

**EFFECT OF PROCUREMENT RESERVATION PRACTICES ON SERVICE DELIVERY IN KENYA. A SURVEY OF PUBLIC INSTITUTIONS IN KENYA
A CRITICAL REVIEW**

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ABSTRACT

This paper examines the extent to which procurement reservations practices influences service delivery in Kenya various importantperspective. In the year 2016/17, the Government of Kenya (GOK) was expected to spend about 70% of the 2.0 trillion Shillings budget on procurement of goods and services. 30% of all government procurement amounting to approximately 336 Billion Shillings was reserved for women, youth, persons living with disabilities and small and medium enterprises in a bid to even the playing field and provide equal opportunities to these groups. This is in operationalization of Public Procurement and Disposal (Preference and Reservations) Regulations 2011 was gazetted in the legal notice number 58; regulations that provide a framework for the implementation of preferential procurements in Kenya's public procurement. Categories of goods and services that will be procured on preferential basis to persons who have been previously discriminated or disadvantaged by unfair competition will be required to be put in the procurement plans of the public institutions. Finally, this article develops a conceptual framework that explains the relationship between procurement reservation practices and service delivery in public sector in Kenya.

Keywords: procurement reservation practices, service delivery, public institutions

1 Introduction

There are several reasons that manifest the importance of public procurement as a function of government. First, the sheer magnitude of procurement outlays has a great impact on the economy. 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 (Callender & Mathews, 2000). In the year 2013/14, the GOK spend about 70% of the 1.6 Trillion Shillings budget on procurement of goods and services. Efficiently handling this size of procurement outlays has been a policy and management concern as well as a challenge for public procurement practitioners.

1.2 Public service delivery

Increasing the effectiveness, efficiency and transparency of public procurement systems has become an ongoing concern of governments and of the international development community (OECD, 2006). Measuring performance is a graceful way of calling an organization to account and in public sector performance measurement; accountability is the central concern (Heinrich, 2007) Public procurement is the process whereby public sector organizations acquire goods, services and works from third parties. It includes much that supports the work of government and ranges from routine items (stationery, temporary office staff, furniture or printed forms), to complex spending areas (construction, Private Finance Initiative projects, aircraft carriers or support to major change initiatives (OGC, 2014).

Performance measurement; the process of quantifying the efficiency and effectiveness of actions (Neely, 2005) has received increasing interest since the late 1980s (Osborne & Gaebler, 2012; Saiz, Bas & Rodriguez, 2007). Efficiency can be measured from the purchasing organization's context where the personnel, management, procedures, policies, and information system issues are considered (Van Weele, 2010). Measuring performance of government draws a considerable amount of attention from professional associations, scholars and practitioners (Holzer & Kloby, 2005). Traditionally, performance measurement has involved management accountants with budgetary control and the development of purely financial indicators such as return on investment (Chenhall, 2007).

However, in today's work environment, there are increasing trends of relying on non-financial measures to assess the performance of organizations. Performance measurement has now gone beyond input and process into other sensitive areas. Politt & Bouckaert (2014) considered the shift of

measurement systems beyond input and process into the more politically and methodologically sensitive area of assessing effectiveness as 'difficult and controversial'. According to Kim, Chan & Yoon (2007), the traditional performance measurement system inhibits the improvement of critical dimensions such as quality, flexibility and delivery. For a performance measurement system to be regarded as a useful management process, it should act as a mechanism that enables assessment to be made, provides useful information and detects problems, allows judgment against certain predetermined criteria to be performed and more importantly, the systems should be reviewed and updated as an ongoing process (Ong & The, 2008).

According to Beamon(2009), supply chain performance (including public procurement) can be measured based on cost measures, costs and activity measures, cost and customer responsiveness measures, customer responsiveness measures and flexibility. From another context, Chan et al (2013) argued that there is still a lack of integration between the existing performance measurement methods and practical requirements for supply chain management. As a result, they proposed a performance measurement method that would provide assistance for performance improvement in supply chain management and the performance should cover such areas; which are of (1) critical concern for supply chain common goals and strategies; (2) inter-influence and common concern among supply chain partners; and (3) concern for both internal partners and external customers.

1.3 Procurement reservations practices

Public procurement is the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). It is a public good which is expected to be carried out with the requisite degree of integrity, fairness, accountability, competition, transparency, national interest, economy and should promote the local industry and general economic development. It is for these reasons that governments put in place laws, regulations and guidelines to govern the public procurement process so that these core values are met to the extent practicable.

