

Challenges Facing Administrators in The Implementation Of Public Procurement And Disposal Act In Civil Services In Kenya: A Case Of Uasin-Gishu County

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ABSTRACT

The purpose of this paper was to determine challenges facing administrators in the implementation of Public Procurement and Disposal Act in the civil services in Kenya, in Uasin-Gishu County. The study adopted both qualitative and quantitative approaches where Questionnaire and interview schedule were used to collect data. The study targeted all the administrators in civil services from Uasin-Gishu County. A sample size of 50 administrators was used. The study used both probability and non-probability sampling techniques. Stratified technique was adopted as respondents were selected according to their respective departments. Furthermore, simple random sampling was used to select the actual number of respondents who were given questionnaires to fill. The study found that Administrators face challenges during the implementation of PPDA, such as, poor procurement operations and market practices, and complex execution of legal mandates of procurement entities, weak institutional framework and management capacity, and lack of integrity and transparency of the public procurement system followed these.

Key Words: Challenges, Administrators, Public Procurement and Disposal Act, Civil Service

1 INTRODUCTION

Bidders have complained about the bidding process, fake competition, variation of tender terms mid way through projects, favouritism of some bidders, leakage of confidential and technical information to some favoured competitors, designing tender documents to skew partiality towards certain firms, insider collusion, conflict of interest and canvassing. Those who use the Act are not properly trained in procurement and disposal; and Information Communication Technology (ICT). Some are out rightly incompetent and therefore prone to procedural blunders that compromise the Act. Incompetence affects both the bidders and the implementers.

The PPDA 2005 is in conflict with other Acts of Parliament. Indeed, the Contracts Act provides that “Public officers cannot be sued personally upon any contracts which they make in that capacity”. The law further does not explicitly prohibit public officers from participating in public enterprise and therefore the rules established to guard against conflicts of interest are invariably breached. In this regard, undisclosed conflict of interest is a challenge worth being addressed.

Goods supplied to the government tend to be more expensive compared to the prevailing market rates leading to overspending. Goods and works of inferior specifications have been delivered and accepted. Indeed, in some cases no goods have been delivered at all but payment has been made all the same. Other challenges associated with compliance with the Act include: deliberate splitting of contracts to fit certain ceilings in order to defeat set thresholds, failure to provide bidding firms with full and accurate tender information, failure to advertise, “safety valve” advertising, failure in complying with advertising rules, inclusion of discriminatory requirements in contract bidding documents, political interference with the tendering process and lack of adherence to set thresholds.

These challenges defeat the purpose of the Act and render; integrity, fairness, transparency, value for money, maximization of economy and public confidence unattainable. It has been reported that the, “Public Works Minister has cited the Procurement Act as a hurdle to the implementation of the Economic Stimulus Package (ESP). Lengthy procurement processes that are cumbersome have delayed the process” (The Standard on Saturday 5th February 2011, page 30). These challenges happen despite the legal framework that informs purchasing and disposal in the civil service being firmly in place. “The use of the law as a regulatory mechanism

may be over estimated, laws alone do not achieve anything and it depends on how they are implemented” (Arrowsmith, 2009). The study sought to unravel the challenges that are inherent in the process of implementation of the PPDA 2005 with a view of making policy recommendations that will mitigate the problem, and define the role of the Act more explicitly, while assessing its effectiveness in shaping competitive procurement and disposal. This in turn will lead to a high level of compliance.

2 Reviews of Related Studies

According to the PPOA in 2007 we have four pillars that structure the procurement system in Kenya; Legislative and regulatory framework, Institutional framework and management capacity, Procurement operations and market practices and Integrity and transparency of the public procurement system. The first pillar dealt with the legislative and regulatory framework.

The Pillar assessed the existence, availability, quality and use of the legal and regulatory framework from the highest level (Act and Regulations) down to the more detailed operational procedures, guidelines, model tender documents, and standard conditions of contract. Key strengths noted included a sound legal framework in place. PPOA developed standard tender documents for goods, works and services. Open tenders accounted for an almost equivalent though slightly higher proportion of the total procurement spend than restricted tenders, followed by quotations. Thus placing open tenders somewhat closer to its intended status as the default procurement method. Despite these findings, assessment confirmed the trend of relying excessively on procurements through request for tenders (Kiberu, 2007).

