

# Journal of Procurement & Supply Chain



ISSN Online 2617-3581

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## **Effects of Procurement Law on Procurement Performance: A Case of Kenya National Highway Authority**

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**ISSN: 2617-3581**

# Effects of Procurement Law on Procurement Performance: A Case of Kenya National Highway Authority

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*How to cite this article:* Mutangili, S. K. (2019). Effects of Procurement Law on Procurement Performance: A Case of Kenya National Highway Authority, *Journal of Procurement and Supply Chain*, 3(1), 30-47.

## Abstract

In many countries today, public procurement has become an issue of public attention and debate, and has been subjected to reforms, restructuring, laws and regulations. Public bodies have the characteristic of dealing with huge budgets; public procurement represents 18.42% of the world GDP. The procurement law was developed as a reference guide to comply with the implementation of the national Procurement Law and Regulations and contains standards, procedures and guidance on all aspects of public procurement. Despite the numerous efforts by the governments of developing countries like Kenya to improve performance of the procurement function, public procurement is still characterized by shoddy job and poor quality goods and services. Failure to implement or delayed implementation of recommended procurement laws has resulted in unnecessarily high operation costs, uncoordinated business activities, and failure to attract and retain experienced and skilled personnel in the procurement positions, thus affecting the function's performance. The specific objectives of the study were; to establish the effect of procurement law implementation on procurement performance of Kenya National Highway Authority, to establish the challenges facing the implementation of procurement laws by Kenya National Highway Authority. The study used a desk study review methodology where relevant empirical literature was reviewed to identify main themes. The study results indicated positive relationship between procurement law implementation and procurement performance. The study concluded that, Procurement policy implementation has a positive influence on performance of procurement function. The study recommended that Kenya National Highway Authority should appoint a procurement oversight committee to oversee implementation of the procurement law and government policies on procurement.

**Keywords:** *Procurement law, Implementation, Procurement Performance.*

## **1.0 Introduction**

### **1.1 Background of the study**

In many countries today, public procurement has become an issue of public attention and debate, and has been subjected to reforms, restructuring, laws and regulations (Migosi, Ombuk, & Evusa 2013). Public procurement refers to the acquisition of goods, services and works by a procuring entity using public funds (Graells, 2015). Public bodies have the characteristic of dealing with huge budgets; public procurement represents 18.42% of the world GDP (Mahmood, 2010). Public procurement law regulates the purchasing by public sector bodies and certain utility sector bodies of contracts for goods, works or services (Brammer & Walker, 2011). Most countries have public procurement laws that set out the rules and processes to be followed for all forms of public procurement (Bovis 2015). Often these laws apply more generally to procurement of PPPs, unless there is a specific PPP law or concession law which provides otherwise. Civil law countries may also have a separate procurement mechanism for delegated management contracts. According to Morlino (2018), most international financial institutions, such as World Bank, the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IDB), require a transparent, competitive bidding process as a condition of financing for major Infrastructure projects.

According to the Institute for Public Procurement (2013), procurement in the public sector plays a unique role in the execution of democratic government. It is at once focused on support of its internal customers to ensure they are able to effectively achieve their unique missions while serving as stewards of the public whose tax dollars bring to life the political will of its representative governing body. The manner in which the business of procurement is conducted is a direct reflection of the government entity that the procurement department supports. Human Resource (HR) and Finance can have their performance measured; this is not the case with the procurement function (Kakwezi & Nyeko, 2010). The failure to establish performance of the procurement function has led to irregular and biased decisions that have costly consequences to every entity. The need to have coherent methods of performance of the procurement function in public entities, particularly in developing countries, has never been as sound as it is now. Delaying will worsen the already deteriorating performance, loss of professionals, and organizations will continue incurring unnecessary costs (DCD/DAC, 2013).

Procurement may be described as process of acquisition of the initial raw materials, finished products, works in progress and services and functions within and outside a company to enhance the value chain to make products and provide services to the customers. Procurement is also defined as all of those activities associated with acquisition of goods, from raw materials stage through to the end products. This includes sourcing and purchasing, order processing, inventory management, transportation, warehousing, and customer service. Public procurement has its origins in the fiduciary obligation of government administration to deliver goods and infrastructure, for example roads and harbours and services, for example health care and education to the population of a country or a specific geographic region, city or town (Disdier, Fontagné & Tresa, 2018). Performance has been described as the degree of achievement of

certain effort or undertaking. It relates to the prescribed goals or objectives which form the project parameters.

