



FACTORS AFFECTING THE TENDERING PROCESS IN KENYAN PUBLIC SECTOR: A CASE OF KENGEN

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ABSTRACT

Lack of a proper tendering process can affect performance of organization negatively due to failure to reap benefits such as award of tender to qualified tenderer. The purpose of this study was to investigate the factors affecting tendering process in public sector. The specific objectives were to determine the influence of ethics on tendering process at Kengen and to assess the effect of record management on tendering process at Kengen. The study took place at Kengen offices in Nairobi located in Ngara. The study will constitute a census of Kengen employees in supply chain department. The number of employees in the census were 120 employees .The study used both open and close ended questionnaire. Pilot testing was done to ensure the reliability and validity of the instrument. Quantitative data was analyzed using SPSS version 23, while qualitative data was analyzed using content analysis. The findings indicated strong positive correlation between the dependent and independent variables hence the independent variables affecting the dependent variable.

Key Words: Ethics, Records Management, Tendering Process

Background of the study

Tendering is considered a common way of obtaining building and construction industry services. It has thus been defined as the list of processes to produce, display and manage tender documents by the client or consultant (Knowles, 1997). While tendering for public construction focuses on the process of selecting a suitable contractor to execute a public project by calling for tenders, often achieved by sending out tender drawings and a bill of quantities or a specification to receive prices in the form of estimates. It however, also includes actions to perform bidding by interested contractors in order to win the contract by responding to tenders with their capabilities and skills formation.

Competitive tendering and contracting (CTC) has embraced alternative means of procuring public sector facilities to the traditional reliance upon an in-house team delivery approach. This is believed to provide greater flexibility in both procuring facilities and managing them. CTC is a "process of selecting a preferred supplier from a range of potential contractors by seeking offers (tenders) and evaluating these on the basis of one or more selection criteria" (Australian Industry Commission, 1996).

The European Union Procurement Directives establish public procurement rules throughout the European Union and apply to any public purchases above the defined thresholds. The purpose of the directives is to open up public procurement within the European Union and to ensure the free movement of supplies, services and works. The directives are enacted in the UK by The Public Contracts Regulations. Public projects must comply with the regulations if the value of contracts is above specified thresholds. Aggregation rules apply to projects tendered in parts to prevent clients from avoiding the requirements of the regulations by simply dividing projects up into contracts that are below the threshold. Private projects may be required to

comply with the regulations if they are publicly subsidized. The regulations set out rules requiring that such contracts must be advertised (contract notices published) in the Official Journal of the European Union (OJEU). This is of particular importance because, unless OJEU rules are considered in the very early stages of a project, the time taken to advertise contracts can cause significant delays (up to 52 days). The time allowed for tenderers to respond to a contract notice can be reduced under certain circumstances (such as if a prior information notice (PIN) was published or if accelerated procedures are being used). The regulations also describe allowable procedures to avoid discrimination against potential tenderers on the grounds of their origin in a particular country. Ideally, contracts for goods or services that might arise during the course of the project and could be subject to the OJEU procurement rules should be advertised at the outset of the project or soon as possible afterwards. This may include contracts requiring early specialist design input by the contractors. The main construction contract might be advertised once planning permission has been obtained and there is some certainty that the project will proceed. Failure to advertise such contracts well in advance of the goods or services actually being required could result in long delays.

The Public Procurement Tendering System in Kenya has evolved from a crude system with no regulations to an orderly legally regulated Procurement System. The Government's Procurement System was originally contained in the Supplies Manual of 1978, which was supplemented by circulars that were issued from time to time by the Treasury (GOK, 2010). The Director of Government Supply Services was responsible for ensuring the proper observance of the provisions of the Manual (GOK, 2004). The Manual created various tender boards for adjudication of tenders and their awards. The Authority shall issue guidelines on the format of procurement documents to be adopted for

approvals and the documentation and the documentation of the procurement procedure (PPOA, 2012). A review of the country's public procurement tendering systems was undertaken in 1999 and established that: There was no uniform procurement tendering system for the public sector as a whole, It did not have sanctions or penalties against persons who breached the regulations in the Supplies Manual, other than internal disciplinary action. Consequently application of the rules was not strict and many of the norms were not followed, the Supplies Manual did not cover procurement of works, the dispute settlement mechanisms relating to the award procedures as set out in the Manual were weak and unreliable for ensuring fairness and transparency, Records of procurement transactions in many cases were found to be inaccurate or incomplete or absent, which led to suspicions of dishonest dealings at the tender boards (GOK, 2010). The systems had other institutional weaknesses that not only undermined its capacity for carrying out their mandates effectively but also led to a Public perception that the Public sector was not getting maximum value for money spent on procurement (GOK, 2010) .In view of the above shortcomings it was found necessary to have a law to govern the Procurement tendering system in the Public sector and to establish the necessary institutions to ensure that all procurement entities observe the provisions of the law for the purpose of attaining the objectives of an open tender system in the sector (World Bank Group, 2008).

