

Impact of Public Procurement Procedures on Maintenance Works

Case of the Ministry of Housing, National Social Security Fund and Kenyatta National Hospital

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SUMMARY

The public procurement system in Kenya has been undergoing reforms consistent with the global trend since the mid-1990s, most notably within the periods covering 1997-2001 and 2005. The delivery of maintenance projects in Kenya is highly dependent on the efficacy and efficiency of the public procurement and tendering procedures. The procurement procedure leading to tender awards is too long depending on the choice of procurement method which cannot arrest an emergency.

Maintenance has very unique characteristics especially for corrective maintenance which is never planned and yet it is an emergency which is supposed to be addressed as it occurs. This is one of the many challenges faced by Public Institutions posed by Public Procurement and Disposal Act (PPDA).

The intent of this paper is to evaluate the challenges posed by PPDA on procurement for emergencies or unplanned maintenance in Kenya. It explores the effects of the PPDA on the delivery of unplanned maintenance projects; the challenges faced while carrying out public maintenance projects as well as determine the best and most suitable procurement and tendering system for emergencies.

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1 Introduction

At the beginning of 2000s, Kenya engaged in major procurement reforms under the combined pressures. Donors pushing for procurement reforms as a condition for lending and from the business community complaining of inefficient procurement which resulted in poor infrastructure and inefficient services.

With the official launch of Public Procurement Reforms, the country set itself on the reforms road in the area of public procurement by putting in place a unified legal and regulatory framework to guide the sector. The landmark in the reforms was in 2005 when the Public Procurement and Disposal Act, 2005 was enacted by Parliament. The Act established three independent bodies; an oversight body, the Public Procurement Oversight Authority (PPOA), Public Procurement Oversight Advisory Board and the Public Procurement Administrative Review Board. The Act repealed all other laws relating to procurement in public entities ensuring that all procurement is done under one umbrella. (Kirugu, 2010 PPOA Bulletin).

Despite of progress made, the new procurement regime still faces the following challenges;

- i. The new procurement regime lacks a firm legal basis. The Minister for Finance can repeal the regulations and retain a great deal of power that can be used to hamper reforms.
- ii. The exemption of National Security and Defence Procurements from the new regulations. This should be considered a flaw of the system, as a number of corrupt security procurements have been exposed by the media, including the Anglo Leasing scandal (Madara Ogot, 2009).
- iii. Additional challenges in emergency related procurement that need to be taken into account when designing relevant policy options to address corruption risks in procurement processes.

1.1 SITUATIONAL ANALYSIS

Recent reports in the newspaper have highlighted that The Parliamentary Committee on Transport wants the Government to simplify procurement procedures to prevent Ministries from returning funds to Treasury at the close of every financial year. The Government should review the Procurement Act to enable ministries release funds for projects without delays.

In operationalisation of The Public Procurement and Disposal Act, the ills facing corrective maintenance in the public sector result from the stringent procedures stipulated in the Act that have not been addressed

The provided procurement procedures leading to tender awards are too long and not suitable for an emergency. The PPDA stipulates the specific time frame (statutory periods) for which a tender should be evaluated advertised and adjudicated as shown in Table 1.1. There is no statutory time limit for both request for quotation and direct procurement and can be applied in times of emergencies. This is not the case because request for quotation one is allowed to spend up to a maximum of Kshs. 0.5 Million which may not be adequate and the quotations must be evaluated also. As for direct procurement approvals have to be sought from inspection and acceptance committee. These bureaucracies involved make this procedure unsuitable for corrective maintenance.