Public procurement is concerned with how public sector organizations spend taxpayers' money on goods and services (Hall, 2010). Globally, in many developed nations, government organizations across the world tend to spend between 8 per cent and 25 per cent of GDP on goods and services (Organization for Economic Co-operation and Development, 2011). Public service agencies aim at making the best use of Cost Reduction for the members of the public this involves client satisfaction, public interest, fair play, honesty, justice and equity (Rendon & Rendon, 2015).

In many countries, the construction industry frequently receives criticism regarding poor quality and customer satisfaction, frequent conflicts and disputes among different actors, and cost and schedule overruns in projects (Eriksson & Westerberg, 2016). Construction projects are mostly characterized by high complexity, customization and uncertainty coupled with long duration. Such characteristics require collaboration and coordination among many different actors. However, both practitioners and academics argue that many of the problems in construction projects are linked to inadequate procurement procedures where the focus is on short-term individual sub-optimization rather than on long-term project team performance.

The Republic of Albania in 2006 enacted new Law on Public Procurement, the regulations passed based on this Law provided the Republic of Albania with a more open and transparent public procurement regime, in compliance with the European Union and International Best Practices (Konomi, 2015). The procurement law was developed as a reference guide to comply with the implementation of the national Procurement Law and Regulations and contains Standards, Procedures and Guidance on all aspects of public procurement. Although the compliance with the advice or guidance found in the law was not compulsory, it was strongly recommended to all categories of procurement staff at the state, regional and local levels. According to Duraku (2018) the new procurement laws enacted in 2006 in Albania was only to be applied as an additional tool to the Procurement Law and Regulations in force. The new procurement law was primarily intended for public procurement practitioners, providing them with a suitable tool to ensure an efficient and consistent practice of the public procurement procedures. The law was also meant to help contracting entities to better and faster grasp procurement procedures in the day-to-day course of their activities to enhance performance of government corporations.

According to Stephen and Basil (2012), World Bank Country Procurement Assessment Report of 2000 revealed that Nigeria was in for serious trouble as the nation lost \$10 billion dollars every year to corruption in public award of contracts. The initial response to the problems was the setting up Bureau of Monitoring and Price Intelligence Unit (BMPIU). The then President of Nigeria Olusegun Obasanjo sent public procurement bill to National Assembly between 2003/2004. The eventual signing of Public Procurement Bill into law by President Musa Yar' Adua on the 4<sup>th</sup> of June 2007 has remained one of the most remarkable water shed in Nigeria governance reform efforts particularly in the Public Procurement sub-sector. The cardinal objective of Public Procurement Law 2007 was to pro-actively address past anomalies and

defects in public procurement systems. This include absence of ombudsman regulatory institution, lack of procurement thresholds and the need to effectively drive public procurement process in order to achieve accountability, transparency, openness, value for money and zero-corruption. The major obstacle to implementation of procurement laws has been inadequate regulatory compliance. Non-compliance problem affects not only the third world countries but also countries in the developed economies. Hui *et al.* (2011), while analyzing procurement issues in Malaysia, established that procurement officers were blamed for malpractice and non-compliance to the procurement policies and procedures.

In Kenya, a review of the country's public procurement systems began in 1999 and established that there was no uniform procurement system for the public sector as a whole (Migosi *et al.*, 2013). The system had more loopholes as it did not have sanctions or penalties against persons who breached the regulations in the Supplies Manual, other than internal disciplinary action. Consequently application of the rules was not strict and many of the rules and regulations were not followed. Furthermore, the Supplies Manual did not cover procurement of works; the dispute settlement mechanisms relating to the award procedures as set out in the Manual were weak and unreliable for ensuring fairness and transparency (Kiama, 2014). In extreme cases, records of procurement transactions were found to be inaccurate or incomplete or absent. This was followed by serious debates on the nature of public procurement in Kenya which subsequently led to the enactment of the Public Procurement and Disposal Act 2005. This Act contains the Regulations that are meant to effectively ensure that the procurement process is fair and just. According to Kagendo (2010), the purpose of this Act was to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives; to maximize economy and efficiency; promote competition and ensure that competitors are treated fairly; promote the integrity and fairness of those procedures; increase transparency and accountability in those procedures; increase public confidence in those procedures; and facilitate the promotion of local industry and economic development.

