

**LOCAL GOVERNMENT AUTHORITIES' COMPLIANCE WITH
PUBLIC PROCUREMENT LAW IN MAINLAND TANZANIA: A
CASE OF DODOMA AND CHAMWINO COUNCILS**

**LOCAL GOVERNMENT AUTHORITIES' COMPLIANCE WITH PUBLIC
PROCUREMENT LAW IN MAINLAND TANZANIA: A CASE OF DODOMA
AND CHAMWINO COUNCILS**

By

EUSTARD PETER NGATALE ATHANACE

**A Dissertation Submitted in Partial Fulfilment of the Requirements for the
Award of a Degree of Mater of Laws in Commercial Law (LL.M –CL) of
Mzumbe University**

2019

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled **Local Government Authorities' Compliance with Public Procurement Law in Mainland Tanzania: A Case of Dodoma and Chamwino Councils**, in partial fulfilment of the requirements for award of the degree of Masters in Commercial Law (LLM-CL) of Mzumbe University.

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I, **Eustard Peter Ngatale Athanace** declare that, this dissertation is my own original work that has not been presented and will not be presented to any other university for a similar or any other degree award.

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DEDICATION

This dissertation is dedicated to my father the late Peter Ngatale Athanace and my mother the late Colleta Kabula Nsana. They are still remembered for their patience and kindness. May their souls rest in eternal peace; Amen.

LIST OF ABBREVIATIONS

AO	Accounting Officer
APP	Annual Procurement Plan
AG	Attorney General
CAG	Controller and Auditor General
CAP	Chapter
CD	Council Directors
CPAR	Country Procurement Assessment Report
CTB	Central Tender Board
DED	District Executive Director
EU	European Union
GPSA	Government Procurement Services Agency
LGA	Local Government Authority
LLGAs	Lower Local Government Authority
NAO	National Audit Office of the United Republic of Tanzania
PCCB	Prevention and Combating of Corruption Bureau
PE	Procuring Entities
PMU	Procurement Management Unit
PO-RALG	President's Office Regional Administration and Local Government
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPPD	Public Procurement Policy Division

PPR	Public Procurement Regulations
PPRA	Public Procurement Regulatory Authority
PS	Permanent Secretary
RAS	Regional Administration Secretary
R.E	Revised Edition
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
VfM	Value for Money
WTO	World Trade Organisation

ABSTRACT

This study examined the adequacy of the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania with the view to determining the factors that make LGAs fail to comply with the said law and make recommendations thereto. The study was motivated by the fact that, notwithstanding different reforms and efforts done by the government to improve the public procurement legal and regulatory framework, the Controller and Auditor General (CAG) and Public Procurement Regulatory Authority (PPRA) reports shows that in Local Government Authorities (LGAs) there is non-compliance with the said framework. The study used case study design and qualitative approach whereas data were collected through documentary review, interviews, and open-ended questionnaires. The consultation was made to 40 respondents out of 48 selected respondents who were obtained through random and purposive sampling from Dodoma City Council and Chamwino District Council. The data obtained through documentary review and field study both through questionnaire and face to face interview was thereby analysed and interpreted qualitatively.

The findings of this study show that there are several weaknesses in the legal and regulatory framework of public procurement in Mainland Tanzania which mainly contribute to LGAs' non-compliance with the public procurement law. One of the major weaknesses is the complexity of the law, toothless organs, and institutions of enforcing compliance, centralisation of the PPRA, and lack of independent oversight authority.

The study recommends for further amendment to the public procurement legal and regulatory framework to reduce the complexity of the law, establish an independent oversight authority, decentralise the PPRA offices and create of a mechanism for the general public to lodge complaints in case of PEs' non-compliance with the law.

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LIST OF STATUTES

LOCAL LEGISLATION

Principal Legislations

The Executive Agencies Act, No. 30 of 1997

The Exchequer and Audit Ordinance, CAP 439 of 1961

The Local Government (District Authorities) Act, CAP 287

The Local Government Finances Act, CAP 290

The Local Government (Urban Authorities) Act, CAP 288

The Medical Stores Tender Board Act, No. 13 of 1993

The Prevention and Combating of Corruption Act, No 11 of 2007

The Public Procurement Act, No.3 of 2001

The Public Procurement Act, No. 21 of 2004

The Public Procurement Act, No. 7 of 2011

The Public Procurement (amendment) Act, No. 5 of 2016

Subsidiary Legislations

The Code of Ethics and Conducts for Public Service, 2003

The Executive Agencies (Finance, Procurement and Stores) Regulations,
Government Notice No. 77 of 1999

The European Union Public Procurement Directives, 2014

The Financial Orders Part III (Stores Regulations), 5th Edition, of 1965

Local Government (District authorities) Councillor's Code Conducts Government
Notice. No. 281 of 2000

The local Government (Procurement of Goods and Works) Regulations, Government
Notice No. 49 of 2003

The Local Government (Selection and Employment of Consultants) Regulations,
Government Notice No. 48 of 2003

The Local Government (Staff Code of Conduct) Regulation 2000.

The local Government Tender Board (Establishment and Proceedings) Regulations,
Government Notice. No.330 of 2014

The Local Government (Urban authorities) Councillor's Code Conducts Government
Notice. No. 279 of 2000

The Procurement of goods and works Regulations, Government Notice No. 138 of
2001

The Public Procurement (goods, works, non-consultant services and disposal of
Public assets by Tender) Regulations, Government Notice No. 97 of 2005

The Public Procurement Regulations, Government Notice.No.466 of 2013

The Public Procurement (Selection and Employment of Consultants) Regulations,
Government Notice No. 137 of 2001

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Several efforts have been made by the Government of the United Republic of Tanzania to improve the public procurement system after realising its importance in the economic growth, poverty reduction and good governance¹. Such reforms resulted in the establishment of the present legal and regulatory framework of public procurement in Mainland Tanzania.² The established legal and regulatory framework was intended to put in place a better regulatory framework that aimed at achieving value for money.³ Despite this legal and regulatory framework, the Controller Auditor General (CAG) and the Public Procurement Regulatory Authorities' (PPRA) reports⁴ show that, compliance with the public procurement law among Public Procurement Entities (PEs) in Mainland Tanzania is not impressive.⁵

The CAG and the PPRA identified a number of issues and weaknesses on PEs compliance with the public procurement law in Local Government Authorities (LGAs).⁶ Non-compliance with the public procurement law in LGAs has resulted in the loss of government money and adverse impact in the implementation of some

¹ See Huka H.A, Mchopa A.D and Kimambo J.J (2014) "Analysis of Procurement Procedures in Local Government Authorities": Experience after Procurement Reforms and Case Analysis from Selected Councils in Kilimanjaro Tanzania.

² The established legal and regulatory framework of public procurement includes the Public Procurement Act (PPA) 2011 and its amendments of 2016, The Public Procurement Regulations 2013 and its amendments of 2016, The Local Authorities Tender Boards (Establishment and Proceedings) Regulations.

³ See section 8,47,49 and 63 of the PPA, see also Regulation 135,142,166,369 of PPR 2013 which generally insist the PEs when executing their duties, to take into account the need to obtain the best value for money.

⁴ See the Annual Performance Evaluation Report for the financial year 2013/2014, 2014/2015, 2015/2016 and 2016/2017 conducted by PPRA and CAG.

⁵ See the Annual Performance Evaluation Report for the financial year 2013/2014, 2014/2015, 2015/2016 and 2016/2017 conducted by PPRA and CAG. Also, see the PPRA Annual Performance Evaluation Report for Financial Year 2017/18.

⁶ The identified weaknesses by the PPRA and CAG reports which are said to have been repeating in every year includes; inadequate preparation and implementation of procurement plans; lack of competitive procurement process; the use of imprest and petty cash in procurement; lack of proper documentation; corruption, lack of competition; the use of false account; signing contract without assurance of availability of fund and tender board approval , use of private garages to repairs and maintenance of motor vehicles without prior approval by TEMESA; disregard of the Attorney General's comments.

development projects.⁷ It has been the concern of the government to ensure that the PEs improve on compliance with public procurement law. However, it is not clearly known why PEs fails to comply with the established legal and regulatory framework of public procurement in Mainland Tanzania.

The continued non-compliance with the established legal and regulatory framework of public procurement by the LGAs suggests that there is either a lacuna in the public procurement law or in its enforcement mechanism. There was a need to conduct this study in order to find out the reasons for PEs non-compliance with the established legal and regulatory framework and come up with viable solutions to cure the problem. The study focused on examining the present public procurement law and its enforcement mechanisms in LGAs with the view to determining why they fail to comply with the same and suggest curative measures thereto.

1.2 Background to the Problem

Before the enactment of the 2001 Public Procurement Act (PPA), Tanzania legal framework of public procurement was scattered into different pieces of legislation, rules, and regulations. The legal and regulatory framework of public procurement was not integrated, there were multiple procedures and legislation used to administer the public procurement undertaking. The remarkable legislation used before enactments of the 2001 PPA includes the Medical Stores Tender Board Act⁸ which regulated the procurement of medicals by the Central Medical Stores Department; the Local Government (District Authorities) Act, 1982, the Local Government (Urban Authorities) Act, 1982 and the Local Government Finances Act, 1982⁹ has provisions which regulated public procurement in the LGAs; the Executive Agencies Act, 1997,¹⁰ the Executive Agencies (Finance, Procurement, and Stores) Regulations¹¹

⁷ Some of the development projects which was revealed by PPRA during Annual Procurement Evaluation Report for 2012/13 not completed due to non-compliance in Chamwino DC include overpayment of TZS 106,403,000 to two contractors for works not done; for Dodoma MC a total of TZS 627,006,057 was overpaid to three contractors for works not done. For Bukoba MC in the financial year 2014/15 the contractor, M/s Deca Enterprises was overpaid TZS 21,198,600/-. For FY 2015/16, dubious payment by four PEs in respect of projects including Dar es Salaam CC was revealed whereas TZS 43,030,000/ was overpaid for Pugu Kinyamwezi Dumpsite project and 3,000,000 for construction of New Block Work Dust Bin, Concrete Channel and Rehabilitation of Drainage System at Ubungo Bus Terminal.

⁸ Act No. 13 of 1993

⁹ Acts No, 7, 8 and No, 9 of 1982 which regulates the Rural and Urban Local Government Procurement process.

¹⁰ Act No. 30 of 1997

and the Exchequer and Audit Ordinance¹² which regulated procurement in the executive agencies. The public procurement system was also regulated by the Financial Orders¹³.

Nkinga, N.S.D. (2003)¹⁴ in his paper stated that, in 1992 following the Public Procurement and Supply Management Study which was conducted in Tanzania, it was discovered that, the system of public procurement in Tanzania had serious weaknesses including fragmentation of the law and, the inadequacy of the said law to cater for the wider definition of procurement. Among the weaknesses were non-regulation of procurement of works and selection of consultants and, absence of oversight and regulatory body to set standards and guidelines to monitor and enforce compliance.¹⁵

The study recommended for comprehensive reform of the legal and regulatory framework of the public procurement system, hence resulted in the enactment of a new procurement Act.¹⁶ The new regulations made include: The Public Procurement (Selection and Employment of Consultants) Regulations¹⁷ and Procurement of Goods and Works Regulations.¹⁸ The regulations used by the LGAs include the Local Government (Selection and Employment of Consultants) Regulations¹⁹ and the Local Government (Procurement of Goods and Works) Regulations²⁰ made under section 65 of the Local Government Finance Act 1982,

The PPA 2001 established a centralised system of public procurement under the Central Tender Board (CTB) with dual functions of a tender board unity and a regulatory authority.²¹ Shortly after the PPA, 2001 came into operation,²² the major

¹¹ Government Notice No. 77 of 1999

¹² CAP 439 of 1961.

¹³ See Financial Orders Part III (Stores Regulations), 5th Edition, of 1965

¹⁴ See Nkinga, N.S.D. (2003, January). Public Procurement reforms-The Tanzania Experience. A paper presented at the joint WTO-World Bank Regional Workshop on procurement reforms and public procurement, Royal Palm Hotel, Dar es Salaam, Tanzania. p. 9

¹⁵ *Ibid.*

¹⁶ The Public Procurement Act No. 3 of 2001

¹⁷ Government Notice No. 137 published on 13th July, 2001

¹⁸ Government Notice No. 138 published on 13th July, 2001

¹⁹ Government Notice No. 48 published on 21st March, 2003

²⁰ Government Notice No. 49 published on 21st March, 2003

²¹ See sect.. 5 and 7 of Act No. 3 of 2001

²² The Act came into operational on 1st July 2001.

bottlenecks failed to be addressed by the PPA 2001 include: Shift from centralised to decentralised procurement system, reduction of more authority from the accounting officers; abolishing of the Central Tender Board (CTB) which had assumed the two conflicting roles of both a tender board and a regulator and establishment of the Public Procurement Regulatory Authority (PPRA) in its place as an exclusive regulator.²³

The bottlenecks of PPA 2001 necessitated for a further study on the public procurement system.²⁴ The study came up with a number of recommendations specifically on the matters related to legislative framework; capacity to conduct procurement process and effects of corruption in the procurement process. The study recommended further reforms so as to curb corruption in the procurement process by introducing a whistleblower facility and ensure adequate remedies.²⁵

The study further recommended for the dissemination of the Local Government Regulations 2003 and establishment of procurement journal as a way of improving procurement system in the country; amendment of the PPA 2001 to decentralise procurement process; establishment of a Procurement Regulatory Board, and establishment of the Public Procurement Appeals Authority.²⁶ The recommendations led to the enactment of the Public Procurement Act, 2004,²⁷ and the Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Regulations.²⁸

The PPA, 2004 established the Public Procurement Appeals Authority (PPAA) as a compliance enforcement organ to ensure compliance of the public procurement law by the PEs,²⁹ the Public Procurement Regulatory Authority (PPRA) for management and regulation of procurement practices in the country,³⁰ the Public Procurement

²³See Mamiro R. G. Value for Money, The Limping Pillar in Public Procurement Experience from Tanzania; p.3

²⁴ See Tanzania Country Procurement Assessment Report (CPAR), 2003 Volume I and II.

²⁵ See Tanzania Country Procurement Assessment Report (CPAR), 2003 Volume II. p.29

²⁶ *Ibid* p.30

²⁷ Act No. 21 of 2004.

²⁸ Government Notice. No. 97 of 2005

²⁹ See Sect.77, 78 and 82 of PPA 2004

³⁰ See Sect.5 and 6 of the PPA 2004

Unit (PMU).³¹ It also set time limits for the procurement process and separation of powers and responsibility in the procurement process.³²

The PPA, 2004 was found to have loopholes and weaknesses which include: the PPRA was acting both as regulatory and review body; lack of procurement planning requirement; loopholes and weakness in the advertisement of contract award; weak complaints and administrative review mechanisms. The administrative review mechanisms created some problem which led to complaints from bidders.³³ This problem includes lack of price indicators in public procurement.³⁴ Such loopholes and weaknesses necessitated repeal of the 2004 procurement Act and its 2005 regulations by the Public Procurement Act 2011³⁵ and its Regulations of 2013³⁶ respectively.

