

**CHALLENGES IN PUBLIC PROCUREMENT: AN EXAMINATION  
OF LEGAL IMPLICATIONS OF NON COMPLIANCE WITH  
PROCUREMENT RULES IN SELECTED INSTITUTIONS IN  
MOROGORO**

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LEGAL IMPLICATIONS OF NON COMPLIANCE WITH PROCUREMENT  
RULES IN SELECTED INSTITUTIONS IN MOROGORO**

**By**

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**A Dissertation Submitted in Partial Fulfillment of the Requirement for the Award  
of Master of Laws [LLM] of the Mzumbe University.**

**2019**

**CERTIFICATION**

We, the undersigned certify that we have read and hereby recommend for acceptance by the Mzumbe University of Tanzania a dissertation entitled **Challenges in Public Procurement: An Examination of Legal Implications of Non Compliance With Procurements Rules in Selected Institutions in Morogoro**” in partial fulfillment of the requirements for degree of Master in Law [LLM] of the Mzumbe University

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## **DEDICATION**

This dissertation is dedicated to my beloved parents, Elikira and Sara for being my first supporters all the time. May God bless them abundantly.

## **AKNOWLEDGEMENT**

First and foremost, I would like to express my heartfelt gratitude to the Almighty God for his endless love from the beginning of this study to the end.

I would like to give many thanks to a number of people who supported and encouraged me during preparations of this work and contributed to the success of this study. It would have been difficult without their moral support, guidance and advice that helped me to accomplish this work. I would like to thank them all.

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## **LIST OF STATUTES**

### **Principal Legislations**

The Budget Act No.11 of 2015

The Public Procurement Act, No. 7 of 2011

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

### **Subsidiary Legislations**

The Public Procurement Regulations, GN. No.446 of 2013

The Public Procurement (Amendment) Regulations, G.N No 333 of 2016

The Public Procurement (Goods, Works, Non Consultancy Services and Disposal of Public Assets by tender) G.N No .97 of 2013

The Public Procurement (Selection and Employment of Consultants) GN No 98 of 2005

## **LIST OF CASES**

Aquarium Marine vs. Strathclyde Fire Board [November, 2007]. CSOH 16<sup>th</sup> Nov, 2007

Global Agency Limited vs Ministry of Home Affairs, PPAA, Appeal Case No. 118 of 2012/2013

Henry Brothers [Magherafelt] Ltd and Others vs. Department of Education for Northern Ireland NIQB116 [21<sup>st</sup>December, 2007] REF.COG7018

M/s Equity Aviation Services [T] Ltd vs Tanzania Airports Authority

M/s Mwanza Ground Handling Services Company Limited [Interested Party], Public Procurement Appeal Authority, Appeal Case No 20 of 2015 /2016



## **LIST OF ABBREVIATIONS**

AO	Accounting Officer
APP	Annual Procurement Plan
CAG	Controller and Auditor General
Cap	Chapter
CPAR	Country Procurement Assessment Report
CTB	Central Tender Board
G.N	Government Notice
GDP	Gross Domestic Product
GPSA	Government Procurement Services Agency
Ibid	Ibidem
N.S	National Shopping
NDC	National Development Corporation
No	Number
P	Page
P.O	Preliminary Objection
PE	Procuring Entity
PMU	Procurement Management Unit
PPA	Public Procurement Act
PPRA	Public Procurement Regulatory Authority
S	Section
SVD	Stock Verification Unit
TAU	Technical Audit Units
TPA	Tanzania Procurement Journal
TSHS	Tanzanian Shillings
WTO	World Trade Organization

## **ABSTRACT**

This study examined the Implications on Public Procuring Entities non-compliance with the Public Procurement Act, No.7of 2011 and regulations made there under at Sokoine University of Agriculture and Morogoro Municipal Council in Tanzania. The motivation behind the study was the annual reports of the Controller and Auditor General that exposed glaring non compliance with the laws on public procurement in spite of legal reforms recently undertaken in the sector. Primary and secondary data sources were consulted .The study adopted stratified random sampling whereby both qualitative and quantitative approaches were used. Qualitative approaches included questionnaires administration and in depth interviews with 50 out of the selected 60 respondents to gather non numerical data while quantitative approaches were employed to generate statistical data to answer to the research questions.

Research findings overall pointed to substantial abrogation from procurement laws and regulations. Evidently, part of the reason for such non compliance or low compliance rates with procurement laws were found to be marginally low/poor oversight structures , complexity in the laws to suppliers, corruption in terms of favoritism in prequalification procedures and lack of adequately skilled procurement personnel at Sokoine University of Agriculture and at the Morogoro Municipal Council.

In conclusion the researcher found out that there are several legal implications of non compliance with the procurement regulations on individual Procuring Entities, bidders and officials, among others, these included oral and written warnings, suspensions, interdictions and demotions of staff that breach procurement laws. Whilst, against the specific entities the steps included blacklisting, deregistration from the company registry and suit in a court of law to seek redress for violations of the procurement laws and regulations .The Auditor General wields another tool which is the issuance of qualified audit reports against public entities which can be used by prosecutors to hold individuals to account in serious cases of misappropriation of funds allocated.

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## CHAPTER ONE

### GENERAL INTRODUCTION TO THE STUDY

#### 1.0 Introduction

It is an undeniable fact that governments around the world will ordinarily carry out or usually are expected to perform a number of activities viewed from a very general level, it is the primary responsibility of individual national governments to manage their economies and national wealth in a prudent manner that helps maximize the people's welfare. Primarily also governments are responsible for ensuring political stability and prevalence of law and order in the society to fulfill some of these onerous tasks and responsibilities, governments go out of their way to perform a number of specific contractual functions. Governments construct social amenities such as roads, bridges, street lighting, schools, parks, public office buildings, walk ways, industrial facilities among other key installations.<sup>1</sup>

In most countries public procurement accounts for a significant proportion of the Gross Domestic Product [GDP] estimated to be around 10-15 percent in OECD countries. The proportion is much higher in developing countries and is often stated to be up to be nearly 25 percent in some countries making up for the inevitable transition from a centrally planned economy to a market economy.<sup>2</sup> Many procurement arrangements in Tanzania often fall short of or do not meet the contracted roles and responsibilities due to lackluster management of procurement contracts. The Controller and Auditor General has in a report noted a number of weaknesses from eight projects implementers related to contract management, such as non-submission of performance bonds, contracts not vetted by the Attorney General as required by law, non-deduction of retention monies,

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<sup>1</sup> Anderson RD, "International Procurement Developments in 2008 and the Road Ahead" in West Government Contracts Year in Review Conference, [2009] pp.1

<sup>2</sup> Trepte C [2004], Regulating Procurement, Understanding the Ends and Means of Public Procurement Regulation, p.9.

inadequate variation orders ,improper extension of contract period and alteration of the agreed contract price.<sup>3</sup>

Tanzania Public Procurement Act, 2011 was purposely enacted in order to provide guidance to procuring entities on among other things standard processing times in the tendering processes as a whole; available complaint review mechanisms in the law, selection of appropriate procurement methods as well as procedures for managing procurement proceedings and contract management for works and goods. On the other hand, the Public Procurement Regulatory Authority as an oversight body on procurement functions in the country has been issuing various circulars and guidelines for the interpretation of Public Procurement Act and its regulations in order to expedite the execution of the procurement processes in Tanzania.

### **1.1 Background to the Problem**

Governments need to obtain items and also make public utilities available both for individual and industrial uses for the most part, because the government may lack the ability, expertise to successfully do these , without of course relying on the technical support of private sector players. Public procurement laws and regulations provides for procedural steps through which the government as a procuring entity contractually engages with the private businesses who provide goods, and construct or utilize other private sector expertise in order to fulfill their public interest duties. In other words, public procurement is primarily a public sector oriented activity aimed at meeting and advancing public needs or public interest.<sup>4</sup>

The United Nations Commission on International Trade Law Model Law on her part holds that procurement is aimed at the construction, acquisition of goods, works or services by a procuring entity. Public procurement is essential commercial process within a political system. Therefore, it is by this systematic linkage, institutionalized

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<sup>3</sup>Report of the National Audit Office available at [www.nao.go.tz/php](http://www.nao.go.tz/php) accessed on the 1/02/2019.

<sup>4</sup> Ibid

public procurement system should in no way work independently of the applicable on relevant procurement laws. The established institutional framework, professionals and professionalism with knowledge, skills and ethics working in the political spectrum.<sup>5</sup> Organizationally, public procurement is dictated by the Government system that is in place and failure to balance these two elements, being government system and prescribed regulatory policy and institutional framework can lead to wasted efforts and poor socio economic development results within the most important public procurement and political systems.

## **1.2 Statement of the Problem**

Public procurement in Tanzania is often said to be bedeviled with corrupt dealings thus presenting businesses with very high risks. Businesses point to public officials taking advantage of legal loopholes in openly favoring well connected companies and/or individuals when awarding contracts. It has equally been well reported that public monies are often diverted to private companies, groups and individuals as a result of corrupt procurement dealings.<sup>6</sup>

The various procurement processes undertaken in Tanzania were equally faced with a problem of the procuring entities trying to circumvent legal provisions especially through alteration of tender documents or the various evaluation teams using criteria different from those stipulated in the solicitation documents that were issued to prospective tender bidders. Furthermore, there is also a challenge of Procuring Entities failing to observe issues like bid validity periods and thus awarding procurement tenders well beyond the stipulated periods of time which is illegal and unprocedural.<sup>7</sup>

The notoriety in flouting public procurement laws was evident in the year 2014, Tanzania Public Procurement Regulatory Authority [PPRA] completely barred a total

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<sup>5</sup> OECD-DAC Methodology for Assessment of National Procurement Systems, Paris France, OECD [2006] pp. 12- 15.

<sup>6</sup> Global Integrity- Africa Integrity indicators –Tanzania ,2016.

<sup>7</sup> Mamiro G (2010) , Value for Money , The Limping Pillar in Public Procurement – Experience from Tanzania, pp 3- 8.



of 19 business firms from competing for government procurement contracts after they were found to have engaged in some form of corrupt practices in previous dealings.<sup>8</sup> Yet another corruption case rocked the Tanzanian government following the damning revelation that over USD 180 million in public funds were siphoned off in questionable deals and deposited in offshore accounts belonging to public officials and business persons. The case claimed some major casualties as it led to the resignation of a quarter senior politicians from the government, including then Energy Minister, the Attorney General, Energy Secretary and the Minister for Housing who lost her post for transferring USD 1 million into her private bank accounts<sup>9</sup>. A few months later in the year 2015, then Director in charge of the Tanzania Ports Authority was suspended for violating procurement procedures.<sup>10</sup>

### **1.3 Objectives of the Study**

#### **1.3.1 Main Objective**

This study examined the legal implications of non-compliance with the legal procedures enshrined within the Public Procurement Act No 7 of 2011 by Sokoine University of Agriculture and Morogoro Municipal Council in Morogoro region.

#### **1.3.2 Specific Objectives**

- a. To examine the legal procedures in public procurement in Tanzania.
- b. To examine to what extent do the procuring entities comply with procedural requirements stipulated under the Public Procurement Act, No 7 of 2011
- c. To examine legal implications on public entities for noncompliance with legal procedural requirements under the Public Procurement Act, No 7 of 2011.

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<sup>8</sup>All Africa, October, 2014.

