

**IMPACT OF BID CHALLENGE SYSTEM ON PROCUREMENT
PROCESS IN KENYA**

WASTA BISMACK KIPKOECH

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS OF MASTER OF BUSINESS ADMINISTRATION
(MBA) SCHOOL OF BUSINESS, UNIVERSITY OF NAIROBI**

NOVEMBER 2014

DECLARATION

This research project is my original work and has not been presented to any other institution or university.

Sign.....

Date

Bismack Kipkoech Wasta

D61/80992/2012

This research project has been submitted for examination with our approval as the university supervisor.

Sign.....

Date

Mr. S Onserio Nyamwange

Department of Management Science,

School of Business,

University of Nairobi

DEDICATION

I dedicate this project to my loving parents for giving me support in my pursuit of knowledge, and for the love they have showered me.

ACKNOWLEDGEMENT

I would like to take this opportunity to pass my heartfelt gratitude to all the people who played a big role in assisting me complete my study. First, I give thanks to the Lord for giving me good health to start and complete this project successfully, without Him, I would not have come this far.

To my supervisor, Mr. S Onserio Nyamwange, thank you for your dedication, time, and effort to guide me. Your comments, advice, criticism, and suggestions are highly appreciated.

I would like to acknowledge all the MBA students, colleagues, friends and my family especially for their moral and material support for the completion of this project

ABSTRACT

The objectives of this study were to determine bid challenge decision time taken by the review authorities in Kenya, to establish factors affecting efficiency of bid review systems in Kenya, and to determine the impact of Bid challenge system on procurement process in Kenya. The literature review is based on administrative review, judicial review, the setup of procurement review system, independence of review authority, accessibility of review authority, and bid challenge decision time taken. Descriptive survey was used to collect both primary and secondary data. The target population of the study was published bid challenges cases decisions in PPARB. Questionnaires were the research instruments used. Secondary data included periodicals and administrative challenge decisions. Summaries of data findings together with their possible interpretations was presented by tables, mean, percentages, frequencies, variances, and standard deviation. The study found out that Bid protests play a central, fundamental role in protecting the integrity of the procurement system. Review mechanisms in public procurement provide bidders the opportunity to exercise a controlling function. Therefore, the study recommends that continued refinement of this study will be valuable to ensure procurement process is maintained

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABSTRACT	v
LIST OF TABLES	viii
LIST OF ABBREVIATIONS	ix
CHAPTER ONE: INTRODUCTION	1
1.1 Background of the Study.....	1
1.1.1 Bid Challenge Review System in Kenya.....	1
1.1.2 Procurement Process.....	3
1.2 Statement of the Problem.....	5
1.3 Objectives of the Study.....	6
1.4 Value of the Study	6
CHAPTER TWO: LITERATURE REVIEW	8
2.1 Introduction	8
2.2 Bid Challenge Systems	8
2.3 Administrative Review	10
2.4 Judicial Review	10
2.5 Set up of Procurement Review System.....	11
2.6 Independence of Review Authority	12
2.7 Accessibility of Review Authority	13
2.8 Bid Challenge Decision Time	14
2.9 Challenges faced by the Review Board	15
2.10 Impact of Bid Challenge on Procurement Process	15
2.11 Conceptual Framework.....	16
CHAPTER THREE: METHODOLOGY	18
3.1 Introduction	18
3.2 Research Design	18
3.3 Population of the Study.....	18

3.4 Sample Design.....	18
3.4.2 Sampling Frame Design.....	18
3.5 Data Collection.....	19
3.6 Data Analysis	19
CHAPTER FOUR: DATA ANALYSIS, FINDINGS, AND DISCUSSION	21
4.1 Introduction	21
4.2 General Information.....	21
4.3 Impact of Bid Challenge	22
4.4 Bid Evaluation.....	23
4.5 Procurement Award	24
4.6 Factors affecting Bid Process Review	25
4.7 Relationship between Bid Challenge and Procurement Process	26
4.8 Discussions.....	29
CHAPTER FIVE: SUMMARY, CONCLUSIONS AND	
RECOMMENDATIONS.....	30
5.1 Introduction	30
5.2 Summary of Findings.....	30
5.3 Conclusions	31
5.4 Recommendations.....	31
5.5 Limitations of the study	32
5.6 Suggestions for Further Research.....	32
REFERENCES	33
APPENDICES	36
Appendix I: Introduction Letter	36
Appendix II: Questionnaire.....	37
Appendix III: ARB Decisions.....	40

LIST OF TABLES

Table 3.1 Sample Size Determination.....	19
Table 4.1: General Information.....	21
Table 4.2 Impact of Bid Challenge	22
Table 4.3 Bid Evaluation	24
Table 4.4 Procurement Award	25
Table 4.5: Factors Affecting Bid Process Review	26
Table 4.6: Regression Coefficient on Effects of Bid Challenge on Procurement Process.....	27
Table 4.7: Regression Model	28

LIST OF ABBREVIATIONS

PPA-K	Public Procurement Act- Kenya
ARB	Administrative Review Board
PPA-T	Public Procurement Act- Tanzania
PPA-U	Public Procurement Act- Uganda
PPARB	Public Procurement Administrative Review Board
PPOA	Public Procurement Oversight Authority
PPR-K	Public Procurement Regulations- Kenya
PPR-T	Public Procurement Regulations- Tanzania
PPR-U	Public Procurement Regulations- Uganda
WHO	World Health Organization
UNCITRAL	United Nations Commission on International Trade Law

CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

In Kenya, a considerable percentage of the annual budget is spent through public procurement. It is estimated that 60 percent of government revenue is spent on procurement (Aketch, 2005). According to Arrowsmith and Hartley (2002), public procurement serves a greater role in developing countries and economies in transition than it does in developed countries. Unlike private sector procurement, public procurement is a business process within a political system with distinct considerations of integrated accountability, national interest and effectiveness (Wittig, 1999). Whereas public procurement has great significance for the national economy, Geroski (1990) argues that as a policy instrument, it has its limitations and failures, and “it can be blunted or perverted by misuse.” Preferences and discriminatory public purchasing might be used as a disguise to favor individuals or constituencies associated with senior government officials rather than as a strategy to improve legitimately marginalized sectors

Besides the fiduciary obligation to deliver goods and services to the constituents of the particular government administration, public procurement addresses a wide range of objectives (Uyarra & Flanagan, 2009). It is used by governments to achieve socio-economic objectives such as stimulating economic activity; protecting national industries from foreign competition; improving the competitiveness of certain industrial sectors; and remedying national disparities (Bolton, 2006; Thai, 2006). The objectives of public procurement are achieved through various means, and legal and regulatory rules for conducting public procurement (Arrowsmith, 2010).

1.1.1 Bid Challenge Review System in Kenya

In Kenya, the procurement reviews are handled by the Public Procurement Administrative Review Board (PPARB) as stated in Section 25 of the Public Procurement and Disposal Act (PPDA), 2005 which is a continuation of the Public Procurement Complaints, Review and Appeals Board which was established under the Exchequer and Audit (Public Procurement) Regulations, 2001. It was established to promote and uphold fairness in the Public Procurement System through judicious

and impartial adjudication of matters arising from disputed procurement proceedings (PPOA, 2005).

The introduction of the concept of 'good governance' by international financial institutions resulted in assessments of national public procurement systems. Following thorough legislative reform processes, the majority of procurement systems today largely complies with international standards. Public procurement is regulated in a way that basic principles such as economy and efficiency, participation free of discrimination, competition, equality, fairness, integrity, transparency, and public confidence in the procurement process can be achieved. In order to ensure application of procurement rules to make the systems effective, appropriate enforcement mechanisms are needed (Engelbert, 2013). Therefore, procurement legislations provide for a range of monitoring tools such as audits, investigations and criminal prosecutions, as well as for administrative and judicial review systems.

According to Gordon and Quinot (2006), review systems have to balance two conflicting objectives: acquiring goods and services at the best quality and lowest price in a short time frame with minimum transaction costs. Requests for review interrupt the procurement procedure and by considerably delaying contract execution, undermine the efficiency of the process. It can therefore be argued that access to reviews should be restricted in order to ensure continuity. Review systems vary in the degree of accessibility they grant to potential claimants, depending on the specific circumstances they operate in. In the context of development and corruption, a focus on efficiency seems a better short-term option for implementing procurement projects.

In Kenya, only candidates who have actually submitted an offer to the procuring entity are eligible to request a review. The definition of a claimant is stricter under Kenyan law than stipulated in the UNCITRAL Model Law 2011 that provides access to review for all parties or potential parties to the procurement proceedings, including suppliers and service providers merely interested in participating. The Kenyan provision discriminates against those parties unlawfully prevented from bidding. The Kenyan procurement laws, therefore clearly exclude from review procurement procedures that have resulted in a signed contract in order to secure the efficient and uninterrupted contract execution (Aketch, 2006).

