

**FACTORS AFFECTING COMPLIANCE WITH PUBLIC PROCUREMENT LAWS AND REGULATIONS IN PUBLIC INSTITUTIONS IN KENYA: A CASE STUDY ON PUBLIC ENTITIES IN MOMBASA COUNTY****William Kipkemboi Sang**

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**ABSTRACT**

Despite the Procurement law being progressive in nature, organizational misbehaviours and non compliance to the procurement law still abound as established by various audit reports. This research therefore conceptualized the factors affecting compliance with public procurement law and regulations in public institutions in Kenya. Specifically it sought to investigate the effect of staff awareness of rules and regulations, personnel skills and competencies and enforcement by relevant external agencies on compliance with public procurement rules and regulations. A case study approach was used whereby four select public entities in Mombasa County were used so as to achieve the objectives of this study. This study incorporated both qualitative and quantitative survey designs. The target population of this study consisted of all the sixty (60) individuals from the select institutions who are directly involved in public procurement in the respective institutions. A sample size of forty five (45) individuals were used whereby the researcher used the purposive sampling technique to select all the procurement officials at the four public entities who were believed to be in a much better position to respond to the research questions. The data gathered from questionnaires and other secondary sources was organized thematically. The relationship between variables was analysed and finally the data has been interpreted and summarized in order to draw conclusions and forward recommendations. The study findings show that the two most important factors affecting public procurement compliance are staff awareness of rules and regulations and personnel skills and competencies. This study recommends that the Public Procurement Oversight Authority and the public entities need to work together to improve on the awareness of staff to the public procurement procedures and that the public entities should liaise with the PPOA to ensure that their procurement staff are

properly trained and equipped with the necessary skills in public procurement in order for them to adhere to the procurement procedures.

**Key Words:** *public procurement, law and regulations, compliance, Kenya, Mombasa County*

## Introduction

Public procurement has its origins in the fiduciary obligation of government administrations to deliver goods, infrastructure and services to the population of a country or a specific geographic region, city or town (Odhiambo and Kamau, 2003). According to the World Bank (2006) a Public procurement system is said to be well functioning if it achieves the objectives of transparency, competition, economy, fairness and accountability. Odhiambo and Kamau (2003) have defined public procurement as the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, foreign aid as well as revenue received from the economic activity of the state. Public procurement refers to the government activity of purchasing the goods and services needed to perform its functions (Arrowsmith, 2010).

The Public Procurement and Disposal Act (PPDA), 2005 has defined 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. For the reasons above, public procurement is subjected in all countries to enacted regulations in order to protect the public interests. It is also worthwhile to note that unlike private procurement, public procurement is a business within a political system and has therefore significant consideration for integrity, accountability, national interest among others.

Furthermore, in developed as well as developing countries, a sound procurement system has to accomplish two sets of requirements which are the management and policy requirements. The procurement management requirements normally include quality, timeliness, cost, maximizing competition and maintaining integrity. The procurement policy requirements normally include economic goals for example preferring domestic or local firms, environmental protection or green procurement social goals which include assisting the minority, youth and women owned business concerns and international trade agreements. It is therefore very difficult for policy makers and public procurement practitioners to make an optimal decision as there are always tradeoffs among these goals (Thai et al, 2005).

The ambitious economic targets outlined in Kenya's vision 2030 blue print and other government policies require public procurement to be carried out in a manner that is not only

compliant to established laws and regulations, but also strategic in approach to ensure higher levels of efficiency and effectiveness. This calls for representation of 'professional procurement' in the county's top leadership to ensure that the nation as a whole leverages upon 'procurement practice and profession to deliver vision 2030 economic development goals and objectives.

In Kenya, ever since the implementation of the Act, compliance has been an issue. In a study conducted by the PPOA(2007), it was noted that although procedures supporting systematic procurement planning had been established, the research showed that there was a low level of compliance with the law and regulations in the sense that a low share of procurements were done through open tendering. In another study by KPMG International after the introduction of the Regulations, it was still found that public procurement still suffers from fraud and misconduct (KPMG, 2008). A study by the Kenya Anti Corruption Commission in 2009 was also consistent with the above findings in that it noted that misconduct exists whereby public officials distort the regulations to restrict the participation of interested firms in procurement or still direct the outcome of others (KACC, National Enterprise Survey on Corruption, 2009). Several Procurement Reviews by the PPOA has also established that most of the public entities exhibit a below minimum level of compliance level of 60% as set out in their performance monitoring plan. In a review of Kenya Ports Authority (KPA) by KACC, External Audit Report and the PPOA in 2009 it was found out that there were deviations by the said entity in terms of general and specific areas of procurement. PPOA concluded that KPA's compliance level is low in major areas of the Act and Regulations.

