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# Challenges facing procurement committees in implementing the procurement act, a case of secondary schools procurement committees in Kisii County, Kenya

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### ABSTRACT

This paper presents the challenges facing procurement committees in secondary schools in Kisii County in the implementation of the public procurement Act of 2005 in the procurement of goods and services used in secondary schools in Kenya, in response to both domestic and international pressures, the secondary schools committees have recently undertaken important initiatives to make their public procurement systems more efficient and transparent in line with the public procurement and disposal Act of 2005.

A cross-sectional survey was used, with the sampling frame comprising members of the secondary Procurement committees in Kisii County. Sets of both pre-tested structured and unstructured questionnaires were used to interview a random sample (82) of the Procurement committee members derived using the formula of Israel (1992) of known target population,  $N$ . The data was analyzed with the aid of the SPSS (Version 11.5) computer software and presented in form of descriptive tabular summaries.

The study finding indicated that the experience with the reforms has been quite varied. There is an urgent need for strengthening institutions involved in public procurement, as these institutions tend to lack technical capabilities and experience external influences.

The paper concludes by emphasizing that there are certain imperatives for the development of an effective procurement system. These are: strengthening the democratic political process, and public accountability; creating real market conditions; and improving work ethics in which public good is valued more than individual.

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### Introduction

In the past decades, the public procurement system in Kenya has undergone significant developments. From being a system with no regulations in the 1960s, and a system regulated by Treasury Circulars in the 1970s, 1980s and 1990s, the introduction of the Public Procurement and Disposal Act (PPDA) of 2005 and the Procurement Regulations of 2006 has introduced new standards for public procurement in Kenya. In line with the country's public procurement reform agenda, Kenya in 2006 committed itself to become one of the 22 countries participating in the pilot testing a new Methodology for Assessment of National Procurement Systems (version 4) developed by the OECD-DAC Joint Venture for Procurement to: Establish a common base for development through a well documented and broadly accepted understanding of key issues of the public procurement system. Create a baseline against which future progress can be measured. Serve as a benchmarking tool which may be used for comparison between systems and countries. Field test Version 4 of the assessment methodology with a view to proposing improvements to the methodology (Carter, R & Grimmin .D, 2001)

With a GDP of \$22.79 billion (2006 estimate), a gross national income per capita (2006) of \$455 and an annual growth rate (2006) of 6.1%, Kenya's economy is recovering from its poor performance in the past two decades. Under the leadership of President Kibaki, who took over on December 30, 2002, the Government of Kenya began an ambitious economic reform

programme and resumed its cooperation with the World Bank and the IMF. The National Rainbow Coalition (NARC) government enacted the Anti-Corruption and Economic Crimes Act (ACECA) and Public Officers Ethics Act (POEA) in May 2003 aimed at fighting graft in public offices. Other reforms, especially in the judiciary and in the field of public procurement led to the unlocking of donor aid and a renewed hope of economic revival.

The Public Procurement System in Kenya has evolved from a crude system with no regulations to an orderly legally regulated procurement system. The Government's Procurement system was originally contained in the Supplies Manual of 1978, which was supplemented by circulars that were issued from time to time by the Treasury. The Director of Government Supply Services was responsible for ensuring the proper observance of the provisions of the Manual. The Manual created various tender boards for adjudication of tenders and their awards.

A review of the country's public procurement systems was undertaken in 1999 and established that: There was no uniform procurement system for the public sector as a whole. It did not have sanctions or penalties 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. The Supplies Manual did not cover procurement of works. The dispute settlement mechanisms relating to the award procedures as set out in the Manual were weak and unreliable for ensuring

fairness and transparency Records of procurement transactions in many cases were found to be inaccurate or incomplete or absent, which led to suspicions of dishonest dealings at the tender boards. The systems had other institutional weaknesses that not only undermined its capacity for carrying out their 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 above shortcomings it was found necessary to have a law to govern the procurement system in the public sector and to establish the necessary institutions to ensure that all procurement entities observe the provisions of the law for the purpose of attaining the objectives of an open tender system in the sector. Consequently the establishment of 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).

The PPD and PPCRAB, though largely independent in carrying out their activities, had been operating as departments in the Ministry of Finance on which they relied for staff, facilities and funding. Since these institutional arrangements have a potential for undermining the impartiality of these bodies in the long run it was found necessary to create an oversight body whose existence was based on a law. The Public Procurement and Disposal Act, 2005 was thus enacted and it became operational on 1st January, 2007 with the gazettelement of the Public Procurement and Disposal Regulations, 2006.