<sup>9</sup>Simon A (2015) The Guardian Newspaper 7<sup>th</sup>, January, 2015.

<sup>10</sup>Africa Report, February, 2015.

## **1.4 Research Questions**

- a) What are the legal procedural requirements prescribed by the Public Procurement Act, No 7, 2011?
- b) To what extent do public procuring entities comply with the procedural requirements stipulated under the Public Procurement Act, No 7, 2011?
- c) What are the legal implications to public entities for non-compliance with the requirements of the Public Procurement Act, No 7, 2011?

## **1.5 Research Methodology**

This part of the study covered the methodology employed in the study .It explains the research design and approaches , research area , data collection methods, data collection instruments, sample size, scope of the study , sources of data, sampling design and data analysis

### **1.5.1 Research Design and Approaches**

The research design adopted for the study was a descriptive design. The subject of procurement being broad in scope. The study involved describing the frequency with which abrogation of procurement laws occurs and the implications on Procuring Entities which flouted the provisions of the Public Procurement Act No. 7, 2011.

The study adopted both qualitative and quantitative approaches because the data gathered albeit empirical contained both statistical indices on non compliance with procurement laws as well as non statistical parameters on the incidences of procurement laws violations and underlying reasons.

### **1.5.2 Area of the Study**

The research area was Morogoro region. Procuring entities involved were Sokoine University of Agriculture and the Morogoro Municipal Council. They were chosen

because they carry out a large number of procurement activities and were easily accessible for data collection for the study.

### **1.5.3 Study Population**

This study involved various categories of respondents who involved in public procurement activities in the selected two procuring entities. The selected population included the Directors, Heads of Departments, members of PMU, Legal Officer, Tender Board members, principal officers ,Internal auditors and private contractors engaged by Morogoro Municipal Council and Sokoine University in various procurement activities.

### **1.5.4 Sampling Design and Sample Size**

The study adopted stratified random sampling design by grouping the respondents into departments and level of seniority. Sampling design is concerned with selection of a subset of individuals from the population to get some knowledge on the whole population under study.

Sample size according to Tromp and Kombo [2006] constitutes the number of items selected from the universe in order to make up the sample<sup>11</sup>. The Sample size for the study was 60 respondents, comprising the Directors (6) , Heads of Departments (8), Principal Officers (8), Legal Officers(6), Internal Auditors(5), PMU (8), Private Contractors (6) and personnel at procurement departments(8) and officers of the Public Procurement Regulatory Authority (5) .

The number of 60 respondents was deemed manageable within the time available for the study and it was also reasonable because it increased the chances of gathering a wider scope of responses from the respondents thus enhancing reliability on the data collected as part of the study.

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<sup>11</sup>Kombo D.K and Tromp D.I A [2006],“Proposal and Thesis Writing , An Introduction,” Pauline’s Publication , Africa, pg 20.

### **1.5.6 Sources of Data**

Data for the study was collected through both primary and secondary sources. Primary sources were mainly principal and subsidiary legislations, case laws and field interviews with respondents while secondary sources were other documentary materials other than statutes.

### **1.5.7 Data Collection Methods**

The researcher used questionnaires and in-depth interviews in the process of collecting field data and on the other hand employed documentary review in the collection of secondary data. Questionnaires with open ended questions were administered on respondents who had limited time to and could not take part in the face to face interviews. Questionnaires were distributed to the respondents who were pressed for time but were willing to respond at their own time and the questionnaires collected later. On the other hand, interviews were conducted with respondents who were willing to participate in the in-depth interviews.

### **1.5.8 Data Collection Instruments**

The researcher used a questionnaire which was a sheet of paper with a series of printed questions that the respondents were expected to respond to with some questions being open ended and others closed ended.

Documentary review on the other hand involved the use of a notebook on which the researcher listed the things to look up for and proceeded to work on them by sorting and eventually reviewed for relevant content.

### **1.5.9 Data Processing and Analysis**

Data processing and analysis operations were editing which involved examination of the collected data to detect errors and omissions and corrections were done where it was

necessary. Coding was done by assigning numerals to reduce the responses into uniform groups and finally classification was done by arranging the data into groups for easy identification.

### **1.6 Scope of the Study**

The study covered the entire tendering process right from advertisement of tenders, bidding process, tender opening, award and execution of the contract. The study spanned the months of August, 2018 to March 2019 and was carried out at Morogoro Municipal Council and Sokoine University of Agriculture at Morogoro region in Tanzania.

### **1.7 Literature Review**

Several studies have been published in Tanzania and elsewhere around the world touching either on procurement law generally or on particular aspects such as procurement at local government authorities and yet no study has been carried out on implications that follow upon violation of procedural requirements set in the public procurement law given the considerable number of procurement outlays at such institutions. The aim of this study was to bridge the existing gap on procurement tender awards by public entities and the resultant effects of non-compliance with the provisions of the Public Procurement Act as well as the regulations made under the law most of which are couched in mandatory or imperative wording which suggests that non-compliance will vitiate the entire tender.

The study was premised on the fact that effective delivery of procurement contracts contributes to overall socio economic empowerment and achievement of goals of the communities and the government therefore derogation from the legally stipulated procurement regime ought to attract legal sanction as a way of deterring future violations of the laid down rules with regard to public procurement in Tanzania paying particular regard to Morogoro region.

Among the literary materials reviewed for the study were the following-

**Mlinga R.S**<sup>12</sup> In *Public Procurement in Tanzania – An Overview* , University of Dar es Salaam, when distinguishing public procurement from private procurement states that, public procurement necessarily and must principally be transacted bearing in mind other factors , other than the economy. These other factors include non-discrimination among potential suppliers, accountability and due regard for various international contractual obligations, in order to protect public interests. It is worth noting that unlike private procurement, public procurement on the hand is a business process embedded within a political system and therefore has significant consideration of accountability, integrity, national interest and effectiveness.<sup>13</sup>

Unlike the author the researcher is very specific with regard to two public procuring entities which are Morogoro Municipal Council and Sokoine University of Agriculture at Morogoro and will seek to examine the effectiveness and efficiency of the procurement delivery system at the entities well as the extent of compliance with the procedural stipulations set under Public Procurement Act, No. 7, 2011 in the tendering process.

**Sope W-E**<sup>14</sup> states that, public procurement is a known phenomenon all over the whole world and systematic challenges influencing public procurement are not entirely a new phenomenon. Presumably therefore, systematic challenges facing the public procurement systems in Tanzania are not novelty, other countries are recorded to have also noted significant challenges in public procurement including but not limited to the Gambia, Nigeria, Estonia and Ghana.

The article makes an incisive appraisal of the public procurement structures and challenges in a bold and transparent manner as contrasted with the rest of the world

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<sup>12</sup>Mlinga R.S, “Public Procurement in Tanzania – An Overview,” University of Dares Salaam, 2011.

<sup>14</sup>Sope W-E, “A Comparative Analysis of the Nigerian Public Procurement Act Against International Best Practice,” Department of Public Law, Faculty of Law, University of Stellenbosch, South Africa , 2012, p 25.

focus being the international best practice , equally therefore this study examined the structures for public procurement in Tanzania and her challenges as casted against the international best practice.

**Mutava. C**<sup>15</sup> makes the following instrumental inference with regard to public procurement; that despite the observed design and structural challenges faced by the policy and regulatory, allied institutions, and the Procuring Entities, they since the onset of their establishment, tried to function according to their institutional objectives, mandates, guiding goals and powers enshrined in the procurement laws.

The above observation was made generally with no specific reference to Tanzania per se, but was seen to be in sync with the situation in Tanzania whereby certain individuals in their quest to do good and comply with the procurement laws flout it by being too rigid and in the process breaching the law when undesired consequences result owing to such rigidity of personnel assigned tasks at public procuring entities.

**Biramata R.A**<sup>16</sup> states that procurement decision in any public entity requires intensive research and selection. All these are in principle done on the basis of quality, economy, price, reliability, quantity and punctuality. It is the duty of the procuring department to select proper and competent sub-contractor or vendor prepared to fulfill the supply activity in accordance with the Public Procurement Act, 2011 and regulations. He further added that compliance levels have continued to be low among public entities despite efforts by the Public Procurement Regulatory Authority to put in place measures to improve compliance levels.

The above concern as raised in the study is broadly framed and quite general in scope as to non-compliance with the procurement laws but does not delve into specific instances

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<sup>15</sup>Mutava C , ‘‘Impact of Public Procurement Procedures on Maintenance Works- Case of Housing National Social Security Fund and Kenyatta National Hospital ,’’ FIG Congress 2014- Engaging the Challenges and Enhancing Relevance16<sup>th</sup> - 21<sup>st</sup> June, 2014, Kuala Lumpur Malaysia.

<sup>16</sup>Biramata A.R, ‘‘Challenges of Compliance to Public Procurement Act No 7 of 2011 The Case Study of Tanzania Ports Authority,’’- A Dissertation Submitted in partial fulfillment of the Requirement for the Degree of Master for Business Administration of the Open University of Tanzania , Dar es Salaam , 2014, p 5.

where a procuring agent deviated from the laid down procurement regulations and the resultant consequence specifically at Morogoro region an aspect which this particular study will seek to pursue.

**Callender G et al**<sup>17</sup> in their work titled, “The Economic Context of Government Procurement - New Challenges and New Opportunities” commenting on public procurement state that public procurement is without a doubt an important function of any government. They go on to add that, the magnitude of procurement activities has a significant impact on the economic wellbeing of the nation and needs to be properly managed.

It has often been stated that by estimation financial activities of public procurement in all countries of the entire world are something between 10 percent to 30 percent .Public procurement therefore exclusively devotes significant resources and time to ensure that the process and procedures are not only sound but also, transparent and any deviation from the strictly set standard procedures definitely raises key questions among the members of the public who are the tax payers.<sup>18</sup>

Apart from the over simplification of the procurement chain the authors do not pinpoint the particular legal gaps that need to be amended in order to achieve full efficiency of procurement laws. Moreover, the study also attempted to draw the maximum economic potential achievable by complying with the provisions of the procedural requirements of the Public Procurement Act fully.

**Kundela C.I**<sup>19</sup> revealed that key procurement challenges in Tanzania emanated from, an absence of proper procurement structures or plans, management duties being concealed within procurement frameworks , and lack of adequately trained and well qualified

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<sup>17</sup>Callender G and Mathews D, “The Economic Context of Government Procurement ; New Challenges and New Opportunities” Journal of Public Procurement ,2002. Pp 55-71.

<sup>18</sup> Public Procurement Regulatory Authority Report ,Dares Salaam , 2013.

<sup>19</sup>Kundela C,I 2008 Extent of Compliance to procurement Act and Regulations A survey of Selected Water Supply and Sewerage Authorities of Arusha, Babati and Moshi, Unpublished , Dissertation, University of Dar es Salaam.



procurement personnel. He further adds that several studies in the past have identified compliance levels with the public procurement Act and regulations in delaying the tendering processes, interference among the parties participating in procurement activities particularly by top government officials and the complicated procurement procedures involved under the law.<sup>20</sup>

All in all some of these concerns still persist at national level as observed by the author, but through this study; the researcher mainly focused on Sokoine University of Agriculture and Morogoro Municipal Council that are based in Morogoro region and not the whole country .

