

DETERMINANTS OF EFFECTIVE COMPLIANCE TO PUBLIC PROCUREMENT RULES AND REGULATIONS IN KENYA: (A CASE OF SELECTED MEMBERS OF NCA–KITUI REGION)

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Abstract: This study sought to find out the various determinants of effective compliance to public procurement rules and regulations in NCA. To achieve this, the study used four objectives; determine the effect of National Construction Authority procurement staff training with the Public Procurement and Disposal Regulations (PPDR) on compliance with public procurement rules and regulations in Kenya, assess the effect of observation of ethical practices during tender processing in NCA with PPDR and determine the effect of government enforcement mechanisms in NCA compliance to public procurement rules and regulations in Kenya. The target population of this study was 2000 respondents who were drawn from procurement, training officers, IT department who generate certificate, compliance department, finance department and registration officers. Sample size was 13% of the total population (2000), making it 264 respondents. Fishers formulae was used to arrive at 264 respondents. Data analysis was done by aid of SPSS version 22.0. Descriptive statistics was used which included frequencies and percentages. Data was presented in form of tables and charts, lastly conclusions and recommendations will be made. This study concluded that staff competency and training had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. Training would equip those involved in the procurement process with the requirements of the regulations and improve their skills in specialized aspects of procurement. Continuous training will ensure compliance learning, innovation and improvement. The study concluded that ethical practices had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. Therefore, we can conclude that there is strong positive relationship between compliance to procurement ethics and the performance of the public sector. From the findings, it was discovered that a significant number of unethical procurement practices are yet to be curbed which include unprofessional ethics. Finally, the study concluded that enforcement of regulations had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. This implies that the enforcement of procurement regulations in an organization encourages compliance to public procurement rules and regulations. The study recommends that National construction authority should also train its procurement staff and stakeholders on the procedures, procurement matrix, methods of procurement, professionalism and excellence to effective compliance to public procurement rules and regulations in Kenya so as to provide consistency to effective compliance to public procurement rules and regulations and reduce costs that may relate to non-compliance such as poor quality costs. The study further recommends that National construction authority need to institute measures to curb unethical practices like unprofessional ethics to enhance effective compliance to public procurement rules and regulations in Kenya. Finally, the study recommends that proper enforcement systems should be embraced by the National construction authority in conjunction with the Public Procurement Oversight Authority to help enhance compliance to procedures spelt out in the Public Procurement and Disposal Regulations and uphold the spirit of transparency, value for money and fairness in public sector.

Keywords: Staff training & Competency, ethical practices and government enforcement.

1. INTRODUCTION

Public procurement is the acquisition of commodities and services through the use of public resources and funds (Lysons 2003). As one of the crucial tasks of the government, Etemesi (2010) confirms that the sector of public procurement in Kenya takes up an estimated 13% of the Gross Domestic Product (GDP) of Kenya. The items involved in public procurement range from simple commodities such as cleaning services to large profitable projects such as the construction of infrastructure and power stations in the country. As such, public procurement has undoubtedly become a crucial factor for Kenya in the economic and business sectors. Globally, Kenya has to ensure that the public procurement rules and regulations in the country match up globally to other countries (Etemesi 2010). This is because an effective public procurement system in the country has the effect of attracting donors who help fund large projects in the country such as facilitating infrastructural ventures.

Statement of the Problem:

National Construction Authority in Kenya face several challenges such as corruption in the execution of public procurement performance. As legal entities created for the purpose of undertaking commercial activities on behalf of the government, National Construction Authority have the burden of proving to the public of their transparency and integrity in undertaking public procurement services (Odhiambo and Kamau 2003). Due to the reputation of National Construction Authority in Kenya being corrupt in their public procurement undertakings, the corporations have to be subjected to intense scrutiny that is driven by both public and political expectations for public procurement service improvements.

