

Corruption in Public Procurement In Kenya

Dr. Charles Chama Nzai

Lecturer at Kenyatta University, Kenya

Department of Applied Economics, School of Economics

Email: ccchonjo@gmail.com

Abstract

Public procurement is a critical function within government that enables it to acquire various types of goods, services and works to facilitate effective performance of its mandate in provision of adequate services to citizens. Public procurement is also significant in catalyzing economic development of a country and if conducted prudently it may minimize wastage and loss of financial resources. The Kenya government spends billions of shillings to procure various goods, works and services every year but there is very little confidence by the public on the integrity of public procurement processes in the country. There are numerous complaints, allegations and accusations of graft on public procurement transactions worth billions of shillings with adverse implications on the wellbeing of the country's citizens. This study investigated the nature and possible causes of corruption in public procurement in Kenya by examining specific procurement transactions that were prosecuted in courts of law or were under investigation by relevant government agencies. Counterfactual analysis, deductive and inductive reasoning and descriptive analytical techniques were employed to analyze the data and information to make relevant conclusions in view of the identified variables of the study. The study observed that public procurement transactions in Kenya were heavily riddled with corruption as all the six forms of corruption and six causes of corruption that were investigated were exhibited in 67 per cent and 96 per cent, respectively, of all the transactions that were examined. The study concluded that corruption in public procurement is not a consequence of moral or ethical or religious fault of the people or business in the country. No. Corruption is symbiotically engrained with the country's political and business culture and practices and the three cannot be separated. Recommendations include amongst others that the country delink politics and business; delink corruption investigative and prosecution agencies from the Executive in any manner; reduce the dominance of private business in public procurement; and, establish an autonomous and independent Office for procurement practitioners in the country.

Key Words: *Corruption, Public Procurement, Forms of Corruption, Causes of Corruption*

Date of Submission: 03-04-2023

Date of Acceptance: 14-04-2023

I. Background of the Study

Public procurement consumes a significant component of every government's budget and is a critical function for effective operations of public entities and in the provision of services to a country's citizenry (Trionfetti, 2000). Public procurement generally means spending by governments, departments of governments and state-owned enterprises (SOEs) on various goods, services and works (World Bank, 1995). It is estimated that public procurement spend make-up about 10% to 20% of a country's Gross Domestic Product (GDP). Though statistics differ from one public entity to another, it is estimated that procurement spend comprise about fifty (50) per cent or more of an entity's budget (OECD, 2000). Public procurement is therefore a catalyst for economic development within and between countries and for that matter public procurements are subject to the 1981 plurilateral international treaty of the World Trade Organization (WTO) called the Agreement on Government Procurement (GPO). The treaty regulates procurements by member governments to ensure that they are open, transparent and non-discriminatory (WTO, 2021).

The government of Kenya through the Ministries, Departments, Government Agencies and State Corporations and the devolved forty-seven (47) County Governments spend billions of shillings every year to procure various types of goods, services and works. The ministry of health procures pharmaceutical and non-pharmaceutical products; the ministry of transport procures infrastructural projects such as roads; the ministry of agriculture procures tones of fertilizer and seeds; the ministry of defense procures various armament equipment and hardware amounting to billions of shillings. The largest single procurement in the history of the country was the completed (2019) Standard Gauge Railway (SGR) from the coastal town of Mombasa to Naivasha in central Kenya that cost the country approximately Ksh600 billion (USA \$6 billion) financed through a Chinese loan (Government of Kenya Reports). This project clearly indicates the significance of public procurement in

provision of critical services to citizens of a country but also the consequent risks to the Balance of Payment (BOP) Account of a country when such mega procurement projects are financed through borrowed funds. The table below illustrates a trend of government procurement spend for the country in selected years:

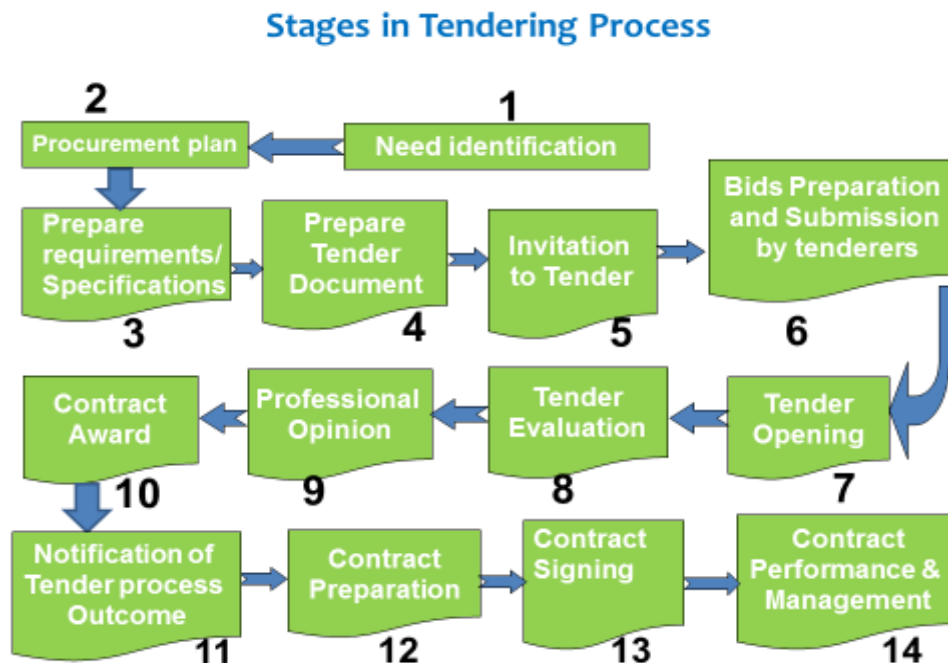
Table 1.1: Estimated Public Procurement Spend in Kenya (2013-2021)

