

Ethical Issues in Public Procurement in Kenya

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I. 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. As a result, ethical supply chain management is becoming a mainstream business practice in public sector in Kenya. Ethics in Public procurement provide advice and guidance to buying organizations on how to develop ethical purchasing practices in their supply chains (Arkingstall 1994). Although intended primarily for buyers, this guidance applies equally to anyone who has responsibility for managing the supply of goods or services from an external source. It has become essential for public organizations to have an ethical policy or code of conduct in procurement functions (Amstrong and Sweeney 2004). The Chartered Institute of Purchasing and Supply (CIPS) believes that public entities should universally apply the practice set out (as laws, regulations, policies and procedures) and should encourage all cadre of organizations to include good ethical business practices in all areas of their work. In this case, organizations should also involve all stakeholders in this process. It is vital that organization's management visibly endorses procurement ethical policy.

As ethical supply chain issues become more widely known, stakeholders are starting to question organizations about their compliance. There has been rapid growth in ethical investment funds that encourage organizations to look at issues of corporate social responsibility (Budenhorst 2006). However, although some companies started work on these issues in the 1980s, ethical sourcing is still a comparatively new concept for most organizations, especially government owned. Most of empirical research in Supply Chain Management (SCM) associated with unethical practices or behaviors in the buyer-supplier relationship is concerned to the opportunism, generally under the theoretical lens of transaction costs economics. Although opportunism is considered an unethical behavior, it is not the only one. According to Carter (2000) there are other unethical practices which may benefit the firm and/or the professional involved in the transaction. Apparently, there are few empirical studies addressing unethical conducts or behaviors in SCM, excepting the opportunism, despite supply chain professionals are probably more vulnerable to unethical choices because there are simply plenty of opportunities to abuse. Facing increasing demands for cost reductions and unattainable goals, supply chain personnel may succumb under such pressure, engaging in unethical practices (Rottig, Koufteros, & Umphress, 2011).

With the enactment of the PPDA and other Regulations, Kenya today has in place a sound and comprehensive legal framework for public procurement with a clear hierarchical distinction. The PPDA clearly establishes the procurement methods to be applied, advertising rules and time limits, the content of tender documents and technical specifications, tender evaluation and award criteria, procedures for submission, receipt and opening of tenders, and the complaints system structure and sequence. The PPDA and Regulations cover goods, works and services for all procurement using national funds. Both documents are published and widely distributed within government. However, this increased professionalism has not, however, proved to be an adequate defence against the temptation to act unethically by purchasing and sales people. Bribery, gift-giving and entertainment have been and are being used to induce purchasing personnel to favour particular suppliers rather than be guided solely by factors such as price, quality and delivery. This paper will look at ethics in public procurement and how its role in procurement performance in public sector in Kenya.

II. PURPOSE OF THE STUDY

The purpose of this paper was to analyze ethical issues in public procurement in Kenya. This paper was guided by the following research questions: What ethical issues are incorporated in public procurement in public institutions in Kenya? What is the role of; procurement standards, policies and regulations on procurement functions of public institutions in Kenya?

III. METHODOLOGICAL APPROACH

A literature review was conducted aiming to collect and analyze all relevant papers (by content analysis) complying with empirical studies that address the specific issue of ethics in the buyer-supplier relationship and along the supply chain. As a result of this review, a discussion on ethical issues in supply chain in public procurement was presented and finally, credible results, conclusion and recommendations also given.

IV. DISCUSSION

Ethics are the guidelines or rules of conduct by which we aim to live on. Organizations like individuals have ethical standards and frequently ethical codes (Peter and Bailey 2005). The ethical standards of an organization are judged by its actions and the actions of its employees, not by pious statements of intent put out in its name. The pressures which the marketplace

exerts on purchasing departments and on individual buyers make it essential that top management, purchasing and supply managers, buyers and all other members of the procurement system recognize and understand both professional and ethical standards required in performance of their duties. According to Kothari (2004) emphasizes on procurement ethics being important in procurement for the following reasons: procurement staffs are the representatives of their organization in dealing with suppliers, sound ethical conduct in dealing with suppliers is essential to the creation of long-term relationships and the establishment of supplier good will, it is impossible to claim professional status for procurement without reference to a consideration of its ethical aspects.