**Knowles R**<sup>21</sup> on his part made an observation and asserted that, those in whose behalf construction works is executed in many cases legitimately expect the value or price of the contract to be certain or fixed at the beginning of the contract and not to vary in the middle of implementation of the project construction. He adds that this is to ascertain that the final sum payable is equal to the contract price for the entire work done. The other term often used to refer to this amount is ‘lump sum fixed price,’ or in the legal profession, entire contracts price. According to the author, most major construction projects are projects are let employing either of the standard contract forms, which in the main contract normally do not provide for the fixed contract prices. Construction work is normally bedeviled with many uncertainties; for example, in most situations some of the work is conducted underground, where surprises are often found in the process of construction but were for foreseeable to the parties. Who, really, bears the risk related to ground terrain that turn out to be more difficult than originally anticipated at the time of contract conclusion. He answers as follows, the contract, if properly drafted, then it is not unreasonable to expect for an amount inclusive as part of the contract price to cover the risk encountered in the process of contract execution.

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<sup>20</sup>Kundela C,I 2008 Extent of Compliance to procurement Act and Regulations A survey of Selected Water Supply and Sewerage Authorities of Arusha, Babati and Moshi, Unpublished , Dissertation, University of Dar es Salaam.

<sup>21</sup>Knowles R, 2012, ‘‘200 Contractual Problems and Their Solutions’’ 3<sup>rd</sup>Edition , Wiley Blackwell- A John Wiley Ltd Publication, p1.

If the above is the case as clearly pointed out by the author, the researcher sought to expose the underlying reasons that tend to precipitate contractual disputes and never ending litigation over procurement contracts at public entities in which suppliers and contractors claim to be have shortchanged in their contractual agreements.

Further, highlighted also are cases where the government claims to have been given a raw deal by the entity that was awarded a contract for construction works delivering a project that the procuring entity deems as substandard and not commensurate to value for money.

**Mayavi P.H,**<sup>22</sup> in her dissertation states that many organizations collapse due to poor tendering procedures and further adds that tendering procedures when followed effectively normally bring good outcomes and if not properly adhered to then corruption arises, and tenders may be awarded to unqualified bidders as a result of which there will be supply of low quality goods and/or services, hence; failure to meet the targeted objectives of procurement contract as a whole.

Unlike the researcher the study focused on specific implications that accompany non-compliance with the procurement laws at Sokoine University of Agriculture and Morogoro Municipal Council at Morogoro region in Tanzania which is beyond the outcomes assessed in the cited works because the implications are a follow up to breaches and account for accountability for violating procurement laws governing public procurement.

### **1.8 Limitation of the Study**

The main limitations encountered in the study were some respondents found the question complex and others had limited time thus getting them to respond to the questions proved hectic to the researcher. The limitations were overcome by distributing

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<sup>22</sup>Mayavi. P.H , 2013, “An Assessment of Tendering Procedures in Public Organizations – Case Study of College of Business Education,” A Dissertation Submitted in Partial Fulfillment of the Requirement for the Award of the Degree of Master of Science in Procurement and Supply Chain Management of Mzumbe University, Dar es Salaam Campus College, pp3 -5.

many questionnaires to ensure that as many as possible were duly completed and returned and the interviews were arranged at the convenience of the respondents to cope with their busy schedules.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK OF THE STUDY

#### 2.1 Introduction

Procurement in public domain is basically geared towards locating a business that has the capability to avail works, goods or construction works and the provision of either consulting or non -consultation services to the requesting entity when such need arises. Before embarking on an activity such as the supply of particular goods, services, construction of assigned -works, the contractor, service provider, or business entity as the case may be have to execute a contract with the entity procuring for the goods or services .In the Republic of Tanzania contracts are generally regulated by the Law of Contract Act.<sup>23</sup>

According to the Public Procurement Act, public officers and members of Tender Boards taking part in the approval of procurement contracts shall be guided by policy directions in the procurement regulation which among others comprise efficiency and the need for economy in the procurement of quality goods and services for members of the public.<sup>24</sup>

The best interest of the public entity, in awarding qualified contractors service providers and potential suppliers equality of chances to participate in tenders for providing goods or in performing some works or provision of services promotes national contracting, manufacturing and domestic service industries. The importance of fairness to parties, accountability and transparency in the procurement process is very much emphasized.

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<sup>23</sup> Cap 345 [ R.E 2002].

<sup>24</sup>Public Procurement Act,No. 7, 2011.

Transparency simply means provision of information on decisions relating to the overall performance of procurement in the public sector, which availability should be accessible to everybody and also in real time whenever there is need.<sup>25</sup>

Barett pointed out some key aspects related to best practices in procurement law among which are that, procurement ought be taken and run as an important function in the corporate world .Procurement ought to be resourced professionally and finally provision of value for money which should always include considering of the socio-economic and political effect of procurement on the people and the environment.<sup>26</sup>

## **2.2 Procurement**

Procurement according to Section 3 of the Procurement Act means the purchasing or buying of goods and services , or the leasing, renting of the same or otherwise acquisition of any works, services goods, works or by any procuring entity spending public funds on behalf of the ministry, regional administration or department..<sup>27</sup>

## **2.3 Procuring Entity**

Procuring entity therefore means any public body or some other body, departmental unit or any other body by any name so called created by the by the government with the sole mandate to carry out public procuring activities.<sup>28</sup>

## **2.4 Compliance**

Compliance means issuance of certificates to prove that the person doing an act for instance supply of certain items or the writing of report by an auditor or the

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<sup>25</sup>Arrowsmith S [2011] Public Procurement Regulations- An Introduction, University of Notingham, EU pp. 56.

<sup>26</sup>Barett A et al[2016], Public Procurement –The Challenges Facing a Small Country, Public Finance Quaterly.

<sup>27</sup>No. 7, 2011.

<sup>28</sup>No. 7, 2011.

manufacture of an item meets set requirement of the accepted standards rules, legislation and regulations spelt out I as part of the procurement contract entered into.<sup>29</sup>

## **2.5 Tender**

Tender according to the Public Procurement Act No. 7, 2011 means any offer, proposal, or a quotation of needed items or services given by a supplier or a contractor or consultant in response to and in exchange for a clear and certain request by given by Procuring Entity.<sup>30</sup>

## **2.6 Supplier**

A Supplier is construed to mean an organization or a company or corporation, or even a partnership or in some cases individual person indicating willingness to supply or actually supplying goods or services or hiring out some equipment to a procuring entity or engaging in the provision of transport services and who is, according to the contract, either a party or potential party to a procurement contract with an entity.<sup>31</sup>

## **2.7 Open- Tendering**

Open tendering is a situation where a prospective supplier or prospective suppliers are by an advert invited to compete for an advertised contract either by the advert being placed in the press or any other broadcast media for that purpose and generally the lowest bidder is accepted to execute the advertised tender especially where in the advert it was so stated.<sup>32</sup>

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<sup>29</sup>Public Procurement Act No. 7, 2011.

<sup>30</sup> Ibid

<sup>31</sup> Public Procurement Act No. 7, 2011.

<sup>32</sup>Kuloba E. [2016], Effect of Procurement Procedures on Organizational Performance- A Case of Moi Teaching and Referral Hospital, Eldoret, A project Submitted to the Postgraduate Studies in Partial Fulfilment of the Requirement of the Degree of Masters in Business Administration. [Procurement, Logistics and Supplies Management] of the School of Business and Economics, Department of Business Kisii University,pp 55.

## **2.8 Procurement Management Unit**

Procurement Management Unit is a division or a department mental segment in every procuring entity charged with the duty of actual execution of the procurement activities at that respective entity.<sup>33</sup>

## **2.9 Value for Money**

Value for money is the total sum of entire life monetary valuation and quality as to fitness for the desired use and ability to meet the requirements of the user and it is also relevant in justifying a procurement outcome of the activity.

Works on the other front means all works associated with the f new building construction, demolition, repair works , reconstruction works or the renovation of a structure whether an airfield or some building and includes any civil works procured for.<sup>34</sup>

## **2.10 Legal Sanction**

Legal sanction is some punishment or punishment meted out as a means of enforcing obedience to law by a legal subject. In the field of jurisprudence a law is said to have sanction if there is a state that will intervene to enforce it when it is breached or broken by any legal person.<sup>35</sup>

## **2.11 Conclusion.**

In conclusion the institutions of higher learning and the Public Procurement Regulatory Authority ought to carry out seminars and intensive courses that expose the citizens to the concept of the procurement law so as to create a large pool of personnel who can be relied upon to effectively carry out the provisions of the procurement law and regulations. This will serve to redirect public energies and ethical orientation away from

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<sup>33</sup>No. 7, 2011.

<sup>34</sup>No. 7, 2011.

<sup>35</sup><http://www.wikipedia.com/legal-sanction/php> Accessed on 12<sup>th</sup> March, 2019.

maximizing wealth accumulation at the expense of public good instead, expending effort towards ensuring public good and value for money in public procurement.<sup>36</sup>

It is the duty of procuring entities to ensure that they provide as high as possible quality of goods and services to the public through procurement contracts for goods, services and works. This implies that goods and services from the suppliers, contractors and service providers must be procured on the basis of best value for money which takes into account factors such as competitive costing and the overall quality of goods, services and other delivered products. At no time in the procurement process should this core duty be suspended as the mere fact of accepting substandard utilities will very likely endanger lives and property of the public and yet colossal amounts have already been spent to put some of these services in places.<sup>37</sup>

The existing laws also need to be amended to enhance penalties for not complying to the laws on procurement as the current laws impose very lenient penalties on people who violate the provisions of the laws which have only served to encourage breaches that go without sanction or that are sanctioned very leniently. In cases where institutions that carry out procurement activities against clear legal provisions the procurement regulations ought to be amended to impose serious punishment on all procuring entities which exclude notices of intention to award a contract, name of the successful tenderer, contracts sum, completion and delivery period, reasons as to why the tenderers were not successful all these should be done with a view to opening up the procurement process and promoting transparency by ridding the process of underhand deals that deny the public goods, services and other products that they by right deserve or in extreme cases cause loss of lives due to shoddy work standards in laying public utilities in the country.<sup>38</sup>

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<sup>36</sup><http://www.wikipedia.com/legal-sanction/php> Accessed on 12<sup>th</sup> March, 2019.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid.



Moreover, Suppliers, contractors and service providers should give adequate warranty for their products or services as the case might be and act in a professional and accountable manner to rectify any shortcomings identified in their products within the warranty period. Suppliers should not take advantage of any supervision on the part of the procuring entity because procuring entities advertise for tenders in order to obtain maximum competition in the tendering process and value for money for the public on whose behalf the various PEs contract.<sup>39</sup>

Finally the procuring entities should endeavor to effect electronic procurement which will ensure a standard processes across the board regarding public procurement for similar projects and will also make it fairly easy to track departures from standard procedures as embedded in the electronic manuals for procurement and in computer software for the same purposes.<sup>40</sup>

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<sup>39</sup><http://www.wikipedia.com/legal-sanction/php> Accessed on 12<sup>th</sup> March, 2019.

<sup>40</sup>Ibid.

