RELATIONSHIP BETWEEN CONTRACT MANAGEMENT AND COMPLIANCE WITH ACCESS TO GOVERNMENT PROCUREMENT OPPORTUNITIES (AGPO) REGULATIONS FOR SPECIAL GROUPS BY PUBLIC UNIVERSITIES IN KENYA

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Abstract

Public procurement has become an issue of public attention and debate. It has been subjected to reforms, restructuring, rules and regulations. Despite statutory provisions and internal controls, public sector institutions have not fully complied with AGPO regulations for special groups due extent of contract management. Little is known on determinants of compliance with AGPO regulations. The objective of the study was to examine relationship between contract management and compliance with AGPO regulations for special groups by Public Universities in Kenya. This study used a mixed research design as it allowed the researcher to use both quantitative and qualitative research methods. The target population consisted of 106 supply chain officers in all public universities in Kenya. The sample size for this study was 62 respondents from all the public universities. Data was collected using two instruments; a semi-structured questionnaire and an interview guide. Quantitative data was analyzed using descriptive and inferential statistics. Quantitative data analysis results were presented in tables and charts. Qualitative data was analyzed using content analysis. The results revealed that there exist correlation between contract management and compliance with AGPO regulations a Pearson correlation. The study findings revealed that contract management contributed positively to level of compliance with AGPO regulations. This contribution was statistically significant. This study also concluded that the contracting management has significant impact on level of compliance with AGPO regulations for special groups. The study recommends that government agencies should strengthen contract management to ensure they have complied with AGPO regulations.

Key words: Contract management, Compliance, Access to Government Procurement Opportunity

Background

Public institutions are prominent actors in the modern economy and it follows that by their choices in public procurement, governments can have a discernible impact on trade patterns. Public procurement has been used as a tool to promote the government's economic, social or environmental objectives (Arrowsmith, 2010) . Public institutions have one of the highest procurement budgets. Their procurement budgets can have a significant impact on

trade in the areas they operate in. Government policy can be used to skew procurement opportunities in favor of certain interest groups such as youth, women and persons with disability (special groups). Worldwide, public procurement has become an issue of public attention and debate, and has been subjected to reforms, restructuring, rules and regulations. Public procurement refers to the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). According to Watermeyer (2003) public organizations have always been big purchasers, dealing with huge budgets. Mahmood (2010) also reiterated that public procurement represents 18.42% of the world GDP.Various countries both in developed and least developed countries have instituted procurement reforms involving laws and regulations. The major obstacle however, has been inadequate regulatory compliance (Gelderman et al., 2006) .

Procurement is central to the government service delivery system, and promotes aims which are, arguably, secondary to the primary aim of procurement such as using procurement to promote social, industrial or environmental policies (Cane, 2004). Public policy makers recognize the importance of the role of Small and Medium Enterprises (SMEs) in the economy, including the importance of their participation in the public procurement market. Public procurement can help in the development of an effective and efficient SME sector by providing appropriate opportunities for SMEs to demonstrate their skills and capabilities, including the purchase of goods and services which allows SMEs to develop and demonstrate innovative goods and services (Teixeira, 2012). In the past, procurement was considered mainly as an operational activity rather than as a key strategic function in the business planning process (Khosrowshahi, 2001). Public purchasers concentrated on compliance with rules and procedures set down in guidelines, regulations or directives to seek value for money outcomes from procurement while observing necessary standards of probity and ethics (Fong, & Choi, 2000).

Contractual relationships play a central and fundamental part in the delivery of public sector services and touch the lives of every citizen. Suppliers' actions are often critically important, and when things go wrong, the failure can be expensive in human, financial and reputational terms. Good management of the operational phase of the procurement is therefore key to successful service delivery (Banaitiene & Banaitis, 2006). Contract management activities can be broadly grouped into three areas: Service delivery management – ensures that the goods or services are being delivered as agreed, to the required level of performance and quality, and are supporting the business and operational need for the contract. Relationship management– keeps the relationship between the two parties open and constructive, and aims to resolve or ease tensions and identify problems early. Contract administration & change management– handles the formal governance of the contract and changes to the contract documents (Badaso, 2014).

