

# **THE PROCUREMENT PRACTICES FOR PROPERTY MANAGEMENT SERVICES BY PUBLIC INSTITUTIONS: THE CASE OF TWO PUBLIC INSTITUTION IN KENYA**

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## **Abstract**

Real Estate is an important resource in the delivery of public services and needs to be well managed. To enhance the quality of service provided or to enable these institutions concentrate on their core mandate, they have recently looked to the private sector to provide certain management functions. This is in the hope of delivering better quality service and reducing costs. The paper will capture the African context through an exploratory study

Outsourcing strategies have been adapted by many public institutions in Kenya. The main reasons for such decisions have been stated as the poor quality of services provided by in house staff and the high cost of such a service. The advantages and disadvantages of outsourcing has been debated in many scholarly journals. Public procurement is regulated by legislation, in Kenya by the Public Procurement and Asset Disposal Act of 2015 and internationally by the United Nations Commission on International Trade UNCITRAL Model Law on Public Procurement. This is because public procurement must be transacted with other considerations in mind, other than the economy. These include accountability, non-discrimination and respect for international obligations.

The paper is exploratory and looked at best practices that exist in chosen public institutions that outsource several of their real estate services. It has been identified that public institutions procurement process is governed by a legal framework and the study will find out if the institutions adhere to this legal framework, in an effort to give value to their consumers and the suppliers.

## **Methodology**

Data was collected using questionnaires and interviews. The questionnaires were distributed to estate and property departments and the procurement departments in the institutions chosen. Data was analyzed to provide

information on whether the institutions adhered to the best practice areas identified in literature and also to show the highest violation and risk areas.

The recommendations were be that these institutions will need to adhere to standards set through legislation. If need be that the existing legal framework and policies should be reviewed. It is also recommended that training may be considered for improved procurement services.

**Key words:** *Procurement, public institutions, improved service, training, legal framework*

### **Background Information**

Management of real estate is important in the delivery of public services. To enhance the quality of services provided by public institutions, the need to engage the private sector has become apparent. This is in the hope of delivering better quality services and reducing costs. To do this, outsourcing strategies have been adapted by many public institutions the world over. There is evidence that governments in developed countries spend at least 10% of their GDP on public procurement. In developing countries some spend between 40% and 70% of their GDP in public procurement (Development Assistance Committee, 2005). For instance, a study done by Makabira et al (2014) stated that procurement is an important and expensive business with at least 70% of revenue being spent on the purchase of goods and services. This points to a need for a well-functioning public procurement system. It was noted by Agaba and Shipman (2007), that though developing countries did not need to conform to international obligations, requirements now set by the World Bank and other donor organizations have set conditions for providing development aid. A well-functioning procurement system must therefore be identified as essential if funds are be used effectively to promote development where such a system is not provided by host countries. As a result of this need and other factors countries within the East Africa region, namely Kenya, Uganda and Tanzania reformed their procurement systems.

### **The Research Problem**

The provision of poor real estate service delivery was identified in many public corporations and as a result they have looked to the private sector to provide these services. These services are provided under a legislative framework, that has sometimes proved slow and open to corruption. There have also been cases of corruption and bribery attributed to the high value

of transactions in the public sector and the pressures to lower costs (Amemba et al, 2015). The main obstacles to procurement reform have been mentioned as deeply vested interests, lack of political will, lack of technical knowledge and capacity and the complexity of the substantive issues involved (Agaba et al, 2007). In Kenya, reports from the Auditor General consistently revealed irregularities in the use of public funds. Most of these misappropriations were linked to breaches in procurement requirements (Kagume and Wamalwa, 2018). In their study, they also noted that financial losses add up to billions of Shillings as seen in the financial years 2014-2016 for the Ministry of Health and Education. This was also noted by Onyango et al (2018) who stated that inefficiency and incompetence of overall administration and management of the procurement function in many public institutions contributes to great financial losses annually.

### **Objectives**

1. To find out if public institutions adhere to the legal framework provided
2. Identify the best practice
3. Identify the high risk stages of the public procurement process

### **Literature Review**

The literature reviewed was on general public procurement with few studies looking at procurement of real estate services. Agaba et al (2007) on public procurement reform in developing countries and concluded that though there are now laws in place, enforcing compliance and eradicating institutionalized corruption are the more difficult steps left to take.