## CHAPTER THREE

### LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING PUBLIC PROCUREMENT IN TANZANIA

#### 3.1 Introduction

According to the Public Procurement Regulatory Authority, 2007 in its final report of the Tanzania's procurement system. The Government of the United Republic of Tanzania has for a long time realized the importance of public procurement and how imperative it is to the economic development of the country and its contribution to poverty reduction in the country.<sup>41</sup>

In the furtherance of the reform process it was found out that in a bid to boost public procurement structures the Government back in 1996 commissioned the Crown Agent to consult on Tanzania's procurement system and then examine assess its effectiveness and suitability. In its report the study was of the view that the procurement system was scattered and there was total lack of uniformity in the procurement therefore every procuring entity chose to operate in a different way ,by applying unregulated procurement regime. It was further apparent that there were no common documents or stored data used in the procurement activities and that there was a lack of a central authority responsible to coordinate and regulate public procurement .<sup>42</sup>

Based on the crown agents' report the government undertook measures to reform public procurement in Tanzania by enacting the Public Procurement Act, No.3 of 2001.The Act provided for the establishment of the Central Tender Board [CTB] as the central coordinating body for public procurement undertaken in the country and hence from 2001, public procurement contracts concluded in Tanzania were governed by the Public

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<sup>41</sup>Public Procurement Regulatory Authority Report available at <http://www.ppra.go.tz> accessed on 22<sup>nd</sup> January, 2019 at 12 . 06 PM.

<sup>42</sup> Ibid.

Procurement Act,2001.As a result of amendments to the law, the law currently governing public procurement in Tanzania is the Public Procurement Act, No.7 of 2011.

### **3.2 Legal Framework Governing Public Procurement in Tanzania.**

#### **3.2.1 The Public Procurement Act, No. 7 of 2011**

The Public Procurement Act No 7 of 2011 which is the principal legislation governing public procurement in Tanzania defines procurement as the process involving the purchasing, buying and/or the leasing /renting the whole or part of a structure or otherwise acquisition of any works, goods or services by a procuring entity spending public funds and also includes all functions that pertain to the acquiring of any services, goods or public works and includes a description of the requirements, the selection criteria and award of contracts.<sup>43</sup>

On the aspect of compliance with the Act, Section 8 emphasizes that the adoption of a rather transparent, fair, efficient and non discriminative competitive and a procurement system that guarantees value for money does set standards for procurement at public in the United Republic of Tanzania and ensure compliance as well as build collaboration with the various public procurement policy division, and other relevant professional bodies operational in the country as a whole.<sup>44</sup>

The enforcement of the Act generally, has the framework which recommended the creation of tender boards as per section 31[1] and second schedule of the Act, 2011. Creation and membership of PMU s is provided for under section 37 of the Act. It also provides for the functions of PMUs, tender boards, Accounting Officers, and other various user departments which need to operate without improper influence or interference from outsiders.<sup>45</sup>

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<sup>43</sup> Section 3 of Public Procurement Act, No. 7,2011.

<sup>44</sup>Public Procurement Act, No. 7,2011.

<sup>45</sup>Public Procurement Act, No. 7,2011.

The procurement regime also has a provision on preparation of procurement plans which requires that preparation of procurement plans must conform with the approved budget re allocations of the entity according to the provisions of section 49 of the Act. Approvals for procurement activities, tendering documents are subject to Regulations 185 of the procurement regulations and the list of suppliers to be engaged as per National Shopping [NS] as provided under regulations 163[3] and other required approvals including the set rules under Regulation 55 of G.N No.446 of 2013 to the effect that Accounting Officers approval to procurement activities of all entities in the country.<sup>46</sup>

The Public Procurement Regulatory Authority as an oversight body has the mandate to ensure that public entities are adhering to the Public Procurement Act, 2011 which gives a fair equal opportunity to all prospective suppliers, consultants, contractors and service providers. It ensures fairness of treatment to all parties in order to obtain value for money in the procurement process without any form of discrimination whatsoever.<sup>47</sup>

The Act is meant to apply to all government institutions which use public funds. The Defense and National Security organs are also obliged to comply with the Act in managing their procurement and disposal of public assets and are therefore required to prepare two lists of items for open tendering and a second list of items for restricted tendering process within the said security organs. They are by law required to agree with the PPRA on an annual basis on the restricted list and the methods of procurement for the restricted items. The Public Procurement Act, 2011 is being simultaneously implemented with the Public Procurement Regulations, 2013.<sup>48</sup>

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<sup>46</sup>Public Procurement Act, No. 7, 2011.

<sup>47</sup> Tanzania Procurement Journal, PPA Orders RITA to Restart Prequalification Process Vol IV No 39 ,2011.

<sup>48</sup> Government Notice No 446, Government Printer, Published on 16<sup>th</sup> December, 2013, Dar Es Salaam.

### **3.2.2 The Public Procurement (Amendment) Act, No. 5 of 2016**

This was an Act enacted by parliament of the United Republic of Tanzania to amend the Public Procurement Act with a view to enabling efficiency in regulating procurement processes, to ensure value for money in public procurement activities and to provide for other related matters in conjunction with public procurement.<sup>49</sup> The Act introduced key amendments to the principal Act by among others, amending section 3, by inserting immediately after the word ‘board’ the following new definition.<sup>50</sup>

An authority with the power and mandate to approve budget approving means that organ within every entity engaging in procurement contract which is responsible for approving the organization’s budget.<sup>51</sup>

The provision also redefines the word procurement by deleting the words, ‘‘preparation and award of contracts’ and substituting it’s for ‘preparation, award and management of contracts .The procurement Act is also amended with the addition of a new section 4A, immediately after section 4 whose import is that public procurement and disposal of assets by tenders have to be conducted as per the basic principles set out in the procurement Act that is to say; all procurement contracts and disposal of assets by tender shall as a matter of law be conducted in a manner that maximizes integrity, competition, accountability, economy, efficiency, transparency and achieves value for money.<sup>52</sup>

Procuring entities are also enjoined to achieve equity and high standards in the procurement process wherein the laws provides that anticipates the entities in the execution of the process of executing their duties; to commit to achieve the highest standards possible of equity, bearing in mind equality of opportunity to all tenderers participating in the bid, fairness of treatment to all parties taking part in the tendering

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<sup>49</sup>The Public Procurement (amendment) Act, No. 5 of 2016.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup>Section 3[2] of Public Procurement Amendment Act, No. 5 of 2016.

and last but not least the need to obtain the best value for money in terms of price, quality of the deliveries.<sup>53</sup>

The amendment by way of capacity building imposes a new requirement that the chief executive officer of the procuring entity must necessarily have experience of at least ten years in law, architectural practice, business administration, engineering, procurement, planning, supplies management quantity surveying, economic development planning or any other related field, academic records in the field and proven track record in procurement activities.<sup>54</sup>

As part of the evaluation process the Act introduces a new criteria upon which the margin of preference will be based, it provides that for non consultancy services a procuring entity shall comply with the guidelines issued by the authority and shall consider in addition to shareholding structure in the joint venture, the extent of inclusion of key local staff in the joint venture and the extent of use of locally manufactured, produced or mined materials in the execution of the works being tendered for.

### **3.2.3 The Budget Act, No 11, 2015**

The bill for the enactment of the Act was first tabled in parliament in November 2014 and eventually passed into law in the National Assembly in March 28, 2015. The implementation of the Act commenced in 1<sup>st</sup> July, 2015 and it is applicable to mainland Tanzania. The Act comprises 9 parts and 75 Sections in total.<sup>55</sup>

The Budget Act has clarified roles and responsibilities of key stake holders in the national budget making process of public entities and strengthens collaborations in the whole process of budget management. It has been hailed for having put in place, recognized and appreciated into legal text important budget pillars of revenue planning and expenditure. Plan for the medium and long term as well as vision 2025 are

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<sup>53</sup>Section 3[2] of Public Procurement Amendment Act, No. 5 of 2016.

<sup>54</sup>Section 9 Public Procurement Amendment Act, No. 5 of 2016.

<sup>55</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

recognized by the Budget Act and no projects should be financed unless in the approved plans there is full compliance with the Act.<sup>56</sup>

According to the Act, budgets are prepared by considering the annual development plans and investment will be made in development projects that are approved by parliament. Specific time to prepare plans and budget guidelines has been set and is annually communicated to accounting officers in order to facilitate the preparations of the plans and budgets.<sup>57</sup>

Other important clarifications of the Budget Act include recognition of the budget process throughout its various stages and stakeholders; establishment and recognition of parliamentary budget office, parliamentary budget committee and sectoral committees; recognition of the roles and functions of the Budget Committee and harmonization of the various existing laws related to budget matters in its entirety .

Implementation of the Budget Act No 11, 2015 and its regulations provides transparency, effectiveness and oversight of all matters regarding National Budgeting process so as to attain economic growth and improvement of the standards of living of the citizens of the United Republic of Tanzania<sup>58</sup>.

### **3.3 Procurement Processes and Legal Requirements on the Procuring Entity**

Procurement cycle is term used to refer to the series of activities right from the identification of a need to the final step which is management of contract. It involves the many steps sequentially arranged including -need identification, procurement planning, bid invitation ,receiving and opening of bids, evaluation of bids, negotiation, approval, award of contracts and contract management as the final step.

In accordance with the present procurement laws, the user department is charged with the duty of identifying the need in relation to what is needed, how much of it will be

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<sup>56</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid.

necessary and when exactly the services, works and goods are needed by the entity. In identifying such needs, the user department is enjoined to specify the technical in-puts or what is ordinarily known as terms of reference and also to propose the technical specifications at the department; which are then submitted to the Procurement Management Unit[PMU at the same entity ].<sup>59</sup>

Procurement planning is the series of activities that makes clear the objectives of procurement, makes key decisions and also monitors progress towards the achievement of organizational objectives.<sup>60</sup>

Section 49 of the Act states that ,the approval of annual procurement plans [APP] of every entity or department and requires procuring entities [PEs] or the concerned department to prepare such APP in a very rational manner, in order to avoid emergency procurement as much as possible to aggregate its needs wherever possible, both within the procuring entity and across the different entities, to get value for money and reduce procurement costs, lastly, to avoid splitting of procurement spending to defeat the use of appropriate procurement methods unless such splitting is to enable wider participation of local consultants or businesses.<sup>61</sup>

Procuring entities are required to observe the approved Annual Procurement Plan and any unplanned procurement shall get a prior written approval of the Accounting Officer at the department.

The practice in Tanzania is that procuring entities prepare three templates of the annual procurement plan, one is usually reserved for internal use, another template for external use and the final template of the Annual Procurement Plan is meant for submission to the overall regulator, Public Procurement Regulatory Authority [PPRA].

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<sup>59</sup> Section 39 of the Public Procurement Act, No. 7 of 2011.

<sup>60</sup>Anbe W,[ 2007] Public Procurement Handbook for Procurement Practitioners, Germany.

<sup>61</sup> Ibid.



Emergency procurement as the term suggests are not in the Annual Procurement Plan. According to Section 65 of the Public Procurement Act<sup>62</sup> and Public Procurement Regulation 63 of 2013, procurement in emergency situations may be done if it is in the interest of the public to do so.<sup>63</sup>

The wording of the statute is such that there must be compelling urgency that creates threat to life, health, welfare or safety of public by reason of some major natural disaster, epidemic, riot, war, fire and other reasons of similar nature constituting an emergency; and Situations whereby without the urgent procurement, the continued functioning of the procuring entity would suffer irreparable loss or damage, the preservation or protection of irreplaceable public property, health or safety of the public would be threatened.<sup>64</sup>

Upon satisfying the criteria for emergency procurement, the procuring entity is then obliged to seek the approval of Government Procurement Services Agency [GPSA] before proceeding on with the procurement as per section 65[3] of the Act and Public Procurement Regulation 63[2].<sup>65</sup>

Under emergency procurement procuring entity has the discretion to set aside the preconditions on the limits of procurement, method of tendering, processing of tender periods and advertisements.<sup>66</sup> However, a procuring entity shall not set aside the conditions as to evaluation of tender and tender approval board as these are stated to remain as provided for the statutes.

