



The Extent of Compliance with Public Procurement and Disposal Act 2005 in Kenyan Hospitals: A Study of Kisii Level 6 Hospital

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Abstract

Public Procurement and Disposal Act (2005) is a government strategy to bring down corruption in the public sector procurement. Its application in the Public Sector is compulsory to ensure efficiency in procurement of goods, works and services. The study sought to establish whether non-compliance with PPDA (2005) was the reason for persistent long lead-time and stock outs in Kisii Level 6 hospital. The objectives of the study were to assess the extent of compliance with PPDA (2005) on price, lead time and quality of the procured goods, works and services in Kisii Level 6 hospital. The literature reviewed included the Public Procurement Systems in Kenya, Lead-time, quality, Specifications, price, Procurement Planning and Procurement professionalism. Descriptive research design was used. Sample size of 83 respondents was taken using stratified random sampling out of a target population of 416. Data collection was done using structured questionnaires measured on a 5-point Likert scale. Data were analyzed using descriptive statistics such frequency percentages and weighted averages. The findings established that there was inadequate training among procurement staff, low rate of compliance on lead-time, price, and procurement planning while quality was rated moderately. However, it was compliant on tendering and inspection of goods, works and services. The study concluded that those with responsibility of handling procurement matters should be trained. The hospital adopted open tendering as a method of procuring goods, works and service which is a sign of promoting competition hence public confidence. Quality was observed moderately, users were not agreeing with lead-time and price which might have led to stock-outs and partial deliveries of procured goods, works and services.

Key words: Public Procurement, Compliance

1.1 Introduction

Large organizations are more likely to use formal procedures involving a group of people in making purchase decisions while small organizations purchase decisions are more often quick, informal and carried out by one or few people (Mercer, 1994). Aketch (2005) observed that the government of Kenya through the Financial Regulations of 1970 gave the Ministry of Finance the overall responsibility for regulating the Procurement of goods, services and works. To do this the Ministry relied on circulars to government departments. This procurement system had several deficiencies that contributed to huge losses in public funds. This gave rise to the Public Procurement and Capacity Reform Project (1997) which was mandated to assess the country's procurement processes and systems. It revealed that the Public Procurement systems lacked transparency, accountability and fair competition. The study further revealed that Procurement staff were not adequately trained and lacked professionalism. There was lack of a professional body to oversee and instill discipline among Procurement Officers and the Procurement Policies and Procedures were scattered in various government documents with no clear harmony. Conflict of interest was rife as Public officials participate in private enterprise with their organizations.

The system only allowed appeals by the accounting officers, Permanent Secretaries in the relevant government ministries, departments and agencies and it was marred by a lot of inefficiencies due to overspending caused by poor planning. Cases of inferior goods and works against the order specifications being accepted by the government were common. In some cases, goods, services or works were not delivered at all. In other instances, contracts were varied upwards from the originally quoted price often with collusion of senior government officers. Lead-times were exceedingly long causing delays in the utilization of the procured goods, services and works. These deficiencies contributed to huge losses of money.

The Public Procurement Disposal Act (2005) was enacted in January 2007. This means that all the public entities must have implemented it including the public hospitals, where the procurement responsibilities are vested in the Hospital tender committee which is mandated to award tenders and contracts, review documents and requests for proposal approve bids, approve variations of contract conditions and carry out any other Public Procurement related functions (Kenya Gazette supplement No.24, 2001).PPDA (2005) became operational when Kenya had the Ministry of Health which was thereafter split into two Ministries. The accounting officers for both Ministries were

responsible for ensuring that the public procurement Act and its regulation are adhered to. In this respect their duties include establishing all standing committees, ensuring procurement units are staffed with procurement professionals, signing of contracts for procurement activities, ensuring annual procurement plans are prepared and proper documents for procurement processing and record are managed according to the Act. The Kenya Medical Supplies Agency (KEMSA) is an agency under the Ministry of Health. KEMSA is responsible for the receiving, warehousing and distribution of Medical Equipment and Supplies procured by the Ministry of Health for all hospitals and clinic across the country.