The Kenyan procurement law also stipulates the most extensive possibilities to exclude certain matters from review; the choice of procurement method and the rejection of all tenders often used, however, to manipulate the tender process in order to award the contract to one preferred bidder and should therefore be contested. The time span between the outcome of tender evaluation and contract signature offering bidders the opportunity to lodge a request for review before the procurement contract has entered into force, are an important means to preserve the legal right to seek remedy (PPOA, 2005).

Administrative and judicial review processes provide the possibility for bidders to claim their subjective rights under the rule of law. Bidders have an information advantage on deviations from standard procurement procedures. Judicial review, in addition to the effects of the administrative review system, is crucial because it complies with the principles of checks and balances and creates an enduring process of establishing principles developed by the judiciary (Lewis, 2002).

1.1.2 Procurement Process

Procurement refers to the “process of acquisition of goods and services by government or public sector organizations” (Uyarra and Flanagan, 2010) and is one of the key economic activities of government (Thai, 2001). Rege (2002) on the other hand argues that public procurement process is the means through which government meets development needs such as physical infrastructure and the supply of essential commodities. According to the Public Procurement and Disposal Act, 2005, public procurement process involve several stages and uses colossal amounts of public resources. The process can be summarized as figure 1 below. Prior research has differentiated between types of public procurement and argued that procurement represents an important policy tool that could help to achieve outcomes in the society that are consistent with broader policy goals.

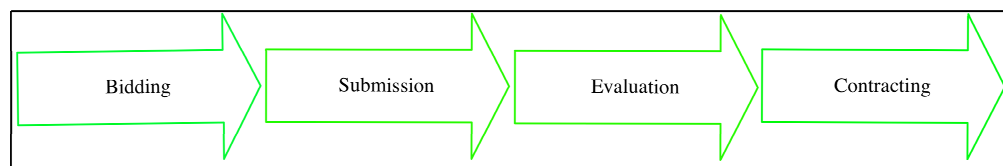
Procurement encompasses the whole process of acquiring property and/or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery 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). An effective procurement process ensures the availability of the right goods and services in the right quantities, available at the right time, for the right customers and at reasonable prices, and at recognizable standards of quality (WHO, 2007).

Sound public procurement policies and practices are among the essential elements of good governance. 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.

Public procurement is a business process within a political system, with distinct considerations of integrated, accountability, national interest and effectiveness (Wittig, 1999). Wittig continues that the business operations of governments controlled by public procurement process, affect many different elements of society. First are the procuring entities that have needs for material support (e.g. roads, hospitals, desks, educational supplies and others), to fulfill their designated national missions. Then there is the business community of actual or potential suppliers to satisfy the government has identified requirements. But for the government agency's needs to be properly considered by a supplier, they must be expressed in clear terms, compatible with public policies involving such areas as competition, social and economic goals, and transparency of the basic rules and procedures.

Figure 1 Procurement Process



Source: Author (2014)

1.2 Statement of the Problem

Bid protests emerge from disappointed bidders who may challenge a solicitation issued by a government contracting officer for failing to comply with a myriad of laws, regulations and processes governing government contracts. It also challenges the decision to award a contract to another bidder and in limited circumstances may challenge a modification to an existing contract person (Drabkin et al., 2004). Public procurement has important economic and political implications, and ensuring that the process is economical and efficient is crucial. Hence, the procurement process should be well understood by the actors: government, the procuring entities, the business community/suppliers, and other stakeholders, including professional associations, academic entities and the public (Odhiambo & Kamau, 2003).

Addressing the challenge of bid protests is one of the most difficult tasks of the buyer. It is expected to become more difficult across the globe as countries outside the U.S. adopt bid protest procedures for their public procurement systems (Drabkin et al., 2004). Accessibility is a major factor influencing the willingness of bidders to initiate procurement reviews. If entry requirements are few and low-threshold, more tenderers will request reviews and therewith exercise a corruption controlling function. Legal provisions stipulate whether or not access to review is granted, irrespective of the individual intention of bidders. Many features of legal frameworks regulate access to review systems, among them the amount of an administrative fee to be paid by bidders, the language in which documents are issued, the geographical distance between the bidder and the review body and the general level of professional capacity in public procurement (Uyarra & Flanagan, 2010).

The most important reason why procurement is carried out is to meet the desired outcome on social economic development in the country. The main procurement objectives are time, cost, and quality as spelt out in procurement laws. However, in recent times there have been concerns about the perceived long time it takes to procure development projects. Most of the blame goes to set up regulators such as the PPOA and the Review Board. Whereas there is perceived delay and loss of value in public procurement, no research has been done in East Africa to analyze the efficiency, competition levels, and comparative time taken to decide on bid protest (Sue et al., 2000).

A number of researchers have conducted studies on different aspects of Bid challenges review systems. For instance, Engelbert and Reit (2013) did a research on effective corruption control: Implementing review mechanisms in public procurement in Kenya, Tanzania and Uganda. The study concluded that review mechanisms in public procurement provide bidders the opportunity to exercise a controlling function. Ambe and Badenhorst (2012) did a study on procurement challenges in the South African public sector. The study found out that Public procurement primarily aims to be fair, equitable, transparent, and cost-effective. Gordon (2006) researched on constructing a BID protest process and found that bid protests play a central essential role in protecting the integrity of the procurement system.

However, related studies that have been carried out are too general and do not focus specifically on impact of Bid challenge system on procurement process in Kenya. From the findings of the above studies, it is clear that, there are many areas about review systems in procurement Bids not yet been fully addressed. Therefore, this study sought to answer the following questions; what is the impact of bid challenge system on procurement process in Kenya? What are the factors affecting the efficiency of review systems in Kenya?

1.3 Objectives of the Study

- 1) To establish factors affecting efficiency of bid review systems in Kenya
- 2) To determine the impact of Bid challenge system on procurement process in Kenya.

1.4 Value of the Study

To the Government of Kenya institutions and Agencies like PPOA, the study provides useful information for appropriate policy making. The study forms a basis for the formulation of appropriate regulations pertaining to the procurement to make sure that all laws and regulations are adhered to in the procurement process in public and private sectors. This ensures effective and efficient management of procurement process with reduced bid challenge for improved overall performance.

The study helps researchers and academicians to expand their research into impact of bid protest in the procurement process in Kenya as literature review. This study contributes to the existing knowledge, addresses and provides the background information to research organizations, individual researchers and scholars who want to carry out further research in this area.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter reviews the information from other researchers who have carried out research in the same field of study and other existing literature by scholars. Among the issues discussed include reasons for procurement review, matters subject to review, administrative and judicial review and the challenges facing review board.

2.2 Bid Challenge Systems

The dispatch of a valid award letter, together with letters to unsuccessful suppliers, represents the start of the important standstill stage in the procurement process. An award letter is the decision notice sent out to all successful suppliers once the evaluation decision has been made. Failure by the procuring entities to notify, in writing, both successful and unsuccessful bidders on time results in procurement review (Sue et al., 2000). As such, it is one that it is important to get right in order to manage the legal risk of a challenge and to avoid unnecessary delay to the award of the contract.

One of the reasons for bid protest is that the award price is not the lowest evaluated. The evaluated bid price means the dollar amount of a bid after bid price adjustments are made pursuant to objective, measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion. The "lowest evaluated cost" means the price offered by a supplier, service provider, or contractor that is found to be the lowest after consideration of all relevant factors and the calculation of any weighting for these factors, provided that such factors have been specified in the tender documents (Public Procurement Regulation, 2005). It can be deduced from the definition that the "lowest evaluated bidder" is the bidder whose bid has been evaluated, found offer low cost, and meet all terms and conditions stipulated in the bid documents.

Other reasons for review include the use of an evaluation criteria not indicated in the bidding document or modification of the criteria after bid submission deadline, no justification for rejecting a bid or failure to reject a bid despite having sufficient

reason. In addition, use of unclear or ambiguous technical specifications which are tailored to suit a bidder and failure by the procuring entities to include sufficient information in the bidding documents leads to procurement review. Violation pertaining to the principle of equal treatment for all bidders also makes the procurement process reviewed (Uyarra and Flanagan, 2010). The results of a complaint review must be codified into a review judgment, which is viewed as an appeal decision. If a company does not accept a review decision regarding its complaint, it may file an administrative appeal with the Judicial Court.