KenGen is a company Kenya Electricity Generating Company or simply KenGen is a company, the largest power producing company in Kenya producing about 72% (KenGen Annual Report, 2013) of the electricity consumed in the country. KenGen relies on various sources to generate electricity ranging from hydro, geothermal, thermal and wind. Hydro is the leading source, with an installed capacity of 0.821 GW, which is 52.3 percent of the company's installed capacity.

The company owns 14 hydropower plants with a combined capacity of 820 MW, five thermal power plants of 256 MW, five geothermal power plants of 493 MW and one Wind power plant of 5.1 MW resulting a total installed capacity of 1,5695 GW.[2] Presently KenGen owns four geothermal power stations, namely: Olkaria I and Olkaria II, Olkaria I unit 4 and 5, and Olkaria IV. The power stations are within the great Rift Valley adjacent to the famous Hell's Gate National Park, and also bordering Lake Naivasha. The company was founded on February 1, 1954 as Kenya Power Company (KPC) and was commissioned to construct the transmission line between Nairobi and Tororo in Uganda This was to transmit power generated at the Owen Falls Dam to Kenya. KPC was as well tasked to develop electricity generating facilities in the country.

Statement of the Problem

The tendering process in Kenya has been characterized by several scandals attributed to poor handling of procurement information thus leading to high corruption (Thai, 2009). This results to the need to transparent operations in order to enhance competitiveness and reduced costs (Ogot, 2009). This is significant since 60% of government expenditure is spent through public procurement.

Despite an increase in knowledge in the tendering processes in public entities according to Public procurement and Disposal Act (2005), very little has been done to analyse the factors influencing the tendering in Public sector. Although in 2003, the GOK began implementing reforms to address inefficiency in the use of Public resources and weak institutions of governance. The reforms included the development of anti-corruption strategies to facilitate the fight against corruption and the enactment of the Public Officer Ethics Act 2003, the Ant-Corruption and Economic Crime Act, the Financial Management Act 2004, and the Public Procurement and Disposal Act 2005. The aim was to make the procurement process more transparent, ensure accountability and reduce

wastage of public resources among others. Currently, there are weak oversight institutions, lack of transparency, poor linkages between procurements and expenditures, delays and inefficiencies, poor records management, bureaucracy, rampant corruption, Political interests. Bottom-up approach to the development of institutional mechanisms for holding to account the domestic implementation of international regulatory decision-making.

A survey done on February (2015) by national treasury showed that 30 per cent of the state corporations award tenders fairly while 14 per cent are involved in procurement malpractices. The treasury indicated that emphasis on e-involved procurement system is to ensure transparency in how tenders were awarded. Estimates by the Treasury showed that the government losses more than Sh70 billion annually due to fraudulent manipulations in procurement process. (Wanzala, 2015).

KenGen was ranked among top ten public sectors associated with procurement manipulations (TI, 2012). Data from World Bank show that KenGen lost 5 Billion relating to procurement and tendering malpractices (WB, 2012). According to Kisero (2015) KenGen is said to have illegally awarded a Chinese firm a tender worth 8 billion contrary to tendering system guidelines.

The Parliamentary Energy, Communications and Information Committee resolved that 43 billion contract for drilling 80 new geothermal wells at the Olkaria Geothermal Field Phase I and II be reviewed. It also identified that KenGen contracted Bonfide Company on basis of a „handshake“ contract for rig-move worth Sh 240 million contrary to tender system provisions. This was attributed to failure on transparency in the award of tenders and the lack of adherence to public procurement system guidelines (Kisero, 2015).

Studies relating to tendering has been done, but few have dealt with the factors affecting tendering. A study done by Ayoti (2012) on factors influencing effectiveness in tendering process in public sector, the case of Nyeri county, the study findings indicated that there was practice of favoritism, tribalism and nepotism in the tendering process in public sector in Nyeri County. The lack of a strong procurement profession and inadequate training of staff has led to failure to employ good practices in procurement, creating inefficiencies and high costs in the tendering process in the county. A study done by Kioko & Were(2014) on Factors affecting efficiency of the procurement function at the public institutions in Kenya; a case of supplies branch in Nairobi. The study found out that procurement staff competencies, legal framework, institutional culture and Information Communication Technology (ICT) positively affect the efficiency of the procurement function in public institutions in Kenya. With these knowledge gaps this study therefore tends to investigate the factors affecting tendering in Public Sector specifically looking at KenGen.

