

**ENVIRONMENTAL FACTORS INFLUENCING PROCUREMENT REGULATORY COMPLIANCE BY KENYA'S PUBLIC UNIVERSITIES**

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**ABSTRACT**

In the year 2005, Kenya enacted the Public Procurement & Disposal Act 2005 and Regulations 2006. Procurement processes play critical roles in enhancing effectiveness in both the private and public sectors. The main purpose of this study was to investigate Environmental Factors Influencing Procurement Regulatory Compliance by Kenya's Public Universities. The study employed Ex-post facto survey research design, the design was chosen because it relied on the past performance of the officers concerned in regard to procurement compliance. The sample size of the study was 168 procurement staff in 21 Kenyan public universities. Simple random sampling technique was used to select the respondents. Questionnaires and in depth interview guide were used to collect data. Descriptive and inferential statistics were used to analyze the data. Community interests and Universities physical accessibility/location were found to be key contributors to procurement compliance at the university level in Kenya. There is need therefore to improve in these two areas so as to increase procurement compliance levels at the University level in Kenya.

**Key Words:** *Determinants, environmental factors, Procurement Regulatory Compliance, Public Universities, Kenya*

**Introduction**

Procurement plays an important role in the working functions of any state. Procurement refers to the purchasing of goods and services in the right quality, from the right source and the right price all to meet a specific need. In this study, procurement compliance is defined as the extent to which procurement stakeholders comply with the existing public procurement and Disposal Act

2007 and Public Procurement and Disposal Regulations 2006 (Lonsdale & Watson, 2005; Angeles & Nath, 2007) and is desirable for a number of reasons.

Coe (1989) notes that Public Procurement has a long history. The scholar asserts that it was first written on a red clay tablet, found in Syria and that the earliest procurement order dates from between 2400 and 2800 B.C. The order was for “50 jars of fragrant smooth oil for 600 small weight in grain”. Over the last decade, a significant number of countries, particularly the transition countries, have adopted public procurement rules and regulations for the first time or have reformed their existing procurement legal provisions (Arrowsmith, 1998).

In public procurement, there are many stakeholders such as citizens, taxpayers, electorate, elected officials, and management and procurement officers. To large extent these stakeholders may have different objectives in regard to procurement. Even if they share an objective, their interests with that objective may conflict. Locating an obnoxious facility is an obvious example: everybody wants sewage water being treated, but not in my living area-‘not in my backyard’.

In Africa, there are some scholars who have conducted research on unethical practices in public procurement but no comprehensive study has been carried out on which factors are accountable for non compliance. In furtherance to this, there are no conclusive empirical studies that can be traced to explain why there is non – compliance. Ntayi et al., (2010) explained unethical procurement behavior using psychological climate, catharsis, organizational anomie, procurement planning behavior and psychological wellness while Basheka and Mugabira (2008) measured professionalism variables and their implication to procurement outcomes in public sector in Uganda. Others who have advanced their theories in this respect include; Ackerman (2002); Basheka, (2010); Nagitta and Ssenoga, (2010); Palmier, (2000); Khai, (2008); TI-Uganda Chapter, (2007); Preston and Snilsberg, (2002); Soreide, (2004) and Onapa, (2005). With all the efforts fronted by these scholars, regrettably, none of them explicitly explains the factors responsible for non-compliance in public procurement .However Gelderman et al., (2006) attempts to establish factors in charge of non compliance in the European Union as; lack of professionalism and familiarity.

The procurement goals normally include quality, timeliness, cost (more than just the price), minimizing business, financial and technical risks, maximizing competition, and maintaining integrity. Non-procurement goals normally include economic goals (preferring domestic or local firms), environment protection or green procurement (promoting the use of recycled goods), social goals (assisting minority and woman-owned business concerns), and international relations goals. To this end The Public Procurement and Disposal Regulations were supposed to supplement towards this goal by making public procurement more transparent (PPOA, 2007). It is very difficult for policy makers and public procurement professionals to make an optimum decision as there are always tradeoffs between these goals.

Hui, W. S., Othman, R. O., Normah, O., Rahman, R. A. and Haron, N. H. (2011) while analyzing

procurement issues in Malaysia established that procurement officers were blamed for malpractice and non-compliance to the procurement policies and procedures. Yukl (1989), Gelderman et al., (2006) stipulate that compliance occurs when the target performs a requested action, but is apathetic about it, rather than enthusiastic and puts in only a minimal or average effort. However, as an organizational outcome, compliance has traditionally been understood as conformity or obedience to regulations and legislation (Snell, 2004) cited in Lisa, (2010).

The aim of the Public Procurement Regulations of 2006 was to promote fairness, transparency and non-discrimination in procurement in public institutions with the aim of ensuring efficient use of public funds. However, studies reveal that even after the enactment of the Regulations, there are losses of public funds that can be attributed to compliance to these regulations (Odhiambo & Kamau, 2003).