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|------|------|-------|-------|-------|
| GDP in US\$ (Billions) | 55.3 | 61.7 | 63.3 | 71.2 | 74.9 | 87.9 | 100.3 | 100.6 | 110.3 |
| Estimated Procurement Spend in US\$ (Billions) | 11.1 | 12.3 | 12.7 | 10.7 | 14.2 | 17.6 | 20.0 | 20.1 | 22.1 |

Source: Author’s Computations from Kenya National Treasury Reports

Public procurement is a legislated function in Kenya where procurement transactions by public entities are required to comply primarily with the provisions of the Constitution of the country (Article 227); the Public Procurement and Asset Disposal Act, 2015; and, the Public Procurement and Asset Disposal Regulations, 2020. The Act prescribes rules and procedures regarding the processing of procurement and disposal transactions as public entities procure goods, services or works and dispose of assets. The rules and procedures touch on the entire procurement cycle from need identification; procurement planning; bid documents preparation; invitation for bids; methods of procurements; opening and evaluation of bids; technical advice by procurement professional; award of bids; notification of award; contracts management; and, disposal of assets as illustrated in Figure 1.1 below. These legislations also prescribe the roles of persons involved in the procurement and disposal processes; documents that must be produced in every stage of the procurement and disposal cycle; preferences and reservation schemes to domestically manufactured products and citizen suppliers and contractors. The bodies that were established by these legislations to regulate public procurement include The National Treasury; the Public Procurement Regulatory Authority (PPRA); and, the Public Procurement Administrative Review Board (PPARB), a tribunal established to adjudicate on complaints raised by tender candidates. Figure 1.1 below presents the procurement cycle as envisaged by the country’s procurement Act:

Figure 1.1: The Public Procurement Cycle



Source: PPRA Manual

II. Statement of the Problem

Notwithstanding the enactment of these legislations, public procurement is still riddled with a myriad of problems and challenges including low absorption of funds earmarked for procurements; delays in delivery of goods and services and completion of construction projects; shortage and incompetence of procurement professionals and experts; inadequate domestic market leading to massive importation of procured commodities; lack of adequate funds to finance procurement needs; delayed payments to suppliers; lack of capacity by local and citizen suppliers and contractors; and, above all corruption of various forms which was the subject matter of this study.

Corruption has been a hall mark of public procurement in Kenya throughout history from the time the country did not have specific legislations on public procurement until this time when public procurement is legislated. Though corruption is not a unique problem in Kenya, every country ought to deal with the problem of corruption in their country without comparison because the effects of corruption impact countries differently. Corruption is synonymous with public procurement in Kenya. Of all the prosecuted corruption cases in the country or those under investigations by relevant anti-corruption government agencies over 80 per cent of them are on public procurement. The confidence in public procurement processes by the public in the country is very low. The following are some of the public procurement scandals that have rocked the country:

Table 2.1: Examples of Public Procurement Scandals in Kenya

| No. | Public Entity Involved | Brief Description of Scandal | Estimated Cost (US\$) |
|-----|----------------------------------|--|-----------------------|
| 1. | Kenya Power and Lighting Company | Defective Transformers and Conflict of Interest in award of Contracts. | 7,590,000 |
| 2. | National Youth Service | Goods, Works and Services not Delivered but Paid. | 80,000,000 |
| 3. | Ministry of Health | Double Payment for Goods and Payment of Phony Suppliers. | 50,000,000 |
| 4. | The Anglo Leasing Scandal. | Various Ghost Security Contracts. | 600,000,000 |
| 5. | Kenya Pipeline Corporation | Paying Contractor for Operational Delays. | 44,000,000 |

Source: Author's Computations

Corruption in public procurement has led to loss of huge sums of taxpayers' money, wastage of resources and has denied the citizens critical services. The debilitating effects of corruption in public procurement on the wellbeing of the people in the country are severe and include: unnecessary deaths due to persistent short supply of pharmaceutical and non-pharmaceutical items in public hospitals; transportation and movement of people and goods is inhibited due to poorly done roads or never completed at all; suppliers are never paid; schools are never built; books are in short supply in schools; operations of public entities are frustrated; security agencies are constrained due to lack of adequate supplies; confidence in public entities and public officers is diminished; general hopelessness in the citizens; the character of the youth is spoilt and their hopes killed; regional integration efforts are tainted; and, the country does not realize economic growth and development. Generally, the tax payers in the country never get value for their money in public procurement.

