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Role of Procurement Laws in Facilitation of International Trade in East Africa Community

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Abstract

The size of the public procurement in East African countries (Kenya, Uganda & Tanzania) is quite considerable. The public authorities spend approximately 10 % of the East African countries GDP and thus, public procurement accounts for a significant portion of the overall demand for goods and services and is increasingly seen as an attractive and feasible instrument for developing society and nation. This study conducted a critical review of empirical literature to establish the role of procurement policies and procedures in facilitation of international trade in East Africa. The general objective of the study was to establish the role of procurement laws in facilitation of international trade in East Africa. The specific objectives of the study were to establish the influence of procurement policies and procedures in trade facilitation and to establish the challenges facing implementation of procurement laws in East Africa Countries. The study used a desk study review methodology where relevant empirical literature was reviewed to identify main themes. The study was informed by institutional and resource based theories. The study found that good laws alone cannot deliver the expectations of East African Countries as far as public procurement reforms are concerned. Numerous instances of corruption and exemption in public procurement have been accounted for in spite of the fixing legal regime in the region. Effective public procurement planning prompts the leads to the identification of major investment opportunities that in turn facilitates budgetary and allocation decision-making of procurement practitioners. However, there is a growing appreciation of the linkages between specific public sector objectives and public procurement practice. The outcomes of the research revealed the importance of procurement function to the East Africa region in trade facilitation. The East Africa Countries should evaluate the existing policies and regulations to ascertain whether the rules

governing procurement expenditure are fit for purpose. The main challenges encountered in the procurement process was corruption, delays, collusion and bureaucracy. The study recommended that the EAC countries should adopt open contracting principles and data standard of disclosure and public participation and begin to publish and publicize government contracts throughout the procurement cycle, from the pre-tendering to the post award stage. The laws regulating public procurement in East Africa Countries on trade should make it mandatory for all public institutions to undertake regular training of their procurement practitioners on procurement laws, regulations, record-keeping, and other procedures to improve adherence to procurement regulations and facilitate trade.

Keywords: *Procurement laws, policies and procedures, International Trade & East Africa.*

1.0 Introduction

Expenditure through procurement of goods and services is an important avenue for ensuring the provision of public services in East Africa Community. The integrity of the entire process from tendering all the way to provision of the same services or delivery of the goods and their use is an indispensable indicator of the robustness of management of public resources and cross border trade in the East Africa Countries. These goals are best assured through an institutional framework for securing oversight by the legislature, adherence to value for money principles by all agencies. This study conducted a critical review of empirical literature to establish the role of procurement policies and procedures in facilitation of international trade in East Africa.

1.1 Background of the Study

Procurement is acquiring resources from outside suppliers. In this sense, procurement activities are very critical to all organizational units from households to firms, organizations, and the government. From the functional viewpoint, procurement is an indispensable activity and its successful achievement is essential to any organization. In the private sector, procurement is considered as a profit center to maximize the firm's profit in saving material cost. However, there is a major distinction in public procurement as it draws its funds from tax revenue. Many procurement procedures have not been streamlined to make them less prone to malpractices. Hence, unlike procurement in the private sector, governmental procurement ought to reflect public concerns as well as efficiency. Nevertheless, both are quite similar in many ways such as cost savings, quality assurance, supplier relationship, procurement ethics, supply market analysis, green procurement and so on.

The size of the public procurement in East African Community (Kenya, Uganda & Tanzania) is quite considerable. The public authorities spend approximately 10 % of the East African countries GDP and thus, public procurement accounts for a significant portion of the overall demand for goods and services and is increasingly seen as an attractive and feasible instrument for developing society and nation (World Bank Group, 2017). Therefore, procurement laws and policies in public procurement could make a profound impact on the countries and their industries. Thus, public procurement has come to play a major role in enhancing the quality level of public and private sectors, and there has been much research into public procurement (Mauro, Joly, Aisen, Alper, Boutin-Dufresne, Dridi & Mira, 2015).

