

EFFECT OF PROCUREMENT LAW ON THE PROCUREMENT PROCESS OF KENYA RURAL ROADS AUTHORITY IN KENYA

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Abstract: The main purpose of the study was to assess the effect of procurement law on the procurement process of Kenya Rural Roads Authority in Kenya. This study concentrated on three variables; accountability, integrity, transparency and fairness. The specific objectives were: to establish the effect of procurement law on the integrity of the procurement process at Kenya of Kenya Rural Roads Authority. To determine effect of procurement law on the accountability of the procurement process of Kenya Rural Roads Authority. Finally, to evaluate the effect of procurement law on the fairness and transparency of the procurement process of Kenya at Kenya Rural Roads Authority. This study therefore adopted a descriptive survey design methodology because the researcher intended to collect cross sectional data on the effect of procurement law on the procurement process at Kenya Rural Roads Authority Headquarters. The main instrument for data collection was semi-structured questionnaires administered to the officers at Kenya Rural Roads Authority parastatal, targeted one hundred fifty (150) employees obtained through simple random sampling. Data collected was cleaned, coded and analyzed with the aid of Statistical Package for Social Sciences (SPSS) version 23. It is assumed in data analysis that the results obtained were for the general population. The findings of the study have important implications for the law and policy makers; procurement professionals; and training and development practices. Data was presented in descriptive form supported by frequency counts and percentages. From the research findings, it can be concluded that accountability, integrity, transparency and fairness clearly indicates the effect of procurement law on the procurement process in Kenya at Kenya Rural Roads Authority. The following recommendations were made: The responsible organisations to create awareness to both the relevant stakeholders both internal and external on the laws and regulations governing the procurement and supply chain processes. Secondly, stakeholders to familiarise themselves with the current trends in procurement laws and regulations; and procurement and supply chain processes; from the various sources of information. Procuring entities to embrace Information Communications Technology and it's peripherals; on the procurement and supply chain processes and be incorporated with all relevant departments and institutions. Since it aids to compliance laws and regulations governing procurement; as well as the code of ethics.

1. INTRODUCTION

1.1 Background

OGC (2008), states that Public procurement is the process whereby public sector organizations acquire goods, services and works from third parties. It includes much that supports the work of government and ranges from routine items e.g. stationery, temporary office staff, furniture or printed forms, to complex spend areas e.g. construction, Private Finance Initiative projects, aircraft carriers or support to major change initiatives. It also includes a growing spend where the private and third sectors provide key services directly to citizens in areas such as welfare-to-work, further education, social care and health. Such services may also be provided by the public sector directly, and in some cases, even this public provision can be handled through procurement mechanisms. A public body may bid for government work against private sector firms through a formal competitive process. After the Second World War, domestic procurement was often seen, rightly or wrongly, as characterized by corruption, inefficiency, political capture, rent seeking, protectionism,

inflated costs, and the development of cartels. Many saw procurement reform regulation as necessary to limit these features of unreformed procurement markets, but how this should be achieved remained controversial. (McCrudden and Gross, 2006).

McCrudden and Gross (2006); further emphasized that; Procurement reform would have attempted to juggle several different sets of interests. There are at least four groups of stakeholders interested in the development of procurement reform. The first important stakeholders are therefore taxpayers and other funding bodies are second, beneficiaries of the goods or services that are being purchased by government. Third, there are the contractors, suppliers or service providers with government. Fourth are the interests of 'the government'; those in 'government' comprise a diverse set of (sometimes competing) interests. The distribution of contracts involves the potential for significant patronage. There are therefore important conflicts between those who stand to gain financially or politically from using procurement as a tool of personal or political aggrandizement and those who will benefit from procurement being seen as free from such possibilities.