Study Objectives

The main objective was to determine the factors affecting the performance of tendering process in the public sector in Kenya: a case of KenGen. The specific objectives were:

- To determine the effect of ethics on the performance of tendering process at KenGen.
- To assess the effect of records management on the performance of tendering process at KenGen.

LITERATURE REVIEW

Utilitarian theory

According to utilitarianism, actions should be evaluated by their consequences. According to Jeremy Bentham, the founder of classical utilitarianism, the theory is based on

understanding of human nature since human beings always try to avoid pains and seek pleasures. It is based on utility principle, “The greatest good for the greatest number of people”. According to utilitarianism;” an action is right from an ethical point of view if and only if the sum total of utilities produced by that act is greater than the sum total of utilities produced by any other act the agent could have performed in its place”(Velasquez, 2001)

Records Management Theory

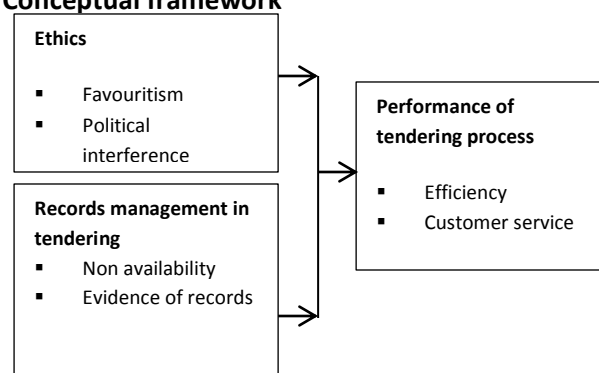
The theory was developed by Vakkari and Cronin (2000) and has attempted to construct a model for the current status of RM. RM has, in the past, been formed on a framework of two relevant bodies of knowledge. One views RM as a management technique (under the umbrella of RM), whilst the other is influenced by the archival point of view. These conceptual frameworks are well defined and continue to underlie present RM practice (Hare and McLeod, 2002).

Records management serves a firm or other organization. The mission of a records management service needs to be related to and supportive of the mission of the organization as a whole (Popoola, 2000). The role of the records management program needs to be articulated with the roles of other parts of the organization: the roles, needs, and activities of employees needing access to records; the roles of other information-related programs such as Management Information Systems, data processing, the library, and the archives. The effect is that, records management theory is likely to be sterile or incomplete unless it is related to a view of the organization as a whole (Gross, 2002). This helps public institutions to create a greater awareness of what is available; where it is held; how to match information to needs and what information can be used to add new value for the customer. Information management, for that matter, is a methodology for identifying all existing information resources within an

organization, providing data to enable the assessment of available sources, and to help priorities decisions for better delivery, improved organization and accessibility of that information (Enwere, 2002).

The record management theory indicates that management of electronic records poses many challenges. One of the biggest challenges is the ability to anticipate future developments in technology (Baje, 2003). Records managers need to be far sighted enough to be able to decide what hardware, software, storage media and documentation techniques need to be employed in preserving records. Media and format should not hinder access to the records. The solution to this problem, as suggested by Bearman (2005), is that standards must be established for intellectual control and documentation that rise above software dependent norms. In addition, the value of an electronic record should be identified before a record is created. This means that records having enduring value as archives will need to be identified even before the moment of their creation. Erlandsson (2002) refers this to as the pre-creation or conception stage. Failure to identify records in this way means that records may not survive (Langemo, 1999).

Conceptual framework



Independent Variable

Dependent Variable

Figure 1: Conceptual framework

Ethics

According to Wee (2002) ethics are the moral principles or values that guide officials in all aspects of their work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behavior includes avoiding conflicts of interest, and not making improper use of an individual's position. Ethical behavior is important in public procurement as it involves the expenditure of public money, and is subject to public scrutiny. Public officials should always behave ethically and fairly, including in their business undertakings. Ethical behavior supports openness and accountability in a procurement process and gives suppliers confidence to participate in the Government marketplace. Ethical behavior can also reduce the cost of managing risks associated with fraud, theft, corruption, and other improper behavior; and enhance confidence in public administration (Wee, 2002).

