

# Effect of Public Procurement on Performance of Constituency Development Fund in Kenya: A Case of Mt. Elgon Constituency

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**Abstract:** The purpose of the study was to examine the influence of public procurement on CDF performance in Kenya; a case of Mt. Elgon Constituency in Bungoma County. The research questions therefore were; to establish the effect of procurement legislation implementation on procurement performance in CDF Committees in Kenya; to determine the challenges facing the implementation of procurement legislation in CDF Committees in Kenya. The study utilized explanatory research design to gather both qualitative and quantitative data from sampled respondents in Mt. Elgon constituency. The population of the study was 290 institutions that have been funded by the Mt. Elgon CDF since CDF inception. The study used primary data which was collected through use of a questionnaire. A five point Likert scale questionnaire was used. Also a Yes or No structured questionnaire was also administered. The data collected was analyzed using descriptive statistics inferential statistics. The descriptive technique was used to generate frequencies, mean and percentages while inferential statistics were generated the fitness of the model and regression of coefficients. The findings concluded that the procurement performance affected procurement legislation and the performance of constituency development fund (CDF). Effects of Procurement Legislation on procurement performance were found to be statistically significant with a positive impact on the importance of procurement performance. Results also indicate that Procurement management had positive and significant effect on CDF performance. The study recommends that a summarized regulatory framework for CDF procurement management be prepared by policy makers. Through legislation, the government should enact comprehensive laws to regulate procurement functions and outline clear policy and procedures to be followed by procurement entities as this will enhance accountability and transparency. The study also recommends that the government should employ professional auditors to undertake public procurement audit and facilitate their continuous training to ensure they are well equipped with necessary technical skills. These will ensure effectiveness of public procurement audit. The study also recommends that more public auditors be trained on public procurement audit and the CDF managers be exposed to audit as a positive management tool. In conclusion, the research will assist practitioners and policy makers both in the devolved and national governments to assess the effectiveness and efficiency of CDF management; hence, wisely address pertinent issues affecting effective performance of the CDF kitty in the constituencies.

**Keywords:** Public procurement, Constituency development fund, Mt. elgon constituency, Performance.

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## 1. INTRODUCTION

Public procurement has a long history. Written on a red clay tablet, found in Syria; the earliest procurement order dates from between 2400 and 2800 B.C. The order was for “50 jars of fragrant smooth oil for 600 small weights in grain” (Coe, 1989). Other evidence of historical procurement includes the development of the silk trade between China and a Greek colony in 800 B.C. In the United States, government procurement at the municipal level predates that of state and federal governments. In the settlements and colonies, printing was one of a few services contracted out by government. But there were no professional procurement officials; goods and services needed by government were supplied by commissioners or commissaries, who received a commission on what they bought for the militia or other administrative units. It was not