Governments are often seen as regulator of market participants but governments also increasingly play a role as active participants in the market itself; purchasing public works, supplies, and services (McCrudden, 2004) in Kenya as in most developed countries, the public sector is the largest domestic market. In Kenya, it accounted for approximately 9% of the GDP (USD3.7Billion in 2003/04). Government is mandated to provide goods, works and services to meet various needs of its citizens. Provision of these items is largely done through the government internally or externally by the private sector.

Reservation Practices is where contracts or portions thereof are reserved for contractors who satisfy certain prescribed criteria e.g. contractors who: are owned, managed and controlled by a target population group. Many set asides are established to assist small business concerns but in the context of global trade, set asides involve reserving part or whole of the contract to local/domestic firms to boost the local economy.

How then can we assess the value of set asides/reservation schemes as a strategy by government to achieve both primary and secondary objectives? While it is appreciated that set asides programmes have positive impact on especially SMEs, the magnitude of this impact has not been explored. The choice of which sector to provide with set asides depends on factors such as socio-economic goals to be addressed, the ability of officials to properly adjudicate tenders, the extent to which cost effectiveness can be sacrificed, how far beneficiaries of the scheme are able to exploit the advantages (Fenster G. 2003). A critical balance of all these would maximize government benefit in its procurement objectives. The request for proposal will therefore include: contractors which are owned, managed or controlled by local firms, classified as small business enterprises or a joint venture with local firms. Fenster (2003) argues that set asides are easy for officials to understand and introduce, simple to explain to tenderers and transparent but they may be the least cost effective,

the least competitive and the least equitable. For a country determined to discriminate in favour of local firms directly regardless of additional cost, set asides may present the best option, he concludes.

McCrudden (2007) argues that in the United States of America, the Public Works Act 1977 provided that at least 10% of each grant for local works project be expended for minority business enterprise. This came to be known in the United States as Set Asides. In Malaysia, in order to uplift the entrepreneurial capacity of the local Malays (called the Bumiputera), all supplies contracts with value between RM10, 000-RM100, 000 (ksh 260,000- 2,600,000) and work contracts up to RM100, 000 (ksh 2,600,000) were reserved to them (McCrudden, 2004).

Kenya, just like many other developing countries is dominated by small and medium sized businesses. These SMEs lack the capacity to compete favourably in highly competitive public procurement markets due to high costs of production arising out of poor production techniques and lack of expertise. There are structural and behavioural factors affecting firm's competitiveness. These structural and behavioural aspects include firm size, operating efficiency, product development capability, knowledge of government requirements, personnel knowledge and training, quality control processes plus production methods and technology. There need to protect them from excessive competition from large foreign firms through set asides (Musila, 2004).

In case of global trade, the contracting authority might prefer to exclude all firms without internal linkages from participation. A contract would therefore be competed for by only those firms who have subsidiaries with local firms or have a working relationship with domestic firms in which case they bid as a consortium (Fenster, 2003). Although Watermeyer argues that qualification criteria reduces competition and excludes suppliers who are capable of satisfactorily executing the contract, Fenster (2003) argues that if well-arranged and transparent, it would save, an excluded buyer, the hassle of going through the often time- consuming and expensive process of bid preparation. For those keen to win the contract, it would enable them make necessary linkages and associations before deciding to bid. Contractual Conditions (Local Content Requirement) is another reservation scheme. The intention here is to make policy objectives a contractual condition for instance, a fixed percentage of work must be subcontracted out to enterprises that agree to meet prescribed obligations such as performing a contract as a joint venture or employing specific local personnel while undertaking the contact (Erridge, 2007).

According to Watermeyer, contractual conditions have the potential under certain circumstances to satisfy both primary and secondary objectives. However he argues that they impose inefficient and uneconomical restraints to the supplier in the execution of the contract. Erridge (2006) does not agree. In order to develop a procurement policy that incorporated the pursuit of socio-economic objectives, Northern Ireland developed an Unemployment Pilot Project (UPP). Developed in 2005, it attracted 15 contracts ranging from £700,000-£8,500,000. All bidders were required to include in their bid, an employment plan for utilizing those registered as unemployed in the country for at least 3 months or else their bids would be rejected. The project results indicated that even at the time of full employment, commitment by government and contractors to invest in such labour market programmes on grounds of equity, social cohesion and efficiency can be successful in attaining sustainable employment. Besides, there was no evidence to show increased cost of production or loss in efficiency.