Significant features of the PPA, 2011, which indeed necessitated the repeal of the PPA, 2004 included: the need of introducing in the Ministry of Finance the Public Procurement Policy Division (PPPD) responsible for developing national procurement policy,³⁷ integration of the preparation of the Annual Procurement Plan (APP) with the financial budget process,³⁸ elevation of the status of head of the procurement unit by creating a sub vote and allocating fund to enable it to carry out its responsibilities under this Act³⁹ and introduction of the procurement process under the public-private partnerships (PPP) arrangements.⁴⁰

Furthermore, the enacted PPA, 2011 put in place a legal and regulatory frame by establishing oversight bodies such as PPRA⁴¹ which is mandated to monitor compliance. The PPA 2011 separated appeals authority from the Public Procurement

³¹ See Sect.34 of the PPA 2004

³² See PART III of the PPA 2004

³³ See Engelbert, A. (2014) Administrative review systems in public procurement and their potential for anticorruption impact: Kenya, Uganda, and Tanzania in a comparative perspective: Ruhr-University Bochum. p.8

³⁴ See Public Expenditure and Financial Accountability Review Mission 2006 (PEFAR) 2006, p. 17

³⁵ Act No 7 and 8 of Act No 7 of 2011

³⁶ Government Notice.No.466 of 2013

³⁷ See Sect. 5 of Act No 7 of 2011

³⁸ See Sect. 49 of Act No 7 of 2011

³⁹ See Sect. 37 (5) of Act No 7 of 2011

⁴⁰ See PART VII of Act No 7 of 2011

⁴¹ See Ss.7 and 8(c) of Act No.7 of 2011

Regulatory Authority (PPRA)⁴² by establishing the Public Procurement Appeals Authority (PPAA). The Act also established bodies and committee for implementation of the public procurement process. It also sets out the public procurement controls and audit mechanisms⁴³ and, an independent procurement appeals to authority.⁴⁴

Notwithstanding many changes brought by the PPA, 2011 in the public procurement regulation in Mainland Tanzania, yet the PPA, 2011 and its PPR, 2013 was found to have some loopholes and weaknesses such as corruption loopholes, procurement process was taking a long time and cost to be completed; non involvement of special groups in participation of procurement undertaking; and weak transparency and accountability in procurement process. These weaknesses necessitated the amendment of the PPA, 2011 and the PPR, 2013 in 2016.⁴⁵

The amendments of PPA, 2011 and the PPR, 2013 in 2016 reduced the time taken for procurement processing.⁴⁶ It also provided room for special groups to be involved in procurement undertakings,⁴⁷ and provided provision aiming at facilitating transparency and accountability in the procurement process by empowering the PEs to reject any proposal for award of the contract obtained by fraudulent, collusive, coercive, or obstructive practices.⁴⁸

Notwithstanding all the reforms and changes made to the legal and regulatory framework of Public procurement, still, procurement system in Mainland Tanzania is marred by shoddy works, poor quality goods, and services, partial or non-delivery of goods and services required, corrupt practices, incompetence, and political interferences and influence.⁴⁹ Some of the PEs including the LGAs has frequently

⁴² See sect.88 of Act No.7 of 2011

⁴³ See sect.27,28 and 29 of Act No.7 of 2011

⁴⁴ See sect.88 of Act No.7 of 2011

⁴⁵ See the Public Procurement (Amendment) Act of 2016, Act No. 5 of 2016 and the Public Procurement Regulation (Amendment), 2016, GN No. 333 of 2016

⁴⁶ See Sec. 18, 34,35 and 36 of the Public Procurement (Amendment) Act No. 5 of 2016 and the Public Procurement Regulation (Amendment), 2016, GN No. 333 of 2016

⁴⁷ *Ibid* See Sec. 21(a) and (b)

⁴⁸ *Ibid* See Sec. 28

⁴⁹ See Pinda, M. (2011). Responsible Supply Chain, An opening speech in the 2nd Annual Conference of the Procurement and Supplies Professionals: AICC Arusha-Tanzania; See also CAG, (2011), Annual General Report for the Financial Year 2010/11. D' Salaam. pp. 77-88.

been reported to have failed to comply with some of the procurement procedures provided in public procurement law.⁵⁰

The remarkable weaknesses frequently reported by the CAG and PPRA concerning LGAs include: inadequate preparation and implementation of procurement plans; the Procurement Management Unit (PMU) and Tender Board (TB) are not effective; disregard of competitive procurement process; use of petty cash and imp rest beyond the set threshold; improper documentation; corruption and lack of fairness and transparency during tendering process; use of false accounts; and signing contract without assurance of availability of fund and tender board approval.⁵¹

The persistence of reported weakness in the LGAs procurement system which indicates LGAs non-compliance with the legal and regulatory framework of public procurement in mainland Tanzania, suggests that there is either a problem in the legal and regulatory framework itself or in its enforcement mechanism. It was for this reason that the researcher thought to examine the law governing public procurement in LGAs and its enforcement mechanism with the view to determining why LGAs fail to comply with the law and, come up with recommendations for LGAs compliance with the public procurement law in Mainland Tanzania.

1.3 Statement of the Problem

The legal and regulatory framework of public procurement in mainland Tanzania has passed through several reforms and changes in a view to improving the Public procurement system and put in place the better legal provisions which could facilitate achievement of value for money. Despite all such reforms and changes, still, PEs including LGAs in Mainland Tanzania has been reported by the CAG and PPRA to have non-compliance with the public procurement law.⁵² Non-compliance of the Law in LGAs has resulted in a loss of government money, poor local service delivery and adverse impact in the implementation of some development projects.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² See the Annual Performance Evaluation Report for the financial year 2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/18, *loc.cit.*

It has been one of the Government concerns on how to improve compliance with public procurement law in public institutions including LGAs. However, repeated weakness and loopholes as frequently reported by the CAG and PPRA raises questions on the adequacy of the said legal and regulatory framework or on the efficacy of its enforcement mechanisms. It was for this reason that this study was thought important to examine the adequacy of the law governing public procurement in LGAs in a view to determining why LGAs fail to comply with the said law and, come up with recommendations thereto.

1.4 Objectives of the Study

The study had both general and specific objectives as shown below:

1.4.1 General objective

To examine the law governing public procurement in LGAs and its enforcement mechanism with the view to determining why LGAs fail to comply with the law and, come up with recommendations to improve compliance with the public procurement law in Mainland Tanzania.

1.4.2 Specific objective

Specific objectives of this study were -

- a) To analyse the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania.
- b) To determine the factors hindering LGAs compliance with the public procurement law in Mainland Tanzania.
- c) To recommend reforms that will enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania.

1.4.3 Research Questions

This study was guided by the following three research questions:

- a) How adequate is the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania?

- b) What are the factors that make LGAs fail to comply with the public procurement law in Mainland Tanzania?
- c) What should be done to enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania?

1.5 Significance of the study

The study of LGAs compliance with PPA in Mainland Tanzania is important because it will enable the Government to establish and formulate comprehensive mechanisms that will facilitate LGAs compliance with the procurement law. The study identified the defects and weakness in the PPA and its regulations as well as the enforcement mechanisms in mainland Tanzania. The study has, therefore, recommended for designing proper mechanisms for effective compliance with the law or lay down the basis for making further amendments of the law.

Public procurement transaction in LGAs constitutes a large proportion of public procurement in public sectors. For that reason, it is very important in ensuring that LGAs have effective compliance with the procurement law so as to achieve value for money and speed up social and economic developments in Mainland Tanzania. The study also is important as it adds value to the existing literature on public procurement. It will, therefore, serve as reference material to different scholars, researchers, students, and professionals.

1.6 Scope of the study

The focus of the study was on the assessment of LGAs compliance with public procurement law in Mainland Tanzania. The study examined the adequacy of the legal and regulatory framework of public procurement in Mainland Tanzania by using two councils: Dodoma City Council and Chamwino District Councils in Dodoma Regional. The study further explored the factors hindering LGAs to comply with the public procurement law in Mainland Tanzania and suggested possible remedies thereto. The study covered the main aspects of public procurement legal framework, that is, the principal and subsidiary legislation that regulates public procurement in Tanzania. These included the Public Procurement Act, (2011 and its

amendment of 2016); the Public procurement Regulation;⁵³ the Public Procurement (Selection and Employment of Consultants) Regulations,⁵⁴ the Procurement of goods and works Regulations;⁵⁵ the Local Government (Selection and Employment of Consultants) Regulations;⁵⁶ the Local Government (Procurement of Goods and Works) Regulations;⁵⁷ and The Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations.⁵⁸ Moreover, the researcher made references to some relevant international instruments which regulate public procurement such as the European Union Public Procurement Directives, 2014.

1.7 Literature Review

In this study, the researcher has extensively and intensively reviewed a number of literatures covering various aspects connected to this study. Notwithstanding the presence of a lot of literature and writings on LGAs compliance with public procurement procedures, such literature has not sufficiently addressed the legal factors for LGAs' non-compliance with the procurement legislation. This section presents the reviewed literature starting with the key theoretical literature.

Reimarová,⁵⁹ and Bolton and Dewatripont⁶⁰ in attempting to explain the causes of PEs non-compliance with public procurement regulatory framework adopt the Principal-Agent Theory. This theory explains that procurement managers in the public procurement sector play a relationship role. The authors argued that procurement managers including civil servants who are dealing with public procurement should follow the best interests of the agency, as they usually have

⁵³ Government Notice. No. 466 of 2013

⁵⁴ Government Notice. No. 137 of 2001

⁵⁵ Government Notice. No. 138 of 2001

⁵⁶ Government Notice. No. 48 of 2003

⁵⁷ Government Notice. No. 49 of 2003

⁵⁸ Government Notice.No.330 of 2014

⁵⁹ See Reimarová, H. (2011): *Transaction Costs in Public Procurement* (Diploma thesis). Prague. Charles University in Prague, Faculty of Social Sciences, Institute of Economic Studies. pp 14-17

⁶⁰ See Bolton, P. and Dewatripont, *A comprehensive introduction to contract theory, emphasizing common themes and methodologies as well as applications in key areas*. M. MIT Press: Cambridge and London. 2005,

better information than his employer.⁶¹ In his view, avoidance with the procurement regulations occurs when there is some disagreement between policymakers and bureaucracy.

Reimarová urges that when there are discrepancies between regulatory policies, for example, the Public procurement regulation and the formal procedure or public system, then there is a likelihood of non-compliance to the regulations or the regulatory policies guiding the system. Bolton and Dewatripont maintain that the principal-agent theory is considered as the contract theory that involves different sets of family models used to assess and evaluate public procurements and the related contract processes. Notwithstanding the insight that may be captured from these literary works, none of them is directly related to law.

Scott⁶² writes on the Institutional theory which describes the extent of PEs compliance with the regulatory guidelines, rules, norms, routines and procedural manual within an organisation or system. The theory constitutes three basic pillars: regulatory, normative and cultural-cognitive. The regulatory pillar emphasises the use of experience as the basis for compliance mechanisms, such as regulations, guidelines, procedural manual, and enforcement experience as the basis of compliance. The normative pillar for compliance is based on norms, values and social obligation being the basis of compliance. The cultural cognitive pillar encompasses understanding, beliefs, symbols, and identity. This literature is useful in this study as it sheds light on the causes of PEs non-compliance with public procurement regulatory framework.

Penrose⁶³ views PEs non-compliance with a regulatory framework on the resource perspective of the firm. He uses resource-based theory which emphasis on the importance of corporate resources and their general impact on performance. The theory suggests that every organisation is gifted with the distinctive resources that

⁶¹ See Reimarová, H. (2011): *Transaction Costs in Public Procurement* (Diploma thesis). Prague. Charles University in Prague, Faculty of Social Sciences, Institute of Economic Studies. p.20

⁶² See Scott, W. R. (2001). *Institutions and Organisations*: Thousand Oaks, CA: Sage, (2nd Ed.) pp 48-52

⁶³ See Penrose, E. T. (1959). *The Theory of the Growth of the Firm*: New York, NY: John Wiley & Sons.

enable it to remain competitive in the dynamic market. This theory has also been supported by other authors like Helfat, C. E., Finkelstein et.al.⁶⁴ According to these authors, the resources may affect PEs compliance with regulatory framework include financial, human, physical, and technological and information. Even though the literature does not explain how the legal and regulatory framework may affect PEs compliance with the law, the work is useful in this study as it tries to touch other factors other than the law which may influence compliance the procurement law.

Besides the above reviewed theoretical literature, there are several empirical literary works which were reviewed in this study. Matembo,⁶⁵ in his study on Compliance with the Public Procurement Act and its regulations on road construction projects, found that various implementations of road construction projects in Kongwa District Council, Chamwino District Council and Dodoma Municipal Council were affected by a limited budget, lack of qualified personnel and inability of suppliers contrary to the PPA 2011 and its regulations. He further found that unfamiliarity with Laws and Regulations among key actors is another major factor for the organisations not to realise value for money. In this case, the author generally considers factors emanating from practices only but didn't consider whether the legal framework has any contribution to LGAs' non-compliance with public procurement law which is the base of this study.

Another study by Bayo .R. R,⁶⁶ identified poor knowledge on procurement law as one of the principal challenges affecting compliance at the lower level of the local government authorities in mainland Tanzania. In this study, the authors didn't say how the legal and regulatory framework has contributed to LGAs' non-compliance with the law which is the base of this study.

⁶⁴See Helfat, C. E., Finkelstein, S., Mitchell, W., Peteraf, M. A., Singh, H., Teece, D. J. & Winter, S. G. 2007. *Dynamic capabilities: Understanding Strategic Change in Organisations*. New York: Wiley

⁶⁵ See Matembo F. (2016) "Assessing the Compliance on Public Procurement Act No.7 of 2011 and its regulations on Road Construction Projects in Tanzania Local Government Authorities (TLGAs): The case of selected LGAs in Dodoma Region"

⁶⁶ See Bayo.R.R (2016) "Assessment of Procurement Processes in Lower Local Government Authority (LLGAs) Evidence from Kilimanjaro and Manyara (LLGAs)"

Omagbon, P,⁶⁷ considers the level of compliance with the public procurement Act is very low due to poor media publicity of local government procurement and poor display of professionalism during the procurement process and political interference. The authors in this study also didn't say how legal and regulatory framework has contributed to LGAs' non-compliance with the law which is the base of this study.

Biramata R,⁶⁸ stated on his study titled “the challenges of compliance to PPA in Tanzania Ports Authority (TPA)” that, though TPA is having staff of Procurement Unit who have served for a reasonable time, with adequate qualifications for their posts, yet there is non-compliance with PPA 2011. Non-compliance with the law is actuated by corruption, lack of professionalism, politics, and bureaucracy. However, the study focused on an authority other than the LGAs, which was the focus of this study.

The report by Abukari Y⁶⁹ stated that, implementation of Public Procurement law is the result of poor information dissemination, insufficient training and capacity building among the key actors, delay in payment to service providers and challenges emanating from the law itself. His finding is important to this study as it has revealed one of the probable challenges with the law that hinder LGAs to comply with the law.

Uromi S.M, on his study⁷⁰ revealed that, one of the major the challenges which the public procurement sectors in many developing countries are facing include: poor public awareness on the importance of public procurement legislation, and the regulatory instruments; lack of awareness on public procurement markets and complaints review mechanisms among stakeholders. The study stressed much on lack of awareness as the main cause for non-compliance with the law but did not examine whether the law itself is adequate or not.

⁶⁷ See Omagbon, P. (2016) “*An Assessment of Compliance with the Public Procurement Act by Nigerian Local Government*”: Journal of Accounting and Financial Management ISSN 2504-8856 Vol. 2

⁶⁸ *Ibid*

⁶⁹ See Abukari.Y, (2014). “*Implementation Challenges of Public Procurement Act, 2003 Act, 663 on Road sector Projects*” Kwame Nkrumah University.

⁷⁰ See Uromi S.M (2014) “*Challenges facing Public Procurement Information in Some African Countries Namely: South Africa, Uganda, Zimbabwe and Tanzania*”: International Journal for Innovation Education and Research Vol.2-07, 2014

Ntimbwa M.E ⁷¹ discovered that, the factors for non-compliance with PPA is caused by lack of awareness among procurement officials on PPA and that, some procurement officials are corrupt. Although the author could not discuss the effect of the legal framework on compliance with the law by LGAs still his literature is important in this study as it provides some insights into some causes for PEs non-compliance with the law.

Osei-Tutu, E, Mensah S, Ameyaw. C.,⁷² on their study on the Level of Compliance with the Public Procurement Act (Act 663) In Ghana, revealed that, among the factors which contribute for PEs' non-compliance with the law includes: lack of skilled personnel to man public procurement, little knowledge with the law among key actors, lack of Internet facilities to post adverts and procurement plans. In this study, the authors didn't say how the law has contributed to PEs' non-compliance with the law which was the focus of this study.