Public Procurement Regulation 65 does bar the tender board from granting retrospective approvals for emergency public procurement which essentially means that all emergency procurement activities ought to get approvals by the respective tender boards well

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<sup>62</sup>Anbe W,[ 2007] Public Procurement Handbook for Procurement Practitioners, Germany.

<sup>63</sup>GN No.446, 2013.

<sup>64</sup>No. 7 of 2011.

<sup>65</sup>Ibid.

<sup>66</sup>Section 65 [6] of Public Procurement Act , No 7 of 2011.

ahead of services, goods, or works as the case might be are procured through this mode of procurement.<sup>67</sup>

Public Procurement Regulation 63 expects accounting officer s to carry out evaluation of the needs for procurement of urgent nature and determine the suitable method of procurement in order to facilitate economic value and tender efficiency to the procuring entity, ensure criteria for emergency procurement are complied with to the full, Identify, specify prioritize the immediate procurement activities which may be used in the period of emergency, and where possible seek out other bodies within government that can provide necessary assistance, and specify the timeframe within which the emergency procurement will be undertaken by the entity.<sup>68</sup>

Public Procurement Regulation63[3], stipulates that, on receipt of an application for emergency procurement from the responsible officer , GPSA is duty bound to consider the advantages of the application and grant the necessary approvals within five working days where satisfied with the advantages of the application made in that regard.<sup>69</sup>

### **3.4 Institutional Framework Governing Public Procurement in Tanzania**

The Public Procurement Act, 2011 provides for the institutional framework within which to conduct public procurement at the public procuring entities using the organs or institutions established under the Act which among others includes the Accounting officer, Tender Board, and Procurement Management Unit. Moreover, the Act provides for modality of solving disputes should they arise between parties involved in procurement contract.

The accounting officer has the responsibility of providing oversight to procurement activities at his institution according to the provisions of the Act. Section 33 of the Act describes in some great details the duties and responsibilities of the accounting officer.

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<sup>67</sup>GN No.446, 2013.

<sup>68</sup>Ibid.

<sup>69</sup>GN No. 446, 2013.

Under that section the accounting officer is conferred with the power to establish the Tender Board as per Second Schedule of the Act. The members of the Tender Board shall be appointed with regard to the competence and skills required to discharge their functions. The functions of the Tender Board are provided under Section 30 of the Act with regard to preparation of quarterly audit reports.<sup>70</sup>

The user department as consumer of the procurement services procured by the entity has the responsibility to initiate all procurement and disposal by tender requirements, inputs to specifications and in evaluation as well as performance of duties outlined under Section 36 of the Act.<sup>71</sup>

As per Section 37[2] of the Act, the evaluation committee is to be recommended by the Procurement Management Unit and approved by the accounting officer of the entity. The evaluation conducted by the evaluation committee is to be reported to the Procurement Management Unit. The PMU after reviewing the report is required to submit recommendations to the Tender Board for approval after which the procuring entity can proceed with the contract.<sup>72</sup>

Part VII of the Act provides for the establishment of PPAA and its functions as the highest level of reviewing disputes arising in the procurement process by aggrieved bidder. Section 80 provides provision for the settlement of disputes or complaints by procuring entities and bid approving authorities.<sup>73</sup>

The Act and its regulations provides for three basic levels of handling procurement complaints which are by the accounting officers, Public Procurement Regulatory Authority and Public Procurement Appeal Authority. The AO is the first Appeal level in handling the procurement complaints within the procuring entity. If the complaints are not handled within the specified time or aggrieved party is not satisfied with the decision

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<sup>70</sup>No. 7 of 2011.

<sup>71</sup>Ibid.

<sup>72</sup>Ibid.

<sup>73</sup>Ibid.

of the accounting officer he can lodge a complaint at Public Procurement Regulatory Authority as per the procedures laid down in the regulations for dispute resolution. The third level is Public Procurement Appeal Authority where the aggrieved party can further within a specified timeframe file a complaint in case he is not satisfied with the decision rendered or the decision of Public Procurement Appeal Authority not given in a specified time limit. Section 85 of the Public Procurement Act provides for judicial review in case the three levels fail to make a decision within the prescribed time limit.<sup>74</sup>

### **3.4.1 Ministry of Finance**

The Ministry of Finance is one of the major actors in the procurement system charged with the responsibility of ensuring that funds are available and are disbursed to the procuring entities according to the budget and plans for the government institutions to implement their functions in the respective financial years.<sup>75</sup>

The Public Procurement Act, 2011 requires all procuring entities to prepare Annual Procurement Plans [APPs] which indicates the volume of procurement and timing of each activity in the procurement process. The APP forms the basis of for budget formulation to the Procuring Entities. The budget is submitted to the responsible line Ministry for review and a final budget tabled in parliament for purposes of approval. The Ministry of Finance disburses funds to respective procuring entities according to the approved budgets.<sup>76</sup>

### **3.4.2 National Audit Office**

The National Audit Office of the United Republic of Tanzania is established under Article 143 of the Constitution of the United Republic of Tanzania. The statutory duties and responsibilities of the Controller and Auditor General [CAG] are provided for under the Public Finance Act No. 6 of 2001 and the Local Government Act No. 9 of 1982.

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<sup>74</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

The National Audit Office has responsibilities of undertaking external financial and performance audits of all government or public entities, public authorities and other bodies at least once every calendar year. In addition, the National Audit Office is required under Section 33 of the Public Finance Act to carry out performance audits and report to parliament on the efficiency, effectiveness and economy in the use of public and other resources.<sup>77</sup>

The performance audit performed by the National Audit Office also covers expenditure of funds being used for procurement of services and goods by state entities. The Act compels the Auditor General to state whether or not the provisions of the PPA have been complied with in the annual report every single year.

#### **3.4.3 The Public Procurement Appeal Authority [PPAA]**

The Public Procurement Appeals Authority [PPAA] has been established under Section 88 of the Act with the sole aim of providing for an independent structure to deal with and facilitate the handling of procurement related complaints and appeals arising in Tanzania.<sup>78</sup> The PPRA further provides clarity on procurement disputes among parties as well as giving advice to the Public Procurement Regulatory Authority on issues that require improvement within the public procurement sector at large.<sup>79</sup>

#### **3.4.4 The Public Procurement Regulatory Authority [PPRA]**

The Public Procurement Regulatory Authority is a statutory body created under Section 7 of Public Procurement Act, 2011 answerable to the Ministry of Finance as an oversight body in the procurement functions in the country and to regulate and monitor all procurement activities undertaken by the different Procuring Entities spending public money.<sup>80</sup>

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<sup>77</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

<sup>78</sup>No. 7 of 2011

<sup>79</sup>Ibid.

<sup>80</sup>No. 7 of 2011.

The funds allocated by the government for the procurement of works ,goods and non consultancy services must be used for the same purposes and that is the aim of monitoring to ensure compliance with the law. The Public Procurement Regulatory Authority therefore, has the very important responsibility of monitoring to ensure that the entities apply a procurement process that is competitive, fair, and non discriminatory, transparent and affords value for money to the entity.<sup>81</sup>

#### **3.4.5 Technical Audit Units [TAU]**

Technical Audit Unit is established by treasury circular No 8 of 2001. The unit works and reports directly to the Paymaster General [PMG] who is the custodian of all government funds. It is a tool to update the paymaster on the use of government funds through procedures of monitoring performance, evaluation and thorough auditing.

#### **3.4.6 Stock Verification Departments [SVD]**

This is a special unit under the Ministry of Finance and Planning responsible for stocks taking and department inventory audits, inspections, controlling of Government assets and disposal of Government assets by way of procurement .It is an important unit or division in procurement contracts as it tracks the goods purchased through public procurement to ensure safe custody of the same and to also guarantee that dealings are above board to reflect international best practice.<sup>82</sup>

### **3.5 Conclusion**

Whenever a public body sets out to procure some goods, works or services a challenge emerges of recruiting a tenderer or bidders who will be able to execute the activity to the desired standards with minimal budgetary allocation and within the stipulated

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<sup>81</sup>No. 7 of 2011.

<sup>82</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

timelines and herein lies the pitfalls that the current procurement laws and regulations sought to remedy.<sup>83</sup>

The overall aim of procurement is well met when all parties to the procurement contract are aware of the expectations and share a common objective with regard to the contract and work in earnest to deliver that shared goal. The main aim of procurement laws is to ensure value for money, efficiency and transparency among stakeholders involved in the procurement exercise.<sup>84</sup>

That transparency is held as one of the key procurement objectives cannot be downplayed and must be given the prominence it deserves in all public procurement activities that are undertaken in the name of the government. Institutors must continuously demand that staff give prominence to the procurement principles in the course of discharging their procurement related duties.

Compliance with the procurement laws is a precondition in the procurement process and value for money is very much emphasized in the procurement laws. For instance foreign firms competing to be awarded non emergency consultancy assignments whether by tender or any other means recognized in the Act shall be required as a matter of law to include local experts in their teams which goes a long way in securing quality and value for money for the country because there is a presumption that locals being patriotic will want to give their country of birth a fair deal unlike a foreigner whose has vested interests in the profit to be reaped from the process.<sup>85</sup>

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<sup>83</sup><https://www.mof.gov.tz> accessed on 6<sup>th</sup> June, 2019.

<sup>84</sup>Ibid.

<sup>85</sup>Ibid.

## CHAPTER FOUR

### PRESENTATION AND DISCUSSION OF FINDINGS

#### 4.1 Introduction

This chapter of the study presents findings and discusses findings made by the researcher drawn from various sources of data consulted and analyzed in the course of the study. The findings were obtained from interviews, questionnaires, and the data obtained from the reviewed empirical corpus of various materials. The discussions held in this chapter are primarily based on the research questions which guided this study.

The researcher noted the presence of a robust legal framework to regulate public procurement as well as a sound regulatory framework, yet still noted that numerous factors continue to undermine public procurement thus denying state corporations and other public entities value for money either by overpricing items and suppliers or by supplying substandard materials or through shoddy performance of works.

Moreover, the research findings are discussed and analyzed. Findings were analyzed by referring to the results obtained from the interviews, questionnaires and documentary reviews. The findings of the study were analyzed in line with the specific objectives of the study. The study aimed at exploring the implications of non-compliance with the procedural requirements of the procurement laws at Sokoine University of Agriculture and at Morogoro Municipal Council at Morogoro region.

The sample size for the study was 60 respondents drawn from both Sokoine University, Morogoro Municipal Council and Public Procurement Regulatory Authority. The face-to-face interviews and distribution of questionnaires were carried out in the months of March and April, 2019. Most of the questionnaires were responded to and subsequently collected by the researcher.