## **1.2 Statement of the Problem**

Despite the numerous efforts by the governments of developing countries like Kenya to improve performance of the procurement function, public procurement is still characterized by shoddy job and poor quality goods and services (Amemba, Nyaboke, Osoro & Mburu 2013). Failure to implement or delayed implementation of recommended procurement laws has resulted in unnecessarily high operation costs, uncoordinated business activities, and failure to attract and retain experienced and skilled personnel in the procurement positions, thus affecting the function's performance. The Public Procurement Oversight Authority (2017) estimated that procuring entities in Kenya were paying around 60% more than prevailing market prices. This signals that there is a noncompetitive procurement market in Kenya. According to Muange and Chirchir (2016), it is estimated that 25% of public expenditure can be saved by proper implementation of public procurement laws and regulations in Kenya. According to the OECD (2015), the legal and regulatory framework set up for public procurement in the last decade have strengthened the system, weaknesses still exist.

There are significant challenges to applying the newly set framework and enforcing the laws (Ngugi & Mugo, 2012). Other issues are the disproportionate reliance on quotations for procurement, as well as significant differences in procurement methods between public entities. According to Njenga (2018), Public procurement in Kenya has also been under scrutiny for its relation to Chinese investment. The Chinese government has invested heavily in building infrastructure in the region, including providing debt for the Kenyan government to hire Chinese firms to build infrastructure projects. A major and controversial example of this is the pipeline connecting Nairobi to Mombasa and the construction of the standard gauge railway line from Mombasa to Syokimau.

The use of public funds to award contracts to Chinese firms has been controversial, as these contractors often bring in workers from China, which opposition figures say reduces job opportunities for native Kenyans. A number of studies have been conducted on public procurement in Kenya for example, Abdifatah (2012) conducted a study on supply chain management practices and their impact on performance among humanitarian organizations in Kenya, Abdi (2012) examined procurement practices of public state corporations in Kenya, Muange (2016) conducted a study on Procurement Legislation and Performance of Constituency Development Fund Committees in Kenya. According to the study findings, effects of Procurement Legislation on procurement performance were found to be statistically significant with a positive impact on the importance of procurement performance. A procurement review by PPOA (2010) of the Narok North District on compliance with the law, regulations, internal controls, generally accepted principles and institutional framework found out that there were deviations in general and specific areas of procurement stages. All these results created contextual and conceptual gaps. This study therefore sought to establish the Effects of procurement law on procurement performance in Kenya. A case of Kenya National Highway Authority.

### **1.3 Specific objectives**

- i. To establish the effect of procurement law implementation on procurement performance of Kenya National Highway Authority.
- ii. To establish the challenges facing the implementation of procurement laws by Kenya National Highway Authority.
- iii. To recommend the procurement laws to Kenya National Highway Authority.

### **1.4 Research Questions**

- i. What effect does implementation of procurement law have on procurement performance of Kenya National Highway Authority?
- ii. What are the challenges facing the implementation of procurement law by Kenya National Highway Authority?
- iii. What are the procurement laws that can be adopted by Kenya National Highway Authority?

## **2.0 Literature Review**

### **2.1 Theoretical Review**

#### **2.2.1 Theory of Internal Control**

The theory was developed by Travis and Reckless (1961). According to the theory, a system of effective internal control is a critical component of an organization's management and a foundation for its safe and sound operation. A system of strong internal control can help to ensure that the goals and objectives of an organization will be met, that it will achieve long-term targets and maintain reliable financial and managerial reporting. Such a system can also help to ensure that the organization will comply with laws and regulations as well as policies, plans, internal rules and procedures, and reduce the risk of unexpected losses and damage to the organization's reputation. In USA, the Committee of Sponsoring Organizations of the Tread way Commission (COSO) issued Internal Control – Integrated Frame working 1992, which defined internal control as a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: Effectiveness and efficiency of operations; Reliability of financial reporting; Compliance with applicable laws and regulations. The Ruttelman Report (1994) in UK defined internal control as the whole system of controls, financial and otherwise, established in order to provide reasonable assurance of Effective and efficient operations; Internal financial control and Compliance with laws and regulations. The theory is relevant to this study in the senses that it helps the researcher understand how the management of KNHA are able to affect the procurement processes in the parastatal.