Mwendwa M.P⁷³ considers among the factors for non-compliance with procurement law in Kenya to include: lack of awareness on public procurement legislation, lack of top management support, lack of staff training and the institutional factors. The author also reveals that, for the PEs to have high compliance with public procurement legislation in Kenya there is a need to invest in various strategies. This literature is important to this study as it addresses the institutional factor which is one of the causes for non-compliance with the procurement legislation which is a part of the legal framework.

According to Onyikwa, J⁷⁴ in his study on "Factors influencing compliance to procurement regulations in public secondary schools in Kenya" revealed that compliance in public secondary schools is affected by unethical conducts, lack of

⁷¹ See Ntimbwa M.E "Assessment of The Implementation of Public Procurement Act Of 2004: Perspectives from the Ministry of Agriculture, Food Security and Cooperatives (MAFSC)" (2013)

⁷² See Osei-Tutu, E., Mensah S, Ameyaw. C. (2011). The Level of Compliance with the Public Procurement Act (Act 663) In Ghana: Management and Innovation for a Sustainable Built Environment 20 – 23 June 2011, Amsterdam, The Netherlands.

⁷³ See Mwendwa M.P. (2011) "Factors influencing compliance with The Public Procurement Legislation in Kenya"

⁷⁴ See Onyinkwa, J. (2013). Factors influencing compliance to procurement regulations in public secondary schools in Kenya: A case of Nyamache district, Kisii County. *Journal of Contemporary Research in Business*, 5(1), 561-592

awareness and training. Although, this study was limited to secondary schools in Kisii County but it concentrated on procurement regulatory framework compliance challenges as a focus of the study. This study is important as it highlights the procurement regulatory framework which was the focus of this study.

Okundi⁷⁵ studied also on how the procurement law can help the implementation of county governments in the devolution process in Kenya. He found that procurement law has made the execution of public procurement inefficient. This study is important as it touches the adequacy of the law itself which forms part of this study.

Mwangi and Kariuki⁷⁶ on their studies on “the Factors influencing non-compliance of public hospitality entities to public procurement laws and regulations in Kenya” revealed that compliance with public procurement law and regulations is affected by staff competencies, weak internal controls and inadequate application of ICT process and systems. This study is important as it has tried to pinpoint a weakness in the internal control mechanisms as one of the causes for non-compliance.

RPPA,⁷⁷ Assessed compliance with procurement law, regulations, and procedures by PEs in Rwanda. The assessment revealed that, delayed tender completion; open competitive methods; award of tenders not planned for; advertising and awarding tenders of value higher than 10m Rwandan francs without any prior study; and lack of inspection and acceptance reports on completed tenders are one of the major factors influencing non compliance with Public entities in Rwanda. However, the study was fact-finding and therefore did not show how non-compliance with the procurement legislation affects the organisational performance of public entities.

The literature above gives wide knowledge of the factors which influence compliance with public procurement law. The remarkable factors revealed for LGAs’ non-compliance with the law in the reviewed literature above include lack of professionals, unfamiliarity with the law; lack of awareness; unethical conduct; lack

⁷⁵ See Okundi, B. (2013). Procurement laws review key to the success of devolution.

⁷⁶ See Mwangi, T. D. & Kariuki, T. J. (2013) Factors affecting the compliance of public hospitality entities to public procurement laws and regulations in Kenya: *International Journal of Business and Commerce*; 2 (10), 66-78

⁷⁷ See RPPA, (2012). Summary report on Assessment of public procuring entities on compliance with procurement law regulations and procedures for the financial year 2010-2011.

of Internet facilities; rate disbursement of funds; political interference and lack of accountability. Thus, despite the fact that extensive researches have been done in the areas related to LGA compliance with public procurement law, still, there is a knowledge gap on the adequacy of the current legal framework on enhancing LGAs compliance with the same in Public procurement process.

1.8 Research Methodology

This part explains the research methodology used in this study. The research methodology used in this study includes research design and approach, area of study, study population, sampling design and sample size, sources of data, limitations of the study, methods of data collection and instruments of data collection.

1.8.1 Research Design and Approach

The study adopted an exploratory⁷⁸ qualitative approach which used a case study design. The study used a case study design because it is easy for data collection. Two councils were selected for the purpose of this study, namely the Dodoma City Council and Chamwino District Council. The two councils were chosen basing on the fact that one council represented the urban authorities and the other one represented the district authorities. The two councils provided sufficient empirical data especially on the factors that hinder PEs in LGAs to comply with public procurement law and the possible remedial measures. Besides case study design, the study also involved library research in which several relevant primary and secondary documents were reviewed through content analysis technique, the purpose being to examine whether the law itself is adequate or not.

⁷⁸ See Rwegoshora, H. M. M., A guide to social science research; Dar es Salaam, Tanzania: Mkuki na Nyota Publishers, 2006, defines exploratory study as study which is characterised by strong desire to discover the unknown, it is an adventure to expand human knowledge directed to a scientific discover it involves three methods namely survey concerning literature, experience survey, and analysis of insights stimulating cases.

1.8.2 Area of Study

The area of study involved the Dodoma City Council and Chamwino District Council. The two councils were chosen by the researcher by considering the representation aspect; one from Urban Authorities and the other from Rural Authorities. Furthermore, the two councils were selected for easy accessibility and availability of respondents who could provide the required data.

1.8.3 Study Population

This study involved various categories of people who mostly involve themselves in public procurement undertakings in the selected two councils. The selected population included the Council Directors (DED/CD), Heads of Department; members of PMU; Councilor; Legal Officer, Tender Board members; Internal Auditors; and private contractors engaged by Dodoma City Council and Chamwino District Council. Frontline workers from health service providers in Dispensaries and Health centers were also included because they are currently involved in the procurement of drugs and other utilities at their respective Dispensaries and Health centers.

1.8.4 Sampling Design and Sample size

Msabila, D.T and Nalaila, S.G⁷⁹ define Sample as a small representation of a large study population. In this study, the sample size was 48 respondents, selected through stratified random sampling and purposive sampling. Sample size was obtained from the following category: two (2) Council Directors (DED/CD); eight (8) Heads of Department; four (4) PMU; eight (8) Councilors from Dodoma City Council and Chamwino District Council; six (6) Legal Officers, six (6) Tender Board members from Dodoma City Council and Chamwino District Council; four (4) Internal Auditors, four (4) private contractors and six (6) frontline workers from health service providers at Dispensaries and Health centers. This sample was sufficient enough to provide the expected information for the study.

⁷⁹ See Msabila, D.T and Nalaila, S.G (2013) Research Proposal and Dissertation Writing, Nyambari Nyangwine Publishers, Dar es Salaam at p.37

1.8.5 Source of Data

Both primary and secondary sources of data were used. The primary sources of data involved legal texts (Statutes, Subsidiary Legislation, and Case Law) and field respondents. Secondary sources of data involved documentary materials other than legal texts.

1.8.6 Data Collection Methods

The questionnaire, survey, and in-depth interviews were used in the collection of field data while the documentary review was used in the collection of documentary data. Questionnaire and survey involved administration of questionnaires with open-ended questions to selected respondents basing on their respective groups. Questionnaires were distributed to Council Directors, Heads of Departments/Sections, Councillors, Procurement Personnel and workers at Dispensary and Health Centers. While In-depth interview was used to respondents who signified readiness to be interviewed during face to face interrogation. The documentary review involved review of legal texts (Statutes, Subsidiary Legislation and Case Law) and other documentary materials in hard and soft copy as they accessed in the field or from the internet.⁸⁰

1.8.7 Data Collection Instruments

The instruments used for data collection in this study included:

- a) Documentary review checklist and Notebook: In documentary review, the researcher used a note book which contained a list of all relevant documents which were sorted for review in the process of data collection.
- b) Interview schedules and questionnaires: the researcher used a list of questions printed in a paper as a guide in interviewing the respondents. Questionnaires which contained open-ended questions were also used in collecting field data.

⁸⁰ For details on the selected list of Public Documents reviewed, see **Appendix V**

1.9 Data Processing and Analysis

Data collected through questionnaire, survey, interviews, and documentary review were analysed and interpreted through qualitative methods. The information obtained through questionnaires and in-depth interviews were converted into comprehensive notes and write-ups against respective questions in the questionnaires and interview guide. Other close related processes: data screening and data sorting to form groups suggesting certain themes were employed. Data sorting was followed by a description of the sorted information and database was the preparation of the database as well as storing the said data in the laptop.

Documentary data were analysed through content analysis. This involved careful examination of the content of relevant documents with the view of identifying words and phrases that connote compliance or non-compliance with procurement law. Words and phrases that occurred frequently were then coded and summarised into themes. Canons of statutory interpretation were employed in analysis and interpretation of legal texts with the guide of research questions and objectives. Inductive reasoning was also employed to draw conclusions on the proposition of both field and documentary data collected as regards to the adequacy of the public procurement law and the factors that hinder LGAs in complying with public procurement law.

1.10 Limitations of the Study

This study based on an assessment of compliance with public procurement law. By using methods of data collection in this study, limitations of getting data from the respondents were observed, especially from the respondents who found the questions difficult for them to answer as they needed someone with adequate legal knowledge and experience on public procurement proceedings. Despite experiencing this challenge still some important information from some of the respondents and those obtained through unpublished reports; this made the quality of study not get compromised.

1.11 Chapter Scheme

This dissertation comprises five chapters, starting with an introduction of the study as the first chapter consisting of the background of the study, statement of the problem, objectives of the study, research questions, literature review, and research methodology. Chapter two discusses the conceptual framework of this research. Under this chapter concept of public procurement law and the concept of compliance with public procurement law has been analysed. Chapter three discusses the legal and regulatory framework of public procurement in Mainland Tanzania. Chapter four presents the critical assessment of the adequacy of the public procurement legal framework and the factors hindering effective enforcement of Public procurement law. Chapter five is the summary of the findings, the conclusions, and recommendations for future improvements.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Introduction

This chapter explains the basic concepts relating to compliance with public procurement law. It gives an analysis of the concepts of local government authorities; public procurement; Procurement process, principles of procurement entities, compliance with public law, and enforcement of compliance. The chapter is divided into three sections: introduction, conceptual analysis, and conclusion.

2.2 Conceptual Analysis

This section covers an analysis of the basic concept underlying this study with their associated principles.

2.2.1 Local Government Authorities

The concept of Local government denotes autonomous non-sovereign institutions created by national or state constitutions or established by an Act of the Parliament for purposes of providing several services at a given area(s) of jurisdiction.⁸¹ Unlike other government institutions or agencies, LGAs are manned by elected representatives and they are body corporate with the specific physical structure, powers of revenue collection and expenditure and powers to provide a number of public services within their respective jurisdiction.⁸²

In Tanzania, local government is defined in the Constitution of the United Republic of Tanzania as “*the local government authorities established under Article 145 of the Constitution for the purpose of exercising people’s power.*”⁸³ It includes District Authorities which are categorised as District Councils, Township Authorities, Village Councils and *Kitongoji* and Urban Authorities which are also categorised as

⁸¹ See Mnyasenga T.R., *Legal Framework of Central-Local Government Administrative Relationship and Its Implication on the Autonomy of Local Government Authorities in Mainland Tanzania*. Unpublished PhD Thesis of Mzumbe University, 2017. p.62.

⁸² *Ibid.*

⁸³ See Art.151, CAP. 2, R.E. 2002.

City Councils, Municipal Councils, and Town Councils.⁸⁴ LGAs are public entities; as such procurement in LGAs is also called public procurement which is the subject of analysis in the item that follows hereunder.

2.3 Public Procurement

The phrase public procurement consists of two terms which are public and procurement. The term public, on the one hand, has several denotations, it may be used to mean “*connected with the ordinary people in the society in general, it may mean for everyone especially provided by the government for the use of the people, or of government, that is, connected with the government and the services it provides*”.⁸⁵ The term procurement, on the other hand, means “*buying, purchasing, renting, leasing ... acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including a description of requirements, selection, and invitation of tenders, preparation and award of contracts*”.⁸⁶

From the meanings of the terms public and procurement seen above, the concept of public procurement may be used denote government procurement or procurement by the government which involve buying, purchasing, renting, leasing or acquiring goods and services by a procuring entity, including the processes of describing the requirements, obtaining works, goods and services, invitation and selection of tenderers, award of contracts by the procuring entities.⁸⁷ Also, public procurement connotes the practice used by the public sector (government) to procure works and acquire goods and services from suppliers by using government budgets (funds) or donor funds. In Tanzania, Public procurement also extends to cover non-publicly owned institutions where public funds are involved for a particular activity, project or program.⁸⁸ For that case, the key determinant for application of public

⁸⁴ See sect. 3, CAP. 287 & s.3, CAP. 288, R.E. 2002. Also see s.3 of the Public Procurement Act, No. 7 of 2011.

⁸⁵ See Hornby, A.S., *Oxford Advanced Learner's Dictionary of Current English*. New York: Oxford University Press, 2010. p.1184

⁸⁶ See sect.3 of the Public Procurement Act, 2011, *loc.cit.*

⁸⁷ *Ibid.*

⁸⁸ See sect. 2(1)(b) of the PPA 2011. *Op.cit*

procurement law is, therefore, the public money involved in the acquisition process, rather than just the ownership of the entity undertaking the procurement process.⁸⁹

Public procurement is an important function of any government.⁹⁰ The magnitude of procurement expenditure has a great impact on the economy hence there is a need to be well managed.⁹¹ For example, in Uganda, public procurement accounts for 70% of the government budget; while in Kenya it accounts for 40% of the government budget and in Malawi, it accounts for 30% of Malawi GDP.⁹² In Tanzania, it accounts for 70% of the national budget.⁹³ To ensure quality products and services delivery, public procurement process uses defined procedures or methods such as open tendering, restricted procedure, negotiated procedure, single source procedure, and force account procedure. For the purpose of proper understanding and clarify the concept "procurement process" is analysed in the next item.

2.4 Procurement Process

The PPA 2011 define the procurement process to mean “the successive stages in the procurement cycle, including planning, choice of procedures, measures to solicit offers from tenderers, examination, and evaluation of those offers, award of contract and contract management.”⁹⁴ As noted in the preceding item, this process may use open tendering, restricted procedure, negotiated procedure, single source procedure and force account procedure as explained hereunder.

2.4.1 Open tendering

Open tendering is the process of tendering open to all prospective bidders.⁹⁵ Under this process no predetermination of who can bid. Open tendering can be an

⁸⁹ See Maliganya E.C., *The Next Age of Public Procurement Reforms in Tanzania: Looking for the Best Value for Money*, (2015).p.5

⁹⁰ See Mgani M., *Evaluation of Public Procurement and Performance in Tanzania*. Unpublished Master dissertation at Mzumbe University, Dar es Salaam Campus College, 2014. p.1

⁹¹ *ibid*

⁹² <https://mw.usembassy.gov/annual-conference-of-the-malawi-institute-of-procurement-and-supply/> retrieved on 24th /2/2019 at 11.36 AM

⁹³ *ibid*.

⁹⁴ See Regulation.150 and 153, Public Procurement Regulation, 2013, *loc.cit*.

⁹⁵ See sect.3, Public Procurement Act, 2011, *loc.cit*.

International competitive tendering or National competitive tendering.⁹⁶ It involves the process of inviting extensively tenderers regardless of their nationality, so as to attract many bidders from the widest range of tenderers⁹⁷ to apply accordingly.

2.4.2 Restricted Procedure

The restricted procedure involves the selection of prospective pre-qualified bidders identified under the restricted procedure.⁹⁸ Only those pre-selected one can bid. In other words, the requirement for public advertisement is not necessary. Tender documents under this method are issued to a limited number of pre-qualified tenderers based on the basis of disclosed selection criteria.