The objective of the PPOA was to promote fairness and legal justice to all public procurement activities in the country (PPOA 2009). The motivation behind the establishment of the various regulatory bodies of public procurement in Kenya was to ensure that public funds were effectively used and that all National Construction Authority adhered to the set rules and regulations of public procurement in Kenya. However, there have been several scandals of corruption and misuse of public funds in National Construction Authority under the umbrella of public procurement activities (Kiplagat 2018).

As reported by Forbes in 2015, corruption and tenderpreneurs has brought Kenya to its knees (Nsehe 2015). President Uhuru Kenyatta of Kenya publicly admitted that corruption that was mostly committed under the hood of awarding tenders to rogue companies has become a national security threat in the country. The 2013/2014 Auditor's Report in Kenya provided evidence for the gross financial impropriety by National Construction Authority in Kenya due to questionable public procurement deals (Nsehe 2015). The report further mentions that there is mismanagement of funds in National Construction Authority, mostly orchestrated by government officials who act with impunity when assigning tenders. As such, approximately 98% of all funds spent by National Construction Authority in 2014 could not be properly accounted for by the officials responsible (Nsehe 2015). Examples of outrageous public procurement practice in Kenya include a ministry in the country admitting to spending \$17,000 in purchasing a television set. As confirmed by Forbes (2015), the amount used to purchase the television is more than ten times the purchasing cost of a television in the most expensive electronic stores in the country.

Further, the Ethics and Anti-Corruption Commission body in Kenya reported in 2015 that 70% of all corruption cases in Kenya are related to procurement. Additionally, according to Forbes (2015), the most lucrative businesses in Kenya are in acquiring government tender contracts due to the opportunities for corruption in most National Construction Authorities. Most entrepreneurs are now targeting the contracts of supplying commodities and services to National Construction Authorities since they have the opportunity of inflating the prices of goods, while the organizations take advantage by cashing in on fictional purchases and tender supplies. Social media circles in Kenya have forged the word 'Tenderpreneurs' for such entrepreneurs, who are known to be company proxies of senior government officials and politicians (Nsehe 2015). Accordingly, the thin line that exists between public expenditure and corruption in Kenya traces back to the 1967 government policy change that allowed civil servants and politicians and civil servants to engage in private business. However, despite this policy, National Construction Authority have the mandate to ensure that they comply with public procurement rules in the country.

Objectives:

- i. To determine the influence of Staff training & Competency on compliance with public procurement rules and regulations in Kenya.

- ii. To assess the influence of ethical practices on the compliance with public procurement rules and regulations in Kenya.
- iii. To determine the influence of government enforcement on compliance with public procurement rules and regulations in Kenya

2. THEORETICAL REVIEW

Agency Theory:

According to Witjes and Lozano (2016), the agency theory best explains the relationship roles played by National Construction Authorities in the public procurement sector. The foundation of the agency theory is that two parties are in a relationship of asymmetry of information where one party, the agent, acts on behalf of the principal. In application of the theory to public procurement, National Construction Authorities are the agents to the various stakeholders of public procurement, such as the public and government donors. The assumptions made under the agency theory is that the efficiency of the operations of the principal largely depends on the actions and decisions of the agent. In the scenario of public procurement where National Construction Authorities acquire commodities and services on behalf of the public, the assumption that the success of the principal depends on the actions of the agent holds true (De Boer 2001).

Institutional Theory:

The institutions theory states that construction entities are made up of cultural-cognitive and regulative factors that end up giving meaning to life as long as they are associated with relevant activities and available resources. According to Greenwood et al. (2017), the institutional theory takes on a sociological standpoint when explaining various organizational behaviors and structures. As such, the three pillars that explain the theory are the regulatory, the cultural cognitive and the normative pillars. The regulatory pillar advises institutions to use expedience as a basis for compliance. In the regulatory pillar, a construction entity can learn to adhere to public procurement rules and regulations since such a decision will ensure that the corporation benefits from gaining the trust of its stakeholders and avoiding the detrimental results of being exposed as corrupt and fraudulent (Greenwood et al. 2017).