#### **2.2.2 Public Interest Theories of Regulation**

The theory was put forward by Arthur (1961). The theory states that regulation seeks the protection and benefit of the public at large. The first group of regulation theories account for regulation from the point of view of aiming for public interest. This public interest can be further described as the best possible allocation of scarce resources for individual and collective goods. In western economies, the allocation of scarce resources is to a significant extent coordinated by the market mechanism. In theory, it can even be demonstrated that, under certain circumstances, the allocation of resources by means of the market mechanism is optimal (Arrow, 1985). Because these conditions are frequently not adhered to in practice, the allocation of resources is not optimal and a demand for methods for improving the allocation arises (Bator, 1958). One of the methods of achieving efficiency in the allocation of resources is government regulation (Arrow, 1970; Shubik, 1970). According to public interest theory, government regulation is the instrument for overcoming the disadvantages of imperfect competition, unbalanced market operation, missing markets and undesirable market results. In the first place, regulation can improve the allocation by facilitating, maintaining, or imitating market operation. The exchange of goods and production factors in markets assumes the definition, allocation and assertion of individual property rights and freedom to contract (Pejovich, 1979). The guarantee of property rights and any necessary enforcement of contract compliance can be more efficiently organized collectively than individually. Furthermore, the costs of market transactions are reduced by

property and contract law. The theory helps the researcher understand how the laid down procurement policies are able to affect resource allocation to the public.

## **2.2 Empirical Review**

### **2.2.1 Procurement Law Implementation and Procurement Performance**

Muange and Chirchir (2016) conducted a study titled Procurement Legislation and Performance of Constituency Development Fund committees in Kenya. The study employed descriptive survey design. The population of the study was all the 290 constituencies in Kenya and a census was conducted in the study. Based on the study findings, effects of Procurement Legislation on procurement performance were found to be statistically significant. The results of the study revealed that Procurement Legislation was important in explaining procurement performance. The findings of the study was a corroboration of the findings by Thai (2004) who explained that, as many countries have moved to a regional and or global economy, Public procurement practitioners face another challenge which is how to comply with their government's procurement regulations and social and economic procurement goals without violating regional and international trade agreements. The study concluded that legislation is a key determinant of procurement performance. The study also concluded that the poor procurement performance by CDF committee was as a result of lack of reinforcement of the legal framework. The study recommended that summarized regulatory framework for CDF procurement management be prepared by policy makers. Through legislation, the government of Kenya should enact comprehensive laws to regulate procurement functions and outline clear policy and procedures to be followed by procurement entities as this will enhance accountability and transparency.

Mbae (2014) in a study investigated the impact of public procurement law on the performance of Machakos County government, Kenya by adopting a descriptive research design. The study findings revealed that the public procurement regulation law had reduced the speed with which goods and services were procured, increased the level of transparency among Government offices, improved utilization of funds in the County Government operations, improved the capacity of the staff involved in procurement processes, improved the quality of projects undertaken by the County Government and provided room for procurement dispute resolution at the County. The study further indicated that in order to come up with a suitable government procurement practice that can be compared across various public organizations, it has become necessary to design a formal government procurement codes that contain formal procurement rules and regulations across a number of countries both in the developed and developing nations.

The study established that political forces, unethical practices, lack of transparency and accountability and dishonesty among procurement officers had affected procurement processes. The study concluded that the procurement law had a great impact on the procurement performance at the Machakos County and that there were a number of challenges faced by the county government which affected its performance. The study recommended that the county appoints a procurement oversight committee that should see implementation of the procurement law and county policies on procurement in the County.

Kakwezi and Nyeko (2010) determined the Procurement Processes and Performance: Efficiency and Effectiveness of the Procurement Function in Uganda. The study adopted descriptive



research design. The study findings indicated a positive relationship between procurement policy implementation and performance. The study further indicated that, it is important to ensure that procurement policies are being implemented and measure what they were intended to achieve. The study found out that, implementing procurement policies is not as easy as it may sound; it requires preparation, coordination, team work, constant communication and feedback. To ensure entities maximize purchasing efficiency and effectiveness, loss of professional turnover should be reduced. This can be done through establishing clear roles and procedures within the procurement processes. To ensure value for money, there should be continuous improvement in the efficiency of internal processes and systems and public entities should maintain structures that avoid unnecessary costs.

Wanyonyi and Muturi (2015) conducted a study to establish the factors affecting performance of procurement function among public technical training institutions in Kisumu County, Kenya. The study focused on the specific objectives of analyzing three main methods of public procurement, which were: establish the effect of procurement policy implementation on performance of procurement function in public technical training institutions, effects of information technology on performance of procurement function in public technical training institutions and to establish the extent in which competency of staff influence performance of procurement functions. The study adopted descriptive survey design. The study indicated a positive and significant relationship between Procurement policy implementation, information technology, ethics, staff competency and performance of Procurement function. The study indicated further that, the main areas that were observed to be the key contributors to staff competence included the training of new employers in the procurement departments, enhancing team work of procurement staff, acquaintance of the procurement act of 2009 by the procurement team and employing qualified and competent personnel in the procurement departments among others. The study concluded that, Procurement policy implementation online advertising and computerized tendering process had a positive influence on performance of procurement function in technical training institutes in Kisumu County, Kenya. It was recommended that, the two institutions should strive to promote competence of staff/employees in all departments with emphasis in the procurement department. This should be so for all the procurement department employees in the two institutions.