PPOA developed the Public Procurement General Manual and the Public Procurement Users Guide to simplify application of the Procurement Law. It further developed eight other sector-specific procurement manuals in Insurance, Project Management, Health, Schools and Colleges, ICT, Procurement Records, Non-Intellectual Services, and Works. PPOA also embarked on reviewing all the Standard Tender Documents (PPOA, 2007).

2.1 Institutional Framework and Management Capacity

This pillar assessed how the procurement system as defined by the legal and regulatory framework was operating through the institutions and management systems and practice in the public sector. The findings of the assessment pointed to the key assets of the institutional framework and management capacity in Kenya. It emerged that the legal framework supports integration of procurement planning in the budget formulation process; PPOA had been established as the authoritative public procurement oversight body; and procedures for performance evaluation were in place (Hunja, 2003).

PPOA issued circulars to all procuring entities on formats for procurement planning and the statutory reporting requirements. It also launched its official website to enable all stakeholders to electronically and easily access all procurement information and documents. The portal was started to advertise all tenders at an electronic one stop shop (PPOA, 2007).

PPOA also conducted a county-wide campaign to sensitize all stakeholders on the public procurement law and has successfully conducted Annual Public Procurement Stakeholders Consultative Forums since 2007, to improve the public procurement and disposal system (PPOA, 2007).

2.2 Procurement operations and market practices

Having assessed the legal/regulatory and institutional systems guiding public procurement system, Pillar III looked at how these systems operated at the level of the implementation as well as on the procurement market in Kenya. Based on the assessment findings, several strengths were identified: procurement decision making authority was fully delegatable; steps had been taken towards developing a professional procurement workforce; dialogue between government and private sector on matters of procurement was considered open and constructive To address existing weaknesses PPOA introduced the Market Price Index, updated periodically to assist accounting officers make informed decisions and to counter the menace of overpricing Recently, PPOA launched the web-based Market Price Index to inform on the regional and national market prices. PPOA also trained over 2,800 youth organizations; 239 procuring entities, several small and medium enterprises; and sponsored the training of procurement officers in both short and long-term courses to build their professional capacity. To ease the tender security requirements PPOA in consultation with the Insurance Regulatory Authority issued a list of approved insurance companies to issue bid bonds (PPOA, 2009).

2.3 Integrity and Transparency of the Public Procurement System

The integrity and transparency of a public procurement system relied on a number of control mechanisms, including an effective control and audit system, an efficient appeals mechanism, a comprehensive information sharing system enabling interested stakeholders to conduct social audit, and effective ethics and anticorruption measures. Without such control mechanisms, flaws in the procurement system would not be detected and addressed (Kiberu, 2007).

The fourth pillar of the assessment therefore measured the existence of adequate control systems and related practices. The assessment identified a number of factors, which had contributed positively to strengthening the control systems of Kenya's procurement systems. The study found that Kenya had a sound internal audit mechanism established and complied with; and a well-functioning and independent complaints review and appeals mechanism (PPOA, 2007).

PPOA has embarked on a rigorous drive to address weaknesses by enforcing Public Procurement Laws through procurement assessments and audits; developing an E-procurement framework to increase transparency and efficiency in the procurement system and developing an Internal Procurement Performance Monitoring Tool (IPPMT). Also, PPOA introduced a monthly publication of all public procurement contract awards in the daily newspapers of nation-wide circulation and developed a Code of Ethics to be observed by all participants of the public procurement and disposal process. All in all, the state of public procurement in Kenya is vibrantly moving towards increasing value for the Kenyan tax-payers' money and still going strong in facilitating economic growth and attainment of Vision 2030 goals (PPOA, 2007)

In a research carried out among Local Authorities in Kenya it was found out that, Local Authorities (herein after referred to as LAs) are creatures of statutes, the Local Government Act, Cap. 265. They are categorized into cities, municipalities, counties and town councils. Their mandates are set out in the parent law although they have to comply with a host of other national laws and regulations in the execution of these roles, for example, the laws relating to the environment, public health, education, transport, public finance, procurement, etc. LAs are empowered to procure goods/ services/ works to execute their mandates provided they operate within the approved annual budgets by the parent Ministry of Local Government and comply with laws and regulations relating to procurement and the mother Act This paper will explore the procurement practices by LAs in Kenya (Kiberu, 2007).