## 4.2 Findings of the Study

A total of 60 respondents were involved as respondents, among who were directors, managers, principal officers, and senior officers, Officers from Public Procurement Regulatory Authority, Officers from procurement evaluation unit and assistant officers as shown in table 4. 1

<b>Are you aware of procedural requirements prescribed by the PPA No 7 2011</b>	<b>Frequency</b>	<b>Percentage</b>
Very Low	15	25
Low	13	21.66
Neither high nor low	13	21.66
High	14	23.33
Very high	5	8.3
Total	60	100

**Source Table 4.1 was designed by the researcher, 2019**

### 4.2.1 What are the Legal Procedures for Public Procurement in Tanzania?

A review of answered questionnaires and a series interviews with respondents conducted between March 5<sup>th</sup> and 6<sup>th</sup>, 2019 at Morogoro Municipal Council Offices in Morogoro town and at the Sokoine University of Agriculture of Agriculture main campus also in Morogoro revealed the procedural requirements for procurement as follows-

A response in one of the questionnaires was that the Public Procurement Regulations have provisions on the procedural requirements for public procurement

*“A reading of the regulations will reveal all the procedural steps that we must comply with in public procurement and it is very detailed as below”<sup>86</sup>*

The very first step is the invitation to tender or what is called advertisement of the tender whereby, a Procuring Entity wishing to commence a competitive tendering proceedings is by law required to prepare tender notices, inviting either contractors or

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<sup>86</sup>Questionnaire Findings, 2019.

suppliers to competing submit offers/proposals for the supply of goods or to undertake the service or work required.<sup>87</sup>

Then second stage is, the issue of tender documents at which the respective Procuring Entity is obliged to avail documents of the tender after the very first tender publication notices with regard to the same and pay the required fees, if any after which a receipt shall be given for the amounts paid.<sup>88</sup>

Receipt of the tender is the third step at which the secretary of the respective tender boards must on request provide every bidder a cash receipt showing the date and time on which respective bids were received for filing and any tender received after the deadline shall be returned to the tenderer unopened for being time barred.<sup>89</sup>

Fourth step is tender opening, all tenders received before the deadline and date of submission shall be forwarded to tender opening which normally takes place after closure of the tender deadline as stated in the tender documents for the receipt of tenders, and the names of all those present at the tender opening and the organizations they represent shall be recorded by the secretary of the tender board.<sup>90</sup>

Fifth step in the tendering process is tender evaluation at which the procuring entity is obliged to evaluate the common basics of bids not turned away, with a view to ascertain the financial implication on the public entity of every bid in a way which allows one to compare between the tenders listed on the head of the evaluation cost but the cheapest submission may not automatically be selected for the award of procurement contract unless specifically stated so.<sup>91</sup>

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<sup>87</sup>GN No.446, 2013.

<sup>88</sup>Ibid

<sup>89</sup>Ibid

<sup>90</sup> Ibid

<sup>91</sup>Ibid.

Finally, the award of contract after approval and recommendations, if the value is within the limit of authority, the procuring entity shall accept and award contract in the form specified in the tender documents. The award of a contract means passing the responsibility to provide construction, goods, works or services required to satisfy certain needs at the right time and in the right quantity.<sup>92</sup>

A member of the tender evaluation committee at Sokoine University of Agriculture restated these steps with approval emphasizing the need to always comply with the same in carrying out public procurement.

*‘Public entities are obliged to comply with these steps without exception unless the law states otherwise, he said in which case that other provision will be followed to the letter’<sup>93</sup>*

It was apparent that a procuring entity is not at liberty to devise its own procurement practices since the law makes provisions for the steps that a procurement contract ought to take right from the start right to the end and in this regard an official interviewed for the study was of the opinion that all the steps enshrined in the procurement laws aim at rooting out wastage and individual discretion by ensuring transparency in the steps to be followed.

In theory procurement processes at both Sokoine University of Agriculture and Morogoro Municipal Council tally with the provisions of the procurement law and the disparities that are there are due to modifications that are devised where compliance with the law in total appears to be unachievable with the set timelines. The use of emergency procurement more and more appeared to be a conduit for circumventing procurement laws and regulations and this is especially so at the end of the year when an institution is intent on depleting her share of financial resources allocated through the annual budget but has no clear plan on what or how to spend the allocation.

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<sup>92</sup>Interview held at Sokoine University, 2019.

<sup>93</sup>Ibid.

At Sokoine University of Agriculture a senior accounting officer stated that he was positive that procurement activities at the Institution fully comply with the legal requirements but hastened to add that the few that do not comply with the law are not deliberate actions of staff.

*“All of us do our utmost best to comply with the legal provisions on procurement and we have made it a culture here to obey the law on procurement except where we make honest mistakes as human beings”*<sup>94</sup>The respondent name was not disclosed for security purposes.

#### **4.2.2 To What Extent do Procuring Entities Comply With the Procedural Requirement Stipulated under the Public Procurement Act No 7, 2011?**

15 of the respondents sampled at Sokoine University of Agriculture placed the compliance rates with the procurement laws at very high rates. 13 respondents said the compliance rates were lowly compliant with the law and another 13 respondents were not sure if the contracts complied with the provisions of the law regulating public procurement.

Data collected at Sokoine University of Agriculture indicated that just about 21.7 percent compliance rates which essentially means that more than three quarters of the procurement activities do not meet the threshold set out in the law with regard to solicitation documents in the tendering process and this is itself should be a cause for concern to the government as it creates room for embezzlement of public funds through fraudulent tendering.

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<sup>94</sup>Interview held on 15-19 March at Sokoine University, 2019.

<b>What are the Compliance rates with the PPA No 7 2011</b>	<b>Frequency</b>	<b>Percentage</b>
Very Low	15	25
LOW	6	10
Neither high nor low	16	26.66
High	11	18.33
Very high	12	20
Total	60	100

**Table 4.2 Was Designed by the Researcher, 2019**

Data collected from the Morogoro Municipal Council revealed a compliance rate of 25 percent according to 15 respondents, with another 6 respondents placing compliance rates at 10 percent while 16 respondents were ambivalent on the matter for fear of giving wrong information. The figure still left a big room for questionable procurement contracting at the council with some officials justifying the low compliance rates with the huge volume of procurement contracts concluded every single year with limited staffing at the information technology department to effectively manage the EPICOR financial management system and other related systems.

A senior accounting officer at Morogoro Municipal Council rationalized award of tender in breach of law or in clear cases of conflict of interest thus;

*“Certain processes have become so routine because we do them every day and at times we do not see the need to refer to the law because we are particularly used to procurement as a routine exercise and have free hand to decide what happens and when.”<sup>95</sup>The respondent name was not disclosed for security purposes.*

According to an officer at PPRA some procurement contracts looked compliant with the law, from a casual view but a keen study revealed a serious breach of law for example cases where procurement personnel regularly prequalified or awarded contracts to particular firms and not others on regular basis only to be later revealed that the said personnel had stake in those firms, either directly or through proxies where blood relatives and spouses held shares in the regularly prequalified firms. This accounted for

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<sup>95</sup>Interview held on 7-14 Mach 2019 at Morogoro Municipal Council, 2019.

a big percent of the cases revealed to the researcher as an aspect of non compliance with the procurement laws.

The researcher found out that public procurement generally has very well established principles which among others provide for admission of eligible firms into the procurement process, equality in the procurement process with regard to fair treatment of all bidders and transparency in the procurement process as confirmed by 50 respondents out of the 60 officials interviewed for the study which is equal to 83 percent of the respondents interviewed for the study.

The Public Procurement Regulatory Authority report of 2011 revealed that establishment, personnel composition and staffing of procurement management units is a major problem facing many procuring entities. According to the report records keeping were not adequate and contracts were also not published in proper way a factor which greatly accounts for misleading the public as to the status of public procurement generally and publication formats.<sup>96</sup>

A fairly good number of suppliers, contractors, consultants and service providers participate in the tendering processes not knowing all the requirements of the tender they are bidding for. The most important requirement in tendering is that the individual bidders should carefully assess themselves on their ability to comply with all the requirements of the tender especially with regard to their annual turnover according to their audited books of accounts and whether they have executed any similar works in the past to the requisite quality and standards as to be able to deliver in the present contractual task.

A study by Lederer<sup>97</sup> has labeled public procurement as public needs meeting private offers, he portrays public procurement as a sphere of public and private interaction

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<sup>96</sup>Public Procurement Regulatory Authority Article available at <http://www.ppra.go.tz> accessed on 11<sup>th</sup> January, 2019.

<sup>97</sup>Lederer S [2012] Public Procurement – Why Transparency is Essential, Article in Visegrad Insight, [Vue.en/p.67](http://vue.en/p.67).

fraught with many risks including corruption which in itself is a risk factor which could potentially undermine compliance with the procurement laws in Tanzania.

A study conducted by PPRA in 2010 on the tendering in the construction sector in Tanzania revealed that tender documents were produced and packaged all contract documents in electronic form and were then sent by email. Also, tender documents were then sent to the contractors were given a web link through which they downloaded tender documents.<sup>98</sup>

The returned tenders from the contractors were returned via the clients tendering portal the tender documents. Returned tenders were opened by the client at the same time. However, there was no opportunity for consultants involved in the process to be present at the tender opening. To conclude tendering process, all returned tenders were sent back electronically to the contractor for analysis and reporting.<sup>99</sup>

The study revealed that the most significant advantage of tendering is reduced cost and time. However, the exercise was also faced by numerous other challenges such as inconsistencies in the tenders returned and tenders submitted for the analysis phase. Most likely as a result of low levels of proficiency in computer usage and operations by the contractors.<sup>100</sup>

Lisa states that the level of compliance with e-procurement is strongly influenced by the general disposition of the organization as a whole to either electronic process redesign or overall desire to gain from the perceived benefits of electronic procurement.<sup>101</sup> To this end electronic procurement at both Sokoine University of Agriculture and Morogoro Municipal Council are largely compromised by lack of enough personnel proficient in

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<sup>98</sup> Public Procurement Regulatory Authority website available at <http://www.ppra.gov.tz> Accessed on 10, April, 2019.

<sup>99</sup> Ibid.

<sup>100</sup> Public Procurement Regulatory Authority Report, Dar es Salaam, 2010, pp15.

<sup>101</sup> Lisa ,I,[2011]Compliance Culture , A Conceptual Framework, Journal of Management and Organization 19[6].

Information technology and also the unreliable power supply which is affected by frequent power outages.

**4.2.3 What are the legal implications on public entities for non compliance with the provisions of the Public Procurement Act, No 7, 2011?**

<b>What are the legal implications for non compliance with the PPA No 7 2011</b>	<b>Frequency</b>	<b>Percentage</b>
Arrest in Court	5	8.33
Dismissal	5	8.33
Suspension	25	41.66
Redeployment	5	8.33
Warnings	20	33.33
Total	60	100

**Table 4.3 Was designed by the researcher, 2019**

This particular question elicited mixed reactions both at Sokoine University of Agriculture and at Morogoro Municipal Council. Among the responses sampled were the following-

It is instrumental to note that most respondents indicated absolute commitment to comply with the provision of the procurement laws on solicitation documents in tendering but were quick to add that success of the process depends on multiple actors and not all the actors meet timelines or overall compliance with the law thus resulting in delays in procuring projects in time or in the failure of the procurement process.

Five (5) out of 60 respondents constituting 8.33 percent of the respondents at Morogoro Municipal Council listed arraignment in court and dismissal as the implications of non compliance with procurement laws singling out conviction as the most serious of the implications for such violations. The remaining 15 respondents representing 25 percent of the respondents listed interdiction, transfers and blacklisting in case of companies that violated public procurement rules.