According to Public Procurement and Disposal General Manual (2009) in Kenya, contract administration pertains to the preparation of procurement documentation, the processing and approval of such documentation, monitoring contract implementation, approving and administering contract variations and modifications, and possibly cancelling or terminating contracts. Weak contract administration is an invitation to corrupt practices. If a procuring entity fails to ensure that the vendor or contractor delivers to the specification or quantities of the contract this can lead to substantial losses (Simayi, 2005). If a procuring entity approves contract variations that lead to significant deviations from original agreed costs, this undermines effective competition since for example an increased volume of delivery

addressed at the time of tender could have led to significantly lower per unit prices from the competing bidders (Lam, Hu. & NG, 2005).

In 2010 Public Procurement was anchored in the New Constitution under Article 227 and in 2013 Preference and Reservations came into place. The Access to Government Procurement Opportunity Program is an affirmative action aimed at empowering youth, women and persons with disability-owned enterprises by giving them more opportunities to do business with Government (Gatere & Shale, 2014). It was introduced by government to facilitate the youth, women and persons with disability-owned enterprises to participate in government procurement (Republic of Kenya, 2013). A Presidential Directive was issued that 30% of government procurement opportunities be set aside specifically for enterprises owned by youths, women and people with disabilities. Government tenders amount to billions each year hence it is a great opening for the Youth, Women and Persons with Disability. In 2013, procurement rules were amended to allow 30 percent of contracts to be given to the youth, women and persons with disability without competition from established firms (Gatere & Shale, 2014).

Statement of the Problem

The regulations provide that a procuring entity shall allocate at least thirty percent of its procurement spend for the purposes of procuring goods, works and services from youth, women and persons with disability owned enterprises (Wanderi, 2014). The criterion for this allocation is centered on compliance with AGPO regulations. Registration and pre-qualification of Youth, Women and Persons with Disability owned enterprises for a basic foundation for accessibility to government tenders and contracts. Adequate contract management is an indicator of access to government procurement opportunities by special interest groups is successful. Effective contract management influence accessibility to government procurement opportunities by small and medium enterprises (SMEs) run by specialized groups playing a significant role in development of national economy (Thai & Grimm, 2001). However, access to public sector contracts by smaller entities and cooperatives is often unsuccessful, at national and global level, for many organizations in different sector of an economy. While accessing government procurement opportunities sustaining development impacts is key, it is the majority at grassroots that accelerate and sustain poverty reduction efforts (Gichure, 2007), hence the need to target the rural poor to achieve overall economic growth by funding them to be able to access public procurement. Gatere and Shale (2014) observes that contract management influence implementation of access to government procurement opportunities for special interest groups. However, based on government report by the Authority, there was zero compliance to AGPO by all county government entities, public schools, public universities and co-operative societies. All central government ministries reported their contracts and it was noted there was100% non-compliance of submission of procurement plans (Arrowsmith, 2010) This study seeks to determine whether there exist a significant relationship between contracting management process and compliance with AGPO regulations for special groups by Public Universities in Kenya.

Research Objectives

The objective of the study was to examine the relationship between contracting process and compliance with AGPO regulations for special groups by Public Universities in Kenya

Research Hypotheses

H_{01} There is no significant relationship between contracting process and compliance with AGPO regulations for special groups by Public Universities in Kenya

Literature Review

Poor documentation and contract management, along with weak coordination between the Government's representative, the procuring unit and the accounting unit undermine payment controls and lead to payments in excess of contract ceilings, especially in multi-year contracts (Cane, 2004). It is imperative that the Accounting Unit maintain accurate and up to date ledgers that properly track all contract payments and record contract totals and approved contract variations to serve as payment ceilings. Several procurement reviews in Kenya and elsewhere around the world have identified weak contract administration as a major source of loss and a significant area of abuse and corruption (Wittig, 2003).

A procurement Contract is a written agreement between a procurement entity and a supplier, contractor or consultant which is enforceable by law. Administration is defined as the activities involved in managing a business organization or institution (Badaso, 2014). Management is defined as the process of being responsible for a business organization or institution. In this part, contract administration and contract management shall have the same meaning and may be used interchangeably. In a procuring contract, the contractor has the responsibility of performing the contract as per the terms and conditions of the contract (Onsongo, Okioga, Otieno & Mongare, 2012). The procuring entity has the responsibility of meeting its obligation of paying the contractor as per terms and conditions of the contract. These are the basic responsibilities of the parties. For ensuring both parties perform and meet their obligations, procurement contracts must be managed. On the part of the procuring entity the procurement contract must be managed with an aim of obtaining goods, works and services as per contract and achieve value for money (Public Procurement and Disposal General Manual, 2009).

