

# **FACTORS AFFECTING COMPLIANCE WITH THE PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS IN KENYA**

## **A CASE STUDY OF COUNTY GOVERNMENT OF NYAMIRA**

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### **Abstract**

*The study dealt with factors affecting compliance with the public procurement and Disposal Regulations with special reference to Nyamira County, Kenya. The study concentrated on three variables:- Effect of training on compliance to Public Procurement regulations; Effect of Ethical practices during tendering process on compliance to PPDR and How does enforcement mechanisms affect compliance to public Procurement and Disposal Regulations. This study was conducted through a descriptive survey research design. The study involved 80 officers drawn from 13 county departments representing senior, middle and lower management. Literature related to this study was reviewed based on the variables of Training; Ethics and Enforcement as factors that affect compliance to Public Procurement and Disposal Regulations in Nyamira County. Data was collected by use of questionnaire and reliability of research instruments was tested using test-retest. From the research findings it was be concluded that Training on PPDR, ethical practices during tendering process and enforcement mechanisms influences the compliance of procurement and Disposal Regulations in Nyamira County.*

*Keywords: Public Procurement, Regulations, Ethics, Training, Compliance*

## INTRODUCTION

Public Procurement has always been a big part of the developing countries economy accounting for an estimated 9-13% of the developing nations Gross Domestic Product (GDP) and it is therefore an area that needs attention in the face of increasing non compliance (Odhiambo and Kamau, 2003). Procurement managers and stakeholders in the Public Service serve institutions created and governed by a complex array of statutes, regulations, policies, and directives. They operate in an environment of increasingly intense scrutiny and accelerated changes driven by technology, program reviews, and public and political expectations for service improvements. These combined result into growing institutional complexity and risks. However Ntayi (2009) observes that millions of dollars get wasted due to inefficient and ineffective procurement structures, policies and procedures as well as failure to impose sanctions for violation of procurement rules thus resulting in poor service delivery. Public procurement is the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). The level of compliance to procurement regulations can therefore determine whether a government meets its goals and objectives or not as well as affect many internal and external stakeholders (Sarah Eyaa, 2011).

In order to improve the management of public procurement, many countries have come up with procurement reforms. According to Arrowsmith and Trybus (2003) the last decade of the twentieth century has witnessed the start of the global evolution in the public procurement. Nonetheless, Thai (2005) asserts that challenges in public procurement go beyond procurement regulations to include procurement process, methods, organizational structure and work force. Compliance is a problem not only in the third world countries but also evident in the countries in the European Union. Gelderman et al., (2006) further advances reasons for non - compliance is explained by the tendency to avoid red- tape involved in the procurement process. However Sewanyana (2009) asserts that the type of goods and services procured sometimes influences the degree of compliance with the procurement regulations.

The public procurement system in Kenya has evolved overtime from a crude system with no regulation to the current orderly and legally regulated procurement system. Initial regulations on government procurement were contained in the supplies manual of 1978 and supplemented by circulars that were issued from time to time by the treasury. The Director of Government supply services was responsible for ensuring proper observance of the provisions of the manual. The manual created various tender boards for adjudication of the tenders and their awards (Public Finance notes, Treasury, June 2012).

A review of public procurement carried out in 1999 unearthed a number of challenges. Among the key flaws note was that there was no uniform procurement system for the public

sector. Besides, the system that existed did not have sanctions against persons who breached the regulations in the Supplies manual, other than internal disciplinary action. Consequently, application of the rules was not strict and many of the norms were not followed. Moreover, the supplies manual did not cover procurement of works and the dispute settlement mechanisms to the award procedures as set out in the manuals were weak and unreliable for ensuring fairness and transparency. Records of procurement transactions in many cases were not found to be inaccurate or incomplete or absent which led to the suspicions of dishonest dealings at the tender boards. The prevailing public procurement system had other institutional weaknesses that not only undermined its capacity for carrying out its mandates effectively but also led to a public perception that the public sector was not getting maximum value for money spent on procurement.

In view of the shortcomings, it was found necessary to have a law to govern the procurement system in the public sector and establish the necessary institutions to ensure that all procurement entities observed the provisions of the law for the purpose of attaining an open tendering system in the sector. Consequently, the exchequer and audit (public procurement) regulations 2001 which created the public procurement Directorate (PPD) and the public procurement complaints, Review and Appeals Board (PPCRAB) were put in place.

The PPD and the PPCRAB, though largely independent in carrying out their activities, had been operating as departments in the Ministry of finance on which they relied on for staff, facilities and funding. Since the above institutional arrangements have potential for undermining the impartiality of the bodies in the long run it was found necessary to create an oversight body whose existence was based on the law. The public procurement and Disposal Act, 2005 was thus enacted and it became operational on 1<sup>st</sup> January 2007 with the gazettment of the public procurement and Disposal regulations, 2006.

Over the three years the procurement law has been in operation, several weaknesses have been identified complaints have been raised with regard to its efficiency and effectiveness. Long delays in procurement process, a lot of supply details that have to be evaluate before awarding tenders (KURA, 2012), many petitions ,unwarranted, surrounding procurement proceedings amongst others. The procurement law was to blame for non- use of ksh.110 billion allocated to various ministries over the 2011/2012 financial year. However, the Public Procurement Oversight Authority (PPOA) dismiss claims that government procurement procedures are too bureaucratic saying that the process only becomes long when due process is not followed.

It is against these controversies that this research looked for the gaps between the provisions of the Kenya Public procurement and Disposal Regulations and the existent of

compliance by the public entities. To locate and identify these gaps, the researcher examined the procurement operations of the County Government of Nyamira with an annual spend of Ksh. 4.5 billion.

### **Problem Statement**

Public procurement is a very important function in any government. In Kenya, the government spent about Ksh.300 billion in procuring goods, works and services in 2006 financial year (KISM, 2008). The object of the procurement reform in Kenya is to harmonize the processes of procurement in the public entities to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner while promoting a competitive local industry.

However, several allegations relating to irregularities in procurement processes are leveled against Public Entities (PE) and other stakeholders involved directly or indirectly in procurement are among the findings of ongoing financial reforms spearheaded by the Treasury. These allegations include inefficiency, delay in procurement due to long procurement processes, high cost of projects, lack of fairness, transparency and non-discrimination in the selection and award of government contracts, as well as inflating contract figures. Public Entities are also confronted with procurement issues such as professionalism, limited career development opportunities for procurement staff in the public service, and weak contract management (Treasury Notes on Financial Reform, 2006).

In its own way, the current system is working. But it's not working in an efficient manner. Compliance levels continue to be low in public entities in Kenya despite efforts by the Public Procurement Oversight Authority (PPOA) to put in place measures to improve compliance. Procurement audits carried out in PDEs from year to year reveals non – compliance with procurement Law and regulations. This study thus investigated the factors affecting compliance to public procurement and disposal Regulations, assessed structures, institutional arrangements, procurement processes, mandatory reporting requirements, stores, Inventory Management and how well they were working in the public sector.

