

**ASSESSMENT OF EFFECTS OF ETHICAL PRACTICES ON  
PERFORMANCE OF PROCUREMENT FUNCTION IN STATE  
CORPORATIONS: A CASE OF STATE REGULATORY  
AGENCIES IN NAIROBI COUNTY, KENYA**

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**Abstract**

*The procurement function is core in the management of supply chains. Procurement practices affect the inventory levels and eventually the services provided to the consumer. The procurement function in Kenya is stipulated in the PPDA. Ethical practices are deemed to ensure that, the procurement function in the public sector is performing to the expectations of taxpayers and other related stakeholders. Over the years the procurement function has been blamed for various malpractices. This underscored the importance of observing ethics in procurement procedures in the public sector. The study sought to assess the effect of ethical practices on performance of the procurement function in State Regulatory Agencies in Nairobi County, Kenya. Specifically the effect of accountability and transparency on the performance of the procurement function amongst the aforementioned agencies was examined. The study adopted a descriptive research design. The target populations constituted the 194 procurement officers working with the 21 State regulatory agencies in Nairobi County, Kenya. Stratified random sampling method was adopted to obtain the 66 sampled respondents from the target*

*population. A structured questionnaire was employed to collect primary data from the respondents. The collected data were analyzed electronically using the SPSS software. Data analysis employed both descriptive and inferential statistics. The findings indicated that accountability and transparency affected performance of procurement function strongly, positively and significantly. It is recommended that accountability and transparency should be upheld in the entire process of procurement.*

*Keywords: Accountability, ethical practices, procurement practices, state regulatory agencies, transparency*

## **INTRODUCTION**

Ethical practices during the procurement process are supposed to be ensured; otherwise, the consequences may be dire. In light of this, monopolizing the procurement system goes against the expected ethics. The supply risk in the public sector is likely to increase in case of a single supplier given that the procuring entities would be vulnerable to forces affecting the supplier (Khan & Burns, 2007). The public service delivery system can fail when the requisite services or materials are not delivered as and when expected (White & Mohdzain, 2009). It is noted that in Mexico, shortening the supply chain not only does it reduce the procurement cycle but also it minimizes costs through lower numbers of warehouse employees and storage space (Tetteh & Pharm, 2009).

The procurement function is core in the management of supply chains. The function determines the availability, cost and quality of materials in addition to responsiveness and flexibility of the organizations in meeting customer needs and expectations (Juha & Pentti, 2008). Gonzalez-Benito (2007) adds that procurement function is of strategic importance to organizations. In order for a procurement organization to run efficiently and effectively in a complex environment, essential structures ought to be created and suitable instruments employed (Eichler, 2003). Kizito and Khomba (2013) analyzed the impact of procurement operations on delivery of health care in Malawi. They noted that the procurement function indeed derailed the delivery of healthcare in the country. This was reflected in the failure of the procurement system to ensure that drugs were availed as anticipated. The procurement officials were blamed for the derailment.

The procurement function in Kenya is stipulated in the Public Procurement and Disposal Act, (PPDA) of 2005. In the same light, the Public Procurement Oversight Authority (PPOA) is legally mandated to ensure that all public entities adhere to ethical practices during the

procurement process. The PPDA came to effect on 1<sup>st</sup> January, 2007. It applies to procurement of goods, works and services, in addition to the disposal of assets by public entities. Previous research indicates that the area where public audits are needed most are in the procurement of State resources given that public resources are relatively scarce and that the procurement process is political, technical and highly imperative (Wanjiru, 2008). It has been noted that technical audit factors followed by regulatory framework have the greatest effect on effectiveness of public procurement audit in Kenya (Achuora, Arasa & Ochriri, 2011). State regulatory agencies are state corporations that have regulatory functions. These agencies are enabled by legislation and have specific mandates to perform. State regulatory agencies are sector-based and regulate matters relating to specific sectors of the economy, support their administration, formulate policies and make recommendations to parliament for legislative amendments (ETI, 2009).