until the late 1800s that state legislatures began to create boards or bureaus responsible for purchasing, but central purchasing was hardly a practice at that time. In 1810, Oklahoma was the first state government to create a board to procure centrally for all state departments and agencies. Many local governments soon followed Oklahoma's example (Thomas (1919). Public Procurement has become an increasingly important factor in economic and business circles globally. This is evidenced by the growing interest of donors, governments, civil society, professional organizations, the private sector and the general public. After decades of messy Public Procurement systems, a majority of developing countries, Kenya being no exception, are now reforming the legal, organizational and institutional frameworks for public procurement. Through public procurement, 12 to 20% of developing countries' GDP is spent annually (and as much as 70% of GDP in post conflict countries such as Uganda and Sierra-Leone). Even marginal improvements in procurement systems, therefore can yield enormous benefits (Basheka, 2010). Procurement refers to the acquisition of goods, services and works by a procuring entity using public funds. Public bodies have always been big purchasers, dealing with huge budgets. Public procurement represents 18.42% of the world GDP. In developing countries, public procurement is increasingly recognized as essential in service delivery (Basheka, 2010). It accounts for a high proportion of total expenditure. For example, public procurement accounts for 60% in Kenya (Bhatt, 2000), 58% in Angola, 40% in Malawi and 70% of Uganda's public spending (Wittig, 1999). This is very high when compared with a global average of 12-20 % (Froystad, 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. Consequently, various countries both in developed and least developed countries (LDC's) have instituted procurement reforms involving laws and regulations. Public procurement can be defined as "the acquisition (through buying or purchasing) of goods and services by government or public organizations" (Hommen and Rolfstam, 2009). In the public finance literature, government is involved in four major economic activities: (a) providing the legal framework for all economic activities, (b) redistributing income through taxation and spending; (c) providing public goods and services freely available to the public such as national defense, public safety, education, and infrastructure (bridges and roads); and (d) purchasing goods, services and capital assets (Stiglitz, 2000). Academically, public procurement has been a neglected area of study even though governmental entities and public procurement practitioners have diligently worked to improve public procurement practices. Recognizing the importance of academic research, some American states undertook a series of academic initiatives by signing a partnership agreement with Florida Atlantic University's College of Architecture, Urban and Public Affairs in 1999. As a result of this agreement, the Public Procurement Research Center was created in 2000 (Carter & Grimm, 2001) and public procurement researches in relation to government projects took shape. In this regard, government projects like Constituency development Fund (CDF) came into research focus in the lens of public procurement. The complexities of public procurement performance require more than just a mere policy framework in every nation. There is need to have direct interventions that would undo the complexities that bedevil the efforts of the government and international organization for supporting the public procurement performance initiatives. In this era of quickly changing corporate environment, purchasing managers are encouraged to be proactive. Purchasing managers need to develop a more proactive strategic approach and encouraged a proactive approach to purchasing planning.

### **Procurement Legislation:**

The Public Procurement System in Kenya has evolved from a crude system with no regulations to an orderly legally regulated procurement system governed by the Public Procurement and Disposal Act, 2005. Prior to this, in Central Government it was governed by Treasury Circulars from 1969, then the Supplies Manual of 1978, before the promulgation of the Exchequer and Audit (Public Procurement) Regulations, 2001. All the aforesaid reform initiatives were geared towards improving the public procurement system by enhancing accountability and transparency with the aim of achieving value for money, and attracting investments by creating a sound business climate. These reforms have ensured fairness and competition among suppliers of goods, works and services, thereby restoring the confidence of Kenyans in the public procurement process while at the same time ensuring that the Government gets the best value for its money. It is imperative to note that the total value of Public Procurement in Central Government is currently estimated at 10% of the GDP. In 2008, Kenya's GDP was estimated at Kshs. 2,099.79 billion putting the total expenditure on procurement by the Government at around Kshs. 209.9 billion annually. It can therefore be argued that even a 10% savings due to improvements in procurement practices and controls would mean a yearly gain to the exchequer of about Kshs. 21 billion. The gains expected to accrue from a streamlined procurement system will allow the Government to invest more resources in other needy areas such as health and education and improve the quality of life of the citizens of this country, a venture that has the potential of greatly improving productivity and service delivery by public entities. It is in that premise that the current legal dispensation created the Public Procurement Oversight Authority (PPOA) to oversee public procurement system with its principal functions of ensuring that the public procurement law is complied with and capacity of the function among stakeholders is enhanced. According to PPAD (2015, came into force on 7<sup>th</sup> January,