Kisii Level 6 Hospital is situated in Kisii County. It was started in 1916 as native hospital serving colonial soldiers. After independence, it was elevated to the level of a District Hospital to serve the larger Gusii community. In the year 2007 the District Hospital was upgraded to a Level 6 Hospital due to the swelling number of patients. The Hospital admits an average of 2300 patients per month and handles an average of 10,500 out patients monthly (Admission Record, August, 2010). The Hospital has 416 employees (Payroll Sept2010). Despite the growth of the Hospital, there are several constraints as evidenced in the congestion of both out- patient and inpatients leading to inadequacy of drugs and infusions of equipment and beddings. It is the deficiency in the hospital that aggravated the study of assessing the extent of compliance with Strategic issues in PPDA (2005) at Kisii Level 6 Hospital.

1.2 Statement of the Problem

The aim of the PPDA (2005) is to promote economy and efficiency in Public Procurement and ensure that Public Procurement processes are conducted in a fair, transparent and non-discriminatory manner hence creating a sound business climate in the country. Since its enactment in January 2007, there have been various incidents where procurement procedures have been compromised. Such compromises include; the stock out of drugs as reported by The Global Fund to Fight Aids, Tuberculosis and Malaria (GFATM), 2009. GFATM (2009) noted that Kenya experienced wide stock-outs of drugs and infusions due to the supplier's inability to supply the order in full and on time. Therefore, patients were normally asked to outsource drugs, services like X-rays, lab tests and in most cases inpatients share beds and beddings. This was an indication that there were shortages which were either caused by misappropriation of resources, shoddy procurement dealings or lack of proper procurement planning. The enactment of PPDA (2005) was to mitigate these problems. However, even while it was in force, the problems have persisted. The purpose of this study was to establish whether non-compliance to the PPDA (2005) was the reason why for persistent long lead-times, stock outs and non delivery of goods, works and services in public hospitals.

1.3 Study Objectives

The objectives of the study were to; assess the extent of compliance with the PPDA (2005) in terms of price, lead-time; and quality of procured goods, services and works at Kisii Level 6 hospital.

2.0 Literature Review

The PPDA (2005) is an Act of Parliament that establishes procedures for efficient public procurement and for disposal of unserviceable stores and equipment by public entities. The Act came into operational on 1st January, 2007. Its main objectives include to; maximizing economy and efficiency, promote completion and ensure that competitors are treated fairly, promote the integrity and fairness, increase transparency and accountability, and increase public confidence. The government of Kenya in conjunction with the World Bank, Africa Development Bank and International Trade Centre initiated procurement reform process. The reform process was meant to create a system that allowed proper delegation of authority, procurement threshold, planning and development of supplies manual. The primary focus was to address the issue of procurement laws, establish appropriate procurement Institutions and entities, and create adequate and timely monitoring and evaluation mechanism. It was with this realization that the Ministry of finance formulated the Public Procurement Regulation (2001) from the Exchequer and Audits Act (CAP412, laws of Kenya) which led to the Public Procurement and Disposal Act (2005) and its regulations 2006.

2.1 Public Procurement Systems

Public Procurement is subjected in all countries to enacted Regulations, in order to protect the public interest. It is worth noting that unlike Private Procurement, Public Procurement is a business process within a political system and has therefore significant considerations of integrity, accountability, national interest and effectiveness (Odhiambo and Kamau 2003). Aketch (2005) noted that a sound Public Procurement system should emphasize on four principles namely: competition, publicity, use of commercial criteria and transparency. The 2004 EU directive has simplified, clarified and modernized their procurement system so as to make sure that the public sector bodies awarding contracts improve on their efficiency and effectiveness; with an aim to take advantage of modern procurement techniques and achieve value for money. COMESA report (2004) noted that public procurement absorbs 60% of government expenditure. Therefore, accountability at all levels is important. The report adds that the government procurement agencies and procurement personnel should be seen accountable to the government,

end users, the public and suppliers for efficient cost effective and fair conduct of their procurement process and avenues for review of complaints should there be available.

Hunja (2004) noted that in many developing countries, Public Procurement has not been viewed as having a strategic impact in the management of public resources. It was treated as a process-oriented, back-office support function of implemented by non-professional staff of the buying agencies. He added that a strong and well-functioning Procurement system would be one that is governed by a clear legal framework establishing the rules for transparency, efficiency and mechanisms of enforcement, coupled with an institutional arrangement that ensures consistency in overall policy formulation and implementation. A professional cadre of staff that implements and manages the procurement function was also necessary. Studies and assessment of procurement system in many developing countries, however, have consistently indicated weaknesses in most if not all of these areas.

