

ACTIONS ON PUBLIC PROCUREMENT, TRAINING AND HUMAN RESOURCES IN THE ROAD SECTOR IN WEST AFRICAN COUNTRIES.

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SUMMARY

In December 2009, Mali held a seminar on "Human Resources Management, Governance and Public Procurement". The topics of the seminar included training, management of industry human and material resources and organisation of public procurement. This paper will refer to the main outputs of the seminar that welcomed participants from 20 countries and will elaborate on what has been done since the seminar.

The quality of the presentations during the seminar led us to initiate conversations with other stakeholders to leverage current innovations in human resources training and public procurement. The following subjects have been the focus of our communications:

- organisation of industry markets and importance of HR in the quality of services provided,
- industry employment, qualifications required and HR management for both contractors and service providers,
- Innovation in procurement, implementation, market follow ups and measures implemented by the authorities of the region to ensure quality and equity in procedures for the award of public contracts,
- Current actions aiming to deliver the training required by the transportation industry and the public works.

The member countries of UEMOA (8 countries, including Mali) have adopted directives based on transparency and fairness in market management. The transposition of these directives in the public procurement code helped to significantly improve the rules in works management and other intellectual services. The new public procurement code that is essentially based on transparency and fairness in procurement markets is becoming generally accessible by stakeholders of the public works sector.

The paper will focus on the innovative aspects of this new code, on the benefits for all players and on the management of measures and control implemented in this code. A chapter will be dedicated to industry education in Mali. This abstract will be an opportunity to identify the stakeholders' point of view on the new public procurement code.

BACKGROUND

In December 2009, Mali hosted a seminar on 'Human Resources Management, Governance and Public Procurement'. The seminar was co-sponsored by Mali's Ministry of Public Works and Transport, the Association of African Road Managers and Partners (AGEPAR), the African Road Maintenance Funds Association (ARMFA) and the World Road Association (WRA).

The organisation was managed by the technical committee B.1 of the WRA in collaboration with the Malian National Roads Directorate.

The seminar was the opportunity to share ideas on human resources and governance that represent a major stake for the players in the infrastructure sector. Professionals from 18 countries attended the seminar.

Apart from fifteen papers submitted on the themes of human resources, institutional integrity and government procurement, the seminar was the opportunity to exchange information on proposed subjects during four workshops and a panel discussion.

The main themes presented and discussed included:

- Forecasted human resources management
- Evaluation of the sector performance and influencing curriculum
- Good governance in public administrations
- Institutional integrity and prevention of corruption

During the seminar, matters related to training, human and material resources management, and organisation of public procurement were discussed. This paper will make mention of the main conclusions of the seminar and will elaborate on what actions have been undertaken since the seminar.

The quality of the presentations during the seminar led us to initiate conversations with other players to leverage current innovations in human resources (HR) training and public procurement. The following subjects have been the focus of our communications:

- Organisation of industry markets and key role of HR in the quality of services provided,
- Industry employment, qualifications required and HR management for both contractors and service providers,
- Innovation in procurement, implementation, project follow ups and measures implemented by the authorities of the region to ensure quality and equity of the procedures to award public contracts,
- Current actions aiming to deliver the training required by the transport and public works industries.

The 8 countries¹ members of the West African Economic and Monetary Union (UEMOA), including Mali have adopted directives based on transparency and fairness in their market management. The transposition of these directives in the public procurement code helped to significantly improve the rules in works management and other intellectual services. The new public procurement code that is essentially based on transparency and fairness in

¹ Benin, Burkina Faso, Ivory Coast, Guinea Bissau, Mali, Niger, Senegal, Togo

market procurement is becoming generally accessible by players of the public works sector.

This paper will focus on the innovative aspects of this new code, on the benefits for all players and on the management of the measures and controls implemented in this code. This paper will be an opportunity to identify the stakeholders' point of view on the new public procurement code.

1. THE SEMINAR OUTCOMES

1.1. Major conclusions

- The institutional weakness including the procurement management process, from the specifications to the call for tenders and realisation control.
- The organisation of the sector markets and the key role of human resources in the quality of the performance.
- The multiplicity of stakeholders and their performance both from a technical point of view and from the disparity of their tasks during the process.
- The notion of corporate culture that is directly related to training and human resources.
- The industry employment, the relevant qualifications to exercise a job and the management of the employees on both the sides of the contracting relationship, the entity and the contractor.

1.2. Solutions suggested to overcome corruption

The discussions at the seminar suggested establishing a style of human resources management where recruitment, remuneration and public servants' career management are based on merit. The main directions that we recommend for this are:

- A clearer definition of profiles required for each positions.
- A recruitment effectively competitive based on job description.
- The establishment of an effective system to evaluate competencies and agents' performance.
- The definition and the effective implementation of career plans based on objective criteria taking into account the competency and the performance of the agents.
- the diminution of discretionary powers of executives for nomination and replacement of agents with high responsibilities, including:
 - implementation of competitive process to access the positions with strictly technical responsibilities.
 - more precise definition of the rules to relieve executives of their commands.
- The implementation of an incentive remuneration system taking into account the performance of the agents.

