

**EFFECTS OF FAMILIARITY WITH PROCUREMENT
REGULATIONS AND PERCEIVED INEFFICIENCY OF
PROCEDURES ON NON COMPLIANCE TO PUBLIC
PROCUREMENT REGULATIONS: A SURVEY OF KENYA'S
STATE CORPORATIONS**

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Abstract

The main purpose of this study was to investigate the Effects of familiarity with procurement regulations and perceived inefficiency of procedures on non compliance with public procurement regulations in Kenya's state corporations. The study was guided by socio economic theory of regulatory compliance and the principal agent theory. Explanatory research design was used in this study. Census technique was employed in picking respondents for the study. Data was collected from 132 purchasing officers. Five point 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 findings of this study

indicated that familiarity with procurement regulations positively and significantly affect compliance. The study concludes that there is a clear link between employee familiarity with procurement regulations and non compliance. Therefore, it's recommended that public procuring entities should ensure that their employees are familiar with the procurement regulations as they transact business.

Key words: Public procurement, non-compliance, familiarity, procurement regulations, inefficiency of procedures

INTRODUCTION

Public procurement refers to the acquisition of goods and services by government or public sector organizations (Nyarra and Flagan, 2010; Stephen B. and Helken Walker, 2009) and is one of the key activities of government (Thai, 2001; Stephen B. and Hellen W., 2009). Public procurement occurs when a public agency purchases goods and/or services from an outside body (Arrow smith, 2005). Compliance refers to target acting in accordance with an influence attempt from the source (Payan and McFarland, 2005,; Gelderman.et.al.,2006). From the perspective of a formal concept of compliance, the conduct of the regulated actor is compared to a formal definition of the corresponding legal obligation (Lange, 1999; Gelderman.et.al., 2006). 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).

Public funds, which are 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 various developments. An effective procurement system would therefore ensure as little leakage from the system as possible, this can be realized if the Public procurement and disposals regulations are fully complied by the stakeholders.

The Kenyan public procurement system is always under intense scrutiny from 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 the public funds kept to a minimum, according to PPOA, the setbacks to compliance includes; poor records management, lack of procurement planning, lack of use of standard tender documents in making mandatory reports to PPOA, lack of use of standard requisition, lack of

properly established procurement unit staffed with professionals and lastly lack of effective post award contract management (PPOA 2012). Surprisingly, not much research has been done on the compliance with public procurement and disposals regulations as such. Notable exceptions are the empirical study by (De Boer and Telgen 1998), and (Gelderman et. al 2006), 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. However, these claims are not substantiated by empirical evidence. Hence there is a need for a sound empirical study to the determinants of non-compliance to public procurement regulations. Given that most research, thus far, has suggested in one way or another, public procurement and non compliance are relevant and since there is a severe lack of empirical studies on the subject, the purpose of this paper is to provide an empirical survey study in the Kenyan context that examines the effect of familiarity with procurement regulations and perceived inefficiency of procedures on non compliance to public procurement regulations.

Research Objectives

1. To examine the effect of familiarity with rules on non compliance to public procurement regulations in Kenya's state corporations.
2. To determine the effect of perceived inefficiency of the procedures on non-compliance to public procurement regulations in Kenya's state corporations

Research Hypothesis

- H0₁ Familiarity with procurement rules has no significant effect on non compliance to public procurement regulations in Kenya's state corporations.
- H0₂ Perceived inefficiency of procedures has no significant influence non compliance to public procurement regulations in Kenya's state corporations.