Conceptual Framework

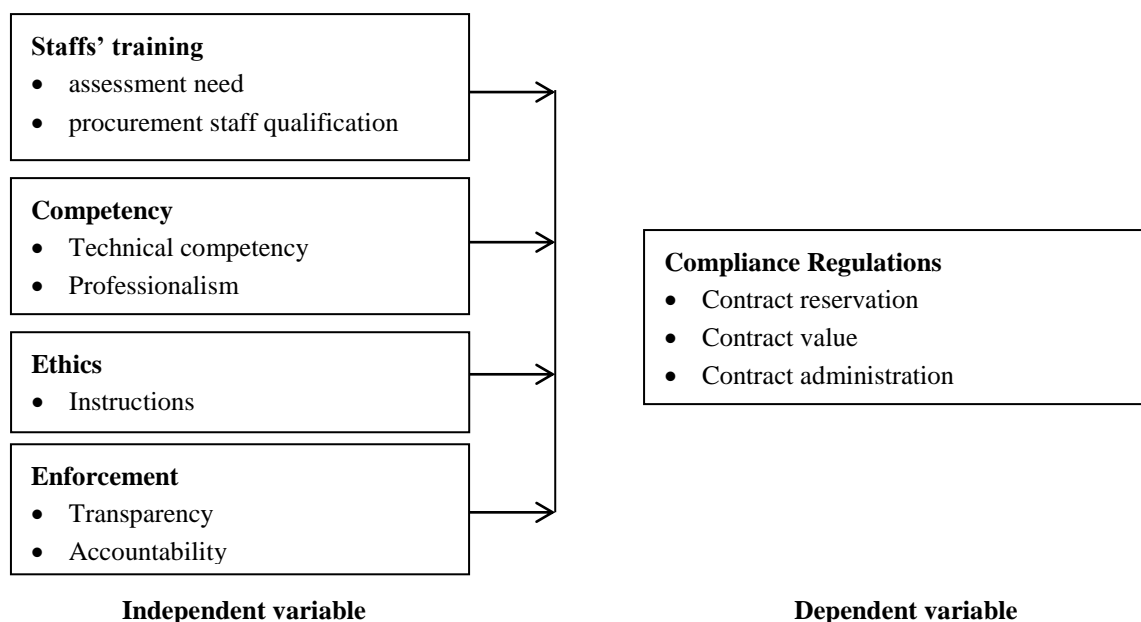


Figure 2.1: Conceptual Framework

Critique of Literature Reviewed:

In a study conducted by Gelderman et al. (2006), the conclusion was that compliance of contractors to the European Union was not absolute due to the issue of ignorance of the members to the existing laws and regulations of the EU. Similarly, entities fail to comply to procurement regulations of a country since they are not familiar with them. Agaba

(2007) analyses the correlation between the presence of procurement enforcement mechanisms and compliance to public procurement regulations. According to the researcher, increased enforcement measures and penalties on contractors has a high positive correlation to compliance of entities to public procurement rules and regulations.

In analyzing the procurement practices and enforcement mechanisms construction entities, Eyaa (2011) maintain that entities which have strong bidding mechanisms allow tender bidders to actively participate in the bidding process and lodge complaints if they deem the process conducted by procurement entities unfair. Conclusively, Basheka (2008) asserts that such strong procurement enforcement mechanisms on contractors act as a force that encourages entities to comply with existent procurement regulations. However, the researcher was not keen on discussing how the procurement enforcement mechanisms in countries enhance greater compliance levels to public procurement rules and regulations.

Summary of Literature:

The Kenyan government has taken several measures to ensure the compliance of National Construction Authority to public procurement rules and regulations. Among the efforts of the Kenyan government to ensure that procurement operations in the country are fair and there is minimization of corruption in the procurement department of National Construction Authority include passing the Public Procurement and Asset disposal Act, and establishing PPOA and KENAO. However, there are still challenges of National Construction Authority not having effective compliance to the existent rules and regulations in public procurement. The literature reviewed confirms that while there are various enforcing mechanisms to ensure effective compliance of National Construction Authority to public procurement rules and regulation, there is also the problem of construction entities participating in unethical procurement behavior and proving non-compliance to public procurement regulations.