### **Research Objective**

To study factors affecting Compliance with the Public Procurement and Disposal Regulations in Kenya: Case of County Government of Nyamira.

#### ***Specifically:***

- i. To assess the effect of procurement staffs' training with PPDR on compliance with the Regulations

- ii. To investigate the effect of Ethical practices during tender processing on compliance with PPDR
- iii. To find out the effect of County enforcement mechanisms on PPDR compliance

### **Research Questions**

Given the research objectives above the study sought to answer the following questions:-

- i. How does staffs' training with Procurement regulations affect compliance with Regulations?
- ii. What is the effect of ethics practices during the Tendering process on compliance with the Public procurement and Disposal Regulations?
- iii. How does enforcement mechanism on PPDR affect compliance with the Public procurement and Disposal Regulations?

### **Justification of the Study**

The study was relevant in that the findings will not only add to the general procurement body of knowledge concerning factor impeding compliance to public procurement Regulations but also help stakeholders in mapping out appropriate strategies to enhance absolute compliance and make regulations practicable. Authorities of Public Procurement and Disposal Management who shall be privy to the final recommendations may also lobby to strengthen or even amend the provisions of the Regulations. The study shall also argue the knowledge of the researcher on practice of procurement in public sector. The students who may also wish to undertake similar study in the near future will also find this project a worthy reference material for their project undertaking.

### **Scope of the Study**

This study will endeavour to investigate factors affecting compliance with the public procurement and disposal Regulations in the public sector. In this regard, the research covered the County Government of Nyamira Headquarters was. Research was administration of the Accounting officer of the County, the Director of procurement, 8 chief officers and county Executive officers 15no. Procurement staff, 20 Suppliers and 29 number staff from all departments. These officers were very instrumental in determining the way procurement operations are done. The accounting officer is charged for ensuring that all institutional frameworks to safeguard the procurement law are put in place as provided by the law. Procurement officers are the ones directly in charge of the procurement division and therefore

have a lot of knowledge in daily operations of the procurement activities .They are also an interface between the county and the suppliers.

### **Limitations of the Study**

The study was limited by factors such as lack of cooperation from officers who might have been apprehensive to grant fullest disclosure of all material facts as regard to the objectives of the research for fear of reprisal from their seniors. In addition, the study does not fully cover all cross sectional and longitudinal procurement entities, as National government procurement entities have been left out, which are also public. Future studies should consider being longitudinal in nature as well as extending to the National Government Entities and Government corporate and Embassies.

## **LITERATURE REVIEW**

### **Theoretical Literature**

#### ***Resource Based Theory***

Penrose (1959) provided insights of the resource perspective of the firm. However, Resource – based view of the firm proper (RBV) was postulated by Wernerfelt (1984) and subsequently propagated by Barney’s (1991) work. Other authors such as Zahra & George (2002); Mahoney & Pandian (1992) and Dierickx & Cool (1989) also made immense contributions to its conceptual development.

The Theory lays a lot of emphasis on the importance of corporate resources and their general influence and impact on performance. The theory postulates that every organisation is endowed with its unique resources that enable it to remain competitive in the dynamic market, by addressing the rapidly changing business environment (Helfat, 2007). Such resources may include financial, human, physical, technological and information and they must be valuable, rare and non- constitutable (Crook, Ketchen, Combs & Todd, 2008). Lopez (2005) criticizes that mere possession of resources does not confer an organisation competitive advantage, rather, the resources must ne planned, organised, coordinated and implemented in a coherent manner. Compliance to the Public Procurement and Disposal Regulations requires Public Procuring entities to have capabilities in terms of professionally trained staff and competent corporate leaders to direct staff on how to partake the functions of the procurement functions as stipulated in the provisions of the PPDR.The study adopted this theory to asses if Procuring Entities employs professionally qualified and trained staff in procurement, corporate and Tender committee levels, level of their competence and the extent to which the staff are familiar with PPDR.

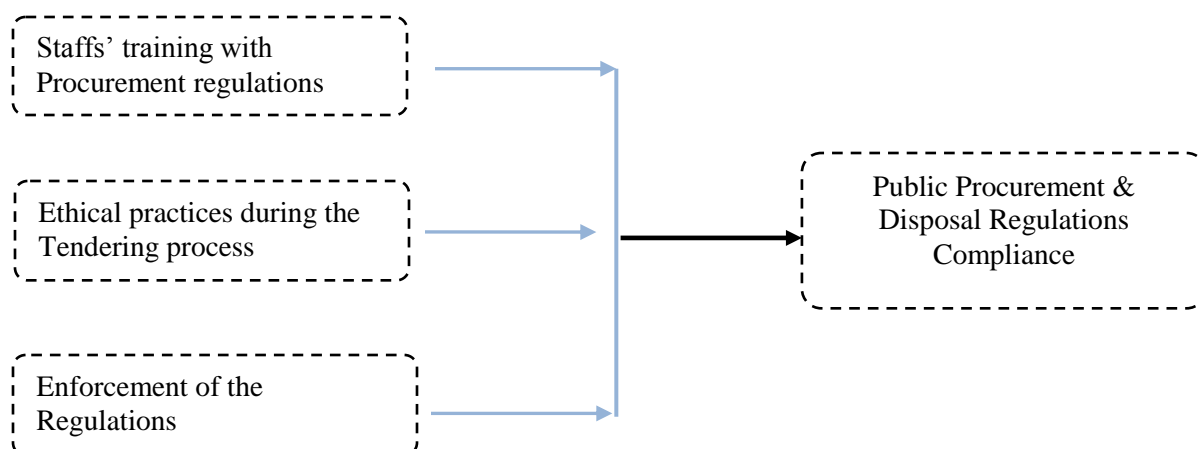
### ***Institutional theory***

According to Scott (2004), Institutions are composed of cultural- cognitive and regulative elements that, together with associated activities and resources give meaning to life. The Author explains three pillars of institutions as regulatory, normative and cultural cognitive. The regulatory pillar emphasizes the use of expedience as basis for compliance. The normative pillar refers to the norms or the way in which things are done in every organization and values, social obligation being the basis of compliance. In Kenya, Public procurement is guided by the article 227 of the Constitution of Kenya 2010, PPDA Act, 2005, Rules and Regulations, 2007 & 2013, Treasury & PPOA Circulars and PPOA Manuals which must be complied in totality.

### ***Principal Agent Theory***

The Principal Agent Theory was advocated by Donahue, (1989). The theory explains that procurement managers in public procurement sector play a relationship role. But his findings are based on Buyer – Supplier relationship and the need of the buyer, as the principal, to minimize the risks posed by the agent. The author argued that procurement managers including all civil servants concerned with the public procurement must play an agent role. Therefore, procurement, managers take on the role for elected leaders. The principal- agency theory holds that the skirting is likely to occur when there is some disagreement between policy makers and bureaucracy. The democratic perspective focuses on responsiveness to citizens and their representatives. The democratic perspective focuses on the responsiveness to citizens and their representatives (strom 2000; Lupia 2003). However, Soudry (2007) identifies this principal / agent relationship among the possible risks whereby procurement managers show apathy towards principal's preferred outcomes or even overriding of the principals preference thus resulting into non – compliance.