LITERATURE REVIEW

Purchaser's familiarity with rules and non compliance to public procurement regulations

In public sector most of purchasers are not completely clear about the public procurement and disposals regulations. Lack of clarity on rules is believed to increase the possibilities for un deliberate non compliance (Gelderman et.al., 2006). Compliance with the formal elements gives an indication of knowledge of rules (Rossi, 2010). (Gelderman et.al, 2006) posits that public purchasers will comply with rules if they perceive them as clear and if the public purchasers are

educated and trained it will translate into increased compliance with the directives. Eyaa and Oluka, (2011) argued that poor non-compliance is as a result of unfamiliarity with Procurement rules. The perceptions with respect to the un-clearness of the rules will influence the chance that public Purchasers will not comply with the rules. According to (De Boer and Telgen, 1998), one of the factor causes of non-compliance with procurement regulations is the level of familiarity with the procurement regulations they also assert that during the early days of the inception of public procurement regulations in The Netherlands, many municipalities could not comply to the regulations because they were not familiar with them. A study by (Heneghan and O'Donnell, 2007) as quoted by (Tukamuhabwa R, 2012) indicated that the high levels of non-compliance were partly attributable to the complex legislative requirements of the Irish Company Acts. (Lazarides, 2011) also adds that compulsory compliance is the result of among other factors clarity or lack of vagueness of provisions. Thus increasing knowledge of the law can improve compliance. According to a report by (European Commission, 1996), There is a significant uncertainty over the application of the 'aggregation rules', both regarding the level at which goods and services should be aggregated and the treatment of discrete operating units within the same public agency. Ambiguity in the public procurement procedures may provide a chance for dubious acts including opaque tendering and discriminate supplier selection which may progress into poor compliance levels; moreover some theorists have noted that deficient familiarity of the procurement procedure by all the internal stakeholders may affect compliance. (Eyaa and Oluka, 2011).

Perceived inefficiency of the procedures and non compliance to public procurement regulations

Public Procurement and Disposal Regulations (2006) outlines the various processes and procedures to be followed when good, services or works are procured and during the disposal of obsolete assets by Public Procuring Entities. The PPDA makes provision for the Open tendering and Alternative procurement procedures, under which fall; restricted tendering, direct procurement, request for proposals, request for quotations, procedures for low-value procurements and specially permitted procurement procedures, the procedure to be followed is in a large part determined by the thresholds outlined in the Public Procurement and Disposal Regulations,(2006).The directives provide a number of rules of conduct for the whole tendering process. In the EU the aim of their directives were to; firstly avoid discrimination (for instance on grounds of nationality) by providing a set of coherent rules (for instance, on objective specifications, types of award procedures and the limits), and secondly to ensure transparency by requiring publication in the official journal (Gelderman et.al., 2006).

The rules and procedures laid down by (Public Procurement and Disposals Act, 2005) and (Public Procurement and Disposals Regulations, 2006) are to ensure that public procurement and disposal activities are conducted in a manner which promotes Transparency, accountability and fairness in the procurement process. Procedures in public procurement are time consuming in combination with much paper work (De Boer and Telgen, 1998). These procedures are criticized because they are not in line with best practices relating to Purchasing Processes. According to (Lian and Laing, 2005) it is believed that most efficient purchasing mechanisms may not be open to competitive tendering. With that notion in mind by bailing out competitive tendering it implies that the potential bidders won't compete from the same platform, hence despondency among them. Moreover the Procuring entity might end up procuring sub-standard products and services at un-competitive prices, for instance a price of an item purchased through the tender process could be inflated above the prevailing market prices. Procurement directives prohibit negotiation during and after the tender procedure and this is a form of the inefficiency of rules. For the case of complex procurement, it's argued that there is a good commercial reason for carrying out negotiation with firms at all stages of purchasing process i.e. before, during and after (Arrowsmith, 1998). Though procurement regulations outlaws negotiations, procurement directives bars any extension of contracts without going to the market, but in the practical context public buyers prefer to renew a contract rather than issuing new contracts (Jones, 1997). According to (Gelderman, 2006) Professional buyers would rather exclude poor performing suppliers from the tendering procedure since they are counterproductive and makes the procurement and tendering process cumbersome for no justifiable reason. Running a tender competition is a very expensive exercise for the public PE's. According to (Bohan and Redonnet, 1997) the transaction costs may exceed any likely efficiency benefits though the Act spells out that this is mandatory.