Bwoma (2013) found that the Public Procurement and Disposal Act of 2005 in Kenya was the right step forward. But this Act affects provision of real estate services by causing delays because of the long procurement procedures. There is also poor contract management and recommended a review of the Act and capacity building and the upholding of ethical practices.

In a discussion of the development and reform of the Kenyan Public procurement systems by Ochieng and Muehle ([www.ppa.org/images/proceedings/IPPC5/Part/Paper 7-7](http://www.ppa.org/images/proceedings/IPPC5/Part/Paper%207-7)), they concluded that the Kenyan Government has committed to reform and improve the public procurement system. They said, however, there are insufficient

implementation laws and regulation in daily administrative actions and the culture of impunity and wide spread corruption. Makabira (2014) argued that procurement is an important and expensive business with at least 70% of the revenue being spent on purchase of goods and services. The study revealed that procurement planning, controls, monitoring and staff training in procurement had a key part to play in successful procurement. Amemba et al (2015) concluded that the high value of transactions in the public procurement process along with pressures to lower costs can result in bribery, corruption and other practices deemed to be unethical. Kagume et al (2018) in an effort to improve the public procurement process recommended the need to strengthen the oversight of public procurement to help raise the effectiveness of public service delivery. Most of the fixes, they stated did not require significant technical amendments to the law but a mere adherence to transparency and open contracting in Kenya.

In the mid-1980s, the need to reform the public procurement in the three East African countries of Kenya, Uganda and Tanzania became urgent, as there was growing scrutiny and pressure from within and outside. The push for reform came mainly from domestic procurement stakeholders. The stakeholders complained of misallocation of resources, inadequate infrastructure, inefficient services, high taxes and growing indebtedness. There was also external pressure from donors and multilateral organisations. Public procurement reforms were a condition for lending. The global trend towards trade liberalization has also made it inevitable to review procurement procedures. As a result of this, the three countries have put in place public procurement legislation. Which seeks to define the organization carrying out the public procurement, sets out how tasks are performed, assigns responsibility to procurement officers and staff and prescribes the regime for decision making and control. Countries that do not have their public procurement legislation can use the United Nations Commission on International Trade Law, The Model Law on Public Procurement 2011.

In provision of the different goods and services public institutions can use different procurement options. These options include inhouse provision of goods and services, outsourcing or a mix of the two. Outsourcing as a way for firms to concentrate on their core functions. Gilber and Black (2004) concluded that the optimum level of outsourcing may require a core corporate real estate staff that understands the overall corporate strategy. Meaning that complete outsourcing of all real estate services may create an

agency problem that reduces the efficiencies and productivity the firm hoped to achieve in the first place.

Outsourcing has also been seen as a way to improve productive efficiency and service quality in the public sector. Construction, property management and professional services are part of the key public services that are outsourced. Research work shows that there are several benefits of outsourcing. These include cost reduction, faster project completion, high level of expertise and technology and flexibility. There are however cases identified that have led to poor service delivery when the outsourcing option is taken. These include coordination breakdowns, lack of control by the client company over the outsourced employees. There are sometimes conflicts, especially where the outsourced company and the client do not share the same values. Security issues and leaking of trade secrets can happen when certain services are outsourced.

The selection of contractors is a fundamental part of the procurement process. The contractor ideally should have a combination of technical skills and financial resources. Hence the need for contractors to submit the financial and the technical proposals. However, the principle of proportionality should be adhered to. This is where the demands placed upon suppliers should be both relevant and directly related to the contract being awarded.

### **The Nature of Outsourced Real Estate Services**

Many public institutions in the world for a long time relied on in house management in the provision of real estate services. The provision of real estate services in house is done by a department created for this purpose. These systems have been found lacking because of low quality, high costs and time taken is too long. The idea is that goods and services which should be of high quality should be provided at the lowest cost and at the shortest time. It has been felt that this can be provided through outsourcing these services. Outsourcing also referred as contracting out, which involves placing of provision of real estate services in the hands of an external service provider. The two options have their advantages and disadvantages. Outsourcing is supposed to allow organizations to focus on their core business and create a competitive advantage by reducing operational costs. One can outsource an entire function or part of it.