In the private sector, procurement is viewed as a strategic function working to improve the organization's profitability. Procurement is viewed as streamline processes; reduce raw material prices and costs, and identifying better sources of supply. In contrast, public procurement processes in many jurisdictions remain inward looking. Sometimes, state buying routines are structured prior to prohibit external bids (Karuri, 2014). Presently that globalization, and regional economic integration is the new reality, there have been debates on whether viable procurement regulation and trade liberalization can be better used to upgrade procurement results. With increasing quantities of consumption, the requirement for receptiveness, transparency and non-prejudicial activity is required by legislation (Muthoka & Iravo, 2017).

Goods, services, employees, customers, investments and intellectual property now cross borders at an ever-increasing rate. Governments sign regional trade agreements (RTAs), bilateral investment treaties, and other economic accords in unprecedented numbers. In the 21st century, open borders have come about decisively in light of the fact that technological advances have joined with changes that encourage numerous kinds of trades in the East Africa region (PricewaterhouseCoopers, 2017). The critical development priority of advancing comprehensive development is influenced by public procurement practices. The youthful, the old, and the poor specifically look upon the services of state provided and such provision relies heavily on where inputs are sourced from and on what terms (Nyeck, 2016). Organizations and their staff depend on state-supported framework, which thusly depends on state procurement practices (Arasa, 2015). Regardless of whether it is neediness decrease and comprehensive development, occupations, or

fare advancement, the adequacy of a country's procurement practices and regulation has a huge bearing on whether a state accomplishes vital social and development objectives.

1.1.1 Procurement Laws in East Africa

There are several existing laws that regulate procurement in East African countries. In Kenya, the Public Procurement Oversight Authority (PPOA) regulates the procurement. The Public procurement system in Kenya has undergone significant developments. The system had no formal regulations in the 1960s. Treasury Circulars for procurement purposes were implemented between the 1970s and 1990s. In 2005, the first Public Procurement and Disposal Act (PPDA) was enacted followed by the Public Procurement and Disposal Regulations (PPDR) in 2006. Following the entrenchment of procurement in the Constitution of Kenya 2010, these laws were repealed by the enactment of the Public Procurement and Assets Disposal Act (PPAD) of 2015 and the attendant Public Procurement and Disposal Regulations (PPDR). These legislations provide a strong legal framework on which the fight against corruption in public procurement is anchored.

In Uganda, the Public Procurement and Disposal of Public Assets Authority (PPDA) is responsible for regulation and supervision of procurement and disposal of government-owned property and other assets. The body monitors procurement efficiency to strengthen public markets, improve competitiveness, and reduce mismanagement. The PPDA could adopt a tool that would enable its staff to parse the number of bidders by PE, as well as by procurement method, tender value, item, or location.

In Tanzania, the Public Procurement Regulatory Authority (PPRA) regulates procurement in all public procurement activities carried by all public bodies in the mainland Tanzania. the Public Procurement Act, 2011 (PPA); the Public Procurement (Amendment) Act 2016 (PPAA); the Public Procurement Regulations 2013 (PR); the Public Procurement (Amendments) Regulations 2016 (PRA); the Public Private Partnership Act 2010 (PPP);the Public Private Partnership Regulations 2011 (PPR); and the Public Procurement Appeals Rules 2014 (PPAA Rules).

According to the East Africa Community (2017), the collective laws under the East African Community, include The Customs Union Protocol Signed in March 2004, and came into force upon ratification by the then three EAC member countries and became effective on 1 January 2005. The objectives of the Customs Union include furthering the liberalization of intra-regional

trade in goods; promoting production efficiency in the Community; enhancing domestic, cross-border and foreign investment; and promoting economic development and industrial diversification. The Common Market Protocol EAC Partner States signed the Protocol in November 2009, and it came into force on 1 July 2010. The Common Market is the first of its kind in Africa. The EAC seeks to progressively transform into a single market that allows free movement of goods, persons, services, labour and capital while guaranteeing rights to residence and establishment. It also reviews the relevant laws to ensure the smooth operation of the EAC Common Market are ongoing in all the Partner States.