Early efforts to bring government procurement under internationally agreed trade rules were undertaken in the OECD (Convention on the Organization for Economic Co-operation and Development) framework. The matter was then brought into the Tokyo Round of Trade Negotiations within GATT in 1976. As a result, the first agreement on government procurement (the so-called "Tokyo Round Code on Government Procurement") was signed in 1979 and entered into force in 1981. It was amended in 1987 and the amendment entered into force in 1988. Parties to the agreement then negotiated to extend the scope and coverage of the agreement in parallel with the Uruguay Round. Finally, a new Agreement on Government Procurement (GPA 1994) was signed in Marrakesh on 15th, April 1994 at the same time as the Agreement Establishing the WTO and entered into force on 1st, January 1996. The World Trade Organization (WTO) deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. The World Bank is the organization managing funds provided by the International Bank for Reconstruction and Development (IBRD) and the International Association for Development (IDA).

To ensure open, fair and transparent conditions of competition in the government procurement markets, a number of WTO members negotiated the Agreement on Government Procurement (GPA). The fundamental aim of the GPA is to mutually open government procurement markets among its parties. As a result of several rounds of negotiations, the GPA parties have opened procurement activities worth an estimated US\$ 1.7 trillion annually to international competition (i.e. to suppliers from GPA parties offering goods, services or construction services). The GPA is composed mainly of two parts: the text of the Agreement and parties' market access schedules of commitments.

PPOA Act (2005), states that the Kenya's Government procurement system was originally defined in the Supplies Manual of 1978, which was supplemented by circulars issued from time to time by the Treasury. Several tender boards were created for tender awards. In 1999, a review of the country's procurement system was undertaken by the Ramboll Institute of Management in collaboration with the World Bank and found the following shortcomings: First, Guidance for the current procurement system was scattered among various outdated regulations and procedures. Secondly, little action was taken to ensure that the procurement process complied with established regulations and procedures. Fourth there were no clear lines of public accountability in the procurement process and little transparency. Also, there was little institutional coordination operating through cash budgets and with inadequate financial planning, the government was an unreliable business partner and suppliers frequently suffered delays in receiving payment for goods and services supplied.

Consequently, bidders sought to offset the above risks by higher prices; System suffered from various forms of malpractice and unethical conduct, including a high incidence of vested interests, interference and insider dealings, and occasional cases of retrospective approval of contract awards. Finally, there was a lack of professional knowledge and expertise in the purchasing and contracting functions at all levels. Records of procurement transactions were often found to be inaccurate or incomplete or absent, which led to suspicions of dishonest dealings at the tender boards. Institutional weaknesses undermined the system's capacity to achieve value for money. (www.ppoa.go.ke retrieved on 20th July, 2015)

Mokaya (2013); also stated that; in 2001, Public Procurement Regulations were issued under the Exchequer and Audit Act unifying all the circulars that had previously governed public procurement, but the public procurement system still experienced institutional weaknesses. The landmark in public procurement reforms came when the Public Procurement and Disposal Act, 2005 and supplementing regulations become operational in January 2007.

The Act introduced new procurement standards and established the Public Procurement Oversight Authority (PPOA) to monitor the functioning of the public procurement system, formulate policies and tools, initiate procurement training and

professional development and provide continuous support to procuring entities. In addition, the Public Procurement Administrative Review Board was established within PPOA to review complaints and the Public Procurement Oversight Advisory Board was created to advise PPOA on the exercise of its powers and functions (PP&AD Act, 2005).

The objectives of public procurement systems in Kenya are value for money (efficiency) in the acquisition of required goods and services. Integrity (avoiding corruption and conflict of interest). Accountability; equal opportunities and equal treatment of providers; fair treatment of providers. Efficient implementation of industrial, social and environmental objectives (horizontal) policies in procurement. Opening up national markets to international trade and Efficiency in the procurement process. (PP&AD Act, 2005).

1.2 Statement of the Problem

Public Procurement is one of the major objectives of any government striving to deliver goods and services to its people. If the procurement process is not transparent and efficient, it results in the loss of taxpayers' money. One such mechanism for dealing with procurement corruption is to enhance compliance with the procurement rules and regulations. The Government in collaboration with the World Bank (2003) commissioned a study to assess the country's procurement processes and systems, supported through the Public Procurement and Capacity Reform Project. This study identified the need for a comprehensive review and an implementation of public procurement law in the procurement systems. The study revealed that the public procurement system in Kenya lacked transparency and fair competition, procurement staffs were not adequately trained and lacked professionalism, lack of a professional body that would oversee and instill discipline among procurement officers made them vulnerable to corruption. One of the major recommendations from these two studies was reforms in public procurement systems were paramount if government was to save resources lost through exorbitant procurement.

