DETERMINANTS OF NON COMPLIANCE WITH PUBLIC PROCUREMENT REGULATIONS IN THE PUBLIC SECTOR, A SURVEY OF SELECTED PARASTATALS IN NAIROBI, KENYA.

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ABSTRACT

Public Procurement is one of the Kenyan Government’s key areas of emphasis; it refers to the acquisition of goods and services by government or public sector organizations, public sector expenditure is substantial, government organizations across the world tend to spend between 8% and 25% of GDP on goods and services. Owing to the enormous amount of money involved and the fact that the money comes from the public, they demand accountability and transparency. Rules on public procurement have been enacted, however compliance by public procuring entities is still a challenge, and limited studies have been done in this area. The general objective of this study was to examine the determinants of non-compliance to public procurement regulations in the public sector in Kenya. Specific Objectives were; to examine the effect of familiarity with rules and determine the effect of perceived inefficiency. The study is anchored on two theories, Socio-economic theory of regulatory compliance and principal agent theory, explanatory research design was utilized in this study. A census survey of procurement officers working for Government parastatals in Nairobi was employed as a method of data collection. Data was collected from a sample of (119/132) respondents from the public sector enterprises translating to a response rate of 90.2 %. A likert type of questionnaire was used to solicit primary data. The data analysis methods used were descriptive and inferential statistics, utilizing a multiple regression analysis model. The study findings revealed that non-compliance is affected by factors relating to; familiarity with public procurement regulations ($\beta_1=0.313$, $p<0.05$). Correlation statistics revealed that there exists a positive relationship between dependent variable ($y$) and all the independent variables ($x_1$ and $x_2$). This study has highlighted several recommendations that will be of use to public procuring entities and their employees to improve compliance with the procurement regulations in place. Finally the respondents in this study are purchasers; future study could include a sample of other respondents other than purchasers, for instance the tender committee members.

Key words: public procurement, non compliance, procurement regulations.

1. Introduction

Ever since the enactment of Kenya’s Public procurement and disposals Act (PPDA) in 2005, its impact and Effectiveness has been seriously questioned. A number of studies have tried to explain non compliance to
procurement directives by public procuring entities and it’s unfortunate that most studies reported disappointing results, the impact of the directives is rather limited and disappointing (Madsen, 2002; Nielsen and Hansen, 2001; Erridge et al., 1998; Cox and Furlong, 1995; Gelderman et al. 2006).

Other publications are devoted to the interpretation and application of the EU Directives (e.g. Arrowsmith, 1998; Pachnou, 2000), the problems of the directives related to the EU’s expansion into Central and Eastern Europe (e.g. Kanaras, 2000), explaining non-compliance to public procurement and EU tendering directives (Gelderman et al. 2006). Surprisingly, there is much less research on the non compliance with respect to public procurement regulations in East Africa and in particular Kenya. A notable exception is the empirical study by (Eyaa and Oluka, 2011) carried out in Uganda, which clearly suggests that the proper use of EU directives in public procurement is far from common practice. Now, many years later, compliance is still a major issue. There are many suggested reasons why public authorities do not comply with the directives, according to PPOA non-compliance issues includes; Poor records management, documentation and tools, (ii) lack of procurement planning (iii) lack of use of standard tender documents in making mandatory reports to PPOA (iv) lack of use of standard requisition (v) lack of properly established procurement unit staffed with professionals and lastly lack of effective post award contract management. However, these claims are not substantiated by empirical evidence that can explain (non)compliance with the directives. This study is aimed at filling this gap, it draws out and empirically tests hypotheses on compliance behavior, adding to both our conceptual and empirical knowledge of the issues at hand.

The organization of the paper is as follows. In section 2, a brief description of non compliance to public procurement regulations in Kenya, then followed by non compliance explanatory variables in section 3. Research methodology and data is reported in section 4. Section 5 presents the empirical results and finally the study is completed by summarizing the conclusions, providing implications and suggestions for further research.

2. Non-compliance to public procurement regulations.

Compliance has been around as long as people have been doing business. Whenever an employer instructs employees about the law, the employer performs a compliance function. Non-compliance is a distinct concept from compliance just as researchers have shown for such opposites as love and hate and positive/negative affectivity (Lewick et al., 1998; Dickey et al., 2007). Whereas compliance is the degree to which an agent adheres to principal’s directives, policies and procedures, non-compliance is the degree to which an agent initiates deviant policies and procedures that are not approved by the principal (Dickey et al., 2007).

Eyaa and Oluka (2011) explain that compliance is a problem not only in the third world countries but also evident in the countries in the European Union (EU). Gelderman et al., (2006) further advances reasons for non-compliance as explained by the tendency to avoid red tape involved in the procurement process. However (Sewanyana, 2009) asserts that the type of goods and services procured sometimes influences the degree of compliance with the procurement regulations.