1.2 Statement of the Problem

The procurement function has become increasingly important over the past decades since purchasing and supply become a major determinant of corporate success. Public procurement process in East Africa plays significant role in ensuring effective control and supply of inputs, which are important for all levels of any establishment. It plays a key role in promoting good management that prevents the potential of corruption in the use of public resources. However, the problem of weak regulation, poor implementation of existing laws and corruption remains one of the main obstacles to economic development in the region (PPO, 2016). Unexplained delays, favouritism, exaggerated price projections, splitting of contracts for similar goods and works are some of the common setbacks in procurement in the East Africa Countries (EACC, 2017). There has been a series of reforms aimed at streamlining public procurement process in the region; however, the bulk of malpractices still occur in procurement in trade (Arasa, 2015). Failure to implement or deferred implementation of suggested procurement regulations has brought about pointlessly high task costs, poor stock control, unsatisfactory provider evaluations gauges, clumsy business exercises, and inability to pull in and hold experienced and talented work force in the procurement positions, along these lines influencing the capacity's execution of exchange East African Countries.

For instance, Public Procurement Oversight Authority (2017) shows that Kenya's State agencies buy goods at an average of 60% above the prevailing market price making them avenues for corruption despite the existing regulations. Further, public procurement in East African Countries is not competitive and it is controlled by powerful cartels who dictate prices at which government

buys goods and services. Therefore, this study sought to establish the effects of implementation of procurement regulations and trade facilitation in East African Countries.

1.3 Objectives of the Study

The general objective of the study was to establish the role of procurement laws in facilitation of international trade in East Africa.

The specific objectives of the study were;

- i. To establish the influence of procurement policies and procedures in trade facilitation in East African Countries.
- ii. To establish the challenges facing implementation of procurement laws in East Africa Countries.

1.4 Research Questions

- i. What is the influence of procurement policies and procedures in trade facilitation in East African Countries?
- ii. What are the challenges facing implementation of procurement laws in East Africa countries?

2.0 Literature Review

2.1 Theoretical Framework

2.1.1 Resource Based Theory

Resource based theory identifies and analyzes an organization's strategic advantages that will in turn be a source of competitive advantage. These competitive advantages might be organizational, human or money related and their focal points are presented dependent on their rareness, uniqueness and esteem. Resource Based Theory underscores that competitive advantage in associations is resolved through legitimate planning and use of procurement. Peteraf and Barney (2013), states two presumptions utilized in analyzing competitive advantage using this theory; firms within the same industry may have diverse resources and the other, believes this dissimilarity in resources may continue for a long duration.

A resource turns into a competitive advantage when it is cannot be imitated. In the event that all sectors in the market have similar resources there would not be any competitive advantage (Cool

2012). Resource proficiency empowers procurement accomplish more with less. As indicated by Barney (1991), resources empower firms enhance productivity and save money on pointless costs. Procurement practices ought to be unprecedented and hard to mimic, for instance sourcing forms. Both operational and organizational working are fused in Resource Based View. Enterprise Resource Planning (ERP) empower associations accomplish higher benefits. ERP frameworks are costly to introduce and not all organizations have grasped their utilization, this implies organizations that have just introduced it are a stage in front of the challenge.

Resource based theory is relevant as it emphasizes that competitive advantage in organizations is determined through proper planning and functioning of procurement. Further, resources enable firms improve efficiency and save on unnecessary costs Procurement practices should be uncommon and difficult to imitate.

2.1.2 Institutional Theory

This is the old approach used in checking public procurement elements (Luhmann, 2010). Scott (2004) states 3 institution pillars as regulatory, normative and cultural cognitive. Each pillar addressed different issue such as use of rules, laws and sanctions that is regulatory pillar as enforcement mechanism to be complied with. Scott (2004) advances that institutes are consists of regulative elements and cultural cognitive comprised of regulative elements with associated activities and resources that give human significance.

Institutional theory is relevant as it asserts that if organizations complied with the public procurement regulations then they would be assured of competition in bids, transparent processes, and professional approach in procurement process.