The matters which are not subject to review include; choice of procurement procedure. The GAO (1987) and Raman and Wilson (1994) identify procurement procedures to include the use of competitive bidding, the use of multiyear associations (contracts) with audit firms, and focusing on technical factors (rather than fee) in the solicitation process: Rejection of all tenders by the procuring entities does not result in procurement review. The procuring entity, upon request, communicates to any supplier or contractor that submitted a tender, proposal, offer or quotation, the grounds for its rejection of all tenders, proposals, offers, or quotations, but is not required to justify those grounds. Where a contract is signed in accordance with Section 68 of the Act (PPDA, 2005). Where an appeal is frivolous appeal, or an appeal solely for delaying the procurement process, it does not subject procurement to review. Frivolous request means a review that lacks a legal basis or legal merit or one brought for unreasonable purpose and/or to delay the review process (Lewis, 2002). The parties to review are the person who requested the review, the procuring entity, successful tenderer notified by the procuring entity and such other persons as the review board may determine (PPOA, 2013)

The review board has the power to annul anything the procuring entity has done in the procurement proceedings. It gives directions to the procuring entity with respect to anything to be done in the procurement proceedings; substitute the decision of the Review Board for any decision of the procurement entity. Moreover, the board can confirm, vary, or overturn Director-Generals decision, order payment of costs as between parties to the review, any party to the review aggrieved by the decision of the Board may appeal to the High Court (UNCAC, 2011).

The procurement review process has certain limitations. There are time limitations on the submission of a claim. To be acceptable, a claim must be submitted within a certain number of days after a particular event takes place or should have taken place. The procurement review process is also intended to handle claims related to the procurement process and if it was carried out according to procedures; as a result, claims of fraud, waste, and abuse should not be addressed in the procurement review process, unless clearly stipulated in the procurement rules (Udeh, 2013).

2.3 Administrative Review

Administrative review is the first step for bidders to seek legal remedy in case of any breach of law by the procuring entity during the procurement process. It is a one-stage procedure in Kenya (PPDA Sections 93 ff., Regulations 67 ff. PPDR). According to Lewis (2002) all public sector authorities are subject to public procurement rules, intended to secure open and fair competition, transparent and auditable contracting procedures. Competition in the procurement process is always stiff, with many contending bidders fighting for a one contract, where usually a single supplier or contractor is required. This leaves many bidders disappointed, wondering why they did not get the deal. In the end, some of them file for an administrative review of the process by the accounting officer or the Public Procurement and Disposal of Assets Authority (PPDA).

After having investigated on the issue, the authorities / review bodies can reject or uphold the appeal. In case the complaint is wholly or partly upheld, the board shall indicate the corrective measures to be. It can annul the procuring entities' decisions, terminate the procurement proceedings, give directions to the procuring entity on further actions or even substitute the procuring entities' decision (Kenya: PPDA Section 98).

2.4 Judicial Review

Judicial review is the procedure used by the courts to supervise the exercise of public power. It is a means by which improper exercise of such power can be remedied and it is therefore an important component of good public administration (Sueur and Sunkin, 1997). The review is the principal method by which the courts have exercised a supervisory jurisdiction over the manner in which Public bodies make decisions.

It is a species of action unique to the Public law (Karl, 2008). Bidders who are not satisfied with the outcome of the administrative review have the possibility to proceed with judicial review in court (Kenya: PPDA Section 112). A party to the review which disobeys the decision of the Review Board or the High Court shall be in breach of the Act and any action by such party contrary to the decision of the Review Board or the High Court shall be null and void. If judicial review is not declared by the High Court within thirty days from the date of filing, the decision of the Review Board shall take effect.

2.5 Set up of Procurement Review System

Art. 9 (1) (d) United Nations Convention against Corruption (UNCAC) requires signatory states to set up at least a two-tier challenge system for public procurement, consisting of an administrative and a judicial review stage. Art. 64 (2) of the UNCITRAL Model Law, on the other hand, covers a three-tier system consisting of an (optional) application for reconsideration to the procuring entity, a request for review to the independent review body and an appeal to court (UNCAC, 2011).

In Kenya, the Public Procurement Administrative Review Board (PPARB) as stated in Section 25 of the Public Procurement and Disposal Act (PPDA), 2005 is a continuation of the Public Procurement Complaints, Review, and Appeals Board established under the Exchequer and Audit (Public Procurement) Regulations, 2001. It was established to promote and uphold fairness in the Public Procurement System through judicious and impartial adjudication of matters arising from disputed procurement proceedings. The Board is autonomous and is made up of six members nominated by various bodies as prescribed in Regulation 68 (1) (a) and three other members appointed by the Minister. Sections 93 100 of the PPDA read together with Regulations 67 88 of the Public Procurement and Disposals Regulations, 2006 are the provisions that govern the Review Board (Udeh, 2013).

The Kenyan system involves different business associations or trade organizations that nominate six out of nine PPARB members, including the Chairman of the board. The remaining three members are appointed by the Minister of Finance at his own preference (68 (1) PPR-K)). Considering the fact that the majority of board members are proposed by external organizations, independence from ministerial structures

seems greater on first sight. However, PPARB can decide by simple majority with a quorum of three members, including the Chairman (Section 69, PPR-K) thus, constellations of three members chosen by the Minister of Finance overruling the Chairman are possible. According to Laurence (2000), it would be desirable to nominate all board members of external organizations. Furthermore, the authority does not employ board members, which is preferable to safeguard their independence from the Ministry. However, tight provisions on conflicts of interest for members are necessary, prohibiting decision making on matters related to the stakes.

2.6 Independence of Review Authority

In countries where corruption is systematic and steered by political and economic elites, the independence of review bodies is essential. If bidders perceive review authorities as subordinates of political decision makers, they will not trust in their neutrality and hence refrain from lodging requests for review. The judiciary, on the one hand, must be independent from political decisions in order to be able to investigate, prosecute, and convict corruption cases. Administrative review authorities cannot be separated from the complex system of public administration, full independence is therefore not realistically achievable (PPOA, 2005).

The procurement and review authority in Kenya is established under the respective Ministries of Finance, which represents a conflict of interest. The Ministry is a procuring entity itself and, at the same time, the superior entity appointing review board members. It is important though to identify potential conflicts of interest within the review bodies and implement strategies to reduce these weaknesses of independence (PPOA, 2005).

With regard to the relationship between review bodies and procurement authorities in Kenya, the Public Procurement Oversight Authority (PPOA) is not involved in the review procedures conducted by the Public Procurement Administrative Review Board (PPARB). PPOA can therefore execute public procurement proceedings for its own needs like any other procuring entity. However, the Act stipulates that PPOA provide administrative services to PPARB (PPDA Section 25 (3)), inter alia paying allowances to PPARB members, and providing secretariat services. Requests for review are received and registered by PPOA and forwarded to PPARB. This is a

concern for reviews launched against PPOA as a procuring entity, as the respondent party is in charge of forwarding the claim to the board (PPOA, 2013).

Gordon (2007) argues that the proximity of the procuring entity facilitates access to review procedures. Independence and neutrality are hardly given where the institution conducting the tender procedure is also in charge of reviewing its own procedures. The decision making of the procuring entity is related to its relationship with the procurement oversight authority: The authority monitors compliance of all procuring entities. When it becomes aware of the deviations in the procurement process like in the case of administrative review, the concerned procuring entity will most probably come to the audit fore of the authority.

2.7 Accessibility of Review Authority

The Kenyan law also excludes the choice of procurement method and the rejection of all offers from grounds for review, as well as procurement procedures that have already resulted in a signed contract and frivolous appeals (PPDA Section 93 (2)). The choice of procurement method and the rejection of all offers are also excluded from review in Tanzania, together with the short listing on the basis of nationality and the refusal of the procuring entity to respond to an expression of interest (PPA-T Section 79 (2)). Both the choice of procurement method and the rejection of all tenders are often used, however, to manipulate the tender process in order to award the contract to one preferred bidder. As mentioned above, the choice of procurement method of the procuring entity determines the degree of competition from single sourcing up to international open tendering.

Bidders disadvantaged by the choice of method should therefore have the right to request a review in order to ensure competition and to prevent favoritism. Secondly, the repeated rejection of all offers can also lead to a manipulated tender result. In case of an unwanted tender outcome, the procedure can be cancelled and repeated up to the point when tender participation eventually decreases and the contract can be awarded to the only remaining bidder with whom a corrupt agreement exists and who is often contracted to inflated prices. The rejection of all tenders should therefore be challengeable at least when done repeatedly for the same tender. Whereas the disqualification of certain grounds for objection makes it impossible for bidders to

request a review, standstill periods determine at what stage of the procurement process, namely before or during contract execution, a request for review can be lodged. Challenging a procurement decision that has already resulted in a contract is much less promising for bidders than reviewing a procurement procedure that has been put on hold (Witting, 2002).

Procurement procedures that have resulted in a signed contract are not challengeable in Kenya. The rationale for this provision is to secure the efficient and uninterrupted contract execution. In order to give bidders the opportunity to lodge their requests for review before the procurement contract has been signed and entered into force, standstill periods between the decision on the tender result and the actual contract signature is stipulated in Kenya. The standstill period begins with the notification of tender outcome and lasts for at least 14 days (PPDA Section 68 (2)). It covers the entire time span bidders are given for submitting a request for review (Regulation 73 (2) (c) PPDR); consequently, no procurement contract can be signed before the deadline for submitting requests for review has elapsed. Upon receipt of a request for review, PPARB informs the procuring entity that the procurement procedure is to be put on hold until a decision on the request for review is taken. The Kenyan law provides thus, both for sufficient time for bidders claim their right to review, and for uninterrupted contract execution at the same time. However, it is not specified in the Act or regulations how the notifications of tender outcome are to be sent out to the bidders.