Odhiambo and Kamau (2003) observed that good governance is a fundamental building block of a just and economically efficient Public Procurement system. Studies of Public Procurement in the three East African countries have shown that corruption in Public Procurement has mainly been through hidden violation of laid down procurement rules. In this case, procurement officers may be involved in malpractices, such as misusing the power of invitation by only inviting preferred firms, favoring certain firms at the short listing stage, to design tender documents in favour of particular firms or release confidential information. While corrupt procurement staff can in their own interest choose to violate procurement rules, they work in most cases under the influence of powerful politicians. Since mid 1999 the African countries have identified and implemented an extensive set of measures in the area of governance, including anti-corruption measures.

In Kenya, governance, established the Kenya Anti-Corruption Authority (KACA) to fight corruption head-on. Therefore, strong procurement management in the public sector is a tool for achieving political, economic and social goals. In the era of diminishing resources and increased demand for accountability and transparency in government, the stakeholders of the public sector are demanding more effective and efficient use of public resources. However, Procurement in the health sector is slightly different due to its unique environment. Lyson (2006) asserts that the applications of all methods of inventory management are problematic for health care systems. Some of the problems include inaccurate demand estimation or forecasts; and communication breakdown.

2.2 Procurement Systems in Kenya

Procurement decisions of any procuring entity are supposed to be taken in a corporate and structured manner. PPR (2006) established a Procurement Directorate as a central organ for policy formulation, implementation, and human resource development process in Kenya. The Act, not only provide open tendering as the main procurement procedure but also allows alternatives such as Restricted Tendering, Request for Proposals, Request of Quotations, Direct Procurement and Low Value Procurement. In open tendering, an invitation to tender for goods works and services, the value of which is in excess of the sum set out are advertised in at least two daily newspapers of nationwide circulation. In restricted tendering, the invitation to tender is addressed to a limited number of qualified candidates that have declared an interest in submitting tenders, selection is done in non-discriminatory manner and number of candidates as supposed to be sufficient(not less than three) to ensure effective competition. Request for Proposal Procurement is used when the procuring entities seek to obtain consulting services for which open or restricted tendering is not suitable because of difficulties in defining precisely the services. In Direct Procurement, a procuring entity prepares a description of its needs and freely negotiates with the sole candidate with an agreement reached is confirmed by a contract signing by both parties. In Request for Quotation, Procurement involves purchasing readily available goods or procuring or works/service for which there is an already established market (Kenya Gazette Supplement No 24, 2001).

2.3 Right Lead-Time

Lead-time is the total time elapsed between the recognition of the need until its satisfaction. Bailey (2005) noted that the achievement of lead-time is a standard purchasing objective. If materials and goods came late or work is not completed at the right time, sales may be costly, production halted and damage caused may be invoked by unsatisfied customer. In addition most organizations regard cash as committed once an order has been placed; failure to achieve supply on time may slow down the cash to cash cycle hence reducing the organization's efficiency or profitability (Gopalakrishnan, 2000). This is a common complained of most users. Purchasers are blamed sometimes by user department colleagues if the suppliers fail to deliver on time.

Bailey (2005) adds that, the first step to obtaining delivery on time is to decide firmly and know precisely what is required and when it is required. This is normally the responsibility of stock control or production planning and control which works out the time required schedule. Dalta (2000) noted that lead time is vital attribute for Procurement to be effective. This means that purchases should be made in such a way that goods, works and services are made available in time. He adds that the procurement unit should ensure that delivery schedule is honoured. Gopalakrishnan & Sundaresan (2001) attributes lead-time as a role of procurement unit. To determine the right time, the procurement unit should have lead time information for all products and analyze its components for reducing the same.

2.4 Right Quality

Lyson (2006) found out that quality is often used to signify excellence of a product or service. It may be used to indicate that a piece of material or requirement conforms to certain physical dimensional characteristics often set out in the form of right specification. Quality is simply meeting the customers' requirements. Quality means fitness for purpose or for use, the totality of the features and characteristics of the product or service that on its ability to satisfy stated or implied needs. Quality should be aimed at the needs of the customers both present and future.

