

Full Length Research Paper

Determinants of non-compliance of public procurement regulations in Kenyan secondary schools

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Kenya's public procurement and disposal Act of 2005 sets out clear rules and procedures for public procurement entities to follow; however this does not seem to be the case. This study sought to examine determinants of Non-compliance to the Public Procurement Regulations in Kenyan Secondary Schools. The study adopted a descriptive survey research. A sample of twelve (12) schools was utilized in this study from a population of thirty three (33) registered public secondary schools in Kitui Central District. The target population was the Public Secondary School Tendering Committees' members; the suppliers and the principals of the twelve (12) Public Secondary Schools were adopted for this study. Stratified random sampling was adopted in this study. The tendering committees yielded 120 respondents, school principals were 12 and the total number of suppliers was 60. Structured self administered questionnaires, interview guides and document analysis were used in data collection. Findings in this study revealed that most respondents in this study were not familiar with the new procurement rules and regulations. There is need therefore for government and public institutions to lay emphasis on familiarization of the new procurement rules and regulations and to intensify continuous education among the procurement stakeholders in the public procurement process particularly at the secondary school level.

Key words: Procurement, compliance, secondary schools, Kenya.

INTRODUCTION

Today, in many countries, public procurement has become an issue of public attention and debate, and has been subjected to reforms, restructuring, rules and regulations. Public procurement refers to the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). Public bodies have always been big purchasers, dealing with huge budgets, public procurement represents 18.42% of the world GDP (Roodhooft and Abbeele, 2006; Mahmood, 2010). In developing countries, public procurement is increasingly recognized as essential in service delivery and it accounts for a high proportion of total expenditure (Hunja, 2003). For example, public procurement accounts for 60% in Kenya (Akech, 2005), 58% in Angola, 40% in Malawi and 70% of Uganda's public spending (Basheka and Bisangabasajja, 2010). This is very high when

compared with a global average of 12-20 % (Frøystad et al., 2010). Due to the colossal amount of money involved in government procurement and the fact that such money comes from the public, there is need for accountability and transparency (Hui et al., 2011). Consequently, various countries both in developed and least developed countries have instituted procurement reforms involving laws and regulations. The major obstacle however, has been inadequate regulatory compliance. Non-compliance problem affects not only the third world countries but also countries in the developed economies. Hui et al. (2011), while analyzing procurement issues in Malaysia, established that procurement officers were blamed for malpractice and non-compliance to the procurement policies and procedures.

In Kenya, the need for procurement reforms became

urgent because of internal and external pressure given the fact that the Government was losing huge sums of money in poorly managed procurement processes that cost the tax payer a lot of money (Akech, 2005). The public procurement system in Kenya has evolved from a crude system with no regulations to an orderly legally regulated procurement system. In the past decades, the public procurement system in Kenya has undergone significant developments. From being a system with no regulations in the 1960s, and a system regulated by Treasury Circulars in the 1970s, 1980s and 1990s, the introduction of the Public Procurement and Disposal Act (PPDA) of 2005 and the Procurement Regulations of 2006 has introduced new standards for public procurement in Kenya (Kipchilat, 2006). Kenya's procurement regime has therefore undergone rapid transformation since 2000.

A review of the country's public procurement systems was undertaken in 1999 and established that there was no uniform procurement system for the public sector as a whole (Bukhala, 2003). The system had more loopholes as it did not have sanctions or penalties against persons who breached the regulations in the Supplies Manual, other than internal disciplinary action. Consequently application of the rules was not strict and many of the norms were not followed. Furthermore, the Supplies Manual did not cover procurement of works; the dispute settlement mechanisms relating to the award procedures as set out in the Manual were weak and unreliable for ensuring fairness and transparency. In extreme cases, records of procurement transactions were found to be inaccurate or incomplete or absent.

This therefore called for serious debates on the nature of public procurement in Kenya which subsequently led to the enactment of the Public Procurement and Disposal Act 2005. This Act contains the Regulations that are meant to effectively ensure that the procurement process is fair and just. The purpose of this Act was to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives.