2.8 Bid Challenge Decision Time

Whereas the disqualification of certain grounds for objection makes it impossible for bidders to request a review, standstill periods facilitate lodging a request for review by interrupting the procurement process between notification of tender outcome and contract signature. Challenging a procurement decision that has already resulted in a contract is much less attractive for bidders than seeking review of a procurement procedure that has been put on hold. Bidders are primarily interested in doing business, not in being compensated for lost business opportunities. Also in terms of efficiency, contesting a procurement process which is already in the contract execution phase, potentially leading to contract cancellation and retendering, is highly undesirable.

Under Kenyan law, a bidder's review has to be filed within 14 days from the occurrence of the complained breach of law (Regulation 73 (2) (c) (i) PPDR). The administrative review authority (PPARB) is obliged to decide within 30 days (PPDA Section 97 (1)). As an internal target, the Kenyan review authority aims to issue the decision within 25 days, containing 21 days for investigations and hearings and 4 days for the actual decision. During the financial year 2011/12, decisions could be issued in 25.5 days (PPDA, 2013).

2.9 Challenges faced by the Review Board

The challenges faced by the review authorities includes defining and identifying what is frivolous and or vexatious appeals, complexity of some of the appeals especially in appeals on conditioning that touches across borders. Lack of power to summon parties and ordering of submission of required relevant documents and lack of power to enforce implementation of various decisions of the Appeals Board are the other challenges facing the Review Board.

The review board is also faced with increased complexity of appeals due to parties becoming more aware of their legal rights which is entrenched in the Act and Procurement Regulations, Increase in parties raising preliminary objections during the preliminary examinations and legal representations of the parties making hearings more legal and complex. The review board is also faced with the challenge of resources in terms of manpower and the cost which is incurred during the review period.

2.10 Impact of Bid Challenge on Procurement Process

Public procurement has been identified as the process in which public entities/ organizations meet the needs for goods, services, works and utilities while also gaining the value for money in totality for all the stakeholders involved, and also putting into consideration the environmental aspect. (Klassen, 2006). According to Bills (2004) public procurement is the purchase of goods and services by the public sector. Public procurement, accounts for a big portion of both public expenditure and need for goods and services in the economy. The public sector being regarded as the largest buyer, it affects competition in some markets through its purchasing behavior.

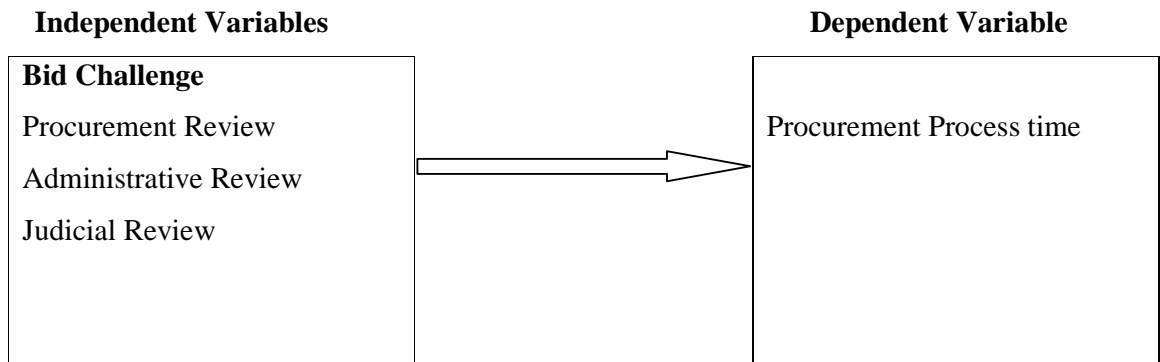
The inception in of legislation in different countries has had a number of effects. They include; promotion of effective competition, investments and innovations, cost effects, promotion of ethics and transparency. The public sector, by conformity of its overall demand in certain markets, may be in a position to protect and promote competition. This may be done by maintaining a competitive market structure through deliberately sourcing of its requirements from a different range of suppliers, by encouraging suppliers to invest and innovate, or by helping firms to overcome barriers to entry (Michaeldes et al., 2003). On the other hand, it can restrict and distort competition, e.g. by adopting procurement systems that have the result of restricting participation of certain entities in public tenders (Parry, 2003).

Other effects include its cause on investment, innovation and the competitiveness faced in the market. This effects makes changes in market structure and technology caused by public procurement, which would come out, in future tenders would improve effects in the supply of other buyers; who are, affected by changes in competitiveness in the market or changes in technology (Gade et al., 2000).however the effects can work in reverse. This may be due to strong promotion of short-term contracts amongst suppliers which reduces long-term competitiveness, and in turn discourage innovation and investment (Golder, 2004).

2.11 Conceptual Framework

The conceptual framework is comprised of procurement process time as the dependent variable and procurement review, administrative review and judicial review period as the independent variables.

Figure 2: Conceptual Framework



Source: Author (2014)

CHAPTER THREE: METHODOLOGY

3.1 Introduction

This chapter is dedicated to the description of the methods and procedures to be followed in order to obtain the data; how the data was analyzed and interpreted, and how conclusions were arrived at.

3.2 Research Design

This study applied a descriptive survey research design. A descriptive survey attempts to describe or define a subject often by creating a profile of a group of problems, people, or events through the collection of data and tabulation of the frequencies on research variables or their interaction as indicated by Cooper and Schindler (2003).

3.3 Population of the Study

The population of the study were all published bid challenges case decisions in PPARB website for a period of three years. The period covered 2011- 2013. The target population in a research study is the total number of individuals in a group or the number of groups that the researchers are intending to work with (Cooper and Schindler 2001). Cooper and Schindler (2001) term the population as the total collection of the elements about which the researchers are intended to make their inferences. The number of bid challenge decided case were 173 for the study period.

3.4 Sample Design

Data was obtained from the bid challenge decision from 2011-2013 and from the respondent procuring entities. The source of data was from the administrative review board website.

3.4.2 Sampling Frame Design

The sampling frame consisted of bid challenge decision in Kenya for the period of three years. Mugenda & Mugenda (1999) observed that where a study is dealing with a heterogeneous population, a minimum target of 30% is required.

Table 3.1 Sample Size Determination

YEAR	No of Bid Cases	Percentage	No selected
2013	49	28	15
2012	70	40	21
2011	54	32	16
TOTAL	173	100	52

Source: Researcher, (2014)

3.5 Data Collection

The study used both primary and secondary data. Primary data was collected through admission of questionnaires to the 52 head of procurement in the sampled organisation. The questionnaire was divided into five parts. Part A focused on the demographic data of the respondents, part B on the impact of bid challenge, C contained questions on bid evaluation process. Part D sought data on the procurement process and part E focused on the challenges faced in review process. The questionnaire was administered by drop and pick later method.

3.6 Data Analysis

Data was prepared for analysis through editing, coding, and data entry. Data editing was done to ensure that data is accurate and consistent with the research questions and objectives. Data was then analyzed using Statistical Package for Social Sciences (SPSS) program and presented in the form of tables, graphs, and pie charts to give a representation of the research findings. Both qualitative and quantitative data was obtained in data analysis. Descriptive statistics: regression analysis was used to determine the impact of bid challenge from information contained in Sections A and B of the questionnaire. Standard deviation, range and co-efficient of variation was used to determine the bid evaluation process using data contained in section C of the questionnaire, procurement review process using data from section D, and challenges faced in review system using data contained in section E. In addition, content analysis was used to analyze qualitative information collected in the survey. This supported the results of quantitative analysis in drawing conclusions and recommendations. The data collected from this study was mainly presented using tables. Further analysis was done using the linear regression model below

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \varepsilon$$

Where Y is the procurement process time , β_0 is constant and ε is the error term of the model.

X_1	=	Procurement Review
X_2	=	Administrative Review
X_3	=	Judicial Review

CHAPTER FOUR: DATA ANALYSIS, FINDINGS, AND DISCUSSION

4.1 Introduction

This chapter presents the analysis of the data collected from the Respondent and discusses the research findings on impact of Bid challenge system on procurement system in Kenya. All completed questionnaires were edited for accuracy, uniformity, consistency, and completeness. The response rate of 52 respondents was achieved. This good response has been attributed to the fact that quite a good number of the respondents were knowledgeable to fill the questionnaires themselves. Summaries of data findings together with their possible interpretations have been presented by use of tables, mean, percentages, frequencies, variances, standard deviation, and graphs.