Gopalakrishnan & Sundaresan (2001) noted that right quality implies that quality should be available, measurable and understandable in order to determine quality of a product; sampling schemes of incoming goods inspection will be used. The quality particulars are obtained from the indents but it has been noted that substantial portions of the indents prepared by the user departments are invariably incomplete. Such incomplete intents often cause unnecessary delays in Procurement as the indenter has to be referred to and if not referred results in heavy reflection. The main objective of purchasing unit is to ensure continuity of supply to the user departments; the time at which the material is provided to the user department assumes great importance.

Dalta (2000) asserts that quality must be properly defined. The definition should give greater details and must be described in the purchase order. Significant elements like dimension physical, chemical and other properties, suitability and purpose must be clearly stated. ISO 9000:2000 defines quality as the degree to which a set of inherent characteristics fulfills requirement. Bester field Carol, Glen & Mary (2003) in his book, "Total Quality Management" looked at quality as the permanent characteristics which are either quantitative or qualitative. They continued adding that the quality dimensions ranges from performance, features, conformance, reliability, durability, service, response, Aesthetics to reputation.

2.5 Right Price

Benton (2010) noted that price per unit of goods, services and works depends on the volume or amount purchased, the quality level desired and the desired lead-time. He adds that goods procured in larger volumes enable the firm to buy at discount hence driving the unit price down. Higher quality levels expressed in terms of lower defect rate usually push the unit price higher. The supplier should ensure higher quality by preventing more defects which may require charge of a premium.

The objective of tender system used in the Public sector should be to identify the lowest responsive bidder and not the lowest bidder (Gopalakrishnar and Sundaresan 2001). They share the same mind with PPDA (2005) but are concerned with the general public procurement sector while the study is looking at the price in the health sector. Determination of the price to be paid is a major supply decision, and the ability to get a good price is sometimes held to be the prime test of a good buyer. If good price means greatest value, then it is imperative to note that price is only one aspect of the overall supply job. It is extremely important that the purchaser must be aware of different pricing methods. The purchaser rightly is expected to get the best value possible for the organization whose funds have been spent. While competitive bidding can be used for some purchases, purchasing requires different approaches and skill (Lyson, 2006).

2.6 Professionalism of Procurement Personnel

The Public Procurement and Disposal Manual (2009) require that the Procurement unit must be staffed with Procurement professionals. The staff should have technical skills in Procurement. This is because Procurement requires significant technical input. If the functions of the procurement unit are to be performed efficiently, then the Procurement unit needs to be equipped with technical know-how and ethical attributes. PPDR 2006 spells out the qualification and experience of procurement professionals at different levels. Purchasers can get into problems due to lack of knowledge.

3.0 Methodology

The study used descriptive research design because it assessed the nature of prevailing conditions. The study was undertaken at Kisii Level 6 Hospital, Kisii Central District. The target population was four hundred and sixteen (416) employees of Kisii Level 6 Hospital comprising; ten Procurement officers, twenty four Standing Committee Members and three hundred and eighty two in User Departments (Kisii Level 6 Payroll Sept, 2010). Eighty three respondents representing twenty percent of the target population was selected for the purpose of this study as follows; two Procurement officers, five Standing Committee Members and seventy six from User Departments. This was because the greater the sample size, the smaller the sampling error and the more representative the sample becomes (Mugenda, 2003). The study used stratified sampling technique and respondents picked purposively. The validity of the research instrument was tested by carrying out a pilot study of twenty respondents at Nyamira District Hospital while Cronbach Alpha Co-efficient was calculated on the piloted questionnaire to test for reliability. Data were analyzed using descriptive statistics.

4.0 Results

The study showed that the majority of respondents didn't have technical know-how and little knowledge of

the PPDA (2005) which could have been the reason for non-compliance. Kisii Level 6 Hospital used open tendering as a method of procuring goods, works and services. It indicated that the quality of procured goods, works and services were affected averagely in Kisii Level 6 Hospital. If specifications are affected moderately it implies that users were not taking specification seriously. The study reflected that 60% were not observing lead-time specified in the orders. This implies that most users were not getting their requested supplies within the specified time. This provides an explanation on the shortage and stock-out in Kisii Level 6 Hospital forcing clients to outsource goods, works and services.