The seminar emphasised a shadow economy developing around the roads industry, making of what should have been a development tool, an economic, social and cultural burden if we do not pay attention to it.

A solution suggested by a one of the speakers is to ensure the respect of the rules established and that heads of the state are responsible for enforcing them. Indeed, the seminar concluded that it was, in the first place, the responsibility of the people who have been mandated to manage the State. They must protect citizens' liberties and protect the assets.

The seminar took up the legislative arsenal that would certainly limit corruption, if it was applied:

- Penal code.
- Customs code.
- Malian tax code (CCI – Code Général des Impôts).
- Malian public procurement code (Code des marchés publics).
- Traffic law (Code de la Route).
- Etc.

1.3. Solutions suggested in terms of training and human resources

- Identification of the priority training actions and the people affected.
- Training of the trainers: pool of professionals – necessity to organise their intervention in the training organisations
- In order to professionalise these roles, it is required to:
 - Strengthen the capacities of the training organisations.
 - Develop the relationships between training organisations and employers.
 - Make the business tax more appealing with employers and training organisations.
 - Associate employers with the identification and the validation of training actions.

2. PUBLIC PROCUREMENT: ASSESSMENT AND ACTIONS

2.1. Outcomes of the discussions on the resources requested in public procurement

- The players responsible for establishing the terms of reference (ToR) for the studies: the quality of the services of drawing offices strongly depends of the quality of the terms of reference. The majority of the terms of reference does not take into account the context in which the studies have to be elaborated.
- The resources requested are often disproportionate compared to the works to be done. The qualifications analysis done during a workshop gathering professionals from the private sector showed that some qualifications are unrealistic for the local small and medium enterprises receiving the request for proposals. For example, an environmental engineer with a few years experience in control was requested for a specific project. However, this type of control has been very recent in the industry and therefore impossible to recruit an experienced engineer in that area. In a similar situation, a geotechnician is known for having a deficit but the contracting authority does not take this into account in their ToR. This situation encourages contractors to make up false documents based on the requirements. The workshop

recommended taking into account UEMOA's knowledge on the professional environment to establish the ToR and formulate major requirements.

- Road maintenance privatisation has led contractors in charge on the follow up to call up for human resources that are not forecasted in the ToR. These extra resources are the "timekeepers" who, in view of the disparity of their intervention points and their type of payments become inevitable to ensure the good realisation of the tasks allocated to the building contractor.

2.2. The update of the public market code

Countries members of the UEMOA established guidelines aiming to increase performance in the public markets in order to allow the infrastructure industry stakeholders to participate equally in the invitations to tender. Those reforms also exposed the works quality control problem that will require the human resources mobilisation at all levels of the procurement. Indeed, the new public market code includes some innovations for all stakeholders: from the client required to endorse the content of the demand, to the companies responsible to realise quality works that becomes an essential condition to tender for new markets.

The building contractor is required to prepare an annual procurement plan where their needs are expressed and published. The strict demand to publish the procurement plans force in practice the building authority to clearly express the request. This constraint offers the possibility for other players to have better information and to prepare their participation earlier.

When it comes to companies, the public market code introduces a clause that, in most cases, the technical selection becomes a precondition to the financial analysis. A company that does not meet the technical criteria cannot access public markets by playing with prices. In the same manner, a company that meets the required technical conditions cannot be eliminated due to an abnormally low or high financial offer. It is being proposed to justify its offer before being eliminated. If the company has the justification of its offer, it can remain in the run for the awarding of the tender.

Players in charge of the realisation are mainly assessed by their technical capacity to realise the studies. Financial offers are taken into account only when multiple enterprises have the technical qualities required and made acceptable propositions.

2.3. Key innovations of the new code

- The recommendation to indicate a fix amount for the tender deposit based on the reference price (supposed confidential) to speed up the process of getting this deposit (this amount takes the rate indicated in the code into account).
- The implementation and the distribution of the approving and deciding authorities.
- The extension of the market code to the public service delegations mainly affecting the call for competition of the delegated building projects.
- The effective implementation of commissions to validate intellectual services.
- The call for tenders with pre-qualification.

- The introduction of forecast plans for procurement.
- Tenders' conditions on a limited list.
- The duty for all contractors to proof their ability to provide the service.
- The unfruitfulness is caused by the only following reasons:
 - Lack of offers.
 - Non compliance to standards.
 - All offers are above the budget.
- The introduction of sanctions and resorts including the establishment of the public markets regulating authority with a dispute resolution committee.
- The negotiation ban except for the intellectual services (this does not concern the amount of the deal) and the case of projects with direct agreement.
- The replacement of national preference by community preference.

2.4. Sanctions and resorts introduced concurring with the transparency of the call for tenders

Sanctions now affect all players. The code mentions the responsibility of the public agents and the contractors. Above all it gives the possibility to resort for all players being concerned by or large by the case. The sanctions are described regarding the candidates or the contractors. All cases are listed for each player. Sanctions concern the failure to respect the regulation of the markets and the mistakes made by public markets candidates or contractors.