Offer Back reservation schemes offer the tenderers that satisfy criteria relating to policy objectives an opportunity to undertake whole or part of the contract if that tenderer is prepared to match the price and quality of the best tenderer received. The Special Contract Arrangement (SBA) introduced by Britain to support disabled people in the European economic area is an example of the offer back discriminatory policy. The SBA requires contracting authorities to give special consideration to

suppliers registered with the scheme. The scheme involves 'offer back' under which a registered supplier whose tender is unacceptable on price alone should be given an opportunity to submit a revised tender for part or the entire contract. The shortcoming with this method is it awards contracts to those who are not necessarily capable of performing the contract within the nominated contract price. This unfairness makes the procurement process unattractive to some tenderers leading to reduced competition (Hefner, 1997).

2 Theoretical Review

2.1 New Public Management Theory

The label New Public Management Theory (NPM) first coined by Christopher Hood and first introduced by academics in the UK and Australia to describe approaches that were developed during the 1980s as part of an effort to make the public service more "businesslike" and to improve its efficiency by using private sector management. While mirroring private sector, which focuses on "customer service", NPM reforms often focused on the "...centrality of citizens who were the recipient of the services or customers to the public sector"(Andrews & Van de Walle, 2013) hence using approaches from the private sector—the corporate or business world, which can be successfully applied in the public sector and in a public administration context.. While NPM approaches have been used in many in countries around the world, NPM is particularly associated with the most industrialized OECD nations such as the United Kingdom, Australia and the United States of America and therefore worth adopting in developing countries like Kenya.

Lane (2000) posits that the key themes in NPM were "...financial control, value for money, increasing efficiency....identifying and setting targets and continuance monitoring of performance, handing over...power to the senior management" executives. Therefore in reservation procurement, citizens are viewed as "customers" and public servants are viewed as public managers. Under NPM, procurement managers are geared towards customer satisfaction initiatives, customer service efforts, applying an entrepreneurial spirit to public service, and introducing innovations . This is because the procurement managers may have greater discretion and freedom as to how they go about achieving the goals set for them, they have incentive-based motivation such as pay-for-performance, and clear performance targets are often set, which are assessed by using performance evaluations. The end result will be efficient and effective service delivery to all citizens from all the public institutions.

2.2 Person-Situation Interaction Theory

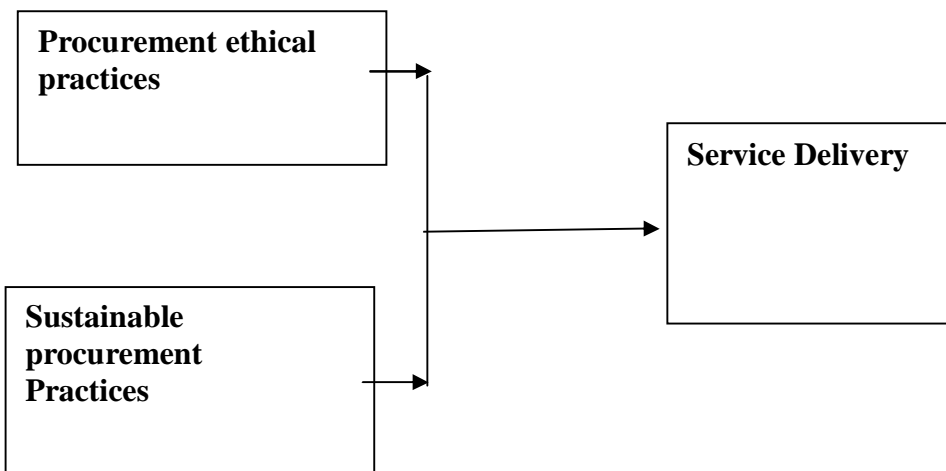
The study adopted a theory by Trevino (1986). The model postulates that ethical decision-making in an organization is explained by the interaction of individual and situational components. The individual reacts to ethical dilemmas with cognitions determined by his or her moral cognitive development stage. The individual's cognitive moral development stage determines how an individual thinks about ethical dilemmas, his or her process of deciding what is right or wrong in a situation (Trevino, 1986). In this case, the procurement manager is influenced by individual factors, situational milieu and organizational culture in his/ her decision-making matrix. The personal factors include ego strength, field dependence and locus of control whereas the situational milieu constitutes immediate job context factors such as reinforcement and work-related pressures. In this sense, the ethical standards of procurement professional are influenced by the three factors. The organizational culture comprises of the normative structure, referent others, obedience to authority and responsibility for consequences.