4.2 General Information

Table 4.1: General Information

		N	Frequency	Percentage (%)
Gender	Male	52	28	53.8
	Female	52	24	46.2
Level of Education	Doctorate	52	5	9.6
	Masters	52	14	26.9
	Degree	52	22	42.3
	Diploma	52	11	21.2
Age	Below 25	52	3	5.8
	26-35	52	8	15.4
	36-45	52	16	30.8
	46-55	52	14	26.9
	Above 56	52	11	21.2
Number of Bid protest Received	1-5	52	6	11.5
	6-10	52	18	34.6
	Above 10	52	28	53.8

Source: SPSS output Data (2014)

As showed in Table 4.1 above, 53.8% of the respondents were male, while 46.2% were female.30.8percentage of the respondent were between 36-45 years, 26.9% between 46-55 years, above 56 years made up 21.2% of the respondents, 15.4were

between 26-35 years and 5.8% below 25 years. Most respondents were old hence more experienced and made the correct group of respondents to give efficient information. Asked about the level of education, 42.3% of the respondents were Degree holders, 26.9% were Masters holders, 21.2% have Diploma holders, and 9.6% were Doctorate holders. This shows that the respondents are very knowledgeable. Table 4.1 shows that 53.8% of the respondents have received above 10 bid protest, 34.65 have received between 6-10, while 11.5% have received 1-5 number of bid protest.

4.3 Impact of Bid Challenge

The study sought to find out the impact of bid challenge. A scale of 1-5 was used where 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree. The results were shown in Table 4.2. The finding of the study showed that Bid challenge has positively impacted the procurement process by improving efficiency, promoting transparency and enhancing collection and management of data with regard to procurement process. The study also found out that it improves accountability and ethical standards. According to Parry (2003), Bid protest improves promotion of effective competition, investments and innovations, cost effects, promotion of ethics and transparency. The public sector, by conformity of its overall demand in certain markets, may be in a position to protect and promote competition.

Table 4.2 Impact of Bid Challenge

Impact of Bid evaluation	Mean	SD
Improved efficiency	4.94	0.24
Promotes transparency	4.92	0.27
Collection and management of data with regard to procurement has improved	4.83	0.47
Improved accountability	4.79	0.50
Quality goods	4.67	0.70
Ethical standards	4.58	0.70
Increased competitiveness	4.46	0.75

Source: SPSS Output Data (2014)

As shown in Table 4.2 respondents strongly agreed that bid evaluation promotes transparency with a mean of 4.92. They also strongly agreed that bid evaluation improves efficiency (4.94). They strongly agreed that bid challenge improves collection and management of data with regard to procurement (4.83). Asked the impact of bid evaluation on quality of goods, respondents agreed that it improves quality of goods (4.67). Respondents agreed that bid challenge promotes ethical standards (4.58). They agreed to a large extent that bid challenge improves accountability (4.79). This response shows that bid challenge has a positive impact on procurement system in Kenya.

4.4 Bid Evaluation

The study sought to find out the Bid evaluation process. A scale of 1-5 was used where: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree. The respondents indicated as shown in Table 4.3. It was evident in the study that evaluation criteria are always clear to bidders and bidding procedure is used in procurement process. The respondents agreed both successful and unsuccessful bidders are notified in writing. They agreed evaluation is conducted within the time outlined in writing and the process is transparent. Use of unclear technical specifications tailored to fit a specific bidder was avoided.

According to Leavey (2001), Bid evaluation is costly, particularly where the buyer's needs are complex and requirements cannot be simplified. The buyer therefore has to trade off the higher costs of assessing a larger number of bids against the likely decrease in purchase cost as a result of fiercer competition amongst bidders.

Table 4.3 Bid Evaluation

Bid evaluation	Mean	SD
Evaluation criteria is always clear to bidders	4.96	0.19
Procedure in the bidding document is always used	4.94	0.24
Both Successful and unsuccessful bidders are notified in writing	4.83	0.43
Evaluation is conducted within the time outlined in the Act	4.62	0.57
Bidders are evaluated according to criteria specified in the bidding document	4.54	0.58
Evaluation process is always transparent	4.33	1.00
All bidders are given equal treatment	4.27	1.08
Use of unclear technical specifications tailored to fit a specific bidder is avoided	4.25	0.62

Source: SPSS Output Data (2014)

It was evident as shown in Table 4.3 that evaluation criteria is always clear to bidders (4.96) and the bidding procedure is always used in procurement process (4.94). Respondents agreed to a large extent that both successful and unsuccessful bidders are notified in writing (4.83). When asked whether evaluation is conducted within the time outlined in the Act, the respondents agreed (4.62). Respondents indicated that bidders are evaluated according to criteria specified in the bidding document to a small extent of a mean of 4.54. The respondents agreed to a small extent that evaluation process is always transparent (4.33) and that all bidders are given equal treatment (4.27). Respondents agreed to a small extent that use of unclear technical specifications tailored to fit a specific bidder is avoided (4.25).

4.5 Procurement Award

The study sought to find out how procurement is awarded. A scale of 1-5 was used where: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree. The respondents indicated as shown in Table 4.4. The respondents agreed that standstill period is allowed before contracts are signed and tenders are advertised for all suppliers to be aware. The study found out that suppliers are given reasons upon

request for all actions taken and the winner of contracts are displayed on public notice boards. Public procurement is based on a set of guiding principles, which include transparency, competitiveness, accountability, efficiency, legality, and integrity, that ensure that the “best value for money” in public procurement is achieved (HM Treasury, 2000)

Table 4.4 Procurement Award

Factors	Mean	SD
Standstill period is allowed before contract signature	4.58	0.50
Tenders are advertised	4.58	0.50
Upon request suppliers are given reasons	4.06	1.09
Winners of contracts are displayed on public notice boards	4.02	1.04
Lowest evaluated bidder is awarded the contract	4.00	1.11
Notification to suppliers is made on time	3.71	1.38

Source: SPSS Output Data (2014)

As shown in Table 4.4, respondents strongly agreed that standstill period is allowed before contract signature (4.58) and agreed to a large extent that tenders are advertised (4.58). When asked whether suppliers are given reasons upon request, respondents slightly agreed (4.06) and if winners of contracts are displayed on public notice boards, respondents agreed to a small extent (4.02). The respondents slightly agreed that notification to suppliers is made on time (3.71).

4.6 Factors affecting Bid Process Review

The study sought to find out factors affecting Bid process review. The researcher use a scale of 1-5 where 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree. The respondents indicated as shown in Table 4.5. On the factors affecting bid process, respondents indicated bid protest mechanism is fair and the bid protest system is easily accessible. Respondents agreed that corruption and unethical behaviors affect procurement process.

According to Odhiambo and Kamau (2005) the bulk of corrupt practices in Kenya have occurred in public procurement. The explanation for this state of affairs is to be found in the political dynamics of the state and its role in the economy. Corruption in public procurement in Kenya has been facilitated by opaque and unaccountable regulations. Common corrupt practices in public procurement thus included public officers often under the influence of powerful politicians and businessmen only inviting preferred firms, favoring certain firms at the short-listing stage, designing tender documents to favor particular firms and releasing confidential information.

Table 4.5: Factors Affecting Bid Process Review

Factors	Mean	SD
Bid protest mechanism is fair	4.62	0.49
Bid protest system is easily accessible	4.58	0.50
ARB decision is fair	4.42	0.49
Bid protest affect procurement time	4.38	0.78
Corruption is too much	4.35	0.76
Bidders raise frivolous request	4.23	0.83
Unethical behavior	4.23	0.98
Poor supervision of contracts	2.40	1.27

Source: SPSS Output Data (2014)

As shown in Table 4.5, respondents strongly agreed that bid protest mechanism is fair (4.62) and that the bid protest system is easily accessible (4.58). Respondents strongly agreed that ARB decision is fair (4.42) and that bid protest affect procurement time bid protest affect procurement time (4.38). They indicated that corruption is too much (4.35). Asked if unethical behaviour affects procurement process, respondents agreed to a small extend (4.23) and agreed that bidders raise frivolous request (4.23). Respondents agreed to a small extend that poor supervision of contracts affect bid review system.

4.7 Relationship between Bid Challenge and Procurement Process

The study sought to find out the impact of Bid challenge system in Kenya on procurement process. This was done by the use of linear regression analysis with gap

scores denoting the procurement process (dependent variables) and effects of Bid challenge representing the independent variables. The regression model used was as below

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \varepsilon$$

Where

Y = procurement process time

β_0 = constant

X_1 = Procurement Review

X_2 = Administrative Review

X_3 = Judicial Review

ε = error term of the model.

