

**IMPLEMENTATION STRATEGIES OF THE PUBLIC PROCUREMENT LAW  
IN KENYA: A CASE STUDY OF PUBLIC PROCUREMENT OVERSIGHT**

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**DECLARATION**

I declare that this project is my original work and has not been submitted for a degree in any other university or Institution of Higher Learning for examination/academic purposes.

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**SUPERVISOR'S DECLARATION**

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## **DEDICATION**

This study is dedicated to my parents, not forgetting my dear wife and beloved Children.

They have always been my Mashujaa since they strive me to toil hard as endearvor to prepare for their successful future lives.

Brave to you all.

## ABSTRACT

Procurement encompasses the whole process of acquiring property and/or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property and/or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life. Sound public procurement policies and practices are among the essential elements of good governance. The study collected both primary and secondary data. The primary data was collected through physical interaction with the interviewees while secondary data was obtained from organization records, brochures, website, and published scholarly articles and from Procurement Laws. The data was collected by way of an interview guide whose questions were open-ended to give the interviewee the chance to expound on any issues that required further probing. The method also allowed for collection of supplementary information and the ability to exercise control during the interviewing session. Content analysis was used to analyse the collected data. Content analysis is systematic since the content to be analyzed is selected according to explicit and consistently applied rules which ensure that the selected samples are fully representative. It also enables the researcher to describe and gave a good quick picture of how variables are distributed. The study findings established that challenges significantly impacted on the implementation of public procurement laws and effectiveness of it procurement system. The study also found out that there were some problems in the acquisition of the reports from the Government Ministries and department. This was associated with difficulties in finding meaningful data and statistics in the manual system; registers and logs with good design were difficult to find; summarizing data and writing reports took a lot of time; duplication of data was also another problem because the same data got repeated over and over since the workers found it hard to keep track of the documents, information and transactions. Lack of data security was also another challenge because the data that was stored in filing cabinets was freely available to anyone. Other problems that the Authority experienced due to the use of manual systems were inconsistency of data, too much paper work, space consuming, and slow retrieval of data. The study further revealed that due to the above challenges, the organization had to come up with the best strategies in ICT in order to be able to cope up with the changes in the ICT Sector.

## LIST OF ABBREVIATIONS

ADB	African Development Bank
ARB	Administrative Review Board
ARD	American Rural Development
BPR	Business Process Re-engineering
ICT	Information & Communication Technology
IFMIS	Integrated Financial Management Information System
M&E	Monitoring and Evaluation
MCC	Millennium Challenge Corporation
MDAs	Ministries, Departments & Agencies
NARC	National Rainbow Coalition
PFMR	Public Financial Management Reform
PhD	Doctor of Philosophy
PPARB	Public Procurement Administrative Review Board
PPDA	Public Procurement and Disposal Act
PPOA	Public Procurement Oversight Authority
PPP	Public- Private Partnership
RBV	Results Based View
RMCs	Regional Member Countries
ROM	Results Oriented Management
SMEs	Small & Micro Enterprises
USA	United States of American
USAID	United States Agency for International Development

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## **CHAPTER ONE: INTRODUCTION**

### **1.1 Background of the Study**

For several decades, concept of strategy has been in existence but despite numerous studies there is no commonly accepted and universal definition (Quinn, 1980). In fact, the term “strategy” is often used in a contradictory manner (Ghobadian, 1993). According to Porter (1980) strategy concerned what an organization does in order to gain a sustainable competitive advantage.

Hill and Jones (2001) defined strategy as an action that a company takes to attain one or more of its goals and therefore superior performance. Thompson and Strickland (1993) defined strategy as “the pattern of organizational moves and managerial approaches used to achieve organizational objectives and to pursue the organization’s mission”. Aosa (1998) defined it as “a means of solving strategic problems, which were a mismatch between the internal characteristics of an organization and the external environment in order to exploit opportunities existing in the external environment.

According to Gamble (2007), the handling of the implementation process by the management can be considered successful if and when the company achieves the targeted strategic and financial performance, and shows good progress in making strategic vision a reality. Once strategies have been developed, they need to be implemented; otherwise they are of no value unless they are effectively translated into action (Aosa (1992).

An excellent implementation plan will not only cause the success of an appropriate strategy, but can also rescue an otherwise inappropriate strategy (Hunger and Wheelan, 2008). However poor implementation of an appropriate strategy may cause that strategy to fail. Procurement encompasses the whole process of acquiring property and/or services. It begins when an agency has identified a need and decided on its procurement requirement.

Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property and/or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life (Waters 2004). Sound public procurement policies and practices are among the essential elements of good governance (KIPPPRA, 2006). Otieno (2004) notes the irregular procurement activities in public institutions provide the biggest loophole through which public resources are misappropriated.

According to Thai (2001), the basic principles of good procurement practice include accountability, where effective mechanisms must be in place in order to enable procuring entities spend the limited resources carefully, knowing clearly that they are accountable to members of the public; competitive supply, which requires the procurement be carried out by competition unless there are convincing reasons for single sourcing; and

consistency, which emphasizes the equal treatment of all bidders irrespective of race, nationality or political affiliation.

The process should also uphold integrity by ensuring that there are no malpractices; informed decision-making, which requires public bodies to base decisions on accurate information and ensure that requirements are being met. More still, the Procurement practice should be responsive to aspirations, expectations and needs of the target society. Finally, there is need for transparency to enhance openness and clarity on procurement policy and its delivery (World Bank, 2003).

Kenya procurement units within ministries, department and implementing agent's parastatals prepare and submit their requirements for procurement and disposal in which qualities, quantities and prices are spelt out to the tendering unit. Once the user departments spell out their requirements they are processed for tendering or quotation or proposal based on the threshold which is finally adjudicated by either the tender committee or procurement committee for award.

RoK, (2001) 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.

### **1.1.1 Strategy Implementation and Conceptual Review**

Strategy implementation is an internal operations-driven activity involving organizing, budgeting, motivating, culture building, supervising and leading, to make the strategy work as intended (Stefanos,2005). It embraces all the actions that are necessary to put a strategy into practice. These actions are divided into leadership, organizational and functional implementation (Howe, 1993). Strategy implementation therefore is the sum total of all activities and choices required for execution of a strategic plan. It is the process by which objectives, strategies and policies are put into action through the development of programs, budgets and procedures (Wheelan and Hunger 2008). The first step in implementing a strategy is for the management to communicate the case for organizational change clearly and persuasively to organizational members. This is to ensure that a determined commitment takes hold throughout the ranks, to find ways to put the strategy into place, make it work and meet performance targets.

A well-formulated strategy can only generate a sustainable added value for a organization if it is implemented successfully. Organizations operate in dynamic environments and may react differently to changes. How they adapt determines success or failure of a given strategy. The Mckinsey 7 S's model developed in 1980 is widely used in implementation. The seven S's are variables that take into account Structure, Strategy, Systems, Skills, Style, Staff and Shared values. These factors are interdependent and managers should pay proper attention to each one of them to ensure success in strategy implementation.

Strategies help increase accountability enhancement in information systems which measure how inputs are used to produce outputs; watchdog organizations, health boards or other civic organizations to demand explanation of results; performance incentives to reward good performance; and sanctions for poor performance. Enforcement is viewed as any actions taken by regulators to ensure compliance with laws (Zubicic and Sims, 2011). Government policies and regulations have greatly influenced the flow of business activities and operations (Hitt, 2011). Where Operating Procedures are not followed that could affect a contract bid or the award process (Wymer and Regan, 2005). The strategic plan is a key performance management tool; a corporate vision provides the general direction for the entire organization (Coopey and Burgoyne 2011). It entails transformation in the form, quality, or state overtime in an organization's alignment with its vision and hence suits its external environment (Bartley, 2011).