2.3 Institutional Theory

According to Scott (2005), institutions are composed of cultural-cognitive and regulative elements that, together with associated activities and resources give meaning to life. He further explains the three pillars of institutions as regulatory, normative and cultural cognitive. The regulatory pillar emphasizes the use of rules, laws and sanctions as enforcement mechanism, with expedience as basis for compliance (Scott, 2005). The normative pillar refers to norms (how things should be done) and values (preferred or desirable), social obligation being the basis of compliance. The cultural-cognitive pillar rests on shared understanding (common beliefs, symbols, shared understanding). This theory is very important when it comes to the implementation of sustainable procurement policy and practice in organizations that serve the public. This is a matter of organizational culture and the degree to which the prevailing climate in an organization is supportive of sustainability and/or of change in general. In other respects, this dimension includes the extent to which there is support for sustainable procurement at senior levels in an organization and the degree to which organizational processes and structures support, or retard, the development of Sustainable Procurement (Brammer & Walker, 2007).

3.0 The Conceptual Framework

The framework conceptualizes that procurement reservation practices influences service delivery.



Independent variables

Dependent variable

3.1.1 Procurement ethical practices and service delivery

According to Wee (2002) ethics are the moral the principles and values that guide officials in all aspects of their work. Ethical behaviour involves the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behaviors also include avoiding conflicts of interest, and not making improper use of an individual's position. The Contract Monitoring Kenya Network (CMKN) (2012) cited unethical practices as a major factor contributing towards inefficiencies in procurement in major public institutions in Kenya in return leading to squandering of public funds through fraud, favoritism and extravagance. This was revealed in a report by the CMKN dubbed Reforming public contracting: Giving Kenyans value for money that said there rampant unethical practices in public procurement. Githongo (2007) states that at the heart of grand corruption in Kenya is a series of financial arrangements that together make up a system of security-

related procurement, procurement of commercial debt, and financing of the political system.

According to Kipchilat(2006), the current Kenya procurement management is deficient of ethical inclination and should employ ethical consideration to re-invent itself. Gikonyo (2010) notes that the most persistent barrier to combating corruption is the culture of secrecy in public procurement and associated government functions. Unethical behaviour in public procurement, which includes conflict of interest and corruption, is an issue since may damage relations within the purchasing department, the relationship with other departments in the company, and with suppliers. According to the World Bank (2010), unethical practices gnaw away Africa's resources and undermine development.

According to a study by Organisation for Economic Co-operation and Development (2010), collusion and corruption are distinct problems within public procurement and these problems result from unethical practices like conflicts of interest. They are best viewed, therefore, as concomitant threats to the integrity of public procurement. Unethical procurement practices deprive citizens, as well as private entities, of the economic benefits of their taxes and natural resources (Transparency International, 2010).

3.1.2 Sustainable procurement practices and service delivery

Sustainable procurement practice is a factor influencing service delivery in public sector organization and indeed the public sector. Public procurement refers to "the acquisition of goods and services by government or the public sector organizations" (Uyarra& Flanagan, 2010) and it is one of the main economic activities of government (Thai, 2001). The UK SP Task Force define sustainable procurement as "a process whereby organizations meet their 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 organization, but also to society and the economy, whilst minimizing damage to the environment (DEFRA, 2006). In light of environmental degradation, climate change, resource depletion, and persistent global poverty, the supply chain management profession is increasingly called upon to contribute to broader organizational goals of sustainable development through the inclusion of social and environmental criteria within procurement processes (Srivastava, 2007; Preuss, 2009).

Green public procurement (GPP) is becoming a cornerstone of environmental policies around the world (Tukker et al., 2008).The potential environmental benefit that could be obtained if environmental requirements were systematically included in public tenders is rather clear and measurable (Parikka-Alhola, 2008).The implementation of GPP is spreading through the public authorities (PAs) both as a policy instrument and as a technical tool. The high purchasing power of PAs is a market factor with enormous potentialities. By operating as a market trigger, GPP can act as a strong stimulus for eco-innovation (Iraldo et al., 2007). However, in the last decade, the use of environmental criteria in public tenders has been increasingly diffusing. For instance, many national initiatives can be accounted in the United States (Swanson et al., 2005), in South Africa (Bolton, 2006; 2008) and in Asia (Ho et al., 2010). Especially in the European Union there was a strong and convinced promotion of these instruments, so that green procurement is gradually turning into a legally binding instrument (European Commission, 2008a).