The study conducted by the public procurement oversight authority in collaboration with the independent consultancy ramboll management (2007); identified a number of gaps that confirmed the procurement systems require strict compliance with the procurement rules and regulations as a result of lack of procurement capacity, access to procurement information, poor record keeping practice, lack of system for collecting and monitoring procurement statistics, lack of feedback mechanism, procurement planning is not carried out systematically and existing laws and procedures do not support timely procurement, contract execution and payment. Thai (2001) drew attention to the academic neglect of public procurement. In political and policy arenas, public procurement is now linked to concerns over economic growth, social inclusion, and environmental sustainability (Arrowsmith, 2010; McCrudden, 2007).

Gesuka, D.M. & Namusonge, G.S. (2013), in their study on the actors affecting compliance of public procurement regulations in Kenya: A case study of Butere District indicated that, there was some level of compliance to the legal requirements at the public procuring entity as officials endeavored to adhere to the legal requirements as revealed by the procurement record and respondents' perception of public procurement compliance /Non-compliance. However, it also revealed that the public procuring entity highly suffer from professional knowledge of the procurement regulations, ethics and risks to its integrity, accountability, confidentiality and transparency and poor remunerations. It also found out that the stakeholders are unfamiliar with the regulations and less compliant. Further, it indicated that that the procuring entity suffers from chronic corruption and consequently compliance in such situation is difficult, if not impossible. Finally, it revealed the procuring entity lacking specific type of culture, characterized with openness, honesty, fairness, confidentiality, transparency and accountability, which are fundamental for corporate image. The public procurement inefficiencies resulting effect is non-compliance of the law.

The Kenyan Public sector faces a perception and, to some extent, a credibility problem as a value-adding unit of the organization. The inconsistent compliance with the procurement law has been identified as a pressing concern in Kenyan public sector procurement. This unfortunate background continues to play down the importance of procurement as a key function that can strengthen the oversight responsibility of the governing body. It is against this background that this study aimed at assessing the effect of procurement law on the procurement process of Kenya Rural Roads Authority.

2. RESEARCH OBJECTIVES

General Objective

The overall objective of the study was to assess the effect of procurement law on procurement process of Kenya Rural Roads Authority.

Specific Objectives

The specific objectives of the study were as follows:

1. To establish the effect of procurement law on the integrity of the procurement process of Kenya Rural Roads Authority.
2. To determine the effect of procurement law on the accountability of the procurement process of Kenya Rural Roads Authority.

3. RESEARCH DESIGN

Descriptive survey designs was used in preliminary and exploratory studies to allow the researcher to gather information, summarize, present, and interpret for the purpose of clarification (Orodho and Kombo 2002). This design was chosen because it provides insights into and comprehension of an issue or situation. It describes and interprets what is and concerned with conditions or relationships that exists, opinions that are held, processes that are going on, effects that are evident, or trends that are developing. The design is useful in describing the characteristics of the firm and determining the frequency of key attributes of the study. It also gathers data on the state of affairs in the study location without manipulating any variables. The data measurement was on scale for categorical measurements using Likert Scales (a method of ascribing quantitative value to qualitative data, to make it amenable to statistical analysis). Mugenda and Mugenda (2003) further emphasize that descriptive survey method is of collecting information by interviewing or administering questionnaires to a sample of individuals.

4. CONCLUSION

The findings of this study indicate that there is a significant positive relationship between the procurement law components namely integrity, accountability and fairness and transparency; and the procurement process.

It was also established that procurement law has been a major contributor towards Integrity, accountability and fairness and transparency of the procurement process Kenya Rural Roads Authority in Kenya. This is in line with Leadership and Integrity Act (2012); the research results also revealed that there is Integrity, accountability and fairness and transparency of the procurement at Kenya Rural Roads Authority in Kenya.

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