The research indicated that 98.5% of the were in agreement that inspection of goods, works and services were being inspected by the Hospital Inspection Committee while 1.5% felt that inspection was done by KEMSA. Since the hospital has inspection and acceptance committee, it was thought to be performing its functions right.

It was further established that 68% were not satisfied with the price of goods, works and services. This shows that dissatisfaction of users with price indicate little extent of compliance with PPDA (2005). The research indicated that 65% prepared procurement plans while 78% of them do not consolidate their procurement plans. Further, 75% of respondents felt that the procurement plans were not in line with allocated annual budget. It clearly indicates that plans are not done as required. This might have been the reason for under-stocking or overstocking of goods; and staggering works and services.

Conclusion

In summary, the research indicated that there is a recurrent problem of stock-outs and observation of Lead-time in the hospital. Quality should be the centre in all purchasing activities and therefore meeting the user's specification makes the work of inspection and acceptance committee easier, and reduces returns and re-works which lengthens lead-time. Price quoted and terms of payment should be clearly negotiated to avoid non-delivery and partial-deliveries which leads to stock-outs. Procurement plans should be prepared in time, consolidated in line with annual budget estimates, and presented to the Accounting Officer of the hospital for approval before 1st July of any financial year. This will reduce under-stocking and over-stocking. To this end it will be prudent that the Level 6 hospitals in Kenya ought to come up with a training policy for procurement staff, and sensitize them on Procurement matters. Procurement is currently a strategic activity for any organization.

Reference

- Aketch, J.M.M (2005), Development Partners and Governance of Public Procurement in Kenya. *Enhancing Democracy in Administration of Aid*. Retrieved 20th Jan, 2011 from http://www.iilj.org/GAL/documents/AkechPaper_000.pdf
- Bailey W .R. (2005), *Human Performance Engineering: Designing High Quality Performance, Professional User Interfaces For Computer Products and Systems* (5th ed) Prentice Hall, New York
- Benton. Jr.W.C. (2010), *Purchasing and Supply Chain Management* (2nd ed.). Mc Graw- Hill, New York.
- Besterfield, Carol, Glen and Mary (2003), *Total Quality Management* (3rd ed.). Prentice Hall, New York.
- Comesa(2004). Public Procurement Reform Project. *African Region Workshop on harmonization, alignment and results*. Retrieved 1st Feb, 2011 from http://www.wto.org/english/tratop_e/gproc_e/wkshop_tanz_jan03/karangizi1_e.doc
- Dalta, A.K (2000), *Materials Management: Procedures, text and cases* (2nd ed.) Prentice Hall, New Delhi.
- European Union (2004). *Report on Public Procurement*. Retrieved 7th Jan, 2011 from <http://eu.europa.eu/internal-market/public>.
- Gopalakrishnan P. and Sundaresan.(2001), *Materials Management an Integrated Approach*. Prentice Hall, India.
- Gopalaskrishnan, P. (2000), *Handbook of Materials Management*. Prentice-Hall, New Delhi.
- Government of Kenya (2005), *The Exchequer and Audit (Public Procurement and Disposal (Act 2005)*. Government Press, Nairobi.
- Government of Kenya (2006) *Public Procurement and Disposal Regulation (2006)*. Legal Notice No. 51. Nairobi: Government Press.
- Hunja, R.(2004), *Obstacles to Public Procurement reforms in developing countries*. Retrieved 20th Jan, 2011 from www.wto.org/english/tratop_e/gproc_e/wkshop_tanz_jan03/hunja2a2_e.doc
- Lysons, K. (2006), *Purchasing and Supply Chain Management (7th ed.)* Prentice Hall, New York.
- Mercer P. (1994), *Directory of British Political Organisation 1994. Longman Current Affairs*. Longman University of Virginia, USA.
- Nation Daily (2002), *A better way to fight Corruption*, January 23rd Nairobi, Kenya.
- Odhiambo, W. and Kamau, P .(2003), *The Integration of developing Countries into the World Trading systems Public Procurement lessons from Kenya, Tanzania and Uganda*. Retrieved 26th Feb, 2011 from <http://www.oecd.org/dataoecd/59/11/2503452.pdf>.
- Public Procurement Oversight Authority (2009). *Public Procurement and Disposal Manual*