Figure 1: Conceptual Framework



## **Empirical Literature**

### ***Staffs' training or familiarity with Procurement regulations***

The procurement process follows laid down procedural steps according to PPDR of 2007 and 2013. These steps form the procurement cycle. The Regulations envisages that all these steps along the procurement cycle must be followed by all persons involved in the procurement process. These steps include procurement planning; Need Identification, Determination of procurement procedure; Drawing up of Bill of Quantities / specifications; Drawing up of qualification criteria; making tender documents, Inviting bidders; closing and opening of tenders; Evaluation of tenders; Post qualification; Tender committee adjudication and award; drawing up of contracts; contract performance and delivery; Payment and Vendor Evaluation (post delivery) (PPDA, Act, 2005).

According to De Boer and Telgen (1998), one of the poignant factors of procurement law non-conformance is the level of awareness or familiarity with the procurement regulations. De Boer and Telgen (1998) observe that during the early days of the operationalization of procurement regulations in Netherlands, many Municipalities found it difficult to comply with the regulations because they were not familiar with them. Gelderman et al., (2006) confirms this observation when he conducted a survey on compliance with EU Procurement directives. Given the fact that the procurement profession is still burgeoning in Kenya having come into force in 2005, it is highly possible that the level of awareness with the procurement regulations is still low. It is also possible from the other hand that those who are familiar with the regulations know it smart enough to beat the loopholes inherent in the regulations to their utter advantage. Research has shown over time that familiarity with procurement regulations by all concerned procurement persons may highly affect the level of compliance. According to Charles & Oludele (2003), many non-executive directors in Africa are always used as rubber stamps for decisions taken outside the board and their limited understanding of the procurement regulations often exposes them to manipulation by management and principal shareholders thus playing no meaningful role in ensuring procurement regulations compliance.

### ***Ethical practices during the Tendering process***

Ethics is a set of principles, values, practices that guide public officials in their service delivery to the citizenry. If not carried with utmost ethical standards, procurement is very vulnerable to malpractices. Elsheman (2002) observes that procurement process offers the most potential for ethical violation or abuses. Good procurement management practices should therefore identify areas of potential ethics pitfalls and address them ahead of time so that employees are well aware what undesirable practices to keep at bay. For procurement practitioners with Chartered



Institute of procurement and Supply (CIPS, UK), a code of procurement professional Ethics is available upon registration of membership which envisages standard moral practices to be embraced by all its members. The Kenya Institute of Supplies Management (KISM) also launched codes of Ethics for Supplies Practitioners in 2012 to guide practitioners to embracing best practices in their daily procurement operations failure to which they shall be exposed to appropriate disciplinary action. Without such disciplinary mechanisms, it is highly likely that procurement law non-compliance will continue to thrive unchecked at the expense of personal growth, leading to declined profession as a whole. The Public Officers Ethics Act (2005) Financial Regulations, and Leadership and Integrity Act, 2012 are legislative enactments that seek to guide and regulate the manner in which public officials undertake their duties.

### ***Enforcement of the Regulations***

The other research study objective was establishing the level of enforcement of procurement regulations by both internal and external agencies. According to Zubcic and Sims (2011), enforcement of regulations could be broadly viewed as any actions taken by the regulators to effect enforcement on compliance. Cunningham and Kagan (2007) also agree that enforcement also improves compliance. According to Zubcic and Sims (2007), enforcement actions and increased penalties lead to greater levels of compliance with the laws. According to Nwabuzor (2005), corruption among government procurement officials in developing countries such as Bangladesh, India, Sri Lanka and Nigeria have been linked to weak enforcement of the rule of law. In countries with strong bidding mechanisms, bidders are allowed to participate in all procurement process and can lodge review complaint if they deem the procurement process was not in consonance with the regulations. Such bidder participative mechanisms are a strong force for procurement officials to abide by the regulations (Hui et al, 2011). Gunningham and Kagan (2005) observes that the threat of legal sanctions is essential to regulatory compliance and that enforcement action has cumulative effect on the consciousness of regulated companies and it reminds companies that circumvention of law will never go unpunished. Gunningham and Kagan (2005) observe that the end product of a sustained enforcement action is an inherent culture of compliance to procurement regulations by all and sundry.

The PPOA is the main procurement oversight Authority which is mandated to conduct investigations into public sector procurement malpractices (PPD Act, 2005) and forward the recommendations to the Ethics and Anti -Corruption Commission for auctioning and prosecution. Also working closer on enforcement of procurement regulations is the Kenya national Audit office (KENAO) which audits all public funded entities and tables its report to

parliament on a quarterly or annual basis for action. The audits are governed by PE's work plans hence providing a basis for good internal and external audit mechanisms.

### **Summary**

While there have been developments in the compliance to the Public Procurement and Disposal Regulations, there are still challenges to be addressed to realize full benefits of compliance to public procurement and Disposal Regulations. Some of the notable challenges include; institutional and professional capacity challenges (PPOA, 2007), political interference with the implementation of the regulations (CCG, 2207) and the low level implementation of Information Communication (ICT) tools (KIPPRRA, 2010). Most of the literature shows that there is an abuse of procurement rules and Regulations, but very little is said in the factors that affect compliance to public procurement and Disposal Regulations which seems to be the missing gist in the abrasive regulations that have been established.

### **Critique of the Literature**

Gelderman et al., (2006) in his study on compliance with EU observed that many entities do not comply with the procurement regulations because they are not familiar with them or the organizations are still burgeoning. The researcher of this project agrees that familiarity to procurement regulations can affect compliance but disagrees on the lifecycle of an organization being a reason enough for organizations not to comply with the regulations. Zubcic Sims (2011) delves into enforcement mechanisms to enhance compliance to Public procurement regulations. According to the study, enforcement actions and increased penalties lead to greater levels of compliance with procurement laws. In countries with strong bidding mechanisms, bidders are allowed to participate in all procurement process and can lodge review complaint if they deem that the process was not in consonance with the provisions of the regulations. Such bidder participative mechanisms are a strong force for procurement officials to abide by the regulations (Hui et al, 2011). That much said, the researcher did not delve into how effective are bidder review mechanisms in enhancing compliance levels to procurement regulations compliance. Are bidders utilizing such review opportunities to check procurement processes that were an affront to the regulations? These questions were not addressed by the study.

### **Research Gaps**

From the analysis of the literature on factors affecting compliance to procurement regulations, the researcher identified that there was a need for research on factors affecting compliance to procurement regulations and how such factor are impact on the procurement process.