Public procurement refers to the acquisition of goods and services by government or public sector organizations (Uyarra and Flagan, 2010; Stephen B and Hellen Walker, 2009) and is one of the Government’s key activities (Thai 2001; Stephen B and Hellen W, 2009). The goods and services may be either regular, off-the-shelf products which serve the general needs of the user, or innovative products which have been delivered as a result of development carried out by the supplier to meet further requirements that are not fulfilled by existing products (Edquist et al., 2000).

Public procurement is concerned with how public sector organizations spend taxpayer’s money on goods and services. Public sector expenditure is substantial, government organizations across the world tend to spend between 8 percent and 25 percent of GDP on goods and services (Organization for Economic Co-operation and Development, 2006; Hellen W and Stephen B, 2011). The nature and context of public sector purchasing differs from commercial practice. The public sector spends taxpayer’s money and is subject to public review and needs to be transparent and accountable in its purchasing processes (Hellen W and Stephen B, 2011).
As a rapid developing country, Kenyan government has put more emphasis to channel the country’s resources to right places of development. Public funds raised through the collection of income tax, companies tax, duties and other sources should flow back to the public and benefit the public in terms of good public facilities and amenities education subsidies and other developments. (Hui et al; 2010) reiterates that an effective procurement system therefore has to ensure as little leakage from the system as possible, all the loopholes should be sealed off. The government procurement system is part of this conversion process, from the collection of funds to successful implementation of projects; hence the procurements system is always under the intense scrutiny of different stakeholders. Issues of accountability, transparency, corruption, integrity and cronyism are concerns raised by the public to ensure that public funds are properly managed and wastage of public funds are kept to a minimum, unfortunately weaknesses still exists in the system (Hui et.al., 2010).


In this section possible reasons for non-compliance to the Public procurement and disposals regulations are presented. In our study we have combined the findings and conclusion of this explanatory study with other publications, dealing with the non-compliance to procurement regulations and tendering directives. The explanatory variables in this study are clustered in two groups, the purchaser’s familiarity with the rules and the inefficiency of the rules as perceived by purchasers.

3.1 Employee professional ethics and non compliance to public procurement regulations.

\( H_0 \)  Employee professional ethics has no significant influence on non compliance to public procurement regulations in the public sector in Kenya.

Conceptual framework on determinants of non-compliance to public procurement regulations in the public sector in Kenya.

<table>
<thead>
<tr>
<th>Independent Variables (IV)</th>
<th>Dependent Variable (DV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee professional ethics</td>
<td>Non compliance with public procurement regulations</td>
</tr>
<tr>
<td>Employee perceived interference</td>
<td></td>
</tr>
</tbody>
</table>

\( H_01 \)

\( H_02 \)

Source: (Gelderman et, al.,2006) modified by (Researcher 2012).

3.2 Employee perceived interference and non compliance to public procurement regulations.
Employee perceived interference has no significant effect on non compliance to public procurement regulations in Kenya.

3.3 Theoretical background

This study is anchored on two theories, namely; socio-economic theory of regulatory compliance, and principal agent theory.

3.3.1 Socio-Economic Theory of Regulatory Compliance

This theory was coined by Becker in (1968), it was meant to explain compliance issues regarding regulations of economic activities in the natural resources industries. According to this theory regulated economic agents are typically controlled through monitoring, surveillance and enforcement authorities and not systematically considered when developing regulatory policies.

In the context of this study, public procuring entities must adhere to the enacted procurement and disposals regulations (PPDA, 2005), since their actions are continuously monitored by the stakeholders, who include the Government, bidders and other potential suppliers and customers. In the event of supplier’s complaint on any issues regarding flouted procurement procedures, they are free to seek redress from PPOA who are in charge of enforcing the public procurement regulations.

This theory is corroborated by a model that was developed by Becker in 1968. It was meant to explain criminal activity following Bentham (1789) and Smith (1759, 1776). According to Becker, criminals behave basically like other individuals in that they attempt to maximize utility subject to budget constraints. From Becker’s model, individuals commit crime if the expected utility from committing the crime exceeds the utility from engaging in legitimate activity. In this study, procurement/purchasing employees can be equated to the criminals, they could be tempted to circumvent the procurement regulations if the kickbacks from engaging in such illegitimate activities are substantial to them and it exceeds the ones of engaging in legitimate activities, it could be they want to acquire wealth quickly. The basic deterrence framework used in these studies assumes that the threat of sanctions as the only policy mechanisms available to improve compliance with regulations. This is justified in this study, since the regulations set up by PPOA offer stiff penalties to offenders of the laid down public procurement regulations. Furthermore to improve and boost the understanding on compliance issues, an enriched model of compliance was developed, that’s Neo Classical deterrence model which holds that rational individuals are driven by both intrinsic and extrinsic motivations, (including but not restricted to wealth enhancement). This model integrates economic theory with theories from psychology and sociology to account for both tangible and intangible motivations influencing individual’s decision whether to comply with a given set of regulations.