2.4.3 Negotiated Procedure

Under this procedure, negotiation is done with the bidder to come to an agreement regarding the contract. The PPR 2013⁹⁹ sets negotiated procedure used normally in a failed tendering procedure, for instance, where there are no tenders to bid or only disqualified tenders has submitted.¹⁰⁰ The negotiated procedure can also be used under circumstances of urgency or a catastrophic event¹⁰¹ or where there is a need to refine and formulate aspects of the description of any procurement matter with the detail required to obtain the most satisfactory solution.

2.4.4 Single Source Procedure

Selection of a supplier or service provider under a single source procedure is done by the PE subject to approval by the tender board.¹⁰² The PPR 2013¹⁰³ provides conditions under which single source procurement can be undertaken. It can be done if the goods or services at issue can be obtained exclusively from a specific provider; where there is an urgent need or emergencies or additional supplies being procured from an existing contractor, or because of policy considerations like national defence

⁹⁶ See Regulation 150 and 151, GN. No. 446 of 2013, *loc.cit.*

⁹⁷ See Regulation 150 (1) (b), GN. No. 446 of 2013, *loc.cit*

⁹⁸ See Regulation 152, GN. No. 446 of 2013, *loc.cit*

⁹⁹ See Regulation 153, GN. No. 446 of 2013, *loc.cit*

¹⁰⁰ See Regulation 153(1) (b) and (2) (b), GN. No. 446 of 2013, *loc.cit*

¹⁰¹ See Regulation 153(4) (b), GN. No. 446 of 2013, *loc.cit*

¹⁰² See Regulation 159, GN. No. 446 of 2013, *loc.cit*

¹⁰³ *ibid*

or national security or for the purpose of research, experiment, study or development or where on-going project, additional items need to be purchased for the completion of implementation.¹⁰⁴

2.4.5 Force Account Procedure

Force account procedure is done by the procuring entity when executing construction, renovation and remodelling of its infrastructures including social and government buildings by use of public or semi-public agencies or departments or its own personnel and equipment or by hiring labour.¹⁰⁵ It is the method whereby PEs uses direct labour to perform small and scattered works or which are in remote locations under which qualified construction firms are unlikely to tender at reasonable prices or where there are emergencies needing prompt attention.¹⁰⁶ On the contrary, the force account method is termed as non-competitive bid. However, the public procurement law insists the PEs adhere to the principles of public procurement when undertaking procurement process. The next item is to examine the basic principles of public procurement.

2.5 Principles of Public Procurement

Procurement of works, goods, and services by PEs is governed by three major principles namely: equal opportunity to all providers; transparency and fairness treatment of all parties and value for money.¹⁰⁷ These principles are expounded hereunder.

2.5.1 Equal opportunity

The public procurement law requires all potential bidders to have equal opportunities on the participation of procurement process, treated impartially, and the public procurement regulations to equally be applied to all contractors.¹⁰⁸ All PEs intending to commence competitive disposal by tender process must also give equal

¹⁰⁴ *ibid*

¹⁰⁵ See Regulation 167 of PPR GN No. 446 of 2013 *loc.cit*

¹⁰⁶ *ibid*

¹⁰⁷ See Section 47 of PPA No. 7 of 2011 *loc.cit*

¹⁰⁸ See Arrowsmith, Sue. 2009. "EC Regime on Public Procurement. International handbook of public procurement. ed. Khi V Thai. New York: CRC Press, 254-90

opportunity to all eligible prospective asset buyers with timely and adequate notification of the procuring entities' requirements.¹⁰⁹ The tender notice must be published in sufficient time for tenderers to obtain the tender documents and submit their tender application before the deadline.¹¹⁰

Achievement of equal opportunity to all providers is important as it enables bidders to prepare their tender document in a manner that the procuring entity will have a wider chance of selecting a proper, eligible and potential service provider. Normally equal opportunities emphasise competition by opening market access to eligible suppliers and contractors. This principle is important as it encourages many bidders to participate through competitive bidding, and therefore result in the achievement of value for money.

2.5.2 Transparency and Fairness Treatment

The principle of transparency and fairness requires all potential bidders to have equal opportunities in the procurement process.¹¹¹ Each tenderer needs to have access to the same information, and each bid needs to be considered fairly with no bias or conflicts of interest towards any or against certain bidders. That is, the public procurement law should be applied fairly to all bidders.¹¹²

Fair treatment in public procurement attracts many suppliers in the open market where goods or services will be offered on a competitive basis. This makes the PEs obtain the best product at the best price through the most cost-effective process.¹¹³ Fair treatment reduces incidences of corruption and develops mutual trust to all stages of the tendering process undertaken by the PE.¹¹⁴

¹⁰⁹ See sect. 328 of PPA 2011 *loc.cit* and regulation 67 of the PPR GN. No. 446 of 2013.*Op.cit*

¹¹⁰ See Sect. 68(3) of PPA 2011 *loc.cit*

¹¹¹ See Regulation 4(2)(d) of PPR GN No. 446 of 2013 *loc.cit*

¹¹² See Arrowsmith, Sue. 2009. "EC Regime on Public Procurement: An International handbook of public procurement, ed. Khi V Thai. New York: CRC Press, 254–90 p.405

¹¹³ See UNODC (United Nations Office on Drugs and Crime) 2013: Transparency, objectivity, and competition in public procurement. Legal assessment of Mexico's compliance with Article 9 of the United Nations Convention Against Corruption (UNCAC) in the Federal Government, the Federal District and the Federal State of Puebla. Within the framework of Public-Private Partnership for probity in Public Procurement: Project 1st ed. Mexico City (MX): UNODC

¹¹⁴ *Ibid.*

2.5.3 The Principle of Value for Money

Value for Money (VFM) is an important principle in the procurement system of which a well-functioning PE must observe it to justify procurement outcome. The principle involves the use of deferent resources such as funds for the realisation of intended purposes in an economic, efficient and effective manner. Driven by considerations of VFM, a government has to insist on increasing transparency, efficiency and effectiveness of procurement.

On the public procurement process, VFM entails “*striking the best balance between the "three E's" the economy, efficiency, and effectiveness*”.¹¹⁵ Applications of the three Es, in public procurement systems normally stimulate economic and social activities. Lack of efficiency and effectiveness in procurement is an indication of non-compliance to the existing laws, regulation, and standards by the PEs. The next item addresses the concept of the procurement entities.

2.6 Procurement Entities

The concept of Procurement entities refers to the public body or unit established and mandated by the government to carry out public procurement functions.¹¹⁶ The government institutions, local government authorities, agencies government departments, Regional, District and government parastatal institutions are entities responsible for carrying out procurement in Tanzania in accordance with the existing legal and regulatory framework.

For purposes of this study, the LGAs were the focus of this study. Like other PEs, LGAs implement procurement procedures through the Procurement Management Unit as described hereunder.

¹¹⁵ See Penny J, (2012) Value for money and international development: Deconstructing myths to promote a more constructive discussion, OECD Development Co-operation Directorate, p.1.

¹¹⁶ See Regulation 3 of the PPR 2013 *Op cit*

2.6.1 Procurement Management Unit (PMU)

Procurement Management Unit (PMU) is established by the PPA 2011¹¹⁷ for purposes of implementing procurement procedures in the procuring entity. Among the major obligation of the unity is to ensure VFM; the procurement entity always is in adherence to procurement principles, methods, and guidelines; to manage procurement and disposal activities by tender; implementing the decisions of the Tender Board (TB); and act as a secretariat to the TB.¹¹⁸

Furthermore, the PMU is mandated to prepare the Annual Procurement Plan (APP) by consolidating the requirement from all department/section of the organisation and recommend to the PE the procurement and disposal by tender. Also, the Unit is mandated to prepare all tender documents, advertisements, contract documents, keeping and maintaining all records of procurement and disposal process done by the respective organisation, and register all contracts awarded. The Unit has a duty to prepare reports for the tender board and maintain the procurement records for at least five years. The PMU works closely with user departments which form the next discussion.¹¹⁹

2.6.2 User Departments

User departments¹²⁰ are key actors of proposing technical inputs when required by the PMU. Among the major functions of the user department include: to liaise and assist the PMU during procurement or disposal by tender process to the last stage of contract implementation; propose technical specifications to PMU when required to do so; initiate procurement and disposal of goods or services; prepare payments to respective contractors, suppliers or consultant.¹²¹ User department is one of the key actors on the implementation of the procurement process and in ensuring compliance with the law. The other important actor is the tender board (TB).

¹¹⁷ See sect. 37 of the PPA 2011 *Op cit*

¹¹⁸ See sect. 38 of the PPA 2011 *Op cit*

¹¹⁹ *Ibid*

¹²⁰ See sect. 39 of the PPA 2011 *Op cit*

¹²¹ *ibid*

2.6.3 Tender Boards (TB)

This is one of the key bodies in ensuring compliance with public procurement. Establishment of the Tender Board in the LGAs is regulated by the Local Government Authorities' Tender Boards (establishment and proceedings) Regulation.¹²² The compositions and functions of the TB are as indicated in the said regulation.¹²³ The establishment and working of the tender board are associated with the following officers.

2.6.4 Accounting Officer

Accounting Officer (AO) of the LGA has several functions including establishing a tender board by appointing its members as specified in the regulation;¹²⁴ ensuring a Procurement Management Unit is staffed to an appropriate level as required by the law; appointing the evaluation committee; communicating award of the contract; signing contracts agreement; ensuring implementation of the contract awarded and ensuring the availability of funds for the intended procurement activities.

Furthermore, the accounting officers have the responsibility of investigating compliance by the tenderer,¹²⁵ to submit the draft contract to the Attorney General for vetting.¹²⁶ An effective and efficient LGAs compliance with procurement law depends much on the efficiency and effectiveness of the accounting office. Therefore, the AO is an important figure in every PE for ensuring compliance with public procurement law.

2.6.5 Evaluation Committee

The PPA requires the PE's in every tender to establish Evaluation Committee to conduct a technical and financial evaluation of all tenders and recommend for the award of contracts.¹²⁷ Approval of Member of the Evaluation committee is done by the AO. The total number of each evaluation committee depends on the value and

¹²² See Regulation 7(1), GN. No.330 of 2014

¹²³ See Regulation 7 (2), GN. No.330 of 2014

¹²⁴ See Regulation 22 (1) and (2), GN. No.330 of 2014

¹²⁵ See Regulation 22 (1) (j), GN. No.330 of 2014

¹²⁶ See Regulation 59 (3) of the PPR 2013 *Op cit*

¹²⁷ See sect.40 of the PPA 2011 *op.cit.* Also, see Regulation. 27(5) of the LGA *op.cit*

complexity of the procurement requirement.¹²⁸ The Committee acts as an advisory organ of the PMU by making recommendations that assist the TB in reaching award decisions.

2.6.6 Internal Audit Unit

In every public procuring entity there is an Internal Audit Unit established as machinery for checking the efficiency and effectiveness of financial management and internal control systems. The major function of the Unit is to check whether the procurement procedures are complied for and propose proper ways of improving the identified weakness.¹²⁹ This Unit is very important in every PEs because not only it operates as machinery of checking the efficiency and effectiveness of financial management and internal control systems but also plays a role of ensuring procurement procedures are followed hence monitoring compliance.

The Unit also acts as a key actor of ensuring internal controls of the LGA are in place for purposes of mitigating risks in procurement processes. In connection to this Unit, local government authority and other PEs are required to establish within their entity audit committee which oversees various procurement undertakings including the internal control and external audit, the financial and performance reporting.

Internal audit is viewed as an opportunity for value-add to the procurement function. A strong internal audit help to realise value for money by increasing efficiencies, reducing costs, cutting revenue leakages and asset losses and promoting value adding to works and services.

2.6.7 National Audit Office

The Constitution of the United Republic of Tanzania establishes the National Audit Office of the United Republic of Tanzania (NAO).¹³⁰ The Public Finance Act (PFA)¹³¹ provide statutory duties and responsibilities of the Controller and Auditor General (CAG). The Public Procurement Act¹³² requires the external auditor (CAG)

¹²⁸ See Regulation. 27 of the LGA *op.cit*

¹²⁹ See Regulation. 47 of the LGA *op.cit*

¹³⁰ Article 143 of the Constitution URT 1977

¹³¹ Act No. 6 of 2001

¹³² Section 48(3) of Act No. 7 of 2011, *Op.cit*

to state in his annual audit report whether or not the audited entity has complied with the requirements of the Public Procurement Act and its Regulations. This audit office is important in this study as it assesses the compliance of the law and its regulations and gives recommendation on how the observed weakness can be tackled.

2.7 Public Procurement Law

Under this study, public procurement law is used as a concept with reference to the legal framework which provides for the guidelines, procedures, principles, standards, and mechanisms of performing public procurement in LGAs in Mainland Tanzania. The legal framework includes the Public Procurement Act (PPA),¹³³ the Public Procurement Regulations (PPR),¹³⁴ and the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations.¹³⁵ The compliance with this public procurement law in the LGAs is the focus of this study. The next item, therefore, analyses the concept of compliance with the said public procurement law.

2.8 Compliance with Public Procurement Law

The word compliance has never been defined in the Act or its regulations. However, the word compliance denotes observance or conformity with various legal and regulatory requirements.¹³⁶ It is the act or state of conforming to rules, specification, policy, guidelines, standard or law. It means pursuing government objectives through appropriate regulatory frameworks. It is the act of complying with laws and regulations which have criminal or civil penalties when not observed properly.¹³⁷

Compliance can be examined by looking at the conformity by the PEs with the necessary substantive and procedural requirements (performance indicators or criteria) provided by the public procurement law. The performance indicators or criteria provide guidance for the authority to assess the strengths and weakness of the Procurement Systems. Normally, the said indicators cover a number of things

¹³³ Act No 7 of 2011

¹³⁴ GN No. 466 of 2013

¹³⁵ GN No. 330 of 2014

¹³⁶ See The Annual General Report of The Controller and Auditor General on The Audit of Local Government Authorities for The Financial Year 2016/2017

¹³⁷ See Mansaray, A.K; Dr. Lapkoff, M and Little. A (2018) *Public Procurement Compliance Behavior and Its Effect On Quality Service Delivery: A Case Study Of The Electricity Company Of Ghana (Ecg)* (International Journal of Supply Chain Management: Vol.3, Issue 2 No.4, p 64.

including the organisation set up and functioning, procurement planning, tender process, records management and Contract Management. For clarity purpose, these performance indicators are further analysed hereunder.

2.8.1 Procurement Planning (APP)

Procurement planning is an essential tool in the procurement process because it is the APP an organisation may decide what to buy, when and from what source.¹³⁸ Companies or public institutions use APP to plan purchasing activity for a specific period of time.¹³⁹ The PPA is a tool for the efficient operations of the entity on the procurement function. The prepared APP normally indicates contract packages; the procurement method, estimated cost for each package; processing steps and times for purchasing each package. The importance of the APP to the PEs is to: avoid unnecessary emergency procurement; to obtain value for money and reduce procurement costs and time. Equally so, an effective procurement plan ensures compliance with regulatory policies. Poor planning may result in waste, inefficiency, and disputes with firms over ambiguous specifications and contract terms and conditions.¹⁴⁰ Procurement planning is commonly completed during the budgeting process.¹⁴¹

2.8.2 Preparation of Tender Document

This is one of the important stages in the procuring process as it enhances fairness, efficiency and transparency which are essential principles of the procurement process. All tender documents are prepared by the head of PMU. User Department may initiate the procurement process by preparing procurement requisition and technical specifications and approved by the AO before the PMU prepare final

¹³⁸ See Lynch, J. (2014). Steps in the Public Procurement Process. Retrieved on 11/3/2019 at 12.39 pm from <http://www.procurementclassroom.com/steps-in-the-public-procurement-process/>

¹³⁹ See Agaba & Shipman, (2007), Public Procurement Reform in Developing Countries: Academics Press

¹⁴⁰ See Naluyaga, T. M.R. *challenges facing procurement entities in complying with procurement regulations*. Unpublished Master dissertation of Mzumbe University, 2012, p.30

¹⁴¹ See Magembe. G., “*Assessment On Implementation Of Procurement Plan In Government Institutions*” a case of the National Electoral Commission, Unpublished Master dissertation of Mzumbe University, 2013, p.1

bidding/tendering documents.¹⁴² PEs is required to use standard tender documents acceptable to the Authority.¹⁴³ Failure to use standard tender documents and guidelines issued may amount to non-compliance with the Law.