The research studies also missed on how longevity of service of staff or existence of an organization affect familiarity of staff to procurement regulations which factor also affects compliance to procurement regulations. Moreover, the studies did not consider how the education levels of officers managing the procurement process affect compliance to PPDR. The aims of the Public Procurement and Disposal Regulations were to ensure value for money, promote fairness, transparency and non-discrimination in public institutions with the cardinal aim of ensuring efficient utilization of exchequer funds. However, research studies reveal that even after the enactment of the PPDR, there are still loses of public funds that can be attributed to public procurement. Further, studies indicate dissatisfaction among stakeholders brought about by the loopholes left by the regulations which may be used by dishonest people to make the process inefficient ( Jane Onyinkwa, 2013).

## RESEARCH METHODOLOGY

### Research Design

The research design is a logical plan for getting from initial set of questions to the conclusion (Yin, 1994). This research study adopted a descriptive survey research design. This kind of survey design attempted to collect data by administering questionnaires to a sample of individuals (Orotho, 2003). The researcher inferred information about a population based on responses of a sample drawn from the population.

### Target Population

The study targeted 80 employees and suppliers of the County Government of Nyamira. The County has a total of 320 permanent employees and 307 casual workers and those inherited from the defunct Local Authority. Only permanent employees participated in the study since casual workers are not consistently present in the county.

Table 1: Target Population for the Study

County Government of Nyamira	Target Population (N)	Percentage (%)
Top management	40	12.5
Middle management	80	25
Lower level management	120	37.5
Contractors	80	25
<b>TOTAL</b>	<b>320</b>	<b>100</b>

## Sampling Design

Both size and randomness are largely applicable in quantitative studies. The larger the sample sizes the better the results. Larger size of sample provides more chances of avoiding sample bias (Yin, 1994). The sample size consisted of select staff of the County Government of Nyamira ranging across all departments namely Procurement, Human Resource, operations, Works, Marketing, Finance & Accounts, and Internal Audit. It also covered the suppliers to the County Government of Nyamira, contractors and members of its specific and standing committees. The population was divided into several sub-homogenous groups from the total population as shown in table 2 below:

Table 2: Sample Size for the Study

Outlets	Target Population (N)	Ratio	Sample Size (n)
Top management	40	0.25	10
Middle management	80	0.25	20
Lower level management	120	0.25	30
Contractors	80	0.25	20
<b>TOTAL</b>	<b>320</b>		<b>80</b>

## Research Instruments

Questionnaires, interviews and document analysis of items such as budgets, procurement plans, procurement project files, tender minutes, evaluation reports and tender contracts were used to collect data for the evaluation of factors affecting compliance to Public Procurement and Disposal Regulations.

The questionnaires were structured in such a way that they elicit specific information from the respondents. The questions comprised of multiple choice, open-ended and dichotomous questions. In addition, Likert scale attitude type of questionnaires was used to evaluate the strength of attitudes held by the respondents. There were two sets of questionnaires to be filled by the respondents; one for piloting and the other set for final data collection. The strength of questioning as a primary data collection technique was its versatility. It does not require that there be a visual or other objective perception of the information sought by the researchers (cooper& Schindler, 2000).

## Pilot Testing

A pilot test was carried out on 10 respondents different from the 60 main respondents to detect any weaknesses in the design and instrumentation. In order to provide proxy data for selection

of a non-probability sample, the questions were revised. The questionnaires were designed to reflect the feedback obtained from the pilot test and respondents gave their views personally. Since the study involved self-administered type of data collection, questionnaires were revised to reduce cases of ambiguity.

### **Validity & Reliability of Research Instruments**

According to Mugenda and Mugenda (1999) validity refers to the accuracy and meaningfulness of inferences, which are based on the research results. It is the degree to which results obtained from the analysis of the data actually represent the phenomenon under study. The content validity of the instrument would be determined in two ways; first, the researcher discussed the items in the instrument with the supervisors, colleagues and other lecturers in the institution. The advice given by these people helped the researchers determine the validity of the research instrument.

Secondly, piloting was carried out to establish the validity of the research instrument. For the research instrument to be considered valid, the content selected and included in the questions must also be relevant to the variable being investigated (Kerlinger 1973). According to Mugenda and Mugenda (1999), the reliability of an instrument is the measure of the degree to which a research instrument yields consistent results or data after repeated trials. In order to test the reliability of the instrument to be used in the study, the test- retest method was used. The questionnaire was administered twice within an interval of two weeks. This helped establish the extent to which the questionnaire elicited the same responses every time it is administered.

### **Data Analysis & Presentation**

After data collection, it was coded and thematic analysis was used. Descriptive Statistical analysis was also used (Orotho, 2009) to show the frequencies and percentages of various responses. Excel computer package was also used to present the analysis in tables.

## **RESULTS AND DISCUSSION**

The researcher prepared 80 copies of questionnaires for this study that were issued to 80 respondents. The response rate was 75 per cent which is a good rate that one can depend on to make conclusion and recommendation. According to Hagger et al., (2003) the researcher should strive to achieve a response rate of 50 per cent, 60 per cent or 75 per cent. And the response was 75 per cent as shown in table 3.

Table 3: Response Rate

Response	Frequency	Rate (Percentage)
Responded	60	75
No Response	20	25
<b>Total</b>	<b>80</b>	<b>100</b>

## Demographic Information

### *Respondents' Age*

Table 4: Respondents' Age Bracket

Age (Years)	Frequency	Rate (Percentage)
20-30	10	16.7
31-40	19	31.7
41-50	24	40.0
Above 50	7	11.6
Total	60	100

In Table 4, study results showed that most respondents were in the age bracket of 41-50 comprising 40 per cent followed by age bracket of 31-40 with 31.7 per cent and 20-30 age bracket comprising of 16.7 per cent and above age of 50 comprising of 11.6 per cent respectively. This points to the fact that most of the respondents were experienced since they had worked long enough to be conversant with the operations of the Public Sector.

Table 5: Respondents' Composition according to Gender

Gender	Frequency	Rate (Percentage)
Male	28	47
Female	32	53
Total	60	100

Table 5 showed that of the 60 respondents, 47% were male while 53% were female. This implies that more females were employed than males.

Table 6: Respondents' Educational Qualifications

	Frequency	Percent
Postgraduate	6	10
Degree	33	55
Diploma	21	35
Total	60	100

In terms of the highest qualifications of the study respondents, the study established that majority (55%) of the respondents had a bachelor's degree, 35% had a college diploma while 10% of the respondents had post graduate education. This suggests that all study respondents had adequate educational qualifications to read and understand the provisions of the PPDR.

Table 7: Respondents' Work Experience

Number of Years worked	Frequency	Percent
Less than 5 years	33	55
5-10 years	6	10
Over 10 years	21	35
Total	60	100

Table 7 shows the number of years the respondents have worked at the County Government of Nyamira. 55 per cent have worked for less than 5 years; 10 per cent have worked for 6 years and 35 per cent have worked for over 10 years. 33 respondents comprising of 55 per cent are likely to be new recruits soon after the new constitution established county Governments whereas 35 per cent would be the staff inherited by the County Government from the defunct Local Authority.

