwara

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This was highlighted by the remarks of the Head of Research and Development at CRB, Eng. David Jere, when he was opening the training session.

Jere said without keeping that need in mind from the very beginning of their operations, contractors can find it hard to enjoy the opportunities offered by a joint venture arrangement, which comes about and operates through various laws and regulations, including public procurement and tax laws.

He added that embracing those needs will enable them to appreciate the involvement of appropriate experts and professionals in dealing effectively with challenges in many areas of their operations.

Anthony Massau, from Public Procurement Regulatory Authority, facilitates training on the role of the e-procurement system (NeST) in the implementation of joint venture projects.

"Through this training a local contractor has come to grips with all that is needed to form a viable and productive joint venture, tax issues, how to avoid or to handle various challenges posed by the employer," Eng. Jere said, adding that contractors who had been in such successful partnerships were a good source of knowledge and experience for others.

Eng. Jere called upon local contractors to always seize training opportunities offered by CRB, in order to add value to whatever knowledge they may have.

"Training is a chance to add something extra to one's knowledge, and, by the way - knowledge is power," he said.

Eng. Sylvia Rwechungura from Tanzania Roads Agency (Tanroads), presents on "Perception of Employers on Contractors' Challenges and Achievements in the Implementation of Joint Ventures," in Mtwara.

"Go forth and put into practice all the knowledge you have acquired, aiming to play your part in all undertakings as responsible citizens who pay tax, shun fraudulent activity and perform diligently per the country's laws," said Eng. Jere.

Earlier on, the director of Abbey Engineering of Ndanda in Mtwara Region, Eng. Kazungu Magili, had expressed gratitude to CRB for the training it offered, saying in the past many local contractors had entered into partnerships without first giving careful thought to the decision "and ended up with many conflicts."

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Anthony Massau, from Public Procurement Regulatory Authority, facilitates training on the role of the e-procurement system (NeST) in the implementation of joint venture projects

Speaking separately Eng. Leonard Mangu and Eng. Isaac Nguga, both directors of Oxo Africa Company Limited of Dar es Salaam, spoke highly of the training, saying they and their colleagues benefitted greatly from the experience shared by the contractors who had implemented JV projects in the past, through discussions that ensued in the course of the training.

Local contractors attend training on implementation

and management of joint venture projects in Mtwara CRB trusts that the sentiments expressed by those who spoke about the two-day training truly reflected a view that the contractors who attended that training came to grips with the essentials of a viable and successful joint venture, use of the public e-procurement system (NeST) and tax matters in a joint venture.



Eng. Sylvia Rwechungura from Tanzania Roads Agency (Tanroads), presents on "Perception of Employers on Contractors' Challenges and Achievements in the Implementation of Joint Ventures," in Mtwara



Local contractors attend training on implementation and management of joint venture projects in Mtwara

Most factors that impact performance of local contractors avoidable if laws, regulations are observed

– By Eng. Luxford B. Ndibaza 0785500151

In general, construction projects are divided into two major parts: firstly the pre-contract part, which deals with converting the client's ideas into detailed construction drawings and tender documents, which in turn consists of activities to be completed to achieve a specific outcome. The detailed ideas/information which we call the scope of the project, helps at the end of the day to deliver the expected final goal. The scope also helps to outline the boundaries of the project and the activities to be executed within the limits, for the final delivery. This part of the work is carried out by a firm or someone called a consultant.

The second part of the project is the post-contract, which deals with the erection of the structure or the physical deliverable, from the drawings or tender documents which were prepared by the Consultant at the pre-contract stage. This erected structure is supposed to be completed within a specified time and cost; at the same time expected to perform to the intended functional requirement of the client. This part of the work is usually carried out by a contractor

Thus in this article, I am going to deal with the factors that impact the performance of the local contractors who erect the physical structures from the tender documents; putting into consideration that the final deliverable will be of the specified quality, which will perform as intended and it will be delivered within specified time and budget.

There are several ways of choosing a contractor to carry out a project, either through single source or through competitive bidding. I am not going to go into details on how a contractor was awarded the tender to carry out the construction of the project. But I will assume that the tender was won legally, then I will concentrate on the performance of the contractor in carrying out his or her works to deliver the expected final product required, within contract time and agreed budget.

Financial resources

The funding of the project is very wide and have a wide effect on the performance of the contractor for the delivery of the final goal. The major players on this

factor are the client who is the owner of the project, the contractor and the financial institutions.

The client can underestimate the cost of the project, and during project implementation the contractor falls into shortage of funding due to inability of the client to honor the certificate of the contractor. For example, if the contract specifies that the contractor should be paid within 28 days after his certificate is approved but the client pays the certificate after 60 days, this late payment will definitely affect the contractor's performance as he or she will be unable to timely pay suppliers, labor force, utilities, etc. The chances are the contractor will be unable to deliver the structure on time.

Essentially, the contractor would be expected to have enough working capital (own cash) which will help him to keep the work proceeding smoothly before his certificate is honored. However, in the case of many small and medium size contractors, their working capital is very low and this tends to affect the flow of activities on site, because most of the time he or she is waiting for the payment from the client. As narrated above, if the client pays them late then the project could be delivered late.

Access to credit facilities: Most of local contractors lack adequate access to credit facilities. In case a contractor has low working capital, he should be credit worthy to some financial institutions, so that they may come to his rescue in case he needs some assistance. The availability of this facility would help the contractor to proceed with his project smoothly despite some late payment from the client.