### **2.2.2 Challenges Facing the Implementation of Procurement Laws.**

Ameyaw Mensah and Tutu (2012) carried out a study to establish the implementation challenges to the public procurement law 2003 in Ghana. The aim of the study was to identify various implementation bottlenecks to the Ghana Public Procurement Law 2003 (Act 663). The study adopted multiple research approaches, including; review of relevant literature, interviews and questionnaire survey. The study findings revealed that low capacity of procurement professionals, low interaction between procurement entities and Public Procurement Authority (PPA), deliberate controlling of competition, non-compliance with provisions of the law, splitting of contracts into smaller lots, lack of funds and non-cooperativeness of suppliers, were the major challenges hindering the implementation of the Public Procurement Law. The study concluded that, the high adoption of less competitive procurement methods, low capacity of

procurement officers, low interaction between procurement entities and the PPA, splitting of contracts into smaller packages and non-cooperation of suppliers means high cost of procurement to the state. The study recommended that procurement entities and the respective procurement officers should be trained to enable them appreciate the importance of embracing competitive procurement methods in all procurements as long as it is practicable as this would ensure the state save a lot of money.

In South Africa, Ambe and Badenhorst (2012) conducted a study to assess the procurement challenges in the South African public sectors. The study employed conceptual analytical approach. According to the study, the Government of South Africa introduced Supply Chain Management (SCM) in the public sector as a policy tool. The study found out that SCM was an integral part of procurement in the South African public sector. It was being used as a tool for the management of public procurement practices. However, despite the introduction of SCM as a strategic tool, public procurement in South Africa still faced enormous challenges in the implementation of the policy. The challenges included, among others: lack of proper knowledge, skills and capacity, non-compliance with SCM policy and regulations, inadequate planning and the linking of demand to the budget accountability, fraud and corruption, inadequate monitoring and evaluation of SCM, unethical behavior, too much decentralization of the procurement system and ineffectiveness of the black economic empowerment (BEE) policy. The study pointed out that, to fully implement SCM, the National Treasury provided support by facilitating the development of appropriate training materials to government departments, municipalities and municipal entities (National Treasury, 2005).

However, the shortage of skills became a re-concurrent debate in public discussion. The findings of the study were in agreement with the findings of Sheoraj (2012) which indicated that skills and capacity shortages had been identified as the single greatest impediment to the successful implementation of public procurement policy in South Africa. The study concluded that, despite the importance of procurement as a policy tool, and the effort by government through the introduction of policies such as SCM, procurement remains challenging in South Africa. The study recommended that, institutions of higher learning and other service providers should equip learners and practitioners with appropriate skills and knowledge through the development of a syllabus that ensures sustainable procurement in South Africa.

Kusi, Aggrey and Nyarku (2014) conducted a study to assess Public Procurement Policy Implementation in the Educational Sector: A Case Study of Takoradi Polytechnic. The aim of the study was to investigate whether Takoradi Polytechnic had fully complied with the provisions of the procurement law of Ghana, and if so, were there any challenges that inhibited the smooth implementation of procurement activities. The study adopted descriptive survey design. The study findings showed that Takoradi Polytechnic had adopted the Ghana Public Procurement 2003 (Act 663) in its procurement of goods, works and services from suppliers through the established Procurement Unit of the Institution. However, the study established that there were some major challenges in the implementation which included excessive bureaucracy, cumbersome documentation processing, inadequate storage facilities and others and it was incumbent on the Public Procurement Authority to intervene to curtail some of the challenges

even as the Polytechnic performed certain internal interventions to counter such challenges in the procurement cycle.

The study concluded that, Takoradi Polytechnic had complied with the provisions in the Public Procurement Act 663 (2003) in the conduct of all procurement transactions. However, the most prominent challenges undermining the implementation of the procurement act discovered in this study included inadequate funding for some programmes, delayed payment of contract sum to suppliers, delays in delivery on goods, works and services by some suppliers, non-usage of ITC (E-procurement), poor storage facilities and prolonged quarterly meetings of Procurement Board. The study recommended that, Government reviews the Act to limit the number of steps in the procurement process so as to reduce the level of bureaucracy in the system and streamline the system to promote quick-response strategy in the implementation of the Act. The study further recommended that a system to provide timely and continuous education and capacity building for all employees connected to the procurement law implementation processes should be put in place.