It is therefore an undeniable fact that the rate of compliance with the procurement law and regulations is still low in the country. However, studies from other jurisdictions also identified that there has been inadequate regulatory compliance. Gelderman (2006) contend that compliance in public procurement is still a major issue not only in the third world countries but also in the European Union. Hui et al (2011) analyzed the procurement issues in Malaysia and established that procurement officers were to blame for malpractice and non - compliance to the procurement policies and procedures. In Uganda, a study by Agaba and Shipman (2007) noted that many central government ministries and agencies were not following the prescribed practices as laid down by the Public Procurement and Disposal of Public Assets (PPDPA) Act, 2003. Procurement audits carried out by the PPDPA in 2005 also revealed that out of the 322 contracts audited at the end of that year, only seven were assessed as compliant. Other successive audit checks reveal that compliance in public procurement in Uganda is still inadequate (PPDPA reports, 2009, 2010, 2011-2014).

Several authors have advanced theories explaining the prevalence of corruption in public procurement but few have attempted to explain the factors responsible for the non - compliance by public officials. Gelderman et al (2006) attempts to establish factors responsible for non compliance in the European Union as being lack of professionalism and familiarity. Other researchers have deemed variables such as enforcement, culture, moral obligation, social

influence, political interference, media publicity and many more as being significant to compliance (Lisa, 2009; Hui et al, 2011; Zubic and Sims, 2011). Thai (2001) identified factors affecting public procurement compliance as procurement procedures, internal control, and competence of the procurement staff and adoption of ICT. Few studies have been carried on the causes of public procurement non compliance in Kenya and hence this study. Compliance in the context of this study will be as cited by Gelderman et al (2006) who noted that compliance refers to target acting in accordance with an influence attempt from the source (Payan McFarland, 2005).

### **Statement of the Problem**

The Public Procurement and Disposal Act, 2005 and its Regulations of 2006 were aimed at promoting fairness, transparency and non discrimination in procurement in public institutions so as to ensure efficient use of public funds and to contribute to the country's economic development by maximizing economy and efficiency. However studies reveal that public procurement is yet to achieve the above objectives due to policy non-compliance both in processes and outcomes of public procurement despite efforts by the Public Procurement Oversight Authority to put in place measures to improve compliance (PPOA, 2007).

Several procurement audits and reviews carried out in public procurement entities reveal non-compliance with procurement law and regulations. The PPOA study report of 2007 noted that there was a low level of compliance with the law and regulations in the sense that a low share of procurements were done through open tendering. A study by KPMG International in 2008 also found out that public procurement still suffers from fraud and misconduct (KPMG, 2008). Several Procurement Reviews by PPOA have also established that most of the public entities exhibit a below minimum level of compliance level of 60% as set out in their monitoring plan. The PPOA reviewed the procurement processes of the Kenya Ports Authority and the Kenya Revenue Authority, two institutions with a prominent presence in Mombasa County and found out that there were deviations by the two entities in terms of general and specific areas of procurement. PPOA concluded that KPA and KRA's compliance level is low in major areas of the Act and Regulations (PPOA, 2009).

Loss of public funds and pilferage of public funds also occur due to non compliance with the public procurement law and regulations. It is instructive to note that the current scandals in the country arising from public procurement non compliance have cost the country an upwards of Kenya shillings 700 billion (The Mars Group, 2011). This study therefore found it appropriate to investigate the factors affecting compliance with public procurement rules and regulations among public institutions in Kenya with a case study of public entities in Mombasa County.

## Literature Review

### Theoretical Review

According to Mentzer et al (2008), a good research should be grounded in theory. This study was based on the institutional theory and the principal agent theory.