Table 1-1: Procurement and Tendering Timings

Procurement Method	Tender Preparation	Tender Evaluation	Tender Adjudication	Appeal Window	Minimum No. of Days
International open tender	Min 31 days	Up to 35 days	1 day	14 days	46 days
National open tender	Min 21 days	Up to 35 days	1 day	14 days	37 days
Restricted tender	Min 14 days	Up to 35 days	1 day	14 days	30 days
Request for proposal	Min 14 days	Up to 35 days	1 day	14 days	30 days
Request for quotations	No statutory limitations	No statutory limitations	No statutory limitations	No statutory limitations	No statutory limitations
Direct procurement	No statutory limitations	No statutory limitations	No statutory limitations	No statutory limitations	No statutory limitations

Source; (Kenya Procurement Journal Issue No. 6 June 2010- Quarterly PPOA Bulletin)

Maintenance has very unique characteristics especially when it comes to corrective maintenance unlike planned maintenance. Though not planned for the institutions should be in a position to address it as soon it occurs. This is one of the many challenges faced by Public Institutions posed by PPDA.

1.2 Research Objective

The main objective of the paper was to establish the effect of the Public Procurement and tendering Procedures on delivery of maintenance projects.

1.2.1 Specific Objectives are to:

- a. Establish the effects of the Public Procurement and Disposal Act on the procurement of public maintenance projects
- b. Evaluate the challenges faced in carrying out public maintenance projects
- c. Determine the ideal procurement and tendering system for emergencies and other unplanned maintenance projects in the public sector

1.3 Scope

The paper concentrates on procurement and tendering procedures as stipulated in the Public Procurement and Disposal Act (PPDA) which regulates public institutions on procurement for goods and services.

The paper dealt with procurement for corrective maintenance services in the public sector. Unplanned or emergencies or corrective maintenance has some unique characteristics which the Act did not take into consideration. This poses great risks for instance when a breakdown occurs e.g. sewage spillage which needs to be sorted out immediately and the services cannot be procured at the same rate of breakdown. It is a challenge for both the maintenance and procurement officers to procure the services immediately

2 Methodology

The Public Procurement and Disposal Act applies to all public institutions both the main stream government and also parastatals. The study explored three case areas mainly because of limited time and financial resources available as listed below;

(a) Ministry of Housing

(b) National Social Security Fund and

(c) Kenyatta National Hospital

- The research adopted a descriptive design.. In collecting case study data, the main idea is to “triangulate” or establish converging lines of evidence to make the findings as robust as possible. (Yin 2004) this will ensure that there is no biasness in the results therefore the reason for investigating the three institutions.
- The author used purposeful sampling method to pick top five counties in terms of the number of quarters or government houses as this would determine the rate of procurement process and funds allocated for procurement for maintenance. In each of the 5 counties selected for the study, the author further used convenience sampling method which is a type of non- probability method where the individuals selected for inclusion in the sample were the easiest to access. For the cases NSSF and KNH, the

author further conveniently included 10 employees in the supplies and maintenance departments within each institution.

- Questionnaires- The questionnaires were administered to the procurement officers and maintenance officers in all the three institutions so as to establish the challenges faced in the procurement for maintenance works as per the sample size.
- Structured Interviews- Interviews were preferred in this case because they provide in depth data and it is possible to obtain data required to meet specific objectives.
- Data Analysis Design - The data collected from the survey was first edited to remove errors made during data collection. Edited data was then coded and entered into the computer for analysis using Statistical Package for Social Sciences (SPSS version 15).

3 Principles of the Procurement

Bauld and McGuinness (2006) note that the key principles underpinning public procurement are:

- a) Economy; value for money,
- b) Ethical Standards,
- c) Competition,
- d) Transparency and
- e) Accountability.

(a) Value for Money

Value for money (VFM) is the most important principle of procurement. VFM in the public sector entails consideration of the contribution to be made to advancing government policies and priorities while achieving the best return and performance for the money being spent (Bauld and McGuinness, 2006).

(b) Ethical Standards

Ethics is another important principle of government procurement. Purchasing professionals are held to higher standards of ethical conduct than people in other professions, yet some do not even know what is expected of them (Atkinson, 2003).