Kenya's public procurement systems review was undertaken in 1999 and established that the Public procurement is governed by the Public Procurement and Disposal Act, 2005 (PPDA) and the Regulations under this Act 2006. The Act assures adherence to basic principles of sound procurement practices. The objective of public procurement is the management of sustainable acquisition of goods, works and services to optimize value for money through professional and auditable framework.

### **1.1.2 Overview of Public Procurement Oversight Authority (PPOA)**

The PPOA mandate is to ensure that procurement procedures are complied with and to generally monitor and assist with the implementation and operation of the public procurement system. The organization also provides advice and assistance to procuring entities. In general the main steps are as follows: invitation to tender, preparation of tender documents in accordance with the PPDA, submission and receipt of tenders before set deadline, opening of tenders and the evaluation of tenders.

According to the PPDA, invitation to tender must be advertised at least twice in a newspaper of nationwide circulation. For international tendering, all tender documents must be in English. Advertising must include one or more English language newspaper or other publications that together, have sufficient circulation outside Kenya to allow effective competition. In an effort to create order in public procurement, PPOA through the support of the Kenya Government and the Public Financial Management Reform (PFMR) Programme, has since its establishment in 2007 endeavored to implement a new legal and regulatory regime to guide public procurement.

The Authority has also worked to create a professional cadre in the public sector, establish workable institutional arrangements within procuring entities and provide support to Government Ministries, Departments and Agencies (MDAs) to implement their plans and budgets through procurement for better cash management. PPOA has made tremendous progress in meeting the above objectives. Key achievement towards



implementing a new legal and regulatory framework in public procurement is evident in the many guidelines PPOA has developed to guide procurement practices and pricing of common user items. The guidelines include Public Procurement Market Price Index, General and Disposal Manual, Procurement Manual for Works, Procurement Manual for Information and Communication Technology, Procurement Manual for Insurance Services, Procurement Manual for Non- Intellectual Services, among others.

## **1.2 Research Problem**

Strategic implementation is very important since organizational objectives are achieved. For it to be effective it must be integrated and coordinated with the organization's plans. Aosa (1998) defines strategy as "a means of solving strategic problems, which were a mismatch between the internal characteristics of an organization and the external environment in order to exploit opportunities existing in the external environment. Many organizations face more challenges in strategy formulation and implementation. Strategy implementation is the hardest part because it involves all the staff and there is always resistance to change.

Implementation strategies of the public procurement Law in Kenya are not properly documented. The Implementation of public procurement law by PPOA has been widely criticized and has caused many problems during the process. This is largely due to poor implementation that did not involve many strategic decision makers in Government. Through public procurement, governments undertake public works; build roads,

healthcare, education and public order (Errigde and McIlrory, 2002). Public procurement or government procurement is increasingly recognized as essential in the delivery of services in developing countries (Basheka and Bisangabasaija, 2008). The need to strengthen the delivery of public services has in recent decades assumed great significance both in developed and developing countries (Karim, 2003).

Many public procurement activities suffer from neglect, lack of direction, poor coordination, lack of open competition and transparency, differing levels of corruption and most importantly not having a cadre of trained and qualified procurement specialists, who are competent to conduct and manage such procurements, in a professional, timely and cost effective manner. The adherence to procurement procedure would ensure the public organization gets the value for money through quality services, good and works, but this has not been effective in other sectors as is expected (KPMG, 2008). Many studies are carried out on procurement before the Public procurement and Disposal Regulations of 2006 to evaluate the efficiency of the procurement process in existence at the time, (Kipchilat, 2006). The major findings of the studies were that public procurement was not operating efficiently and that the state was losing a lot of money through shoddy deals.

Reports strongly indicated the need for reforming the public procurement system in the country. In 1997, the Government in collaboration with the World Bank commissioned a study to assess the country's procurement processes and systems. The World Bank

supported the study through the Public Procurement and Capacity Reform Project. This study identified the need for a comprehensive review and an implementation of a reform process in the procurement systems after revealing that the public procurement system in Kenya lacked transparency and fair competition; that procurement staff were not adequately trained and lacked professionalism and that lack of a professional body that would oversee and instill discipline among procurement officers made them vulnerable to corruption. The World Bank study argued that improvement in procurement systems had a direct and beneficial effect on the overall economic situation in the country (Odhiambo and Kamau, 2003).

There are various studies done in Kenya especially in the Government Ministries, Departments and Agencies focusing in different aspects in public procurement. For instance; Githinji [2010] reads strategic planning practices at Kenya National Audit Organization, Maurine (2011): Strategic Planning Practices in Kenya Pipeline Company, Kathama (2012) reads strategic planning practices and performance of state corporations in Kenya, Kollah (2012) also investigated strategic planning and efficiency of the banking sector; a case of Kenya Commercial Bank Limited and many more. However all these scholars did not cover anything on implementation strategies of the public procurement Law in Kenya, hence filling a research gap in the literature. The study will therefore seek to address the implementation strategies used by PPOA. What are implementation strategies of the public procurement Law in Kenya?

### **1.3 Objective of the Study**

The objective of the study was to establish implementation strategies of the public procurement Law in Kenya.

### **1.4 Value of the Study**

The findings of this study was of great importance to the Kenyan government as policy makers as they was able to design polices that could enhance accountability in public sector procurement propose reforms to the procurement laws, regulations and also create a point of reference which people can learn or apply as a bench mark in procurement procedures. The top management in the Public Procurement Oversight Authority (PPOA) will know the implementation strategies necessary for proper procurement process.

The study was of interest to procurement students, professionals and researchers, as it will form the basis for more in-depth studies with respect to implementation strategies of the public procurement Law in Kenya.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter reviews the existing literature, information and publication on the topic related to the research problem by accredited scholars and researchers. This section shall examine what various scholars and authors have said about implementation strategies of the public procurement Law in Kenya, in particular it will cover the theoretical review of literature, conceptualization of the research problem empirical review of the literature and critical review and research gaps.

### **2.2 Theoretical Foundation of the Study**

The study on implementation strategies is anchored on the theories originating from strategic management. Some of the key theories relevant in the study include Strategic Triangle Theory, Social Exchange Theory, Institutional Theory and Principal Agent Theory.

#### **2.2.1 Strategic Triangle Theory**

Public value can be described as the contribution made by the public sector to economic, social and environmental well-being of a society or nation, and can be generally defined as what the public is willing to make sacrifices of money and freedom to achieve (Kelly et al., 2002). Public value theory argues that the creation of public value is the ultimate goal of public sector programmes and activities – the value proposition that should guide public organizations (Moore, 1995; Moore, 2000).

Moore (1995) formulated the Public Value framework to imbue public sector managers with a greater understanding of the constraints and opportunities within which they work, and the challenge to create publically valuable outcomes. His central proposition was that public resources should be used to increase value not only in an economic sense but also more broadly in terms of what is valued by citizens and communities. Moore developed a 'strategic framework' in an attempt to capture the aims and constraints of public sector management and to help align goals, authorization and operational capability (Moore, 1995).

The Public Value approach envisages a manager's purpose as going beyond implementation of policy and adherence to institutional norms. It includes seeking out opportunities to make significant improvements to the lives of the public. The role is envisaged as a strategic decision maker who works at the intersection between three imperatives of value, legitimacy and feasibility. Unlike private enterprise, organizations providing public services are directly accountable to citizens and their democratic representatives.

Therefore, Public Value cannot be delivered without ongoing public engagement and dialogue. Allied to this, the public value manager must be skilled in the efficient and innovative deployment of available resources, and effective in persuading other stakeholders to adopt similar purposes and approaches. The ability to adapt to, shape and manage the external environment is also a core skill of the Public Value manager.