Real estate services that can be outsourced include, cleaning, security, garbage collection, firefighting equipment and servicing, lift and generator maintenance. Other services include ground maintenance, borehole drilling and maintenance, as well as window cleaning. Ndede et al; (2010) believe that there can be significant cost savings when a business function is outsourced. Benefits have been identified to include flexibility thus avoiding fixed costs and bureaucratic processes.

Outsourced services mean contracts and contract management must be considered. The main stages in the procurement process according to Kagume *et al* (2018) are the pre-tendering phase, tendering and post award stage. From their work they identified that the majority of the procurement violations happen at the post award stages at 82% followed closely by the pre-tendering stage. Most of the cases were related to order and payment at 61%, contract management at 19% and contract award at 2%. Violations include abuses of the supplier performing the contract in term of quality, time and pricing. Others are product substitution or sub-standard work and service and lack of supervision from public officials.

### **Public Procurement in Kenya**

According to Kagume and Wamalwa (2018) public procurement is the means through which government spends revenue for the implementation of public service delivery. To ensure that such a process adheres to the principles of transparency and integrity, there is legislature laid down to protect it. In this regard, there is the law and the institutional framework. The spending by the public sector is high and adherence to the rules of procurement are essential in reducing corruption.

The way the public sector procures goods and services in Kenya has undergone significant developments over the years. In the 1960s, there were no regulations. While in the 1970s, 80s and 90s the National Treasury regulated the system by using circulars. In the mid-1980s, the need for reform in the public procurement was already evident in the three East African countries, that is Kenya, Uganda and Tanzania. This was as a result of growing scrutiny and pressure from within and internationally. The push from within came from stakeholders, where they were complaining of misallocation of resources, inadequate infrastructures, inefficient services, high taxes, growing indebtedness and high risks. External push was from donors and multilateral organizations who made procurement reform a condition for lending money to many developing countries. The demand

was to have national procurement systems to be in harmony with international procurement guidelines. Thus, making them more transparent and accountable.

To meet the requirements of stakeholders, donors and multilateral organisations, there now exists from 2005 a law in Kenya on public procurement. This is the Public Procurement and Disposal Act of 2005 and revised later to the Public Procurement and Asset Disposal Act 2015. In Uganda, there is the Public Procurement and Disposal of Public Assets Act 2003. The Public Procurement and Assets Disposal Act 2015 is an Act of Parliament to give effect to Article 227 of the Constitution: which states “To provide procedures for efficient public procurement and for the Assets Disposal by public entities and for connected purposes (GOK, 2010). It also requires Parliament to prescribe a framework within which policies relating to procurement and asset disposal shall be implemented. The Public Procurement and Asset Disposal Act was enacted to regulate and guide on how procurement processes are carried out within public entities in a bid to minimize challenges within this sector.

The 2015 Act prescribes the methods of procurement and the institutional framework. It establishes several oversight bodies and mechanisms, the office of the Auditor General, the Parliamentary Oversight Authority and the Ethics and Anti-Corruption Commission.

### **Best Practices in Procurement**

Reed *et al* (2005) admits that though industry best practices have great potential for government acquisition, a careful analysis of the differences between public and industry procurement is essential before attempting to implement them.

Agaba and Shipman (2007) in their discussion on public procurement reform, suggested the following as a desired outcome – Transparency that needed to be characterized by regulations and procedures that were well defined. These should also be open to public scrutiny. The importance of clear standardized tender documents containing complete information for ease of tendering. There was to be an equal opportunity for all in the bidding process. Secondly, a more effective means of fighting waste and corruption and improving financial accountability, thirdly integration of the public procurement system with national budgeting procedures A fourth aspect being to have a more attractive investment climate lowering risk.

Fifth, to have greater competitive pressure to satisfy customer needs and finally a streamlined procurement process through greater use of electronic commerce.

Further benchmarks establishing the elements of a well-functioning public procurement system are based on four pillars;

**Pillar 1: Legislative and regulatory framework**

All those speaking under this pillar agree that public procurement must adhere to public procedures if public funds are to be used in the best way possible. Crucial in this respect is a sound enforcement mechanism.

The enactment of the Public Procurement and disposal Act and the subsequent enactment of the Public and Procurement and Asset Disposal Act of 2015 has led Kenya to be assessed slightly stronger on this pillar.