2016) an appropriate regulatory system is required to enhance transparency and non-discriminatory tendencies in order to achieve value for money. The law establishes the procurement methods to be applied, advertising rules and time limits, the content of tender documents and technical specifications, tender evaluation and award criteria, procedures for submission, receipt and opening of tenders, and the complaints system structure and sequence (PPOA, 2007). Ongoya (2005) points out that regulations lays the foundation for separation of powers between institutions managing public procurement and those checking on compliance. According to Manasseh (2007), auditors examine procurement transactions and documents, pursuant to the appointment terms and in compliance with relevant statutory requirements. Availability of sound legal framework offers boundaries and benchmarks against which audit is conducted objectively. The PPAD Act, 2005 stipulates that effective legal framework in itself prevents fraud (GOK, 2005). The supplies and management Practitioners Act, 2007 provides for professionalization of procurement practice which facilitates good record keeping. This facilitates timely audit and enhance cost efficiency in auditing. Sound procurement regulations are critical to effectiveness of public procurement audit. Before the PPAD Act (2015), there were big discrepancies and differences between the procurement practices applied in different public entities (PPOA, 2015). The main laws applied in the conduct of public audits in Kenya include the Public Audit Act (effective 2015), Public Internal Audit Act (effective 2003), the new CDF Act (effective 2015), Public Procurement and Asset Disposal Act (2015). In spite of the legal and institutional reforms carried out in the public procurement sector in Kenya, Public Procurement Law has failed to eradicate corruption in the sector. KACC Perception Survey 2010 indicates that over 80 percent of corrupt practices in Kenya still occur in public procurement. Recent scams such as the Anglo-Leasing Security Contracts, maize importation, mismanagement of Free Primary Education (FPE) funds, sale of Grand Regency Hotel to Libyan investors, Triton Oil scam, sale of Kenya's Embassy in Japan and many other irregular deals in Government all relate to corruption and impunity in public procurement. The Mars Group (2011) estimates that the recent grand corruption scandals have cost the country over KSh.700 billion (USD 8.24 bn).

#### **Constituency Development Fund (CDF):**

The constituency development fund was created through an Act of parliament in 2003 then subsequent amendments CDF (amendment) Act in 2007 and 2013. The fund was established by the government to devolve resources meant for development through public participation to the constituencies. The CDF board which runs the fund receives at least 2.5% of the government annual budgetary allocation revenue in every financial year which is disbursed to the constituencies for development of public projects. Such amount is enormous to the economy and needs proper financial management to achieve the intended objectives. Therefore, sound procurement will play a critical role to achieve these objectives. Key operating principle of the legal and regulatory framework is the promotion of value for money practices in public procurement and the maximization of economy, effectiveness, efficiency and compliance with regulations. According to Kimenyi (2005) the Constituency Development Fund (CDF), which was established through the Constituency Development Fund Act of 2003, is one of the ingenious innovations of the National Rainbow Coalition (NARC) Government of Kenya. The Constituency Development Fund ('CDF') is therefore an additional means of financing (sourced from domestic revenue) for community-driven development that is managed at the constituency level by Members of Parliament ('MPs'). As such it supplements, or operates parallel to existing funding mechanisms for local government. In both developed and developing countries CDF has evolved from scratches. In East Africa, the CDF has been available in Kenya and Uganda since 2003 and 2005, respectively and in August 2008, President Kikwete fully endorsed the introduction of CDF to Tanzania in his address to Parliament (Wanjiru, 2008). In Kenya, Opposition MPs sought to introduce the CDF as they were concerned that their constituencies were not receiving development funds and consequently these areas remained with poor infrastructure and social services. In their view, introducing the CDF (by way of legislation) would ensure a fair distribution of funds and therefore lead to more even-handed development throughout Kenya's 210 constituencies. In Uganda, CDF was borne out of a series of meetings held between the President and MPs of the 7<sup>th</sup> Parliament in order "to relieve [MPs] of the pressures of their constituents in regard to the promised and other development projects. "Unlike Kenya, Ugandan MPs each personally received 10 million Ugandan Shillings in November 2005 with only a minimum set of guidelines (prepared by a Committee of 7 MPs and the Clerk to Parliament appointed by the Parliamentary Commission) to direct disbursement and accountability by MPs. Predictably, this had deleterious results for Ugandans. Similar to Uganda, President Kikwete stated that the CDF would be established in order to assist MPs in implementing development projects and reduce the 'daily nuisances' that MPs face in their constituencies (Wanjiru, 2008). While most researches have focused on assessment of the use and management of development funds (Awiti, 2008), there is little empirical evidence on the prediction of public procurement on CDF performance in Kenya. This research therefore endeavored to examine the influence of public procurement on CDF performance in Kenya; a case of Mt. Elgon Constituency in Bungoma County.