The theoretical background underlying this review comprises three different fields of knowledge: *supply chain management*, *business ethics*, and *behavioral ethics*. In this study, the definition of supply chain management (Procurement) is that offered by Mentzer, DeWitt, Keebler, & Min (2001): 'Supply chain management is defined as the systemic, strategic coordination of the traditional business functions and the tactics across these business functions within a particular company and across business within the supply chain, for the purposes of improving the long-term performance of the individual companies and the supply chain as whole'. With this definition, the focus of SCM is on the different levels of analysis and the business operations within the channel from the point-of-origin to the point-of-consumption. Business ethics pertains to the conceptual field of social responsibility, which has been centered a real debate for decades, showing very different philosophical positions. For example, Friedman (1992) argued that the doctrine of social responsibility is "fundamentally subversive", asserting: "Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible" (Friedman, 1992). Acknowledging the primacy of economic concerns, (McGuire, 1993) accommodates a broader view of the firm's social responsibility: "The idea of social responsibilities supposes that the corporation has not only economic and legal obligations, but also certain responsibilities to society which extend beyond these obligations" (McGuire, 1993).

In a slightly different path, Sethi (1975) proposes a set of three dimensions to corporate social responsibility: (1) social obligation, (2) social responsibility, and (3) social responsiveness. Social obligation involves corporate behavior in response to market forces or legal constraints. Social responsibility "implies bringing corporate behavior up to a level where it is congruent with the prevailing social norms, values and expectations" (Sethi, 1975). Finally, Carrol (1979) proposed a definition of social responsibility that fully address the entire range of obligations business has to society: "social responsibility must embody the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time" (Carrol, 1979). These four categories are not mutually exclusive, nor are they intended to represent a continuum. According to Carrol (1979), these categories are neither cumulative nor additive. Although all these responsibilities have always simultaneously existed for business organizations, the history suggests an early emphasis on the

economic and then legal aspects and a later concern for the ethical and discretionary aspects.

For this review purposes, the framework proposed by Carrol (1979) comprises the concept of ethical responsibility to be used going forward: although the economics and legal responsibilities embody ethical norms, there are additional behaviors and activities that are not codified into law but nevertheless are expected of business by society's members. Important to note that the discretionary responsibilities, as described by Carrol (1979), are those purely voluntary, and the decision to assume them is guided only by a business's desire to engage in social roles not mandated, not required by law, and not even generally expected of businesses in an ethical sense.

Unethical behavior conceptualization is often found in the decision-making literature. For some authors, unethical intention is used as a proxy of unethical behavior (Kish-Gephart, Harrison, & Trevino, 2010). Unethical intention is defined as the expression of one's willingness or commitment to engage in an unethical behavior. Unethical behavior is defined as any organizational member action that violates widely accepted (societal) moral norms. These definitions are convergent with recent behavioral ethics literature (Kaptein, 2008; Trevino, Weaver, & Reynolds, 2006). Despite research that address individual-level determinants of ethical and unethical decision making at work has grown significantly in the past few years, a recent meta-analysis on the topic concludes that still little is known about how and under what circumstances individuals make unethical choices. The most studied ethical decision-making framework was proposed by Rest (1986) and comprises a sequence of elements considered antecedents of an ethical/unethical behavior/decision: moral awareness, moral judgment and moral motivation. Recognizing an ethical issue and solving it means determining whether a specific behavior or decision is right or wrong (Treviño, Weaver, & Reynolds, 2006). In this sense, formal communication of organizational values and principles, by the establishment of codes of conduct and codes of ethics, have been allowed firms express expectations or guidelines for employees regarding a variety of issues (Rottig, et al., 2011).

In relation to this, Public procurement means the process of acquiring goods, works and services by government procuring entities. The process includes purchasing, hiring, leasing or any other contractual means of engaging suppliers in provision of public services to the public. The public procurement goals include; satisfying the customer in terms of cost, quality and in timely manner, minimizing administrative operating costs, conducting business with integrity, fairness and openness and fulfilling public objectives. Rwti (2005) noted that effective application of procurement ethics is a major challenge facing many organizations around the globe. The level of application of procurement ethics has been used as a measure of the state of organization corporate image and corporate social responsibility practices hence supply chain management ethics is nowadays considered a core factor for business success. Low level of procurement regulations compliance by government ministries and lack of effective enforcement of regulations implementation by the government encourages cases of unethical procurement practices in Kenya (GoK 2006).