According to an accounting officer at Morogoro Municipal Council, first offenders are warned that serious disciplinary measures will ensue and to this end two members of staff were already warned, one having been verbally warned and the other had been served with a written warning should they misapply the provisions of the procurement laws either by abetting or perpetrating favoritism or giving out privileged information to potential bidders thus giving them unfair advantage over other competitors.

Six officials who flouted or failed comply with the provisions of the Public Procurement Act, 2011 and regulations at Sokoine University of Agriculture and Morogoro Municipal Council had been terminated from public service within the last twelve months for embezzlement of public funds, abuse of office and fraud, this is especially so where the violation is serious and deemed grossly unfair to the procuring entity and also contrary to ethical standards for public servants.

A senior procurement officer at Morogoro Municipal Council revealed that a practice has also been witnessed of procurement officials involved in violations of the law being transferred to new stations of work or being interdicted and in some cases both actions are taken against them. He gave an example of an officer who having been accused of mishandling a procurement contract at the council was transferred to the Ulanga District Council.

Another officer also interviewed at the Morogoro municipal council was of the opinion that transfers of errant officials should be discouraged, with a view to taming bad practices since an individual who is transferred for misbehavior will very likely repeat the habit elsewhere or could potentially enlist innocent staff at his new station into his old ways and this will spread the habit across procuring entities in the country.

At Sokoine University of Agriculture out of the respondents listed demotion and prosecution as the implications of non compliance with procurement rules with a large percentage of the respondents also listing transfers, warnings as the implications of flouting the procurement laws.

At Sokoine University, demotion of unethical personnel has been employed in the past against three officials who repeatedly flouted procurement rules and this has been noted to instill fear in staff rather than encouraging compliance according to an accounting officer interviewed by the researcher.

Comprehensive audits revealed serious violations of the procurement law, for example the Evaluation Committee of Ulanga District Council falsified a bid document of the lowest tenderer by increasing prices for three commodities which resulted in disqualification and the loss of TZS31,5920, 000.<sup>102</sup>

Likewise at Morogoro Municipal Council, the Evaluation Committee disqualified the lowest bidder for one missing page contrary to tender board evaluation guidelines, resulting in a loss of TZS57,979,200<sup>103</sup> Tendering is without a doubt at the heart of government development initiated development projects. However, despite the many benefits of tendering, challenges still arise in public procurement in the nature of structural challenges that hinder effecting procurement contracts while other challenges are legal in nature as they emanate from the provisions in the law and in the procurement regulations.

Part VIII of the Public Procurement Regulations deals with the prohibitions wherein among others it is stated that it is an offence to engage in fraud or corruption, tamper with submitted tenders, engage in improper inducement, bid in conflict of interest, and non anticipation of tenders.

An important indicator of high rates of corruption in public procurement is if the procurement system can properly run projects of high valuation effectively, where there is a big chance of returns and also much wider ambit for exchange of bribers. In Hongkong, where cases of graft have been largely tamed, very large procurement

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<sup>102</sup>The Public Procurement Regulatory Authority, A Summary Report of Procurement Audit Carried Out in 106 Procurement Entities, October, 2011pp, 24-25.

<sup>103</sup> Ibid.

projects are effectively managed.<sup>104</sup> This is only possible where violations of the procurement laws are severely sanctioned by the courts with serious violations even attracting long custodial sentences or death sentence.

#### **4.2.4 Procurement procedures compliance best practices**

Where a public project is publicly displayed in adverts and invitation to tenderers formally made within the advert it is stipulated that selection shall be on the basis of the cost effective most advantageous bid made and received yet after tenders have been submitted, selection of the tenderer is made based on an evaluation method not disclosed to the tenderers, the following are the consequences based on decided cases-

There is yet another requisition under law applicable in Europe, as enshrined in the laws applied in the United Kingdom, requiring public entities and organizations using funds collected from the public which demands for fair and equal treatment of all tenderers. In case appointment are on the most economically viable bid, the contracting authority in each case must clearly state which criterion from a given list it seeks to apply to select the economically viable bid of them all.<sup>105</sup>

In the case of *Aquarium Marine vs. Strathclyde Fire Board* [2007]. The case hinged on a contract to maintain and repair of breaking apparatuses. The court awarded the contractor 110,000 pounds, due losses of profits, because the contracting public authority used an alternative criteria in her evaluation which was a significant departure from what was stated in the invitation to tender, as advertised in the OJEU.

In yet another case of *Henry Brothers [Magherafelt] Ltd and Anor vs. Department of Education, for Northern Ireland NIQB105* [2007]. By nature work undertaken was in relation to which particular tender were received was the providing of large construction works relating to the modernization of certain schools. Numerous unsuccessful bidders

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<sup>104</sup>Agaba E et al,[2005] Public Procurement Reform in Developing Countries – The Uganda Experience, p385.

<sup>105</sup> Van Weele, A [2005], Purchasing and Supply Chain Management, 4<sup>th</sup>Edition, Thomson Learning, pg, 15.

filed a court action on the criteria used in settling on the eventual winner challenging it as distinct from the one made known to them in the advertisement.

The argument was that the cost evaluation, merely basing on an arbitrary percentage to be topped on to the overheads, prime value costs and profits, was not fair to the bidders, since it did not take into account of efficiency levels required. The court out rightly disallowed the claim on the basis that the contract evaluation was fair , very transparent and that alleged discrimination had no proof at all .

An accounting officer at the Morogoro Municipal Council stated that where contracts are won on the basis of fraud or pretext by the tenderer the procedure is that such tender is normally cancelled and retendered afresh and in the fresh bid the party that cheated is locked out of participating.

At Sokoine University of Agriculture a Procurement Manager stated that the very same evaluation criteria advertised are the ones they observe even during the valuation stage and that there is no room for variation since it will very likely disadvantage some of the parties and in his own words, “that will amount to, Unfair advantage to some other parties by deliberately moving goal posts in the process of tender evaluation.” In his view this constitutes a violation of the procurement laws.

### **4.3 Discussion of findings**

A discussion of the research findings revealed a number of key details among which are the following-

Most violations of procurement laws are due to weak enforcement of the existing laws and overall lenient sanctions for violators which breeds an attitude that promotes lack of seriousness among individuals assigned procurement related tasks at institutions. There is need for regular training of officers because due to forgetfulness, some officers tend to forget key parts of their training including professional ethics which is important in their day to day work as procurement officers. This is due to the fact that a number of

violations appear to be inadvertent on the part of staff but out of being overly cautious or plain misapprehension of the laws and regulations. Professional bodies have a role to play in enforcing professional codes and standards by disciplining errant procurement officers likely to bring the body into disrepute through misconduct and violation of professional standards.

Despite the fact that procurement laws in Tanzania are very progressive in nature, cases of organizational misbehavior and non compliance with the public procurement law still abound as established by various audit reports by the Controller and Auditor General and the study as well. Some of the challenges are structural meaning poor organization of the procuring entity while some other challenges are personnel related such as abuse of individual discretion which ought to be used judiciously.

This research therefore synthesized the factors affecting compliance with public procurement laws generally and regulations in public institutions at Morogoro Municipal Council the leading of which was found to be external influence and at Sokoine University of Agriculture where lack of professionalism was found to be the key factor undermining public procurement.

The study looked at the effects of staff unawareness of rules and regulations, personnel skills, competencies and enforcement by relevant external agencies of compliance with public procurement laws and regulations and found that there exists a major enforcement gap that needs to be addressed.

The leading cause of non compliance with the Public Procurement Act is lack of professionalism among the personnel and this was evident through the data collected by the researcher as part of the study. This is followed closely by corruption and external influence which serves to undermine procurement processes at Sokoine University of Agriculture and Morogoro Municipal Council.

Self interest and quick deals made some respondents view the procurement law as being bureaucratic and justifications to circumvent the legal provisions appeared to be held on

by self interest of those claiming that the law is bureaucratic. Yet another group of staff are sticklers for due process and insist on following the law regardless of outcomes and this kind of rigidity though with well intentions may sometimes lead to impasses or delay in execution of works subject of protracted procurement.

Many suppliers are themselves not aware of the procedures involved in public procurement, neither are they aware of the legal stipulations thus they pile pressure on procurement officers to break the law for example by seeking privileged information relating to tenders under consideration. The practice has widely been stud to undermine procurement processes especially among officers who earn comparatively low salaries as they are easily tempted to engage is procurement misadventures then end up violating procurement laws.

Deliberate steps on the part of procurement officials is key in ensuring that procurement laws are complied with because a situation where an individual conceals documents that constitute a bid is not only unethical but goes a long way to defeat the objective of fairness to the bidders which the law guarantees and this can be gradually achieved through trainings and provision of incentives for honesty and good work performance by the staff at the procurement department..

Therefore the principle of transparency is one of the most important principles in public procurement and it serves two main objectives which are, first to introduce a system of openness in public purchasing, so as to attain a greater degree of accountability should be established through elimination of discrimination in the award of procurement contracts.

The second objective is that it aims at ensuring that transparency prevails and is observed by all in public procurement which represents a substantial basis for a system of procurement best practice of both parts of the equation, but in more particular this is relevant to the supply side of the equation as future business hinges on performance of

contracts and the levels to which the supplier meets the expectations of the clients whether public or private entities.

Most procurement officers in the event that they encounter problems in the process of awarding or managing procurement contracts, sought the opinion of their senior colleagues and rely on such opinions in taking the next course of action. There is the need for regular audits of procurement law compliance by procuring entities to tame pile up of files which could conceal questionable contracts.

It was apparent that suppliers and by extension the general public only appear concerned when matters to do with public procurement and tendering go bad and massive misappropriation is reported in the media but overall the many issues that afflict public procurement are not known by the public and therefore very little is done to report cases of obvious legal breaches by staff charged with the duty of carrying out public procurement in Tanzania a culture that has served to promote breaches and not bring them to an end .

Public procurement serves to make products and services that are demanded by the wider public available. The products and services ought to be delivered in the right quantity, at the right time and at the right place and in all these transparency in terms of availability of information of activities is important because it helps allay fears of impending shortage of the product and also assures the tax payers that their monies are in the right hands and that the money will be properly spent on more pressing issues of public concern.

The documents advertised and submitted to evaluation process are binding and must therefore consistently remain the same until the contract is concluded and any changes meant to defeat interest of either party will not be acceptable and is therefore a potential area of litigation. This is by and large one of the most contested area is public procurement especial where bidders claim that the documents were not disclosed to

them in their entirety or that the documents they submitted were concealed from the evaluation which eventually led to their disqualification from the tendering process.

Data collected paint a picture of a disconnect between what is at times advertised and the actual procurement process practices wherein standards advertised in some situations widely vary from the actual rules applied and this is partly explained in the following terms. Officials in charge of the procurement process have been blamed for in particular instances giving undue advantage to firms that are associated to them by for instance participating in bids through proxies which makes it attractive to bend otherwise clear rules in favour of certain firms.

The delay in following up on complaints and decision making on procurement related cases which turns away potential complainants who though may genuinely feel unfairly treated will equally not report such mistreatment by procuring entities owing to the long durations that it takes until such complaints are determined and consequently disposed off by the legally created tribunals.

The framework which exists under the procurement laws for reporting non application of the law and the circumventing of the law are in nature long and therefore tedious to some who opt out of pursuing their claims with the feeling that it will be cumbersome and they might not be in a position to foot legal fees in the event that they engaged a legal expert to help press for the claims.