The Public Procurement and Disposal Act, 2005 created the Public Procurement Oversight Authority (PPOA), the Public Procurement Advisory Board (PPAB) and the continuance of the Public Procurement Complaints, Review and Appeals Board as the Public Procurement Administrative Review Board (PPARB). The PPAB and PPARB are autonomous bodies.

The PPOA is mandated with the responsibility of ensuring that procurement procedures established under the Act are complied with; monitoring the procurement system and reporting on its overall functioning. Initiating public procurement policy assisting in the implementation and operation of the public procurement system by: preparing and distributing manuals and standard tender documents, providing advice and assistance to procuring entities, and develop, promote and support training and professional development of staff involved in procurement.

#### **Problem statement**

Public procurement practitioners are torn between free trade and economic stabilization when they face a hard choice in selecting and awarding tenders to qualified firms. Apart from public procurement regulations and rules, the legal environment refers to a broad legal framework that governs all business activities including development; regulations dealing with safety and health of new products, control finance; regulations dealing with disclosure of information, marketing; regulations dealing with deceptive advertising, disclosure of product characteristics, personnel; regulations dealing with equal opportunity for women and minorities, and contracts. Indeed, most aspects of contracts public or private such as contract requirements, disputes, and breach of contract are governed under the same contract law.

Insofar as public procurement has important economic and political implications, ensuring that the process is economical and efficient is crucial. This requires in part that the whole process is well understood by both the actors (the secondary schools procuring entities, the business community/suppliers)

and other stakeholders, including the professional associations, academic entities and the general public. Unfortunately, for most secondary schools, this is not the case. Although several secondary schools in Kenya have taken steps to reform their public procurement systems, the process is still shrouded by secrecy, inefficiency, and corruption and undercutting. In all these cases, huge amounts of resources are wasted. This has prompted the researcher to conduct a research to establish the challenges that procurement committees in secondary schools face in Kisii County.

#### **Theoretical Review**

In Africa, public procurement practitioners have and will face always many challenges. Each country has its own economic, social, cultural and political environment, and each country's public procurement practitioners face different types of challenges, or the same types of challenges but at different levels from their counterparts in other countries.

Public procurement is an important function of government for several reasons. First, the sheer magnitude of procurement outlays has a great impact on the economy and needs to be well managed. Indeed, in all countries in the world, estimates of the financial activities of government procurement managers are believed to be in the order of 10% – 30 % of GNP (Calendar & Mathews, 2000). Efficiently handling this size of procurement outlays has been a policy and management concern as well as a challenge for public procurement practitioners.

Second, public procurement has been utilized as an important tool for achieving economic, social and other objectives (Arrow smith, 1998; Thai, 2001). In its report to the Congress, the Commission on Government Procurement states: "the magnitude of the Government's outlays for procurement and grants creates opportunities for implementing selected national policies" (Federal Acquisition Institute, 1999, p. 1.8

According to Thai, (2001) there is a model depicting the scope of public procurement that consists of five elements: policy making and management; authorizations and appropriations; procurement regulations; procurement function in operations (processes, methods, organizational structure, and procurement workforce; and feedback). Public procurement practitioners have always walked on a tight rope. Their ability to accomplish procurement objectives and policies is influenced very much by internal forces including: Interactions between various elements of the public procurement systems, various officials and organizations in the three branches of government, and various actors and sub-agencies within a department or executive agency and actors and organizations external to sub-agencies.

Public procurement practitioners have always faced challenges imposed upon by a variety of environment factors including market, legal environment, political environment, organizational environment, and socio-economic and other environmental factors. Market Environment Market conditions have a great influence on public procurement practitioners' effort to maximize competition. Moreover, the market determines whether or not socio-economic conditions of procurement are accomplished, whether or not a governmental entity can fulfill its needs; the timeliness of fulfillment; and the quality and costs of purchased goods, services and capital assets. As there are different levels of capitation in the schools depending on the number of students the schools has, market conditions are very favorable in big schools, while they may be unfavorable in small schools.

In a democracy many individuals, groups, and organizations in the private sector including trade associations, professional associations, and business firms or companies (commonly known as interest groups) are actively involved in all aspects of the public procurement system. Having various interests, objectives and beliefs, interest groups are involved in the public procurement system in several ways such as lobbying legislative bodies to pass or alter procurement statutes, influencing implementation of these statutes, and influencing budget authorization and appropriations processes. Normally, a government program that is eventually adopted is a compromise among different views of interest groups, policy makers and management. In this democratic environment, there are cases of a strong coalition of policy makers, bureaucrats and interest groups in their effort to get their programs adopted.