### **Effect of Procurement Training on compliance to PPDR**

These set of questions were aimed at establishing whether the participants to the public procurement proceedings were adequately trained to the law with more emphasis on the regulations, whether they have ever participated in the procurement process. The researcher therefore sought to find out whether training in procurement affects compliance to PPDR. The results were tabulated as hereunder; -

Table 8: Frequency of Training and Participation in Procurement Process

	Frequency	Percent
Yes	27	45.0
No	33	55.0
Total	60	100.0

The respondents were asked to answer questions on whether they have ever attended any training on the Public procurement and Disposal Regulations, and if they have ever attended the procurement process.

**Respondents' Response of Effect of training on their compliance to PPDR**

Table 9: Those that have ever had training on PPDR

	Frequency	Percent
Ever faced challenges with the procurement process?	22	81.5
Never faced challenges with the procurement process	5	18.5
Total	27	100

Bar Chart 1: Effect of Training on Compliance to PPDR

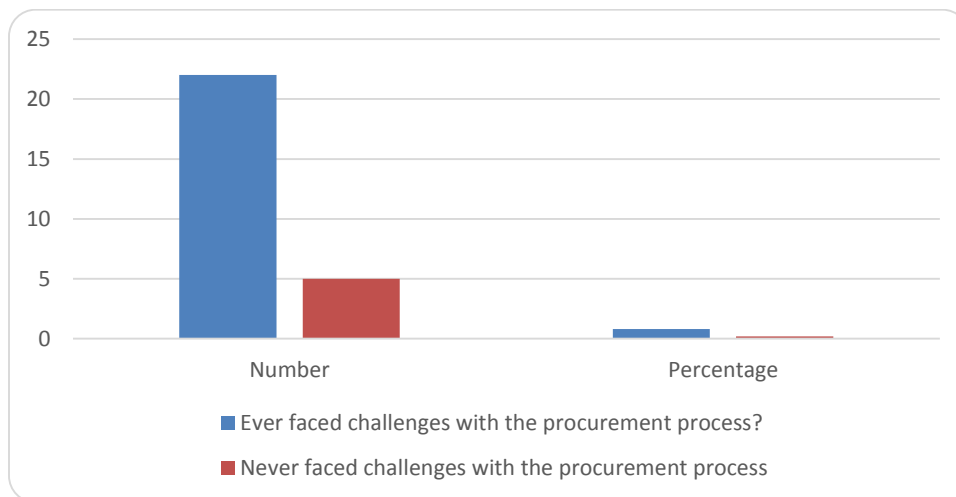


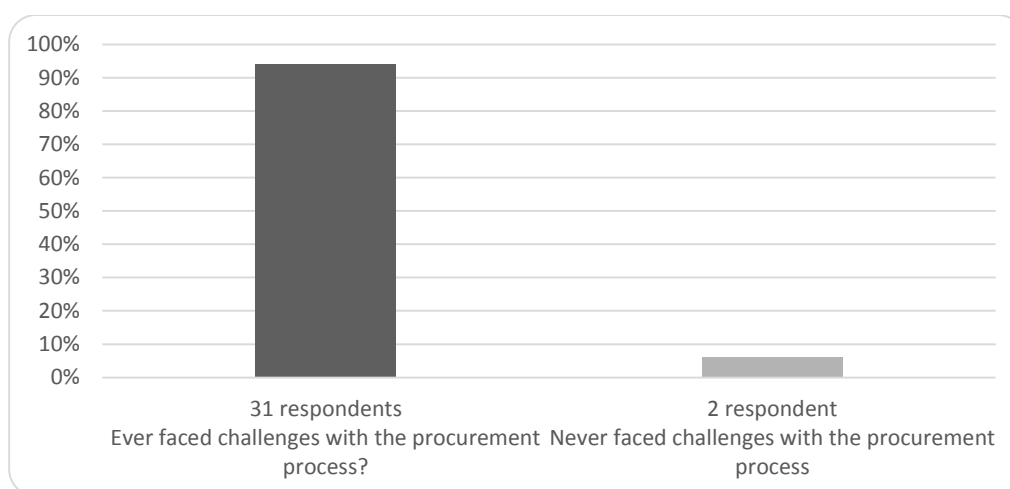


Table 10: Those that have never had training on PPDR

	Frequency	Percent
Ever faced challenges with the procurement process?	31	94
Never faced challenges with the procurement process	2	6
Total	33	100

Bar Chart 2: Effect of Training on Compliance to PPDR

## a) Those that have never had training on PPDR



The analysis indicates that the majority of the respondents are not trained in procurement (55 per cent) against 45 per cent who have training in PPDR.

This could be attributed to the county governments being newly established institution of devolved governance brought about three (3) years ago by the new constitution. This partly explains why it is difficult to comply with the Public Procurement and Disposal regulations.

Of the 27 respondents who were trained in PPDR, 81.5 per cent comprising of 22 respondents had never experienced challenges in complying with the provisions of PPDR against 18.5 or 5 respondents.

On the other hand, out of 33 respondents who were not trained in PPDR, 94 per cent or 31 had challenges or difficulties complying with PPDR against a paltry 6 per cent comprising of 2 respondents.

Table 11: Participation in Tendering Process

	Frequency	Percent
No.	12	20.0
Yes	48	80.0
Total	60	100

The study also sought to know to whether the respondents have participated in on job training through incorporation in tendering process. The table 11 indicates that 80 per cent of the respondents have participated in tendering process either as members to tender committees including tender opening, tender processing and disposal committees or as requesters for their departments. This, however, does not seem to give them the much required exposure to PPDR.

### Internal Controls and Enforcement Mechanisms

The researcher sought to know the effect of enforcement mechanisms on compliance to the Public procurement and Disposal Regulations in Nyamira County. Using five items in the questionnaires and the respondents responses are as shown in the tables below:

Table 12: Ever experienced internal problems with procurement process

	Frequency	Percent
No	12	20.0
Yes	48	80.0
Total	60	100.0

Table 13: Establishing whether the user departments and suppliers complain procurement irregularities to Head of procuring entity or PPOA

	Frequency	Percent
No	36	60.0
Yes	24	40.0
Total	60	100.0

Table 14: Determination of agreeability on whether the Issue was addressed for those respondents who complain (24 respondents)