### The Institutional Theory

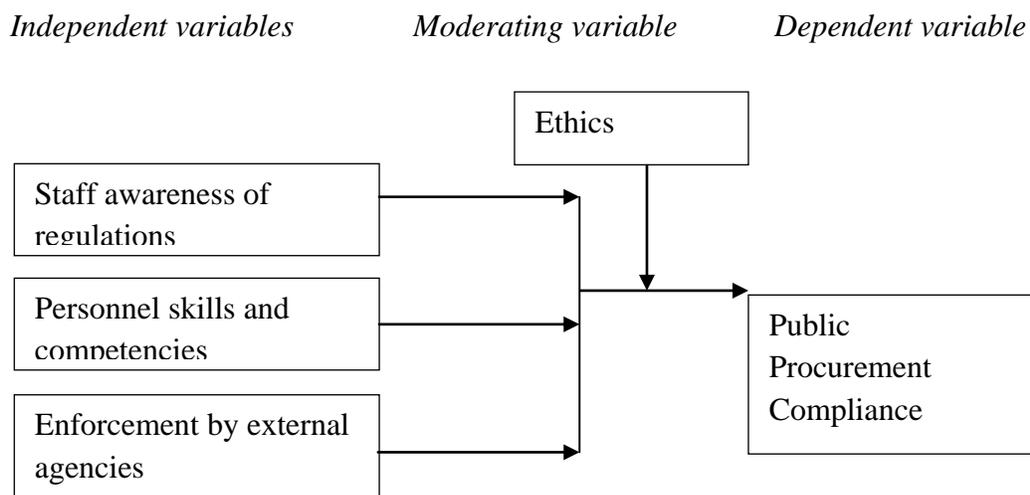
According to Obanda (2010), the institutional theory is the traditional approach that is used to examine elements of public procurement. Scott (2004) identifies three pillars of institutions as regulatory, normative and cultural cognitive. The regulatory pillar emphasizes the use of rules, laws and sanctions as enforcement mechanism, with expedience as the basis of compliance. The normative pillar refers to norms and values with social obligation as the basis for compliance. The cultural cognitive pillar rests on shared understanding, that is, common beliefs, symbols and shared understanding. Borrowing from this theory, public entities in Kenya are guided by rules and regulations as espoused in the PPDA, 2005, the Regulations, 2006 and the guidelines directing procurement activities which are issued from time to time by the PPOA and which shall be complied with by all public procurement entities.

### The Principal –Agent theory

The principal-agent theory is an agency model developed by economists that deals with situations in which the principal is in position to induce the agent, to perform some task in the principal's interest, but not necessarily the agent's (Health and Norman, 2004) This theory explains that procurement managers in the public sector play a relationship role. According to this theory, procurement managers including all civil servants concerned with public procurement must play the agent role. Therefore procurement managers take on the role of agent for elected representatives. This theory holds that shirking is likely to occur when there is some disagreement between policy makers and the bureaucracy. Soundry (2007) identifies this principal agent relationship among the possible risks whereby procurement managers show apathy towards principal preferred outcomes or even overriding of the principal's preferences thus resulting into non compliance. This theory prefigures procurement regulation as an intervention whose primary purpose is to police nonconformist procurement officials resolute on 'gaming the system' to their own benefit. Taken in isolation, it paints a picture of a procurement official begrudgingly obeying procurement regulations at the pain of penal consequences, a position which is only partially correct. In the same vein, the procurement agent is seen as the primary initiator of corruption. These theories constitute the road maps that guided this research from the formulation of research questions, through formulation of interview questions, data and content analyses to the conclusions.

## Conceptual framework

According to Mugenda and Mugenda (2003), a conceptual framework refers to a conceptualization of the relationship between variables in the study and it is shown diagrammatically. Other than showing the direction of the study, a researcher can also be able to show the relationships of different constructs that he/she investigates.



**Figure 1: Conceptual framework**

## Staff awareness of Public Procurement rules and regulations

This study aimed to evaluate the influence of staff awareness of the public procurement rules on public procurement compliance in public institutions in Kenya. Therefore, research question one read “What is the relationship between staff awareness of the procurement rules on public procurement compliance?” The procurement process within the public sector follows steps as enumerated in the PPOA, 2005. The steps follow a logical order and the same must be observed so as to ensure that all the stakeholders involved in the procurement process obtain fair treatment. According to Rossi (2010), compliance with formal elements gives an indication of knowledge of the rules. According to a study by De Boer and Telgen (1998) as quoted by Gelderman et al (2006), one of the factors that causes non - compliance with the procurement regulations is the level of familiarity or awareness with the procurement regulations. De Boer and Telgen (1998) assert that during the early days of the inception of the public procurement regulations in the Netherlands, many municipalities could not comply to the regulations because they were not familiar with them. Gelderman et al (2006) confirmed this position in a survey on compliance with European Union (EU) procurement directives.