Transfer of project funds: This situation usually occurs due to political instructions or intervention; when the funds earmarked for a particular project are instructed to be moved to the unbudgeted project for the person to gain a political extra mile against his opponents. The project, whose funds have been transferred will definitely be affected, as it might run short of funds in case the contractor submits his claim

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certificate for payment. This usually happens at local authorities level where there is a lot of political competition in case of expected elections.

Competent manpower

Inadequate technical and managerial manpower skills to plan, supervise and coordinate activities of a project have a serious effect on its progression. Therefore, local contractors need competent, knowledgeable and experienced personnel who understand the detailed drawings used, the specifications of materials supplied, the flow of activities during project implementation, to be able to coordinate the project smoothly, timely and within budget. The procurement of materials of particular activity on time need to be observed.

Communication

Local contractors lack clear proper project communication or coordination of activities on site during construction. The communication structure should be in place to indicate who is answerable to who and who reports to who. This will help to clear the communication gap which might arise in the project implementation. This structure should be well manned by competent personnel.

Pre-bid site visit

Some local contractors don't visit the site before bidding for a project just to familiarize with site conditions e.g site topography. Knowing the



Mbamba Bay – Mbinga road section: “Some contractors never visit a project site before bidding...knowing the topography of the site helps a contractor to know the complexity of the site condition during construction.”

topography of the site helps to know the complexity of the site conditions during construction, accessibility to the site (road conditions to site), availability of water and other building materials within reach. Lack of such information might affect the smooth implementation of the project.

Equipment

Most local contractors lack suitable equipment and tools to carry out particular projects more efficiently. This aspect is influenced by two major factors, firstly some equipments are very expensive hence beyond reach to our local contractors. Secondly some equipments are using new technology which most of our local contractors don't have knowledge about it. Worst situation is our local contractors using old equipments which are breaking down from time to time. For example, one might have an old truck which he has planned to use to deliver 7 loads of sand per day, but due to its old age this truck breaks down for about 3 hours daily, so one wastes time fixing the truck instead of the truck delivering to his expectation. In such a case the smooth implementation of the project will be affected.

Conclusion

Most factors impacting performance of local contractors in the project implementations may be avoided or minimized if the national policies or caps and local authority regulations are observed and implemented accordingly. Transparency in procuring of contractors, this includes procuring of materials, procedures in bidding for competitive tenders, evaluation of tenders and award of tenders etc. This basic observation may help in awarding a project to the competent or right firm/company for implementation as it will most likely be well equipped with equipment, manpower, experience, more liquid etc.

The national financial regulations also need to be observed. If the funds are already earmarked for a particular project whose contract is already signed; the virement of the same funds to another project should never happen. This is sometimes happening due to some political interventions, by issuing contradicting instructions which should never be entertained.

The contractor's registration board should try to empower our local contractors by providing some training from time to time, provide tender bond or performance bond in collaboration with some financial institutions. The national tax policies as well as construction policies need to be reviewed from time to time so as to accommodate any global changes in the same industry.

The Financial opportunities available for the contractors

– By Veronica Lobo 0713 316 354

INTRODUCTION

The construction industry or sector in Tanzania consists of small and medium size contractors, even the mentioned contractors that are said to be large contractors, when compared with other countries such as developed and some developing they are still small contractors surrounds the contracting industry in Tanzania. In Tanzania, contractors are classified based on the Contractors Registration Act NO. 17 of 1997 that classifies them in seven classes that is Class I to VII, Class I being the highest rank. Till-date the number of registered contractors is increasing which of most rank in Class VII to V. Now that being said the market share by value for local contractors was low compared to foreign contractors. However, the local contractor's accounts for about 96% of the total contractors registered in the country.

In Tanzania, the sector growth rate is well above the general economy and has maintained positive growth in response to the country's investments in commercial and residential buildings and infrastructure projects.

Now it's truly known that due to the nature of the construction business the works are capital intensive and sometimes require contractors to have a huge working capital at initial stage and the entire period of project execution. In results, there is no way a contractor can turn away from approaching a financial institution for financial assistance. So as to enable him to pre-finance the projects prior for receiving interim payments.

Now there are some initiatives taken by the government and the players involved the construction sector including the contractors themselves and other financial institution, to assist, support, and encourage the contractor's financially, as it is known that construction activities require huge funds in executing the projects. Now this initiatives are the ones that poses as financial opportunities for the contractors in Tanzania.

Contractors Assistance Fund (CAF)

The contractor's assistance fund was established by Contractors Registration Board in 2002 with the aim

of provision of bid bonds and advance payment guarantees to small contractors.

However, at the current environment the fund has been extended its services to cover the entire contractors from class 1 to class VII and Specialist class I to III. We expect in the future the fund limit issued will be increased so that to enhance the performance of the industry in the country.

Credit guarantee scheme

This is among the initiative taken by the government under the bank of Tanzania (BOT). The Scheme issues credit guarantees to financial institutions for lending to SMEs (Small and medium enterprises), with the aim to cover the shortfalls in the collateral thereby facilitating granting of credits. The scheme offer guarantee coverage only for loans with durations between 1 to 5 years. The scheme has 2 billion worth issued guarantee from different financial institutions, in which construction sector having 18% distribution of the guarantee, offering loans to 250million being 50% of the eligible loan of 500million.