Onyinkwa (2015) revealed that ethics, awareness and training affected compliances of procurement regulations in public secondary schools. The study focuses on factors influencing compliance of procurement regulations in public secondary schools but failed to focus on examining determinants of compliance with AGPO regulations in public universities in Kenya. Jaafar, Ramli and Aziz (2014) noted that although compliance with the Government Procurement Policy is mandated by regulations, cases of non-compliance, irregularities and frauds in government procurement do still occur. Mandating compliance with procurement standards by law does not necessarily results in full compliance without concerning contract management factors. Rebecca (2007) found that lack of system integration and standardization issues, immaturity of procurement-based market services and end-user resistance;

maverick buying affects integrating commerce with other systems. Opportunism is the result of self-interest while uncertainty is the result of unforeseen difficulties embedded in every transaction. Lam, Ng, Hu, , Skitmore & Cheung, (2001) says that transaction costs relating to public procurement are those costs that enterprises incur in trying to access government procurement opportunities. In most cases, communication costs are higher for MSE than large organizations which hinder effective, fair and open competition among suppliers.
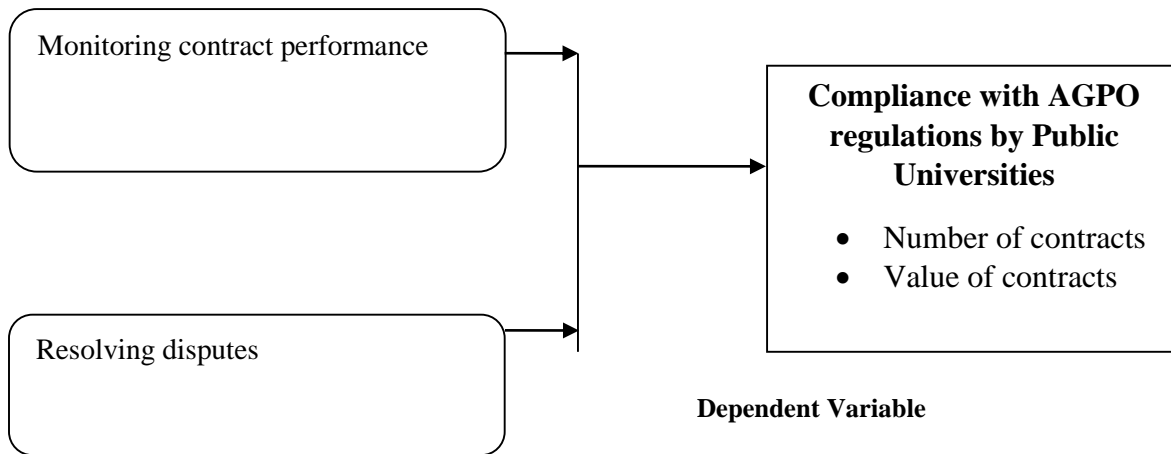
Conceptual Framework

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┌─────────────────────────────┐
│                             │
│  Monitoring contract        │──────┐
│  performance                │      │       ┌──────────────────────────┐
│                             │      │       │  Compliance with AGPO    │
└─────────────────────────────┘      ├──────▶│  regulations by Public   │
                                     │       │  Universities            │
                                     │       │                          │
                                     │       │   • Number of contracts  │
┌─────────────────────────────┐      │       │   • Value of contracts   │
│                             │      │       │                          │
│  Resolving disputes         │──────┘       └──────────────────────────┘
│                             │
│                             │                    **Dependent Variable**
└─────────────────────────────┘
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Figure 1: Conceptual Framework

RESEARCH METHODOLOGY

This study used a mixed research design as recommended by Saunders, Lewis and Thornhill (2009). This allowed the researcher to use both quantitative and qualitative research methods to establish the contract management as determinants of compliance with AGPO for special group's regulations. Quantitative methods emphasizes data analysis using measurements and in numerical form. The study adopted descriptive survey research design which made it possible to collect data to test hypothesis and make predictions (Kothari, 2004). Qualitative research design was used to collect qualitative data. The target population was 12 public universities and constituent colleges in Kenya. The respondents comprise of chief procurement officer, principal procurement officer, senior procurement officer, and procurement officer making a total of 106 supply chain officers in public universities. The sample size for this study was 62 respondents determine using Nassiuma (2000) formula from all the public universities. Primary data was collected using semi structured questionnaire. Secondary data was obtained from publications and reports.