2.8.3 Invitation to Tender (Advertisement)

It is a mandatory requirement of the PE to advertise the intention to procure works, goods or services. Under this procedure, bidders are invited by a PE to submit priced and sealed bids based on the specifications and evaluation criteria issued by the procuring entity in the invitation to tender.¹⁴⁴ Such advertisement aims at obtaining adequate information for the PE to make a decision on the suitability of the tenders who applied. Invitation to tender is the most recommendable methods under the law, as it encourages maximum competition in the procurement system. Also, it helps to enhance accountability and transparency and prevent fraud, waste, and unethical practice. Procurement activities should be done through open tendering.

2.8.4 Tender Submission

The TB is mandated by the PPR 2013 to determine time and place for the return of the tenders which shall be specified in the tender documents. However, once the tenders are received and evaluated the PPR requires the PMU to submit to the TB a detailed report on the evaluation and comparison of the tenders or proposals together with the recommendations for the award and such information as the TB may request for its review. This stage also is important in ensuring equal treatment to bidders.

2.8.5 Tender Opening

On the deadline, all tenders are opened by the ad-hoc tender opening committee, on a public avenue and in the presence of bidders and other peoples allowed to attend the tender opening ceremony.¹⁴⁵ However, all tenders submitted before the deadline shall be opened in public. The tender opening is a crucial stage as it encourages transparency and participation of all tenders who have submitted their bids.

¹⁴² Regulation 55(1) PPR 2013, *Op.cit*

¹⁴³ See regulation 184 (5) PPR 2013 *Op.cit*

¹⁴⁴ See regulation 56 of PPR 2013 *Op.cit*

¹⁴⁵ See Sect. 68 of PPA 2011, *Op.cit* and Regulation 190(3) of PPR 2013 *Op.cit*

2.8.6 Evaluation of Tender

This is one of the critical stages in the procurement process. It is the stage where the fate of bidders is determined. Evaluation of tender involves the following stages: preliminary examination to determine responsiveness and detailed evaluation to verify whether bidders demonstrate relevant experience in the undertaking the goods/works being procured and comparison of prices and post qualification. In the case of revenue collection, evaluation of tender is based on the lowest evaluated tender price or the highest evaluated tender price, and not in the lowest or highest submitted tender price.¹⁴⁶

The standard for determination of the lowest evaluated tender price is guided by the PPR.¹⁴⁷ Once the evaluation and post qualification is complete, the evaluation committee the final evaluation report shall be prepared and be submitted to the PMU for submission to TB for approval. This stage is crucial in obtaining the successful tenders; hence it has to be done carefully by each entity because it is under this stage where bid evaluations can easily be manipulated by favouring a particular bidder an act which violates the law.

2.8.7 Award of Contract and Notification of Successful Tender

Disclosure of procurement information is one of the elements of transparency. For purpose of ensuring transparency and fairness in procurement transactions, a PE shall maintain and disclose contract award information by publishing in the Journal and Tenders Portal the names of the successful bidder and unsuccessful bidders, reasons for that award, the contracts amount, contracts period and the date when the awards were made. All successful tenderer shall be notified and be required to confirm in writing whether they accept the tender award. For LGAs the procedure is a bit different because once the TB awards the tender, and before the contract is signed, the proceedings of the TB as regards to that tender has to be presented to the Finance

¹⁴⁶ See regulation 212 of the PPR 2013

¹⁴⁷ See regulation 213 of the PPR 2013; The procuring entity may consider the tender price; the cost of operating, maintaining and repairing the goods or construction, the time for delivery of the goods, completion of construction or provision of the services, the characteristics of the goods or construction, the terms of payment and of guarantees in respect of the goods, construction or services.

committee for verification, the purposes being to see whether the intended project has enough funds to meet the cost of the said project¹⁴⁸ and whether that project is in the procurement annual plan.

The public procurement regulation requires that, after signing the contract, notification has to be sent by the PMU to various authorities concerned with procurement including the Attorney General (AG) for vetting the contract; CAG; Office of the Stock Verification Unit of Ministry of Finance or the Regional Officer of the CAG and to TRA. This is important as it acts as one of the controlling mechanisms which ensure compliance with the procurement process.¹⁴⁹

2.8.8 Signing of Contract

This is a crucial stage under which a legal and binding contract agreement between the two parties is signed to describe and identify the rights and obligations of each party. Successful and unsuccessful tenderers shall be notified by the AO about the need for conducting the signing ceremony. The notification shall be done within thirty days after the communication of award. Any contract amendment has to follow the procurement process including tender board approvals, signing, and ratifications or vetting.

2.8.9 Contract Management

Contract management involves assessment of the adequacy of contracts management, by determining the adequacy of contracts management, communication management, scope management, time management, quality management, and cost management issues. Also, contract management can be analysed by assessing time extensions, delays, liquidated damages, variations, and process of issuing variation orders (scope changes), performance securities, quality control systems, claims, instructions, warranties, payments, retention money, delayed payments. Assessment of contract management is vital as it can give the levels of compliance of contracts management by the PE.

¹⁴⁸ See regulation 19(2) of the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations GN No. 330 of 2014

¹⁴⁹ See regulation 23 *ibid*

Therefore, based on all these stages of procuring cycle, public procurement is supposed to be strictly in compliance with the laid down procurement law and regulation. Hence fore, all key executors of the procurement cycle that is the: User departments or sections (initiator); the PMU, Evaluation committee, TB and the Accounting Officer, including the councillors in case of LGAs who participate on procurement process through standing committee and Full Council meetings are to strictly comply to the set procedures above. That means every PE is required to exercise proper contract management to prevent the apparent loss which may arise during this procurement stage.

2.8.10 Enforcement of Compliance

Enforcement of compliance can broadly be viewed as any actions taken by the regulatory bodies and PE to ensure compliance with the Public Procurement Guidelines.¹⁵⁰ Severe penalties and enforcement action may lead to greater levels of compliance with laws. While coercive enforcement measures remain an essential ingredient in any compliance regime.¹⁵¹ However, weak enforcement in any PE may create enormous opportunities for abuse of the system often with total impunity.¹⁵²

Enforcement mechanisms under the PPA 2011 start from the bidder himself. The PPA provides that, where a tenderer believes to have been adversely affected by any error or irregularity committed during selection or procurement procedure, the first instance of enforcement is by the aggrieved bidder to file a complaint to the accounting office in writing or electronically and a copy to the PPRA after the tenderer become aware of the circumstances giving rise to the complaint or dispute.¹⁵³ The bidder may also file directly to the Appeals Authority if the accounting officer fails to deliver a written decision to the complainant.¹⁵⁴

¹⁵⁰ See Zubicic, J. & Sims, R. (2013). Examining the link between enforcement activity and corporate compliance by Australian companies and the implications for regulators, *International Journal of Law and Management*, 53(4), 299-308

¹⁵¹ See Sutinen, J. G. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance. *International Journal of Social Economics*, 26(1/2/3), 174-193

¹⁵² See Hunja, R. (2001). *Obstacles to Public Procurement in Developing Countries*. Paper 4. World Bank

¹⁵³ See Regulation 105 of the PPR 2013 *Op cit*.

¹⁵⁴ See Regulation 107(1) of the PPR 2013 *Op cit*.

The second scenario for review is available from the AO to the Appeals Authority, whereby the appeal shall be referred to the Authority from the date when the tenderer received the decision of the accounting officer. The Appeal Authority in determining the complaint shall be guided by the regulation made under the Act. The decision of the Appeals Authority shall be final and binding to all parties and such decision may be enforced in any court of competent jurisdiction as if it were a decree of the court.

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The third stage of review by way of judicial review. The tenderer or procuring entity who is aggrieved by the decision of the Appeals Authority may apply to the High Court through the procedures set in the Act. In case the review involves the procuring entity and the Appeals Authority, the law requires that the procuring entity and the Appeals Authority shall state their positions to the Attorney General. In such a case the Attorney General shall state the case containing positions of both parties and file a case marked “Case Stated” in the High Court for its opinion in accordance with Order XXXIV of the Civil Procedure Code.¹⁵⁶ The decision of the High court will bind both parties.

2.9 Conclusion

In this chapter, we have seen the conceptual framework of the study. The chapter has analysed all the important concepts and principles which are related to compliance with public procurement law. The next chapter covers the analysis of the law and regulations governing public procurement in LGAs in Mainland Tanzania.

¹⁵⁵ See Sect. 97(8) of the PPA 2011 *Op cit.*

¹⁵⁶ See Sect. 101(3) of the PPA 2011 *Op cit.*

CHAPTER THREE

THE LEGAL FRAMEWORK OF PUBLIC PROCUREMENT IN LGAs IN MAINLAND TANZANIA

3.1 Introduction

This Chapter presents an analysis of the legal and regulatory framework governing procurement in LGAs in Mainland Tanzania. The analysis is made on the provision of the legal and regulatory framework of Public procurement which includes both principal and subsidiary legislation that provide for public procurement principles, standards and procedures in mainland Tanzania. The analysis of the said legal and regulatory framework of public procurement will form the basis for determining the factors that hinder LGAs compliance with the said legal and regulatory framework in Mainland Tanzania. The Chapter is organised into three parts: the introduction, analysis of the legal and regulatory framework of public procurement and its enforcement machinery and conclusion.

3.2 Legal Framework

As noted in the preceding chapter, public procurement in LGAs in Mainland Tanzania is governed and regulated by the PPA,¹⁵⁷ the PPR,¹⁵⁸ and the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations.¹⁵⁹ The provision of each of this legislation related to public procurement in LGAs is hereby examined.

3.2.1 The Public Procurement Act (PPA 2011)

The current public procurement Act was enacted in 2011 to repeal the PPA 2004. The Act was enacted for the purpose of making better provisions for the regulation of public procurement, repeal the Public procurement act 2004 and re-enact the Public

¹⁵⁷ Act No. 7 of 2011

¹⁵⁸ Government Notice. No. 466 of 2013

¹⁵⁹ Government Notice. No. of 2014

Procurement Act and consequential matters and to provide for other related matters.

¹⁶⁰

The PPA 2011 was designed to put in place a defined legal framework which intended to have effective utilisation of the resources and ensuring that public procurement process is transparent, ethical and promote sustainable economic development and standards of living.¹⁶¹ The Act provides various procedures, principles, and standards for ensuring compliance of the law.

The PPA 2011 requires every procuring entity that intends to procure goods, works or services to advertise the tender in the newspaper of wide circulation in Tanzania after approval by the TB in order to inform prospecting bidders to bid.¹⁶² This process is very important not only to the bidders but also to the PEs because it enables the PEs to procure a reliable bidder from a widely competitive bid. Furthermore, the provision enhances transparency in the procurement process which is one of the key principles of the procurement system.

The PPA 2011 provides for competitive tendering for purposes of providing equal opportunity to tender for the required goods, works services or non-consultancy services or public-private partnership, and disposal of public assets by tender.¹⁶³ The competitive tendering shall be considered before other methods of tendering prescribed in these Regulations are used. The procuring entity can use International Competitive Bidding, National Competitive Bidding, Restricted Tendering, Competitive Quotations, Single Source Procurement, and Minor Value Procurement basing on the thresholds prescribed in the Seventh Schedule of the Regulations.

However, the PPR-2013 allows the procuring entity to select an appropriate alternative method of procurement in any case where competitive tendering is not considered to be the most economical and efficient method of procurement and the

¹⁶⁰ See Long Title to the Act.

¹⁶¹ See Seidu, S.S., Fatawu, A. & Ahmed, S., (2014), 'Assessing the contribution of Public Procurement in revenue mobilization in Ghana', *International Journal of Economics, Commerce, and Management* 2(9), 1–20.

¹⁶² See sect. 68 of the Public Procurement Act, *loc.cit.*

¹⁶³ See sect. 67 of the PPA 2011 and regulation 76 of the Public procurement regulation. *loc.cit.*

nature and estimated value of the goods, works, or services permit.¹⁶⁴ The alternatives available are; a single source, shopping, micro value procurement, force account, and community participation.¹⁶⁵ The purposes of PPRA offering different procurement methods depending on the thresholds provide for an efficient system, however, the provision that mandate the procuring officers, to apply at their discretion, the alternatives method of procurement opens a possibility of non-transparency, unfairness and potential abuse of the law.

The PPA 2011 establishes a structure of decision-making processes. Various organs and stakeholders are involved in procurement processes including; the Tender Boards, budget approving authority, Accounting Officer, Procurement Management Unit, User Departments, Internal Audit Unit and Legal Department.¹⁶⁶ Additionally, a series of committees are usually appointed for each procurement stage, including ad-hoc tender opening committee, tender evaluation committee, contract negotiation team and special team for conducting post-qualification or due diligence where required.

Furthermore, at some stage, external control bodies such as the PPRA, the GPSA, the Paymaster General and the Attorney General (AG) are involved in granting some approvals or legal advice required under the law. Such set up established by the PPA 2011 create a hierarchical structure and bureaucratic decision-making processes which dilutes individual accountability, making every official covered by collective decisions even if the intended results are poor.¹⁶⁷ In other words, nobody owns the process instead everyone has a good excuse. This normally results in inefficiencies in terms of high transaction costs, more time is taken to complete the procurement cycle, and failure to achieve the intended outcomes.

¹⁶⁴ See Regulation 149(4) *ibid.*

¹⁶⁵ See Regulation 159,163,166,167 & 168 *ibid.*

¹⁶⁶ See ss. 30, 31, 33(2),38 and 39 of the PPA 2011 *Op.cit*

¹⁶⁷ See Maliganya, E. C., *The Next Age of Public Procurement Reforms in Tanzania: Looking for the Best Value for Money (2015)*, p. 19, Draft available at SSRN: <http://ssrn.com/abstract=2709842>.

The PPA 2011 makes it a mandatory requirement to all PEs to prepare and submit Annual Procurement Plans (APP) to the PPRA. PE also are obliged to submit to PPRA information regarding tender notices, invitations for quotations, request for proposals, contract award, contract termination monthly, quarterly and annual procurement implementation reports in the prescribed format and through systems developed by the PPRA.¹⁶⁸

The PPA 2011 further requires every official and expert engaged in services delivery or procurement decision making to subscribe to the Code of Ethical Conduct.¹⁶⁹ It further requires all tenderers to sign a declaration of compliance with the Codes of Ethical Conduct.¹⁷⁰ These requirements are very important in the public procurement as are meant to monitor compliance with legal procedures by the PEs.

Notwithstanding the requirement of public officers to be guided by integrity, the PPA 2011 and its regulations fall short of a clear definition of the word integrity as one of the basic principles. Also, the Act does not provide an effective mechanism for imparting ethical values and detection of violation of integrity and ethics among the procurement stakeholders. Such loophole has given less weight the commitment to integrity and ethics by public and private officials involved in procurement undertakings. Maliganya, E. C (2016) in his paper on "The Systemic Flaws of the Tanzania Public Procurement Act, Cap. 410 and Proposed Solutions" stated that; there is less public knowledge on the integrity and ethics, leading to a perception among most of the external stakeholders about integrity and ethics that every inefficient outcome in the procurement activities may be perceived as a corrupt practice.¹⁷¹

The PPA 2011 assigns to the PPRA a role of ensuring fairness, value for money, competitive, transparent, non-discriminatory adherence to procurement standards and

¹⁶⁸ See sect. 87 *Ibid.*

¹⁶⁹ See sect. 102 *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ See Maliganya, E. C. *The Systemic Flaws of the Tanzania Public Procurement Act, Cap. 410 And Proposed Solutions*; A Short Paper Submitted to the Law Review Commission of Tanzania 14th January, 2016.p.12.

practices, and monitoring compliance with the procurement law.¹⁷² The PPRA in collaboration with other relevant bodies is required to monitor any kind of deviation from the use of standardised tendering documents, procedural forms and to ensure any other attendant documents get written approval of the PPRA before being affected.¹⁷³ Application of this role may guarantee monitoring of compliance.