	Frequency	Percent
No	20	83.3
Yes	4	16.7
Total	24	100.0

Bar Chart 3: Effect of Internal Enforcement on Compliance to PPDR

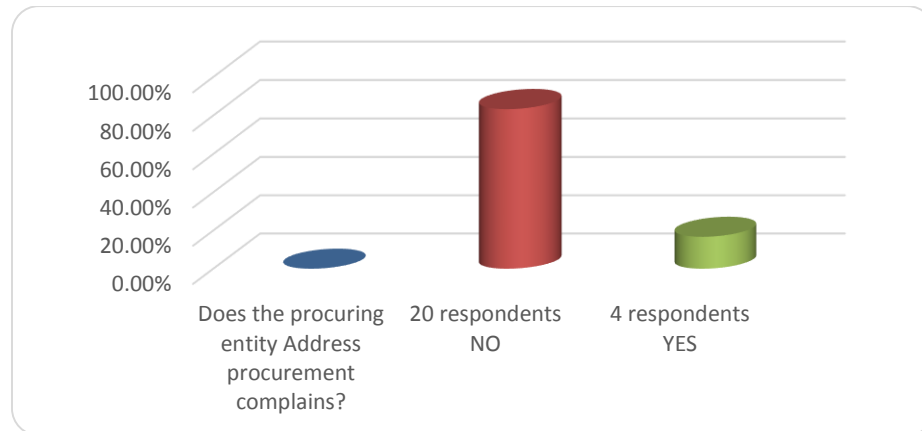
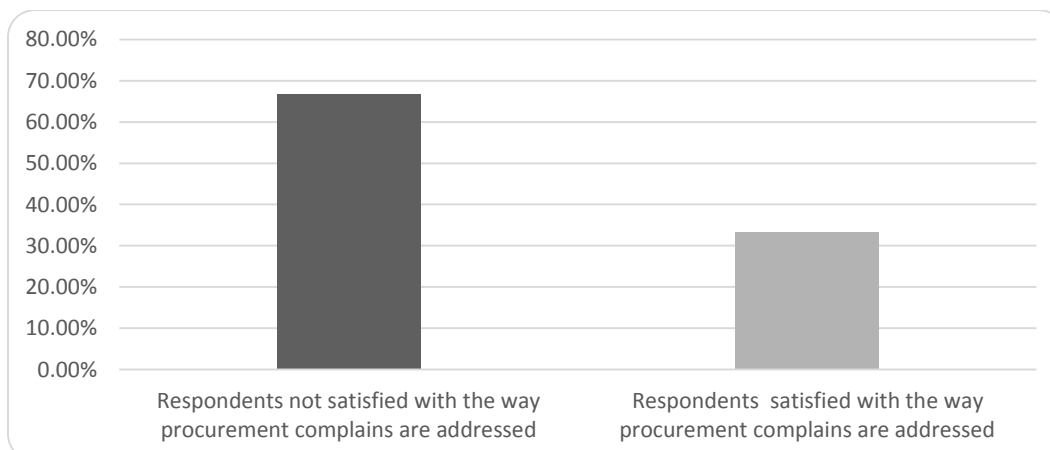


Table 15: Response on level of satisfaction of procurement complains addressed

	Frequency	Percent
No	16	66.7
Yes	8	33.3
Total	24	100.0

Bar Chart 4: Level of satisfaction on the way complains are addressed



The study as revealed above sought to find the extent to which the respondents channels their views on procurement process and how the complains are handled in the organization as far as the carrying out of procurement operations are concerned. 80% of the respondents indicated they have ever had a problem with procurement process against 20%. Of the 80% who had a problem, only 40% complained to PPOA or the procuring entity. 83.3% of the reported complains were not addressed at all which left 66.7% of staff in user departments unsatisfied. This lack of internal controls and enforcement mechanisms could be one of the reasons why the Public procurement and Disposal Regulations are not implemented as required of law.

Table 16: Awareness of Public Procurement Administrative Review and systems

	Frequency	Percent
Yes.	13	21.6
No	47	78.3
Total	60	100.0

The researcher sought to find out from the respondents whether they were aware of the existence of the redress mechanism available with the Public Procurement administrative Review Board to guard against maladministration and circumventing of procurement regulations by public procuring entities. Out of 60 respondents, 21.6 per cent respondents indicated that they were aware of the existence of such provisions, 78.3 per cent indicated that they were not aware of the existence of such redress mechanisms.

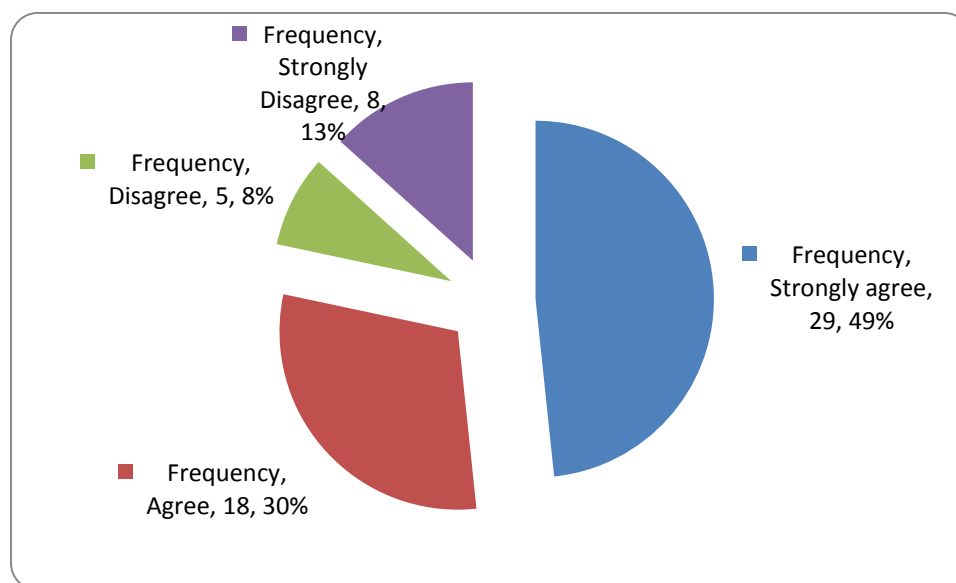
The analysis indicates that most of the respondents including contractors and suppliers were not well aware of the existence of the public procurement administrative appeals Board and opportunity to challenge suspect tender award decisions inconsistent with the provisions of the PPDR. The interview which was done on 12 respondents and document analysis from high value projects in construction works shows that no appeals have been lodged with PPARB since the county come to its existence but contactors only verbally complain after letters of tender notifications are issued out. Many suppliers are not aware of the existence of PPARB as well.

In many public entities in Kenya, ignorance of this important tender appeals mechanism by the stakeholders could be an enticement to those charged with implementing the Public procurement and Disposal Regulations circumvent conformance.

Table 17: Response whether weak enforcement measures of procurement and Disposal Regulations contribute to non- compliance to PPDR

	Frequency	Percent
Strongly agree	29	48.3
Agree	18	30
Disagree	5	8.3
Strongly Disagree	8	13.3
Total	60	100

Pie Chart 1: Response whether weak enforcement measures of procurement and Disposal Regulations contribute to non- compliance to PPDR



According to the results in table 17 and pie chart 1. above, 48.3 per cent opine that weak enforcement measures of PPDR contributes to its non- compliance with 30 per cent more agreeing and 8.3 per cent disagreed and 13.3 per cent strongly disagreed.