Now the above are not the only financial initiatives or opportunities that Tanzania contractors are abundantly disposed too, but also financial institutions such as banks like East Africa Development Bank (EADB) also provide different financial opportunities and assist the contractors to get a profound financial assistance needed. At the moment, banks in Tanzania offer a range of financial products to contractors. The following are some of the different types of products offered:

- **Bid bond** usually is applied by a contractor during the process of submitting bid documents. One of the common experiences in the banking industry is that such request is brought "under a certificate of emergency"
- **Performance bond** is a bank guarantee given to a third party (employer of the contractor) that the contractor (customer of the bank) will complete a specified contract and will fulfil its terms.

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Mitigating factors that affect cost, time and quality of delivery is boosting performance

Today and always, the lives of many people depend on the quality of work done at a construction site. And at the site, a contractor is the most important player as he or she is the one who convert designs into a tangible, functional reality. The performance of this contractor is thus an important criterion for the success of the project being undertaken; success reflecting a good contractor and their skills in all areas of activity.

But what is performance? As applied to contractors, it is the ability to deliver a project on time, within budget while it meets stakeholders' expectations on quality and specifications, without harming the environment.

So, it is of interest to be able to identify factors that impact performance of contractors, as it would help towards their improvement, that of the construction industry and - given the role of the industry - the country's development.

This article sheds light on some factors that impact performance of local contractors in the country. The article benefitted extensively from the literature stored from 2003 to date.

Of course, there are many factors that impact the performance of local contractors - some are internal while others are external in basis - and so those mentioned here cannot be all, including others that are discussed elsewhere in this edition.

For example, while contractor's incompetence – a catchall term liked by critics - is an internal factor, inadequacies in water and electricity supplies, additional work or changes in design at the client's behest, time taken by client to pay the contractor and the consultant's attitude, are external.

As clients prefer to assess performance of local contractors on three parameters, namely cost, time and quality, this article will seek to show how each factor hampers performance in these parameters.

Without straying out of order, it is necessary to state that while the contractor's engagement starts after signing a contract, the seeds of one major factor – corruption – can get planted during the procurement

process. Various proceedings of CRB's Annual Consultative Meetings show that execution of a construction project is heavily influenced by decisions taken during tendering: the method of procurement and the process can be a hub for corruption that can seriously hamper performance of a contractor. If the procurement process is not handled ethically, performance on the project will be compromised - sometimes fatally. Corruption is both an internal and an external factor that affect all performance parameters.

Estimating: This factor can be summed by a phrase 'quoting low to win' – carelessly estimating at unrealistically low prices in order to win a tender, choosing to ignore about the capability and the obligation to deliver. While the contractor's focus is indeed driven by a desire to produce a winning bid, they need to bear in mind that should they win, they will use the same estimates during implementation. For this reason, the task needs to be undertaken seriously and professionally, including getting to know the project site and its environs, which will be the project's home - with cost, health and profit implications.

Consultant: An important factor relates to the consultant's willingness to ensure that all discrepancies in the contract are found in time to prevent changes resulting from mistakes or errors in contract documents. Furthermore, often, the satisfaction of the client gets overlooked in a situation where the consultant is not committed to ensuring the works are implemented according to specifications. This factor is vital to owners as it has to do with their satisfaction.

The contractor also needs to be aware of a possibility of an unusual external factor: Political interference/pressures in the project area. Sometimes, in the course of implementing a project, a contractor is presented with a 'request' to reschedule work or to assign workers and equipment to an adjacent activity, to meet a local political need. This factor impacts performance in all parameters.

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The weather: This factor is an act of God and so, regardless of forecasts – both short term and long-term – there is always room for a dramatic change of weather with catastrophic consequences to a contractor. It is difficult to mitigate the effect of this factor short of buying an insurance policy, especially now that there is awareness about the emergency of unusual weather patterns due to widespread environmental degradation.

From the client's side there is inability to brief on project objectives, often combining with client's interference by way of excessive change orders, impacting scheduling, efficiency and morale.

Inflation and prices of materials: Increase in prices of materials affect performance of the contractor as they struggle to cut corners to boost a decreased profit, undermining quality of the works.

Government patronage: Government being the primary client in the construction industry, twin factors that can have an impact in the performance of

local contractors is government patronage. Paying contractors on time thereby maintaining a contractor's financial stability facilitates higher productivity. It is believed that the factor was behind the implementation of the 8-lane Dar es Salaam – Kibaha road section. With this kind of patronage, issues of project cash flow disappear, thereby improving the performance of a contractor.

Health and safety at the site is an important factor in a project because labour is the backbone of project success. This is both external and internal. On one hand it can be rooted in the lack of a safety culture that is normalized in many areas of the country: One finds a contractor having provided appropriate safety gear for workers, they refuse to use them with all sorts of excuses, including the weather and the weight. Some workers may see certain items good for Sunday wear, others may use helmets as water containers, etc. In such situation, the contractor must devise ways of

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Construction of Dar es Salaam Busbased Rapid Transit system: Lack of a safety culture can hinder a contractor's performance when workers find all sorts of excuses not to use appropriate safety gear

- **Advance payment bond** refers to a guarantee given by a bank to a third party securing advance payment made by the said third party (contractor and customer of the bank)
- **Over draft facility** refers to credit facility granted to a contractor (customer of the bank) through a cheque account in which the account is allowed to go into debit to a specified limit (over draft limit). Interest is charged daily on the debit amount. This facility is suitable for short-term or working capital requirement. It is cheaper than term-loan because in the latter, interest accrues on the entire loan amount.
- **Term Loan** is credit granted to a customer on condition that it is repaid in instalments or all at once on a given date at an agreed rate of interest. Term loans are used to finance capital investment or item of a long-term nature.