**Table 1: Metamorphosis of Public Procurement in Kenya**

<b>1963-1978</b>	<b>Treasury Circulars</b>
<b>1978 - 1983</b>	Supplies Manual; Treasury Circulars
<b>1983-2001</b>	Supplies Manual; District Focus for Rural Development Strategy
<b>2001-2007</b>	Exchequer & Audit (Public Procurement) Regulations
<b>From 2007</b>	Public Procurement and Disposal Act, 2005
<b>2010</b>	Public Procurement anchored in the New Constitution under Article 227
<b>2013</b>	Preference and Reservations

*Source:* Adapted from Procurement Journal No. 5 of 2011

Kenya Vision 2030 is the country's new development blueprint for 2008 to 2030 which aims at making Kenya a newly industrializing, "middle income country providing high quality life for her citizens by the year 2030" (NESC, 2007). The country's Vision 2030 identified key initiatives/ flagship projects to spearhead the socioeconomic transformation in the country. A key enabler/strength in the delivery of these projects is utilization of an efficient and effective public procurement system. Thus Public Procurement Oversight Authority (PPOA) which is at the helm of overseeing compliance is expected to play a key role in the development, implementation and regulation of the public procurement system so as to ensure that; GoK achieves value for money, loss of public funds on procurement is minimized or diminished, there is optimized resource allocation for the various prioritized government projects and that procured goods, works and services are delivered on time to reduce negative impact and risk. Existence of an effective and efficient procurement system ensures reduction of public expenditure, reduction in levels of corruption, transparency and accountability in government procurement processes and systems. This will also facilitate availability of funds to finance other public priority projects which will general contributes to spur economy- both micro and macro economy.

### **Statement of the Problem**

Kenya has undergone a wave of procurement reforms that begun in the year 2000 culminating into the enactment of the Public Procurement and Disposal of Public Assets (PPDA) Act 2005, and regulations 2006. However, many central government ministries and agencies have since then not followed prescribed practices (Agaba & Shipman, 2007). PPOA procurement audits carried out revealed that out of 322 contracts audited at the end of 2005, only 7 (2%) were considered complaint after being taken through thorough assessment. Other successive audit checks reveal that compliance in public procurement in the country is still inadequate (PPOA compliance reports, 2009; PPOA Baseline survey report, 2010; PPOA Capacity Building Strategy Report, 2011-2014; World Bank Country Procurement Assessment Report, 2001). This state of affairs is supported by the African Peer Review Mechanism Country Review (APRM) Report (2009), which indicated that non – compliance with the regulations is very high in Kenya. Despite this evidently low public procurement compliance, not much focus has been placed on explaining non-compliance with public procurement regulations in Kenya (Eyaa & Oluka, 2011). This is aimed at purging the public procurement sectors, encouraging competition, transparency, efficiency and ensuring accountability. These reforms have not come without difficulties (Hunja, 2003).

In one of the instances, a study commissioned by the PPOA in some of the public universities in Kenya found that budget rules, regulations and financial procedures that support timely procurement, contract execution and payment were deficient (PPOA, 2010). In this study, all the cases reviewed, the review team found no proof that the procurements were initiated within existing budget appropriations.

### **General Objective of the Study**

The general objective of the study is to establish factors influencing procurement regulatory compliance by Kenya's public Universities.

### **Specific Objectives of the Study**

To establish environmental factors influencing procurement regulatory compliance by Kenya's public universities

### **Hypothesis**

There is no significant relationship between Environmental factors and procurement regulatory compliance by Kenya's public universities

## **Methodology**

The study applied ex post survey research design. The target population was a total of 22 full-fledged public universities in Kenya. According to Commission for University Education (CUE), Kenya has 22 public Universities. However through simple random sampling 21 public universities were used to form the study population.

According to the Commission of Higher Education (2013), there is an average of 8 procurement staff in tertiary institutions. The study population thus comprised of a total of 176 procurement staff in procurement departments of all the 22 public universities in Kenya. This amounted to 64 procurement staff as the study population. The procurement staff was targeted since they are involved in the execution of key procurement management decisions and hence have technical knowledge and skills on challenges affecting the implementation of effective procurement practices in public universities in Kenya. This study utilized questionnaires to collect primary data. The study considered questionnaires for they have advantages over other types of research instruments in that they are cheap, do not require as much effort from the questioner as verbal or telephone surveys, and often have standardized answers that make it simple to compile data.

## **Research Results**

Data was analyzed using descriptive and inferential statistics using Statistical Package for Social Sciences Version 20. Analysis of the quantitative data was presented in tables and graphs. Qualitative data was collected by use of open ended items in the questionnaire and in-depth interviews and then analyzed through content analysis. This involved the analysis, description and synthesis of information from open ended items in the questionnaires and in depth interviews.