### **2.2.2 Social Exchange Theory**

Social exchange theory posits that the parties in an exchange relationship provide benefits to one another in the form of tangible benefits such as money or intangible benefits such as socio-emotional support (Blau, 1964). The exchange of these benefits is a result of the norm of reciprocity. According to the norm of reciprocity, individuals are obligated to return favors that have been provided by others in the course of interactions in order to strengthen interpersonal relationships (Gouldner, 1960).

In addition, social exchange theory maintains that trust is an essential condition for the establishment and maintenance of interpersonal relationships. Therefore, according to social exchange theory, individuals seek to enter and maintain fair and balanced exchange relationships. In organizations, employees seek a fair and balanced exchange relationship with their employers.

### **2.2.3 Institutional Theory**

The problem of whether performance measurement could improve public service delivery can be examined by applying the institutional theory. One major topic of the institutional theory (Kondra and Higgins, 1998) has been the role of institutional norms. After a research project on schools, Meyer and Scott (1983) back in the 1970s, formulated the hypothesis that a continuum of organizations exists running from those dominated by technical criteria (manufacturing companies) to those dominated by “institutional” criteria (schools, private nonprofits, public administrations).

A technically optimized work flow is of less importance for institutionalized organizations than for those dominated by technical criteria. Following Greenwood and Higgins (1988), institutional norms deal with appropriate domains of operation, principles of organizing, and criteria of evaluation.

Values and beliefs external to the organization play a significant role in determining organizational norms. Institutional organizations may conform to these rules and requirements in order to increase their legitimacy (Meyer and Rowan, 1977). For this type of organization technical or economic efficiency may not be the driving force as they are forced to make trade-offs between sometimes conflicting external stakeholders interests. Public organizations have to deal with many external constraints, which potentially decrease the economic efficiency. Wilson for example regards the technical inefficiency of the checks and balances of the American constitution as a small price to pay for freedom and responsiveness of government (Wilson, 2000, p. 326). Looking at the role performance measurement may play in institutionalized organizations one can say that it is an instrument that may contribute to the legitimacy in cases where market-oriented reforms are high on the agenda.

Roy and Sèguin (2000) are convinced that in the reasoning of the institutional theory, performance measurement is not adopted as technical efficiency-oriented approach for increasing the productivity of public services but mainly for its symbolic values in order to meet important external stakeholder expectations. For Johnsen, such reasoning fits best



in an egalitarian public management culture, which stresses the potential of window-dressing and the function of a symbolic and decoupled use of performance measurement (Johnsen, 2005). A Likelihood exists that performance measurement is, among other reasons, implemented in order to comply with the rhetoric of the market reforms in the public sector. Some proponents of institutionalism would also support the notion that performance measurement with its seeming rationality can also be seen as a step towards mythologizing public service providers as (economically) rational organizations.

This may help public service providers to legitimize themselves at least in the eyes of those political decision makers and actors, who are convinced that more market elements will lead to better public services (for performance myths in the public sector see Modell (2004). This will, of course, only work if the myth cannot be easily dispelled by any relevant stakeholder group. If there are obvious gaps between the reported performance and the real performance it is likely that any stakeholder group whose interests are served by pointing at this discrepancy will draw the attention to this gap.

#### **2.2.4 Principal Agent Theory**

The idea of the legitimate self-interest-driven or illegitimate opportunism-driven public actor is something which is also addressed by the principal agent theory. The principal agent theory describes strategic interactions between at least two contract partners, called principal and agent. The principal agent theory assumes that the actors are motivated by

rational self-interest and that mainly the agent uses gaps in contracts to his or her advantage.

One central question is how to get the agent (e.g. a contracted public service provider, a public agency, a public employee, a regulated enterprise) to act in the best interest (e.g. a contracting public authority, a political body or a public manager), when the agent has an information advantage. A primary challenge is to achieve the full gains from exploiting comparative advantages in order to achieve joint agency value (Jacobides and Croson, 2001). The agency problem arises not just from a conflict of interests but also from the agent's privileged access to information. According to the basic model, the agent will tend to use his or her superior knowledge to divert benefits in his or her direction.

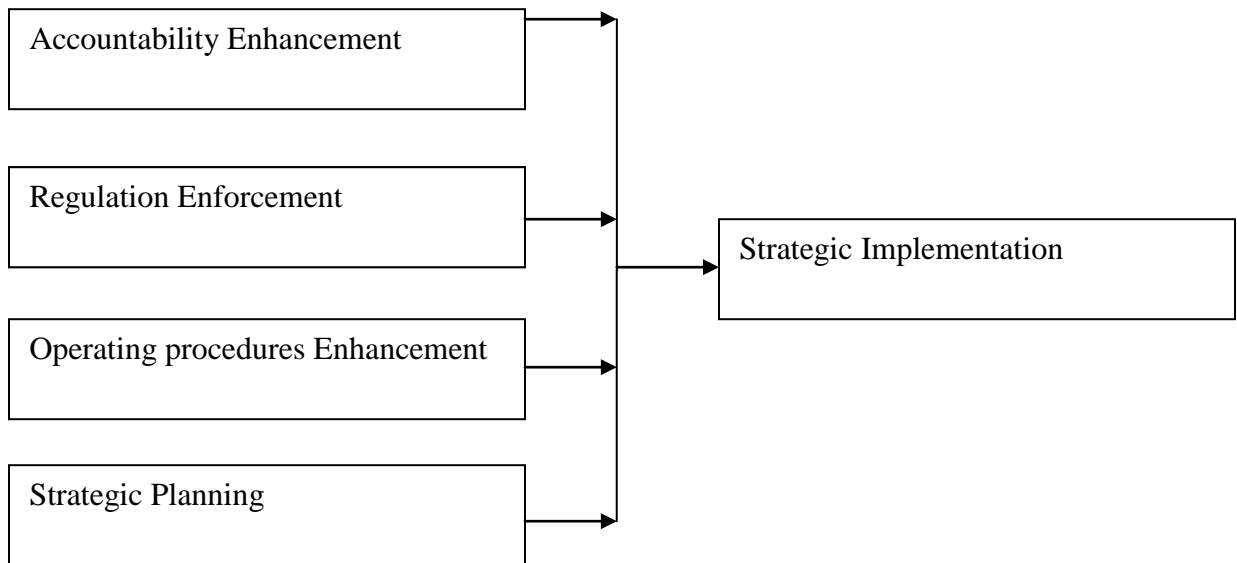
The principal agent theory as well as information economics have identified several approaches to address the problem of information asymmetries on the principal's behalf. In order to deal with this problem detailed performance-oriented monitoring systems are established. To enforce comprehensive monitoring systems is in line with what Johnsen calls the hierarchist management culture and Prendergast calls the informativeness principle, which is embedded in the traditional reasoning of the principal agent theory. The informativeness principle includes the conviction that any improvement of the principal's information situation will have positive results (Johnsen, 2005).

Whether or not there is a substantial decrease of information asymmetries depends on the quality of the information provided by the agent. The well-known evaluation problems of most public services, which lead to noisy measures, may leave room for window-dressing in a field where credence goods play an important role. The smart self-interested agents will also develop a notoriously high ability to find their way around the indicators (Jacobides and Croson, 2001, p. 208). The problems of an appropriate monitoring system and the choice of the right indicators are furthermore multiplied by the problems of uncertainty and ambiguity.

**Figure 2.1: Conceptual Framework**

**Independent Variable**

**Dependent Variables**



**Source, Author (2014)**

Public Procurement has been defined as the acquisition of goods, works or services, including the disposal of assets by a Procuring Entity. Procurement process is the successive stages in the procurement cycle including planning, choice of procedure, means to solicit offers from bidders, examination and evaluation of those offers, award of contract and contract management. Procurement encompasses the whole process of acquiring property and/or services. Procurement also extends to the ultimate disposal of property at the end of its useful life (Waters, 2004).