### **Statement of the Problem**

Economic and social challenges have obliged many organizations to re-evaluate their manner and approach in maintaining sustainable relationships with their customers. For most successful organizations, ethical standards are crucial in insuring that customers derive the very best from service providers. Over the years the procurement function has been blamed for various malpractices such as corruption in awarding contracts, bribery to favour bidders, nepotism, solicitation and extortion, disclosure of confidential information; practices that have led to a drain in the public resources and hence the need for a heightened focus. These loopholes subsequently led to the introduction of the Public Procurement Oversight Authority, enactment of the Public Procurement and Disposal Act (PPDA) of 2005 and the Procurement Regulations of 2006. The foregoing underscored the importance of observing ethics in procurement procedures in the public sector. Yet, the implementation of the same comes into question in spite of the regulations being in place for more than a decade as exemplified by various scandals that have characterized a number of State agencies. Such scandals include tenders for forensic lab for the Criminal Investigations Department (CID), terrorist proof passport systems, procurement of Hyundai police cars, and acquisition of patrol ships amongst others. It was thus imperative to assess how the various ethical practices influence the performance of the procurement function in State corporations in Kenya particularly the independent regulatory agencies.

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

To assess the effect of ethical practices on performance of the procurement function in State Regulatory Agencies

### **Specific Objective of the Study**

To examine how accountability and transparency affect procurement function performance in State Regulatory Agencies in Nairobi County

### **Research Question**

How does accountability and transparency affect the performance of procurement function in State Regulatory Agencies in Nairobi County?

## **THEORETICAL FRAMEWORK**

This section reviews theories that explain ethical practices and those that touch on procurement issues.

### **Theory of Procurement Contracts**

It is evident that the procurement problem has generated substantial attention in the recent past. Bajari and Tadelis (2001) asserted that the primary focus of literature touching on procurement problem has been on the public sector procurement. It is argued that public sector procurement is of huge importance to the economy of any given country. According to Laffont and Tirole (1993), modern economic theories of procurement employ mechanism design to structure the procurement problem as one of ex ante asymmetric information coupled with moral hazard. In light of the foregoing, the seller is argued to possess information regarding production costs that the buyer does not have.

The buyer is said to screen the seller by offering a list of contracts from which the seller selects a particular contract, a situation that end up revealing the buyer's private information. In this case, the seller has an upper hand in terms of requisite information. It is, however, noted that the descriptive engineering and construction management does not demand for a list of contracts. Rather, the vast majority of contracts in this sector are variants of simple fixed price and cost-plus contracts. In the former (fixed price) contracts, the buyer offers the seller a prespecified price for completing the project. On the other hand, cost-plus contracts do not specify a price; instead, they reimburse the contractor for costs plus a stipulated fee. In their examination of pertinent literature, Bajari and Tadelis (2001) established that there is little evidence to indicate that either the contractor or the buyer has private information at the onset of a procurement project. The scholars argue that both the contractor and the buyer share

uncertainty about many vital design changes that occur after the contract is signed and production begins. This theory is highly relevant to procurement procedures and confidentiality of information during the procurement process. As such, understanding the theory of procurement contracts can be employed to explain the procurement function in State regulatory agencies.

### **Agency Theory**

Agency relationship is a contract under which one or more persons (principals) engage another person (the agent) to perform some service on their behalf which involves delegating some decision-making authority to the agent (Anderson & Marcie, 1996). It is posited that when carrying out the tasks within the principal-agent relationship, the agent must choose actions that have consequences for both the principal and the agent. Furthermore, it is said that due to the fact that the aforementioned outcomes can be either positive or negative for each of the actors, the chosen action of the agent affects the welfare of both (Aylesworth, 2003).

In context of procurement procedures in the public sector, the taxpayers through the government are the principals whereas the procuring entities such as State regulatory agencies are the agents. The taxpayers expect these public entities to choose and/or prioritize suppliers who are the lowest bidders. The agency theory, according to Aylesworth (2003), is argued that it can enable all the stakeholders in public procurement to better understand their role in utilizing procurement decisions. In the event that the regulatory agencies follow inappropriate or corrupt procurement procedures, they are bound to elicit the wrath of the taxpayers who can demand for the removal and consequential prosecution of procurement officials.

It is noted that the principal-agent relationship usually arises from the belief that the agent possesses the requisite skills and abilities in abundance and/or have time to perform the desired activities (Dixit, 2002). In line with this assertion, the procurement officials are expected to encompass diversity in terms of regional representation, gender, age, marginalization, and professionalism. It is, however, argued to be inevitable that there are several challenges for the principal in governing the relationship with the agent. This is normally occasioned by the challenge of choosing an appropriate agent. In the case of State regulatory agencies, the taxpayers have minimal say, if any, regarding the composition of the procurement officials and tendering committees. Consistent to the tenets of agency theory, it is assumed that the principal and the agent do not share the same levels of information. Therefore, the agent can be opportunistic and take advantage of the situation, sometimes to the detriment of the principal. This situation is referred to as moral hazard and often results from asymmetric information (Aylesworth, 2003). In State regulatory agencies, the agencies are mandated to advance the

interests of the taxpayers by ensuring that the requisite procedures are followed. Therefore, the agencies act as the agents while the taxpayers are the principals in tandem with the agency theory.