**Pillar 2:** The recommendations will be that these institutions will need to adhere to standards set through legislation. If need be that the existing legal framework and policies should be reviewed. This is to incorporate emerging issues in African continent. It is also recommended that training may be considered for improved procurement services.

**Pillar 3: Procurement operations and market practices –** In this case there should be efficiency of procurement operations and practices. There should be functionality of the public procurement market and the existence of contract administration and dispute resolution provisions.

**Pillar 4: Integrity of the public procurement system** which has an effective control and audit system. It must also have an efficient appeals mechanism, as well as access to information. Along with this the existence of ethics and corruption measures.

Best practice here means that a department in charge of the management of estate or property can use this as a check list to gauge their performance.



## **Findings**

### **Case Study – Two public Institutions**

The research centered on procurement by two public institutions, one offering higher education learning and another reinsurance company based in Nairobi, Kenya. It was felt that it gave a good reflection of the public procurement of real estate services, which amounted a sizeable number of 13 for both institutions. The amounts paid to suppliers in this sector was also sizeable, almost in the region of Kshs. 70 million. (approximately US Dollars. 700,000) for the higher learning institution. The Departments that are charged with the provision of real estate services are an Estates Department and the Construction and Maintenance Department and a property management department. Both have heads of department trained in a real estate discipline. These departments, like any other rely on the Procurement Department to purchase goods and services for them.

Data for this work was collected from both primary and secondary sources. The questionnaires were distributed to the estate and property managers in the two institutions and to the procurement officers. The questionnaires to the estates and property departments in the two institutions were filled and returned, the procurement section did not respond. It was however, felt that the data collected was adequate for this paper. Data collected was cross checked against the four pillars identified under best practices and to show areas of the highest violations.

On the objective to find out if public institutions adhere to the legal framework provided these were the findings.

### **Pillar One: Legislative and regulatory framework**

There was evidence that the two institutions adhered to the laid down legislative and regulatory framework. The two institutions follow the Public Procurement and Asset Disposal Act, along with the Public Procurement Regulation 2016 and the Institution's own procurement manual.

The staff interviewed stated they were aware of the Acts relevant to procurement in this country. These include the Public Procurement and Asset Disposal Act of 2015, The Finance Act, The Public procurement Regulations and the institution's procurement manual. The department used the procurement manual before the Public Procurement and Disposal Act was enacted in 2005. Meaning they were aware that public procurement must have certain guidelines. The two institutions trained

their staff members especially when they procure new laws and new equipment. This is a clear indication that the institutions know the consequences of not using the Act in the procurement of goods and services.

It was however found out that on occasions, public institutions have been able to circumvent the law by raising the mandatory requirement which play into the hands of particular suppliers. For example, on the procurement of security services, the Protective Security Association (PSIA), protested to the University of Nairobi procurement manager over the tender process. The Vice Chancellor was reported to have said, *“We were looking for a company with a sound financial position and which can pay its guards even before receiving payment from the University. We are facing serious cash flow challenges”*. The PSIA, faulted the university for trying to circumvent the law so as to get into a contract with a firm that can bail it out of its financial problems. This kind of arrangements locks out the small firms. Another anomaly noted in this award, was the contract period which was for three years as opposed to the one year contracts that is the practice.

#### **E-procurement and green procurement**

One of the two institutions was using e-procurement and training for suppliers especially on the use of e-procurement was given by the procurement department. There is the use of electronic procurement Information system (EPMIS) to procure goods and services. E-procurement is encouraged by the Public Procurement and Asset Disposal Act 2015 and is defined as *the process of procurement using electronic medium such as the internet or other information and communication technique. Some of the reasons given for not using e-procurement was lack of awareness and cost. (GoK, 2015 section 2)*

Green procurement is being used in the institution of higher learning and not the reinsurance one. Green procurement is a means of improving products and operations from an environmental perspective, it means a reduction in energy consumption by using natural lighting or energy saving bulbs. The need to have a production process of cleaning materials that are not only environmentally friendly but ones that conserve the natural resources. Poor maintenance of plumbing systems that reduce water leakage and misuse. Here there was the policy of take back, whereby suppliers take back the goods on expiry of their life e.g. computers and toners. An effort is made to procure goods and services which are

environmentally friendly. Suppliers are required to confirm that they are caring for the environment by providing their policies as part of the tender requirements.