Sound public procurement policies and practices are among the essential elements of good governance (KIPPRA, 2006; World Bank, 2002). Otieno (2004) notes the irregular procurement activities in public institutions provide the biggest loophole through which public resources are misappropriated. In some cases, tenders are awarded to firms either through single sourcing or manipulation of bids; and worse still, full payments have often been made for projects that fail to take off or are abandoned half way. Still in other cases, tenders are awarded to un-competitive bidders through irregular disqualification of the lower bidders. According to Thai (2001), the basic principles of good procurement practice include accountability, where effective mechanisms must be in place in order to enable procuring entities spend the limited resources carefully, knowing clearly that they are accountable to members of the public; competitive supply, which requires the procurement be carried out by competition unless there are convincing reasons for single sourcing; and consistency, which emphasizes the equal treatment of all bidders irrespective of race, nationality or political affiliation.

An ideal procurement system should also focus on effectiveness, where procuring entities should meet the commercial, regulatory and socio-economic goals of government in a manner that is appropriate and a good procurement practice should embrace: efficiency, which requires that procurement processes be carried out as cost effectively as possible; fair-dealing, where suppliers should be treated fairly, without discrimination or prejudice including protection of commercial confidentiality where necessary (Agere, 2001). The process should also uphold integrity by ensuring that there are no malpractices; informed decision-making, which requires public bodies to base decisions on accurate information and ensure that requirements are being met. Finally, there is need for transparency to enhance openness and clarity on procurement policy and its delivery (World Bank, 2003).

## **2.3 Implementation Strategies**

### **2.3.1 Accountability Enhancement**

Accountability is government's obligation to demonstrate effectiveness in carrying out goals and producing the types of services that the public wants and needs (Segal and Summers, 2002). Lack of accountability creates opportunities for corruption. Brinkerhoff (2004) identifies three key components of accountability, including the measurement of goals and results, the justification or explanation of those results to internal or external monitors, and punishment or sanctions for non-performance or corrupt behavior. Strategies to help increase accountability include information systems which measure how inputs are used to produce outputs; watchdog organizations, health boards or other

civic organizations to demand explanation of results; performance incentives to reward good performance; and sanctions for poor performance.

In South Africa, a district health planning and reporting system was used to improve management control and hold government agents accountable for their decisions. By combining financial and service data, the reporting system drew attention to clinics and programmes that had unusual indicators, and helped officials to explore root causes for performance differences, including possible corruption (Vian and Collins, 2006).

### **2.3.2 Regulation Enforcement**

Enforcement could be broadly viewed as any actions taken by regulators to ensure compliance (Zubic and Sims, 2011). There are mixed opinions regarding the effect of enforcement on compliance. Some scholars such as Sparrow (2000, 1994) doubt the direct effect of enforcement on compliance. They argue that enforcement may make violators more sophisticated in how to prevent, and conceal detection. However many other scholars agree that enforcement improves compliance (Zubic and Sims, 2011). According to Zubic and Sims (2011), enforcement action and increased penalties lead to greater levels of compliance with laws. Corruption among government procurement officials in developing countries such as Kenya, India, Sri Lanka, Nigeria and Venezuela has been linked to a weak enforcement of the rule of law (Nwabuzor, 2005) as cited in Raymond (2008).

A study on corporate governance in Africa revealed that countries such as Nigeria and Ghana suffer from weak law enforcement mechanisms (Okeahalam, 2004). In countries with complaint and review mechanisms, bidders are allowed to verify whether the procurement processes conform to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules (Hui et al, 2011). Firms might choose to implement ineffective compliance systems if legal violations may be profitable in cases where the legal system under-enforces, either because penalties are set too low or because detection is imperfect or ineffective.

Gunningham and Kagan (2005) argue that the threat of legal sanctions is essential to regulatory compliance and that enforcement action has a cumulative effect on the consciousness of regulated companies and it reminds companies and individuals that violators was punished and to check their own compliance programs. This is also supported by Gunningham and Kagan (2005) who opined that the outcome of sustained enforcement action instilled a culture of compliance and had a direct impact on corporate compliant behavior. Sutinen and Kuperan, (1999) further argue that coercive enforcement measures remain an essential ingredient in any compliance regime. We therefore make the second proposition. Government policies and regulations have greatly influenced the flow of business activities and operations (Hitt, 2011).

### **2.3.3 Operating Procedures Enhancement**

Public procurement has, for long, been overshadowed with inefficiency, corruption and disregard of fundamental "value for money" considerations. This has adversely impacted the rate and quality of progress in realizing the objectives of national development, especially in developing and transition countries (Tan *et al.*, 2009). Employees may neither engage in, nor give the appearance of engaging in, dishonest or unethical actions. Both are injurious to the public's perception of honest government.

As a government employee, you might have access to procurement and other nonpublic information that could affect a contract bid or the award process (Wymer and Regan, 2005). Improper disclosure of such protected information could violate numerous laws, as well as ethics rules. It also could subject you to administrative actions, as well as civil or criminal penalties. Management in contracting authorities that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function that procedures are in place to ensure compliance with all relevant guidelines.

Officials involved in procurement must not make improper use of their position (Tan *et al.*, 2009). Officials may have access to very confidential and/or market sensitive information. It is unethical to use inside information provided to the agency as part of a tender process, either for the material benefit of the official or for another person. Criminal sanctions apply to such behaviour.



### **2.3.4 Strategic Planning**

The strategic plan is a key performance management tool; a corporate vision provides the general direction for the entire organization (Coopey and Burgoyne, 2011). Since the global financial crisis, the change imperative has come to the fore for many organizations and has been the focus of many boardroom, senior management, and strategists' meetings and discussions key to setting the strategic plan. No industry sector, public sector organization, or government department has escaped the change. Strategic changes entail transformation in the form, quality, or state overtime in an organization's alignment with its vision and hence suit its external environment (Bartley, 2011).

According to Agaba & Shipman, (2007), procurement planning is the process used by companies or public institutions to plan purchasing activity for a specific period of time. This is commonly completed during the budgeting process. Each year, departments are required to budget for staff, expenses, and purchases. This is the first step in the procurement planning process. Economic commission of Africa (2003) defines procurement planning as the purchasing function through which organization obtain products and services from external suppliers. A good procurement plan will go one step further by describing the process you will go through to appoint those suppliers contractually. Whether you are embarking on a project procurement or organizational procurement planning exercise, the steps was the same. First, define the items you need to procure. Next, define the process for acquiring those items. And finally, schedule the timeframes for delivery. Procurement is thus one part of the commissioning process.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

This chapter discusses the methodology approach for the study and highlights the research design, data collection and data analysis.

### **3.2 Research Design**

The study adopted a case study design that described the implementation strategies of the public procurement law in Kenya. According to Yin (1984), a case study is an empirical enquiry that investigates a contemporary phenomenon within its real life context. It is an exploratory research technique that intensively investigates one or a few situations similar to the researcher's problem situation (Zikmund, 2003).

Case study enabled the researcher to probe and obtain in depth information and also provide for detailed analysis. Kothari (2004) concurs that a case study often provides focused and valuable insights to phenomenon that may be vaguely known and less understood.

### **3.3. Data Collection**

The study collected both primary and secondary data. The primary data was collected through physical interaction with the interviewees while secondary data was obtained from organization records, brochures, website, and published scholarly articles and from Procurement Laws.

The data was collected by way of an interview guide whose questions was open-ended to give the interviewee the chance to expound on any issues that required further probing. The method also allowed for collection of supplementary information and the ability to exercise control during the interviewing session.

### **3.4 Data Analysis**

Content analysis was used to analyse the collected data. Krippendorff (2004) defines it as a research technique for making replicable and valid references from data to their context. Kerlinger (2000) defines content analysis as ‘a method of studying and analyzing communication in a systematic, objective and quantitative manner for the purpose of measuring variables.