Besides all, the PPA 2011 creates an offense to any person who causes loss of public properties or funds as a result of negligence when implementing this Act; connives or colludes to commit fraudulent, corrupt, collusive, coercive or do an obstructive action as prescribed in the Act; exerts undue influence to any officer or employee of the authority, appeals authority or procuring entity or to member of tender board in the performance of his functions or in the exercise of his or her power under this Act.¹⁷⁴

Most importantly, the PPA 2011 establishes several institutions with different capacities in the implementation of the provision of the Act. The said institutions include: the Public Procurement Regulatory Authority (PPRA), the Public Procurement Policy Division (PPPD), Budget Approving Authority and the Public Procurement Appeals Authority (PPAA). The Act further mandate other bodies established by other relevant laws to take part in ensuring compliance and implementation of the provisions of the Act. Among such other bodies include the CAG, the Government Procurement Services Agency (GPSA), and the Prevention and Combating of Corruption Bureau (PCCB).

However, most of these institutions are not strong enough in ensuring procurement system is efficiently and effectively performing. For instance, the PPPD is not performing its function for that matter it is almost underutilised, the PPRA is vested with some conflicting functions such as conducting training to procurement officials, and it is one of the criteria for measuring PEs' compliance. Thus, such function raises a question of organisational conflict of interest, especially where training is

¹⁷² See sect. 8, *Ibid.*

¹⁷³ See sect. 9(1) (d), *Ibid.*

¹⁷⁴ See sect. 104, *Ibid.*

also sources of revenue from the PEs. It is worthwhile to briefly examine the role and functions of some of these institutions and bodies hereunder:-

3.2.1.1 The Public Procurement Regulatory Authority (PPRA)

The PPRA is established under the PPA 2011 as an oversight body. It is composed of seven members of the governing board including the Chairman and the Chief Executive Officer appointed by the President.¹⁷⁵ Other members are appointed by the Minister for the time being responsible for finance, provided at least three of them must be experts or specialists in procurement, law, management, engineering, commerce, or any other relevant field.¹⁷⁶ The PPRA is responsible for the monitoring of compliance by ensuring effective implementation of public procurement by conducting a procurement audit through periodic review and by monitoring the procurement activities of the PEs.

However, some of the compulsory regulatory functions of the Authority require payment of fees from the PEs. There is a bad chance for the Authority as a regulator to be biased and think more to satisfy its budget forecast than the normal regulatory interests of striving to improve efficiency in the compulsory service delivered. For instance, when the PPRA runs a capacity building program which is part of its income generation, while the same time, one of the procurement performance assessment criteria assessed to the PE by the authority is whether public officials of the particular PE have to receive procurement training, it is very easy for the authority to report lack of capacity whenever it finds that the officials of that particular PE are not trained by the authority.

The PPRA is considered a toothless body because the law does not provide it with enforcement mechanisms of taking action against the defaulters. According to the PPA, the PPRA once discover that a certain PE has not complied with the guidelines, regulations issued in accordance with the prescribed procedures; it has to make only recommending to other authority on the disciplinary actions to be taken against the one who failed to comply. In this regard, the other authority may decide to act or on

¹⁷⁵ See ss. 7, 21(3) and 23, *Ibid.*

¹⁷⁶ See First Schedule to the PPA *op.cit*

not. This is the weakness of the law which contributes to the existence of procurement weakness which has been frequently repeating in every financial year.

3.2.1.2 The Government Procurement Services Agency (GPSA)

The GPSA is established under the Executive Agency Act.¹⁷⁷ The PPA 2011 makes a mandatory requirement for the procurement entity to seek approval of the GPSA before proceeding on with emergency procurement.¹⁷⁸ Also, the Agency in collaboration with the PPRA, the department responsible for technical audit in the Ministry responsible for finance or where necessary, with any other competent body, may advise the Pay-Master General on the appropriate action to be taken in as far as emergency procurement is concerned.¹⁷⁹ This Agency is important in ensuring PEs compliance with the procedure prescribed in the law. Nonetheless, it is questionable as to whether the Agency is effective enough to ensure value for money principle in public procurement as the price and quality of goods and services provided by the Agency are said to be relatively higher and sometimes with low quality as compared to those from the market.

3.2.1.3 Public Procurement Policy Division (PPPD)

The PPPD is established under the Ministry responsible for Finance. It is mandated by the PPA to develop National Procurement Policy; review and update procurement policies, regulations, circulars, and other related directives; monitor the implementation of Public Procurement Policies; local governments and statutory bodies on issues related to procurement policies; develop and manage procurement cadre.¹⁸⁰

The PPPD also is mandated to monitor, evaluate and review public procurement systems; harmonise public procurement systems in the country and monitor their implementation; build procurement capacity to officials from the public procurement entities by liaising with training institutions on issues related to capacity building of

¹⁷⁷ CAP 245 R.E 2002

¹⁷⁸ See sect.65 (3) of the PPA 2011, *loc.cit.*

¹⁷⁹ See sect. 65(7) *ibid.*

¹⁸⁰ See sect. 6 *ibid.*

procurement staff; manage the establishment of Procurement Management Units; conduct research and other studies on public procurement and advice. However, the division seems to be underutilised because to date it has failed to ensure procurement policy is developed to regulate the procurement process at national and or at the council level.

3.2.1.4 The Appeals Authority

This Appeal Authority is established under the PPA.¹⁸¹ The Authority is vested with original and appellate jurisdiction to hear and determine complaints against procuring entities where a contract for procurement or disposal of goods is already in force. It also vested with powers to hear and determine appeals arising from administrative decisions made by the AO that arise when the contract is not yet in force.¹⁸² However, the law does not give access to the general public to complain to the review mechanism, such rights are only available to bidders and other parties in the procurement process.

3.2.1.5 Budget Approving Authority

The budget approving authority is established under the PPA 2011. The major function of the Authority is reviewing and approving of Annual Procurement Plan of the PEs based on its budget and action plan; reviewing of quarterly procurement report submitted by the accounting officer; ensuring that the organisation comply with the provisions of the Act and regulations; ensuring its recommendations with respect to established wrongdoings in procurement activities are implemented and to take disciplinary action against any staffs implicated on wrongdoings.¹⁸³

3.2.1.6 Prevention and Combating of Corruption Bureau (PCCB)

The Bureau is established under the Prevention and Combating of Corruption Act (PCCA).¹⁸⁴ The Act provides among another thing mandate for the bureau to combat

¹⁸¹ See Regulation 88 of PPA 2011

¹⁸² *Ibid.*

¹⁸³ See sect. 33 (2),(3) and 49(2) *ibid.*

¹⁸⁴ Act No. 3 of 1971

corruption transactions in contracts and in the procurement process.¹⁸⁵ The Bureau is an important organ in the enforcement of compliance with public procurement law. Having analysed the provision and institutions (Bodies) of the PPA, the next item examines the provisions of the Public Procurement Regulations (PPRs) 2013.

3.2.2 The Public Procurement Regulations (PPR 2013)

The PPR 2013 was established to operate and support the application of the Public Procurement Act.¹⁸⁶ The PPR 2013 sets various standards and principle of public procurement to make the best possible use of public funds with honesty and fairness.¹⁸⁷ The principles of public procurement are important in ensuring compliance to the legal and regulatory framework,¹⁸⁸ and for the PPRA and other bodies in ensuring the existing principles and standards are adhered for by every PEs.

The regulation further makes a mandatory requirement for any procuring entity to prepare and submit it to the PPRA summary of the general procurement notice based on its annual procurement plan for publication in the Journal and Tenders' Portal.¹⁸⁹ Contents of the summary of general procurement notice are as provided in the PPR. The regulations also create liability to the accounting officers in case he/she engage in unnecessary or extravagant procurement.¹⁹⁰ The PPR is supplemented by the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations in Public Procurement in LGAs which are examined hereunder.

3.2.3 The Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014

Local government authorities use both the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014 and the PPR when undertaken procurements process. However, tender board for local government authorities is established under the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014. The regulations establishes and

¹⁸⁵ See Sect. 16 and 17 of Act No. 11 of 2007

¹⁸⁶ See Regulation 88(2) of the Public Procurement Regulations, 2013, GN no. 446 of 2013

¹⁸⁷ See Regulation 4 *ibid.*

¹⁸⁸ See Regulation 148-161 of PPR *Op.cit*

¹⁸⁹ See Regulation 18 of PPR *Op. cit*

¹⁹⁰ See Regulation 67 of PPR *Op. cit*

prescribe the member of the board to include the chairman who is chosen from the department not frequently initiating procurement, four heads of departments, the council legal officer or his representative who shall attend as an advisor, Head of PMU who shall be the secretary to the Board.¹⁹¹

The LGA Regulation appoints the Finance Committee as oversight of procurement activities in the council, which also has the mandate to review and approve annual procurement plan and oversee contract implementation through inspection of works.¹⁹² This requirement is important as it helps in ensuring LGAs' compliance with the Law and Regulation including adherence to procurement principles which are key indicators for the attainment of value for money and the objective of procurement in general.

Furthermore, The LGA Regulation requires all council officers and member of the TB to work under the guidance of the procurement policy with a view of achieving the best available net return when disposing of councils' assets by way of tender. This requirement is important as it acts as an instrument of ensuring compliance with the law when the LGA is disposing of council asset by tender.¹⁹³ The LGA Regulation also prohibits any illegal conducts resulting from the provision of gratuity in any forms and inducement. It also prohibits procurement to be done by the councillor or an officer working with the respective council, whether acting in a private capacity or as a partner, the aim is to discourage personal benefit through their position they have in the LGA. Moreover, for purposes of controlling personal interest of council officers and councillors, the regulation requires them to observe the code of conducts for councillors and code of conduct for council officer, by declaring any interest on the contract, supplier, service or works in which that supplier, the service provider is involved.¹⁹⁴

¹⁹¹ See Regulation 7 and 8 of the Local Government Authorities' Tender Board (Establishment and Proceedings) Regulation Government Notice. No.330 of 2014

¹⁹² See Regulation 9 *ibid.*

¹⁹³ See Regulation No. 4 (2) (a-d) *ibid.*

¹⁹⁴ See the Local Government (Urban authorities) Councillor's Code Conducts GN. No. 279 of 2000 and the Local Government (District authorities) Councillor's Code Conducts GN. No. 281 of 2000. Also, see the Code of Ethics and Conducts for Public Service, 2003 and the Local Government (Staff Code of Conduct) Regulation, 2000.

The Staff involved in procurement processes at a council level is obliged to disclose any conflict of interest which arises between public duty and private or personal interest in order to comply with the Staff Code of Conduct.¹⁹⁵ This is done also to Councillors who are required to avoid conflicts of interest between his or her public duties as a councillor and his or her personal interests and obligations.

However, the organ for hearing a breach of the code of conduct by the Councillor is the Committee established by the council whose members are the Councillors themselves. Among the remedies which a committee may order in case of breach of the code of conduct is a warning, or the matter to be tabled to the full council for deliberation or the full council to be advised to report the matter to another enforcement body like Police or to PCCB for further investigation and proper action. The Regulations also stipulate the function of different bodies and organs including that of the Finance Committee, AO, PMU, User department, and evaluation committee.¹⁹⁶ The Regulation requires all these organs to act independently in relation to their function.

Furthermore, the LGA Regulation provides for the requirement of the procedure for emergency procurement in LGAs. Unlike the provision of the PPR on emergency procurement, the LGAs Regulations mandates the Accounting Officer on his own to effect emergency procurement and report the same to the Regional Administrative Secretary (RAS) and to the CAG explaining the reason for him to depart from the ordinary directives.¹⁹⁷ The regulation doesn't entertain any conduct by the accounting officer done extravagantly or unnecessary with lack of oversight.¹⁹⁸

Critical analysis of the provisions of the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations reveals that these regulations have similar provisions to the PPRs except the provision on the establishment of the Local government tender board, the function of the tender board, and other procedures relating to approval of the tender award. Thus, it can be argued that the

¹⁹⁵ *Ibid.*

¹⁹⁶ See Regulation 17,22,25,26 &27 *ibid.*

¹⁹⁷ See Regulation 32 of LGA Regulation *Op.cit*

¹⁹⁸ See Regulation32(2) *ibid*

creation of the same regulations for public procurement in LGAs was unnecessary because the existence of many regulations may unnecessarily cause confusion among the stakeholders and implementers' of the laws.

3.2 Conclusion

This Chapter analysed the legal and regulatory framework governing public procurement in LGAs in Mainland Tanzania. An attempt has been made to examine the provisions of the PPA and the organs established to regulate Public Procurement, the PPRs 2013 and their respective amendments as well as Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014. The analysis has revealed several loopholes and flaws in the legal and regulatory framework of public procurement which may contribute to non-compliance with the said law by LGAs in Mainland Tanzania. The next chapter covers the findings of the study.

CHAPTER FOUR

RESEARCH FINDINGS AND DISCUSSION

4.1 Introduction

This chapter presents and discuss the research findings. The discussion basis on the findings obtained through the research objectives and questions which guided this study. The study examined the governing law on public procurement in LGAs and its enforcement mechanism in order to determine why LGAs fail to comply with the public procurement law and come up with recommendations on how to improve LGAs' compliance with the public procurement law in Mainland Tanzania.

Specifically, the study was centered on assessing the adequacy of the legal and regulatory framework of public procurement in LGAs; the factors that make LGAs fail to comply with the public procurement law in Mainland; and what should be done to enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania. Data was collected through interviews, documentary review, and questionnaires. Both documentary review and field responses show that the law is generally inadequate in ensuring effective public procurement. There are several weaknesses in the law itself and in its enforcement machinery. Such weaknesses contribute to LGAs non-compliance with the public procurement law. These findings are hereunder discussed in detail under three headings: adequacy of the legal and regulatory framework, factors hindering LGAs compliance law and measures to ensure LGAs compliance with the law.

4.2 Adequacy of the Legal and Regulatory Framework

Documentary review shows that the PPA 2011 was enacted for purposes of, among other things, making better provisions in the regulation of public procurement. The idea was to have effective and efficient utilisation of resources through an ethical and transparent public procurement system. To ensure an ethical and transparent public procurement system, particularly in LGAs, the PPA 2011 provides for competitive tendering for purposes of providing equal opportunity to tenderers. Nonetheless, as noted in the preceding chapter, the Act gives PEs the discretion to use any other

appropriate alternative methods of procurement instead of competitive tendering. The alternatives methods available include single source, shopping, micro value procurement, force account, and community participation. Giving PEs the discretion to use alternative methods of procurement opens a possibility of non-transparency, unfairness and potential abuse of the law; hence non-compliance with the law.

Analysis of the PPA under the preceding chapter further revealed that the Act establishes a structure of decision-making processes. In this regard, various organs and stakeholders are involved in procurement processes including; the Tender Boards, budget approving authority, Accounting Officer, Procurement Management Unit, User Departments, Internal Audit Unit and Legal Department. There are also a number of committees which are usually appointed at different procurement stages including ad-hoc tender opening committee, tender evaluation committee, contract negotiation team and special team for conducting post-qualification or due diligence where required.

At some stage, external and internal control bodies such as the GPSA, the Paymaster General, the AG, the PPRA, the PPPD, the Budget Approving Authority, the PPAA, the CAG, and the PCCB are involved in granting some approvals, legal advice and ensuring LGAs compliance with the provisions of the PPA. Such set up established by the PPA creates unnecessary hierarchical structure and bureaucratic decision-making processes which may dilute individual accountability hence making every official covered by collective decisions. In other words, nobody owns the procurement process as such; everyone may have a good excuse. Should such a phenomenon happen, there can be inefficiencies due to high transaction costs, wastage of time in completion of procurement cycle and, failure to achieve the intended outcomes.