## **EMPIRICAL REVIEW**

This section reviews empirical studies that have hitherto been conducted on ethical practices and procurement function. In particular, studies on accountability and transparency during the procurement process are reviewed.

### **Accountability and Transparency**

According to a study by Segal and Summers (2002) on how to enhance transparency in pharmaceuticals in Latin America and the Caribbean region, it was established that accountability is a government's obligation to demonstrate effectiveness in undertaking the goals and producing the types of services that the public wants and needs. Accountability, they observed, comprises of three vital dimensions, that is, measurement of goals and results, justification of results obtained to internal or external monitors, and punishment or sanctions for poor performance of corrupt behaviour. The authors suggested pertinent strategies than could help to enhance accountability. These strategies include among others, information systems to measure how inputs are employed to produce outputs, watchdog organizations, relevant boards or civic organizations that demand explanation of results, performance incentives to reward good performance, and sanctions for poor performance. It is worth noting that when there is no accountability, a window of corruption is opened (Brinkerhoff, 2004).

It is argued that accountability illustrates how the public interest has been protected in the expenditure of public funds. Moreover, upholding probity in public procurement is opined to be one of the most vital beacons of modern national procurement systems (Barret, 2000). In their study, Vian and Collins (2006) posited that a district health planning and reporting system was employed in South Africa with a view of enhancing management control and also in order to hold government agents accountable for their decisions. The system brought together the financial and service data which helped officials to explore the genesis for performance differences, which include probable corruption.

The probity and transparency of a public procurement system is said to rely on a number of control mechanisms which include an effective control and audit system, an efficient appeals mechanism, a comprehensive information sharing system that enables civil society and other stakeholders to conduct social audit, and effective ethics and anti-corruption measures (Namusonge, 2007). The author further avers that a public audit is considered effective if and

when it accomplishes the intended results of fostering good governance and effective accountability in the management of public resources. It is, moreover, posited that an appropriate regulatory system is required in order to enhance transparency and non-discriminatory in the application of resources in all public entities in Kenya.

Transparent management is asserted to be closely related to accountability, yet Kenya has done little to ensure that this type of management is upheld. It is reasoned that relative to transparency, active disclosure of information entailing decision making and measures of performance can lead to improved public deliberation, reinforce accountability and inform citizen choice. It is further asserted that transparency enables the documentation and dissemination of information on both the scope and consequences of corruption. This information, it is advised, can aid in building support for anti-corruption programmes and target enforcement efforts (Ngugi & Mugo, 2011). According to the two scholars, accountability of public procurement officials is probably the most fundamental aspect of upholding probity in public procurement. This is ascertained by the argument that accountability of public procurement officials not only is it vital from a public law perspective, but it also have economic consequences. Accountability components (measurement of goals and results, justification of results obtained to monitors, and punishment or sanctions for poor performance of corrupt behaviour) according to the Ngugi and Mugo's (2011) study findings were found to affect procurement process of supplies in the public sector to a great extent.

When studying efficiency and efficacy of CDF in Kenya, Kimenyi (2005) opined that public audits are a crucial link in the chain of accountability because they reinforce accountability, both upwards to elected or appointed members who provide resources and outwards to the consumers and beneficiaries, taxpayers and the wider community in general. The rationale of public procurement audits according to TISA (2009) is to ascertain that public funds are utilized for their intended purpose, and with a view of maximizing value received by the public purchaser. This ensures that proper and accountable systems are not only in place but also adhered to. Though accountability and transparency have sufficiently been studied, research on the implication of the same on the performance of the procurement function seems to be scanty.

### **Procurement Function**

According to Development Assistance Committee (DAC, 2005), about 15 per cent of the world's Gross Domestic Product (GDP) is spent through public procurement. In developing countries' economies, it is observed that approximately 9 to 13 per cent of their GDP is spent through public procurement (Thai, 2001). It is exemplified that in Angola, public procurement accounts

for 58 per cent while in Uganda it accounts for a whopping 70 per cent of public spending. Yet, procurement is argued by Trionfetti (2000) to be increasingly vulnerable to internal control challenges. The findings of Mamiro's (2010) study indicated that one of the major setbacks in public procurement is poor procurement planning and management of the procurement procedures.

