Challenges in Public Procurement in Kenya

1. Introduction

Public procurement is the acquisition of goods, services and works by a procuring entity using public funds. The process covers the entire cycle of activities starting from identifying a need, evaluating tenders, purchasing, contract management, and extends to the ultimate disposal of property at the end of its useful life (World Bank, 2018; Badaso, 2014; Mangan et al, 2012).

As the population and economy have grown over time, there has been considerable increase in public expenditure on the development of infrastructure and provision of requisite services. Public procurement is increasingly recognized as essential in service delivery and a major component of public expenditure. For example, public procurement accounts for 60 per cent in Kenya, 70 per cent in Uganda, 58 per cent in Angola and 40 per cent in Malawi’s public spending (Badaso, 2014). This is quite high when compared with a global average of 12–20 per cent (Frøystad, Heggstad and Fjeldstad, 2010).

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2. Background

Non-adherence to proper procurement processes and procedures has attracted increasing attention from many stakeholders in the country’s development agenda. These actors include politicians, citizens, religious leaders, academicians and researchers, and practitioners through print and the social media. On corruption, Kenya was ranked number 143 out of 183 countries in 2017 (Transparency International, 2018). Public procurement continues to be affected by many challenges that have led to huge losses of public resources. Procurement fraud includes illegal practices in which organizations or individuals bribe officials to influence the awarding contracts; making

KEY MESSAGES

- Public procurement seeks to procure the right quality goods, works or services from a reliable supplier, in the right quantity, ensuring cost effectiveness, delivery at the right time and to the right place and paying the right price whilst achieving the lowest possible total cost.
- Political leadership needs to demonstrate long-term commitment to fight procurement corruption so that the country’s resources are put to the best possible use.
- Overseeing procurement policies and processes requires strategic thinking, strong negotiation skills and ethical behavior to ensure that goods and services are of superior quality at an acceptable price, which can have a significant positive impact on business and social welfare.
- Application of professional procurement principles (fairness, value for money, economy, integrity, fit for purpose, efficiency, transparency, professionalism) should be adhered to so as to curb any uncertainty in procurement.
- To eliminate waste in procurement, organizations must align the procurement function with their long-term strategic vision and mission.

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payments in order to escape punishment or penalties for offences committed; paying gratitude money or giving gifts for usual services; or simply misuse of public office. In the process, corruption contributes to unequal income distribution, discourages investment and distorts long-term economic development.

This policy brief identifies some of the major challenges and suggests some remedies towards enhancing better procurement management in Kenya. We summarize common threads emerging from policy and academic research (Basheka and Tumutegeyreize, 2010; Davila, Gupta and Palmer, 2003; Wee, 2002; Thai, 2001; Callendar and Matthews, 2000) as well as perceptions from print and the social media (Nsehe, 2015).

3. Persistent Issues and Challenges

1) Limited access to information

Despite widespread public perceptions, obtaining accurate and timely information on corrupt malpractices is quite difficult because organizations and individuals engaged in these activities are difficult to identify and securing their cooperation is problematic. This challenge is not only faced by research and academic scholars but also anti-corruption and prosecution agencies.

2) Complex procurement loopholes

Procurement systems often bend rules and regulations to enhance opportunities for fraudulent practices. This may include:

(i) A legal and restrictive framework that prohibits competition;

(ii) Rewarding political supporters and/or financing political parties. The term "tenderpreneurs" has been used to describe such beneficiaries;

(iii) Deliberately delaying planning in order to create a crisis and stampede the procurement process;

(iv) Providing unclear procurement specifications, ambiguous evaluation procedures, fraud in invoicing, and vague contract management, ultimately leading to acquisition of substandard goods, services and works;

(i) Delaying or withholding payment decisions until a bribe is given. Familiarity and cosy behaviour of public officials with suppliers and the notion of "help me help you" has somewhat become an acceptable practice in public procurement; and

(ii) Failing to issue a certificate of completion or issuing one when the works have not been completed (resulting in shoddy workmanship).

3) Unethical behavior in procurement

The Public Procurement and Asset Disposal Act (2015) and the schedule of implementation rules and regulations capture the current international best practices. However, the main problems revolve around their enactment and huge socio-political forces that seem to encourage unethical behaviour such as corruption, bribery, coercion, extortion and proliferation of vested interests. It seems that sanctions and the risks faced for acting in contravention to procurement laws and regulations have not deterred illegal efforts to achieve personal enrichment, avoidance of conflicts of interest and have not encouraged procurement professionals to "do the right thing".

4) Nepotism and weak human resource management

In many countries, lack of meritocratic recruitment and promotion as well as a glaring absence of professional training are positively associated with incidences of high procurement malpractices coupled with weak oversight and administrative controls. This is a critical challenge at both national and county levels as ethnicity and familial clan-based politics are deeply entrenched in the country despite considerable civic education in the last two decades.