Content analysis is systematic since the content to be analyzed is selected according to explicit and consistently applied rules which ensure that the selected samples are fully representative. This technique was used because it determined patterns in making inferences by systematically and objectively identifying specific messages and then relating them with occurrence trends (Nachmias and Nachmias, 1996). It also enables the researcher to describe and gave a good quick picture of how variables are distributed.

## **CHAPTER FOUR: FINDINGS AND DISCUSSIONS**

### **4.1 Introduction**

The research objective was to establish the implementation strategies of the public procurement law in Kenya. This chapter presents the analysis and findings with regard to the objective and discussion of the same. This chapter discusses the interpretation and presentation of the research findings drawn from the research instrument by way of data analysis. This chapter also presents the analysis and findings of the study as set out in the research methodology. The study findings are presented on the implementation strategies and the case study being public procurement law in Kenya.

### **4.2 The Interviewees' Profile**

The interview's comprised of the top management at the public procurement oversight authority, some of who were instrumental in the formulation and the implementation of strategies in the public procurement law in Kenya. The interviewees comprised top level managers of the PPOA and the researcher managed to interview three of the intended four top level managers at the public procurement oversight authority. All interviewees had worked for at least a year at the PPOA a condition that showed they were knowledgeable enough for the research and also had the experience to provide relevant information. In-depth information was gathered from senior members of the public procurement oversight authority. Data was collected using interview guides. This was considered as it was mainly the top level management responsible for the implementation of strategies at the PPOA.

#### **4.2.1 Position held at the PPOA**

The study sought to establish the position held by the interviewees at the Public Procurement Oversight Authority. From the analysis it was noted that there were four technical departments, of which three were fully interviewed and the interview guides analysed. From this it was noted that there was an interviewee for each of the departments. In the capacity building department, the capacity building manager was interviewed while from compliance research department, the compliance research manager was interviewed lastly from the policy and research department, the policy and research manager was interviewed. The study concludes that the position held at the PPOA is significant to the interviewer in order to know the relevant question to insist on, when interviewing. It is also evident that each department was fully represented in the study.

#### **4.2.2 Level of Education**

The interview sought to establish the level of education of the interviewees. From the interview guide it was evident that majority that is sixty seven percent of the interviewees had a masters degree. Interviewees who stated this were noted to carry a frequency of 2. This was closely followed by the interviewee who stated that his highest level of education was a PHD. Interviewees who stated this in their interview guide had a frequency of only one interviewee. None of the interviewees stated that they had done a bachelor's degree as their highest level of education. From the analysis of the interview guide, it was evident also that there was no interviewee out of those in the study who stated that they had a diploma as their highest level of education. None of the

interviewees were also noted to state that they had done their O levels as their highest level of education. From this we can deduce that the interviewees were well educated and knowledgeable and had at least had at some point learnt the theoretical framework that pertains to public procurement. We can also come to the conclusion that the interviewees had gone further to master in business or procurement related courses. It was also evident from the study that the higher the position in the public procurement oversight authority, the higher the level of education the interviewee had.

#### **4.2.3 Years served at the Public Procurement Oversight Authority (PPOA)**

The study sought to establish the number of years each of the interviewees had worked at the PPOA. It was evident from the analysis of the interview guide that majority of the interviewees stated that they had been in operation for a period of more than 4 years. This was noted to carry a frequency of 2 interviewees. This was calculated to be approximately sixty seven percent of the total interviewees.

This was followed by interviewee who stated that he had been in operation for a period of two to four years. This was noted to carry a frequency of one interviewee and was calculated to be approximately thirty three percent of the total interviewees. None of the interviewees stated that they had served for a period of less than one year. This group was noted to have no frequency.

### **4.3 Environmental Changes and Challenges**

The study established that there have been many changes in the external environment of the organization. The interviewees noted that the external environmental changes have exerted a lot of pressure on the Public Procurement Oversight Authority (PPOA) to formulate strategies that helped it to achieve its mandate in the turbulent environment.

Based on the interviews and the secondary data, the researcher discovered that there were some changes in the external environment that interviewees felt were of concern to PPOA. Some of these changes in the environment have been discussed in the ensuing paragraphs.

#### **4.3.1 Political Changes and Challenges**

The study established that when the National Rainbow Coalition (NARC) Government took the reins of the country's administration in 2003, the Government embarked on major reforms in the Public Sector and especially in the area of Public Procurement. It started by recruiting qualified Procurement Officers who were deployed to Government Ministries and departments.

The Government further embarked on the enactment of the Public Procurement and Disposal Act, 2005 and Regulations of 2006. Under the Public Procurement and Disposal Act, 2005 the Public Procurement Oversight Authority was created with an aim of streamlining the procurement activities in the Public Sector.

It is in light of the existing problems in the public sector that the Kenyans welcomed the new Authority with the hope that the a modern system of public procurement, there was going to be fairness and competition among suppliers of goods and services to the Government. The study further found out that nine members of the PPOA's Advisory Board are nominated by the various professional organizations; however, the appointment of the Board Members is done by the Minister of Finance after names of the nominee's have been approved by Parliament.

At a times, the appointment of the Board members delays due to failure by the Parliament to approve the names as a result of political reasons. This therefore impacts negatively the decision making organ of the organization especially on keys issues that are handled at the Advisory Board level. Therefore the interviewees noted that for effective strategic implementation of the public procurement law in Kenya. There should be good governance.

#### **4.3.2 External Pressure from Donors and Multilateral Organizations**

The study uncovered that the Public Procurement Oversight Authority was launched in 20th June, 2008 and the importance of the launch cannot be gain said, more so as it was done at a time when the level of awareness by Kenyans on economic malpractices in public expenditure had risen.



PPOA was launched at a time when the Government was expected to spend billions of shillings in infrastructure projects that included roads and fibre optic telecommunication links that was to help in catalyzing economic growth. The study further found that at that point in time, there was a lot of pressure from the donors and other multilateral organizations that donated funds for major projects in the country. For example the African development bank (ADB) whose shareholders include the 53 countries in Africa and 24 non-African countries from the Americas, Asia, and Europe is driven by the objective of promoting the economic development and social progress of its regional member countries (RMCs) individually and jointly.

The Agreement establishing the ADB requires that the proceeds of any loan be used with due attention to considerations of economy and efficiency. Although the Bank normally finances only part of the cost of contracts under projects and programs, it requires that in most cases a system of international competitive bidding be used in purchasing any goods and in contracting for works needed to be implemented in any of the projects or programs wholly or partially financed with its loans.

Furthermore, the Bank requires that any other bidding procedures and contract awards which may be used for procurement of goods and works on projects and programs wholly or partially financed by the Bank should be subject to conditions acceptable to the Bank, consistent with its policies and the purpose for which the loan is being granted. On the other hand, for contracts not financed by it, the Bank shall be satisfied that the procedures

to be used will fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently.

It is therefore noted that donors and multilateral companies may have a significant effect on compliance to the public procurement law in Kenya.

#### **4.3.3 Technological Changes and Challenges**

The interviewees consented that the pressure for change in the area of technology came mainly from the Kenya's National ICT Policy (2005) and ICT Strategy for Economic Growth (2006) also had a major effect on the compliance of the public procurement laws at the PPOA. This was the start of a journey that represented Kenya's vision in the information age. The interviewees stated that, preparation of the two documents was guided by the aspirations set out in Kenya's key socio-economic development framework documents including: The Economic Recovery Strategy for Wealth Creation and Employment, 2003-2007; Poverty Foreword Reduction Strategy Paper; 2001; Sessional Paper No. 2 of 2005 on Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction.