As indicated below, various studies have been conducted around the world on the subject of corruption not only in public procurement but generally on the use of resources within public sector and the results and findings have been varying.

In his study on corruption scourge, Robert Klitgaard (1988) summarized corruption in the following formula:

$$\text{Corruption} = \text{Monopoly Position} + \text{Discretion} - \text{Accountability} \dots\dots\dots 1$$

Klitgaard explained that corruption is an outcome of the exclusive control that an individual holds over an operation (monopoly) plus adding into it the freedom to decide as he/she wishes (discretion). And then the absence of the individual not being held responsible by anyone for such a decision (accountability). Sofie Arjon Schutte, et. al (2017) in their study on corruption explained that anti-corruption measures are most effective when they are supported by other factors or measures and integrated in a reform package. They identified a need for iterative, problem-based approaches, which take an experimental approach from the outset and have special focus on learning when dealing with corruption. The Department for International Development – UK Aid (2015) in their study on corruption found out that corruption is facilitated by factors such as administrative; that corruption is collective rather than simply individual matter; is a symptom of wider governance dynamic, weak accountability, and, is systemic; corruption should be addressed on a case per case basis; and, that public financial management reforms are effective in reducing corruption. These studies were helpful in this research and facilitated investigations on nature and causes of corruption in public procurement in Kenya.

III. Objectives of Study

Generally, the study analyzed corruption in public procurement in Kenya to lay bare its manifestations for the benefit of the public and for reasons of informing policy making against the scourge. There is so much anger in the country on exactly what causes the rampant and never-ending corruption scandals in public procurement. Therefore, efforts to unearth the true reasons around these scandals without doubt were welcome. The study's specific objectives were:

- i. To investigate the nature or forms of corruption in public procurement.
- ii. To determine the causes of corruption in public procurement.

IV. Methodology of Study

4.1 Theoretical Arguments on Corruption

Corruption is more of an economic phenomenon than a moral or ethical one. This is because the motivation of the corrupt individual, the beneficiary, is money while the anger by society, the loser, is due to welfare-loss. Money to the beneficiary and welfare loss to society are both economic variables. Corruption harbors in it both costs and benefits even when those benefits may be short lived. To the corrupt individual, the higher the quantity of corruption, the higher the benefits but equally the higher the potential costs when he/she is caught. To the corrupt person the cost when caught is equivalent or commensurate to the expected benefit. Graphically, the cost curve (vertical axis) of the corrupt person is equally the same as the benefit curve rising from the left to the right as quantities of corruption (horizontal axis) increase. To society, the higher the incidences of corruption, the higher the costs to society in terms of lost resources or taxes or welfare loss; and, the lesser the expected benefits from the undelivered products as corruption incidences increase. To society, the cost curve (vertical axis) graphically rises from the left to the right as incidences of corruption (horizontal axis) increase and the benefit curve (vertical axis) drops from the left to the right as the incidences of corruption increase.

The concept of optimality to a corrupt person does not apply because the cost curve is the benefit curve and so there is nothing like intersection of curves. Theoretically, this means that there is no benefit whatsoever from corruption to a corrupt person. The perceived benefits only exist as long as he/she is not caught to account for the theft because of failure of relevant investigative or prosecution agencies – in the Klitgaard equation we noted that corruption only exists when there is no accountability. To a corrupt person optimality from corruption does not exist, that is, there is zero value from corruption according to theory. Paradoxically, however, looks like some quantity of corruption is optimal to society. That is the quantity of corruption at the point where the cost and benefit curves intersect. Theoretically, that quantity of corruption tells us that not all corruption is bad. There is some quantity of corruption that may be good and beneficial to society and society ought to live with it! So, who should engage in corruption when it is not beneficial to the corrupt person but some quantity of corruption is beneficial to society? At this point, it was not the objective of this study to determine the optimal quantity of corruption but this paradox is an area that requires further study.

4.2 Definition and Measurement of Variables

The identification and selection of the variables for the two objectives was based on both theoretical and empirical literature on corruption and on the researcher’s own observations and judgement on the matter. The following variables were identified for each of the two objectives:

Table 4.1: Definition and Measurement of Variables
Objective One – Nature of Corruption Incidences

| Objective One – Nature of Corruption Incidences | | |
|---|--|---|
| Variable of Study | Definition of Variable | Measurement |
| Inappropriate use of Procurement Method. | The method of procurement selected to procure goods, works or services is one potential way of committing procurement fraud. Single sourcing or direct procurement method is a non-transparent method and may be abused to satisfy personal interests. Contracts have also been entered and paid yet the method of procurement used cannot be justified within the requirements of the procurement law. | Yes if the transaction did not satisfy the required conditions of the method used or the other circumstances as defined. And No, otherwise. |
| Targeted Specifications. | Specifications may be developed smartly to tailor the procurement transaction towards a particular pre-identified bidder. As well as procurement legislations rejects stating specifications using specific trademark, brand or patent of manufacturers, public officers have always done it with excuses of trying to achieve excellent performance from products. Mandatory or technical requirements on assessing responsiveness of bidders have always been specified to favor certain bidders. For instance, the required sales turnover of firms may be raised so high to lock out certain bidders from participating. | Yes if any of the defined circumstances was observed in the transaction. And No, otherwise. |
| Skewed Evaluation of Bids | The potential for corruption incidences is highest at the evaluation stage of the procurement process. The evaluation criteria or a bidder’s documents may deliberately be miss-interpreted just to disqualify a certain bidder. Pages may be plucked off from a bidder’s document for reasons of failing them. A bidder may deliberately be awarded little scores to knock them out. Evaluators have been bribed by bidders or have been instructed by their superiors to recommend award to a | Yes if any of the defined circumstances was observed in the transaction. And No, otherwise. |

| | | |
|--|--|---|
| | particular bidder whether they are technically competent or not. | |
| Favoritism in Award of Contracts. | The awarding of bids is the prerogative of the head of the procuring entity (Accounting Officer). Therefore who is to be awarded in most cases will be determined by the wishes of the Accounting Officer whether there is merit or none. The Head of Procurement Department ought to advice on award of bids, but the Boss often will have his or her way. | Yes if such a scenario was observed or alluded to in the transaction. And No, otherwise. |
| Ghost Payments. | Payments are made in procurement transactions even when full quantities or part of the quantities are not delivered. Payments have also been made for substandard items that never satisfied the specifications. Roads have been fully paid which were never constructed at all. Contractors have been paid large sums of money for fictitious transactions. Or payments have been made repeatedly for the same contract. | Yes if any of the defined circumstances was observed in the transaction. And No, otherwise. |
| Inflated Prices. | Prices of goods, works and services have been exorbitantly inflated far above the market prices for personal benefit of public officers. | Yes if this scenario was observed in the transaction. And No, otherwise. |
| Objective Two – Causes of Corruption Incidences | | |
| Variable of Study | Definition of Variable | Measurement |
| Moral Hazard Behavior on the Public Sector. | In Kenya the public sector is unfortunately perceived as an area to make money and enrich oneself and not facilitate provision of adequate services to the citizens. There is so much potential for moral hazard behavior within the public sector by both workers and suppliers. | The study decided to consider this variable as a valid cause of corruption that would be revealed through the interviews. |
| The Boss is the Problem | It is a common saying that the fish starts rotting from the head. It will be very difficult or impossible for corruption incidences to end in public procurements within public entities as long as the Bosses are involved in them. Procurement processes require approvals at various stages including by bosses and as long as the junior see or suspect the involvement of the seniors they will too follow suit. Bosses influence or bulldoze how procurements should be processed or paid. | The culpability of the Accounting Officer in the case will be considered as evidence that he or she chose to involve oneself in the scandal. |
| Weak Internal Accountability Systems | When corruption incidences involve the ‘Bosses’ and when they are executed through collusion by various members of staff then accountability and audit systems within the procuring entity naturally collapse. One procurement transaction involves several persons within the procuring entity. It is therefore natural that if a transaction is corruptly processed then virtually all the persons involved in its processing were involved. Corruption incidences within procuring entities in most cases only leak out when a party did not get their expected share of the loot. It is very difficult for an auditor to pick out corrupt transactions within procuring entities when officers collude because officer will cooperate to hide or doctor information and documents. | This variable was considered to have occurred where collusion was envisaged. Especially if all the persons prosecuted were those who ought, as per the requirements of the procurement law, to have been involved in the processing of the transaction. |
| Low Salaries in Public Sector | Salaries and wages are the genuine sources of income and living for public officers. True a thief is a thief but let salaries and wages not allow for excuses for corrupt practices. The relatively low salaries paid to public officers potentially encourage corruption in public procurement and it is therefore difficult to differentiate between those who engage in corruption for economic survival and those who engage in corruption because they were born thieves. In view of the cost of living in the city of Nairobi and others in terms of food, housing, transport, education and personal development the salaries are too low to sustain these demands. That naturally provides the motivation, excuses and sympathy to engage in corruption. | The study decided to consider this variable as a valid cause of corruption in all cases examined and through the interviews. |
| Suppliers’ Influence | The capitalist nature of Kenya’s economy where the government buys virtually everything from private businesses, compounded with a very competitive and expensive political system, that has made suppliers in Kenya a very powerful lot. Suppliers finance political parties and politicians for reward of procurement contracts once the politicians form government. Suppliers are very powerful persons in Kenya who can influence budgets of procuring entities, awards of contracts, transfers of staff or even sacking of senior officers within public entities. | The study decided to consider this variable as a valid cause of corruption in all cases examined. The nature of corruption as examined in objective one should be able to corroborate this variable and the interviews as well. |

| | | | |
|----------------|--------------------|--|---|
| Weak Oversight | ExternalCorruption | The procurement law established an agency to ensure that public entities comply with the provisions of the law as they procure. That is, the Public Procurement Regulatory Authority (PPRA). There are also the Ethics and Anti-Corruption Commission (EACC) and the National Police Service through the Director of Criminal Investigations (DCI) also conduct investigations on corruption in public procurement. Most of the times these agencies just react to investigate transactions that leaked or were whistle blown otherwise they would not have picked them for investigation. | There are thousands of procurement transactions executed by public entities in the country. This study assumed that many corrupt transactions pass unnoticed. For that reason, the study decided to consider this variable as a valid cause of corruption in the country. |
|----------------|--------------------|--|---|