Records Management in tendering Process

Records, asserted Thurston (2002), are critical to the operations of any organization. No entity can operate successfully if it relies on human memory alone to keep trail of her transactions. Procurement records are a vital resource to any organization that strives to conduct operations effectively. Organizations need accurate and accessible records that are tamper-free, original, reliable and able to reveal institutional memory for informed decision making. PEs should strictly comply with documentation, recording, minuting and filing requirements. The documentation should be kept in orderly, accessible and clean conditions.

Sound RMS is a vital aspect of ensuring transparency, accountability and responsibility in the tendering process. It can reduce vulnerability to legal challenge on financial loss and promote efficiency in terms of human and space resources through greater coordination of the information

use, maintenance and control. Procurement RM aims at addressing weaknesses and provides guidance and direction for best practices. David (2005) opined on the future of managing electronic records, which is complex and goes beyond the procurement of a RMS. He contended that firms need an understanding of current ICT trends and business processes and must accept that records systems are products of the moment. The future lies in electronic systems that are more recent in business logic and more useful in business support. Management of electronic records must not be confused with the procurement of document management systems. For any positive contribution to procurement performance, PEs must ensure that records are available to provide documentary evidence of conformity to the requirements of an effective management system. The records control system should facilitate identification, storage, protection retention and disposition of records. One of the best ways to implement a record management policy is utilizing a business that specializes in it; there are a myriad of companies that offer record management solutions for both paper and electronic documents. Bolton (2006) noted that such solutions make it easy to track, retrieve, and securely store important documents. With so many threats facing entities today, prevention with record management is one vital key to managing a successful business.

Rembe (2011) observed that RMS should be accorded a high organizational status and ranking in terms of budgetary allocation, investment in human resource development, records storage space and equipment. It should be viewed as a critical support function. PEs need to strive to appoint procurement records officers with clearly defined record keeping duties. Transparency and accountability is promoted through the appropriate recording of procurement procedures. There is need for every PE to maintain records retention and disposal schedule for sound management of procurement

transactions. This schedule should specify the length of time each type of record to be retained, and the applicable disposal action which may take the form of preservation in closed records room, transfer to the archives or destruction if it is deemed to be valueless upon the completion of the required retention period.

Performance of the tendering process

Tendering is a Procurement Procedure whereby potential Suppliers are invited to make a Firm and unequivocal offer on the price and terms in which they will supply specified goods, Services or works which on acceptance shall be the basis of a subsequent contract (Lysons and Farrington, 2006). Tendering is based on the principles competitiveness, fairness and accessibility, transparency, openness and probity (World Bank, 2008).

Empirical review

Mazet & Flipo (2009) conducted a study on marketing and ethics in competitive tendering procedures where they analyze the practices generated by the competitive bidding and concludes that the public procurement directives do not actually constitute a relevant framework to favor the implementation of ethical practices in projects and strict applications of the competitive procurement directives based on the lowest price bid may even favor the development of unethical practices. As acknowledged by Berube & Villeneuve (2002), ethical dilemmas faced by project managers are not always solved by legal rules, especially in controversial situations. Ndolo & Njagi (2014) on role of ethics in procurement process effectiveness in the water sector in Kenya: (A Case Study of EWASCO, Embu County) the research confirmed the need to establish training programs as well as maintaining high organizational culture through strong codes of ethics. Ray(2002) on ethics in tendering: a survey of Australian opinion and practice concluded that that most companies support the use codes of tendering, defend the right of withdrawal of tenders, disapprove of bid shopping, cover pricing

and union involvement in the tendering process, support the principals' right to know what is included in a tender and the self-regulation of the tendering codes. In addition, most companies have developed, and follow, idiosyncratic ethical guidelines that are independent of, and often contrary to, the nationally prescribed codes.

Fust & Graf (2002) argue that proper management of records is the foundation any government needs to provide public services, to fulfill its obligation of accountability towards its citizens and economic development. Chinyemba & Ngulube (2005) assert that procurement units have a general responsibility for maintaining procurement records, complete documentation and maintaining of all procurement activities, contracts and agreements entered into. Practicing proper records management leads to effective public procurement process because government activities are based on access to information contained in records(Michael, 2009) . According to De Wet & DuToit (2000), it is essential for government procurement departments to manage records more effectively with other information management functions so that records management becomes a strategic management function towards attaining a competitive advantage.