The Act tries to promote participation of the domestic supplier base, which includes supplies from local sector. It has several provisions that intend to support local firms to access public procurements. These include among others, 15% marginal preference, exclusive preference for locally funded projects and the preference that involves joint ventures between locals and foreign partners, which ranges up to 20%. Unfortunately, despite these supportive provisions, high valued tenders have been awarded to very few large firms that are mostly foreign companies.

Today governments all over the world have received a great deal of attention as providers of essential services, such as health, education, defense and infrastructure. To be able to meet the demand for these services, governments purchase goods and services from the marketplace. In other words, governments are purchasers of works, supplies and services from the open market, placing their demands alongside those of the private sector. The business operations of governments in the marketplace or public procurement have thus both economic and political implications. Yet, until not too long ago, the subject of public procurement would have received little attention by academic researchers and policy makers, because it was considered an administrative function too mundane to worry about (Coe, 1989).

Public procurement is broadly defined as the purchasing, hiring or obtaining by any other contractual means of goods, construction works and services by the public sector. Public procurement is alternatively defined as the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, foreign aid as well as revenue received from the economic activity of state. Public procurement thus means procurement by a procuring entity using public funds (Sherman, 1999). The items involved in public procurement range from simple goods or services such as clips or cleaning services to large commercial projects, such as the development of infrastructure, including road, power stations and airports.

Public procurement is different from private procurement, because in public procurement the economic results must be measured against more complex and long-term criteria. Furthermore, public procurement must be transacted with other considerations in mind, besides the economy. These considerations include accountability, on discrimination among potential suppliers and respect for international obligations. For these reasons, public procurement is subjected in all countries to

enacted regulations, in order to protect the public interests. It is worth noting that unlike private procurement, public procurement is a business process within a political system and has therefore significant consideration of integrity, accountability, national interest and effectiveness (Kelman, 1990).

### Research Strategy

This study used the descriptive survey design in which opinions of schools tendering committees was sought. The data collected were both quantitative and qualitative in nature. Mugenda and Mugenda (1999) describes a survey design as an attempt to collect data from members of a population in order to determine the current status of that population with respect to one or more variables. The design was chosen because it is an efficient method of collecting descriptive data regarding characteristics of a sample of a population, current practices, conditions or needs. The design was also used because it allowed the researcher to gather information regarding the respondents' opinions, perceptions, attitudes and views in a highly economical way. The study constructed questions that solicited the desired information related to the challenges facing the procurement committees from the target respondents. Usage of this design contributed to accurate and fair interpretation of the results.

### Sampling and sample size

Sampling is the process of selecting a number of individuals for a study in such a way that the individuals selected represent the large group from which they were selected (Mugenda and Mugenda, 1999). The sample frame consisted of members of the tendering and procurement committees in secondary schools in Kisii County.

The study sample was determined using systematic random sampling. This sampling method secured a representative group, which enabled the researcher to gain information about an entire population with limitations of time, funds and energy (Mugenda and Mugenda, 1999). To determine the sample size,  $n$ , for target residents with a known population,  $N$ , the study adopted the formula of Israel (1992) as shown in equation 1 below.

$$n = \frac{N}{1 + N(e)^2} \quad \text{(Equation 1)}$$

Where;

$n$  = optimum sample size,

$N$  = number of secondary schools

$e$  = probability of error (i.e., the desired precision, e.g., 0.1 for 90% confidence level).

For example, the secondary schools in Kisii County; implying  $n$  was 82 as derived in equation 2:

$$n = \frac{435}{1 + 435(0.1)^2} \approx 82 \quad \text{(Equation 2)}$$

### Research Findings, Conclusion and Recommendation

Table 1. Shows the challenges facing procurement committee, the committee operate in secrecy and this affect committee efficiency ( $r=0.32$ ,  $p<0.01$ ), the corrupt committee members affect committee's effectiveness ( $r=0.34$ ,  $p<0.01$ ), and deceptive advertisement cause improper communication in the committee ( $r=0.25$ ,  $p<0.05$ ). Inaccurate records or incomplete records lead to committee not meeting date lines ( $r=0.44$ ,  $p<0.01$ ), political environment affect the standard operation of the tender committee by bending the tendering rules and documentation ( $r=0.37$ ,  $p<0.01$ ), finance control ( $r=0.51$ ,  $p<0.01$ ),