Research Gap:

In analyzing literature from other scholars on compliance of construction entities to public procurement rules and regulations, it is clear that the issue of factors that affect the compliance of entities public procurement were not addressed. Further, previous research did not address how the longevity of procurement employees, or the period of existence of the construction entity affects the level of compliance that an organization has towards public procurement rules and regulations in Kenya. In addition, the literature reviewed did not address how the level of education of procurement staff affects the compliance of their construction organization to public procurement rules and regulation. Despite the enactment of PPDR and PPOA in Kenya, which is meant to promote transparency, value for money and fairness in procurement operations within the construction entities, there are still reports of the ineffectiveness of compliance to procurement regulations among National Construction Authority. As such, there is need to investigate on the factors which determine effective compliance to public procurement regulations among National Construction Authority, an objective that this study aims at fulfilling.

3. RESEARCH METHODOLOGY

The research design used in this study was descriptive research design. This study was carried out at National construction authority (NCA) of Kitui County, Kenya. The target population of this study was 2000 respondents who were drawn from procurement, training officers, IT department who generate certificate, compliance department, finance department and registration officers. The data collection instrument for this study was a questionnaire. The questionnaire had both open ended questions and a Likert Scale on some questions. The questionnaire was pre-tested with a small representative sample aimed at identifying potential misunderstandings or biasing effects for various questions. The data was coded and thereafter analyzed using descriptive statistics (mainly percentages, mean, variance and standard deviations) and inferential statistics (mainly linear regression models) with the aid of Statistical Package for Social Sciences (SPSS) program and presented using appropriate tables to give a clear picture of the research findings at a glance. A multiple linear regression analysis was performed to test the effect of the independent variables on the dependent variable

Model

The model was specified as follows: $Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \epsilon$

Where,

Y= Public procurement rules and regulations in Kenya

X₁: Staff training & Competency

X_2 : Ethical practices

X_3 : Staff competency

α = constant

β =coefficient

ε = error term

4. REGRESSION RESULTS

Table 4.1: Significance of Independent Variables

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	2.604	.013		.000	.001
1 Training	.827	.045	.807	18.208	.002
Ethical practices	.910	.032	.904	28.283	.001
Staff competency	.867	.039	.855	21.956	.002

The results in Table 4.13 indicate that staff competency and training had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. Training would equip those involved in the procurement process with the requirements of the regulations and improve their skills in specialized aspects of procurement. Continuous training will ensure compliance learning, innovation and improvement.

Further, the study established that ethical practices had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. Therefore, we can conclude that there is strong positive relationship between compliance to procurement ethics and the performance of the public sector. From the findings, it was discovered that a significant number of unethical procurement practices are yet to be curbed which include unprofessional ethics.

Enforcement of regulations had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. This implies that the enforcement of procurement regulations in an organization encourages compliance to public procurement rules and regulations. The rate of non-compliance in many organization as pertaining to procurement activities of corporations has risen and linked to weakened enforcement mechanism of procurement rules and regulations in the country

5. CONCLUSION

This study concluded that staff competency and training had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. The study further concluded that ethical practices had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region. The study finally concluded that enforcement of regulations had a significant and positive influence on the public procurement rules and regulations in Kenya among selected members of NCA in Kitui region.

6. RECOMMENDATIONS

The study recommends that National construction authority should also train its procurement staff and stakeholders on the procedures, procurement matrix, methods of procurement, professionalism and excellence to effective compliance to public procurement rules and regulations in Kenya so as to provide consistency to effective compliance to public procurement rules and regulations and reduce costs that may relate to non-compliance such as poor quality costs. The study also recommends that National construction authority need to institute measures to curb unethical practices like unprofessional ethics to enhance effective compliance to public procurement rules and regulations in Kenya. The study finally recommends that proper enforcement systems should be embraced by the National construction authority in conjunction with the Public Procurement oversight Authority to help enhance compliance to procedures spelt out in the Public procurement and Disposal Regulations and uphold the spirit of transparency, value for money and fairness in public sector.

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