Procurement committee decisions are made by consensus and where there is no consensus, the decision shall be made through voting by simple majority and where there is a tie, the Chairman shall have a second or casting vote (PPDA, 2005). This provision in the regulations exposes loopholes to Compliance since in case of common individuals interest the tender committee could collude in favour of one preferred bidder, creating despondency on the rest of suppliers/bidders moreover the procuring entity could end up sourcing sub-standard goods at uncompetitive inflated prices.

Theoretical Background

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

their familiarity with public procurement regulations (mean =3.999, SD = 0.58795) with skewness of -0.681 showing responses were not deviating from the average.

Table 1 Familiarity with public procurement regulations

	Mean	Std. Deviation	Skewness	Kurtosis
Lack of clarity with the applicability of Public procurement regulations	4.65	0.917	-3.264	10.38
Not all procurement/purchasing employees are well conversant with the legal obligations to follow the public procurement regulations.	4.11	0.79	-1.143	1.652
The overall knowledge of procurement rules is still low among the purchasing staff in the public procuring entities	3.99	1.004	-1.26	1.184
Bidders complain often regarding the outcome of the tender processes	3.67	0.956	-0.308	-0.535
Most Procurement/purchasing staff tend to ignore the public procurement regulations	3.6	1.084	-0.477	-0.663
Familiarity	3.9919	0.58795	-0.681	6.257

Perceived inefficiency of public procurement regulations

Study findings from table 2 revealed that it was highly agreed that the public procurement procedures involve a lot of paper work with (mean 4.36 and SD 0.698), also that the bidder who quotes low price doesn't guarantee the best quality of services and other products being procured (mean 4.35, SD 0.889). The findings also indicated that public procurement procedures were time consuming (mean of 4.13 and SD of 1.127) and that quality of products or services procured can't be guaranteed based on contents of documents received in response to an invitation for bids (mean of 4.13 and SD of 1.038). There is prohibition of negotiations during and after tendering process as shown by (mean of 3.77, and SD of 0.995) and the one that was least agreed on was that public procurement procedures are expensive and thus costs may exceed the likely efficiency benefits, its (mean was 3.12 and SD was 1.223).

In overall, findings showed that respondents were negative towards perceived inefficiency of Public Procurement Regulations (mean of -0.602, SD of 0.5897) which was less than mean.

Table 2 Perceived inefficiency of public procurement regulations

	Mean	Std. Deviation	Skewness	Kurtosis
Public procurement procedures involves a lot of paperwork	4.36	0.698	-1.393	3.138
Quoting the lowest price doesn't guarantee the best quality of products or services being procured	4.35	0.889	-1.792	3.822
Public procurement procedures are time consuming	4.13	1.127	-1.607	1.982
Quality of products or services procured can't be guaranteed based on contents of documents received in response to an invitation for bid	4.13	1.038	-1.459	1.689
Negotiations during and after the tendering process is prohibited	3.77	0.995	-0.21	-0.635
Public procurement procedures are expensive thus the costs may exceed the likely efficiency benefits	3.12	1.223	0.083	-1.165
Inefficiency	3.9244	0.58912	-0.602	-0.28

Non-compliance

From table 3, research findings showed that, some public procurement entities failed to periodically measure and evaluate their purchasing performance,(mean 3.82, SD = 0.847) at times there were delays in submitting quarterly reports to public procurement oversight authority,(mean3.80, SD = 0.801) thus making it difficult to monitor its performance. Also there were some instances where the timeframe for receiving bids were extended (mean 3.69, SD = 0.912).

Further it had been observed by the respondents that some purchases were done without necessarily using the standard tender documents (mean 3.61, SD =1.184) and at times the post award contract management was not undertaken (mean 3.60, SD = 0.777). There were also instances whereby records are misplaced in the department (mean 3.51, SD = 1.076). A low output on some occasions where tenders valued above ksh.5 million thresholds were not advertised in public procurement oversight authority's journal and website (mean 3.22, SD = 1.274).