Now the important factor that has to be well tucked is the need by the contractor to be able to meet all the conditions that would enable him to access the

financing. Meaning that, the contractor should be able to determine the kind of finance that his business requires at a particular time and this demands him to establish a candid relationship with his banker in order to enable the later to arrive at an informed credit decision. Contractors should consider financial institutions as their right hand men and not impediment to the success of their business

Finally, contractors should acknowledge that they are now operating in a very different environment a competitive environment where no body owes anybody a living. To survive in a competitive market, contractors must properly prepare themselves financially, organization-wise and in capacity terms so that they can deliver to the satisfaction of the client. A contractor who is always in default in his projects is likely to default in the obligations to his banker so is the contractor who is always applying for extension of time or one who is changing his banker the way we change our clothes.

forcing compliance to avoid serious injuries or illness to workers that can hamper productivity, profits and hence performance. Furthermore, when disease pandemics are rife in a project area, performance suffers greatly, as countermeasures are the responsibility of other parties who may not be adequately equipped for the task or who may not appreciate the adverse impact of the disease on the project.

Security: A contractor's performance can be seriously hampered if the project site is in an area notorious as a den of thieves and robbers, who connive with workers to steal tools, construction materials and sometimes equipment. This is both an internal and external factor which affects the financial capability of the contractor.

Most internal factors have roots in the project manager. Competence, knowledge and skills of the project manager have a huge impact on contractor's performance. For example, proper sequencing of

work enables implementation of project according to scheduled time towards completion time. Furthermore, a project often suffers because of delays arising from inadequate or poor supervision due to the incompetence of the project manager. They include poor or unrealistic planning and scheduling that the construction may deviate from what was planned initially, affecting efficiency, quality of work, and profitability.

Another internal factor is a readiness to embrace technology in general and use of information and communication technology (ICT) in particular, to assist in planning, organizing, coordinating and controlling. It impacts efficiency.

Other factors include finance, project type and size, number and size of ongoing projects, manpower and contract conditions.

Clearly, there is a relationship between performance of a contractor and the factors that affect project cost, time and quality of its delivery.

Local contractors can use public procurement law, regulations and NeST to improve their performance

– By *Zabdiel Moshi, Iringa Municipal Council, 0767875829*

The performance of local contractors for a number of decades now have been the centre of public outcry in as far as the construction industry is concerned. There are notable incidences where projects undertaken by the local contractors are successfully executed while the majority all end in vein leading to unjustified prolonged completion periods, shoddy works and in some occasions termination of contracts. Several factors both negative and positive have commonly been attributed to their performance including but not limited to project financing problems, failure to enhance their capacity, delayed payments and political interference just to mention few. It is not the intention of the author to repeat what has already been exhausted but rather to focus on other factors that are disguised in the eye of the public but have impact in the performance of local contractors, hence the gist of the remaining part of this article.

Selfishness among local contractors

“If the powerful strive to unite in order to overcome the weak, the weak must strive to do so thrice as much to overcome the powerful”, Mwal J.K Nyerere, 1996

Regulations 9 of GN No 446 (2013) as amended provide for an opportunity for contractors to associate in the form of joint venture in order to enhance their capacity for the sake of participating in the public tender opportunities. The rationale behind this legal provision is to address the long prevailing public outcry from the local economic operator's access to tender opportunities for the want of capital. It is unfortunate however that this opportunity has not been fully exploited by the would-be the beneficiaries, the local contractors in this case. Most local contractors have been finding it difficult to participate successfully in competing for tender opportunities due to either their selfishness and partly on ignorance on how to associate in joint ventures. This position was amplified in the PPAA ruling in Appeal Case No 41 of 2014/2015 between **Techno lab. Gamon JV vs DAWASA**, whereby a local construction firm associated with foreign firm which was blacklisted in its country of

origin, was declared to having been fairly disqualified by the public entity during the evaluation process: pursuant to Section 62 of the PPA (2011) once a foreign firm is blacklisted at home the position becomes the same in Tanzania that a blacklisted firm cannot be part a joint venture.

High overhead costs incurred by contractors

High cost of overheads can impact the performance of local contractors. In construction projects, such costs range from rent for office space, benefits and salaries of fulltime employees, insurance coverage for both people and equipment, general liability coverage, transportation costs, utilities (electricity, gas and water) and Government fees and licenses. All these overhead expenses ultimately impact income statement profits and the bottom line directly. Every increase in overhead costs reduces profits by exactly the same amount. On the other hand, overheads can affect gross profit, operating profits and the bottom line net profit. In order for the contractor to ensure successful performance of the contract the reduction of overheads costs is not an option. This is probably an area where some foreign firms have managed to outsmart local firms in both the bidding process and the project execution phases. Local firms are therefore argued to revisit their overhead costs for the sake of reducing all those which are unnecessary. One may ask several questions including, is it necessary to hire permanently a number of full time staff while you are not sure of projects? The same applies to machinery and equipment which are costly in terms of insurance and maintenance regardless of their use.