2.2 Empirical Review

2.2.1 Procurement Policies and Trade Facilitation

Mazigo (2014) assessed the causes of corruption in public procurement in Tanzania. The findings revealed that in all stages of procurement, corruption takes place including specification of the tender, the bidding process, the selection stage, the delivery stage and even at the evaluation stage, and the main causes of corruption are lack of transparency, bureaucracy, lack of legal framework, behavior aspects of some unfaithful procurements officials, discretion, lack of accountability and even budgeting problems in the said area. The study recommended that there should be compliance

with legislative obligations and public policies, avoiding conflicts of interest, use of an appropriately competitive process, security and confidentiality, consistency and transparency of procurement process and even fairness and impartiality. These issues would result in a decrease or elimination of corruption practices among officials in constructions industry.

In Tanzania, Procurement process in public sector (central and local government, government institutions, government agencies and parastatal organizations) have been found to be encompassed by complains from various stakeholders such delay in procurements process, wrong items delivery, low quality services and general stakeholders' dissatisfaction over the public process (Kessy & Salema, 2017). These complains were symptoms of a deficient process despite of public procurement process being governed by procurement laws and regulations, regulated by Regulatory Authority (PPRA) and standardized by National Board for Material Management(NBMM) thus the gap was found to exist between what expected and what actually is achieved by the procurement series of activities (Dello & Yoshida, 2017).

Lewa (2017) noticed that, while Uganda and Tanzania have straightforwardly adopted and actualized economic changes including procurement, Kenya's responsibility has been observed to be inconsistent and irregular and subsequently, change is yet to produce its planned results in Kenya's procurement framework. As indicated by Lewa, notwithstanding many change activities attempted in the services of public division over the most recent years, the greater part of degenerate practices in Kenya.

Kenya's public procurement is subject to rampant corruption and bribery. Organizations report that fixes and unpredictable installments are very normal during the time spent granting public contracts (GCR 2016-2017). Rampant corruption in procurement is the most rampant economic wrongdoing in Kenya: One in each three organizations reports encountering misrepresentation in procurement amid the previous two years (PwC, 2017). Organizations report that the merchant choice stage is well on the way to be liable to extortion (PwC, 2017). Charges exist that abnormal state debasement happens in vitality, air terminal development, and foundation procurement forms; various contracts were granted to outside firms that purportedly did not agree to public procurement laws in Kenya (ICS, 2017). Besides, the procedure of devolution has prompted an expansion of support in region level procurement forms (BTI, 2017). An overview among government authorities presumed that procurement extortion is predominant, especially on the

province level (EACC, 2017). Organizations report preoccupation of public assets and preference in the choices of public authorities to be normal (GCR, 2017-2018).

Basheka and Tumutegyereize (2017) examined the determinants of public procurement corruption in Uganda using factor analysis and multiple correlation analysis. Financial, political, organizational and social determinants were found to have a measurably critical association with public procurement corruption. The investigation found that organizational determinants are the central point, which represent the expanding patterns of procurement corruption. Efforts at limiting public procurement corruption should hence focus on the distinguished authoritative open doors at both focal and nearby government levels, which propagate the issue of corruption.

In Uganda, numerous instances of procurement corruption outrages have been advocated by those authorities with high political associations that sustain the way toward impacting grant of government tenders through very much arranged apparatus as a team with government specialized authorities (Agaba & Shipman, 2017). The Government of Uganda in 2013 set up another legitimate and institutional structure through which public procurement was to be overseen. This new framework depended a great part of the agreement grant choices to the establishments inside the Procuring and Disposing Entities (PDEs). The Accounting officer, the agreements council, the Procurement and transfer unit, client divisions and assessment advisory groups are made out of very specialized individuals with 'limit' to settle on discerning procurement choices. Nevertheless, because of the uncontrolled instances of procurement corruption and outrages the limit of the specialized individuals has been exposed to questions (Basheka & Tumutegyereize, 2017).

Hunja (2011) argued that from countries where reform efforts have stalled indicates that it is very difficult to achieve wholesale, systemic changes to the legal framework in Procurement. This has been seen in the event that there is absence of steady political responsibility and support from inside the most abnormal amounts of government as procurement challenges are not statics in nature. Uromi (2014) through his study conducted in three African counties accentuate the significance of legitimization for public access to procurement related in developments. Through getting to the public procurement data the public will be familiar with secured things subsequently upgrade responsibility and straightforwardness in public assets.