Gelderman et al (2006) maintained that public purchasers will comply with the rules if they perceive them as clear. They added that the simple fact that the management of a public agency is familiar with the essence of the EU rules could function as an organizational incentive to

comply. According to Geldernan et al (2006) educating and training public purchasers will be an effective tool for increasing the compliance with the directives. In Uganda, a study by Eyaa and Oluca (2011) found out that lack of familiarity with procurement rules results into poor compliance levels. Other studies from other jurisdictions have also indicated that high levels of non-compliance are partly attributable to inadequate knowledge of the law. According to Fisher (2004) compliance arises from a dynamic equilibrium between the various powers of the state and understanding what their roles are.

A study by the PPOA (2007) and the Kenya Institute of Supplies Management (KISM, 2008) found out that procurement staffs in many procuring entities suffer from a general lack of information about the legal framework, principles, procedures and processes of procurement. Given that the procurement profession is still a nascent field in Kenya, with the regulations having come into force in 2007, it is possible that the level of awareness with the regulations is still low. Nonetheless it is also possible that those who are very much aware of the regulations know it so well that they know how to beat the loopholes to their advantage. It is worth noting that the ambiguity in the public procurement procedures may provide a chance for dubious acts including opaque tendering and discriminate supplier selection which may progress into poor compliance levels. Other studies have also noted that deficient awareness of the procurement procedure by all the internal stake holders may affect compliance. Hui et al (2011) opined that procurement officers must be trained and made aware of all regulations in relation to procurement and related procedures. In enhancing the capacity of the public procurement system, PPOA has embarked on a series of procurement sensitization or training programmes throughout the country aimed to streamline procurement activities in the country and to familiarize the trainees with procurement problem areas and possible solutions. These programmes are designed to create awareness and develop procurement expertise in staff of procuring entities in Kenya.

### **Personnel skills and competencies**

This study also attempted to evaluate the influence of skills and competencies on public procurement compliance in public entities within Mombasa County. The study therefore posited research question two as follows “What is the influence of personnel skills and competencies on public procurement compliance in selected public entities within Mombasa County?” The quality of procurement and procurement related workforce influences the efficiency of the procurement process and the degree of compliance to the procurement laws, regulations and policies. According to Thai (2001), procurement professionals and personnel have dual responsibilities. They make sure that operational agencies comply with procurement regulations and they are directly involved in procuring goods, services and capital assets as authorized and funded. According to Lysons and Farrington (2006), making high quality decisions in a short amount of time with confidence is a requisite competency for success in procurement.

According to Raymond (2008), professionalism in public procurement relates not only to the level of education and qualifications of the workforce but also to the professional approach in the conduct of business activities. If the workforce is not adequately educated in procurement matters, serious consequences including breaches of codes of conduct occur. In order to do their work effectively, however, procurement professionals have to be well equipped with a set of skills and competencies. These professionals need to be equipped with procurement techniques and methods and process management skills which are pertinent to their work. Procurement literature by Jensen and Stone Cash (2004) and others suggests that the core procurement methods and techniques required by procurement professionals include; negotiation skills, price analysis, cost analysis and procurement cycles.

In Uganda, the PPDPA Audit Report (2008) revealed that lack of professionalism was high among public procurement officers. This position was also echoed by Basheka and Mugabira (2008) who state that the level of professionalism in public procurement in Uganda is low or non-existent. While some entities are able to attract qualified professionals for procurement positions, the vast majority of procuring entities suffer from a serious lack of qualified candidates when attempting to recruit new officials. The problem is further aggravated by the fact that the existing qualified candidates often choose to seek employment in the private sector where the salary package is more attractive (Office of the Director of Public Procurement Malawi, 2007).

Kwagbenu (2003) observed that general lack of procurement professionals in Uganda is a major problem for procurement disposal entities in both central and local government and it has been difficult for the ministry of public service to find enough qualified procurement professionals for all the entities (Uganda CPAR 2004). Professionalism is the discipline whereby educated, experienced and responsible procurement officers make informed decisions regarding procurement operations. It is in the recognition of this fact that the Public Procurement Authority focuses its resources on the training, professional development, promotion and support for individuals that are engaged in public procurement to ensure adherence to professional and ethical standards (Adjei AB, 2006).