To maximize economy and efficiency; promote competition and ensure that competitors are treated fairly; promote the integrity and fairness of those procedures; increase transparency and accountability in those procedures; increase public confidence in those procedures; and facilitate the promotion of local industry and economic development. The Rules and Regulations, herein known as the Public Procurement Regulations of 2006, became operational on 1 January 2007 (Government of Kenya, 2007).

Although these regulations have been set up by government to govern the public procurement function, there still remains many loopholes in the performance of this function. There are many issues relating to non compliance to these regulations in the public sector, including the education sector. According to the Kenya Gazette

Supplement No. 92, 2006, there are five types of public procurements; open tenders, restricted open tender, advertising of which is restricted to appropriate local newspapers, Selective tenders and a negotiated tender, a tender is negotiated with only one supplier such that competition is eliminated (Government of Kenya, 2006). There has been a tendency for public officers to prefer the less tedious type of procurement without proper justification.

The United Nations (UN) Bill of Rights guarantees the provision of education to everyone in the world at a very minimal or no cost (Article 26 of the Universal Declaration of Human Rights), based on which the UN has declared education as a basic *human right* for every person (UNESCO, 2000). At the Jomtien world conference on Education for All (EFA) in 1990 and the subsequent World Forum on Education in Dakar Senegal in 2000, the governments of the world committed themselves to provide children around the world with access to good quality basic education (Hunt et al., 2011), following which education has been recognized as an indispensable weapon for human and national development that urged both national and international laws to declare it as a basic human right (World Education Report, 2000). Education to the general public not only improves their general standard of life but also enables them to understand and participate in the socio political discourses to make their voice known in an increasingly congested environment of ideas and competing interests (Psacharopoulos and Woodhall, 1985).

Many issues related to education exist ranging from access to basic education at micro level to appropriate synthesizing and practicality of the education at the macro level, however, issues related to access and participation have dominated the world forums and conferences on education due to the fact that education is considered a basic human right. Education is considered the most effective way to reduce poverty, give people opportunity to improve their lives and raise their voice, improve their health, productivity and foster participation in civil society (Acemoglu and Joshua, 2000; Preece, 2007). Education also broadens employment opportunities; increases income levels, improves child and maternal health and helps to slow down the transmission of major preventable diseases in the world including HIV/AIDS. The benefits of education extend beyond the family to the wider community and even the nation (Psacharopoulos and Woodhall, 1985). Increasing the number of pupils who finish school leads to economic growth, social and political stability, decline in the crime rate, and improved social services. Empirically, there is a strong negative correlation between educational attainment and various measures of crime (Freeman, 1996; Hjalmarsson, 2008). The benefits of education are innumerable. Since world governments have limited resources to commit to the education sector, there is need for the concerned parties and stakeholders to use the available resources prudently. This cannot be done if the relevant procurement rules and regulations are not adhered to.

Table 1. Descriptive statistics.

	Mean	Std. Deviation	N
Procurement professionalism	4.00	.769	153
Familiarity with procurement regulations	4.13	.704	153
Institutional factors	2.03	.786	153
Personal factors	1.93	.699	153

The aim of Kenya's Public Procurement Regulations of 2006 was to promote fairness, transparency and non-discrimination in procurement in public institutions with the aim of ensuring efficient use of public funds. However, studies reveal that even after the enactment of these Regulations, there are losses of public funds that can be attributed to non compliance to these regulations (Odhiambo and Kamau, 2003). This study therefore sought to examine the factors leading to non-compliance of Public Procurement rules and procedures among secondary schools in Kenya.