Data Analysis and Presentation

Quantitative data was analyzed using descriptive and inferential statistics. Descriptive statistics such as frequencies, mean scores, percentages and standard deviation were used to analyze quantitative data. Correlation and multiple regression analysis were also used to analyze quantitative data. Linear multiple regression analysis was used to

establish the relations between the dependent and independent variables. Multiple regression analysis is a tool that uses two or more independent variables to predict a dependent variable.

$Y = \beta_0 + X_1 \beta_1 + \varepsilon$

Where Y is compliance with AGPO regulations

X_1= Contract Management, β_0 = a constant

β_1 - are changes in Y as a result of corresponding change in X

ε is the error term.

Results

The study targeted 62 respondents from 31 public universities in Kenya. All the administered questionnaires were filled and returned translating into 100% response rate. This excellent response rate can be attributed to the fact that the researcher administered the questionnaires personally and took ample time to conduct the study. Reliability was tested using Cronbach's Alpha coefficient of 0.848 hence the instrument was reliable. The study revealed that challenges in compliance with AGPO regulations were experienced to a moderate extent in contract management (M=3.63, SD=.487). The findings show that contract management poses the most challenges in compliance with AGPO regulations.

Descriptive Analysis

The results also show that to a moderate extent compliance with AGPO regulations was affected by modification of contract to accommodate changing needs or circumstances (negotiation) (M=3.24, SD=.843). The findings of this study also revealed that to a moderate extent. The study also established that to a moderate extent compliance with AGPO regulations was affected by conducting of final accounting (M=3.37, SD=.794) and closing out the contract involving special groups owned enterprises (M=3.06, SD=.508).

Level of Compliance

The results show that 29% of the respondents indicated total contracts awarded in the previous financial year were 51-60 while 25.8% of the respondents indicated that contract awarded were 21-30 and 41-50. The results also show that 8.1% of the respondents indicated that in their institutions total contracts awarded in previous financial year were 81-90 while 6.5% and 4.8% of the respondents indicated 61-70 and 71-80 respectively. These results are shown in table 1.

Table 1: Total contracts awarded in the last financial year

	Frequency	Percent	Cumulative Percent
'21-30'	16	25.8	25.8
'41-50'	16	25.8	51.6

'51-60'	18	29.0	80.6
'61-70'	4	6.5	87.1
'71-80'	3	4.8	91.9
'81-90'	5	8.1	100.0
Total	62	100.0	

On value of contracts awarded in the last financial year, 47.5% of the respondents indicated that value of contracts awarded in the last financial year as 501 million to 1 billion while 27.5% indicated 100-500 millions. The results also show that 12.5% of the respondents indicated value of contracts awarded in the last financial year as 1.1 billion to 1.5 billion and 1.6 billion to 2 billion each. These findings are shown in table 4. The researcher sought to establish the contracts reserved for special groups in the last financial year. The results show that 62.9% of the respondents indicated that contracts reserved for special groups in the last financial year were 11-20 while 29% indicated 21-30. The results also show that 8.1% of the respondents indicated that contracts reserved for special groups in the last financial year awarded to special groups were 31-40. On the value of contracts reserved for special groups in the last financial year awarded to special groups the results show that the majority of respondents indicated value of contracts reserved for special groups in the last financial year awarded to special groups as 50-100 millions while 43.8% indicated 100-500 millions. These findings are shown in table.

Table 2: Value of contracts reserved for special groups in the last financial year awarded to special groups

	Frequency	Percent	Valid Percent	Cumulative Percent
50-100 millions	27	43.5	56.3	56.3
100-500 millions	21	33.9	43.7	100.0
Total	48	77.4	100.0	

On the number of contracts awarded to the special groups in the last financial year, results show that the majority of respondents indicated 1-10 (75.8%) while 16.1% of the respondents indicated 11-20. The results also show that 8.1% of the respondents indicated that contracts awarded to the special groups in the last financial year in their institutions were 21-30. The results are summarized in table 3.