Some institutions like the PPRA are vested with conflicting roles. The PPRA is required to conduct training to procurement officials. Training is one of the criteria for measuring PEs' compliance. Such function raises a question of organisational conflict of interest, especially where training is also a source of revenue from the PEs. The possibility of a conflict of interest minimizes the credibility of the PPRA

hence watering down its capacity to ensure PEs compliance with the public procurement law.

The PPRA is also responsible for the monitoring of compliance and ensuring effective implementation of public procurement law by making procurement audit through periodic review and monitoring the procurement activities of the PEs. However, some of its compulsory regulatory functions require payment of fees by PEs. This creates possibilities of the Authority as a regulator to be biased and thinks more to satisfy its budget forecast than regulatory interests. For instance, the PPRA runs capacity building program which is part of its income generation, while the same time it is one of the PEs procurement performance assessment criteria assessed by the authority. It is very easy for the authority to report lack of capacity whenever it finds that the officials of that particular PE are not trained by the authority.

The PPRA is also considered a toothless body because it has no enforcement power of its functions. Once it carries out investigations for alleged mis-procurement, it is only required to make recommendations of disciplinary actions. The other authority may decide to act on those recommendations or not. This is one of the weaknesses of the law, which may result in LGAs non-compliance with the public procurement law.

Besides the PPRA, analysis of the law regulating public procurement in LGAs in the preceding chapter also noted weaknesses on the GPSA. The PPA requires every PE to obtain approval of GPSA before proceeding with an emergency procurement. Also, GPSA in collaboration with the PPRA may provide advice to the Pay-Master General on the appropriate action to be taken in as far as emergency procurement is concerned. Notwithstanding its importance in ensuring PEs compliance with the procedures prescribed in the law, its effectiveness in ensuring value for money in public procurement is questionable. This study revealed that the price of goods and services provided by this Agency is relatively higher and sometimes with low quality as compared to the market.¹⁹⁹

¹⁹⁹ See Mrope N. P,(2018) *Determinants of Performance of Procurement Departments in Public Entities In Tanzania*. PhD Thesis of Jomo Kenyatta University of Agriculture and Technology

The PPA also establishes the Appeals Authority with original and appellate jurisdiction over complaints against procuring entities where the contract for procurement or disposal of goods is already in force. It also deals with appeals arising from administrative decisions made by the accounting officer, especially where the contract is not yet in force. However, the law does not give access to the general public to complain. Access to complaint review mechanism is only available to bidders and other parties in the procurement process and not to the public who might be the victims of poor service delivery in case of non-compliance with the law.

Furthermore, as noted in chapter three above, for the purpose of ensuring PEs compliance with the law, the PPA requires every official and expert engaged and involved in the procurement process to adhere to the Code of Ethical Conduct. The Act also requires all tenderers to sign a declaration of compliance with the Codes of Ethical Conduct. However, the Act and its regulations do not clearly define the term integrity. Also, the Act does not provide an effective mechanism for imparting ethical values and detection of violation of integrity and ethics among the procurement stakeholders. Such lacuna creates loopholes for non-compliance with integrity and ethical values.

It has also been noted in chapter three above that besides the PPA 2011 and its regulations of 2013, procurement in LGAs is also regulated by the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations (PPRs). Critical analysis of the provisions of the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations reveals that these regulations have similar provisions to the PPRs except the provision on the establishment of the Local government tender board, the function of the tender board, and other procedures relating to approval of the tender award. Thus, it can be argued that the creation of spate regulations for public procurement in LGAs was unnecessary because the existence of many regulations may unnecessarily cause confusion among the stakeholders and implementers' of the laws. From the foregone discussion based on analysis of the law, it is worthwhile to infer that the legal framework of public procurement in LGAs and its enforcement mechanism is not adequate enough to ensure LGAs compliance with the law.

Apart from content analysis of the law, information on the adequacy of the legal framework of public procurement and its enforcement mechanism was gathered from field respondents through questionnaires and interviews. In this regard, a total of 48 respondents were involved. Twenty-eight (28) were administered questionnaires and 20 respondents were interviewed through face to face interviews. Out of the 28 questionnaires, only twenty (20) were returned hence making a total of 40 respondents who were accessed.

From the returned questionnaires and interviews, the majority of respondents were of the opinion that, the legal and regulatory framework of public procurement in LGAs is adequate and do guarantee sufficient mechanisms for compliance. A few of them had the opinion that the legal and regulatory framework of public procurement in LGAs and its enforcement mechanism has some weaknesses (inadequacies) for LGAs effective compliance with the same.

The breakdown of the responses as such, out of the forty (40) respondents, thirty (34) respondents which equal to 85% were of the view that the legal framework of public procurement and its enforcement mechanism is adequate for LGAs compliance with the same. Three (3) (7.5%) respondents were of the view that the legal framework of public procurement and its enforcement mechanism is inadequate for LGAs compliance with the same but they did not provide reasons for their stand. Three (3) (7.5%) respondents were of the view that the legal framework of public procurement and its enforcement mechanism is very complicated as it has a lot of provisions which confuses some of the stakeholders. This category of respondents substantiated their stand by the following reasons:-

Firstly, that the set up of the PPRA does not provide adequate monitoring mechanism that can ensure LGAs compliance with the public procurement law because it is highly centralised. The PPA, 2011 does not provide a room for the PPRA to establish offices at the Region, District or Zone levels. This kind of set up cannot guarantee efficiency and effective monitoring of LGAs compliance with public procurement law. They also urged that the PPRA being vested with the mandate to formulate criteria, indicators, guideline, and standards for monitoring compliance, can easily

misuse such powers as it is left unchecked. These respondents' arguments are in line with the findings obtained from the documentary review that besides the complexity of the law, the PPRA is vested with conflicting roles and functions.

Secondly, that the oversight bodies such as the PPRA and CAG are toothless bodies because the legal and regulatory framework of public procurement does not empower them to take action against defaulters. The law only requires them to propose and recommend to the government proper action to be taken against the defaulter, whereas the government may decide to take action or not. Such weakness has repeatedly caused LGAs' non-compliance with the public procurement law in Mainland Tanzania. This argument is in line with the findings obtained from the documentary review that the PPRA and other institutions set to ensure PEs compliance with the law are toothless bodies.

Thirdly, the legal and regulatory framework of public procurement is complex. Their argument was that the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania is governed by the PPA 2011; the PPR 2013; the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014 and other guidelines and standard documents issued by the PPRA. This argument is also in line with the findings obtained from the documentary review that the existence of many regulations may unnecessarily cause confusion among the stakeholders and implementers of the laws.

Therefore, notwithstanding the majority (85%) responses that the legal framework of public procurement and its enforcement mechanism is adequate for LGAs compliance with the same; the minority (7.5%) responses that the legal framework of public procurement and its enforcement mechanism is inadequate for LGAs compliance with the same seem to suggest the true position because the same is also supported by content analysis of the law. The next item discusses the factors hindering LGAs compliance with the law, of which some of them have already been covered in this item.

4.3 Factors hindering LGAs Compliance with the Law

From the discussion of item 4.2 above, it can obviously be concluded that the major factors hindering LGAs compliance with the public procurement law are associated with the legal and regulatory framework on the one hand and on the other hand the weaknesses on the institutions or organs responsible for enforcement of compliance. That is, the legal framework of public procurement and its enforcement mechanism are inadequate to ensure LGAs compliance with the law. For instance, as noted under item 4.2 above, the law gives PEs the discretion to use alternative methods of procurement instead of competitive tendering; the PPA creates unnecessary hierarchical structure and bureaucratic decision-making processes which dilutes individual accountability; the PPRA is vested with conflicting roles which may result into bias due to conflict of interest.

Furthermore, some institutions of compliance enforcement like the PPRA have no enforcement power of their decisions. The PPRA, for instance, makes investigations for alleged mis-procurement only but it cannot take disciplinary action against defaulters. Not only that but also the general public is not afforded an opportunity of lodging complaints against PEs which do not comply with the law. As it has been noted under the preceding item 4.2, the Appeals authority jurisdiction is limited to hearing matters of the first instance and appeals from bidders and other parties only but the law does not give access to the general public to complain. The PPA 2011 and its regulations do not define compliance to provide an effective mechanism of ensuring PEs compliance with integrity and ethical values. Also, the said the legal and regulatory framework is unnecessarily complex hence causing confusion to its subjects.

Apart from the documentary review, field respondents were also requested to provide their opinion on the factors that hinder LGAs compliance with public procurement law in Mainland Tanzania. Majority of respondents 33(82.5%) were of the opinion that there are several factors which hinder LGAs compliance with the public procurement law in Mainland Tanzania. Seven (17.5%) respondents negated the presence of any factor that hinders LGAs non-compliance with the public

procurement law. The category of majority responses provided several reasons (factors) that in their opinion hinder LGAs compliance with procurement law. They provided the following reasons;-

First, that one of the factors that hinders LGAs compliance with the public procurement law in Mainland Tanzania is lack of comprehensive National Public Procurement Policy. That is, despite the PPA 2011 giving room for the establishment of Public Procurement Policy by the PPPD, still, Tanzania has no public procurement policy in place. Thirty-three (82.5%) respondents argued that absence of procurement policy creates inconsistencies in the procurement of works and goods. this finding is in line with findings from the documentary review that the PPPD has to date failed to create and put in place any National Public Procurement Policy.

Second, that majority of PEs has sufficient knowledge of the procurement rules and regulations. For instance, twenty-five (62%) out of 40 respondents were not conversant with procurement rules and regulations. Only fifteen (37.5%) out of 40 respondent seemed to be conversant with public procurement rules and regulations. This finding has an effect on LGAs compliance with the law because, if the key actors in the procurement process are not familiar with the governing law and regulation, it is obvious that compliance with the law by the said actors is impossible. This finding is in agreement with the existing literature. For instance, Gelderman et al.,²⁰⁰ in his study on the causes of non-compliance with European Union procurement directives, states that familiarity with the procurement regulations improves PEs compliance with the law.

Third, that, the legal and regulatory framework of public procurement establishes a long chain of organs and committee which does not guarantee compliance except wastage of tax payer's money. Twenty-five (62%) out of 40 respondents argued that although the PPA requires the established organs and committees to act independently, still the person appointing them can easily influence their decision. For example, the powers of the Accounting Officer to appoint committees and board

²⁰⁰ See Gelderman, Ghijssen, P.W., and Brugman, M.J. (2006), Public Procurement and EU Tendering Directives – Explaining Non-Compliance, *International Journal of Public Sector Management*, Vol. 19, No. 7, pp. 702 – 714.

members in the exercise of his or her functions can influence decisions of the appointees by exerting pressure or instructions on them.

Nonetheless, when asked to opine whether officials involved in procurement activities are independent, thirty-six (90%) out of 40 respondents, said that officials involved in procurement activities perform their assigned duties independently, with very minimal interferences and influences because each organ is assigned special duties to discharge depending on the professional requirements. Four (10 %) respondents were of the view that there are interferences and cited an example of the Accounting Officer (AO) who has the role of appointing members of the TB, evaluation committees, review panels, and negotiation teams that at a time she/he, influences the decisions of such appointees.

Even though the majority negates the presence of influences, the views of minority responses cannot be disregarded. The inference that may be drawn from these responses is that, even though the law requires such officers to be independent in exercising decision-making powers, their independence is not practical. At a time they are influenced by the interests of their appointing authorities.

Fourth, that the legal and regulatory framework of public procurement in Mainland Tanzania was not meant to ensure PEs compliance with the law and attain value for money but rather to control corruption and attract investors. This finding is in agreement with the existing literature. For Instance, Maliganya²⁰¹ in his study on The Systemic Flaws of The Tanzania Public Procurement Act argues that, unlike the modern procurement systems around the World which are designed with a primary goal of enabling the government to achieve value for money and compliance, the Tanzania procurement law was designed with the main purpose of corruption control and opening up international procurement markets.

The Respondents supported their argument by referring to the PPA 2011, the PPR 2013 and subsequent amendments thereto. They argued that neither of them has

²⁰¹ See Maliganya, E. C, (2016)*The Systemic Flaws of The Tanzania Public Procurement Act*, Cap. 410 And Proposed Solutions.

defined neither the term "compliance" nor provided the provision of the law and regulations insisting on compliance of the law. The big part of these legislations talks about prevention of corruption conducts. They referred the legal requirement for PEs to obtain prior approval from GPSA in emergency procurement and, the mandatory procurement of goods and services from GPSA irrespective of higher price and sometimes poor quality of goods and services has nothing to do with compliance with the law. They also referred to the requirement of PPA 2011 which has provided instructions on mini competition in case a PE finds that the market prices of intended goods or services are lower. Unfortunately, the PPR is not clear on mini-competition procedures.

Having examined the factors that hinder LGAs compliance with the public procurement law, the next item focuses on how to ensure LGAs compliance with the public procurement law in Mainland Tanzania.

4.4 Measures to Ensure LGAs Compliance with the Law

This was the question of which its intention was to investigate and determine if there are possible measures to make LGAs comply with the public procurement Law. To ensure LGAs Compliance with the Law respondents suggested that, time to time audit should be conducted to certify whether there is compliance and severe measures be taken for individuals who default instead of imposing collective punishment to an Institution only by issuing qualified or disclaimer certificates award.

It was further opined that the local Government Tender Board Regulations be amended to put in place a legal requirement for members of the council Tender Board to have at least knowledge on procurement. That is, in order for a person to qualify to be appointed by the Director to be a member of Local Government Tender Board he or she must have a minimum education qualification related to procurement. Also, the regulation should include the Internal Auditor as an advisory member of the Council Tender Board as it is with the Council Legal officer.

The bureaucratic and cumbersome procedures of the public procurement process are reduced and replaced by simplified procedures. For example, more emphases are put on the use of force account method as it has demonstrated to end up with a value for money and most of the projects are done within a short time as seen to some of the current projects especially the construction of health centres and council hospitals. Moreover, the PPA, 2011 should be amended to put in place strict procedures for administering the force account method.

Seminars and workshops on procurement law and regulations to procurement officers and member of the Tender Board be regularly done by an independent organ rather than the PPRA. This will make the procurement officers to be conversant with the legal and regulatory procedures on procurement and get rid of the conflicting role currently vested in the PPRA that makes it susceptible to bias as noted in the discussion of the proceeding item.

4.5 Conclusion

This chapter focused on the presentation and discussion of the research findings. The presentation and discussion of findings have been made on the basis of the findings obtained on every research objective and question of the study. It has been observed in the discussion of this chapter that although the legal framework of public procurement is generally adequate to ensure LGAs compliance with the same, yet, the said legal and regulatory framework is unnecessarily complex and may as such cause confusion to the stakeholders. It has also been noted that some of the institutions created for enforcement of compliance are less powerful as they have no powers to enforce their decisions. Not only that but also some of them, like the PPRA is vested with conflicting roles which makes it susceptible to bias. In all the noted weaknesses, amendment of the law seems to be inevitable as detailed in the recommendations in the next chapter.

CHAPTER FIVE

SUMMARY, CONCLUSION, AND RECOMMENDATIONS

5.1 Introduction

The study was conducted to examine the present public procurement law and its enforcement mechanisms in LGAs with the view to determining why LGAs fail to comply with the same and, suggest measures thereto. The general objective of this study was to examine the law governing public procurement in LGAs and its enforcement mechanism with the view to determining why LGAs fail to comply with the law and, come up with recommendations for LGAs compliance with the public procurement law in Mainland Tanzania.

The specific objectives of the study were to analyse the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania; to determine the factors hindering LGAs compliance with the public procurement law in Mainland Tanzania; to recommend reforms that will enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania.

To achieve the above objectives, three research questions were made. The first research question was how adequate is the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania; the second question was what factors make LGAs fail to comply with the public procurement law in Mainland Tanzania; and the third question inquired on what should be done to enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania.