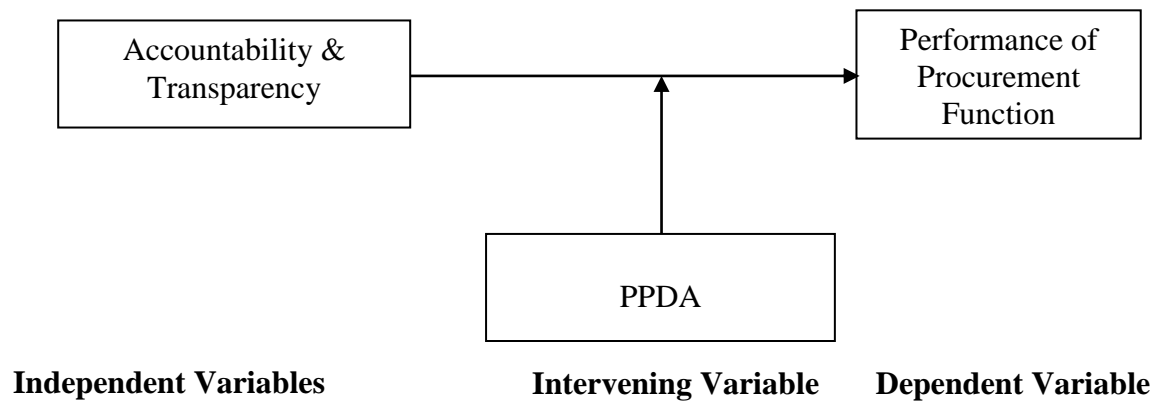
A study on how procurement operations impact on Malawi's public healthcare delivery system indicated that procurement functions derailed healthcare delivery through failure to ensure availability of drugs (Kizito & Khomba, 2013). Kakwezi and Nyeko (2010), in their study, observed that the procurement departments of public organizations in Uganda are faced with the problem of inadequate information regarding the procurement procedure. As such, those organizations are unable to determine their efficiency and effectiveness. This argued to result from failure to establish clear procurement procedures and performance standards.

Integration of Information and Communications Technology (ICT) in procurement procedures is very important. This assertion is reinforced by the results of a study by Ngugi and Mugo (2011) where it was established that ICT adoption affected procurement process at Kenya government ministries to a great extent. Incorporating ICT was found to enhance the process of effective tendering through advertising, sourcing reviews, pre-qualification, potential for cost savings and greater awareness for new development. The adoption of ICT was argued by the two scholars to capacitate the aforementioned ministries to provide excellent service to their suppliers in an effective and transparent manner. Their study inferred that operating procedures afore-explained affected the procurement process at Kenya government ministries to a very great extent.

The PPDA (2005) stipulates the procurement methods to be applied, advertising rules and time frames, the content of tender documents and technical specifications, tender evaluation and award criteria, procedures for submission, receipt and opening of tenders, and the complaints system structure and sequence. It is further pointed out that regulations as established by PPDA lay the basis upon which there is creation of separation of powers between institutions that manage public procurement and those checking compliance with procurement procedures. The findings of Achuora et al. (2011) concurred with those of Manasseh (2007) that public procurement regulation is one of the most important factors in carrying out effective public procurement audit.



Figure 1. Conceptual Framework



The framework indicates that there was one independent variable (accountability and transparency) while on the other hand, the dependent variable was procurement function performance. It was presumed that accountability and transparency influence performance of the procurement function in State regulatory agencies. The Public Procurement and Disposal Act (PPDA) influenced the interaction between the two sets of variables.

## METHODOLOGY

### Research Design

The research design is a blueprint of conducting a study. The study adopted a descriptive research design. The foregoing stems from the argument that descriptive study aims at providing precise and valid representation of variables that pertains the research objectives (Mugenda & Mugenda, 2003). The design enabled the sampled respondents to give information on the issues of interest to the study which touched on ethical issues in the procurement process in the State corporations.

### Target Population

The target population is defined with a clear understanding that it should be consistent with the objectives of the study (Mugenda & Mugenda, 1999). It is limited to the entities from which the participants of the study are extracted. In the context of the current study, the target populations constituted the 194 procurement officers working with the 21 State regulatory agencies in Nairobi County, Kenya.