## 2. STATEMENT OF THE PROBLEM

According to PPAD (2015) an appropriate regulatory system is required to enhance economy, efficiency, effectiveness, transparency, compliance with the relevant legislation and non-discriminatory practices in order to achieve value for money. The law establishes the procurement methods to be applied, advertising rules and time limits, the content of tender documents and technical specifications, tender evaluation and award criteria, procedures for submission, receipt and opening of tenders, and the complaints system structure and sequence (PPOA, 2007). Ongoya (2005) points out that regulations lays the foundation for separation of powers between institutions managing public procurement and those checking on compliance. According to Manasseh (2007), auditors examine procurement transactions and documents, pursuant to the appointment terms and in compliance with relevant statutory requirements. Availability of sound legal framework offers boundaries and benchmarks against which audit is conducted objectively. Kenyans, for a long time, were used to mobilizing local resources through the “Harambee” Spirit to fund development projects in their community. Over time, however, Harambee was abused and became an avenue for corruption, particularly among public officials/offices. This also created inequalities as well as discriminatory development. The creation by the government of Kenya of the Constituency Development Fund (CDF) in 2003 and the subsequent CDF Amendment Act (2015) through an act of Parliament was meant to address these challenges at the grassroots level through the provision of funds for the implementation of community based projects that would otherwise have been funded through Harambees. While the initiative has fairly succeeded in some constituencies in devolving resources targeting development projects at the constituency level particularly those aimed at alleviating poverty as well as addressing imbalances in regional development the CDF kitty in some constituencies has become a sanctified cow graced by special powers in the constituency. CDFs in Kenya are in important tool for devolution and also for meeting the Sustainable Development goals. However, the effective running of CDFs depends on the procurement performance as CDFs are entitled to procure for the needs of the constituency. The regulation on procurement was to enhance the procurement performance. Specifically, it was supposed to improve efficiency, transparency and economy. The problem is that adherence to the regulation may be inadequate in CDFs which may further lead to defeating the mandate of the CDFs. whereas most researches have focused on general factors influencing CDF management and performance, there is little empirical evidence on the prediction of public procurement on CDF performance in Kenya. This research therefore endeavors to examine the influence of public procurement on CDF performance in Kenya; a case of Mt.Elgon Constituency in Bungoma County.

### Specific Objectives:

1. To determine the influence of public procurement legislation on performance of CDF in Mt. Elgon Constituency.
2. To assess challenges facing the implementation of public procurement legislation in the performance of CDF in Mt. Elgon Constituency.
3. To evaluate the influence of public procurement procedures on performance of CDF in Mt. Elgon constituency.
4. To find out the extent to which public participation in procurement procedures affects CDF performance in Mt. Elgon constituency.

## 3. METHODOLOGY

The study employed descriptive survey design. The target population for the study included all institutions that receive funding by CDF in Mt. Elgon constituency. According to the Mt. Elgon CDF annual report, 2015, CDF has so far funded over 200 institutions and projects since inception as indicated in Table 1 below.

