

Regulation of discretion in Public Procurement in Kenya

Kuloba, Isaac Simiyu

URI: <http://erepository.uonbi.ac.ke:8080/handle/123456789/3387>

Date: 2011

Abstract:

This research report contains findings of the study carried out on the level of discretion that the procurement officials enjoy under the Kenyan law. The study, which was more qualitative and analytical of written works in approach and analysis of documents such as statutes, public reports and other resources in the procurement sector, concludes that the public procurement regime in Kenya is too detailed, too prescriptive, with the result that procurement officials are unable to effectively make decisions that are based on good business judgement. This, coupled with lack of inbuilt incentive mechanisms for procurement officials, has increased the divergence between the interests of procurement officials (as agents of government) and the goals of the government (the principal). The study found that though granting more discretion to procurement officials does not in itself guarantee good, business or commercial judgement in procurement decision-making, it may contribute substantially to the objectives of public procurement if other measures - such as increased oversight and monitoring, enhanced rules on individual and collective accountability, provision of appropriate incentives for the procurement officials to act without focusing on their own interests, providing more structured and checked channels for exercise of discretion, amongst others - are put in place to deal with the enhanced level of discretion. The findings, therefore, are that there is need to review and amend the Public Procurement and Disposal Act and the Regulations in order to enable attainment of value for money, and to meet other objectives of public procurement. Simultaneously, the law should put in place mechanisms to deal with the resulting enhanced discretion of procurement officials through oversight and incentives. Key words: Discretion, agency problem, incentives, rules, public procurement.