The development of this ICT Strategy for Economic Growth was a result of wide consultations involving all key stakeholders in the public sector, private sector and civil society. The study revealed that due to the above Government Policies, the Public Procurement Oversight Authority has had to ensure that the reforms in the public procurement incorporated the use of technology or e-procurement. It was established that

there were significant efficiencies to be generated by applying better procurement and modern e-procurement technologies because while other sectors of the economy were moving into the digital platform, public procurement remained rigid and was made up of all paper-based systems run by procurement officers who were not technology savvy. This was mainly due to the fact that most of the employees did not want the scrutiny to which the implementation of technology brought in compliance with the public procurement law in Kenya. The in depth interviews revealed that PPOA's challenges specifically stemmed from the outdated manual workflows in the Government Ministries and departments or lack of clear guidelines in some steps of the procurement process.

These challenges significantly impacted on the implementation of public procurement laws and effectiveness of its procurement system. The study also found out that there were some problems in the acquisition of the reports from the Government Ministries and department. This was associated with difficulties in finding meaningful data and statistics in the manual system; registers and logs with good design were difficult to find; summarizing data and writing reports took a lot of time; duplication of data was also another problem because the same data got repeated over and over since the workers found it hard to keep track of the documents, information and transactions.

Lack of data security was also another challenge because the data that was stored in filing cabinets was freely available to anyone. Other problems that the Authority experienced due to the use of manual systems were inconsistency of data, too much paper work, space

consuming, and slow retrieval of data. The study further revealed that due to the above challenges, the organization had to come up with the best strategies in ICT in order to be able to cope up with the changes in the ICT Sector.

#### **4.3.4 Legal and Policy Changes and Challenges**

The study found out that in an effort to create order in public procurement, PPOA through the support of the Kenya Government under the Public Financial Management Reform (PFMR) Programme, had since its establishment in 2007 endeavored to implement a new legal and regulatory regime to guide public procurement. Key achievement towards implementing a new legal and regulatory framework in public procurement was evident in the many guidelines PPOA but the main was through the implementation of the public procurement law in Kenya.

The guidelines include: Public Procurement Market Price Index, General and Disposal Manual, Procurement Manual for Works, Procurement Manual for Information and Communication Technology, Procurement Manual for Insurance Services, Procurement Manual for Non-Intellectual Services, among others. Similarly, the Authority developed a comprehensive manual on procurement that sought to simplify the application of the Act and the Regulations. The Manual clarified the provisions of the law while ensuring that there was consistency in its application in relation to the law. The manual was a product of joint effort between PPOA and its stakeholders.

The study established that some of the provisions in the Act, for instance reservations and preferences for SMEs had not been operationalized. In addition, regulations to guide procuring entities on public-private partnerships (PPP), public procurement records management protocols and development of a public procurement policy framework needed to be finalized.

Further, there were some provisions in the Act that were inconsistent with other regulations. Apart from strengthening the enforcement mechanism, it was imperative to undertake research that will inform review and operationalization of all provisions of the Act to make it more relevant and effective in governing the public procurement process. To strategic position the procurement function, there was need to undertake research and develop policy guidelines on the appropriate procurement organization structures for the different classes of Procuring Entities.

The study also revealed that the next phase of the reforms that PPOA plans to undertake include the plans to deepen capacity building of public procurement staff in order to satisfy the needs of the County Governments envisaged to become operational after the next general elections. The interviewees noted that over the few years the procurement law has been in operation, several weaknesses have also been identified. PPOA intends to review the law with a view to initiate amendments that will align it to the new

constitution that was promulgated. It was further found that the structure of PPOA as currently it is does not conform to the new constitution.

The next phase of reforms will also endeavour to align the structure to the supreme law. Since the roll-out of the public procurement law, complaints have been raised with regards to its efficiency and effectiveness. Long delays in the procurement process have been noted and a study is required to identify causes of delay. This was an important assignment for PPOA going forward.

The Authority also looks to strengthen its Monitoring and Evaluation (M&E) system to not only ensure procuring entities utilize public resources efficiently but also follow the law as they execute procurement work.

#### **4.4 Strategic Responses by PPOA to Environmental Changes**

The Public Procurement Oversight Authority has formulated strategies in response to the changes in both internal and external environment. These strategic responses were depended on the organization's internal capabilities and were found to be adequately aggressive to effectively address the threats that changes in the environment exerted on the organization.

The interviews conducted on the interviewees and the analysis of the secondary data shows the existence of strategic responses that have been formulated by PPOA's top management in order to address the changes in the internal and external environment. It

was clear from the data that some of these strategic responses include: - investment in ICT, strategic partnerships, outsourcing of services, performance contracting, business process re-engineering, benchmarking and performance measurements.

#### **4.4.1 Investment in Information Communication Technology (ICT)**

The in depth interviews and the review of the secondary data revealed that the Public procurement in Kenya can now be done on-line, through a standardized interactive database driven website, [www.ppoa.go.ke](http://www.ppoa.go.ke). Apart from reducing transaction costs currently incurred by the Government, citizens and the private sector, the site also provides a forum for citizens' participation in public procurement through feedback at [info@ppoa.go.ke](mailto:info@ppoa.go.ke). According to PPOA ICT Manager —The website was launched on June 20th 2008 and it has enabled citizens, Government departments, the business community and various stakeholders to access procurement opportunities and information in an efficient and effective manner. The website has, in addition to above: provided information on matters pertaining to procurement as well as improvement on service delivery to the public; facilitated interactive online business planning and sharing of resources and skills as well as leverage for new technological opportunities; improved collaboration between PPOA and procuring entities by providing timely information on matters pertaining to procurement.

The website has also helped the heads of the procuring entities, accounting officers and all public officials involved in the procurement process to download average price lists,

which assisted them with information on indicative prices of common user items for goods, works and services mostly procured by public entities. The study also revealed that all procurement contracts awarded by the public entities are published on the PPOA website to ensure greater transparency. Consequently, PPOA has been able to publish all open tenders for goods or works above Kshs 6 million on its website. The authority also anticipates advertising services above Kshs. 3 Million in addition to placing the same on the Procuring entity's website. The Authority hopes that the website will enable the lodging of reviews in case of complaints without seeking guidance from the Administrative Review Board (ARB).

The interviewees further revealed that the information on previous decisions that were issued by the Public Procurement Administrative Review Board (PPARB) from 2004 onwards have been posted on the website to enable potential appellants or applicants make an informed decision on whether to lodge a review with the ARB or a complaint with the Director General. Other features on the website include the ability of the visitors to the website to download the Act, Regulation and the gazette notices. The interviewees felt that the information accessed by the stakeholders from the website was useful in informing them about their legal requirements in the public procurement system.

#### **4.4.2 Strategic Partnerships**

The study found that in March 2007, an agreement was signed between the Governments of Kenya and the United States of America to launch threshold program. Threshold



programs are designed to help improve performance on specific indicators. The Kenyan program is designed to reduce public sector corruption by overhauling the public procurement system, with a specific concentration on health care procurements and delivery throughout the supply chain.

The program is administered in Kenya through the United States Agency for International Development (USAID) in partnership with PPOA. The study also established that the Public Procurement Oversight Authority entered into a partnership arrangements with the Millennium Challenge Corporation (MCC) which is supporting the procurement reform program in Kenya through a range of activities designed to raise standards and improve practices. MCC is a United States of America Government corporation designed to provide development aid to poor countries based on the principle that aid is most effective when it reinforces good governance, economic freedom and investments in people.

The study also revealed that the American Rural Development (ARD), Inc., one of America's leading consultancies in promoting the essential conditions for successful economic development, has been contracted to support the Public Procurement Oversight Authority (PPOA) in reforming the public procurement process in Kenya. ARD is a wholly owned subsidiary of Tetra Tech, a leading provider of consulting, engineering, and technical services worldwide. With the support of its partner, Crown Agents, ARD has embarked on an extensive program of workshops designed to help staff who are

performing procurement-related functions within central and local government agencies to acquire a better understanding of the law and good procurement practices from an international perspective.