In Kenya, Badaso (2014) conducted a study to establish the challenges of implementing procurement policies in state corporations. The study adopted descriptive research design, Cluster sampling techniques were used to select 50 employees from a target population of 198. The study findings indicated that the components of quality of personnel affected the implementation of procurement policies in public sector to a great extent and they include the level of education and qualification of personnel areas. The study revealed that, for a procurement organization to operate both efficiently and effectively in a complex environment useful structures need to be created and suitable instruments put to use. Information technology can have an important function in this regard. Used appropriately ICT can offer: smoother and faster process flow, efficient distribution of information, decentralization of tasks and decisions, increased transparency and better control. In addition, information technology helps not only to support internal processes, but also those involving business partners. Government officials and elected leaders have increasingly come to realize that public agencies must utilize ICT in order to enhance the procurement processes in the public sector. The study concluded that, lack of sound execution plan renders the best procurement policies useless and Policy formulation requires coordination among few individuals.

The study recommended that, in order to ensure effective procurement policy implementation, head of procurement entities should negotiate with the policymakers with regard to aligning public procurement policies with the functions of public organizations by being responsive to their needs and challenges in order to be sustainable in the long term. The study recommended also that the government should accord procurement officials and those all involved in the procurement cycle autonomy to make independent and professional decisions and be accountable to any decisions they make. This will eliminate or minimize political interference when implementing procurement policies. Adequate training should be provided for all employees and stakeholders involved in implementing procurement policies. Lack of training can act as a powerful restraint to effective policy implementation and overall organizational success. Training issues include: resistance to change, fear of technology, rapidly changing technology,

retaining quality employees, work ethics, decision-making and individual/organizational IT expertise.

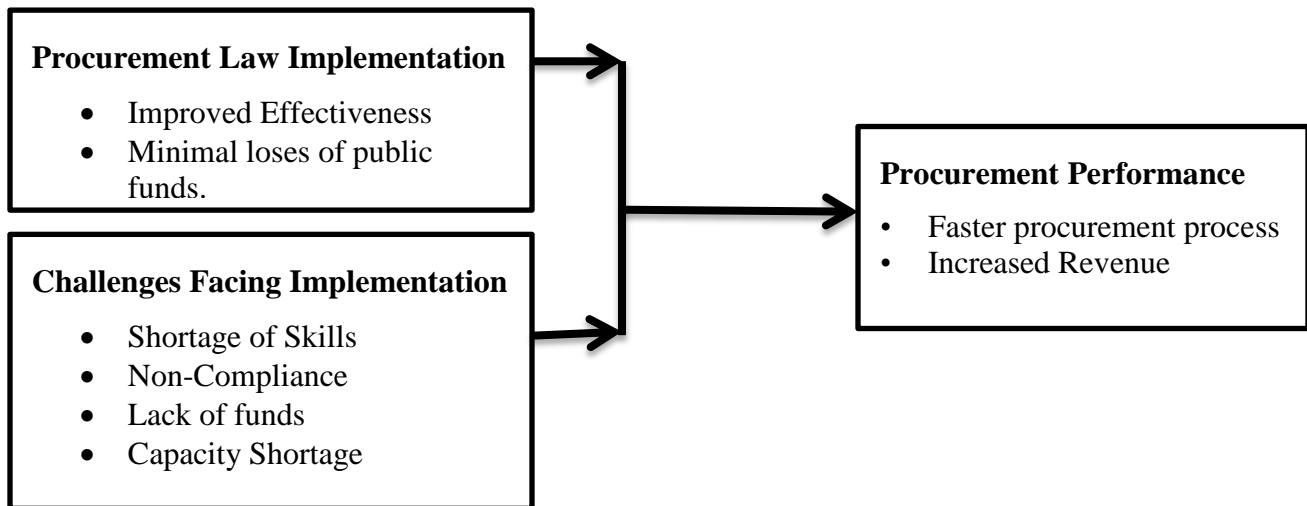
Njeru (2015) conducted a study dubbed Procurement Policies and Implementation of Effective Procurement Practices in Tertiary Public Training Institutions in Kenya. The aim of the study was to establish the influence of procurement policies on implementation of effective procurement practices in tertiary public training institutions in Kenya. The study adopted a descriptive research designs and the target population of the study was Procurement staff across the 40 tertiary public training institutions in Kenya. the study findings indicated that procurement policies elements that were found to influence/hinder implementation of effective procurement practices in tertiary public training institutions in Kenya included; low level of procurement regulations compliance, application of poor procurement policies, lack of top management support, use of poor procurement procedures, poor relationship between management and stakeholders, poor method of managing organization resources and lack of effective policy making process. The study revealed that in Kenya over 70% of tertiary public training institutions procurement practices were normally not in full compliance with Public Procurement and Disposal Act, 2005 and Public Procurement and Disposal Regulations, 2006, it was further revealed that, in over 50% of tertiary public training institutions in Kenya, the quality and quantity of procured good and services did not meet the recommended specifications during tendering.