According to the Public Procurement and Disposal Act 2005, procurement shall be staffed with procurement professionals whose qualifications have been recognized by the authority. The authority shall facilitate the establishment of an examination body for procurement professionals and shall ensure support for their professional association. Two legislations define procurement professionalism in Kenya: the Supplies Practitioners Management Act 2007, and the Public Procurement and Disposal Act 2005; the latter is applicable in the public sector while the former is applicable in all sectors.

According to GOK (2005) a procurement professional should have professional qualifications in procurement and supply management, is engaged in a calling for procurement practice, and is a member of a recognized professional association for procurement and supply. This definition

leaves out the academic qualifications that such professionals should possess; the Public Procurement Oversight Authority is supposed to define the required minimum academic qualifications. The Kenya Institute of Supplies Management has partnered with the Kenya Accountants and Secretaries Examination Board (KASNEB) to develop and offer exams in procurement and supply chain management pending the establishment of the Kenya Institute of Supplies Examination Board (KISEB). These exams will form the basis for locally certifying procurement and supply chain professionals. KISM currently hosts two certification programs; Chartered Institute of Purchasing and Supplies (CIPS) and International Trade Centre -Modula Learning System (ITC-MLS) which is offered on an in- company basis because of its application to the industry challenges. In practice however, procurement rules that require management by tender committees, evaluation committees, inspection and acceptance committees, etcetera, undermine the ability of procurement professionals to contribute strategically to organizational goals. Conversely, there is little to show society that if procurement professionals had a freehand to make professional judgement and be autonomous in decision making, they could gain confidence of the public regarding value for money and elimination of procurement related corruption.

### **Enforcement by relevant external agencies**

The other objective of this project was to investigate the effects of enforcement by relevant external agencies on public procurement compliance in selected public entities within Mombasa County. The research question three therefore read “How does enforcement by relevant external agencies affect public procurement compliance in selected public entities within Mombasa County?” According to Zubcic and Sims (2011), enforcement could be broadly viewed as any actions taken by the regulators to ensure compliance. There are mixed opinions regarding the effect of enforcement on compliance. Some scholars such as sparrow (2000) doubt the direct effect of enforcement on compliance. They argue that enforcement may make violators more sophisticated in how to prevent and conceal detection by the authorities. However, many other scholars agree that enforcement improves compliance (Cunningham and Kagan, 2005; Imperato, 2005; Zubcic and Sims, 2007). According to Zubcic and Sims (2007), enforcement action and increased penalties lead to greater levels of compliance with laws.

According to Nwabuzor (2005), corruption among government procurement officials in developing countries such as Bangladesh, India, Sri Lanka, Nigeria and Venezuela has been linked to a weak enforcement of the rule of law. In countries with complaint and review mechanisms, bidders are allowed to verify whether the procurement processes conform to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules (Hui et al, 2011). Firms might choose to implement ineffective compliance systems if legal violations may be profitable in cases where the legal system under enforces either because penalties are set too low or because detection is imperfect or ineffective. Gunningham and Kagan (2005) argue that the threat of legal sanctions is essential to regulatory

compliance and that enforcement action has cumulative effect on the consciousness of regulated companies and it reminds companies and individuals that violators will be punished and to check their own compliance programs. Gunningham and Kagan (2005) opined that the outcome of sustained enforcement action instilled a culture of compliance and had a direct impact on corporate compliant behaviour.

Weak enforcement on the other hand creates enormous opportunities for abuse of the system often with total impunity (Hunja, 2003). Public entities will go to great lengths to create semblance of formal compliance with procedural and other requirements while seriously compromising the intent and spirit of such rules. In several compromised systems even this veneer of formal compliance is not observed mainly because public officials and their private sector accomplices have no fear of retribution. In a review of a public entity's procurement of the Integrated Security Management (ISM) system, the Public Procurement Administrative Review Board had to say the following in its ruling dated 29th November, 2009 " the Board holds that the procurement entity and specifically the tender committee is behaving like an unruly horse and it has to be tamed and calmed. A procurement entity that attempts to run away from the parameters set by the Act and the Regulations must be contained and forced to comply with the Act and the Regulations".