### **Pillar Two: Institutional Framework**

There was a clear institutional framework with fully fledged departments concerned with real estate services and a separate procurement department that served this department as well as other departments.

Real estate functions are supervised by the Estates Department or the property management department. While procurement of goods and services for this department are carried out by the Procurement Department. The Department of procurement at both Institutions is under supervision of the Public Procurement and Oversight Authority.

From the human aspect, challenges experienced include resistance to change. To overcome this the institutions gives training and workshops whenever there are changes in legislation both locally and internationally. Training is done through workshops and group trainings where an expert is invited.

### **Pillar three: Procurement operations and market practices**

The functions identified in real estate in the two institutions are similar. These ranged from cleaning, maintenance of lifts, general repair, boreholes, garbage collection, security and maintenance of grounds among others. Training has also been given on routine services such as firefighting and security preparedness. Table 1.1 below shows what options of procurement were used institution 1 and 2.

**Table 1.1 Real Estate Functions**

	Institution 1	Institution 2	Institution 1	Institution 2	Institution 1	Institution 2	Institution 1	Institution 2
Function	Inhouse		Outsource		Mix of the two		Period of contracts in years	
Cleaning				X	X		2	2
Security				X	X		5	2
Lift Maintenance			X	X			1	2
Bore hole Drilling			X	X				2
Bore hole maintenance			X	X			1	2
Window Cleaning			X	X			2	2
Generator provision			X					2
Generator Maintenance				X	X		1	2
Grounds Maintenance				X	X		2	2
Plumbing	X			X				2
Fire equipment			X	X				2
Garbage Collection			X	X				2
Cold rooms			X	X			1	2
Wastewater management			X	X			1	2

Source: Field Survey, 2019

From Table 1.1 above, the two institutions outsource most of their real estate functions. The main reasons for using outsourcing was cited as lack of technical expertise within. It was found cheaper to outsource. It was also thought that the institutions would be better off concentrating on its core business. Functions like cleaning were done using the mix of in-house and outsourcing. In this case the outsourced service cleaned the common areas, while in-house staff cleaned the offices and classrooms (often for security reasons). Security was also mixed for the same reasons. Some of the other services were specialized and were left to the experts.

**The challenges for outsourcing that were stated included:**

Poor supervision leading to poor workmanship, quality sometimes is comprised, goods of low quality are provided. Some of the services are quite expensive. In other cases where a supplier had monopoly, prices were high since there was no competition.

*One of the property managers says “Service providers initially introduced staff are competent but are gradually replaced. The Institution is now given substandard goods and services midstream by bringing in cheaper workers who lack training.”*

This means, though the Public Procurement and Asset Disposal Act was used initially the public institutions suffer eventually if there is lack of supervision or corruption is involved.

### **Mixed Inhouse and Outsource**

The use of the mix of the two procurement models was said that some services require a mix so as to ensure efficiency and close monitoring, for example the security management. Other areas require privacy and confidentiality thus access to some areas by outsiders is limited. Such areas include staff offices. This option has the benefit of cost cutting, though the research did not look at the actual cost reduction. Sharing of risks and costs was also said to be a benefit.

**The challenges included:** lack of boundaries as to who is to do what task. Difficult to appraise staff since targets are shared.

### **In House**

The Inhouse only option is used where the institutions felt the expertise is there and jobs are repetitive. This is also link to savings in cost. Other benefits of this option were said to be good record keeping, cheaper in the long run, a sense of belonging is instilled in the employees. Reduced response time, especially in times of emergencies.

**Challenges for inhouse included:** a lack of commitment by members of staff. The cost was high for training staff when new technology or methods are introduced. Employee turnover is high, with staff looking for greener pastures.

From the requirement under Pillar Three, there was evidence that the institution had chosen to use all the procurement options available and there was existence of a contract that was properly administered and there were dispute resolution provisions.

The contract periods are varied for the different services and no explanation was given to this variation. This lack of a standard contract was queried by

the Protective Security Association (PSIA). There was no clear explanation on this.