ARD is strengthening the PPOA by providing training for members of the Advisory Board and Administrative Review Board. It is training PPOA staff on their enforcement, oversight and other responsibilities and helping the Authority to establish linkages with public procurement regulators in other countries. The study further revealed that another activity in which ARD was contracted was to prepare manuals to guide procurement in the key areas of health, information technology, insurance, nonintellectual services, public works and project management, together with procurement by schools/colleges and cooperative societies. These sector specific manuals will complement a general procurement manual that was prepared separately. To strengthen compliance with the law, ARD supported PPOA in auditing and reviewing the procurement practices of several key Procuring entities and has prepared a procurement review manual to standardize practices in carrying out these reviews.

Records management practices in key entities were reviewed to identify common areas of weakness and a manual on good practice was also prepared and promulgated through a training program. Measures have been recommended to promote the use of framework contracts within the Government of Kenya. ARD also assisted PPOA to develop guidelines for procurement under public-private partnerships and, together with its

partner, Gina Din Corporate Communications, developed and implemented a national public awareness campaign. Other components of the MCC program focused on improving health service procurement and delivery and on improving the capacity of civil society institutions to monitor and report on public procurement practices.

#### **4.4.3 Outsourcing of Services**

The interviewees interviewed felt that the Public Procurement Oversight Authority had put in place modalities of outsourcing some of its functions. It is clear from the study that PPOA is utilizing external expertise to carry out reviews/assessments in order to increase the compliance check in the Government Ministries, institutions and departments. The study also established that there was progress in the development of a policy for sourcing external expertise on services e.g. uses of external lawyers to carry out matters relating to law. The study also revealed that the Procuring entities have been given the option to use the services of public or private procuring agents to advise them or manage their procurement process, especially where they lack the necessary capacity. Smaller procuring entities were especially encouraged to use the assistance of larger ones, who may have additional capacity for a fee.

#### **4.4.4 Performance Contracting**

The study uncovered that the Public Procurement Oversight Authority initiated the Results Oriented Management (ROM) approach, which made it necessary to adjust its operations to respond to predetermined objectives, outputs and results. The adoption of

this approach therefore demanded a paradigm shift in the organization. This called for a transformation from a passive, inward- looking bureaucracy to one which is pro-active, outward looking and results oriented; one that seeks ‘customer satisfaction’ and ‘value for money’.

Consequently the management developed a strategic plan for 2010-2014 period which reflected the objectives of the organization. The developed strategic plan outlined the mission, core values and the organizational structure of the Authority. A majority of the interviewees interviewed summed the goal of performance contracting as the improvement of performance/enhancement of efficiency and effectiveness in service delivery through a transparent and accountable system.

#### **4.4.5 Business Process Re-engineering (BPR)**

The study established that the Government of Kenya was currently implementing a number of reforms aimed at re-engineering the public sector to improve productivity, attain efficiency and increase its service delivery levels to Kenyans. Public Procurement, a problematic area, was being targeted for improvement. A number of milestones to this end have so far been attained. Among them is the enactment of the new law to regulate the management of the public procurement system in Kenya, namely the Public Procurement and Disposal Act, 2005. The Act was operationalized on 1st January, 2007 through the promulgation of the Public Procurement and Disposal Regulations, 2006. The Act has addressed issues on corruption, mis-procurements and proliferation of contract

variations. The study also revealed that PPOA in liaison with the Government has commenced a major reform initiative to re-engineer and fully automate the Integrated Financial Management Information System (IFMIS). To this end, The Treasury has established the IFMIS Department in the Ministry of Finance, charged with the overall mandate of coordinating, implementing and overseeing the re-engineering and full automation of IFMIS. Comprehensive and holistic implementation of IFMIS Re-engineering in the broad spheres of Planning of procurement activities, Budgeting, Cash-Management, Asset-Management, Debt-Management, Auditing, Electronic-Funds-Transfers and financial reporting will help to increase transparency, accountability, effectiveness and efficiency of public service performance and service delivery to Kenyans and especially in the area of public procurement.

#### **4.4.6 Benchmarking and Performance Measurement**

The Study found that a delegation from the Public Procurement Oversight Advisory Board, the Administrative Review Board (ARB) and PPOA management, led by the Advisory Board Chairperson, visited procurement organizations in the USA and Canada. The purpose of the study tour was to:- benchmark Kenya's public procurement system with international best practices; learn about the public procurement systems, including arrangements for bid challenge and resolution of contract disputes, in the United States and Canada; consider features of these systems that might be adapted for application in Kenya; and to strengthen links with public procurement organizations overseas with a view to facilitating continuing arrangements for exchange and the sharing of information.

The interviewees felt that benchmarking tour befitted the organization by equipping the delegates with information on e-procurement, bid challenge systems, framework contracting and agreements, arrangements for supporting small businesses and disadvantaged groups, procurement audits and investigations, contract management and dispute resolution and public procurement policy. The study further revealed the Authority was —currently working on regional harmonization of procurement systems in line with concerted efforts towards regional integration said the PPOA’s Director General.

#### **4.5 Discussion of the Findings**

The findings of the study show that this study is anchored on the resource-based view (RBV) theory which was initiated by Penrose (1959) and later developed by Rumelt (1984). The Resource Based Theory explains that a firm’s competitive advantage lies mainly in the bundle of resources at its disposal and how it can stretch these resources to achieve competitive advantage. Based on the findings of the study, it is clear that PPOA’s success depends entirely on the availability of resources at its disposal and proper implementation of the public procurement laws in Kenya. The resources include both financial and non financial resources.

For PPOA to successfully formulate and implement its strategic responses, it must effectively adhere to the public procurement laws that are stipulated in the constitution of Kenya. Financial resources are a necessity in order to enhance investments in Information

Communication Technology, to attract the best strategic partners, to carry out business process re-engineering, and benchmarking. On the area of performance contracting, PPOA must have enough human resource in order to effectively implement performance contracting. Inadequate number of staff at PPOA has led to outsourcing of some of the core functions like Procurement Reviews/Assessment to consultants.

## **CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter provides a summary of the findings, conclusions and recommendations of the strategic implementation of the public procurement authority; a case study of the public procurement oversight authority (PPOA). Based on the above objectives, data was collected and analyzed using content analysis. This chapter also includes a section on limitations of the study and recommendation for further research. The chapter provides the summary of the findings from chapter four, and it also gives the conclusions and recommendations of the study based on the objectives of the study. The objective of this study was to establish the strategies implemented to enable the success of the public procurement oversight authority in reference to the PPOA. The chapter further highlights the conclusions drawn from the study, recommendations for policy and practice, limitations of the study and suggestions for further study.

### **5.2 Summary and Findings**

The interviewees established that in coming up with strategies; PPOA Management considered the changes in the internal and the external environment. However, the analysis of the study revealed that the organization was more affected by the external changes than the internal ones. The major external variables that affected the organization include: political interferences, external pressure from donors, advancement in technology, legal and policy issues. The study noted that in order for PPOA to counter



the mentioned environmental challenges, it formulated the following strategies: advancements in technology, formed strategic partnerships with key donors, outsourced some of the procurement reviews/assessment to consultants, signed performance contracts, re-engineered the organization and conducted benchmarking and performance measurement.

The study further shows that the innovative use of technology has had the greatest impact on the way PPOA as a Government Agency does business. In particular, PPOA's adoption of information and communications technology (ICT) has drastically improved service delivery, reduced costs, enhanced transparency and accountability, and accelerated the spread of ICT throughout the economy benefitting both the competitiveness of the public sector and the pace of economic growth and development. Technology has also increased performance and quality, and it was viewed by interviewees to be a means of providing competitive edge and hence, it was becoming part of the organization strategy.