### Effect of Ethical practices during tendering process on Compliance to PPDR

The study sought the opinion of respondents whether the officers serving in the procurement division are qualified as required of the Act and Regulations and also whether the various committees do make informed decisions and are competent in their work. The study also aimed at measuring the level of transparency of procurement process in the County Government of Nyamira, establish whether the procurement opportunities are advertised in the appropriate

medium as per the Act and Regulations, and establish whether contracts are posted to the website and if there is effective monitoring of procurement activities and debriefing of unsuccessful bidders in a timely manner.

Table 18: Procurement staff qualified and experienced

	Frequency	Percent
<b>Agree</b>	24	40.0
<b>Strongly agree</b>	36	60.0
<b>Total</b>	60	100.0

The study results showed that 60 per cent of the respondents strongly agree that procurement staffs are qualified compared to 40 per cent who agree that they are qualified.

Table 19: Evaluation done by competent people

	Frequency	Percent
<b>Agree</b>	33	55.0
<b>Strongly agree</b>	27	45.0
<b>Total</b>	60	100.0

The study results showed that 45 per cent of the study respondents agree that evaluation of tenders is carried out by competent people.

Table 20: There's transparency in Procurement process

	Frequency	Percent
<b>Strongly disagree</b>	3	5.0
<b>Disagree</b>	15	25.0
<b>Agree</b>	27	45.0
<b>Strongly agree</b>	15	25.0
<b>Total</b>	60	100.0

The study results from the above table shows that 25 per cent of the respondents strongly agree that there is transparency in procurement process, comparing to 45 per cent who agree and 25 per cent & 5 percent who disagree & strongly disagree respectively.

Table 21: Opportunities Advertised in appropriate medium

	Frequency	Percent
Disagree	6	10.0
Agree	33	55.0
Strongly agree	21	35.0
Total	60	100.0

Table 22: Contracts posted on the website

	Frequency	Percent
Disagree	3	5.0
Agree	45	75.0
Strongly agree	12	20.0
Total	60	100.0

From the tables above, the results shows that 55% of the respondents agree that opportunities for procurement and award decisions are posted on the County Government of Nyamira's website and advertised using appropriate medium.

Table 23: Unsuccessful bidders debriefed timely

	Frequency	Percent
Disagree	3	5.0
Agree	39	65.0
Strongly agree	18	30.0
Total	60	100.0

The results from the above table shows that 65% of the respondents agree that unsuccessful bidders are given proper debriefing hence accorded the necessary opportunity for lodging litigations through the legal process provided by the regulations comparing to 30 per cent who strongly agree and 5 per cent who disagree respectively.

Table 24: Establishing whether procurement practitioners are held accountable

	Frequency	Percent	Valid Percent
Strongly disagree	3	5.0	5.0
Disagree	33	55.0	55.0
Agree	15	25.0	25.0
Strongly agree	9	15.0	15.0
Total	60	100.0	100.0

The study from the above table established that 65% of the respondents disagreed of the view that errant procurement officers in the public sector procurement are held accountable for dubious actions that contravenes the procurement regulations.

Table 25: Establishing if there have been sanctions against procurement officers

	Frequency	Percent
Strongly Disagree	12	20.0
Disagree	24	40.0
Agree	18	30.0
Strongly agree	6	10.0
Total	60	100.0

The study established from the above frequency table that 60% of the respondents disagreed that there have been sanctions against officers practicing procurement maladministration practices. This could be a clear indicator that public sector malpractices are a sum total of collusion of a network of officers participating in procurement proceedings and the failure by management to act on them is a litmus test for their involvement and interference in the process.

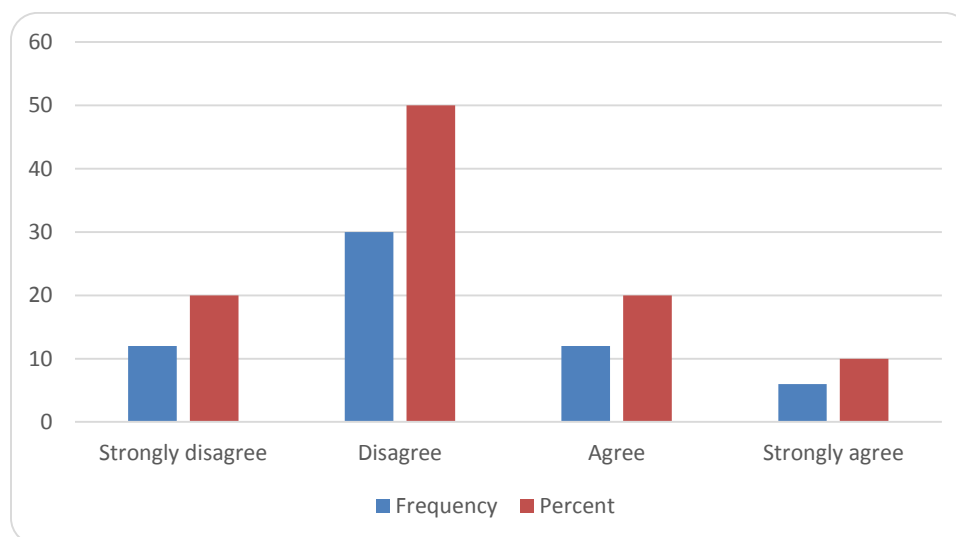
The respondents were asked if they thought stakeholders do observe business ethics during tendering process at the County Government of Nyamira.



Table 26: Upholding Business Ethics by All Stakeholders

	Frequency	Percent
Strongly disagree	12	20.0
Disagree	30	50.0
Agree	12	20.0
Strongly agree	6	10.0
Total	60	100.0

Bar Chart 5: Upholding Business Ethics by All Stakeholders



The outcome of research study on level of embracing good business ethics from the above table shows that 70% of the respondents hold the view that stakeholders don't uphold business ethics when transacting procurement business. Three respondents (Contractors) interviewed revealed to the study that they are sometimes forced to bribe Members of the County Assembly and Resident Engineers of the projects they have won to "cement friendly business relationships". This inherent lack of embracing proper procurement ethics by stakeholders' particularly involving suppliers and elected leaders and engineers is a greater inhibitor to complying with the quality works and services to confer value for money paid by the tax payers.

Finally the researcher sought to establish from the respondents in the light of the emerging weaknesses in public sector procurement, if it's prudent to have the PPDR amended and which particular provisions should be amended so as to provide reinforced safeguards to enhance compliance to the PPDR.

Table 27: Current procurement law should be amended

	Frequency	Percent
Strongly disagree	6	10.0
Disagree	3	5.0
Agree	9	15.0
Strongly agree	42	70.0
Total	60	100.0

The study revealed that 85% of the responded agreed that such PPDR should be amended against 15% respondents.

Table 28: Such Amendments will solve current problems

	Frequency	Percent	Cumulative Percent
Strongly disagree	9	15.0	15.0
Disagree	3	5.0	20.0
Agree	6	10.0	30.0
Strongly agree	42	70.0	100.0
Total	20	100.0	

From the above table, 80% of the respondents proposed that the amendments to the PPDR are aimed at correcting the errors and weaknesses that tolerate non-compliance will succeed in weeding out undesirable problems inherent in public sector procurement.