4.3 Data Type and Source

The study examined one hundred and fifty-four(154) procurement transactions from various public entities in the country where officers from those public entities and suppliers or contractors appeared in courts of law to answer to various corruption charges with regard to their involvement in the processing of the transactions; and/or examined transactions that were under investigations by relevant investigation agencies. The study also made reference to reports published by the Public Procurement Regulatory Authority (PPRA). Several public procurement practitioners (60) and suppliers in the country were interviewed to provide information that was required for the identified variables. Some of the court cases that were examined were in public domain and information about them especially on the charges was not a challenge.

4.4 Analytical Techniques

Counterfactual analysis technique; deductive and inductive reasoning; and, descriptive analysis technique were appropriately used in analyzing the data and information from the procurement transactions and interviews to make relevant judgements and conclusions and to present the results and findings as indicated in section 5.0 below. Given that public procurement processes are regulated by legislations, counterfactual analysis was naturally appropriate in examining the conduct of the procurement transactions under investigations against the requirements of these legislations then make meaningful conclusions in relation to study's variables. Corruption is a sensitive matter and it is rare to find a culprit who will admit that truly he or she intended or actually stole or defrauded and so these analytical techniques were the appropriate ones to use in this kind of a matter.

V. Empirical Results and Discussions

5.1 Objective 1: The Nature or Forms of Corruption in Public Procurement

Table 5.1 below provides a summary of the descriptive statistics of the six variables that were identified as the nature and forms of corruption in public procurement.

Table 5.1: Descriptive Statistics on Nature or Form of Corruption

| Variable | Total Cases Analyzed | Number of Occurrences | Percentage Occurrences (%) |
|--|----------------------|-----------------------|----------------------------|
| Inappropriate use of Procurement Method. | 154 | 100 | 65% |
| Targeted Specifications. | 154 | 63 | 41% |
| Skewed Evaluation of Bids | 154 | 123 | 80% |
| Favoritism in Award of Contracts. | 154 | 139 | 90% |
| Ghost Payments. | 154 | 60 | 39% |
| Inflated Prices. | 154 | 129 | 84% |
| MEAN | 154 | 102 | 67% |

Source: Author's Computations

Of the 154 procurement transactions that were examined, all the six forms of corruption that were envisaged were exhibited in 102 of the transactions translating to 67% of the transactions under study. In average, all the six forms of corruption investigated were highly exhibited in all the transactions that were investigated. The form of corruption that was highly exhibited in the transactions that were studied was favoritism in awards of bids which was exhibited in 139 transactions of the 154 that were investigated translating to 90 per cent of the cases. This outcome is a clear manifestation that corruption in public procurement is not a coincidental phenomenon but a well-designed, calculated and planned outcome. Favoritism in award of contracts was characterized by, at the extreme, contractors or suppliers being awarded contracts and paid yet they had not participated in the procurement process at all; and, awards made to contractors and suppliers who had no capacity to perform the contract.

The forms of corruption that were exhibited the least were ghost payments and targeted specifications which were found in 60 and 63 of the 154 transactions, that is, in 39 and 41 per cent of the transactions, respectively. Targeted specifications as a form of corruption is difficult to investigate or does not manifest itself easily in a transaction unless the investigator is able to access the bid documents and therefore this low occurrence was expected. Likewise, ghost payments are a serious crime but are easily noticeable by the investigators in many corruption cases and are therefore avoided by most corrupt persons which explains the low occurrence as well. Targeted specifications in the transactions that were studied were characterized by setting qualification requirements to suit a predetermined bidder and false justification that only a certain contractor or supplier can perform the contract. Ghost payments observed included paying contractors or suppliers who never delivered items nor performed any contract and double payment on a single transaction.

The second highest form of corruption that was observed in the transactions was inflated prices of items which was observed in 129 of the 154 transactions that were studied which is an occurrence rate of 84 per cent. People engage in corruption to make money. The high number of transactions that exhibited this form of corruption confirms this statement to be true. That money is the main motive why many persons engage in the vice as was argued out above in section 4.1. The observations were that prices of commodities were exorbitantly far above the market prices; and, in addition sometimes contractors were unnecessarily paid for avoidable delays that were occasioned by the procuring entity. In discussions with suppliers and contractors, they admitted that there isn't any other place they will get the money to bribe officers of the procuring entity other than inflating prices of the products or performing the contract below par. Some of the suppliers complained that they had at some point used their money to secure contracts only to be short-changed. For that matter, suppliers and contractors said they had become clever and enlightened and therefore ensured that any money that would be demanded and paid-out to officers of the procuring entity is factored in the subject transaction.