In order to implementation those various resorts, new authorities have been created including:

- The Authority of Resolutions of Public Markets and Public Service Delegations (ARMDS);
- A Committee of Dispute Resolutions beside ARMDS, in charge of determining the irregularities committed by public markets' stakeholders and on the resorts relating to the procurement of markets and service delegations, as well as their implementation.

ARMDS is responsible for the quality control after the project is finished. This control takes place in various ways:

- Order audits on a project.
- Proceed, at any point in time, an external control or survey on the procurement process or on the conditions of the project execution, and report to the contracting authority, to the relevant Ministry and the Ministry of Finance.
- Refer any matter to the appropriate authorities.
- Report annually to the High authorities of the country: The President of the Republic, the Prime Minister, and the President of the National Assembly.

ARMDS intervenes on the following occasions:

- Irregularities in relation to procurement.
- Avoid market planning and advertisement obligation.
- Divide up expenses when trying to avoid the normal procurement process.
- Start a procurement process without the requested approval.
- Attribute a project or a public delegation to a candidate excluded from the invitation to tender process.

2.5. Candidates and irregularities

In relation to the candidates, we can retain the following situations:

- A candidate or a market holder is found guilty to fulfil their contractual obligations during past contracts further to the relevant jurisdiction decision that has become permanent.
- Grant or promise to grant to any person intervening at any level in the procurement process an unjustified benefit, monetary or else, directly or with intermediaries, in view of winning the market.
- Supply of wrong information or declarations in the call for tenders' process.
- Use of confidential information in the call for tenders' process.
- Participation in collusions with candidates in order to establish offer prices at an artificial and non competitive level depriving the contracting authority of the benefits of a free and fair competition.
- Attempt to influence the evaluation of the offers or the awarding decision including offering any payment or inappropriate benefits.
- Use of over invoicing and bogus invoices.
- Requests for payment that do not correspond to the actual services delivered.

3. TRAINING AND HUMAN RESOURCES

3.1. Ten-year professional training development program

In January 2010, Mali undertook the establishment of a 10-year development program for professional training for employment. This programme that covers all sectors has established theme groups including a group entirely dedicated to transports and public works. The term of reference (ToR) of this theme group and its composition are as follows:

- Establish the present training offer in the transport and public works industry.
- Identify the qualitative and quantitative competencies required in the sector.
- Suggest training systems enabling to deliver the human resources required in the sector.
- Suggest supporting measures to reach the goals including utilising existing systems.
- Train public players in charge of public procurement including in the following themes:
 - Malian public procurement code (Code des marchés publics)
 - The constitutional items of the above code
 - Administrative clauses lists

3.2. Training programme of the European Union

Between 2007 and 2009, the European Union financed a training programme aimed at completing road maintenance programmes. This training programme concerned the public and private players considering the training requirements identified and the maintenance work in progress. The programme was held in a training institution willing to guide

participants in their respective tasks to accomplish the maintenance task. 5000 public and private agents enrolled in this free of charge training programme. Despite the quality of the training services delivered and the distribution means, this programme did not enable to cover the companies' needs due to the weakness of the human resources process actually used by these companies.

3.3. Introduction of the competency approach in technical education

The training programmes currently developed in Mali are based on a situational work analysis that allows training people on the essential competencies required to do their job. In this manner, programmes for technicians in public works were established according to the competencies approach that requires the elaboration of listings of jobs, evaluations, competencies and trainings.

The companies and engineering offices have noticed that in the majority of the cases, graduates recruited do not match their requirements. The private sector carries out on the job training that places graduates at the same level as people who did not study. Graduates are disadvantaged due to their salary expectations being generally higher than the non-graduates.

3.4. Implication of the private sectors' players in the establishment of the training programmes.

Apart from the officers in central organisations such as the national road and transport authorities, and the Planning and Statistics Unit (Cellule de Planification et de Statistiques – CPS) that are all nominated by the Minister of Infrastructure and Transport, the theme group is made up people from the private sector or assimilated as follows:

- Two representatives of the Malian Engineering Association (Ordre des Ingenieurs Conseil).
- A representative of OPECOM (Malian Building Sector Employers Organisation).
- A representative of a training organisation.
- A representative of a private training agency.

Training programmes have been analysed by the theme group. It was suggested to re-do the ground work of these programmes with a strong involvement of the private sector. The theme group created the professional training programme in the public work sector at level 3 and 4 (2-year / 3-year National Vocational Qualifications course). The group then established the sector profile and the list of employment required by the industry. The profile allowed identifying the human resources qualitative requirements. The theme group still needs to assess the quantitative requirements and decide on the training programmes adapted to the quality requirement, defined earlier.

CONCLUSION

The seminar has certainly enabled all players to share information but also allowed to get to know case studies presented by participants. Theme workgroups have shown that very few colleges have programmes taking into accounts the company and public agencies needs.

The 10-year programme for the professional training development aims to make a diagnosis on training organisations, propose changes in the training methods both on the content and at an institutional level with a strongest participation from the people playing a role in delivering training and in evaluating training content.

The training of corporations on public procurement procedures and the requirements for public agencies to publish on a regular basis their procurement plan (that forces a permanent evaluation of the terms of reference), will contribute to the improvement of carrying out public procurement.

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