Table 3 Non compliance

	Mean	Std. Deviation	Skewness	Kurtosis
Some Public Procuring Entity's fail to periodically measure and evaluate their purchasing performance	3.82	0.847	-0.512	-0.164
Sometimes there are delays in submitting Quarterly reports to the Public Procurement Oversight Authority	3.8	0.801	-1.034	0.837
There are instances whereby time frame for receiving bids is extended	3.69	0.912	-1.806	2.797
Some purchases are done without necessarily using the standard tender documents	3.61	1.184	-0.865	-0.003
At times Procuring Entities don't use standardized method for supplier evaluation in the tendering process	3.61	1.227	-0.768	-0.391
At times post award contract management is not undertaken	3.6	0.777	-1.398	2.131
There are instances whereby records are misplaced in the department.	3.51	1.076	-0.671	0.058
There are instances whereby Tenders valued above Kshs.5 million threshold are not advertised in the Public Procurement Oversight Authority's journal and website	3.32	1.274	-0.275	-1.031
Non-compliance	3.5321	0.5845	0.142	0.639

Scale Reliability Test

To test reliability of the questionnaire, Cronbach's alpha measurement was used and the reliability coefficients of each independent variables are as follows, X1(.815);&X2(.745). The reliability coefficients of the two independent variables(X1 and X2) are above 0.70 which meets the acceptable limits (Nunnally, 1978) also cited by (Wei et.al., 2008).

Table 4 Reliability analysis

Item	Cronbach Alpha
Familiarity with regulations	0.815
Perceived inefficiency	0.745
Non-compliance to public procurement regulations	0.803
Average	0.787

Multiple Regression Analysis

Multiple regression analysis was employed to test hypothesis in this research, According to (Hair et al., 2005), Multiple Regression Analysis is applied to analyse relationships between a single Dependent Variable and Independent Variables, and hence it was considered an appropriate method for this study.

Table 5 Model Summary

R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics					
				R Square Change	F Change	df1	df2	Sig. Change	Durbin-Watson
.795 ^a	0.632	0.618	0.41887	0.632	45.964	4	107	.000	1.569

Predictors: (Constant), X1, X2,

Dependent Variable: Y

In this study, the dependent variable was non compliance to public procurement regulations denoted as Y, whereas the independent variables were; familiarity with rules (X₁) and perceived inefficiency of procedures, (X₂).

Results in table 5 illustrate model summary of multiple regression model of familiarity with public procurement regulation (X₁) and Perceived inefficiency of the public procurement regulation (X₂) against non-compliance to public procurement regulations (Y). Results reported that 61.8% total variation of the non-compliance to public procurement regulations is explained by joint contribution of familiarity with public procurement regulation (X₁) and perceived inefficiency of the public procurement regulation (X₂).

Analysis of Variance (ANOVA)

Table 6 ANOVA^b

	Sum of Squares	Df	Mean Square	F	Sig.
Regression	32.258	4	8.064	45.964	.000 ^a
Residual	18.773	107	0.175		
Total	51.031	111			

a. Predictors: (Constant), , x1, x2,

b. Dependent Variable: Y

ANOVA analysis was performed to assess the reliability and validity of the overall model as well as goodness of fit. The ANOVA Table 6 above F value was reported as 45.964, in that large values of F indicate a rare test scores (unusual data) and indicates that it is unlikely the null hypothesis is true. The significance level (p -value) for the test was 0.000 which is less than 0.000, reflecting that there is significant linear relationship between independent variables against the dependent variables.

Hypotheses testing

A regression of Y (non compliance) against X1 (familiarity with rules) and X2 (perceived inefficiency of procedures) was done and the results are summarized in the table 7 below.