Skewed evaluation was the third most recurring form of corruption in the transactions that were studied with an occurrence of 80 per cent having been observed in 123 transactions out of the 154. Bid evaluation is critical in determining who may win the bid and is therefore one stage prone to manipulation to serve personal and corrupt interests which explains the slightly high occurrence rate of this form of corruption. In some of the charges that were placed against public officers in these transactions, the investigation agencies documented that certain bidders did not have mandatory documents that were required during evaluation such as tax compliance certificates but were scored as responsive on the same. One public entity procured second-hand vehicles yet government policy did not allow such. But the bids were evaluated and one successful bidder was determined and was issued a contract to supply the second-hand vehicles. Another public entity received defective electricity transformers because the supplier did not have the capacity to supply genuine products but the supplier passed all the evaluation processes and was awarded a contract.

Inappropriate use of procurement method as a form of corruption was observed in 100 of the 154 transactions that were studied translating to 65 per cent of the transactions. This form of corruption was highly exhibited through the use of direct procurement or single sourcing method of procurement where the justification for use of the method did not satisfy the provisions of the procurement law. Direct procurement is a non-competitive method but serves well on matters of corruption because it is one sure way of awarding contracts to persons of interest. In direct procurement only a single seller is chosen without engaging them in competition against others. This finding was corroborated by the observation that where direct procurement method was prosecuted as not justified in the transaction, favoritism in award of contract was also positive. The other ways in which this form of corruption was exhibited was the case where the procurement transaction could not fit into any of the procurement methods that have been prescribed in the procurement legislations. The public entity just processed the transaction in their own way. Other instances where this form of corruption was observed was where restricted tendering method and prequalification procedures did not satisfy the prescribed conditions. In restricted tenders, the public entity ought to justify why it is restricting the tender within the provisions of the procurement law. Most of the justifications for use of restricted tendering did not comply with the requirements of the procurement law. The procurement legislations regulating public procurement prescribe that open tender method or open competitive bidding should be the preferred method of procurement because it allows many potential bidders to compete for the procurement opportunity with the expectation that such a method guarantees lower prices due to competition. But the method is not preferred on matters of corruption because it is difficult to control the interests of the corrupt persons since no one knows who and how many bidders will participate. Competition is good for procuring entities and the citizens because they purchase products at low prices but is bad for the corrupt person as he or she loses control and power to direct the corruption proceeds the way he or she wants. Competition at times is equally not good to bidders because they cannot dictate the price of products as they wish.

5.2 Objective 2: Causes of Corruption in Public Procurement

Table 5.2 below provides a summary of the descriptive statistics of the six variables that were identified as the causes of corruption in public procurement.

Table 5.2: Descriptive Statistics on Causes of Corruption

| Variable | Total Cases Analyzed | Number of Occurrences | Percentage Occurrences (%) |
|---|----------------------|-----------------------|----------------------------|
| Moral Hazard Behavior in Public Sector. | 154 | 154 | 100% |
| The Boss is the Problem. | 154 | 144 | 94% |
| Weak Internal Accountability Systems. | 154 | 139 | 90% |
| Low Salaries in Public Sector. | 60 (Intv) | 54 | 90% |
| Suppliers' Influence. | 60 (Intv) | 58 | 97% |
| Weak External Corruption Oversight. | 154 | 154 | 100% |
| MEAN | 154/60 | 148/56 | 96%/93% |

Of the 154 procurement transactions that were examined, four of the six causes of corruption (moral hazard behavior in public sector; the Boss is the problem; weak internal accountability systems within procuring entities; and, weak external corruption oversight by established government agencies) were valid in 96% of these transactions (148 transactions). The two other causes of corruption (low salaries in public sector; and, suppliers' influence in procurement processes) were cited and acknowledged as valid causes of corruption in public procurement by 93% (56 practitioners) of the procurement practitioners that were interviewed. These causes of corruption should not be a justification for corruption in public procurement in Kenya, but these statistics acknowledge that corruption in public procurement is a reality in the country.