As per World Bank (2016), though Tanzania Procurement report demonstrated that the Government of Tanzania is aware that its public procurement is still weak and needs to be

strengthened substantially to enable it ensure procurement laws and institutions become effective tools in efficient and transparent management of the public funds. Regardless of this awareness the government has since a long time ago recognized that there is widespread corruption in Tanzania and has been discovering hard to lessen it, subsequently it has been presenting different changes. It is evaluated that at national dimension around 20 percent of the government consumption on procurement related use is lost through corruption, essentially through kick-backs and terrible procurement choices including procurement forms executions (Dello & Yoshida, 2017).

While the legal framework in place may be good for regulating public procurement practices in the East African Countries, Muange and Chirchir (2016) see that the law does not work in a vacuum. They makes a fundamental case that the law is a social establishment whose design is to manage the undertakings of individuals and along these lines add to the making of a network in which all individuals can prosper, a network in which everybody can understand the diverse different basic values. In this way, the law is an ethical undertaking, gives a reasonable association between good theory and legal logic, and ought to be maintained by all performing artists.

Systematic corruption can induce inefficiencies that reduce competitiveness. It might confine the quantity of bidders, support those with inside associations instead of the most effective competitors, and limit the data accessible to members and present included exchange costs (Karuri, 2014). The estimation of the exchanges in the procurement procedure alongside weights to bring down expenses could result in pay off, corruption and different practices which could be regarded untrustworthy. In the public area where products and enterprises are financed by public consumption, it is basic that procurement works morally, with unprejudiced nature and uprightness, with straightforwardness and polished skill (Basheka & Tumutegyereize, 2017). Supporters for moral purchasing best practices state that moral practice in an individual begin when a worker in procurement pursues the moral code which manages conduct and activities while directing business.

2.2.2 Procurement Procedures Trade Facilitation

According to Agaba and Shipman (2017), procurement planning is the procedure utilized by organizations or public establishments to design acquiring action for a particular timeframe. This is normally finished amid the planning procedure. Every year, departments are required to budget

for staff, expenses, and purchases. This is the initial phase in the procurement procedure process. Burt (2014) further characterizes procurement procedure as the acquiring capacity through which association get items and administrations from outside providers. A decent procurement plan will go above and beyond by depicting the procedure you will experience to select those providers legally. Regardless of whether you are setting out on a task procurement or authoritative procurement arranging exercise, the means will be the equivalent. To start with, characterize the things you have to acquire. Then, characterize the procedure for procuring those things. Finally, plan the time periods for delivery.

The objective of a study by Shale (2014) was to examine the role of e-procurement strategy on the performance of state Corporations in Kenya. A cross-sectional survey was used in this study. The study findings revealed there was a significant positive relationship between the components of e-procurement strategy namely customer service level strategy, stock improvements procedure, purchaser/provider cooperation methodology and reviews and consistence system and execution of state organizations. The examination prescribed that state partnership ought to have a decent e-procurement programming framework as it would help them incredibly decrease the time and exertion required to finish acquiring exchanges by wiping out customary paper chain of orders, endorsements, accepting and installment compromise. Zakari, Sharifai, Mubaraka, and Agaba (2017) aimed at establishing the relationship between E-procurement on the performance of selected service organizations in Uganda. The study used survey design on 202 employees and found that there is a significant relationship between E-procurement and performance of the organizations. Accuracy, convenience and smooth workflow and accepting vast amounts of data which facilitated growth and expansion were ranked as the major benefits.

Many leading companies worldwide have verified the benefits of e-Procurement, and e-Procurement is a significant tactic in most companies' e-Business strategies (Deloitte Consulting, 2016). The accord is that e-Procurement benefits associations regarding procurement cost and process productivity related with procurement exercises. This is because of online e-Procurement arrangements can bolster four noteworthy undertakings in associations: search, processing, monitoring and control, and coordination (Subramaniam & Shaw, 2016). International Competitive Bidding (ICB) is the most acknowledged procurement method around the world, for the most part because of a high likelihood for a cost-effective outcome while applying this

framework. One issue, nevertheless, is the numerous ways ICB can be controlled (Oromo & Mwangangi, 2017).