5) Election expenses and procurement malpractices

In many countries, election laws and regulations are not commonly followed. Politicians spend inordinate amounts of resources (especially finances) during campaigns. Win or lose, many politicians engage in procurement malpractices to recover the money hitherto spent by any means possible. With long a litigation process in relatively weak judicial systems, many procurement malpractices by politicians are not punished, which in turn makes politics a rather lucrative and corrupt enterprise. Most surprisingly, many communities have a high tolerance for corruption. It is not uncommon that openly corrupt individuals are "worshipped" and voted into position of authority and responsibility even with questionable sources of riches. Stories of "from rags to riches" often make headline news.

6) Donor Influence

Public procurement has come under keen scrutiny in relation to foreign investments. Foreign governments have invested heavily in procurement of infrastructure works and supply of goods and equipment. However, most donor assistance has strings attached of different forms (e.g., client has to procure goods and equipment, such heavy machinery, from the supplier country). In other cases, perceptions of procurement corruption and the country’s worsening international ranking in the fight against corruption have continued to reduce the business appetite of foreign investors. This does not augur well in terms of international competitiveness for foreign investors.
4. **Way Forward**

It is estimated that 25 per cent of public expenditure could be saved through the use of proper mechanisms and the implementation of procurement and disposal of assets laws. Such substantial savings could be devoted to other priority development objectives.

1. **Sustained Political Commitment**
   
   Political leaders have a big influence on and role in guiding the implementation and realization of a country’s development priorities. Sustained political commitment would contribute significantly to the fight against procurement malpractices and corruption. However, there are costs and losses to incur. For example, President Uhuru Kenyatta has gone public on how many friends he has lost in his fight against people who had irregularly built on riparian land and conducting lifestyle audits of senior procurement officials. He should be encouraged and not falter in these efforts. Such drastic measures will perhaps deter other people from similar behavior and discourage people from engaging in corruption, knowing they risk losing assets that have been fraudulently acquired and fearing punishment. This would go a long way to securing the country’s future.

2. **Strengthening Oversight and Audit Systems**
   
   To identify organizational weaknesses in both national and county governments that perpetuate procurement malpractices, including corruption and embezzlement, it is necessary to strengthen the oversight and audit systems. Some of the issues that must be considered in the context of implementing procurement are quite complex and often require innovative thinking and some hard decisions. It is necessary to recruit procurement professionals with the right mentality, skills and value orientation. They need to be supported with increased efforts in research, knowledge advancement, and exchange of experience.

3. **Leveraging Technology Effectively**
   
   Leveraging the right technology is crucial to delivering the best procurement possible. There is now technology for spend analytics, e-sourcing, supplier and contract management, e-workflow, spot-buying management, savings tracking and budget management. Coupled with market intelligence, procurement processes can be more informed, efficient, and effective while reducing the cost of doing business. This will require improvements on record keeping, oversight controls and contract management processes to ensure that firms conform to procurement laws and regulations.

4. **Tighten Procurement Loopholes**
   
   A strong and well-functioning procurement system should be governed by a clear legal framework establishing the rules for transparency, efficiency and mechanisms of enforcement, coupled with an institutional arrangement (i.e., good governance), that are consistent with policy implementation. To improve governance, it is necessary to develop an inclusive code of conduct that will streamline and guide all stakeholders in procurement processes.

5. **Strategic Sourcing Strategy**
   
   Strategic sourcing is a collaborative and organized approach of selecting suppliers best suited to provide maximum value. Strategic sourcing implements cross-functional and geographic teams for unified decision-making process, procurement guidance and leadership. It has benefits such as assured availability of goods and services, increased responsiveness to customers’ changing needs and lower overall total cost.

6. **Behavioral Change and Post-Award Surveillance**
   
   Behavioral change is usually a big challenge when implementing new ways in the work environment. If procurement professionals want to act as internal advisors, they must take ownership, be proactive and constantly ask questions and look for improvement opportunities. When stakeholders become disciples of sustainable procurement, government will meet its real needs for goods, services, works and utilities in a way that achieves value for money on a whole-life basis in terms of generating benefits not only to the parties involved but also to society and the economy.

5. **Conclusions**

Procurement plays a major role in the economy of a country and should be managed effectively and efficiently. However, corruption scandals in public procurement are denying Kenyans opportunities for socio-economic development. There are many motivations for procurement malpractices including vested organizational or individual interests, lack of political commitment to fight these vices, inherently fraudulent and unethical behavior, and slow prosecution processes.

Despite these challenges, government and Parliament can amend and strengthen policy and legislative measures to streamline procurement systems (value for money, fairness, integrity, efficiency, transparency, professionalism). Political commitment and timely judicial interventions will strengthen public procurement systems at both national and county levels for the benefit of all citizens. Indeed, the President has reiterated that the fight against corruption will not spare even the closest of his relatives and friends.
References