RESEARCH METHODOLOGY

This research adopted descriptive research design. Cooper and Schindler (2006) describe a population as the total collection of elements whereby references have to be made. Kengen has a total of 120 procurement staff. The study did a census due to the small population of procurement staff at Kengen. Questionnaires were used to collect required data for this study. They comprised of open and close ended questions. Data was collected through questionnaires, the questionnaires were self-administered through pick and drop approach. Pilot testing was done to check the validity and

reliability of the questionnaire. The researcher measured the reliability of the questionnaire to determine its consistency in testing what they were intended to measure. The study used Cronbach's alpha formula to test reliability. The research instrument was validated in terms of content and face validity by experts in procurement field.

The data collected from the field was analysed qualitatively and quantitatively. At first, data was screened to identify omissions and removal of non-answered questions. For quantitative data analysis, coding and entry was done in electronic spread sheet with the aid of Statistical Package for Social Sciences (IBM SPSS Version 23). Data generated from SPSS was analysed using descriptive and inferential statistics.

Qualitative data was analysed using content analysis.

DATA ANALYSIS, RESULTS AND DISCUSSION

Data was cleaned, coded and analysed in accordance with the indicators of each variable using the Statistical Package for Social Sciences (SPSS) version 22. A total number of 120 instruments were administered to the sample selected. 110 questionnaires were collected back. The response of 91.6% facilitated towards gathering sufficient data that was generalized to reflect the opinions of respondents. This was in tandem with Graham (2002) that a response rate above 70% of the total sample size contributes towards gathering of sufficient data that could be generalized to represent the opinions of respondents in the target population on the sought study problem.

The coefficient of the data gathered from the pilot study was computed with assistance of Statistical Package for Social Sciences (SPSS) Version 22. A context validity coefficient index of above 0.82 was obtained and this implied that the questionnaires were valid research instrument for the study.

The pilot study involved questionnaires from 8 respondents. The results indicated a Cronbach's alpha of well above 0.7 and most of it above 0.8 implying that the instruments were sufficiently reliable for measurement.

The study sought to establish the age of the respondents in order to determine if the age corresponded with Performance of tendering process. Majority (57.6%) of the respondents who were students was in the age category of 25-35 years, 26.9% both were in the age category of 36 and above years 15.38 were in the age category of below 25 years.

The study sought to establish the gender of the respondents in order to ascertain if they majority gender has an effect on employment. Majority (52.07%) of the respondents were female 47.11% were male. This is in line with Collier (2013) that tendering is critical in organizations.

The study sought to establish the education level held by the respondents in order to ascertain if they were equipped with relevant knowledge and skills to understand the study. From the study findings, majority (64%) of the respondents were post graduate students followed by 21% Graduate education level and 15% who were diploma education level.

The study sought to establish the sector the respondents worked in order to establish the major sector. Majority (80.33%) of the respondents belong to the informal sector while (19.67%) to the formal sector.

Ethics

The study sought to investigate the influence ethics on performance of tendering process in Kenya. 14.6 % strongly agree that ethics affect performance of tendering process, 32.2% agreed while 21.5% disagree and 4.6% strongly disagreed. These findings are in line with Ryder (2016) that ethics affect performance of tendering process.

Records Management

The study sought to investigate the influence of Records management on performance of tendering process in the formal and informal sectors. 8.1 % strongly agree that records management affects performance of tendering process, 25% agreed while 25.8% disagreed and 13.7% strongly disagreed.

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The study established that Ethics and Records management affects performance of tendering process in Kenya. Rather, they require sustained and concerted action – by several actors over an array of policy areas.

From the finding, the study concluded that Performance of tendering process was affected by Ethics and Records management.

Ethics was a major factor in performance of tendering process and that policy priorities for tackling the current tendering problems in Kenya must be set; these priorities aim to cut across both the risk factors.

Sectoral policies, in particular, can promote job creation in the medium to long term, provided they are well designed and targeted to sectors with high potential for tendering.

While there are many indicators that provide evidence suggesting records management of one

kind or another, is less well developed. On the one hand, Often a mismatch between the demand for records management and the supply has been at the roots of their weak integration into the procurement systems. An integrated approach (e.g. national action plans on performance of tendering process), where not just the Ministry concerned, but also other key Ministries, address the issue of performance of tendering process, could be helpful in this regard.

Tendering and procurement performance is one of the key priority areas that can also contribute to the achievement coherent.

Recommendations

The study established that Ethics and records management affected performance of tendering process in Kenya, therefore they need to be checked in a more appropriate for change.

Suggestions for Further Research

The results of this study can be further utilized to suggest several directions for future research. Finally, more research on this area is needed because this study has investigated a subset of the variables found to be important determinants. Other variables that may affect private label projects need be investigated. Further research can examine these possibilities and the extent of their influence.

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