Have the construction firm ever hired a consultant to carryout human resource audit so as to recommend the optimum requirement of the staff to be hired? Suffice is to say that to remain competitive and thereby guarantee its performance, local firms must strive to cut down their overhead costs.

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The 400kV Nyakanazi to Kigoma transmission line: “In order for a contractor to ensure successful performance, reduction of overhead costs is not an option.”

Photo: https://www.linkedin.com/posts/ramadhani-kidunda-13468525_stringing-work-400kv-nyakanazi-to-kigoma-activity-7101268935206944768-Bx82

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Possible incidence of corruption in the bidding and contract implementation

Incidences of corruption in the bidding process is yet another factor that worth consideration at this particular juncture. Some of the contractors used to engage in a collusive corruption practices with the client with the promise to settle the agreed bribes out of the payments associated with the projects without consideration of whether such promise is part of the net profit or the working capital. When eventually they become due the contractor are faced with two option the first one been to honor the promise and the second one to refuse the same for the interest of the project. Both options pose consequences towards the project. While honoring the promise will reduce working capital, refusal will lead to lack of supportive contract implementation environment from the client such as unreasonable delayed payments, unjustified instruction orders and the like which will have negative impact on the performance of the contractor.

Consequences of force majeure

Climate change has also an impact on the performance of the contractor. Once the contractor submitted work program as part of his bid it is assumed that the bidder has consulted the relevant weather forecasting authority to obtain weather associated data including rainfall and hence there is no excuse for the contractor who failed to adhere to the work schedule only due to change of weather conditions. However, the world is now living in the eras of climate change of which weather forecast can no longer be done with some element of certainty. In view of the above, most local contractors are affected by climate change in terms of demolitions of works in progress without invoking legal and contractual safeguards. GCC Clause 66 of the standard building contracts issued by the Authority exempt the contractor from forfeiture of his performance security, liquidated damages or termination in case of delays occasioned by unforeseeable circumstances that prevent the same from fulfilling its obligation under the contract commonly known as force majeure. Contractors are therefore once again reminded to invoke this contractual safeguard in case of consequences attributed not of their fault but as a result of forces of nature rather than being blamed and held responsible for underperformance.

Another factor that has impact on the performance of the local contractor is over contracting. Most of the local contractors have a tendency of bidding for any tender opportunity that comes across without due regard to works volume at hand. Eventually, some of the contractors come at a situation where works volume exceeds available resources in terms of personnel and equipment and sometimes scattered countrywide, rendering supervision much difficult and hence poor performance. Local contractors are therefore argued to bid for works project that match with the available resources in terms of personnel and equipment. Sub-contracting is yet another strategy that can be adopted by local contractors to overcome voluminous works that if left unchecked can lead to poor performance.

Unfair contract management on the part of the employer

Authorities are not exhaustive, poor contract management on the part of the client is another living testimony of the factors that impact on the performance of local contractor. Proper contract management entails among other things timely issuance of site instructions and certification and payment of contractor's claim. However, this have not been the case with what local contractors are facing in the site. GCC Clause 14.7.1 of the standard bidding documents for Procurement of medium and large works for instance provide for the period under which the contractors certified claim must be paid by the client to be 56 days from the time the project manager receives the statement and supporting documents. Probably this is among the contractual management provisions prone to abuse by the client as some of the contractual claims are payed far beyond the prescribed period and without any justifiable cause. In consequence thereof the effected contractors have been suffering from financial resources necessary for the accomplishment of the project something that can prolong the project completion period and eventually interpreted to be poor performance of the contractor in the eyes of the general public.

Contractor's ignorance of contractual terms and conditions

Ignorance of the procurement legislation also posed a

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potential threat to the performance of the local contractors. The Public Procurement Act by virtue of section 9 provide for the rights and obligations of both the contractor and the client vide the bidding documents prepared and issued by the Public Procurement Regulatory Authority. GCC Clause 14.8.1 of the standard bidding document for the procurement of medium and large works provide for the payment of financing charges compounded monthly on the amount unpaid during the period of delay commencing on the expiry of 56 days after the receipt of the statement and supporting documents by the project manager. GCC Clause 14.8.3 of the same entitles the contractor to be paid financing charges without formal notice or notification. Similarly, GCC Clause 8.7.11 of the same tender dossier provide for the payment of delay damages to the client by the contractor in the sum stated in the SCC in case of unjustified delayed completion of the project, for every day which shall elapse between the relevant time for completion and the date stated in the taking over statement. While most local employ has been able and punctual to enforce the contractual provision at their favor, things are quite different on the part of the local contractors unlike foreign firms. Despite the fact that delayed payment has impact on their performance, rarely they come out to make use of the contractual provisions to arrest the situation. In a marked similarity, the standard works contracts agreement issued by the Public Procurement Regulatory Authority provide for compensational events to the contractor in the course of contract administration. These are events which are usually not the fault of the contractor and change the cost of the work, or the time needed to complete the same (Waterhouse, 2010). GCC Clause 46 of the standard contract document issued by the authority provide the same to include partial site possession given by the employer, modification of other contractors schedule that affects the works of the contractor under the contract, delays ordered by the project manager or failure to issue drawings, specifications or instructions required for execution of the works on time, instructions issued by the PM to carry out additional tests which eventually found to have no defects, ground conditions are substantially more adverse than could reasonably be assumed, delayed advance payment and unreasonable delayed issuance of completion certificates just to mention but few. The contract provides further the manner in which compensational events need to be addressed, whereas t

in case the same cause additional costs or would prevent the works from being completed within the intended completion date, then the contract price and the completion date shall be increased and extended respectively. In view of the above examples, it is clear that the contract agreements provide safeguards that guarantees contractors performance but the question is how many local contractor especially small ones are aware of and if yes how many have utilized the same in the performance of their contracts when compensational events occurred.