### Sample Size and Sampling Technique

The sample size was calculated using Nassiuma's (2000) formula as illustrated hereunder.

$$n = \frac{NC^2}{C^2 + (N-1)e^2} \quad \text{Where}$$

n = sample size;

N = population size;

C = coefficient of variation (0.5)

e = error margin which is 0.05.

Substituting these values in the equation, estimated sample size (n) was:

$$n = \frac{194 (0.5)^2}{0.5^2 + (194-1)0.05^2}$$

$$n = 66.21$$

$$n = 66 \text{ procurement officers}$$

Stratified random sampling method was adopted to obtain the 66 sampled respondents from the list of 194 procurement officers. The 21 State regulatory agencies in Nairobi County constituted the strata. This implies respondents were drawn from all the 21 agencies proportionately to the procurement officers attached to each agency. Random sampling was then conducted within each agency in order to minimize sampling bias.

### Data Collection Instrument

A structured questionnaire was used to collect primary data from the respondents. The questionnaire consisted of close-ended questions with the aim of restricting the scope of responses. The instrument captured data pertinent to respondents' demographics and more importantly, it was structured in such a way that it facilitated collection of data on all study variables.

### Reliability of the Research Instrument

Reliability implies that the findings will conform to the objectives of the study. This is a measure of consistency of the research instrument. There are various approaches of assessing an instrument's reliability. However, in regard to this study, the Cronbach alpha was used given that it is the most recommended and widely used method of reliability testing. The reliability threshold was achieved by the two variables (accountability and transparency, and performance of procurement function) where the two constructs returned  $\alpha = 0.791$  and  $\alpha = 0.820$  respectively.

## **Validity of the Research Instrument**

Validity refers to the degree to which a test actually measures the variables it is meant to measure. The content validity of the research instrument was determined by seeking expert opinion of the assigned university supervisor. Expert opinion was preferred due to the argument that content validity could not statistically be determined (Kimberlin & Winterstein, 2008). None of the factors under the two study variables (accountability and transparency, and performance of procurement function) was removed. For an instrument to be valid it had to attain the reliability threshold. Therefore, once the validity of the instrument was determined then it was effectively employed to collect data from the sampled respondents.

## **Data Processing and Analysis**

Data analysis is a process of creating order, structure and meaning to the collected data (Mugenda & Mugenda, 2009). The collected questionnaires were edited in order to address the ones that were incompletely and inappropriately filled. The collected data were analyzed electronically using the Statistical Package for Social Sciences (SPSS) software Version 21. Data analysis employed both descriptive and inferential statistics to analyze the findings from the raw data.

## **EMPIRICAL FINDINGS**

### **Response Rate**

A total of 66 questionnaires were issued to the sampled respondents. Out of these, 64 were successfully filled and returned. This represented 96.97 per cent response rate. The response rate was deemed sufficient for the study.

### **Descriptive Analysis**

#### ***Accountability and Transparency***

The study analyzed the opinions of the sampled respondents regarding accountability and transparency as one of the ethical practices in procurement process<sup>1</sup>, respondents agreed (mean  $\approx$  4.00; std dev  $<$  1.000) that the procurement procedures in their corporations are fair and equitable; procurement procedures ensure there is value for money; contracting authorities are able to justify the decisions made and actions taken; there are accurate documented records that demonstrate proper ethical standards are observed; and that the documented procurement records provide an audit trail of the procurement process. Respondents, however, disagreed (mean = 1.56; std dev = 0.969) that there is appropriate separation of duties within the procurement cycle.

Table 1: Descriptive Statistics for Accountability and Transparency

		n	Min	Max	Mean	Std. Dev
i.	Procurement procedures in the corporation are fair & equitable.	64	1	5	4.01	.937
ii.	Procurement procedures ensure there is value for money.	64	1	5	4.07	.772
iii.	Contracting authorities are able to justify the decisions made and actions taken.	64	1	4	3.66	.885
iv.	There is appropriate separation of duties within procurement cycle.	64	1	4	1.56	.969
v.	There are accurate documented records that demonstrate proper ethical standards are observed.	64	1	5	4.24	.506
vi.	The documented procurement records provide an audit trail of procurement process.	64	1	5	3.91	.648

As illustrated in Table 1, respondents agreed (mean  $\approx$  4.00; std dev < 1.000) that the procurement procedures in their corporations are fair and equitable; procurement procedures ensure there is value for money; contracting authorities are able to justify the decisions made and actions taken; there are accurate documented records that demonstrate proper ethical standards are observed; and that the documented procurement records provide an audit trail of the procurement process. Respondents, however, disagreed (mean = 1.56; std dev = 0.969) that there is appropriate separation of duties within the procurement cycle.