In the first part, the procurement practices prior to the enactment of the new Procurement Law, the Public Procurement & Disposal Act, 2005 (PPDA 2005) was highlighted and the Public Procurement and Disposal Regulations, 2006 (PPDR, 2006) i.e. the pre-reform era. The second part will discuss how the LAs have embraced the new Procurement Laws, i.e. the post-reform era from January, 2007 onwards. Finally, we will highlight the challenges LAs face in trying to comply with the reforms on procurement and make some recommendations. This demarcation is important because the new procurement laws were enacted to instill discipline and professionalism in procurement (Kiberu, 2007).

LAs, like the Central Government, are major consumers of goods/ services/ works procured from the private sector. It is only through public procurement that one with fraudulent intentions can get money from a public entity by concealing their identity. The LAs were guided by the Local Government Act Cap.265 and procurement regulations issued by the Central Government. Whereas these laws set out very clear procedures, the same were flouted with abandon. LAs were preoccupied with the regularity and legality of the procurement process not value for money. Matters were aggravated by the fact that the politicians (councilors) were in charge of the tendering process from adjudication to award as members of the influential tender, finance and work committees. Conflicts of interest and influence peddling were rampant and in most cases council officials were willing accomplices in flouting the laws for profiteering motives. In instances where the LAs decided to award tenders to bidders other than the lowest priced, then the law provided that the Minister for Local Government had to sanction such procurement. Allegations abound on how councilors and business persons would lobby the minister for such approvals. To circumvent the requirement of awarding tenders to the lowest quoted bidder, it was a very common practice for tenderers to under quote to win the tender and immediately apply for variation orders citing all manner of reasons, the original intentions being to swindle the public (Kiberu, 2007).

The new law and regulations came into effect after a lot of pressure from development partners and the Kenyan public. There were very serious concerns about the abuse of the procurement process to enrich individuals at the expense of the public in terms of forgone services. Some of the objectives of the new law are to restore public confidence on public procurement, ensure value for money and transparency, encourage competition, and promote economic development. All public entities are required to comply with this law which supersedes all the previous ones. The key provisions that were meant to address the weaknesses highlighted above are the exclusion of the politicians from the procurement cycle Prohibition of any public servant or anybody holding a public office/ their spouses/ relations from participating in any public procurement democratization of the procurement process” through various committees The imposition of duty to comply with the law on third parties supplying goods/ services/ works to public entities. In anticipation of capacity and skills gaps for compliance in the LAs, the law provides options for outsourcing procurement function to authorized agents appointed by the authority responsible for implementing the new law. LAs are also authorized to use procurement materials e.g. pre-qualification listing of suppliers from other competent public entities. LAs cannot therefore use excuses of lack of internal capacity as a basis for non compliance (Kiberu, 2007).

3 METHODOLOGY

The study was conducted in all the civil services in Uasin-Gishu County. The County has a population of 894,179; a surface area of 3,345km²; and population density of 267 people per km². The study adopted both qualitative and quantitative approaches where Questionnaire and interview schedule were used to collect data. The study targeted all the administrators in civil services from Uasin-Gishu County. However, a sample size of 50 administrators was used to collect information on the challenges that they face when implementing the Act in their jurisdiction. The study adopted both quantitative and qualitative methods. The study also used both probability and non-probability sampling techniques. For instance, the choice of Uasin-Gishu was purposive such that a lot of complaints from the public have been raised over whether the implementation of Public Procurement and Disposal Act is effective. Stratified technique was adopted as respondents were selected according to their respective departments. Furthermore, simple random sampling was used to select the actual number of respondents who were given questionnaires to fill.