METHODOLOGY

This study adopted a descriptive survey design since its main concerns were to describe record, analyze and report on conditions that existed or still exist so as to make generalizations of the whole population. The study was conducted in Kitui Central District, Kenya. A sample of twelve (12) schools was utilized in this study from a population of thirty three (33) registered public secondary schools as reflected by the District Education Office (DEO's) records. The study targeted the twelve (12) public secondary schools for the purpose of this study. The target population was the Public Secondary School Tendering Committees' members, the suppliers and the principals of the twelve (12) Public Secondary Schools. A total of one hundred and ninety two (192) respondents were invited to take part in this study. The tendering committees yielded 120 respondents, school principals were 12 and the total number of suppliers was 60. For representativeness of the data, stratified random sampling technique was applied to select a sample for this study, safe for the principals sub group. Three sub-groups were identified in the target population whose responses were important in achieving the objectives of this study. These sub groups were the tendering committee members, suppliers and the school principals. The structured self administered questionnaires, interview guides and document analysis were used in data collection. Structured self administered questionnaire formed the main instrument for this study because they are straight forward, helped to reach the whole sample and could be filled during free time. They can be analyzed more 'scientifically' and objectively than other forms of research. The researcher preferred to use structured self administered questionnaires because they were easy to administer and more time saving compared to other tools like interview schedules, tests and observations. According to Malhotra and Peterson (2006), structured self administered questionnaires are widely used in studies to obtain information about current practices, make inquiries concerning attitudes and opinions quickly and in a precise form. The structured self administered questionnaire was pretested in one school and three suppliers who were not part of the sample to check on its appropriateness for the study. This also ensured that any adjustments were made to ensure validity and reliability. The structured self administered questionnaires were administered by drop-and-pick method where the respondents were allowed four days to complete them.

This paper is based on the institutional theory; this is the traditional approach that is used to examine elements of public procurement (Obanda 2010). Scott (2004) identifies three pillars of institutions as regulatory, normative and cultural cognitive. The regulatory pillar emphasizes the use of rules, laws and sanctions as enforcement mechanism, with expedience as the basis for compliance. The normative pillar refers to norms and values with social obligation as the basis of compliance.

Based on these theories and literature review done on this area of specialization, this study was guided by the following four (4) hypotheses;

H1: Professionalism in public procurement improves compliance levels

H2: Familiarity with procurement regulations improves compliance levels,

H3: Institutional factors improves compliance levels,

H4: Personal factors improve compliance levels,

RESULTS

In this section, we present the findings of our study. Data were analyzed using the SPSS software version 15. Correlation analysis was used to establish the strength and direction of the relationship between the variables in the study. Regression analysis was used to examine the variance in compliance (dependent variable) that is explained by Procurement professionalism, familiarity with procurement regulations, institutional factors, personal factors, time considerations and type of product/service to be procured (independent variables).

Table 1 presents descriptive statistics from the data analyzed in this study. The four factors were further subjected to analysis in the form of correlation coefficients and hierarchical regression analysis as shown in the subsequent discussions. All confirmed that personal factors were not significant in influencing non compliance to procurement rules and regulations.

Correlation analysis

The results of the correlation analysis are presented in Table 2.

Findings revealed positive and significant results between familiarity with procurement regulations and compliance ($p < 0.01$, $r = 0.704$), professionalism and compliance with procurement regulations ($p < 0.01$, $r = 0.683$), institutional factors and compliance with procurement regulations was positive and significant ($p < 0.01$, $r =$

Table 2. Correlation analysis.

		(a)	(b)	(c)	(d)	(e)
Compliance with procurement regulations (a)	Pearson correlation	1				
	Sig. (2-tailed)					
	N	153				
Procurement professionalism (b)	Pearson Correlation	.683(**)	1			
	Sig. (2-tailed)	.000				
	N	153	153			
Familiarity with procurement regulations (c)	Pearson correlation	.704(**)	.374(**)	1		
	Sig. (2-tailed)	.000	.000			
	N	153	153	153		
Institutional factors (d)	Pearson correlation	.535(**)	.326(**)	.549(**)	1	
	Sig. (2-tailed)	.000	.000	.000		
	N	153	153	153	153	
Personal factors (e)	Pearson correlation	-.390(**)	-.545(**)	.034	-.167(*)	1
	Sig. (2-tailed)	.000	.000	.675	.039	
	N	153	153	153	153	153

** Correlation is significant at the 0.01 level (2-tailed). * Correlation is significant at the 0.05 level (2-tailed).

Table 3. Regression analysis results.