Table 3: Contracts awarded to special groups in the last financial year

	Frequency	Percent	Cumulative Percent
'1-10	47	75.8	75.8

'11-20'	10	16.1	91.9
'21-30'	5	8.1	100.0
Total	62	100.0	

On the value of contracts awarded to special groups in the last financial year, the results revealed that value of contracts awarded to special groups in the last financial year was 50-100 million (68.9%) while 31.1% indicated below 50 million. These results are shown in table 4.

Table 4: Value of contracts awarded to special groups in the last financial year

	Frequency	Percent
Below 50 millions	14	31.1
50-100 millions	31	68.9
Total	45	100.0

Correlation Matrix

Pearson Correlation analysis was used to examine whether there existed correlation between variables.

Table 5: Dependent and Independent Variables Correlations

		Compliance
Compliance	Pearson Correlation	1
	Sig. (2-tailed)	
Contract Management	Pearson Correlation	.542
	Sig. (2-tailed)	.001

Results in Table 5 indicate there exist correlation between contract management and compliance with AGPO regulations a Pearson correlation (r) =0.542. P=0.001>0.05. This implied that there is a significant relationship between contract management and compliance with AGPO regulations.

Regression Analysis Results

Multiple linear regression analysis was conducted to establish the contribution of contract management to level of compliance with AGPO regulations. The results in model summary show that contract process explain 80.7% of

change in level of compliance with AGPO regulations by public universities. Analysis of variance (ANOVA) was used to test whether the multiple linear regression analysis model used was fit for the analysis. F statistics was used to establish model fitness. Statistically significant F value indicated that model is fit. In this case, it was established that the model used was significantly fit (F=64.962, $p=0.000$). The study findings revealed that contract management contributed positively to level of compliance with AGPO regulations by a factor of 0.480. This contribution was statistically significant (β=0.480, $p=0.002$, t=7.483). The results concurred with Banaitiene & Banaitis, (2006) who noted that contract management play a significant central and fundamental part in the delivery of public sector services and enhance compliance with procurement regulation. These results are shown in table 6.

Table 6: Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.268	1.569		2.083	.000
	Contract Management	.480	.373	.031	7.483	.002

a. Dependent Variable: Compliance

H_{01} contracting management has significant effect on compliance with AGPO regulations for special groups by Public Universities in Kenya.

Summary

The compliance with AGPO regulations was affected by ineffective monitoring contract performance as measured by technical, schedule and cost (M=3.34, SD=.723). The findings also revealed that negotiation in enhancing compliance with AGPO regulations was affected by modification of contract to accommodate changing needs or circumstances to a moderate extent (M=3.24, SD=.843). The inadequate resolving of conflicts involving special groups owned enterprises, moderately conducting final accounting and failing to close out the contract involving special groups owned enterprises hinders compliance with AGPO regulations for special groups by Public Universities (M=3.06, SD=.508) and (M=3.37, SD=.794). The results revealed that there existed correlation between contract management and compliance with AGPO regulations a Pearson correlation (r) =0.542. P=0.001>0.05. This implied there is significant relationship between contract management and compliance with AGPO regulations .The finding established that contract management contributed positively to level of compliance with AGPO regulations by a factor of 0.480. This contribution was statistically significant (β=0.480, $p=0.002$, t=7.483). The results concurred with Banaitiene & Banaitis, (2006) who noted that contract management play a significant central and fundamental part in the delivery of public sector services and enhance compliance with procurement regulation.

Conclusion

Based on the study, it is concluded that contract process, monitoring contract performance, negotiation, modification of contract affect compliance with AGPO regulations in public universities. Inadequate conflict management among special groups owned enterprises, low accountability and poor contract management special groups owned enterprises hinders compliance with AGPO regulations for special groups by Public Universities in Kenya. In conclusion contracting management has significant effects on level of compliance with AGPO regulations for special groups. The government and other stakeholder should ensure effective contract management as this would promote public procurement and delivery of quality goods and service. Effective contract management would also promote development of an effective and efficient SME sector by providing appropriate opportunities for SMEs to demonstrate their skills and capabilities, including the purchase of goods and services which allows SMEs to develop and demonstrate innovative goods and services.

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