Table 4.6: Regression Coefficient on Effects of Bid Challenge on Procurement Process

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	6.962	3.489		1.995	.052
	Promotes transparency	-.432	.386	-.167	-1.119	.269
	Improved efficiency	.079	.438	.027	.182	.857
	Quality goods	-.193	.160	-.179	-1.207	.234
	Ethical standards	-.086	.165	-.086	-.520	.606
	Increased competitiveness	-.142	.138	-.153	-1.027	.310
	Collection and management of data with regard to procurement has improved	-.250	.233	-.170	-1.069	.291
	Improved accountability	.067	.229	.048	.294	.770

Source: SPSS output data

The outputs of analysis are presented in Table 4.6. Positive effects was reported on transparency, improve efficiency, quality goods, ethical standards, increased competitiveness, improve collection and management of data, and improved accountability.

Table 4.7: Model Summary

Change Statistics				
R Square Change	F Change	df1	df2	Sig. F Change
.091	10.628	7	44	.730

Source: Research Data (2014)

Regression analysis revealed a positive relationship ($R = 0.091$). The F value (10.628) changes are significant which implies that the model is fit and robust.

Table 4.8: T-Test

	Test Value = 5						
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference		
					Lower	Upper	
Bidders raise frivolous request	-6.674	51	.000	-.769	-1.00	-.54	
Bid protest affect procurement time	-9.033	51	.000	-.615	-.75	-.48	
Bid protest mechanism is fair	-5.646	51	.000	-.385	-.52	-.25	
ARB decision is fair	-5.547	51	.000	-.577	-.79	-.37	
Bid protest system is easily accessible	-6.116	51	.000	-.423	-.56	-.28	
Corruption is too much	-6.171	51	.000	-.654	-.87	-.44	
Poor supervision of contracts	-14.718	51	.000	-2.596	-2.95	-2.24	
Unethical behavior	-5.646	51	.000	-.769	-1.04	-.50	

Source: SPSS Output (2014)

From the output in Table 4.8 above, the t for all elements is > 0.05 . Hence a positive hence significant.

4.7 Discussions

From the findings of the study, it is evident that bid evaluation promotes transparency and improves efficiency. It improves collection and management of data used in procurement process and ensures suppliers provide quality goods. Bid challenge ensures that ethical standards are maintained and improves accountability. Accountability constitutes a central pillar to public procurement. Without transparent and accountable systems, the immense resources channeled through public procurement systems run the danger of being entangled with increased corruption and misuse of funds (Jeppesen, 2010).

It was evident in the study that evaluation criteria are always clear to bidders and bidding procedure is used in procurement process. The respondents agreed both successful and unsuccessful bidders are notified in writing. They agreed evaluation is conducted within the time outlined in writing and the process is transparent. Use of unclear technical specifications tailored to fit a specific bidder was avoided. On the factors affecting bid process, respondents indicated bid protest mechanism is fair and the bid protest system is easily accessible. Respondents agreed that corruption and unethical behaviors affect procurement process.

CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This Chapter summarizes the major findings of the study. This study sought to find out the impact of Bid challenge system on procurement system in Kenya. In addition, this chapter provides a direction for further studies and gives some recommendations for policy making by the relevant authorities. Questionnaires were used to gather primary data. The questionnaires comprised of both closed and open-ended questions and were strictly administered by the researcher. Both primary and secondary information was used to determine the results findings of the study.

5.2 Summary of Findings

This study sought to find out the impact of Bid challenge system on procurement system in Kenya. Public procurement is increasingly recognized as a key concept that plays a significant role in the successful management of public resources. For this reason, several countries have become more aware of the importance of procurement as an area vulnerable to mismanagement and corruption, and have thus instituted efforts to integrate procurement in a strategic position of government efforts. As part of the need to adopt a long-term and strategic view of their procurement and management, most countries have resorted to turning to their annual procurement plans as a possible ‘problem-solver’ (Mahmood, 2010).

The researcher established that Bid Challenge has a positive impact on the procurement process as it promotes transparency, improves efficiency and quality of goods, and promotes ethical standards. Competition is increased making suppliers improve on their products and services. The entire process ensures accountability is improved. The researcher further established that during bid evaluation, the procedure in the bidding document is used and the evaluation criteria is made clear to bidders. Bidders are evaluated according to criteria specified in the bidding document and both successful and unsuccessful bidders are notified in writing.

According to the findings, Procurement is awarded to the lowest evaluated bidder, tenders are advertised, and winners of contracts are displayed on public notice boards.

Suppliers are notified on time and standstill period allowed before contract signature. Factors affecting bid process review include frivolous request from bidders, bid protest, corruption, unethical behavior, and poor supervision of contracts.

5.3 Conclusions

Bid protests play a central, fundamental role in protecting the integrity of the procurement system. Review mechanisms in public procurement provide bidders the opportunity to exercise a controlling function. Procuring entities are more compliant with legal provisions when they are monitored. Reviews can bring corrupt behavior to the attention of the authorities and lead to prosecution. Review structures subject procurement procedures to challenge and exercise hence a maximum controlling function. They have the potential to disclose corruption cases, which cannot be detected by merely monitoring compliance performance based on procurement records.

Public procurement is of great importance in Kenya as the country tries to solve inequality that existed in the past. The Constitution provide for an equal and transparent procurement process. In this regard, there are categories of preference in the allocation of contracts as well as the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. The bid challenge system has a positive impact on the procurement process as it ensures that unfairness and corruption is eliminated.

5.4 Recommendations

From the findings, suppliers should be made aware of the bid protest to ensure the procurement process is ethical, transparent and fair. The Cases arising should be dealt with on time to ensure that delays are avoided. Mechanisms should be put in place to ensure eradication of corrupt officials the procurement organizations. Incentives should also be provided to the officials implementing PPDA in order to ensure better guidelines in the process.

5.5 Limitations of the study

The respondents were usually very busy and therefore they required a lot of time in order to fill in the questionnaires. The challenge was overcome by giving the respondents the questionnaires early. Getting accurate information from the respondents was one of the major challenges since some of the respondents were not willing to share information. The challenge was minimized by giving incentives to respondents in order to win their will to respond and offer accurate information. The location in distance while traversing Nairobi central business area proved to be tiring coupled with dusty grounds. Effective means of transport were sought by using a private car to access respondents without delay.

5.6 Suggestions for Further Research

The researcher suggests that it could be a useful starting point for further academic research. Bid challenge system on procurement system is a potential area for further research studies in developing countries of the world. Continued refinement of this study will be valuable to ensure procurement process is maintained.

REFERENCES

- Akech, J.M. Migai (2006): “*Development Partners and Governance of Public Procurement in Kenya: Enhancing Democracy in the Administration of Aid*”, in: NYU Journal of International Law and Politics, Vol. 37, No. 4, pp. 829–868.
- Ambe, I.M., Badenhorst-Weiss, J.A. 2011. South African automotive industry: *Trends and challenges in the supply chain*. Journal of Contemporary Management, 8: 337–362.
- Annika Engelbert and Dr. Nina-Annette Reit are researchers at the Chair of Public Law (Development Law), Research Project on Procurement Law and Anti-Corruption, Ruhr-University Bochum.
- Arrowsmith, & Sue. (2003). *Government Procurement in the WTO*. Boston, The Hague: Kluwer Law International.
- Arrowsmith, Sue, Linarelli, John, Wallace, & Don. (2000). *Regulating Public Procurement: National and International Perspective*. Boston, The Hague: Kluwer Law International.
- Cooper, D., & Schindler, P.S. (2003). *Business research methods* (8th ed). New Delhi: Tata McGraw-Hill Publishing Company.
- Drabkin David, Lloyd E. Robert and Thai V. Khi., 2004. *Bid protests in the U.S. Federal Government: an empirical analysis*, 13th International IPSESA conference, Catania.
- Geroski P., (1990), “*Innovation, Technology Opportunity and Market Structure*,” Oxford economic papers.
- Gordon, & I, D. (2006). Constructing a bid protest process. *The choices that every procurement challenge system must make*. Public Procurement Journal , Vol 35, 427-445.
- Government of Kenya (GOK). (2005). *The Public Procurement and Disposal Act, no. 3 of 2005*. Nairobi: Government Printer.
- Government of Kenya (GOK). (2006). *The Public Procurement and Disposal Regulations, no. 174 of 2006*. Nairobi: Government Printer.
- Harold Lewis (2002) Bids, Tenders and proposal: *Business through best practice*, MPG books Ltd, Bodmin, Cornwall.