From the economic perspective, the UK which have the best standard of sustainable procurement, and it's based on a set of guiding principles, including transparency, competitiveness, accountability, effectiveness, efficiency, legality, and integrity, that have the ultimate aim of supporting the delivery of "best value for money" in public procurement (HM Treasury, 2000). "Best value for money" is defined as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet

the customer's requirements" (HM Treasury, 2000). Regarding "value for money" the view of public sector efficiency (Gershon, 2004) sought to define opportunities to deliver "sustainable efficiencies in the use of resources within both central government and wider public sector" and highlighted that significant savings in procurement were expected to be obtained through better supply side management, seeking to communicate and manage likely aggregate public sector demand in a way with the supply and further professionalization of the procurement function within the sector (Gershon, 2004).

Another way to look at sustainable procurement is by considering it as a corporate social responsibility. Corporate social responsibility extends beyond a company's own organization. Nowadays it covers all activities within the company's supply chain. MVO Nederland, a Dutch coalition that promotes corporate social responsibility, uses the following definition: 'Corporate social responsibility is a process in which an enterprise takes the responsibility for the social, ecological and economic impact of its actions in the whole chain, and participates in a dialogue about this with stakeholders' (MVO, 2008). That makes it the responsibility of companies to check their suppliers on sustainability and, if necessary, to help them to improve. Close collaboration is essential if such efforts are to succeed. Lamming and Hampson (1996) argue that, the purchasing function is beginning to play an important role in the future strategy of businesses and will need to have policy in place that can cope with a range of issues, many of which closely affect the environment (Lamming & Hampson, 1996).

According to Lisa, (2010), culture plays a central role in the compliance process and associated outcomes. Due to regulatory reforms and changing community expectations, the role of culture in organizational compliance has gained momentum (Lisa, 2010). Basing on the competing values model (hierarchical culture), which involves enforcement of rules, conformity and attention to technical matters, individual conformity and compliance are achieved through enforcement of formerly stated rules and procedures (Zammuto & Krakower, 1991) as cited in Parker and Bradley (2000). Concerning the importance of organizational culture, earlier studies have suggested that public sector organizations, particularly NHS organizations, can exhibit cultures that are highly resistant to change (Cox, et al., 2005). Parker and Bradley (2000) further indicated that awareness of the nature of public organizational culture is vital in explaining and assessing the appropriateness and outcome of the current reform process. This applies to developing countries where waves of procurement reforms have resulted into enactment of procurement rules and regulations. This suggests that these cultures, where they exist, may have adverse consequences for the implementation of SP.

In order for an organization to be able to effectively implement SP activities, it is vital that organizations understand the concept of SP and government policies with respect to it and that they have the skills, competencies and tools necessary to make SP happen. Brammer and Walker (2007) noted four factors that influence the degree to which particular organizations implement SP practices. Firstly, Sustainability is itself a contested and complex concept suggesting that it may be the case that procurement professionals lack the skills and knowledge necessary to successfully implement SP (Brammer & Walker, 2007). Secondly, is the role of financial aspects of SP. In particular, perceptions of the financial viability of implementing SP are expected to play a crucial role in shaping the degree to which SP policies are acted upon since green/socially responsible production methods are often perceived of as being inherently more expensive than other methods.

Thirdly, the degree to which SP is implemented in organizations concerns organizational attitudes and incentives for SP. In part, this is a matter of organizational culture and the degree to which the

prevailing climate in an organization is supportive of sustainability and/or of change in general. In other respects, this dimension includes the extent to which there is support for SPatsenior levelsinan organization and the degree towchich organizationalprocesses and structures support, or retard, the development of SP. The final driver of SP implementation centers on the supply-side of the SP transaction by emphasizing the importance of the availability sustainably-produced goods and services for the ability of public sector organizations implementation of SP. Given that many of the goods and services procured by the public sector are highly specialist, it is possible that identifying sustainable sources of supply may be very challenging in some contexts(Brammer&Walker, 2007).

4.0 Summary and Concluding Remarks

This paper has reviewed the relevant literature and the considerable argument and conversion of procurement reservationspractices on service delivery in Kenya. The results of the review indicate thatthat public procurement preference and reservations policy among the youth, women and people women, youth, persons living with disabilities still not been fully implemented. On average the government enterprises have not fully prioritized the special groups intheir procurement opportunities. To meet the goals the there is need to take strategic measures that include among others strict regulations and compliance to ensure optimal service delivery to the entire public.

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