4 FINDINGS

In the study to find out the challenges, five variables were formulated where respondents were supposed to show their extent of agreement to the variables. A Likert scale was adopted for answering from strongly disagree to strongly agree. Table 1 has a summary of the study findings.

Table 1 Challenges of implementing PPDA 2005

Challenges of implementing PPDA										
Name of variable	S.D		Disagree		UD		Agree		S.A	
	Fq	%	Fq	%	Fq	%	Fq	%	Fq	%
Hard to comply with legislative framework	3	9.1	6	18.2	5	15.2	14	42.4	5	15.2
Weak institutional framework and management capacity	2	6.1	4	12.1	6	18.2	14	42.4	7	21.2
Poor procurement operations and market practices	0	0	2	6.1	3	9.1	19	57.6	9	27.3
Lack of integrity and transparency in procurement	2	6.1	5	15.2	3	9.1	18	54.5	5	15.2
Complex execution of legal mandates	0	0	2	6.1	6	18.2	16	48.5	9	27.3

Key: S.D=strongly disagree, UD=undecided, S.A=strongly agree, Fq=frequency, %=percentage

Source: Survey data, 2011

The descriptive statistics for these variables are presented in Table 2.

Table 2 Descriptive statistics on challenges affecting PPDA 2005 implementation

Variable (n = 33)	Mean	Mode	S.D	Ske w	SE of skew	Kur tosis	SE of kurtosi s	Min	Max
Hard to comply with legislative framework	3.36	4	1.22	-.54	.41	-.71	.80	1	5
Weak institutional framework and management capacity	3.61	4	1.14	-.74	.41	-.08	.80	1	5
Poor procurement operations and market practices	4.06	4	.78	-.93	.41	1.27	.80	2	5
Lack of integrity and transparency in procurement	3.58	4	1.12	-.91	.41	.073	.80	1	5
Complex execution of legal mandates	3.97	4	.85	-.60	.41	.03	.80	2	5

Source: Survey data, 2011

The chi-square (χ^2) goodness of fit for all variables was significant at $P < .05$; ‘hard to comply with legislative framework’ ($\chi^2=11.09$, $df = 4$, $p = .026$); ‘weak institutional framework’ ($\chi^2=12.6$, $df = 4$, $p = .013$); and ‘poor procurement’ ($\chi^2=22.2$, $df = 4$, $p < .001$). Others were ‘lack integrity’ ($\chi^2=25.6$, $df = 4$, $p = < .001$) and ‘complex execution of legal entities’ ($\chi^2=12.7$, $df = 3$, $p = .005$). This implied that the observed sample proportions were likely to reflect the true proportions in the population. Thus, most civil servants were of the opinion that during implementation of PPDA, heads of departments and their deputies faced considerable challenges, which included difficulties of complying with legislative and regulatory framework, weak institutional framework and management capacity, and poor procurement operations and market practices. Others were lack of integrity and transparency of the public procurement system and complex execution of legal mandates of procurement entities. This conclusion is supported by the high means, high modes and negative skewness of the values for all the variables.

It was also important to determine amongst these challenges which one the respondents rated to be the greatest and the one they considered the least. A repeated Measures analysis of variance (RM-ANOVA) was conducted to determine whether the means of the variables used as proxies for the challenges faced by the heads of departments in implementation of PPDA were significantly different from each other, and was found to be significant, $F_{3,001, 96.04} (3.776, p = .013)$. These means are presented in Figure 4.5. Follow-up post hoc comparisons conducted using the Least Squared Difference revealed the following: the greatest challenges faced by the heads of departments in the implementation of PPDA were poor procurement operations and market practices, and complex execution of legal mandates of procurement entities. These were followed by weak institutional framework and management capacity, and lack of integrity and transparency of the public procurement system. The least challenge was failure to comply with legislative and regulatory framework.