	Model 1		Model 2		Model 3	
	Unstandardized Beta	Sig.	Unstandardized Beta	Sig.	Unstandardized Beta	Sig.
Familiarity with procurement regulations	.478	.000	.354	.000	.310	.000
Procurement professionalism			.301	.000	.290	.000
Institutional factors					.080	.015
F	148.028		175.147		122.716	
Sig.	.000		.000		.015	
R	70.4%		83.7%		84.4%	
R squared Change	70.4%		13.3%		0.7%	
Adjusted R squared	49.2%		69.6%		70.6%	

a Dependent variable: compliance with procurement regulations.

0.535). Our findings supported hypotheses H1, H2 and H3 but did not support hypothesis H4.

Regression analysis

The results of the hierarchical regression analysis are shown in Table 3.

In model 1, the Familiarity with procurement regulations variable was entered and results indicate that it accounts for 70.4% variation in compliance with procurement regulations. Model 1 is statistically significant in explaining compliance (Sig=0.000, $p < 0.01$, $F = 148.028$). In model 2,

we added Procurement professionalism and the model retains statistical significance (Sig = 0.000, $p < 0.01$, $F = 175.147$) and the R Square increases to 83.7%. Procurement professionalism therefore accounts for an increase of 13.3% in the variation in compliance with procurement regulations. In model 3, institutional factor is added and the R Square increases to 84.4%, which presented a 0.7% increase in the variation in compliance explained by professionalism. Model 3 is not statistically significant in explaining compliance (Sig. = 0.015, $p > 0.01$, $F = 122.716$). The overall model is significant at the 0.01 level ($F = 122.716$, Sig=0.000, $p < 0.01$). Institutional factors, familiarity with procurement regulations and

professionalism explain 70.6% of the variation in compliance with procurement regulations. Institutional factors (Sig=0.015, $p>0.01$) are not significant predictors of compliance at the 0.05 level. The only significant predictors are familiarity with procurement regulations (Sig=0.000, $p<0.01$) and Procurement professionalism (Sig=0.000, $p<0.01$). The variables with the positive and highest beta are familiarity with procurement regulations and procurement professionalism.

DISCUSSION

Compliance or non compliance to procurement regulations and rules depends on various factors. There is no single factor responsible for compliance levels (Obanda, 2010). A combination of factors contributes to either compliance or non compliance to procurement regulations. Familiarity of rules can best be described as having the knowledge with respect to the rules, processes and procedures in carrying out procurement function (OECD-DAC /World Bank, 2006). Likewise, Hunja (2003) argued that knowledge is a key ingredient of a well functioning, modern, legal and institutional public procurement framework and that the lack of it brings about capacity problems. It is important for a procurement professional to be familiar with the performance indicators which include: Implementing regulation that provide defined processes and procedures not included in higher-level legislation, Model tender documents for goods, works, and services, Procedures for pre-qualification, Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion (OECD-DAC /World Bank, 2006). The findings in this study resonate with De Boer and Telgen (1998) who assert that during the early days of the inception of public procurement regulations in The Netherlands, many municipalities could not comply to the regulations because they were not familiar with them. Gelderman and Brugman. (2006) confirmed this position in a survey on compliance with EU procurement directives. Closer home, in a study titled "Explaining non-compliance in public procurement in Uganda" Eyaa and Oluka (2011) findings indicate that of the three variables which are professionalism, familiarity with procurement regulations and institutional factors, only one variable, familiarity was a significant predictor of compliance. The model explained 52.4% of the variation in compliance with regulations. In the absence of the procurement professional having a sound knowledge of these procurement performance indicators, there is likelihood for non compliance of procurement regulations and rules in any organization. A Public Procurement System is said to be well functioning if it achieves the objectives of transparency, competition, economy, fairness and accountability (World Bank, 2000). In a related argument, Obanda, (2010) stipulated that strong institutional support particularly at top levels of government/institutions is needed by procurement personnel in order to promote integrity, monitor

the public procurement process and apply procurement law appropriately towards the compliance of public procurement.

Since the findings in this study supported hypotheses H1, H2 and H3 but did not support hypothesis H4, there is need, therefore, for the government and public institutions to lay emphasis on familiarization of the new procurement rules and regulations and to intensify continuous education among the procurement stakeholders in the public procurement process, particularly at the secondary school level in Kenya.

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