Bidding through Electronic Procurement

Currently procurement opportunities are advertised and processed electronically through the National e-Procurement System of Tanzania (NeST). It is a bidding system that requires the knowledge of ICT among the applicants in this case the economic operators and in particular contractors. Some of the local contractors, especially small ones, are facing challenges in participating in electronic bidding process due to lack of ICT knowledge. In some occasions this challenge is compounded by the absence of ICT related infrastructures especially in upcountry localities. To overcome these challenges, it is high time that the local construction industry thinks of adopting to changes through ICT training and sometimes hiring of ICT experts to handle their procurement related transactions. Equally important, economic operators are encouraged to put in place ICT related infrastructure and consider the same as part of their business operating costs

Conclusion

Local contractors like other economic operators, play a vital role towards economic development of our nation. In realization of this undisputable truth the Public Procurement Act and its Regulations was enacted in such a way to ensure their active participation in the government procurement opportunities which account for over 70% of the government budget. In view of the above, local contractors are encouraged to harness this opportunity to increase their share of what is available in the construction industry, especially in this era where several big strategic construction projects are implemented by the Government. To be able to do so the knowledge of the PPA and its Regulations, as well as electronic procurement among local contractors is no longer an option but a must.

UTEKELEZAJI WA MIRADI KWA NJIA YA PUBLIC PRIVATE PARTNERSHIP (PPP)

– Na Frank Yesaya

Ununuzi wa umma unahusisha njia na michakato inayotumiwa na taasisi ili kupata bidhaa, huduma na miundombinu itakayosaidia serikali kutimiza wajibu wake kwa wananchi.

Wadau wakubwa katika mfumo wa ununuzi wa umma ni pamoja na taasisi, wazabuni, wananchi na mashirika ya kimataifa. Wadau hawa wanafanya majukumu mbalimbali katika kufanikisha shughuli za ununuzi, ikiwemo kuainisha mahitaji, kufanya upembuzi yakinifu, kufanya usanifu, kupanga ununuzi, kuchakata zabuni, kusambaza bidhaa, kutoa huduma, kujenga miundombinu, kusimamia mikataba, kuendesha miradi, kugharamia ununuzi na uendesaji wa miradi.

Katika ununuzi wa kawaida uliozoeleka, serikali na taasisi zake ndiyo wamekuwa watekelezaji wa majukumu tajwa isipokuwa usambazaji wa bidhaa, utoaji wa huduma na ujenzi wa miundombinu ambayo hufanywa na wazabuni.

Ununuzi wa umma umeendelea kukua na kukubali mabadiliko mbalimbali katika kutekeleza shughuli na majukumu ya ununuzi. Ununuzi wa kisasa unatoa msisitizo katika matumizi ya teknolojia, ununuzi endelevu na ushirikiano baina ya sekta ya umma na binafsi (public-private partnership au PPP) katika utekelezaji wa ununuzi na uendesaji wa miradi.

Kuna sababu nyingi zinazopelekea serikali kushirikiana na sekta binafsi katika ununuzi na uendesaji wa miradi ya usambazaji bidhaa, utoaji huduma na ujenzi wa miundombinu.

A. Sababu za ushirikiano

Baadhi ya sababu hizo ni pamoja na: - mahitaji makubwa, gharama kubwa na vihatarishi vingi vya uanzishaji, ukarabati au ujenzi na uendesaji wa miradi ya huduma na miundombinu ya umma na kijamii ukilinganisha na rasilimali na vipaumbele vya serikali; upungufu wa uzoefu, utaalumu, teknolojia na fedha; malengo ya kuharakisha maendeleo ya kijamii na kiuchumi kwa wananchi, sekta binafsi na umma.

B. Ushirikiano wa sekta ya umma na binafsi

Katika mtazamo wa ununuzi, ushirikiano baina ya sekta ya umma na binafsi ni mkakati unaohusisha

serikali na sekta binafsi kwa pamoja kusanifu, kupanga, kugharamia, kununua, kukarabati au kujenga na kuendesha miradi ya miundombinu, huduma na maendeleo ya kiuchumi.

Mfano wa miradi inayoweza kutekelezwa kwa ushirikiano baina ya serikali na sekta binafsi ni pamoja na miradi ya huduma na miundombinu ya umma na kijamii kama barabara, reli, viwanja vya ndege, masoko ya kisasa, vituo vya mabasi, vituo vya uegeshaji malori, maeneo ya kupumzikia, shule, vyuo, mabweni na hosteli za wanafunzi, hospitali, vyombo vya usafiri na uchukuzi, maeneo ya uzalishaji na usambazaji wa nishati, usambazaji maji na uondoshaji taka.

Serikali inaweza kuandaa miradi na kuwaalika sekta binafsi kushirikiana katika miradi hiyo, lakini vile vile sekta binafsi inaweza kubuni miradi na kuiomba serikali kushirikiana nao katika kutekeleza.

Maeneo ambayo sekta ya umma na binafsi wanaweza kushirikiana ni pamoja na usanifu wa miradi, ununuzi, ugharamiaji wa ununuzi na uendesaji, ukarabati au ujenzi na uendesaji wa miradi husika.