The findings of the study were similar to those of a study by Victor (2012) which noted that procurement expenditure could be minimized through implementation of effective procurement practices. However, none of tertiary public training institutions have successfully embraced effective procurement practices and this has led to increased procurement expenditure and high institutions operational costs. The study concluded that, a properly designed and implemented procurement policy plays a pivotal role in providing a guiding framework for the implementation of efficient procurement practices; however, the employed procurement policies in government training institutions did not provide a framework for supporting implementation of sustainable procurement practices. It was therefore recommended that, management of tertiary public training institutions should improve on the level of compliance with procurement regulations compliance, design and apply better poor procurement policies, support and encourage other staff to execute procurement functions in accordance with the procurement regulations and procurement policies, use effective procurement procedures, improve on relationship between management and stakeholders and employ better methods of managing organization resources.

### 2.3 Conceptual Framework

#### Independent variables

#### Dependent variable



**Figure 1.0 Conceptual Framework**

### 3.0 Research Methodology

The study established the effects of procurement law on procurement performance: A case study of Kenya National Highway Authority. The paper 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 effects of procurement law on procurement performance.

### 4.0 Results and Discussion of Findings

Based on the results from the reviewed literature, there was significant relationship between procurement law implementation and procurement performance; the results also indicated that Procurement Legislation was important in explaining procurement performance. Based on the results from the literature based review, public procurement regulation law had reduced the speed with which goods and services were procured, increased the level of transparency among Government offices, improved utilization of funds in the Government operations, improved the capacity of the staff involved in procurement processes, improved the quality of projects undertaken by the Government and provided room for procurement dispute resolution at the Government. The studies’ findings also indicated that in order to come up with a suitable government procurement practice that can be compared across various public organizations, it has become necessary to design a formal government procurement codes that contain formal procurement rules and regulations across a number of countries both in the developed and developing nations.

Based on the reviewed literature, it is important to ensure that procurement policies are being implemented and measure what they were intended to achieve. The findings indicated that, implementing procurement policies is not as easy as it may sound; it requires preparation, coordination, team work, constant communication and feedback. To ensure entities maximize purchasing efficiency and effectiveness, loss of professional turnover should be reduced. This can be done through establishing clear roles and procedures within the procurement processes. To ensure value for money, there should be continuous improvement in the efficiency of internal processes and systems and public entities should maintain structures that avoid unnecessary costs. From the study findings it was revealed that low capacity of procurement professionals, low interaction between procurement entities and Public Procurement Authority (PPA), deliberate controlling of competition, non-compliance with provisions of the law, splitting of contracts into smaller lots, lack of funds and non-cooperativeness of suppliers, were the major challenges hindering the implementation of the Public Procurement Laws.

The reviewed literature results further indicated that that procurement policy was an integral part of procurement system in the South African public sector. It was being used as a tool for the management of public procurement practices. However, despite the introduction of the procurement policy as a strategic tool, public procurement in South Africa still faced enormous challenges in the implementation of the policy. The challenges included, among others: lack of proper knowledge, skills and capacity, non-compliance with SCM policy and regulations, inadequate planning and the linking of demand to the budget accountability, fraud and corruption, inadequate monitoring and evaluation of SCM, unethical behavior, too much decentralization of the procurement system and ineffectiveness of the black economic empowerment (BEE) policy. Based on the literature reviewed, Skills and capacity shortages has been identified as the single greatest impediment to the successful implementation of public procurement policy in many countries. Despite the importance of procurement as a policy tool, and the effort by governments through the introduction of policies such as SCM, procurement remains challenging in many parts of the world. Further findings indicted that some of the challenges facing the implementation of procurement laws in many countries include; excessive bureaucracy, cumbersome documentation processing, inadequate storage facilities and others.