The major causes of corruption in public procurement in Kenya are the moral hazard behavior on the public sector and weak external corruption oversight by established government agencies in the country which were both revealed in all the 154 transactions that were examined. It was evident that public procurement in Kenya was an arena for people to make money and get rich, the moral hazard behavior. Public procurements are not transactions that are aimed at acquiring goods, works or services to genuinely provide services to the citizens. It was astonishing to observe from the procurement transactions under investigation how senior government officials defrauded their own public entities millions of shillings through transactions that were disguised as procurement transactions while they were not without an iota of shame. More discouraging is the fact that ordinary citizens have lost hope completely with regard to the integrity of the public procurement system in Kenya. It was deduced that if the government agencies that were established with the mandate to oversee compliance and prosecution on the conduct of public procurement processes were proactive, most of the mis-procurements or irregular transactions would have been prevented. These agencies were reactionary most of the times to the scandals and came in late when contracts had already been signed and products are delivered. Why the agencies were not proactive or did not act in a preventive manner, was a question that I could answer by just examining these procurement transactions. However, some of the transactions under examination involved very senior people in government such that the Heads of these agencies would not dare touch or investigate. Corruption in public procurement in Kenya is that deeply entrenched. So, lack of proactiveness or not-wanting to prevent corruption in procurement transactions by these government agencies is a forced inaction out of fear. These agencies have reduced themselves to serve as weapons of the Executive on matters of corruption in the country. This is because the Heads of these agencies are appointed by the Executive or report directly to the Executive on their operations. This is the gist of the problem why these agencies will not effectively fight corruption. For that matter, they do not behave in a manner as to be seen to look at the bigger picture why corruption should be ended in the country other than just being happy to serve the interests of the Executive. The Executive and these agencies are the only two persons who should be held squarely accountable for the costs and debilitating effects of corruption to the people of Kenya.

The second major cause of corruption in public procurement in Kenya was suppliers' or contractors' influence in the procurement processes. This particular cause of corruption was mainly investigated through snowballing-interviews especially with practitioners. Suppliers and contractors were also cautiously interviewed on this variable but as expected little affirmative responses came from them. The results of this variable through the interviews were corroborated by the findings in objective 1 where for instance, 139 transactions out of the 154 transactions that were studied revealed that there was favoritism in award of contracts. It is not possible that the contract awarding authority will favor award of contract to someone he or she does not know or without having some discussions with that supplier or contractor. Further, in objective one it was observed that 129 of the 154 transactions that were studied had prices of the products inflated and were awarded contracts. Prices are quoted by bidders and if those inflated prices were awarded contracts, then some level of collusion between officers of the procuring entity and the bidder cannot be ruled out. It was revealed during the interviews that certain suppliers or contractors in the country were very powerful in influencing decisions in government including hiring and firing of very senior government officials; and, directing and dictating budgetary allocations in government ministries and departments. These findings should not be surprising because the ghost payments in the fraudulent procurement transactions that were studied were paid through companies and firms

belonging to suppliers and contractors. Politics in Kenya is predominantly a game of the rich and wealthy. Suppliers and contractors and other business persons are the major financiers of politicians and political parties at all levels of elective positions. Naturally, the suppliers and contractors will want to recover their money once the politician they financed wins and that reciprocation or compensation is done through awarding them lucrative contracts. In Kenya this is done without fear of shame.

The involvement of the Head of the procuring entity (the Boss) in the outcomes of the procurement processes was the third major cause of corruption in public procurement in Kenya. It was observed in 144 of the transactions (out of 154) that were examined, that the Boss influenced or bulldozed award of these transactions. The Head of the procuring entity in public procurement is the ultimate awarding authority of contracts and in relation to the findings in objective 1 that 90 per cent of the transactions exhibited favoritism in award of contracts, the Heads of those procuring entities concerned should ultimately be held accountable for those irregularities. Astonishingly, the interviews revealed that the Bosses of the procuring entities do not actually hold much power in decision making within those entities. Power and authority in those procuring entities is held outside including by politicians or suppliers and contractors. First of all, that may be true because appointments to those posts are not done on merit basis but through hand-picking and so he who pays the piper calls the tune. The administrative processes that are conducted in these appointments are simply decorations but more so public relations tactics to fool and hoodwink the public that due processes were observed. Otherwise, someone somewhere already made a decision on who should occupy what position. At the time of concluding this study, it was on record and in public that senior officers in the country's executive made statements that alluded to who ought to be appointed and who ought-not to be appointed in government. Once again, there is no shame even at the highest echelons of power in the country with these actions.

Weak internal accountability systems and low salaries within the public sector scored the least at 90 per cent occurrence as causes of corruption in public procurement in the country. If procuring entities had effective anti-fraud or compliance internal mechanisms most of the scandals would be prevented and avoided but they were not evident. Internal and external auditors conducted audits only after the transaction was concluded but not when the transaction was in progress. The internal and external audit systems are deliberately designed this way not to interfere but to facilitate fraud. There is no justification or reason whatsoever why a contract with inflated prices is ultimately signed, performed and paid after going through evaluation, awarding and contract management stages and the internal audit system did nothing to stop that. Practically that is complacency. Salaries for procurement practitioners in the public sector are low compared to their counterparts in the private sector and that was cited as a reason why practitioners engaged in corrupt or fraudulent behavior. Low salaries notwithstanding, procurement practitioners cannot stop fraud from occurring in procurement transactions even in the stages of the procurement process where they are directly required to make decisions. Procurement practitioners are powerless in the entire stages of the procurement cycle and can rarely stop irregularities from happening and so end up just facilitating fraud instead of risking losing their job or be transferred to other stations. The procurement practitioner ends committing fraud sometimes by choice or at times by force. Even if salaries were high the procurement practitioner would still have little control with regard to orchestrated fraud in procurement transactions because as it has been explained earlier, the real decision makers on the outcomes of procurement transactions are external parties in most of the times. Some procurement practitioners have dared to stand firm on principles of integrity but have paid the price in terms of being sacked or transferred to other stations or have just been ignored. The interested and powerful parties in procurement transactions within public entities are outsiders and therefore the role of the procurement practitioner is a delicate one. The procurement practitioner requires to make use of more of public relations in his or her involvement in the processing of the procurement transaction than the professional training in procurement and supply chain.

