

# Factors Affecting Compliance with Public Procurement and Disposal Act by the County Government of Nairobi

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**Abstract:** *This study aims to investigate the factors affecting compliance with public procurement and disposal act 2005 by the county government of Nairobi from which the findings may be generalised to other counties in Kenya. The study employed explanatory survey. The study targeted the employees of Nairobi County government from various departments. Stratified sampling technique was used to recruit 97 respondents to participate in this study. Questionnaires were used to collect data for respondents this study. The study concluded that lack of ethical practices and political interference still remains a major challenge on compliance with procurement act. The compliance with procurement act is mainly reliant on political good will as politics was found to strongly interfere with procurement process.*

**Keywords:** Procurement Act, Compliance, Public

## 1. Introduction

Public procurement is prone to various challenges globally which has attracted public attention and debate. This is because public bodies being big purchasers, dealing with huge budgets [1] and contributing 18.42% of the world GDP [2] have a great impact to the economy. Efficient and effective management of public procurement is therefore essential to the growth of the economy. It is based on this premise that various rules, reforms and regulation have been adopted to counter public procurement challenges globally [3]. In developing countries, various steps have been put into place to reform the government procurement sector.

In Kenya the enactment of the Public Procurement and Disposal Act (PPDA) 2005 was mainly inspired by need to have a legal regime that control inefficiencies in the procurement process, ensuring fairness, and ensuring public purchaser to obtain value in return for the expenditure of public funds. The Act defines procurement in general terms as “the acquisition or obtaining by purchase, rental, lease, hire purchase, license, tenancy, franchise or by any other contractual means of any type of works, assets, services or goods including livestock or any combination. Public procurement is transacted with other considerations in mind besides the economy”. Such considerations include accountability, transparency, non-discrimination among potential suppliers and respect for international obligations. Nevertheless, the aim of act has remained a theory [4]. Public procurement is still characterized by inefficiencies, corruption and undercutting leading into huge waste of public resources [5]. According to KPMG report in 2008, public procurement has continued to suffer from frauds and misconducts. Word Bank [6] noted that despite the enactment of the PPDA, business communities have expressed dissatisfaction with public procurement depicting it as a threat to their business. It is based on this background that this study sought to bridge the knowledge gap on factors affecting the compliance with public procurement regulations

in Kenya, with specific focus on the county government of Nairobi.

### 1.1 Statement of the Problem

Public procurement takes a significant portion of Kenya’s GDP. In 2010, 10% of the total national GDP was spent on public procurement. This indicates the economic implications of decisions in public procurement. The enactment of PPDA of 2005 was seen as a means to ensure efficiency and effectiveness with the Public Procurement Oversight Authority (PPOA) projecting an annual 10% savings (amounting to about Kshs. 21 billion) on successful implementation of the act [7]. However, compliance with public procurement act 2005 has still remained a challenge. Consequently, Public procurement has continued to suffer from frauds and misconducts and the fruits of public procurement have remained a dream since the enactment of the Act in 2006 [8]. This study seeks to determine the factors affecting compliance with the Act in Nairobi City County.

### 1.2 Objective of the Study

To determine factors affecting the compliance of public procurement regulations by the county government of Nairobi

## 2. Literature Review

Lack of professionalism encourages corruption in public procurement which hampers the compliance. Training of procurement officers creates awareness about all regulations in relation to procurement and related procedures [9]. Additionally, lack of proper staff training has also been observed to contribute to non – compliance with public procurement act. The PPOA Audit Report (2008) shows that insufficient and inappropriate training was high among public procurement staff in Kenya which may be attributed to the young procurement profession nature in Kenya. Basheka and

Mugabira [10] affirm the PPOA Audit Report that the level of professionalism in public procurement is low or almost non-existent.

Ethics is a set of principles, values, practices that direct public officials in their service delivery to the community. Unless carried with highest ethical standards, procurement is very susceptible to malpractices. Elsheman [11] observes that procurement process has high potential for ethical violation or abuses. Noble procurement management practices ought to identify areas of potential ethics drawbacks and address them ahead of time so that employees are well aware what undesirable practices to avoid in their daily operations.

In today's fast changing business environment organizations with the most competitive supply chain remains competitive [12]. Lankford [13] notes that business that has effectively incorporated the Internet into managing the supply chain hold a competitive advantage over those who have not. E-procurement solutions aim to automate workflows and simplify the procurement process in order to make the supply chain more effective [14]. According to PPOA (2009), procurement processes are to be electronic to the extent possible in order to incorporate the operations between Procurement Units and the potential beneficiary of the services. This speeds up regular transactions and communications within and outside the procuring body.

Public procurement is perceived as fundamentally a politically sensitive activity [15]. Murray [16] contended that in public procurement, executives act as agent for elected representatives. However, top public officials and political leaders use public office for personal gain thus weakening the motivation to remain honest [17]. According to Raymond [18] the challenge may not be resolved easily as ministers and political parties receive secret payments in government procurement. This affects the procurement process constrains compliance with procurement acts.