Table 7 Coefficients^a of determinants of non compliance to public procurement regulations

Variables	Unstandardized Coefficients		Standardized Coefficients			Collinearity Statistics	
	B	Std. Error	Beta	T	Sig.	Tolerance	VIF
Model							
(Constant)	-0.153	0.411		-0.373	0.710		
X1	0.358	0.113	0.313	3.167	0.002	0.351	2.846
X2	0.198	0.11	0.177	1.798	0.075	0.353	2.830

Dependent Variable: Y

H₀₁ Familiarity with procurement rules has no significant effect on non compliance to public procurement regulations in Kenya's state corporations

The study's first hypothesis stated that familiarity with procurement rules has no significant effect on the public procurement regulations non-compliance in the public sector in Kenya. However the study findings rejected the hypothesis as evidence of ($\beta_1=0.313$, $p<0.05$), and infer that familiarity with procurement regulations had positive effect on public procurement regulations non compliance. Thus, failure to improve familiarity with procurement regulations among procurement/purchasing employees breeds non compliance. In additional, with t-test value of 3.167 showed that familiarity with procurement regulations had the highest effect.

H₀₂ Perceived inefficiency of procedures has no significant influence non compliance to public procurement regulations in Kenya's state corporations.

The second Hypothesis of the study stipulates that Perceived inefficiency of procedures has no significant influence on public procurement regulations non-compliance in Kenya. As evidence from the study results ($\beta_2 =0.177$, $p<0.05$) hypothesis 2 was accepted implying that

perceived inefficiency of procedures has no significant influence on public procurement regulations non-compliance. This showed that increase and decrease of perceived inefficiency had no impact whatsoever on public procurement regulations non-compliance.

CONCLUSION

Familiarity with public procurement regulations

Study findings rejected hypothesis one of the study; *familiarity with procurement rules has no significant effect on the public procurement regulations non compliance in the public sector in Kenya* ($\beta_1 = 0.313$). The findings of this study are consistent with others studies conducted, for instance, (Gelderman et.al., 2006) argued that lack of clarity on rules is believed to increase the possibilities for un deliberate non compliance, while (Rossi, 2010) asserted that knowledge on rules and procedures of procurement enhances compliance moreover (Oluka et.al., 2011) argued that poor non compliance is as a result of un familiarity with procurement rules. According to (De Boer and Telgen,1998), one of the factor causes of non compliance with procurement regulations is the level of familiarity with the procurement regulations. The findings support (Lazarides, 2011) argument that compulsory compliance is the result of among other factors clarity or lack of vagueness of provisions. Study findings are consistent with socio-economic theory of regulatory compliance as explained in the neo classical deterrence model which holds that rational individuals are driven by both intrinsic and extrinsic motivations, (including but not restricted to wealth enhancement).

Perceived inefficiency of procedures

The findings of the analysis accepted hypothesis 2 implying that perceived inefficiency of procedures has no significant influence on public procurement regulations non compliance ($\beta_2 = 0.177$). This study coincide with other studies where none of those study found evidence of the relationship between perceived inefficiency of procedures and public procurement regulations non compliance. According to (Laing et.al. 2005) it is believed that most efficient purchasing mechanisms may not be open to competitive tendering. For the case of complex procurement it's argued that there is a good commercial reason for carrying out negotiation with firms at all stages of purchasing process i.e. before, during and after,(Arrowsmith,1998).Procurement committee decisions are made by consensus and where there is no consensus, the decision shall be made through voting by simple majority and where there is a tie, the Chairman shall have a second or casting vote (PPDA, 2005) this could give a lee way for favouritism since the tender committee chairman could be biased towards a certain bidder. Moreover (Gelderman

et.al.2006) posits that Professional buyers find it rather odd and counterproductive that poor performing suppliers cannot be excluded from the (public) tendering procedure.

RECOMMENDATIONS

Familiarity with public procurement regulations

From the tested hypothesis, it is evident that the applicability of public procurement regulations is not very clear, hence there is need for procurement employees working for the public PE's to be sensitized and educated on these by Public Procurement Oversight Authority, moreover all procurement employees should be acquainted with the legal obligation to follow and not to ignore the public procurement regulations and lastly the Government should improve the overall knowledge of public procurement rules among the purchasing staff in the public procuring entities by coming up with mandatory trainings for procurement employees working in the public sector.

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 my investigation is a step towards understanding compliance issues with respect to public procurement regulations and procedures, more research is needed in this area. More variables should be introduced in the next study and also increased the number of target respondents.

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