The PPOA being the main procurement oversight body conducts investigations on any complaint of non compliance with the procurement rules and regulations and makes recommendation to the Ethics and Anti Corruption Commission (EACC) a body established under the Constitution for its assistance in enforcing compliance with the procurement rules by prosecuting suppliers and or procurement or public officers found to have acted corruptly in the public procurement process. Working also in the area of ensuring transparency and compliance to procurement rules in Kenya are the Kenya National Audit Office and the Internal Auditor General (IAG). IAG is responsible for the internal audit function across government especially in the area of procurement. This internal audit is governed by the Public Financial Management Act, 2003 and is carried out on an ongoing basis throughout the Fiscal year and in accordance with the required annual work plan thus providing the basis for a sound internal audit mechanism. The external auditing including that of procurement is carried out on an annual basis by KENAO whose mandate is derived from the Constitution and further governed by the Public Audit Act, 2003.

### **Ethics and Public procurement Compliance**

A moderating factor or variable is a special type of independent variable. It is a variable that changes, that is, increases or decreases, the otherwise established effect of the independent variable upon the dependent variable. In this case, the moderating variable, ethics would somehow alter the strength of this relationship. Ethics is a set of principles that guide public officials in their service to their constituents including their decision making on behalf of their constituents. Ethics addresses the fundamental premise of a public administrator's duty as a

“steward” to the public. The principles of ethics form the foundation of good governance and good management practices in organizations. Evidence shows that the procurement process is most vulnerable and the most threatened process in organizations; due to this peculiarity procurement must follow a dedicated set of ethical standards.

According to Elshleman (2002), the process of procurement or the purchase of goods and services is the process that offers the most potential for ethical abuses or violations. Good procurement management practices should therefore identify areas of potential ethics pitfalls and address them ahead of time so that employees know what practices to avoid. In Kenya, the Kenya Institute of Supplies Management (KISM) launched a Code of Ethics for Supplies practitioners in 2012. This code of professional ethics is envisaged to uphold the moral standards of the profession. In line with the Supplies Practitioners Management Act of 2007, failure to adhere to the ethical code could lead the person to be subjected to Disciplinary Committee proceedings.

Without such a disciplining mechanism, it is highly likely that procurement law non compliance would continue to thrive at the expense of personal professional growth, leading to decline of the profession as whole. Other attempts at cultivating ethical conduct in the Kenyan public sector have found overt manifestations in the Public Officers Ethics Act, 2005, Financial Regulations, and the Leadership and Integrity Act, 2012 which are enactments that seek to guide and regulate the activities of public officials in the discharge of their duties.

## **Research Methodology**

### **Research design**

This study was conducted through a descriptive survey approach with special focus on qualitative and quantitative survey designs. According to Mugenda, & Mugenda (2003) a descriptive survey is an attempt to collect data from members of a population in order to determine the current status of that population with respect to one or more variables. This design enabled the researcher to investigate the factors influencing compliance on public procurement regulations in public entities within Mombasa County. Further, Descriptive survey design was appropriate for this project study as it allowed the researcher to use few procurement entities to explain the influence of levels of awareness on public procurement law, skills and competencies and enforcement action on compliance with the public procurement rules and regulations in public entities in Kenya. This approach was also adopted by the researcher because it involved the measure of respondents’ attitude and opinions. The qualitative survey design adopted involved a guided open ended questionnaire of which data from individuals in the target population were obtained. The research method that the researcher used was the case study research. Some of the more salient aspects of a case study research include the fact that a case study research uses multiple methods for collecting data which may be both qualitative and

quantitative and that a case study research being exploratory in nature is used in areas where there are few or deficient body of knowledge.

### **Population of the study**

Target population is defined as universal set of the study of all members of real or hypothetical set of people, events or subjects to which an investigator wishes to generate this result (Mugenda and Mugenda, 2003). According to Babbie (2005), the population for a study is that group (usually of people) about whom we want to draw conclusions. The target population for this study comprised of 60 individuals drawn from all the procurement cadres whose activities directly or indirectly has a bearing on public procurement in the four public institutions under study. The target population was specifically chosen in order to validate the research from a statistical perspective and to ensure that opinions were solicited from respondents who are involved in procurement.