- Hassman, K., Hechler, H., & Penailillo, M. (2009). Institutional arrangements for corruption prevention. *Considerations for the implementation of the United Nation Convention against*, 6.
- Migai, A. J. (2006). Development Partners and Governance of Public Procurement in Kenya. *Enhancing Democracy in the Administration Aid*. International Law and Politics , 37, 829-868.
- Mugenda, O. M., & Mugenda, A. G. (1999). Research methods. *Quantitative and qualitative approaches*. Nairobi. Acts Press.
- Nicholas, C. (2009). Remedies for breaches of procurement rules and the UNCITRAL Model Law on Procurement. *Public Procurement Law Journal* (4), 151-159.
- Organization for Economic Co-operation and Development (OECD, 2007) *Integrity in the public procurement: Good practice from A-Z*, OECD publishers.
- Quinot, G. (2013). A Comparative Perspective on Supplier Remedies in Africa Public Procurement Systems. *Public procurement regulations in Africa* , 308-335.
- Senturia, J. (1931). Corruption, Political. *Encyclopedia of Social Sciences* , pp. 448-452.
- Udeh, K. T. (2013). A critical appraisal of Kenya's supplier review system in the light of international standards. *Public Procurement Law Review* , 183-203.
- UNCAC, Article 9. Public procurement and management of public finances
- Uyerra, E, Flanagan, K, (2010) Understanding the innovation impacts of public procurement “*European planning studies*” vol.18.
- Vinod Rege. (2002) .Transparency in government procurement. *Issues of concern and interest to developing countries*, 35, J, World trade 489.
- Wayne A. Witting (2002): Building value through public procurement: *A focus on Africa*
- Waters, D. (2004) .Introduction To Supply Chain Management, (2nd Edition), Palgrave Macmillan, London.
- Westen, Laurence M. (2012): Das Vergaberecht als Mittel der Korruptionsbekämpfung in den Entwicklungsländern Subsahara-Afrikas am Beispiel Kenia, Baden-Baden: Nomos.
- Wittig, A. Wayne., 2005. *Linking islands of integrity to promote good governance in public procurement: Issues for consideration in Fighting Corruption and Promoting Integrity in Public Procurement*, OECD Publishing.

World Health Organization (2007). *Development Effectiveness Achieving
Development Outcomes: The Millennium Challenge Report*, WHO, Geneva

Zhang, X. (2007). "Supplier review as a mechanism for securing compliance with
government public procurement rules: A critical perspective". *Public
Procurement Law Review* (5), 325-351.

APPENDICES

Appendix I: Introduction Letter



UNIVERSITY OF NAIROBI
SCHOOL OF BUSINESS
MBA PROGRAMME

Telephone: 020-2059162
Telegrams: "Varsity", Nairobi
Telex: 22095 Varsity

P.O. Box 30197
Nairobi, Kenya

DATE 6.10.2014.....

TO WHOM IT MAY CONCERN

The bearer of this letter BISMAER KIPKOECH WAGIX.....

Registration No. D01/80992/2012.....

is a bona fide continuing student in the Master of Business Administration (MBA) degree program in this University.

He/she is required to submit as part of his/her coursework assessment a research project report on a management problem. We would like the students to do their projects on real problems affecting firms in Kenya. We would, therefore, appreciate your assistance to enable him/her collect data in your organization.

The results of the report will be used solely for academic purposes and a copy of the same will be availed to the interviewed organizations on request.

Thank you.



PATRICK NYABUTO
MBA ADMINISTRATOR
SCHOOL OF BUSINESS



Appendix II: Questionnaire

Information collected from this questionnaire will be handled with high confidentiality and will strictly be used for academic purposes by the researcher.

SECTION A: Demographic Information

1. What is your gender? Male Female

2. How old are you?

Age (years)	Below 25	26-35	36-45	46-55	Above 56
Response					

3. What is your highest level of education?

Doctorate Masters Degree Diploma

Specify

4. How many formal bid protest have you received in the last 3 years

Number of times	
1-5	
6-10	
More than 10	

SECTION B. Impact of Bid Challenge

Please indicate on the impact of Bid challenge using the following scale: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree

No.	Impact of Bid evaluation	1	2	3	4	5
1	It promotes transparency					
2.	Improved efficiency					
3.	Quality goods					
3	Ethical standards					
4	Increased competitiveness					
5	Collection and management of data with regard to procurement has improved					
6.	Improved accountability					

SECTION C: BID EVALUATION

The following scale will be applicable: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree

No.	Bid evaluation	1	2	3	4	5
1.	The procedure in the bidding document is always used					
2.	Evaluation criteria is always clear to bidders					
3.	Evaluation is conducted within the time outlined in the Act					
4.	Evaluation process is always transparent					
5.	Both Successful and unsuccessful bidders are notified in writing					
6.	Use of unclear technical specifications tailored to fit a specific bidder is avoided					
7.	All bidders are given equal treatment					
8.	Bidders are evaluated according to criteria specified in the bidding document					

SECTION D PROCUREMENT AWARD

The following scale will be applicable: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree

No.	Factors	1	2	3	4	5
1	Lowest evaluated bidder is awarded the contract					
2.	Notification to suppliers is made on time					
3.	Upon request suppliers are given reasons					
4.	Standstill period is allowed before contract signature					
5.	Tenders are advertised					
6.	Winners of contracts are displayed on public notice boards					

SECTION E: FACTORS AFFECTING BID PROTEST REVIEW

The following scale will be applicable: 5= strongly agree 4= agree 3= undecided 2= disagree 1= strongly disagree

No.	Factors	1	2	3	4	5
1	Bidders raise frivolous request					
2	Bid protest affect procurement time					
3	Bid protest mechanism is fair					
4	ARB decision is fair					
5	Bid protest system is easily accessible					
6	Corruption is too much					
7	Poor supervision of contracts					
8.	Unethical behavior					

THANK YOU

Appendix III: ARB Decisions

YEAR	APPLICANT	PROCURING ENTITY
2013	Landmark Holdings Limited	Kenya Industrial Research Development Institute (KIRDI)
2013	Eltel Networks Corporation Ltd	Kenya Power And Lighting Company Ltd
2013	Eltel Networks Corporation Ltd	Kenya Power And Lighting Company Ltd
2013	Hullow Enterprises Ltd	Northern Water Service Board (Manderu North)
2013	UTO Creations Studio Ltd	Ministry of Housing
2013	Fleet Tracking Solution Africa Ltd	Kenya Electricity Generating Company Ltd
2013	Winston International Ltd	Ministry of Public Works
2013	The Advertising Company	Kenya Post Office Bank
2013	Banoda Oil Limited	Ministry of State for Defence
2013	Magal Security Systems Limited	Kenya Airports Authority
2013	Optilan (Uk) Ltd	Kenya Airports Authority
2013	Kenbright Nbc Risk & Financial Services	Kenya Electricity Generating Company
2013	Mayrak Investment	Ministry of State for Defence
2013	Current Millenium Co.Ltd	Kenya Rural Roads Authority
2013	EPCO Builders Ltd	Catering Tourism Development Levy Trustees
2013	Benicia International Ltd	Lake Victoria South Water Services Board
2013	Rup Pharm Ltd	National Council For Persons With Disabilities
2013	Brooms Ltd	Kenya Ports Authority
2013	Sanitam Services(E.A) Ltd K	Kenyatta University
2013	Cic General Insurance Ltd	Nairobi City County
2013	Globaltech Desarrollos Ingenieria	Ministry of Fisheries
2013	Trustmark Insurance Brokers	Kenya Pipeline Company Ltd
2013	Bedrock Holdings Ltd	Masinde Muliro University of Science And Technology
2013	Bevaj	Kenya School of Monetary Studies
2013	Getrio Insurance Brokers Ltd	IEBC
2013	Ndongoro General Contractors	Nanyuki River Water User Association
2013	Abalatiro Investment Ltd	Kenya Rural Roads Authority
2013	Fleet Tracking Solutions Ltd	Kenya Power Lighting Co. Ltd
2013	China Wu Yi Co.Ltd	Kenya School of Monetary Studies
2013	EPCO Builders Ltd And Milicons	Parliamentary Service Commission
2013	BOC Kenya Ltd	Kenyatta National Hospital
2013	Knocks Kranes Gmbh	Kenya Airports Authority
2013	Manchester Outfitters Ltd	Kenya Airports Authority
2013	Bevaj Funiture Ltd	Kenya School of Monetary Studies
2013	Autoxpress Ltd	Kenya Ports Authority
2013	Autoxpress Ltd	Kenya Ports Authority
2013	Mabey Bridge Ltd	Kenya National Highway Authority
2013	Associated Motos	National Treasury
2013	Samo Security	Masinde Muliro University of Science And