Mtindo wa ushirikiano unaweza kuwa katika namna zifuatazo:

- i. Serikali kubuni mradi, kutafuta fedha za kugharamia ujenzi wa mradi, kisha kutafuta mshirika mmoja au zaidi wa sekta binafsi kupitia mchakato wa zabuni, mshirika kukarabati/kujenga miundombinu na kuiendesha, kisha kuirudisha serikalini.
- ii. Serikali kubuni mradi, kutafuta mshirika mmoja au zaidi wa sekta binafsi kupitia mchakato wa zabuni, mshirika kugharamia, kukarabati/kujenga miundombinu na kuiendesha.
- iii. Serikali kubuni mradi, kutafuta mshirika mmoja au zaidi wa sekta binafsi kupitia mchakato wa zabuni, mshirika kugharamia, kukarabati/kujenga miundombinu, kuiendesha na kuirudisha serikalini.
- iv. Mshirika kubuni mradi, kupewa eneo na serikali, serikali kutafuta mshirika kwa njia ya zabuni,

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mshirika kugharamia, kukarabati/kujenga miundombinu, kuiendesha na kuirudisha serikalini.

Serikali ya Tanzania inatekeleza miradi mikubwa na midogo ya ujenzi wa miundombinu kama ya barabara, reli,viwanja vya ndege, uzalishaji nishati,usambazaji maji, masoko, shule na hospitali kupitia utaratibu wa ushirikiano wa sekta ya umma na binafsi.

Utekelezaji wa miradi hiyo unafanywa kwa mujibu wa: - Sera ya Ushirikiano wa Sekta ya Umma na Binafsi ya Mwaka 2009; Sheria ya Ushirikiano wa Sekta ya Umma na Binafsi ya Mwaka 2010 kama ilivyoboreshwa; na Kanuni za Ushirikiano wa Sekta ya Umma na Binafsi za Mwaka 2020.

Utekelezaji wa sera, sheria na kanuni za ushirikiano wa sekta ya umma na binafsi unasimamiwa na Kituo cha Ushirikiano wa Sekta ya Umma na Binafsi kilicho chini ya Wizara ya Fedha na Mipango.

C. Mchakato wa ushirikiano

Ili kutekeleza ushirikiano wa sekta ya umma na binafsi katika ununuzi wa miradi ni muhimu kufuata hatua zifuatazo:

- i. Utambuzi wa fursa za ushirikiano, hatua hii inajumuisha kutambua fursa za kushirikiana katika mipango na bajeti mbalimbali za serikali na wadau wengine; kuandaa na/au kuchambua wazo la mradi, kubaini mahitaji ya mradi na kuhusisha wadau.
- ii. Kufanya upembuzi yakinifu wa mradi, faida zake, madhara yake kwa jamii na mazingira na kushirikisha wadau kuamua kama mradi unafaa kutekelezwa kwa utaratibu wa ushirikiano.
- iii. Kutafuta washirika watakaofanikisha mradi kama vile taasisi za kifedha, kampuni za ujenzi na wataalamu wa sekta husika. Washirika sahihi wanaweza kupatikana kwa kuendesha mchakato wa upimaji wa awali wa sifa za wazabuni (pre-qualification).
- iv. Kuendesha mchakato wa zabuni ili kumpata mshirika mmoja au kundi la washirika wataoingia makubaliano ya ushirikiano na serikali ili kutekeleza mradi. Uchambuzi wa zabuni zilizowasilishwa na kampuni binafsi unafanyika kwa kuzingatia vigezo vilivyowekwa kwenye nyaraka za zabuni ili kupata ofa bora zaidi kulingana na vigezo.
- v. Kuendesha majadiliano juu ya makubaliano ya ushirikiano na kufunga mikataba ya kifedha na uendesaji. Mikataba inapaswa kuweka wazi majukumu ya kila upande, muda wa utekelezaji,

gharama za mradi, vigezo na masharti mengine yanayohusiana na utekelezaji wa mradi.

- vi. Kutekeleza mradi, baada ya mikataba kusainiwa, kampuni binafsi itaanza kutekeleza mradi kwa kurakabati/kujenga na kuendesha miundombinu au huduma kulingana na masharti ya mkataba na mpango wa biashara.
- vii. Usimamizi wa mradi, baada ya kuanza kutekeleza mradi, kamati ya usimamizi wa mradi, inapaswa kufanya usimamizi wa kina wa maendeleo ya mradi, fedha, rasilimali watu, na ubora wa kazi na kudhibiti gharama, kupunguza hatari na kufikia malengo ya mradi.
- viii. Kufanya tathmini ya mradi, wakati mradi unatekelezwa washirika wanaweza kufanya tathmini ya mradi ili kuona kama malengo yanafikiwa na kama siyo wanaweza kuchukua hatua za kuboresha kama inahitajika.

D. Faida za ushirikiano

Zifuatazo ni faida za ushirikiano baina ya sekta umma na binafsi katika ununuzi na uendesaji wa miradi:

- i. Kuleta pamoja ujuzi, uzoefu, na rasilimali za serikali na sekta binafsi ili kufanikisha miradi kwa haraka, ubora na ufanisi zaidi.
- ii. Kupunguza mzigo wa serikali kuwekeza fedha nyingi za umma katika miradi ya miundombinu na huduma ambayo inaweza kugharamiwa, kujengwa na kuendesha na sekta binafsi kwa ufanisi.
- iii. Kuongeza ubunifu katika kujenga na kuendesha miradi kupitia utaalamu, uzoefu na teknolojia mpya na bora zaidi.