From this model individuals violated rules only if the benefits less the expected cost of violating exceeds or equals benefits of compliance otherwise the individual complies, moral acts are fronted as the key to compliance.

3.3.2 Principal agent theory

Agency theory has emerged as one of the most influential economically based theories of dyadic contractual relationships (Eisenhardt,1989; Jensen and Meckling,1976;Rebecca&David, 2011).Agency theory is based on the relationship between one party, the principal, who designates certain tasks and decisions to another party the agent(Jensen and Meckling,1976;Rebecca and David,2011; Sajad et’al,2012) .In the context of this study, procurement employees in the public procuring entities plays their role of the agent whereas the Government is the principal. The government exercises its principal’s authority through the public procurement oversight authority (PPOA). The primary role of PPOA is to ensure that all the public procuring entities adhere to the laid down regulations in procurement and disposal activities. From the agency theory it is evident that the agents behaves opportunistically, particularly if their interests conflicts with those of the principal, and that the principal is in a weak position to control opportunistic behavior because of information asymmetry, that’s limited access to
information regarding the actions of the agent on their course of duty (Eisenhardt, 1989; Zajac and Westphal, 1994; Rebecca and David, 2011). These conditions are what brings about the agency problems in which agents engage in behavior pursuant to their own goals and in consequence negatively affect the principal. For instance during the procurement process, some unscrupulous procurement employees could flout the procurement regulations which have adverse effects to the procuring entity, for instance acquisition of goods/services and works at inflated prices moreover the organization could receive substandard products owing to loopholes in the system. The unfortunate thing is that the principal (Government) is not in a position to scrutinize each and every transaction executed by the agent (Public PE’s). In order to safeguard and protect the interest of the principal (Government) and minimize adverse effects of their welfare, An agency to enforce the procurement laws (PPDA, 2005) was set up, this being the public procurement oversight authority (PPOA).

4.0 Methodology and data collection

4.1 Research method

In order to test the hypotheses we have selected a sample frame of (potential) respondents who are all personally involved in the procurement of goods and services for which the Public procurement and disposals regulations apply.

With respect to that purpose a questionnaire was administered to the purchasing professionals working for Government parastatals in Kenya. The survey procedure included a pilot study aimed at enhancing the reliability and validity of the questionnaire. The final questionnaire was administered to 132 purchasing professionals of the Government parastatals with their headquarters in Nairobi on the basis of ‘drop and pick’ or ‘pick later’.

This study was a survey of one respondent per the procuring entity, this being the head of procurement/purchasing department or any other person he or she nominates to fill the questionnaire.

4.2 Response

A total number of 119 responses were received, translating to a response rate of 90.2 percent (119/132). Table I presents the respondent profile. This is an effective response rate comparing favorably to other similar studies (e.g Gelderman et.al. 2006).

Purchasing staff members are charged with the day to day procurement activities and policy development.

4.3 Construct validity

Explanatory factor analysis was used to assess the validity of the constructs and to identify a possible underlying factor structure. Most items had factor loadings that exceeded the commonly recommended level of 0.50, see Table II.

A reliability analysis has been performed in order to ensure the internal consistency of the indicators that constitute each construct. Cronbach’s alpha [2] are:

- 0.803 for the non compliance construct;
- 0.896 for the employee professional ethics construct;
- 0.535 for the employee perceived interference construct;

The results of the reliability analysis indicate an acceptable internal consistency and reliability of the constructs.

5. Empirical results

Multiple regression analysis has been applied, in order to determine the influence of the explanatory variable on the non compliance with the public procurement regulations (see Table III).

<table>
<thead>
<tr>
<th>Procurement/purchasing officer</th>
<th>16</th>
<th>13.4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior purchasing Assistant</td>
<td>29</td>
<td>24.4</td>
</tr>
</tbody>
</table>
Table I.