The rise of supply chain management and procurement in Kenya is associated to a number of unethical business practices that violates codes of conduct. For instance when tendering processes is not executed in a transparent manner, then suppliers may have chances and vantages to solicit for consideration by advancing bribes and other forms of corruption. Transparency, fair treatment in bidding and awards of tenders, accountability and responsible purchasing and supply have a positive implication on procurement processes in any organization and could thus result into increased performance and delivery. This is not possible without employing ethical theories. According to Rwoti (2005) compliance with the formal elements gives an indication of knowledge of the rules. Procurement managers will comply with the rules if they perceive them as clear. Lack of clarity increases the possibilities for procurement regulations noncompliance. Lack of familiarity with procurement rules results into poor compliance levels and this leads to inefficiency which negatively affects organizations performance.

In this case, public procurement is the main process through which the government operates and spends public money. It is estimated that in Kenya public procurement accounts for over 10% of Gross Domestic Product (GDP), making it a large market for suppliers and contractors (GoK 2006). With this amount of resource public procurement tops the list of sectors with high opportunities for corruption. This therefore means that every effort should be made to erect safeguards to check against corrupt malpractices in public procurement. It is against this background that Kenya Anti-Corruption Commission has partnered with the Public Procurement Oversight Authority (PPOA) to issues corruption prevention guidelines in public procurement as part of its corruption prevention strategies and in line with the wider public financial management reforms that Kenyan government has been initiating. The issuance of these guidelines is further anchored in Section 9(c) (i) and (iv) of the Public Procurement and Disposal Act, 2005 read together with regulation 30 of the Public procurement and Disposal regulations, 2006. These guidelines are aimed at assisting public procuring entities in checking corruption in the procurement processes and instilling ethics as well in public procurement. This guideline highlights procurement methods, the procurement processes and various manifestations of corruption and corruption prevention strategies.

V. CONCLUSION

Public sector has become highly competitive, and the industry therefore focuses a lot on principles of efficiency of procurement process. But this paper shows that for long term efficiency and effectiveness, competency need to be built on the ethical code of conduct in public procurement. The paper brings us to the conclusion that the more ethical practices are adhered in public organization, the better the effectiveness of the procurement process and hence the more customers will be satisfied. Furthermore this paper asserts that the more public organizations adhere to a strong ethics policy, the more likeliness to enjoy a long-term competitive advantage. Despite the government implementation of policies in procurement, its full adoption is still a challenge since the organizations lacks the capacity to do so. Lack of a procurement ethics training policy is

enough proof since all the ethical practices are just mere guess work.

This article has reviewed the ethics at the interface between purchasing and supplier/contractor from an international perspective and provided evidence of the degree to which their interaction is marked by unethical behaviour. Bribery is seen as being the most significant problem, particularly, though not exclusively, in public procurement in Kenya. Many public organizations operate lower ethical standards, and that corruption is endemic in their procurement functions. However, there are positive movements to improve the situation by; for example, introducing codes of ethics which, although they have limitations, can influence the climate within which procurement processes are conducted.

VI. RECOMMENDATIONS

Efforts foster ethics in public procurement ought to be seen as the responsibility of both public entities (employee and employers) and bidders/contractors. Prevention of corruption deals; collusion and malpractices are essential elements of risk management in procurement. The purchasing unit should not be solely responsible for making the organizations purchase decisions. Instead, it should involve individuals from entire organization. In various committees, organization personnel can work together in order to achieve the larger goals of the organization's strategy. Ethical procedures should comprise clear and transparent rules as well as clear behavioral rules for all the parties in the procurement process. The corruption Prevention Guidelines in public procurement need frequent review to cope with changing trends in procurements procedures. This paper recommends that there is need for establishment a procurement training policy and code of ethics. This will provide the staff involved in the process with the much needed knowledge and guidance. The state of procurement professional in public sector in Kenya need to be improved especially now when the public sector is facing accusations of procurement malpractices and procurement in efficiencies at high levels.

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