**Pillar four: Integrity of the public procurement system**

How the institution deals with issues of integrity was handled under the human resource policy for inhouse staff. Where disciplinary measures were taken. Any contractor not adhering to the requirements of the contract they had signed breached it and it was terminated. Any dispute arising was handled as per the contract. In some of the cases the requirement is to handle disputes amicably. If this does not happen then the dispute can be referred to the Arbitration tribunal.

**On the second objective was to identify stages where most violations in procurement occur**

Since the Acts of Parliament were enacted, public institutions had to follow the rules as required. Where departments are dealing with the private sectors on matters of procurement. The Act requires that tenders should be done by the Act and the University uses the methods given by the Act, which include open tendering, two stage tendering, design competition (the institution used this for one of the buildings), restricted tendering, direct tendering, request for quotations, low value, force account and electronic reverse auction. As a result of the Act, the institution under study has been able to procure transparently in most cases and is accountable to the public.

The contracts seen indicate that public institutions are able to open the public marketplace to the private sector and engage.

The research also identified the different contracts signed as seen in Table 1.2 below.

**Table 1.2 Contracts with service providers**

	<b>Contract</b>	
	Contract for comprehensive service and maintenance of generator	Several contracts with different contractors
	Window cleaning contract	One contractor
	Comprehensive cleaning and ground maintenance	One contractor
	Contract for preventive maintenance of power factor correction equipment	One contractor
	Fire equipment provision and servicing	One contractor

	<b>Contract</b>	
	Lift maintenance –	contracts with several service providers
	Waste water treatment	Two contractors
	Borehole service agreement of 14 boreholes	One contractor

Field survey, 2019

The lowest price was not the only criteria used in selection of contractors. However, there will always be a request for a technical and financial bid. There was evidence from both institutions that there is a criterion used. It was noted that several contractors were awarded contracts for similar tasks. Some of the explanation for this included the fact that there many campuses spread out in the country for the higher learning institution. The geographic base and current project commitment were a factor that was considered in this. If a contractor has too many other assignments, then he will not give your project full attention.

Just as from the study done by Kagume *et al* (2018) violations in the institutions studied here occurred after the contract award which relate to the ordering, payment and contract management. This was evident from the property manager’s statement that *“Some services are over-priced. Service providers offer substandard goods and services midstream by bringing in cheaper workers who lack training. Initially the introduced staff are competent but are gradually replaced. There is Lack of control when services are substituted with substandard service”*

There were instances where the criteria was changed to favour bigger firms on the account that they are not relying on the payment by the institution to meet their financial obligations.

The paper has identified what is the best practice, with the four pillars being used to gauge how well the institution has adhered to the suggested reforms; under legislative and regulatory framework, the institutional framework, the operations of procurement and integrity. The institutions have shown evidence of changes to try and fit into these four pillars. The riskiest stage in the procurement process was identified as the post award stage.

There are consequences of violation which include poor performance of the contract and delays in implementation. Where there is breach of contract, termination will occur leading to nonperformance of tasks which will have an impact in the day to day smooth running of the institution. In some cases will stop the institution's delivery of its core mandate.

### **Conclusions**

The paper concludes that public procurement is now subject to the various legislation and regulations that have enacted. These laws and regulation were enacted to assist public institutions procure transparently and reduce corruption in the public sector. The two institutions though different in what they do adhere to requirements of the Public Procurement and Asset Disposal in the same way. Meaning that the two institutions chosen for this study represent what happens elsewhere in the public sector. All public institutions must therefore follow these laws and regulations to be able to carry out its mandate. The four pillars play an important role in assisting these institutions keep to what is ideal. The two institutions have shown that laws are there to be implemented and enforced, but there are cases where the law can be circumvented. Cases were noted where the criteria were changed to favour suppliers who had financial strength. There was also evidence of violations of the procurement process after the contract was awarded. In these cases, service providers were found to deviate from the original contract by supplying sub-standard goods and services.

It is recommended that the institutions continue to adhere to those standards set through legislation. If need be that the existing legal framework and policies should be reviewed to incorporate emerging issues in African continent. It is also recommended that training may be considered for improved procurement services. Since there was a gap in the understanding of e-procurement and green procurement. Training in e-procurement and green procurement for procuring departments and for the suppliers should be done.



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