<table>
<thead>
<tr>
<th>Job title of respondents</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchasing/supplies assistant</td>
<td>52</td>
<td>43.7</td>
</tr>
<tr>
<td>Purchasing/supplies clerk</td>
<td>13</td>
<td>10.9</td>
</tr>
<tr>
<td>Stores clerk</td>
<td>9</td>
<td>7.6</td>
</tr>
<tr>
<td>Total</td>
<td>119</td>
<td>100</td>
</tr>
</tbody>
</table>

Measures | Factor Loading | Cronbach ’s alpha | Mean | Standard Deviation
---|---------------|-------------------|------|-------------------
Employee professional ethics
Conflicts between opportunities for personal financial gains and proper performance of one’s responsibilities | 0.9 | 3.13 | 0.91
Showing partiality towards the suppliers preferred by upper management | 0.7 |
Offering gifts to procurement staff with intention of compromising them to influence purchasing decisions | 0.75 |
Revealing of confidential bids to suppliers and allowing quote | 0.65 |
Failing to provide products and services of highest quality by colluding with suppliers | 0.73 |
Employee perceived interference
Public tenders involving huge sums of money often attract political influences | 0.57 |
Purchasing staff at times fight the temptation of being bribed by suppliers | 0.84 |
tender committee members could collude in favor of a certain bidder | 0.79 |
Challenge of adhering to procurement procedure while dealing with the heads of procurement Entities who are not well versed with procurement regulations | 0.78 |
Observation of health, safety standards and environmental protection | 0.88 |
Non compliance to public procurement regulations
Advertisement of tenders valued above Kshs.5 million thresholds | 0.51 |
Delays in submitting Quarterly reports to Public Procurement Oversight Authority | 0.71 |
Standardized method for supplier evaluation in tendering process | 0.61 |
Periodically measure and evaluation of purchasing performance. | 0.44 |
At times post award contract management is not undertaken. | 0.69 |
Extension of time frame for receiving bids. 0.8
Use of the standard tender documents in purchasing. 0.59
There are instances whereby records are misplaced in the department 0.64

Table II  Item scales

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Compliance with EU directives</th>
<th>Standardised Beta</th>
<th>T</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Constant)</td>
<td>-0.153</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Professional Ethics</td>
<td>0.168</td>
<td>0.259</td>
<td>2.674</td>
<td>0.009</td>
</tr>
<tr>
<td>Employee perceived Interference</td>
<td>0.239</td>
<td>0.176</td>
<td>2.46</td>
<td>0.015</td>
</tr>
</tbody>
</table>

Table III  Results of the multiple regression analysis

Note: *Indicates significant at p<0.05. Adjusted R²=0.618, F-value: 0.000, n=119

Hypotheses testing were conducted using 0.05 significance level. Findings indicated that there was no multi collinearity among the study independent variables; employee professional ethics (X₁), and employee perceived interference (X₂) since the variance inflation values were all less than 10, which is the thumb rule recommended value.

H₀₁  Employee professional ethics has no significant influence on non compliance to public procurement regulations in the public sector in Kenya.
The Study results showed that there is a statistically significant relationship between employee professional ethics and non compliance (pvalue =0.009) and thus hypothesis was rejected and conclude that employee professional ethics has an effect on non compliance to procurement regulations.

H02 Perceived interference has no significant effect on non compliance to public procurement regulations in Kenya.

The Study findings showed that there is a statistically significant relationship between perceived interference and non compliance (p value =0.015) and thus hypothesis was rejected and conclude that perceived interference has an effect on non compliance to procurement regulations.

6 Conclusions, recommendations and areas for further research

Ever since the enactment of (PPDA, 2005), compliance to public procurement and disposal directives is still an uphill task. In as much as this is a very important area of research, a few empirical studies have been conducted. This study aimed at filling this gap, by identifying factors and variables in which non compliance can be measured.

The empirical findings indicate that employee professional ethics and employee perceived interference have a positive statistically significant relationship with non compliance. The managerial implications of these findings would be that, there is need to train, educate and sensitize purchasers and this would be a major contributor to compliance

5.3 Recommendations

The recommendations to public procuring entities are as follows;

5.3.1 Employee professional ethics

Public procurement stakeholders should place more emphasis in inculcating sound moral standing and ethics on procurement employees. Stiffer penalties on members of KISM should be set for any compromise on public procurement rules.

5.3.2 Employee perceived interference

Political influence should be kept off all the public procurement and tendering processes, procurement employees should be well remunerated to ward off the temptation of receiving bribes from crafty bidders, There’s need to train the tender committee on importance of personal integrity to avoid colluding in favour of certain bidders and finally PPOA should sensitize all the heads/accounting officers of public PE’s on procurement regulations and the penalties for non-compliance.

5.4 Limitations and areas for further research

No research is without its limitations, and there are some cautions in interpreting the results of this study. Although our investigation is a step towards understanding compliance issues with respect to public procurement regulations and procedures, more research is needed in this area. The current study is limited in its setting, the questionnaires were administered to one respondent in each public procuring entity, there is need to diversify the sample to cover a higher number of purchasers per procuring entity to further justify the research findings. Furthermore the respondents in this study are purchasers; future study could include a sample of other respondents other than purchasers, for instance the tender committee members and the prequalified suppliers.
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Page 1


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