### How to improve the Secondary Schools Procurement Committee Performance in line with the Procurement and Disposal Act 2005

Table 2. Shows the study contribution to the improvement of secondary schools procurement committee performance. Improved training motivates procurement committee members to work hard. This increases their performance and the attainment of organizations goals. Studies have found that highly trained personnel had superior performance due to improved skills to deal with the challenges (e.g., black and lynch 1997). The current study contributed positively to procurement committee efficiency by offering suggestion to govern the disclosure of information. This was confirmed by, correspondingly, 38% and 35% of the respondents who believed that this contributed moderately or to a large extent to procurement committee being efficient. Respectively, only 4% and 7% of the respondents confirmed no or a small contribution. The level of awareness of the committee members also is positively affected by the advice the procurement committee members were given on all procurement entities. Correspondingly, 43% and 26% of the respondents agreed that the safety and health of new products needed to be ensured was moderate to large. Conversely, only 37% and 17% of the respondents indicated that the proper standards of procurement documents should be ensured.

The activities of the procurement committee positively affected the performance of the members. Correspondingly, 35% and 33% of the respondents agreed that the activities of the procurement committee had moderate and large effect on performance. Respectively, only 4% and 20% of the respondents believed that the activities of the procurement committee had no or small effect on the committee performance was also positively affected by the activities of the procurement committee. The impact of the activities of the procurement committee on the committee performance was reported to be moderate (40%) or large (33%). About 5% of the respondents believed that the activities of the procurement committee had no impact on the performance while 10% believed the impact was small.

### Independent Sample t-test on challenges facing the Procurement Committee on Performance

The study indicated that the challenges that the procurement committee faced were significant and this affected their performance, this is evident by the  $p$ -value = 0.607 ( $p > 0.05$ ). The possible explanations could be because the committee members lack specialized training in procurement matters, lack proper records kept on procurement meetings, lack of mechanism to observe obedience to disclosure of information and lack of standard procurement documents Thus, the effective and efficient performance of the committee is affected.

### Factors that boost the procurement committee to perform better

As shown in Table 5, Training of the procurement of procurement committee members will make the members know their roles and responsibilities as members of the procurement committee also change their attitude towards performance, the governing of disclosure and use of information on the tendering and procurement will help the members be in line with the procurement regulation under the procurement and disposal act of 2005, offering of advice to the procurement committee members in what they are doing also motivate and boost the morale to perform better, and security and privacy of the

members is important to shield them from political interferences be it from within or outside the schools are significant due to  $p$ -values bigger than 0.05 and the factors that are affecting procurement committee performance In contrast, need for interaction is not significant as evident by the  $p$ -value equal to 0.994 ( $p > 0.05$ ).

Multiple regression analysis was conducted, under this regression, only the significant results are shown, while insignificant variables are excluded. As shown in Table 6, four independent variables such as training committee members, governing disclosure of information, offering advice to the committee members and the security and privacy of committee members are the predictors that significantly predict the performance of the Procurement committee amid the challenges.

Meanwhile, in determining the best variable to predict the performance of the procurement committees, the columns of  $R$  square change and significant  $F$  change in Table 7 are referred. From the column of  $R$  square change, the highest percentage is considered as the best predictor. In addition, the column significant  $F$  change determines whether the variables are significant ( $p < 0.05$ ). The results disclose that the performance of the committee members are contributed by perceived training 34.5%, followed by governing of disclosure of information at 10.9% offering advice on all procurement entities at 3.6% and offering security and privacy to the committee members by than 1%. Thus, it indicates that training of members is the best predictor to predict the procurement committee performance.

### Study conclusion

The secondary schools Procurement Committees in Kisii County suffer from a general lack of sufficient information about the legal framework, principles, procedures and processes of procurement. In particular, the assessment findings suggest that a need exists for additional: Written guidelines, Training and sensitization, Ad hoc advice, General awareness of the legal framework and institutional setup guiding Procurement in secondary schools, as well as the main principles of sound, fair, transparent and efficient procurement.

### Study Recommendations

This paper recommends for the creation of procurement structures, provision of Procurement information that will help the procurement committees to be effective.

The weaknesses of procurement system in secondary schools presented a suggestion on a need for enhancing procurement capacity to address these needs; a comprehensive understanding of the underlying explanatory factors is required. While the present study has significantly contributed to such an understanding, further in-depth analysis in some areas is required to ensure that capacity needs are addressed in an adequate and sustainable manner.