## SUMMARY OF FINDINGS

### Effect of procurement staffs' training with PPDR on compliance with the Regulations

The study revealed that a majority of respondents or staff have not attended any procurement training, conference or workshop. The study revealed further that for the few respondents who had received training on PPDR, they were able to administer procurement proceedings without material difficulties. On the other hand majority of untrained respondents also experienced severe difficulties in implementing the provisions of the Public procurement and Disposal Regulations.

### **Effect of Ethical practices during tender processing on compliance with PPDR**

Ethics is all about what is morally right and morally wrong, so procurement ethics is concerned with what is morally right in procurement as profession, (Wood, 1995). This is very important in procurement management because procurement staffs deal with suppliers and therefore represents the whole organization and that will determine the face of the organization towards the suppliers which may create goodwill or destroy it. Officials conducting procurement need to be able to demonstrate that their decisions are fair and equitable, and made in accordance with the law, agency rules and guidelines, and conditions of contract.

The study revealed that ethics has a major effect on compliance with the PPDR. Ethics involves all stakeholders and institutional frameworks such as tender committee deliberations, evaluation of bids and contract management during execution. Influence on procurement proceedings by the Members of the County Assembly on the contractors while executing task such as construction works has also been cited as a major contributor to non-compliance to PPDR.

Some of the unethical practices cited include evaluation of bids sometimes carried out by incompetent people and lobbying of tenders by stakeholders through corruption, extortion and bribery and lack of effective reporting system. Furthermore, one significant challenge that was realized from the study was in respect of accountability. In spite of procurement malpractices that manifests themselves in the procurement process, the concerned officers are not held accountable. And as such, no sanctions have been occasioned to those individuals who violate the procurement law.

### **Effect of County enforcement mechanisms on PPDR compliance**

The study revealed that weak enforcement of procurement regulations regime contributes to a greater extent to non-compliance to procurement regulations. The study revealed weak systems of procurement complains handling procedures and lack of proper reporting frameworks and holding of officers' abusing the provisions of PPDR. Transparency, proper bidder briefing and professional procurement practitioners were also factors revealed by the study to enhancing enforcement mechanisms that affect compliance to PPDR.

## **CONCLUSION**

The study found that training the staff in procurement will have a positive effect on the compliance to the PPDR as was indicated by the majority of the respondents. Training would equip those involved in the procurement process with the requirements of the regulations and improve their skills in specialized aspects of procurement. This agrees with the findings of

OECD (2005) which asserted that continuous training will ensure compliance learning, innovation and improvement. The county in conjunction with the PPOA, KISM and Chartered Institute of Procurement and Supply should organize sensitization training in PPDR 2007,009,2011 AND 2013 for all members of staff involved in county procurement. Further, the County should establish an annual supplier conference where procurement regulators should be invited to attend and train them on their rights and mechanisms of reporting suspect procurement processes in which they participate.

Based on the findings of the present study, the researcher further concludes that the workforce was not adequately educated in procurement law and serious consequences including breach of the regulations could emanate. This could be attributed to the fact that most counties are new organizations and have not put in place proper procurement structures to expose the staff to the required trainings necessary to increase PPDR compliance levels. The study also concludes that an ethical practice plays a very important role in influencing compliance of procurement and Disposal Regulations. However, a lot remains desired to be done to improve ethical standards because failure to comply with the procurement regulations can lead to major losses for exchequer funds.

The County Government need to institute measures to curb unethical practices like suppliers corrupting politicians to help them win lucrative tenders. This needs to be checked in order to ensure quality of works, goods and services delivered to the county by the contractors and Suppliers. There is also need to enhance transparency and accountability in the procurement process, alongside strengthening contract monitoring and oversight systems. The study also revealed that bidders in procurement process play a big role in increasing non-compliance levels to the PPDR. In a strong bidder review supported environment, bidders should put all procurement officers on toes by appealing suspect procurement decisions which may not have complied to the PPDR. But most bidders were found out to shy away from embracing such opportunities for fear of reprisals and possibly losing out on prime chances of being considered for favorable government contracts in the near future. This continues to hand rogue procurement officers- a lifeline – to continue making biased unethical tender decisions unchecked.

In addition, the study concludes that proper enforcement systems need to be embraced by the county Government in conjunction with the Public Procurement oversight Authority to help enhance compliance to procedures spelt out in the Public procurement and Disposal Regulations and uphold the spirit of transparency, value for money and fairness in public sector tendering.

## RECOMMENDATIONS

It is important to offer ethics education and draw county Ethics code of conduct to its entire staff that stands to play a role in procurement proceedings. This is to ensure that the staff is conditioned to ensure objectivity, transparency, accountability and fairness in awarding of public contracts. The code of ethics shall also serve as a guide on all staff on what is expected of them during all procurement operations.

The county should also train its procurement staff and stakeholders on the procedures, procurement matrix, methods of procurement, professionalism and excellence in implementation of PPDR so as to provide consistency in tender decision making and reduce costs that may relate to non-compliance such as poor quality costs and legal charges arising from litigations filed by aggrieved parties for discrimination in awarding of procurement opportunities in the county.

Public procurement Oversight Authority should enhance its oversight role by increasing the frequency of auditing procuring entities to ensure that proper enforcement is done to ensure that public bodies through their accounting officers put in place systems and practices to ensure that procurement process is implemented as per the provisions of law.

Kenya government ministries and state corporations should adopt ICT in procurement of works, goods and services. This will enhance the process of effective tendering through advertising, sourcing reviews, prequalification, potential for cost savings and greater awareness of new development. It will also enable Kenya government ministries to provide excellent service to their suppliers in an effective and transparent manner.

## AREAS FOR FURTHER RESEARCH

Further research should be undertaken on the Impact of Procurement Regulations on good governance; the impact of skilled procurement personnel on procurement practices; the effect of Information, Communication and Technology systems in enhancing Compliance to the Public Procurement and Disposal Act and Drivers, Challenges facing e-procurement in County Governments.

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## APPENDIX

### List of abbreviations used

BM	BILL OF MATERIALS
BQ	BILL OF QUANTITIES
COMESA	COMMON MARKET FOR EAST AND SOUTHERN AFRICA
KISM	KENYA INSTITUTE OF SUPPLIES MANAGEMENT
KURA	KENYA URBAN ROADS AUTHORITY
LATF	LOCAL AUTHORITY TRANSFER FUND
MWI	MINISTRY OF WATER AND IRRIGATION
PE	PROCURING ENTITIES
PMC	PROJECT MANAGEMENT COMMITTEE
PPDA	PUBLIC PROCUREMENT & DISPOSAL ACT, 2005
PPDR	PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS
PPOA	PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
RFQ	REQUEST FOR QUOTATIONS
SPSS	STATISTICAL PACKAGE FOR SOCIAL SCIENCES
TISA	THE INSTITUTE FOR SOCIAL ACCOUNTABILITY