According to Lodhia and Burritt, [19], social and political influences have an important bearing on public sector reform. Developing countries, ministerial interference with the tender process is major obstacles to the procurement system as ministers intervene and influence tender awards. The risk of being suspended or fired has in many cases intimidated public officers into obeying illegal ministerial directives leading to noncompliance [20]. In sustenance of this, Hui et al [21] argue that interference from the local politicians, directors, members of parliament and very influential top administration individuals has interrupted the procurement processes and discouraged transparency.

### 3. Methodology

#### 3.1 Research Design

The study employed explanatory survey method. Explanatory design allows researcher to go beyond observation and examine relationship. It allows careful choice of variable to measure and efficient technique for data analysis. The study therefore employed explanatory study design to explain how

training, ethical practices, technology adoption and political influence affect the compliance with public procurement and disposal act.

#### 3.2 Target Population

The study targeted the procurement officers from government procurement staff of County Government of Nairobi. Researcher sampled from junior staff and middle level managers. A total sample of 97 procurement staff members were sampled to participate in the study.

#### 3.3 Data Collection and Analysis

Data was collected using questionnaires which were distributed to the sampled respondents. The data was cleaned for anomalies and quantitative data analyzed in SPSS Version 20. Descriptive statistics such as mean, SD, median, quartiles, minimum, and maximum was used to summarize continuous variables while categorical variables were summarized using proportions.

### 4. Results and Discussions

#### 4.1 Influence of Training on Compliance with the Act

The study found majority of respondents attends training four times (quarterly, 66.3%) a year on procurement process training. Respondents felt that the training offered was very helpful (50.0%) or helpful (50.0%). 75% of the respondents said that they had participated in tendering process with most of them describing their knowledge on tendering to be fairly good. Challenges relating to tendering were often (76.9 %) experienced by the respondents. This implies there more effort should be made to boost the knowledge and skills for procurement officers.

#### 4.2 Influence of Ethics on Compliance with the Act

Respondents were neutral concerning effects of managerial skills required to write technical specifications, supervise competitive bidding, and monitor and evaluate the contract performance among employees on their ethical binding and procurement as shown by mean of 3.1196; the standard deviation of 1.02542 implies varied response on the scale of 1-5 indicating that slightly a number of respondents felt that managerial skills was a challenge. The respondents also remained neutral on contribution of separation of key functions to professionalism, accountability and an efficient procurement system on ethics as shown by a mean of 3.0851. The standard deviation of 1.2840 implies varied responses. Financial Malpractices considered aspect that influenced ethical practices once it happened at any stage of the process as shown by a mean of 3.362. On assessing the officers' adherence to the rule of law in procurement process, the study noted respondents said that rule of law was not adhered to as shown by mean of 1.618, respondents also disagreed with notion that officers exercised transparency and due diligence during procurement process as shown by a mean of 1.830 and 2.117 respectively.

#### 4.3 Influence of ICT on Compliance with the Act

The study found ICT played a major role in enhancing procurement processes in public sectors thus increasing internal efficiencies and productivity. Respondents agreed that enhancement of productivity and internal efficiency by ICT as shown by mean of 3.692. However, the standard deviation implied varied responses indicating that ICT was perceived differently by different officers. Respondents also agreed that the role played by ICT on enhancing transparency as shown by mean of 3.473. Adoption of ICT was also considered important in helping counties to meet day to day procurement needs and addressing operating challenges in the procurement offices as well as enhancing the process of effective tendering through advertising, sourcing reviews, prequalification, potential for cost savings

#### 4.4 Influence of Politics on Compliance with the Act

The study found lack of knowledge for the rule of law affected the adherence to procurement act, 2005 by Nairobi County government as implied by a mean of 3.553, respondents further stated that the public institution are characterized by high impunity making their compliance with the law almost impossible. The political goodwill in embracing sound adherence with procurement act was lacking in the County and further shortcomings of public procurement laws making adherence difficult. Other political factors attributed to lack of adherence to procurement act 2005 are institution weakness and court weakness that making it difficult to implement the act 2005. The results from this study echo Hui et al [21] who found out that interference from the local politicians, directors, members of parliament and very influential top administration individuals has interrupted the procurement processes and discouraged transparency.

### 5. Conclusion and Recommendations

#### 5.1 Conclusion

From the findings of the study we conclude that compliance with procurement act 2005 still remain a major challenge in Nairobi County government. While training and technology were found to contribute in enhancing the procurement process, lack of ethics practices such lack of appropriate skills in the management, financial malpractices at various stages and political interference still remains a major challenge on compliance with procurement act in Nairobi county government. The compliance with procurement act is mainly reliant on political goodwill as politic was found to strongly interfere with procurement process.

#### 5.2 Recommendations

The study makes the following recommendations;

- 1) Enhancing technology in public may go forth in enabling reduce non-adherence with the procurement law; this is because technology which is based on various approval stages is able to expose inconsistency in the procurement process.

- 2) Strengthening sound institution culture that embrace professionalism is significant step in enhancing the compliance with the law. Lack of professionalism remains a challenge as individuals can get away with crime so easily due to weakness in the enforcing institutions.
- 3) An effort could be made to separate direct political influence on procurement process in the county level. This could be done by having independent judicial system to deal with economic related issues such as mishandling of public funds and inappropriate allocation of tenders.

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