A good number of business also shy off from protracted court battles over procurement contracts because it tends to bring the companies into extensive media coverage which may paint the company negatively and affect future prospects in procurement contacts by being painted as sore losers who choose to litigate every contract that they are not successful in .

There is a widely propagated view that one cannot fairly do business with the government not unless they are corrupt and are willing to either give or receive bribes , a perception that has greatly contributed to a shortfall in public entity procurement



wherein firms bid and set prices with the cost of corruption in the form of kickbacks at the back of their minds and the quotations given in most cases are inclusive of kickbacks which inflate project costs and reflect as a burden on the tax payer.

Public procurement appeal authority appears over burdened with the number of cases that they have to handle which has contributed to a big backlog a fact that is not very good to businesses since the longer a case drags the more the risk attached to the business increases due to fluctuation trends of the currency used in the procurement process.

The public should be encouraged to read various reports availed to the public on procurement outlays and the monies spent which will spur interest in the process and in the long run promote public awareness in the procurement process involving public entities and as a consequence expose public procurement to more oversight and thorough scrutiny which will ensure compliance with the requirements of the procurement laws as passed by parliament as well as compliance with the procurement regulations. The public watchdogs and independent organizations bring in more value when they begin to interrogate procurement processes and budgets and do not merely accept the reports at face value simply because they done by professionals .

#### **4.5 Conclusion**

Public procurement has greatly changed the way government meets the needs of the public in a way that meets the very high standards that are enacted in the laws and that way the need to ensure value for money and transparency is of utmost importance. The challenge of finding a business that will supply goods, works or services at a fair price and of the desired quality has always been an uphill task to procuring entities.

The study noted significant increase in procurement activities and this has brought with it numerous challenges to the procuring entities that need to be addressed to attain value for money, quality goods, services and works. It is without a doubt also true that the staff suffers fatigue over the large volume of work to be done with short timelines, employing

more staff could be used as measure to improve delivery of procurement activities but very importantly, further training will be necessary to improve the ability of the staff to meet the high expectations provided for in the procurement laws as well as in the codes of public service all of which govern performance of duties by public entity officials involved in procurement processes.

The challenges of corruption and insider dealing whereby procurement officers award contracts to companies in which they have an interest in clear circumstances of conflict of interest as pointed out by the study must be addressed from an organization culture point of view and from an ethical point of view as well and therefore to root it out completely a process involving organizational cultural awareness will be needed to give an orientation to the staff involved in procurement activities and sanctions including termination of repeatedly errant staff will help in curbing this practice at public procuring entities and will in effect boost public confidence in such entities with more accountability in procurement activities and delivery of services to the public.

The findings of the study do not make a rosy reading with regard to compliance with the procurement laws because on the one hand there are staff with genuine desire to comply with the procurement laws, there is another large number of staff who are either unaware of the provisions of the law or are intent at breaching the laws by taking advantage of the loopholes in the laws. Contrary to public opinion the members of the public have a role in ensuring that all public entities comply fully with the public procurement laws by interrogating public procurement activities conducted at those entities.

A satisfactory procurement regime should meet certain basic criteria such as following all the requisite protocols and procedures and there will be no problems. These protocols should at the very least explain reasons for the purchase of particular products, the steps followed to arrive at the selected supplier or suppliers and why a certain contractor was chosen and not the other and it should come out clearly that the contract was competitively won and awarded to the eventual winner and all these should be verifiable by all interested part

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Conclusion**

Public procurement is one of the biggest goals of a government in a bid to deliver goods and services to her citizens who are the tax payers. Indeed, procurement is virtually found in the entire range of development activities since the government institutions are a major purchaser of services and goods that entail the application of very large sums of money running into billions of shillings .If procurement processes are not efficient and transparent, it results into losses of tax payers' money which in turn undermines development gains of the country.

Procurement of services, goods and works is without a doubt an important function in each public institution. This is partly because each entity needs goods, services and works for the smooth running of her operations. It is estimated that public procurement covers seventy percent of the recurrent budget and one hundred percent of the development budget every single year. Therefore need of efficient management of procurement contracts and activities.

Lack of adequate procurement legislation as well as insufficient transparency and accessibility of the public procurement markets has led to poor performance and diminished trust in the public procurement system thus negatively influencing public perception of the same.

Procurement professionals need to acknowledge and devise strategies for managing all these complex challenges. The public procurement is marked with a lot of problems which among others include lack of transparency, political intrigues, lack of informed staff and many other problems. Unethical practices in public procurement damage the reputation of government organizations.

## **5.2 Recommendations**

As effective as the law on public procurement may be there exist some very serious challenges that continue to undermine full compliance with the requirements of the law at public procuring entities. An effective tendering procedure is emphasized at all public entities because it is through effective tendering that an organization can attain value for money and also meet client needs .However, the report does provide evidence to the effect that tendering procedures are conducted at a much slower pace due to numerous challenges and in some cases tendering procedures are flouted in a manner that leads to loss of public funds over issues related to breach of contract.

The study was thorough and was carried out to the best standards possible guided by research ethics, and the researcher was able to navigate all the challenges that are faced in the implementation of the procurement laws and regulations and ultimately the implications that arise from non compliance with the same at the Morogoro Municipal Council and Sokoine University.

The legislative and regulatory framework suffers from a number of weaknesses though these recommendations may come in handy in addressing the weaknesses that were exposed through this particular study and also some weaknesses were seen to be personnel related and therefore the recommendations given in that regard are pointed towards personnel corrective approaches and interventions while some other regulations go far enough to target necessary changes in the policy and legal framework on public procurement in Tanzania. Among others the recommendations are-

- a) Putting in place of a procurement manual for public entities .The existence of manual is key as it will constitute an important supplement to the legal framework comprising the law and regulations and may address some of the problems identified by the researcher. This manual ought to contain the standard procedure according to which public procurement should conform and any deviation must be explained by filling special forms.

- b) Establish a procedure that allows for use of technical capacity as a key criterion in the award of procurement contracts to bidders. Though the regulations briefly mention technical capacity as a requirement to tender it falls short of making this a key criterion as should be the case as it further guarantees value for money to the public and the procuring entity though this should be further strengthened.
- c) Uniformity and standardization in the procurement processes. It is imperative that a measure of uniformity is attained in public procurement as big dissimilarities or differences in processes become problematic in appraisal and assessment of compliance with the law and regulations made under it.
- d) Execute procurement planning systematically. It was not possible to assess the percentage of contracts not systematically carried out it was evident that a large number of contracts were haphazardly carried out without due regard to the established procurement planning stipulations.
- e) Introduction of electronic procurement, Respondents suggested that in order to eliminate the challenges in procurement electronic procurement ought to be introduced to effectively curb the challenges that are faced in the implementation of procurement laws in Tanzania.
- f) Provision of skills on procurement planning, poor planning was identified as one of the key challenges to public procurement at Morogoro region. The researcher suggests that public procurement officials should be trained every two years on planning aspect of procurement and the nature of learning be made as participatory as possible.
- g) Provision of more training programmes to be offered to firms on legal requirements regarding public procurement. These programs could be carried out within the institutions or at government training institutes at a fee which will in turn also boost government revenues. The intensity of the lessons could range from beginner levels to medium competence and finally higher proficiency levels

which will only target consultants and big corporate organizations engaged in procurement services with the various public entities in Tanzania.

- h) Further studies ought to be done to ascertain why particular public entities are known and acclaimed for regularly recording the highest incidences of violations of the procurement laws and not others as this could be a pointer to a deeper problem that needs a targeted intervention and not a general attempt at solving as the problem could be deeply ingrained within the organization such that any attempt to root it out must be well targeted to achieve this objective.
- i) In the evaluation process for a tender that a firm has bid for such evaluation should be based on the tender documents submitted only and documents not submitted by the bidder should not be used in the evaluations process. This is because admission of documents not submitted at the evaluation process could grant a party unfair advantage against fellow competitors which is both against the letter and spirit of the Tanzanian procurement laws and yet some entities do this as customary within their institutions and this has consistently served to conceal dirty games against unwanted bidders and marked firms competing for tenders.
- j) The procuring entities are also better placed by ensuring that across the procurement process they encourage professional input and that only those proficient and trained in the field of procurement are allowed to make derive inputs and this will go a long way in promoting professionalism in public procurement in Tanzania.
- k) Regular reforms in the procurement process are also necessary as this will enable the procurement laws keep abreast with changes in technology and the changes taking place in the global business environment as a whole and by extension return value for money on procurement investment in Tanzania.

- l) Imposition of severe sanctions to persons who violate procurement laws and regulations. This will go a very long way in ensuring deterrence of such violations in future and will also promote compliance with the procurement laws.
- m) Further research to be done to establish the effectiveness of the various reforms instituted in public procurement activities in Tanzania.

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## APPENDICES

### QUESTIONNAIRE

This set of questionnaire was filled by respondents in a bid to gather information relating to the subject matter of the study which is the implication of non compliance with the provisions of the Public Procurement Act, No. 7 of 2011.

#### Particulars of the Researcher

The research paper title is: Challenges in Public Procurement: Examination of the Legal Implications of Non Compliance with Procurement Rules in Selected Institutions in Morogoro. The information obtained was used for preparation of the research for the award of Degree of Master of Laws in Commercial Law of the Mzumbe University. The data obtained was treated with confidentiality and anonymity was guaranteed at all times.

#### PART A: Particulars of the respondents

Please Tick the relevant information

1. Gender: Male                  Female
  
2. Profession
  - (a) Lawyer [        ]
  - (b) Accountant/financial officer [    ]
  - (c) Other Profession [    ]
  - (d) No Profession [    ]
  - (e) Other [        ]

PART B: Knowledge on Public Procurement Laws

1. Do you know the laws governing Public Procurement in Tanzania Mainland?

YES

NO

2. If the answer in No. 1 above is yes, can you mention the laws governing Public Procurement in Tanzania?.....

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3. What are the mechanisms set in the law to ensure value for money in public procurement?.....

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4. Please provide if any, the legal challenges or effects of non compliance with the provisions of the Public Procurement Act, No 7 of 2011.

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5. Please provide an overview and procedures if any, that the government has adopted in promoting efficiency in public procurement.

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6. Please describe the various governmental authorities responsible in public procurement regulation in Tanzania?

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7. Are the institution(s) above effective in ensuring compliance with the PPA,2011? Briefly explain.....

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8. What are your opinions and recommendations on what should be done to ensure compliance with the PPA in Tanzania?.....

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9. Please tick the right answers in below Questions:

QUESTIONS	YES	NO
(a) Do you know what is Public Procurement?		
(b) Are Laws on Public Procurement efficient?		
(c) Are you aware of Sokoine University of Agriculture/ Morogoro Municipal Council procurement systems?		
(d) Do you think procurement at Sokoine University of Agriculture /Morogoro Municipal Council is transparent?		
(e) Does the Act adequately serve all procuring entities in Tanzania?		
(f) Have you ever tendered to provide a service of particular goods?		
(g) Do Procuring Entities get value for money in Tanzania?		
(h) Does the public really understand the impact of procurement on their lives ?		
(i) Does the law afford redress to dissatisfied tenderers in public procurement in Tanzania?		

10. What is the ethical and integrity disposition of procurement officers .....

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