Based on the findings, for a procurement organization to operate both efficiently and effectively in complex environment useful structures need to be created and suitable instruments put to use. Information technology can have an important function in this regard. Used appropriately ICT can offer: smoother and faster process flow, efficient distribution of information, decentralization of tasks and decisions, increased transparency and better control. In addition, information technology helps not only to support internal processes, but also those involving business partners. Government officials and elected leaders have increasingly come to realize that public agencies must utilize ICT in order to enhance the procurement processes in the public sector. More literature indicated that, procurement policies elements that were found to influence/hinder implementation of effective procurement practices in tertiary public training institutions in Kenya included; low level of procurement regulations compliance, application of poor procurement policies, lack of top management support, use of poor procurement procedures, poor relationship between management and stakeholders, poor method of managing organization

resources and lack of effective policy making process. The results revealed that in Kenya over 70% of tertiary public training institutions procurement practices are normally not in full compliance with Public Procurement and Disposal Act, 2005 and Public Procurement and Disposal Regulations, 2006. From the literatures more revelation emerged that, in over 50% of tertiary public training institutions in Kenya, the quality and quantity of procured good and services did not meet the recommended specifications during tendering.

## **5.0 Conclusion**

Based on the findings from the reviewed literature, the study concludes that, legislation is a key determinant of procurement performance. The study concludes also that, poor procurement performance by CDF committee is as a result of lack of reinforcement of the legal framework. According to the results of the reviewed literature, it is concluded that, concluded that the procurement law has a great impact on the procurement performance of Counties in Kenya, however there are a number of challenges faced by the county governments which affected their performance. It can be concluded that, implementing procurement policies is not as easy as it may sound; it requires preparation, coordination, team work, constant communication and feedback. To ensure entities maximize purchasing efficiency and effectiveness, loss of professional turnover should be reduced. This can be done through establishing clear roles and procedures within the procurement processes.

The study concluded that, Procurement policy implementation online advertising and computerized tendering process have a positive influence on performance of procurement function in technical training institutes in Kisumu County, influence on performance of procurement function in technical training institutes. the high adoption of less competitive procurement methods, low capacity of procurement officers, low interaction between procurement entities and the PPA, splitting of contracts into smaller packages and non-cooperation of suppliers means high cost of procurement to the state.

Based on the reviewed literature, the study hereby concludes that, a properly designed and implemented procurement policy plays a pivotal role in providing a guiding framework for the implementation of efficient procurement practices; however, the employed procurement policies in government training institutions do not provide a framework for supporting implementation of sustainable procurement practices. It also suffices to conclude that, the major factors that influences procurement policies to affect implementation of effective procurement practices in tertiary public training institutions in Kenya include; low level of procurement regulations compliance, application of poor procurement policies, lack of top management support, use of poor procurement procedures poor relationship between management and stakeholders, poor method of managing organization resources and lack of effective policy making process.

## **6.0 Recommendation**

Based on the reviewed literature, it is recommended that, summarized regulatory framework for Kenya National Highway Authority procurement management be prepared by policy makers. Through legislation, governments should enact comprehensive laws to regulate procurement

functions and outline clear policy and procedures to be followed by procurement entities as this will enhance accountability and transparency. It can also be recommended that, the county governments should appoint a procurement oversight committee that should see implementation of the procurement law and county policies on procurement in the County.

As per the reviewed literatures, it is recommended that, to ensure entities maximize purchasing efficiency and effectiveness, loss of professional turnover should be reduced. This can be done through establishing clear roles and procedures within the procurement processes. To ensure value for money, there should be continuous improvement in the efficiency of internal processes and systems and Kenya National Highway Authority should maintain structures that avoid unnecessary costs. Institutions should strive to promote competence of staff/employees in all departments with emphasis in the procurement department. This should be so for all the procurement department employees of Kenya National Highway Authority.

It can be recommended further that, procurement entities and the respective procurement officers of Kenya National Highway Authority should be trained to enable them appreciate the importance of embracing competitive procurement methods in all procurements as long as it is practicable as this would ensure the state save a lot of money. Institutions of higher learning and other service providers should equip learners and practitioners with appropriate skills and knowledge through the development of a syllabus that ensures sustainable procurement in Kenya.

As indicated by the reviewed literature, it is recommended that systems to provide timely and continuous education and capacity building for all employees connected to the procurement law implementation processes should be put in place by Kenya National Highway Authority. It is also recommended that management of Kenya National Highway Authority should improve on the level of compliance with procurement regulations compliance, design and apply better procurement policies, support and encourage other staff to execute procurement functions in accordance with the procurement regulations and procurement policies, use effective procurement procedures, improve on relationship between management and stakeholders and employ better methods of managing parastatal's resources.

## 7.0 Reference

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