### **Sampling Frame**

Sampling is the process by which a relatively small number of individuals, objects or events is selected and analyzed in order to find out something about the entire population from which it was selected. The target population for this study were all the 60 individuals from the four public institutions under study who are directly involved in public procurement in the respective institutions. Inevitably the entire population was not studied and thus the researcher selected a sample of 45 individuals from the 4 institutions to be used in the study. The proposed sample size translates to 75 percent of the population. Mugenda and Mugenda (2003) recommend 10 percent of the population as an adequate sample in a social study.

### **Sampling Methodology**

In selecting samples to be included in this study, the researcher used both probability and non – probability sampling techniques. In particular, the researcher used the purposive sampling technique which is a non- probability sampling technique to select all the procurement officials at the four public entities who were believed to be in a better position to respond to the research questions. The criteria that the researcher used in selection of subjects included their level of responsibility or authority, stake in procurement transactions, non-substitutability of the officials and ability to comprehend the questions put forth and to answer them. The researcher used proportional sampling at each of the public entity so as to ensure that the sample size in respect to each of the public entity under study was proportional to its target population. This sampling enabled representation of each of the public entity and allowed generalization of a larger population with a margin of error that is statistically determinable (Mugenda & Mugenda, 2003).

## **Data Collection Instruments**

Both primary and secondary data was collected for this study. The secondary data include a review of key public procurement publications and literature on the subject. The primary data was predominantly collected through structured interview and questionnaires administered to selected respondents.

## **Pilot Test**

To ensure reliability of the data collection instrument, a peer review cum pilot study was carried out. The instrument was pre-tested through a peer review cum pilot study before the actual data collection to enhance reliability. The importance of pre-testing a questionnaire according to Creswell (1999) is to help the researcher understand the meaning of the questions to be put to the respondents and how they arrive at their response. The researcher carried out a pilot testing on 5 employees of the Ethics and Anti- Corruption Commission (EACC). Since content validity is not assessed numerically but can only be subjectively judged by the researchers (Wong and Aspinwall, 2005), procurement experts were asked to review the survey questionnaire before use in collecting data. This was aimed at highlighting any potential errors in the research instruments thus ensuring content validity.

## **Data Processing and analysis**

According to Kombo and Tromp (2011), data analysis procedure includes the process of packaging the collected information, putting in order and structuring its main components in a way that the findings can be easily and effectively communicated. Data was analyzed qualitatively and quantitatively. Data was analyzed and interpreted with the help of percentages and against other internationally accepted procurement practices; national procurement proclamations and directives. Descriptive analysis was largely employed to analyze data presented in the form of tables. The data gathered from interviews and other secondary sources was organized thematically. The relationship between variables was analyzed. Finally, the data was interpreted and summarized in order to draw conclusions and make recommendations. The researcher used the Likert scale as a parameter to measure the variables. The researcher also used statistics to analyze the data. The statistical formulas for calculating percentages and weighted means and the SPSS software was used to come up with the statistical analysis for this study.

## **Research Results**

The study was conducted to find out the factors affecting compliance with public procurement rules and regulations among public institutions in Kenya with a case study of public entities in Mombasa County. The study involved three variables; staff awareness of rules and regulations, personnel skills and competencies and enforcement by external agencies. The mean scores for

the 3 variables range from a low value of 2.89 to a high value of 3.57. According to the 4 point Likert scale adopted by the study in ranking the variables; 0.1 – 1.0 represents ‘unimportant’; 1.1 – 2.0 represents ‘least important’ ; 2.1 – 3.0 represents ‘ important’; and 3.1 – 4.0 represents ‘Most important’. This therefore implies that all of the three variables are viewed by the respondents as either ‘important’ or ‘most important’. A summary of research findings as per the specific research objectives are discussed in detail below.

### **Staff awareness of rules and regulations and public procurement compliance**

Staff awareness of rules and regulations was ranked first (mean value of 3.57) as a necessary factor to ensure compliance with the public procurement rules and regulations in Kenya. Staff awareness of procurement rules and regulations is therefore a very significant predictor of compliance with procurement rules and regulations. The implication of this finding is that the more the procurement personnel are aware of the rules and regulations of public procurement, the more they will comply with the same. This finding is tandem with Gelderman et al, (2006) who established that familiarity with procurement regulations improves compliance. Lukic (2007) in his paper on ‘How to improve compliance with International Environmental Law’ argues that compliance can be improved by increasing knowledge of the laws. This argument is based on the notion that once people are aware or familiar with what they are supposed to do or not to do, it becomes easier for them to do the right thing, which in this case is compliance. The most important sub- factor in this category as perceived by the respondents is ‘obedience to rules and regulations’ (mean value of 4.78 on a 5 point Likert scale). Obedience to rules and regulations will increase public procurement compliance. The respondents also emphasized the fact that clarity of procurement laws and regulations (mean of 4.38) is a prerequisite for public procurement compliance.