There are five different types of procurement. These include open tendering, restricted tendering, direct procurement, request for proposals and request for quotations. Open tendering offers a fair and competitive type of procurement and is the most preferred method (PPO, 2016).

2.3 Conceptual Framework

A conceptual framework is a road map that the study intends to follow with the aim of looking for answers to the problems raised by the research questions (Orodho, 2012). The conceptual framework is shown in Figure 1.

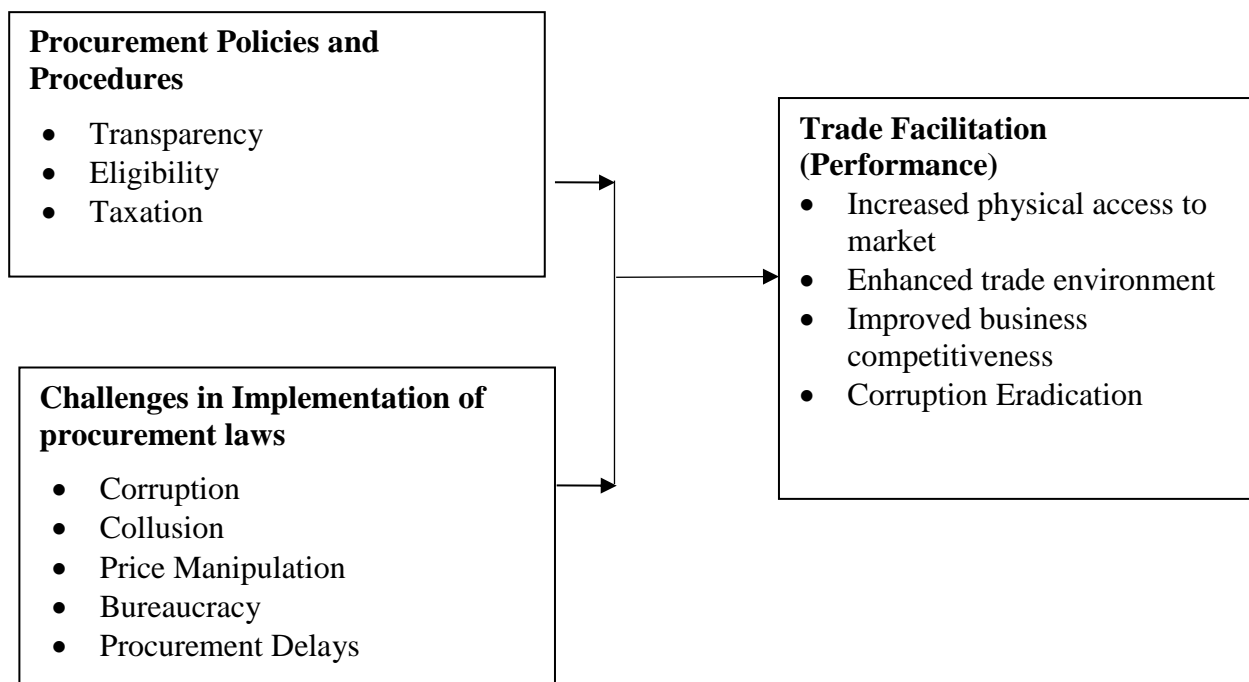


Figure 1: Conceptual Framework

3.0 Research Methodology

The study established the role of procurement laws in facilitation of international trade in East Africa. The study used a desk study review methodology where relevant empirical literature was reviewed to identify main themes. A critical review of empirical literature was conducted to establish the role of procurement laws in facilitation of international trade in East Africa.

4.0 Results and Discussion

Based on empirical review, the study finds that good laws alone cannot deliver the expectations of East African Countries as far as public procurement reforms are concerned. For example, Kenya was very positive and hopeful that the Public Procurement and Disposal Act (PPDA) and other reinforcement laws would end corruption in public procurement. Numerous instances of corruption and exemption in public procurement have been accounted for in spite of the fixing legal regime in the sector.