4.1 Conflict of PPDA with other Acts of Parliament

Table 3 Conflict of PPDA 2005 with other acts of parliament

Name of variable	Conflict of PPDA with other parliamentary acts									
	S.D		Disagree		UD		Agree		S.A	
	Fq	%	Fq	%	Fq	%	Fq	%	Fq	%
Statutory interpretation of other acts of parliament	2	6.1	5	15.2	7	21.2	11	33.3	8	24.2
Recognition of electronic records by the courts	1	3	3	9.1	8	24.2	16	48.5	5	15.2
Conflicts of interests	0	0	2	6.1	5	15.2	17	51.5	9	27.3
Non confidentiality	1	3	5	15.2	5	15.2	15	45.5	7	21.2
Poor enforcement of procurement contracts	0	0	4	12.1	2	6.1	16	48.5	11	33.3
Poor inventory management	2	6.1	3	9.1	4	12.1	14	42.4	10	30.3
Lack of standard procurement and disposal documents	3	9.1	3	9.1	3	9.1	16	48.5	8	24.2

Key: S.D=strongly disagree, UD=undecided, S.A=strongly agree, Fq=frequency, %=percentage

Source: Survey data, 2011

The descriptive statistics for these variables are presented in Table 4.18.

Table 4.18 Descriptive statistics on conflict of PPDA with other acts

Variable (n = 33)	Mean	Mode	S.D	Ske w	SE of skew	Kur tosis	SE of kurtosis	Min	Max
Statutory interpretation of other acts of parliament	3.55	4	1.2	-.52	.41	-.59	.80	1	5
Recognition of electronic records by the courts	3.64	4	.96	-.75	.41	.59	.80	1	5
Conflicts of interests	4	4	.83	-.70	.41	.37	.80	2	5
Non confidentiality	3.67	4	1.08	-.69	.41	-.19	.80	1	5
Poor enforcement of procurement contracts	4.03	4	.95	-.99	.41	.37	.80	2	5
Poor inventory management	3.82	4	1.15	-1.03	.41	.48	.80	1	5
Lack of standard procurement and disposal documents	3.70	4	1.21	-1.05	.41	.33	.80	1	5

Source: Survey data, 2011

Except for statutory interpretation of other acts of parliament ($\chi^2=6.85$, $df = 4$, $p = .144$), goodness of fit tests for all variables were significant at $P < .05$; 'recognition of electronic records by the courts' ($\chi^2=20.79$, $df = 4$, $p < .001$); 'conflicts of interest' ($\chi^2=15.36$, $df = 3$, $p = .002$); and 'non confidentiality' ($\chi^2=16.24$, $df = 4$, $p = .003$). Others were 'poor enforcement of procurement contracts' ($\chi^2=15.12$, $df = 3$, $p = .002$), 'poor inventory management' ($\chi^2=16.24$, $df = 4$, $p = .003$) and 'lack of standard procurement and disposal documents' ($\chi^2=19.58$, $df = 4$, $p = .001$). Analysis of frequencies (Table 4.17) showed that most respondents answered either 'agree' or 'strongly agree' to all these variables. This is further supported by the high means, high modes and negative values of skewness for all the variables (Table 4.18). Thus, excepting statutory interpretation of other acts of parliament, most civil servants in the region are of the opinion that PPDA is in conflict with other acts of parliament and therefore requires the conflict be addressed. The other issues to which the PPDA is in conflict with were found to be in recognition of electronic records by the courts, conflicts of interest, non-confidentiality, and poor enforcement of procurement contracts, poor inventory management, and lack of standard procurement and disposal documents.

4.2 Conclusion

Administrators face challenges during the implementation of PPDA, such as, poor procurement operations and market practices, and complex execution of legal mandates of procurement entities, weak institutional framework and management capacity, and lack of integrity and transparency of the public procurement system followed these. Except for statutory interpretation of other acts of parliament, PPDA is in conflict with other acts of parliament and therefore requires regulation. In addition, the constitutional threshold of one third either gender in the civil service employment is yet to be achieved. We have a big number of employees in the service being male and effort should be made to attain the require gender mix.

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