		Technology
2013	H Young And Co	Kenya Ports Authority
2013	ZTE	Min of Interior And Coordination of National Government
2013	Total Security Surveillance	Kenya National Highway Authority
2013	Bowha Ltd	Kenya Railways Corporation
2013	Motivator Enterprises	Min Of Foreign Affairs
2013	Unifree Duty Free, Suzan Trading, Flemingo International And Dufry International	Kenya Ports Authority
2013	Tricon Works Ltd	Kenya Forestry Research Institute
2013	Horsebridge Network Systems Ltd	Kenya Airports Authority
2013	Zappkass Consulting & Trading Ltd	Kenya Power & Lighting Company Ltd
2012	Lavington Security Limited	Kenya Airports Authority
2012	Gowharrud Construction Africa Limited & Intex Construction Limited	Kenya National Highways Authority
2012	Kenya Airports Parking Services Limited	Kenya Airports Authority
2012	Mea Limited	National Cereals and Produce Board
2012	Hatory Security Guards Limited	Postal Corporation of Kenya
2012	Between Njama Limited	Northern Water Services Board
2012	Gillys Security & Investigation Services Ltd	Kenya Power & Lighting Company Ltd
2012	Kirawira Construction Co. Ltd	Kenya Rural Roads Authority Kakamega Region
2012	Lavington Security Guards	Kenya Post Office Savings Bank
2012	Cell Arc Systems	District Tender Committee, Kisumu East District
2012	Jack Wright Limited	Ministry of State for Defence
2012	Rurii Construction (K) Ltd	District Tender Committee Muranga East
2012	Gitutho Associates	Catering And Tourism Development Levy Trustees
2012	Lindscan Advanced & Tank Services	Kenya Pipeline Company Limited
2012	Golicha Gange Omar	Ministry of State for Defence
2012	Ogle Construction Company	District Commissioner Habaswein
2012	Gardens & Wedding Centre Ltd	Kenya Electricity Generating Company Ltd
2012	Rayovac Industries Limited	Kenya Medical Supplies Agency (KEMSA)
2012	Mt. Kenya Construction Company Limited	District Commissioner Mathioya District
2012	Landmark Holdings	Jomokenyatta University of Science and Technology
2012	Timber Treatment International Ltd	Kenya Bureau of Standards
2012	Kenya Meat Commission	Ministry of State for Defence
2012	Com Twenty One Limited	Kenya Pipeline Company Limited

2012	Imprimirie Nationale	Ministry of State for Immigration and Registration of Persons
2012	Oneway Cleaning Services	Kenya Revenue Authority
2012	Metrocosmo Limited	National Irrigation Board
2012	Protective Custody Limited	National Social Security Fund
2012	Makini Construction And Engineering Ltd	Ribe Boys High School
2012	Telkom Kenya Limited	Ministry of Higher Education, Science & Technology
2012	Vekesh J. Shah, Janendra R. Shah Kamal Shah	Moi University
2012	Lanmark Holdings	Nairobi University
2012	Mayaka Management Training	School Equipment Production Unit
2012	Race Guards Limited	Export Processing Zone Authority
2012	Holiday Cars And Tours Ltd	Kenya Ports Authority
2012	Holiday Cars & Tours Ltd	Kenya Ports Authority
2012	African Infrastructure Development Company	IEBC
2012	Valley Auctioneers, Galaxy Auctioneers.	Kenya Ports Authority
2012	African Infrastructure Development Company	IEBC
2012	Anhui Construction Engineering Limited	Kenya Airports Authority
2012	Hatari Security Guards Limited	Kenya Medical Training College (KMTC)
2012	Dekings Traders Ltd	Ministry of Nairobi Metropolitan Development
2012	Dekings Traders Ltd	Ministry of Nairobi Metropolitan Development
2012	Dimensions Data Solutions Ltd, Lantech Limited & Gestalt Gild Ltd	National Social Security Fund
2012	H F Fire International(K) Ltd	Ministry of Nairobi Metropolitan Development
2012	Between Pelican Insurance Brokers(K) Ltd	Nzoia Sugar Company Limited
2012	Skillman Construction Ltd	Ministry of Local Government
2012	Global Consulting Partners Ltd	Medical Council of Kenya
2012	Lavington Security Ltd	Ministry of Roads
2012	Horsebridge Networks Systems(E.A) Ltd	Central Bank of Kenya
2012	Technolectric Ltd	Kenya Power And Lighting Co
2012	Hatari Security Guards Ltd	Kenya National Examination Council (KNEC)
2012	Bags & Bailers Manufacturers (K) Ltd	Kenya Seed Company Ltd
2012	Farm Engineering Industries Ltd	Kenya Pipeline Company Ltd
2012	Furniture Elegance Ltd	Kenya School of Monetary Studies
2012	Fleet Tracking Solutions Africa	Kenya Power & Lighting Company Ltd

	Ltd	
2012	Runji & Partners	Water Resource Management Authority
2012	Avante International Technology Inc, Bidvest Paperplus Ltd (Lithotech Exports) And Smartmatic International Holding	IEBC
2012	Canefields Company	Ministry of State for Defence
2012	Canefields Company Ltd	Ministry of State for Defence
2012	Horse Bridge Network System	Central Bank of Kenya
2012	Fleet Tracking Solutions Africa Ltd	Kenya Roads Board
2012	Nelson & Francis Associates	Kenya Ports Authority Pension Scheme
2012	Huwawei Technologies Co. Ltd	Min of State For Provincial Administration & Internal Security
2012	Konnexion Systems Ltd	IEBC
2012	Riley Services	National Oil Corporation Ltd
2012	Babs Security Services Limited	County Council of Muranga
2012	China Jiangxi International Kenya Limited	Parliamentary Service Commission
2012	African Infrastructure Development Co	Independent Electoral & Boundaries Commission
2012	Megal Security Systems Limited	Kenya Ports Authority
2011	Intex Construction Ltd	Kenya Rural Roads
2011	Mutang Agencies Ltd	Kenya Civil Aviation Authority
2011	Capital Guardians	Min Of East African Community
2011	Jyan Construction Services	Coast Institute of Technology
2011	Promarc Consultancy Ltd & Mathu & Gichuri Associates	Kenya Institute of Education
2011	Gibbs Africa Ltd & Canarail Consultans Inc	Kenya Railways Corporation
2011	Building Fire Consultant Ltd	Kenya Electricity Generating Company
2011	Gravity Contractors Ltd	Alliance High School
2011	Harvey Engineering Ltd	Kenya Power & Lighting Company Ltd
2011	Euroconsult Mott Macdonaldsamez Consultant Ltd	National Irrigation Board
2011	China Wu Yi Co Ltd	Kenya Rural Roads Authority
2011	China Wu Yi (Kenya) Co Ltd & China Jianxi International Kenya	Nationals Social Security Fund
2011	China Wu Yi (Kenya) Co Ltd & China Jianxi International Kenya	Nationals Social Security Fund
2011	Systech Ltd	National Social Security Fund
2011	Pestlab Ltd & Sanitam Services Ea.S Ltd	Kenyatta University
2011	Reliable Electrical Engineering M.Ltd	Kenya Ports Authority
2011	Kundan Singh Construction Company Ltd	Kenya Rural Roads Authority
2011	Constortium Of Mitsubishi Heavy Industries Ltd & Mitsubishi	Kenya Electricity Generating Company Ltd

	Corporation Vs	
2011	Bedrock Holding Limited	New KCC
2011	National Signals Network & Mayfox Company Ltd	Communication Commission of Kenya
2011	Guumba Contractors	Ramogi Institute of Advanced Technology
2011	Deloitte Consulting Ltd	Kenya Airports Authority
2011	CM Labs Simulations,Inc	Kenya Ports Authority
2011	Sedwick Kenya Insurance Brokers Ltd	Kenya Airports Authority
2011	MFI Leasing Ltd	Kenya Ports Authority
2011	Aprim Consultants	Central Bank of Kenya
2011	Customer Care Center Ltd	Kenya Medical Research Institute
2011	Golicaha Gange Omar	Ministry of State for Defence
2011	Riley Falcon Security Services Ltd	Kenya Electricity Generating Company
2011	Twiga Chemical Industries Ltd	Kenya Seed Company Ltd
2011	Impax Business Solutions Ltd	Kenya Ports Authority
2011	Gekins Exporters & Importers Ltd	Min Of State For Defence
2011	Cm Labs Simulations,Inc	Kenya Ports Authority
2011	Schneider Electrical Francemehta Electrical Ltd	Kenya Air Ports Authority
2011	Martin Otieno Okwach & Charles Ongondo Were Ta Victora Cleaning Services	Kenya Post Office Savings Bank
2011	Erick Otieno Nyambetha	Ministry of Gender, Children & Social Development
2011	Acacia Energy Ltd	Geothermal Development Company
2011	Maina & Maina Advocates Ltd & Igeria & Ngugi Advocates	National Irrigation Board
2011	Intertek International Limited & Kenya Bureau Of Standards	Kenya Ports Authority
2011	MFI Leasing Ltd	Kenya Airports Authority
2011	Africa Duty Free Limited & Diplomatic Duty Free	Kenya Airports Authority
2011	Sicham Aviation Limited	Kenya Airports Authority
2011	Total Security Surveillance Ltd	Kenyatta University
2011	Nyatama Construction Co Ltd	Dc Ndhiwa
2011	MFI Office Solutions	Ministry of Information & Communication
2011	Blaxton General Building Contractors Ltd	Chebara Boys Secondary School
2011	MFI Office Solutions	Ministry of Information & Communication