### ***Procurement Function Performance***

The fourth theme that the study analyzed revolved around the performance of the procurement function. The aim in this case was to assess the views of procurement officials on the issue of procurement function in their respective regulatory agencies. Table 2 presents the respondents' views on this subject.

Table 2: Descriptive Statistics for Procurement Function Performance

		n	Min	Max	Mean	Std. Dev
i.	Procurement function ensures that there is compliance with all relevant guidelines.	64	4	5	4.89	.032
ii.	Procurement function in our agency is discharged with transparency and accountability.	64	2	5	4.38	.627
iii.	Procurement function in our agency is discharged with probity (probity).	64	4	5	4.20	.078
iv.	Procurement function in our agency is discharged with confidentiality of information	64	1	5	4.46	.728

Respondents strongly agreed (mean = 4.89; std = 0.032) that procurement function ensures that there is compliance with all relevant guidelines. It was also agreed (mean  $\approx$  4.00; std < 1.000) that procurement function in the agencies is discharged with transparency and accountability; procurement function in the agencies is discharged with probity (probity); and that procurement function in the agencies is discharged with confidentiality of information. The foregoing findings underscore the importance of enhancing the performance of the procurement function in regulatory agencies.

### Inferential Analysis

The study sought to establish the relationship between accountability and transparency, and performance of the procurement function in regulatory agencies in Nairobi County. To achieve this, Pearson's correlation analysis was employed. The pertinent findings emanating from correlation analysis are outlined in Table 3.

Table 3: Correlation Analysis between Accountability and Transparency, and Performance of Procurement Function

		Performance of Procurement Function
<b>Accountability and Transparency</b>	Pearson Correlation	.773**
	Sig. (2-tailed)	.000
	n	64

\*\* . Correlation is significant at the 0.01 level (2-tailed).

The findings of the correlation analysis indicated that there exists a strong, positive and statistically significant relationship between accountability and transparency on one hand and performance of procurement function on the other hand ( $r = 0.773$ ;  $p < 0.01$ ). Interpretatively, enhancing accountability and transparency in the procurement process would significantly improve the procurement function performance. On the other hand, diminished accountability and transparency would likely negate procurement function performance in the aforesaid agencies.

### Summary

It was agreed that the procurement procedures in their corporations are fair and equitable; procurement procedures ensure there is value for money; contracting authorities are able to justify the decisions made and actions taken; there are accurate documented records that

demonstrate proper ethical standards are observed; and that the documented procurement records provide an audit trail of the procurement process. It was, nevertheless, disputed that there is appropriate separation of duties within the procurement cycle amongst the regulatory agencies in Nairobi County. The findings of the correlation analysis indicated that there exists a strong, positive and statistically significant relationship between accountability and transparency on one hand and performance of procurement function on the other hand ( $r = 0.773$ ;  $p < 0.01$ ). It was strongly agreed that procurement function ensures that there is compliance with all relevant guidelines. It was also concurred that procurement function in the agencies is discharged with transparency and accountability; procurement function in the agencies is discharged with probity and that procurement function in the agencies is discharged with confidentiality of information. The foregoing findings underscored the importance of enhancing the performance of the procurement function in regulatory agencies in Nairobi County.

## CONCLUSIONS AND RECOMMENDATIONS

The study concluded that there is fairness and equity in procurement procedures amongst regulatory agencies in Nairobi County. It was further concluded that the contracting authorities are able to justify the decisions made and actions taken possibly because there are accurate documented records that demonstrate proper ethical standards are observed. It was also inferred that, the presence of appropriate separation of duties within the procurement cycle amongst the regulatory agencies in Nairobi County was disputable. More so, the study deduced that accountability and transparency are consequential on the performance of the procurement function.

It is recommended that accountability and transparency should be upheld in the entire process of procurement. The foregoing is bound to negate corruption from fraudulent procurement officials. Scholars and researchers are advised to embark on a comparative study on the procurement process in both public and private sector.

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