**Table 1: Number of projects funded by CDF in Mt. Elgon Constituency since inception**

Category of Institution	Number funded
Schools	195
Hospitals	25
Water projects/users associations	40
Road and Bridges	30
Total	290

Source: Mt.Elgon Constituency Annual Report, 2015

The study targets institutions and projects funded by CDF in Mt. Elgon constituency since inception which includes schools, hospitals, and water and road projects. Stratified sampling was used to select respondents that participated in the study. Data was collected by means of self-administered questionnaires. The questionnaires were both close-ended and open-ended. The close-ended or structured questionnaires were used because they are easier to administer and to analyze since they are in immediate usable form and are also economical in terms of time and money. The study used primary data which was collected through use of a questionnaire. A five point likert scale questionnaire was used. The likert measures the level of agreement or disagreement. Likert scales are good in measuring perception, attitude, values and behaviour.

#### **Data analysis:**

The data collected was coded and entered into a computerized SPSS 18 program and then analyzed using descriptive and inferential statistics. The descriptive technique was used to generate frequencies, mean and percentages while inferential statistics generated the fitness of the model and regression of coefficients. The data was presented in the form of tables, charts and graphs.

### **4. SUMMARY OF FINDINGS**

The general objective of the study was to establish the effect of public procurement on performance of CDF's in Kenya, a case of Mt. Elgon Constituency. A sample of 165 respondents out of a population of one hundred and fifty 290 institutions /projects that have so far benefitted from CDF since inception were drawn. For purposes of collecting primary data, the researcher developed and administered a questionnaire and the results obtained were analyzed using Microsoft Excel and Statistical Package for Social Sciences (SPSS). The result displays results of responses regarding the dependent variable which was procurement performance measurement. This finding was supported by an overall responses mean of 1.54 which means that more respondents were disagreeing with the statements on this objective in the questionnaire. The responses were also spread from the mean at a 0.64 standard deviation. The first objective was to establish the extent to which Procurement Legislation affects procurement performance. Majority of the respondents disagreed with the statements and this was supported by an overall response mean of 1.89 and a standard deviation of 0.64 which means more respondents were disagreeing with the statements. The second objective was to establish the extent to which Procurement management cycle management, record management and compliance issues affects procurement performance. The findings show that most of the respondents disagreed with most of the statements as support by a mean score of 0.39 and standard deviation of 0.42. Effects of Procurement Legislation on procurement performance were found to be statistically significant. Data analysis revealed that Procurement Legislation was important in explaining procurement performance. This is supported by a p value of 0.000 and a beta coefficient of 0.105 which means that Legislation is a statistically significant predictor of procurement performance. Effects of Procurement management cycle, record management and compliance issues on procurement performance were found to be statistically significant. Data analysis revealed that Procurement management was important in explaining procurement performance. This is supported by a p value of 0.009 and a beta coefficient of 0.349 which means that Procurement management is a statistically significant predictor of procurement performance.

### **5. CONCLUSIONS**

Based on the findings of the study, the following conclusions are arrived at. Legislation is a key determinant of procurement performance. The legal framework is not reinforced and hence the poor procurement performance. The CDFs has a challenge in complying with the government regulation. Based on findings it is also possible to conclude that Procurement management has an effect on procurement performance. To meet the goals there is need to take strategic measures this includes competency, training and high level of leadership. Therefore, it can be concluded that the CDFs are lacking the strategic measures hence the poor performance.

### **6. RECOMMENDATIONS**

The study recommends that a summarized regulatory framework for CDF procurement management be prepared by policy makers. Through legislation, the government should enact comprehensive laws to regulate procurement functions and outline clear policy and procedures to be followed by procurement entities as this will enhance accountability and transparency. The study also recommends that the government should employ professional auditors to undertake public procurement audit and facilitate their continuous training to ensure they are well equipped with necessary technical skills. These will ensure effectiveness of public procurement audit. The study also recommends that more public auditors be

trained on public procurement audit and the CDF managers be exposed to audit as a positive management tool. The study also recommends that the constituencies development committee members especially the CDF tender sub-committee should be well trained on procurement legislation affecting the procurement performance. The study also recommends that the CDF board should employ procurement specialist in every constituency so as to improve the procurement performance to ensure legal compliance and necessary reporting to public procurement oversight authority (PPOA).

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