The study also finds that access to procurement information remains a major weakness of EAC procurement system. Access to a variety of readily available and complete procurement information (from procurement plans, tender notices and contract awards to procurement statistics, legal and policy documents and studies) is vital to a well functioning procurement system for several reasons. This is because it increases competition levels, provides for control by the audit system, enables social audit and enhances the understanding of the procurement system.

The study further finds that while the legal framework establishes norms for the safekeeping of records and documents related to procurement transactions and contract management, compliance levels in this area remain low. Lack of procurement knowledge remains a major weakness to the efficiency of procurement operations. Massive upgrading of qualifications through training as well as an increase in the supply of specialized graduates is required to fill these gaps.

The study finds that top officials disregard existing procurement rules and often cause malpractices in public procurement in EAC. Thus, political commitment is a necessary condition for successful procurement reform. In the East Africa Community, the organizational structure is excessively wide for what it's worth. The numerous regulations furnish the public authorities with bureaucratic corruption that aid in request for bribes. In order to reduce the elements of bureaucratic corruption it will be essential to implement the regulatory frameworks, as well as executing, the anti-corruption laws.

The main challenges encountered in the procurement process point to corruption, delays, collusion and bureaucracy. However, there is a growing appreciation of the linkages between specific public sector objectives and public procurement practices in EAC. Public procurement exercises are opening access to global markets. The International trade negotiations, bilateral, regional, and

multilateral are also aiding to address the terms upon which international companies can compete in domestic public procurement markets.

5.0 Conclusions

The outcomes of the research revealed the importance of procurement law to the East Africa Community in trade facilitation. The study concluded that EAC have in place procurement policies and procedures that have continually enhanced the performance of their supply chains and in the long run has also lead to international trade facilitation. These regulations have aided in the liberalization of intra-regional trade in goods; promoting production efficiency in the Community; enhancing domestic, cross-border and foreign investment; and promoting economic development and industrial diversification. However, ethics and culture should be been adopted by a high extent through the implementation of strict codes of conduct, punishment of corrupt behavior and high adherence to limits of authority in the procurement department to facilitate economical movement of goods thus facilitating trade in the EAC.

The study concluded that a well-regulated procurement system, embodying the principles of transparency and non-discrimination, helps to ensure optimal value for money in public purchasing, and facilitates trade in the EAC. Thus, there is need to evaluate the existing policies and regulations to ascertain whether the rules governing procurement expenditure are fit for purpose. There is to ascertain if existing processes and procedures encourage and support good procurement practices in the East Africa Community.

The study also concluded that there is need to finalize the procurement governance structures. It is important to know precisely how procurement is being conducted and what opportunities for development exist. This includes data gathering process that will advise future procurement choices. It assists with deciding what data will be required for the procurement officials to monitor procurement activities effectively. Lastly, auditing and reviewing existing financial regulations and strategies and procedures to expenditure is critical in procurement process.

6.0 Recommendations

The study recommends that the EAC should adopt open contracting principles and data standard of disclosure and public participation and begin to publish and publicize government contracts throughout the procurement cycle, from the pre-tendering to the post award stage. To address the

issues arising in the tendering phase some members have prior information, all persons participating in a public procurement process for a specific contract should access the information relating to request for proposals, bids submission, bids evaluation and contract award at the same time. Suppliers accessing crucial information on tenders earlier than their competitors have undue advantage over the other suppliers.

The laws regulating public procurement in East Africa Countries on trade should make it mandatory for all public institutions to undertake regular training of their procurement practitioners on procurement laws, regulations, record-keeping, and other procedures to improve adherence to procurement regulations. Finally, the study recommends that in order to increase negotiating leverage, transaction costs and value for money need to be measured and monitored on a regular basis.

Lastly, ethics and culture should be been adopted by a high extent through the implementation of strict codes of conduct, punishment of corrupt behavior and high adherence to limits of authority in the procurement department to facilitate economical movement of goods thus facilitating trade in the EAC.

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