Data was collected through documentary review, questionnaires, and interviews. Both documentary review and field responses were analysed and interpreted qualitatively. The findings on all research questions have been analysed and discussed in chapter four above. Therefore, this chapter hereunder provides a summary of findings, general conclusions, and the recommendations.

5.2 Summary of Findings

First, the PPA 2011 provides for competitive tendering for purposes of providing equal opportunity to tenderers. Nonetheless, the Act gives PEs the discretion to use any other appropriate alternative methods of procurement instead of competitive tendering. Giving PEs the discretion to use alternative methods of procurement opens a possibility of non-transparency, unfairness and potential abuse of the law; hence non-compliance with the law.

Second, the PPA establishes a structure of decision-making processes which involves various organs and stakeholders including; the Tender Boards, budget approving authority, Accounting Officer, Procurement Management Unit, User Departments, Internal Audit Unit and Legal Department. There are also a number of committees which are usually appointed at different procurement stages including ad-hoc tender opening committee, tender evaluation committee, contract negotiation team and special team for conducting post-qualification or due diligence where required. Also, there are several external and internal control bodies like GPSA, the Paymaster General, the AG, the PPRA, the PPPD, the PPAA, the CAG, and the PCCB. Such set up creates unnecessary hierarchical structure and bureaucratic decision-making processes which may dilute individual accountability.

Third, some institutions like the PPRA are vested with conflicting roles and functions. Such roles and functions raise questions of organisational conflict of interest hence susceptible to bias.

Fourth, the PPRA has no enforcement power of its functions. It carries out investigations for alleged mis-procurement only and recommends for disciplinary actions to other authority which may decide to act on such recommendations or not.

Fifth, the PPA establishes the Appeals Authority with original and appellate jurisdiction over complaints against procuring entities where a contract for procurement or disposal of goods is already in force. However, the law does not give access to the general public to complain. Access to complaint review mechanism is only available to bidders and other parties in the procurement process and not to the

public who might be the victims of poor service delivery in case of non-compliance with the law.

Sixth, although the PPA requires every official and expert engaged and involved in the procurement process and tenderers to adhere to the Code of Ethical Conduct, the Act and its regulations do not clearly define the term integrity and provide an effective mechanism for imparting ethical values and detection of violation of integrity and ethics among the procurement stakeholders.

Seventh, the legal and regulatory framework of public procurement in LGAs is unnecessarily complex. It includes the PPA 2011; the PPR 2013; the local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014 and other guidelines and standard documents issued by the PPRA. Some of them have more or less the same provisions hence unnecessarily causing confusion to stakeholders and implementers of the law.

Eighth, the set up of the PPRA does not provide adequate monitoring mechanism that can ensure LGAs compliance with the public procurement law because it is highly centralised. The PPA does not provide a room for the PPRA to establish offices at the Region, District or Zone levels.

5.3 Conclusion

This study was conducted to examine the law governing public procurement in LGAs and its enforcement mechanism with the view to determining why LGAs fail to comply with the public procurement law and, come up with recommendations for LGAs compliance with the said law in Mainland Tanzania. The study was moved by the fact that, notwithstanding the efforts made by the Government of Mainland Tanzania to improve the Public procurement system through a number of reforms in the legal and regulatory framework of public procurement in Mainland Tanzania, the CAG and PPRA reports show that LGAs compliance with the public procurement law in Mainland Tanzania has yet been impressive. The LGAs non-compliance with the public procurement law has several times resulted in loss of government money, poor service delivery and poor implementation of some development projects.

The study was thus specifically conducted to inquire on the adequacy of the legal and regulatory framework of public procurement in LGAs; the factors that make LGAs fail to comply with the public procurement law; and to find out what should be done to enhance and guarantee LGAs compliance with the public procurement law in Mainland Tanzania. The required qualitative data was collected through documentary review, open-ended questionnaires, and interviews.

The study involved a sample size of 48 respondents who were selected through stratified random sampling and purposive sampling from Dodoma City Council and Chamwino District Council. This sample involved two (2) Council Directors (DED/CD); eight (8) Heads of Department; four (4) PMU; eight (8) Councilors from Dodoma City Council and Chamwino District Council; six (6) Legal Officers, six (6) Tender Board members from Dodoma City Council and Chamwino District Council; four (4) Internal Auditors, four (4) private contractors and six (6) frontline workers from health service providers at Dispensaries and Health centers. Out of this sample, 40 respondents were successfully reached through either self-administered questionnaires or face to face interviews. The obtained data from both documentary review and field study were thereby analysed and interpreted qualitatively.

The findings of this study show that the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania is inadequate in ensuring LGAs compliance and effective public procurement. There are several weaknesses in the law itself and in its enforcement machinery which contribute to LGAs non-compliance with the said public procurement law.

The noted weaknesses in the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania include complexity of the said legal and public procurement regulatory framework; presence of loopholes in the law which encourages non-transparency, unfairness and potential abuse of the law; unnecessary hierarchical structure and bureaucratic decision making processes which dilutes individual accountability; some institutions like the PPRA being vested with conflicting roles and functions which makes them susceptible for bias; and the PPRA and the CAG having no enforcement power of their functions.

Other weakness of the legal and regulatory framework of public procurement include lack of general public access to complaint review mechanism; lack of clear definition of integrity and effective mechanism for imparting ethical values and detection of violation of integrity and ethics among the procurement stakeholders; centralisation of the PPRA with no room to establish offices at the Region, District or Zone levels; absence of National Procurement Policy; and lack of mechanism(s) to check the oversight institutions. Such weaknesses of the law contribute to LGAs non-compliance with the public procurement law. The remedial measures to the above-noted weaknesses are outlined under the next item.

5.4 Recommendations

Basing on the weaknesses of the legal and regulatory framework of public procurement in LGAs in Mainland Tanzania, the study makes the following recommendations;-

- i) The definition of the word compliance and integrity be defined in the Act. The current public procurement Act is missing the legal definition of the word compliance. Lack of precise legal definition of compliance makes the compliance a weak concept.
- ii) Establishment of the National Procurement Policy. It is recommended that the National Procurement Policy be established in order to govern and guide the procurement system. The policy should reflect the local circumstances, local business or other economic development goals, and aim at achieving social or environmental procurement objectives.
- iii) The oversight authority to be established. It is recommended that an independent Authority be established to oversee and check the function of the PPRA. The established oversight body to be empowered to make and determine the procurement audit indicators. This body should be composed by representation from key stakeholders including the Parastatals, MDAs, and Local Governments, private sector and regulatory bodies.

- iv) For effective monitoring and for purposes of advocating decentralisation by devolution policy to LGAs, the PPA be amended to allow the PPRA establish offices at Regional, District or at Zonal level. The current set up of the PPRA doesn't guarantee effective monitoring of compliance because the authority seems to be far from most of the LGAs.
- v) The PPA should be amended to allow the PEs to procure goods and services at a market price instead of procuring from GPSA whose prices are comparatively higher than the market prices.
- vi) For purposes of eliminating the complexity of the law, the Act and its regulation be amended to put in place legal provision which is reader-friendly. The procurement process is shortened and clearly stated for everyone to understand and implement it.
- vii) For purposes of ensuring the independence of some of the body and committees involved in the procurement process, it is recommended that the appointment of such members be done by an independent body not involved in procurement undertakings. The Accounting Officer should not be involved in appointing them but left to be an overseer of the process.
- viii) For effective enforcement mechanism, it is recommended that the law be amended to reduce and remain with few organs assigned to ensure enforcement of compliance instead of assigning several bodies which are not effective in ensuring compliance with the law and end up creating mismatches between the establishments of the organs and the legal positions in dealing with the key activities within the procurement system.
- ix) In order to create awareness, it is very important to conduct training to council employee on procurement.

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APPENDICES

Appendix I

Research Questionnaire

Dear Respondent: Directors, Heads of Departments/ Sections and Councillors.

I am Eustard Peter Ngatale Athanace from Mzumbe University (**Main Campus**). As part of the requirement for the award of the Master's degree, I am expected to undertake a research study on **ASSESSMENT OF LOCAL GOVERNMENT COMPLIANCE WITH PROCUREMENT LAW IN MAINLAND TANZANIA**.

The aim is to examine the law governing public procurement in Local Government Authorities (LGAs) and its enforcement mechanisms with a view to determine the reasons for non-compliance and come up with suggestions for effective compliance with the public procurement law in LGAs in Mainland Tanzania. I'm therefore, seeking your assistance to fill in the questionnaires hereunder. Kindly answer all the questions. The research results will be used for academic purposes only and will be treated with utmost confidentiality. No one, except the institution will have access to these records.

Your timely response is important to the success of this study.

Yours Sincerely,

Eustard Peter Ngatale Athanace

Instructions

- i) Place a tick in the blanks (v) in front of the answer.
- ii) Fill in the spaces provided in the question.
- iii) If you feel you have something more to tell the researcher about these questions, you may write in the plain paper and attach it at the end of this questionnaire.

Work Experience

1. How many years have you been working at your Organisation?
i) 0 to 1 year (); ii) 1 to 3 years (); iii) 3 to 5 years (); iv) 5 years and above()

2. Are familiar with the existing public procurement Act and its regulation? Yes()
No ()

3. Does PPA 2011 and its regulations clearly stated and easily understood by every person participating in procurement process? Yes () No ()

4. If No, give your opinions
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.....
.....
.....

5. According to your experience can you briefly mention some of the provisions in the public procurement law or regulations which your council normally feel difficult to comply during procurement process?
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6. What are the factors that contribute to non-compliance with Public Procurement Act and its regulations during procurement process in your organisation?
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7. How does the public procurement enforcement mechanism facilitate the LGAs in complying with the public procurement law?

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8. Does the TB, PMU, and other committee involved in procurement process independent enough to discharge their function as required by the law? Yes() No ()

9. How does the available regulatory authorities such as the PPRA, CAG ensure Local Government Authorities' compliant with the procurement law?

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10. Does the punishment given to LGAs and officers who involve themselves in non compliance with the procurement procedures severe enough? Yes() No ()

11. If No explain why?

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12. Please provide any recommendation that would ensure effective compliance with the public procurement law in Local Government Authorities in mainland Tanzania

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THANKS FOR YOUR COOPERATION

Research Questionnaire

Dear Respondent: Procurement Personnel and workers at Health centers

I am Eustard Peter Ngatale Athanace from Mzumbe University (**Morogoro Campus College**). As part of the requirement for the award of the Master’s degree, I am expected to undertake a research study on **ASSESSMENT OF LOCAL GOVERNMENT COMPLIANCE WITH PROCUREMENT LAW IN MAINLAND TANZANIA**. The aim is to examine the law governing public procurement in Local Government Authorities (LGAs) and its enforcement mechanisms with a view to determine the reasons for non-compliance and come up with suggestions for effective compliance with the public procurement law in LGAs in Mainland Tanzania. I’m therefore, seeking your assistance to fill in the questionnaires hereunder. Kindly answer all the questions. The research results will be used for academic purposes only and will be treated with utmost confidentiality. No one, except the institution will have access to these records.

Your timely response is important to the success of this study.

Yours Sincerely,

Eustard Peter Ngatale Athanace

Personal Particulars

Education.....

Work Experience

1. How long have you been with your department/unit?

Less than 5 years () 5 -10years () more than 10 years ()

2. Are familiar with the existing public procurement Act and its regulation? Yes()
No ()

3. Are the Public Procurement Law and Regulations clearly stated and easily understood?

Yes () No ()

3 How does the available procurement law facilitate the achievement of your organisation objectives?

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.....
.....

4 Does the TB, PMU, and other committee involved in procurement process independent enough to discharge their function as required by the law? Yes ()
No ()

5 Which provision of the law seems to be difficulty to comply during procurement processing?

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.....

6 Which areas in the procurement law and regulations do your co-workers being sanctioned for non compliance and why?

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.....

7 Are sanctions be effected immediately after the violation of the law and the reasons for sanctions made known to other employees?

Yes () No ()

8 Does penalties stipulated in the public procurement law lead to fear of violating the laws? Yes () No ()

9 If No explain why?

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.....

10 What are the reasons for your councils' non- compliance with the public procurement law?

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11 Please provide any recommendation that would ensure effective compliance with the public procurement law in Local Government Authorities in mainland Tanzania.

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THANKS FOR YOUR CORPORATION

Appendix I11

An Interview Guide Questions for Head of Organisation and Procurement Personnel.

I am Eustard Peter Ngatale Athanace from Mzumbe University (**Main Campus**). As part of the requirement for the award of the Master’s degree, I am expected to undertake a research study on **ASSESSMENT OF LOCAL GOVERNMENT COMPLIANCE WITH PROCUREMENT LAW IN MAINLAND TANZANIA**. The aim is to examine the law governing public procurement in Local Government Authorities (LGAs) and its enforcement mechanisms with a view to determine the reasons for non-compliance and come up with suggestions for effective compliance with the public procurement law in LGAs in Mainland Tanzania. I’m therefore, seeking your assistance to fill in the questionnaires hereunder. Kindly answer all the questions. The research results will be used for academic purposes only and will be treated with utmost confidentiality. No one, except the institution will have access to these records.

Your timely response is important to the success of this study.

Yours Sincerely,

Eustard Peter Ngatale Athanace

Please answer the questions to the best of your knowledge.

Name (Option).....

Age of respondents

- a) 26-35
- b) 36-45
- c) 46-55
- d) 56 and above

Occupation

1. Why is it important to have a good procurement process within organisation?
2. For your opinion, why is it importance for your organisation to follow the procurement law during procurement processing?
3. What causes non compliance with the procurement law?
4. What can be done to minimize non compliance with procurement legislations?
5. What are the challenges encountered in the procurement process in relation to the existing procurement Act?
6. For your opinion, is there a need for changes in the procurement process with the existing Laws in relation to rapid changes of business environment and current political stand?
7. What is your opinion on the PPA No. 7 of 2011 and its Regulations of 2014 on performance of procurement process in public procurement?

Appendix 1V

RESEARCH ACTIVITIES SCHEDULE

The following table shows expected time frame for research activities.

Research Activities Schedule

ACTIVITY LIST	DURATION								
	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MARCH
Topic selection and assignment of the Supervisor	YES								
Consultation with supervisor and presentation of Concept Note.	YES								
Preparation of 1 st draft proposal and presentation to the Supervisor		YES	YES						
Final draft proposal and submission				YES	YES				
Data collection					YES	YES	YES		
Data processing, analysing and presentation						YES	YES		
Preparation of first draft research report							YES	YES	
Final report draft and submission									YES

APPENDICES V

APPENDIX V SELECTED LIST OF PUBLIC DOCUMENTS REVIEWED IN COLLECTION OF PRIMARY AND SECONDARY DATA

Guidelines for Participation of Public Bodies in Public Procurement PPRA October, 2017 available on: www.ppra.go.tz

Procurement Plan files of Chamwino District Council between 2015/2016-2017/2018 fiscal years.

Procurement Plan files of Dodoma City Council between 2015/2016-2017/2018 fiscal years.

The Annual General Report of the Controller and Auditor General (CAG) for financial year of 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2017/18. Available at: <http://www.nao.go.tz>

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The Local Government (District Authorities) Councilors' Code of Conducts: Government Notice. No. 281 of 2000. Government Printers Dar es Salaam

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The Public Procurement Act No 11 of 2011, Government Printers Dar es salaam

The Public Procurement Act No. 21 of 2004. Government Printers Dar es Salaam

The Public Procurement Act No. 3 of 2001. Government Printers Dar es Salaam

The Public Procurement Act of Kenya, 2015. Available at <http://kenyalaw.org/kl>

The Public Procurement Act of Uganda, 2003. <https://ulii.org>

The Public Procurement Regulation: Government Notice No.466 of 2013.
Government Printers Dar es Salaam

The Summary report on assessment of public procuring entities on compliance with procurement law, regulations and procedures for the financial year 2010-2011. Available at: www.ppra.go.tz

The Tanzania Country Procurement Assessment Report (CPAR) Executive Summary April 30, 2003. Available at: <http://documents.worldbank.org/curated>

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