### **Personnel skills and Competencies and public procurement compliance**

‘Personnel skills and competencies’ was ranked a close second (mean value 3.43) as a most important factor to ensure compliance with the public procurement law and regulations. The sub-factors of personnel skills and competences that were tested include the extent to which sound knowledge of procurement rules and regulations, possession of certified professional training and registration or association with a professional body affect compliance with the public procurement rules and regulations. There was an accord among the respondents that possession of a sound knowledge of procurement rules and regulations and possession of certified professional training (mean values of 4.57 and 4.04) are the most important components of the personnel skills and competencies required for public procurement compliance. According to Howsam (1985), “some of the indicators of professionalism include skills based on theoretical knowledge, existence of a professional association, extensive period of education, testing of competence, institutional training, licensed practitioners, work autonomy, code of professional ethics, self regulation, legal recognition, control of pay and high status and rewards.

### **Enforcement by relevant external agencies and public procurement compliance**

The study's third objective was to evaluate the effects of enforcement by relevant external agencies on compliance with public procurement rules and regulations among public entities in Mombasa County. This variable was ranked third with a mean score of 2.89 which according to the 4 point Likert scale earlier alluded to means that the respondents consider this variable to be an important predictor of compliance with the public procurement rules and regulations. To address this objective effectively, respondents were asked to indicate their level of agreement with statements that relate to relationship between enforcement by external agencies and compliance with the public procurement rules and regulations. All the five statements were ranked and their means ranged from 1.88 to 3.65. The respondents indicated that enforcement action and increased penalties lead to greater levels of compliance with procurement laws and regulations. This statement was ranked in position one with a mean value of 3.65 which indicates that most of the respondents strongly agree with the statement. Other statements that elicited positive relationships include 'sustained enforcement action by external agencies instills a culture of compliance and has a direct impact on corporate compliance behaviour' and 'possibility of a review by external agencies is a strong incentive for procurement officials to abide by the rules and regulations' which had mean values of 3.16 and 2.89 meaning that the respondents strongly agreed and agreed to the statements respectively. The respondents indicated that they disagree with the statement that 'there is effective monitoring and auditing of procurement activities by oversight bodies'. This statement was ranked fifth with a mean of 1.88.

### **Conclusions**

Given that all the variables in the study were nominally seen as critical in the literature review for ensuring public procurement compliance, this research was able to determine that staff awareness of rules and regulations and possession of professional skills and competencies greatly influences the compliance of public procurement rules and regulations in public institutions in Kenya. A lot therefore needs to be done to improve on the staff awareness of rules and regulations and also to enhance the professional skills and competencies of procurement officers because failure to improve on the two aspects will lead to procurement non compliance and possibly loss of public funds. Strong enforcement of rules and regulations by external agencies should also be implemented so that ethical malpractices like corruption can be forestalled.

### **Recommendations**

As a result of these study findings, the researcher puts forward the following recommendations; First, the Public Procurement Oversight Authority and the public entities should work together to improve the familiarity or awareness with the public procurement rules and regulations. This can be achieved through taking procurement skills assessment and training staff through refresher courses, workshops, seminars and conferences where staff meet and share experiences. The

PPOA and the Kenya Institute of Supplies Management should also work hand in hand in order to promote the professionalism in the procurement function. The two bodies should work in synch in promoting learning, development of best practices and application of the same to the practice of procurement and supply chain management in the public sector. The public procuring entities on their part should ensure that they employ qualified procurement personnel or send the existing staff for specialized procurement training. PPOA and the other relevant external agencies should further ensure that monitoring or review of the public procurement entities is done on a regular basis to ensure procurements are in compliance with the law of procurement. Sanctions should also be imposed on the transgressors so as to act as a deterrence to others bent on circumventing the law for their own personal gains.

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