E. Changamoto za ushirikiano

Zifuatazo ni changamoto ambazo washirika wanaweza kukutana nazo katika utekelezaji wa miradi kwa ushirikiano baina ya sekta umma na binafsi katika ununuzi na uendesaji wa miradi:

- i. Hatari ya kifedha, miradi hii inahusisha hatari za kifedha kwa pande zote mbili ikiwemo mshirika binafsi kushindwa kulipa madeni au kuzalisha mapato ya kutosha kutoka kwenye mradi wakati serikali inaweza kukabiliwa na hatari ya kupoteza pesa za umma au kutokupata manufaa ya kutosha kutoka kwenye mradi.
- ii. Kuongezeka kwa gharama za huduma hasa pale ambapo mshirika binafsi anataka kurejesha uwekezaji wake na kupata faida kubwa kwa haraka. Hii inaweza kuongeza gharama za huduma, hivyo kusababisha mradi kuwa ghali zaidi kuliko miradi inayofadhiliwa na serikali pekee.
- iii. Hatari ya utendaji duni, kutokana na usimamizi hafifu wa utekelezaji mradi au kupungua kwa

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Bashungwa directs Tanroads to find remedy for premature failure of roads

– By Joseph Muhozi, Dodoma

The Minister of Works, Innocent Bashungwa, has directed the Tanzania National Roads Agency (Tanroads) to find the remedy for premature failure of the country's roads in order to save funds and other resources that would otherwise be spent on repairing them.

The directive was given recently in Dodoma during the 19th Workers Council meeting, where Bashungwa cautioned against laxity in the management of road works and in the maintenance of the country's roads.

"The problem of roads deteriorating prematurely is an issue, so make sure you address it using all available means including taking legal action against any contractor who executes a project below the required standards," Bashungwa said.

He instructed Tanroads to use the results from road scanner machines to take legal action against contractors and project supervisors if quality is found to be below the expected standard, expressing concern that despite the fact that the scanners provide evidence of poor quality, some dishonest officials simply ignore those results and accept the projects.

Minister Bashungwa directed Tanroads, which is charged with, among others, to carry out routine

maintenance of roads regularly, to strengthen and enhance the capacity of its Engineering Consulting Unit to enable it to oversee projects professionally and to prevent premature deterioration of roads.

Additionally, the minister noted that heavy goods vehicles, which tend to carry more than standard axle loads, are one of main causes of failure of roads, and he called on Tanroads to enforce weight regulations for vehicles, and to impose fines or other penalties on anyone caught violating them.

He was also unhappy that while weigh bridges have been constructed on major roads, effective monitoring and policing are almost non existing and went on to direct officers working at those weighbridges, to comply with and enforce the relevant laws meant to protect the country's roads.

"No leader or employee is above the law and so those who break it should face the consequences," Bashungwa emphasized.

He highlighted the importance of Tanroads having to build the expertise of its professionals, especially in project management and contracts, to bring efficiency to the agency.

Source: Tanzania Procurement Journal, 20 February, 2024

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uwezo wa mshirika binafsi kuna weza kuwa utendaji duni wa mshirika binafsi hivyo kupelekea utoaji wa huduma mbovu.

- iv. Migogoro baina ya washirika au washirika wa washirika, wakati mwingine migogoro inaweza kutokea baina ya washirika au washirika wao na kuchukua muda mrefu kutatuliwa hivyo kupelekea kutoendelea vizuri kwa miradi.

F. Mambo ya kuzingatia kufanikisha mradi wa ushirikiano

Mambo ya kuzingatia ili kufanikisha mradi wa ushirikiano baina ya sekta ya umma na binafsi :

- i. Kufanya tathmini ya kina ya mradi, kabla ya kuanza mradi, ni muhimu kufanya tathmini ya kina ya mahitaji ya mradi na uwezekano wa kuwa na faida ya kifedha kwa pande zote. Hii inajumuisha kufanya uchambuzi wa kina wa mazingira ya kibiashara, mahitaji ya kifedha, na uwezekano wa mradi kufanikiwa.

- ii. Kuwa na mikataba mizuri, mikataba inapaswa kuwa na maelezo ya kina juu ya majukumu ya pande zote, gharama na muda wa utekelezaji, masharti ya mikataba, na utaratibu wa utatuzi wa migogoro. Mikataba hii pia inapaswa kuwa wazi na inayopatikana kwa umma.

- iii. Usimamizi mzuri wa mradi ili kuhakikisha kuwa pande zote zinatimiza majukumu yao na kufuata masharti ya mikataba. Hii inajumuisha kuweka utaratibu wa kusimamia maendeleo ya mradi, fedha, rasilimali watu na ubora wa kazi.

- iv. Kuwa na utaratibu mzuri wa kupata fedha za kutosha kwa wakati na kuhakikisha kuwa fedha hizo zinatumiwa kwa kufuata mipango ya kifedha ya mradi.

- v. Kusuluhisha migogoro kwa njia za amani na za haki ili kuhakikisha kuwa mradi unaendelea kutekelezwa kwa ufanisi.

Source: Tanzania Procurement Journal, 16 January 2024