Computer based information systems have also altered the nature of operations in the organization, and enabled the firm to develop closer relationships with its clients and created new opportunities for the organization. It was therefore clear that the implementation of e-procurement should not simply be engrafting electronic technology onto a paperbased procurement process, but should be a focus on reengineering the entire procurement process to take advantage of electronic innovations.

Based on the results from the interviews, it was also clear that PPOA was looking at outsourcing as a means to gain specific value-added benefits to the services that the organization was delivering to the people. However, despite the allure of using outsourcing as a means to finally achieve a positive transformation of the overall operations of organization there was still the debate about the economic and political implications of leaving certain key processes in the hands of private sector providers. The major reason given for this was that outsourcing reshapes a fundamental characteristic common to all governmental institutions – authority and the control that such authority guarantees.

What outsourcing essentially does is relinquish some degree of control that would otherwise be absolutely held by the government authority. There was also sufficient evidence from the study to show that the implementation of Performance Contracting Strategy by the Public Procurement Oversight Authority enhanced the overall performance and service delivery in the organization. From the results, it was clear that sustained application of the Performance Contracting Strategy was a necessary prerequisite for streamlining the management and operations of the Public Service so as to work better more efficiently. However, for the Strategy to be fully integrated and to become effective, it was imperative that it is extended to all the institutions within the three arms of Government and cascaded to all levels. This view was supported by the studies done by other researchers. According to Akaranga (2008), all government ministries and state corporations in Kenya had formally implemented performance

contracts and there was clear evidence of improvement in income over expenditure as well as service delivery in the state corporations and government ministries. Based on the study it was also clear that the Business Process re-engineering in the organization emerged because the management found itself confronted with rising expectations and fiscal problems. Long winded procedures, non-transparent processes, unclear responsibilities, increasing personnel costs, and complex communication paths exacerbated the situation. BPR promised to become a valuable and much-needed tool in the organization.

By facilitating resource efficiency and allowing for a more straightforward way of service provision, BPR assumed a leading role in the transformation of the organization. Finally, the findings of the study shows that the highly successful organizations use the best practice benchmarking as a tool to continually learn and improve. The resources needed to carry out repeated best practice benchmarking projects properly and in a way that maximizes the learning to be gained from the experiences can be considerable; hence it was being used more frequently within large organizations.

### **5.3 Conclusion**

Based on the findings of the research, several conclusions could be drawn from the study. First, there are numerous issues affecting public procurement in Kenya today and PPOA alone cannot be able to deal with them alone; hence there is need to be tackled jointly by a range of different stakeholders. This is particularly true for capacity gaps found in areas

in which procurement meets other core public functions, such as audit, public financial management, human resources and Ethics and Anti corruption Commission. In such areas, it is recommended that the capacity gaps be addressed by strategies of intensified partnership and coordination between PPOA and organizations working in related fields. Lastly, there was evidence to conclude that for any organization to be successfully in the area of strategic partnerships, it must have the infrastructure to attract and maintain these relationships. The first step in this infrastructure is to have a message that informs corporations of who you are, what you do as an organization and how they can help.

Corporations have various resources and interests, so be sure to give corporation's options when asking for their help. In addition, the organization need to do a research when soliciting corporate partnerships, they are not supposed to approach any organization that doesn't historically support initiatives that are related to the mission of the organization. Also organizations need to know how an organization provides support, there are some corporations that will never make a financial contribution, but will provide in kind service or good donation that are just valuable as a financial contribution to the organization.

#### **5.4 Recommendations for Policy and Practice**

The implementation of the best strategic responses in the Public Sector demonstrates the dynamisms in which government agencies and institutions are pro actively engaging in the best practices that endeavor to improve the manner in which the service delivery is

provided to the Kenyan Citizens. The policy makers in these agencies and institutions need to formulate policies that will entrench the adoption of the best strategic responses.

As a matter of policy, all the public sector institutions should adopt and implement the performance contracting, business process re-engineering and, benchmarking and performance measurement in their organizations.

This can only be achieved if the government can make it a government policy and oversee its implementation. On the recommendation for practice, it is important for all public sector institutions to outsource some of their non core functions as opposed to outsourcing some of the core functions to the third parties. This is because of the need to safeguard the confidentiality of some of the core functions of an organization. For example, the outsourcing of procurement assessments/ reviews to consultants needs to be limited and instead increase the capacity of internal staff to carry out the function.

### **5.5 Limitations of the Study**

The success of the study was limited and constrained because the researcher believes that the chosen case study approach was an appropriate method to employ in this study. However, a case study only provides information about perceptions of the interviewees regarding the operations in of a single unit, in this case PPOA as an institution and the results generalized. The personal bias of the interviewer also constituted other limitations to this study. The study was also limited and constrained by some of the targeted

interviewees who could not be easily accessed because some of them were usually busy with their duties so they could not attend to the interviewer or would prefer to respond when they had time which meant the delay in getting the data. Some targeted interviewees were unwilling to participate in the study; however, the interviewer was able to secure a sizeable number of the targeted interviewees. Time was another limiting factor that constrained the researcher.

### **5.6 Suggestions for Further Study**

The researcher suggests that there is need for other researchers to conduct the same study of strategic responses but on a different government agency so as to provide a basis for reinforcement and comparison of the research findings. This will assist to solidify the generalization of the findings arising from the case study. Other areas suggested for further study include the need to carry out studies on some of the provisions in the Public Procurement and Disposal Act, 2005 that are inconsistent with other regulations. This should be done with an aim to inform, review and operationalize of all the provisions of the Act in line with the new constitution and to make it more relevant and effective in governing the public procurement process.

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**Appendix I: Interview Guide**

**SECTION A: GENERAL INFORMATION**

1. What is the position held in the Public Procurement Oversight Authority?  
.....  
.....
2. What is your highest educational qualification?  
.....  
.....
3. How many years have you served in Public Procurement Oversight Authority?  
.....  
.....

**SECTION B: IMPLEMENTATION STRATEGIES OF THE PUBLIC PROCUREMENT LAW IN KENYA**

1. Does accountability enhancement affect strategic implementation of public procurement Law in Kenya?  
.....  
.....
2. How does accountability enhancement affect strategic implementation of public procurement Law in Kenya?  
.....  
.....
3. Accountability is government's obligation to demonstrate effectiveness in carrying out goals (Explain)  
.....  
.....

4. Lack of accountability creates opportunities for corruption. (Explain the given statement).

.....  
.....

5. Give an account of the given statement below.

Public procurement activities suffer from lack of open competition and transparency.

.....  
.....

6. How does sound public procurement policies and practices among the essential elements of good governance affect accountability enhancement on strategic implementation of public procurement Law in Kenya?

.....  
.....

7. What strategies can help increase accountability enhancement in strategic implementation of public procurement Law in Kenya?

.....  
.....

8. Does Regulation Enforcement affect strategic implementation of public procurement Law in Kenya?

.....  
.....

9. How does regulation enforcement on strategic implementation improves compliance of public procurement Law in Kenya?

.....  
.....

10. Government policies and regulations have greatly influenced the flow of business activities and operations (explain)

.....  
.....

11. Does operating procedures affect strategic implementation of public procurement Law in Kenya? (Explain)

.....  
.....

12. In your opinion, has Public procurement been overshadowed with inefficiency, corruption and disregard of fundamental "value for money"?

.....  
.....

13. Does Strategic Planning affect strategic implementation of public procurement Law in Kenya? Please explain your answer

.....  
.....

14. Do you agree that strategic plan is a key performance management tool? (Explain)

.....  
.....

15. Strategic implementation is the process by which objectives, strategies and policies are put into action. (Explain)

.....  
.....

**Thank You**