VI. Conclusion and Recommendations

Corruption in public procurement or corruption generally in Kenya is not a phenomenon out of moral or ethical or religious fault of the people or businesses in the country, no. Corruption in Kenya is an economic and political phenomenon. Corruption in public procurement as it was observed from the study's findings is engrained symbiotically within the country's political and economic systems. That is, in Kenya you cannot separate corruption in public procurement from the existing political and economic systems. They are all complementary parts of the same system. Corruption is a natural part-and-parcel of the existing political and economic or business culture and practices in Kenya. Corruption in public procurement in Kenya is a well-designed, planned, coordinated and controlled phenomenon with clear objectives of enriching specifically identified and targeted persons or businesses at an individual transaction level or overall. Corruption in public procurement does not just happen as a coincidence, not at all. It is a clear and smartly calculated phenomenon. Procurement transactions that reveal the contrary are in fact abnormal because they are in the first place rare. The symbiotic relationship between politics, economics/business and corruption in public procurement may be summarized as follows: Politicians need money to play politics – suppliers and contractors (business

community) are the major financiers of politicians – the politician wins – the politician influences appointments of heads of procuring entities – suppliers and contractors must be rewarded and compensated their donations to politicians through procurement contracts. Corruption in public procurement will not be stopped through moral or ethical persuasions or through heightened religious invigorations. To stop corruption in public procurement the study recommends the following:

- a) Delink politics from business by for instance making political parties self-sufficient in financial resources;
- b) Abolish the power of politicians or their associates to directly or indirectly influence appointments of heads of procuring entities;
- c) Accord heads of procuring entities and other government agencies security of tenure once appointed into office;
- d) Abolish Board of Directors in government parastatals;
- e) The members of the country's Executive at the National and County levels must make a genuine and honest determination of either to enrich themselves and their associates or fight corruption because they can't do both (this is the anchor recommendation that may determine effectiveness of all other recommendations herein);
- f) Establish an autonomous and independent Office for Procurement Practitioners similar to the Office of the Auditor General and remove procurement practitioners from being staff of the National Treasury or the procuring entity;
- g) Re-engineer the existing investigative and prosecution government agencies on corruption, first, by changing their mindsets and second, by delinking them completely from the Executive in any manner;
- h) Reduce (don't eliminate) the dominance of private business as suppliers and contractors of required goods, works and services in public procurement;
- i) Uphold, uphold meritocracy in all appointments in any office.

REFERENCES

- [1]. Constitution of Kenya, 2010.
- [2]. Ethics and Anti-Corruption Reports, Kenya.
- [3]. Government of Kenya (2021). "Economic Surveys", Various Issues, Government Printer, Nairobi.
- [4]. Government of Kenya (2021). "Statistical Abstracts", Various Issues, Government Printer, Nairobi.
- [5]. Judiciary of Kenya Reports.
- [6]. Klitgaard, R. (1988). *Controlling Corruption*, University of California Press: Berkeley.
- [7]. Kwagbenu, D. (2003). "Capacity Building in Government Procurement – The Experience of Ghana", Accra, Ghana.
- [8]. National Police Service (Director of Criminal Investigations) Reports, Kenya.
- [9]. Odhiambo, W. and Kamau, P. (2003). "Public Procurement: Lessons from Kenya, Tanzania and Uganda", IDS/OECD Nairobi, Kenya.
- [10]. OECD (2000). "Measuring the Impact of Public Procurement Policy, First Indicators, Single Market News", March 2000, Paris, France.
- [11]. Public Procurement Administrative Review Board Decisions Kenya.
- [12]. Public Procurement and Asset Disposal Act, 2015, Kenya.
- [13]. Public Procurement and Asset Disposal Regulations, 2020, Kenya.
- [14]. Public Procurement Regulatory Authority Reports, Kenya.
- [15]. The National Treasury, Kenya, Reports.
- [16]. Trionfetti, F. (2000). "Discriminatory Public Procurement and International Trade", *The World Economy*, Vol. 23 pp. 57-76.
- [17]. Wittig, W.A. (1998). Report of the Conference on Public Procurement Reform Conference in Africa, Cote d'Ivoire, 30 November-4 December 1998, International Trade Center, Geneva.
- [18]. World Bank Reports.
- [19]. World Trade Organization Reports.

Charles Chama Nzai. "Corruption in Public Procurement in Kenya." *IOSR Journal of Economics and Finance (IOSR-JEF)*, 14(2), 2023, pp. 31-40.