### Recommendations for further research

The study can be used as a reference material for scholars who need to carry out a research on the challenges facing the procurement committees in the secondary schools in Kisii County. owing to the peculiarity of issues like location of schools, membership and leadership style of committee members.

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**Table 1: Correlations between challenges facing procurement committees and committee performance**

Aspect	Correlation Coefficient (r)	Efficient committee	Effective committee	Meet timelines	Proper communication	Standard tender documentation	Finance control
Committee operate in secrecy	R	0.004	-0.125	-0.317**	-0.198	0.324**	0.444**
	Sig. (2-tailed)	0.972	0.264	0.004	0.074	0.003	0.000
Corrupt members	R	0.086	-0.133	-0.258*	-0.267*	0.344**	0.372**
	Sig. (2-tailed)	0.444	0.234	0.019	0.015	0.002	0.001
Deceptive Advertisements	R	-0.049	-0.089	-0.297**	-0.223*	0.245*	0.511**
	Sig. (2-tailed)	0.661	0.425	0.007	0.044	0.027	0.000
In accurate records/ Incomplete records	R	0.052	-0.077	-0.102	0.023	0.142	0.356**
	Sig. (2-tailed)	0.640	0.493	0.360	0.834	0.202	0.001
Political environment	R	-0.086	-0.165	-0.058	-0.181	0.155	0.401**
	Sig. (2-tailed)	0.440	0.138	.606	0.104	0.164	0.000

N= 82. \*\*Correlation is significant at the 0.01 level (2-tailed). \*Correlation is significant at the 0.05 level (2-tailed)

**Table 2. How to improve Secondary Schools Procurement Committee Performance**

Variable	Frequency (f)/	extent of the contribution of the procurement committee							
		None	Small	Moderate	Large	Very large	Not negotiated	No response	Total
Training of committee members	F	3	6	31	29	8	1	4	82
	%	4	7	38	35	10	1	5	100
Governing disclosure of information	F	8	7	35	21	8	1	2	82
	%	10	9	43	26	10	1	2	100
Offering advice to all procurement entities	F	3	16	29	27	4	1	2	82
	%	4	20	35	33	5	1	2	100
Proper record keeping	F	4	8	33	27	9	1	0	82
	%	5	10	40	33	11	1	0	100
Ensure health and safety of new products	F	6	23	29	19	4	1	0	82
	%	7	28	35	23	5	1	0	100
Prepare standard procurement documents	F	18	17	30	14	2	1	0	82
	%	22	21	37	17	2	1	0	100

Source researcher, 2011

**Table 3**  
**Independent Sample t-test on challenges facing the Procurement Committee on Performance**  
**T-test for equality of means**

	T	Df	P
Equal valiance assumed	-1.616	82	0.607

Source researcher, 2011

Table 4

	Sum of squares	df	Mean square	f	p
Challenges facing procurement Committee	20.363	3	6.788	1.184	0.316
Performance of procurement Committee	452.828	79	5.732		
Total	473.191	82			

Source researcher, 2011

**Coefficients**  
**Variables Standard coefficients**  
**Table 5.**

	Beta	T	P
Training of the procurement committee	0.522	6.241	0.000
Governing the disclosure of information	0.617	2.180	0.030
Offering advice on all procurement entities to committee members	0.783	5.167	0.000
Offering security and privacy to committee members	0.70	-0.008	0.994

Source researcher, 2011

**Table 6**  
**Summary of regression Analysis for independent Variables**

	Sum of squares	df	Mean squares	f	p
Regression	842.940	4	210.735	71.752	0.000
Residual	229.086	78	2.937		
Total	1,072.026	82			

Notes. Predictors; training committee members, Governing disclosure of information, offering advice to the committee members and the security and privacy of committee

**Table 7**  
**Variation Explained by Independent Variables**

Step	R	R square	Adjusted R square	R square change	Significant F change
1.	0.587a	0.345	0.343	0.345	0.000
2.	0.674b	0.454	0.450	0.109	0.000
3.	0.700c	0.490	0.485	0.036	0.000
4.	0.706d	0.498	0.492	0.008	0.029

Notes; a Predictors: (Constant), Training; b Predictors: (Constant), governing disclosure of information; c Predictors: (constant) offering advice on all procurement entities; d Predictors: (Constant), Security and Privacy,