## **Environmental Factors and Procurement Regulatory Compliance**

The second objective of the study aimed to determine the environmental factors influencing procurement regulatory compliance by Kenya's public universities. To achieve this the respondents were required to give their opinion on whether environmental factors affect compliance or not. In addition, respondents were required to give their level of agreement on several statements describing procurement environment on a five point Lickert scale where Strongly agree(SA)=5, Agree(A)=4, Undecided(U)=3, Disagree(D)=2, and Strongly Disagree(SD)=1. Measures of central tendency and dispersion mean and standard deviations were used to summarize the study findings.

### Rating on Environmental factors affecting Procurement Act Compliance

**Table 2: Rating on Environmental Affecting Procurement Act Compliance**

Environmental factor	N	Mean	Std. Deviation
Community interests	189	4.3	0.9
Environmental compliance requirements	189	3.9	1.0
Location of the university	189	4.1	1.0
University corporate social responsibility	189	3.6	1.2
Universities past litigation	189	3.4	1.1
Competition with other institutions	189	4.0	1.0
Environmental audit requirements	189	4.0	0.9
Universities physical accessibility	189	4.3	0.9
<b>Overall</b>		<b>3.9</b>	<b>1.0</b>

Results in Table 2 show that overall the respondents agreed (mean =3.9) that environmental factors affects compliance with procurement. An overwhelming number of respondents agreed that community interests (mean 4.3), universities physical accessibility (mean 4.3), location of the university (mean 4.1), competition with other institutions (mean = 4.0) and environmental audit requirements (mean 4.0) affect compliance with procurement Act. Further, on average agreed that environmental compliance requirements (mean 3.9), university corporate social responsibility (mean 3.6) affect compliance with procurement act while (mean 3.4) were not sure whether universities past litigation affects compliance with procurement.

### Hypothesis testing for the Relationship between Environmental factors and Compliance

The study hypothesized that there is no significant relationship between environmental factors and compliance with procurement Act. To achieve this, a compliance score was calculated and environmental factor score was also calculated and Pearson's correlation coefficient was used to test the relationship since both scores were in interval measurement scale. Results were tabulated as shown in Table 3.

**Table 3: Hypothesis testing for the Relationship between Environmental factors and Compliance**

		Compliance	Environmental factors
Compliance	Rho	1	0.077
	P-Value		0.02
	N	189	189
Environmental factors	Rho	0.077	1
	P-Value	0.02	
	N	189	190

The study findings show a weak positive relationship ( $\rho = .077$ ) between compliance and environmental factors.  $\alpha = 5\%$  level of significance was used to test whether the relationship was significant or not and since the P-value ( $=.02$ ) was less than 5%, there was enough evidence to warrant rejection of the null hypothesis and therefore we conclude that there is a significant relationship between environmental factors and compliance with the procurement Act. Therefore, the universities environmental factors affect compliance with procurement Act and Regulations in a positive way.

## Discussion

Public procurement practitioners have always faced challenges imposed upon them by a variety of environmental factors including market, legal environment, political environment, organizational environment, socio-economic and other environmental factors. This study has indeed confirmed that a variety of environmental factors influence procurement compliance in an number of ways. These findings are in agreement with recent studies in this area by other scholars (Ntayi et al., 2010; Basheka & Mugabira, 2008; Ackerman, 2002; Basheka et al, 2010; Nagitta & Ssenoga, 2010; Palmier, 2000; Khai, 2008). In a democracy many individuals, groups, and organizations in the private sector including trade associations, professional associations, and business firms or companies (commonly known as interest groups) are actively involved in all aspects of the public procurement system (Ackerman, 2002).

Having various interests, objectives and beliefs, interest groups are involved in the public procurement system in several ways such as lobbying legislative bodies to pass or alter procurement statutes, influencing implementation of these statutes, and influencing budget authorization and appropriations processes. In addition to social and economic environment, public procurement practitioners are under other external pressures such as an environment protection movement, and foreign policy commitments. The procurement functions are

performed in a complex environment (Eriksson, 2005) where the accounting officer is a political appointee answerable to a wider spectrum of persons who are not necessarily within the organization. Findings in this study are in agreement with other studies in this area which indicate that professionals in procurement and supply chain management have faced a challenging ethical environment (Cooper, Frank & Kemp, 2000; Powell & DiMaggio 1991).

The public procurement system is also influenced by culture and technology. In a culture where giving gifts is a common public relation practice, it is difficult to distinguish between gifts and bribes.

### Conclusions and Recommendations

Results in the study showed a positive and significant relationship between environmental factors and compliance with procurement regulatory act ( $\beta=.29$ , P-Value 0.02). Further results in this study indicated that Community interests and Universities physical accessibility/location were found to be key contributors to procurement compliance at the university level in Kenya. Therefore, for the University management to realise faster compliance to the Act, it should encourage further and deeper partnerships with the local communities taking into consideration the Community interests. Also efforts should be made for the improvements of the Universities physical accessibility/location, more efforts should be directed to opening up the Universities and making them more accessible.

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