(c) Competition

Competitive tendering is the means by which most goods and services are procured. Before moving on it is perhaps best to understand how competition occurs in procurement. For example, in Australia, if the Melbourne Ports Authority is interested in the purchase of Gantry Cranes, the Ports Authority will advertise and call for bids from potential suppliers. In this process there will be bids from major suppliers and a technical evaluation committee would be involved in the decision-making process while a tender board and technical evaluation committee would evaluate whether bids are in accordance with the technical requirements as stipulated in the tender conditions.

(d) Transparency

The function of transparency is also important in procurement and it refers to openness. Transparency therefore is an essential aspect of ensuring accountability and minimizing

corruption, and has gained prominence in Organizations for Economic Cooperation and Development (OECD) countries, and is particularly associated with the rise of the governance agenda as transparency is a core governance value (Smith-Deighton, 2004).

Transparency in government procurement will provide an assurance for both domestic and foreign investors that contracts will be awarded in a fair and equitable manner. In all markets, a lack of transparency in the sense of absence of information on rules and practices could operate as a barrier to trade and may affect foreign suppliers more than local ones (Arrowsmith, 2003).

(e) Accountability

The concept of accountability does not only apply to the public sector (Barrett, 2000). The Boards of private sector organizations are also accountable to their stakeholders (Hughes, 2003). Public servants have to take the influence of politics into consideration in the implementation of their duties while the private sector gives more attention to the market mechanism (Stewart, 1999).

3.1 Public Procurement Procedures

a. Open Procedure

In an open procedure, any company interested in participating has the opportunity to submit a proposal. The proposal must conform to the requirements of the administrative department that issued the call. No alterations of the standard application documents, e.g. of the legal terms and conditions contained in them are permissible, as that would make it very difficult if not impossible to compare the offers. The terms of contract are thus laid out exclusively by the office calling for the bids. Any violation of this principle by a bidder automatically disqualifies him and his submission is rejected.

b. Restricted Procedure

In a restricted procedure, only certain companies are requested to submit a proposal. They are companies that have been selected in a preliminary participation contest, the request for participation in contracts. On the other hand, the request for participation is open to all companies and any of them can submit proposals for participation. In the request for participation, they are required to make statements in regard to their special know-how, performance capability and reliability that can be used to judge their eligibility for the second round (Stergiou, 2009).

c. Negotiation Procedure

This procedure is an exception that comes into play only when the important reasons mentioned by the standard official terms of contract permit it. For example, this is the case when no economic results can be expected from an open or a non-open procedure, when such a procedure has already been conducted without producing any economically feasible results, when there is only one particular company that is capable of providing the required service, or when there is time pressure due to the occurrence of unforeseen events and it is no longer

possible to carry out any other procedure. Depending on the reason for initiation of the negotiation procedure a preliminary participation contest may or may not be required.

d. Competitive Dialogue/ Negotiation

This new procedure is used for very complex projects only, where the public authority is not able to give a detailed specification for the requested performances. Therefore, the public authority has to select a number of companies which shall create such a specification in dialogue with the public authority and each other. Afterwards the public authority chooses again some or all of these companies for a kind of a restricted procedure, where the corresponding companies each may submit a detailed tender according to the developed specification.

f. The Limited Procedure.

Under this procedure (previously called “single tendering”), a procuring entity may contact a supplier or suppliers directly and individually and negotiate the terms of a contract directly with that supplier or suppliers (Bovis, 2007).

g. Accelerated Procurement Procedures

Accelerated procurement procedures establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability by public organisations. Within this category there are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement. Emergency procurement is used in contexts where life, property or equipment is immediately at risk or standards of public health, welfare or safety need to be re-established without delay.

Examples include government’s responses to natural disasters (e.g. earthquakes, floods and typhoons) and epidemic risks. Non-emergency accelerated procurement procedures are used in contexts where unforeseen circumstances arise and require an urgent response by public organisations. In comparison to emergency procedures, non-emergency accelerated procurement should be used only as an exception and not the norm (Stergiou, 2009).

3.2 Building Maintenance

Classification of Maintenance

A classification of maintenance simply into routine or remedial, or planned and unplanned categories is clearly of rather limited value. The audit commission considered a better division of maintenance to be the following;

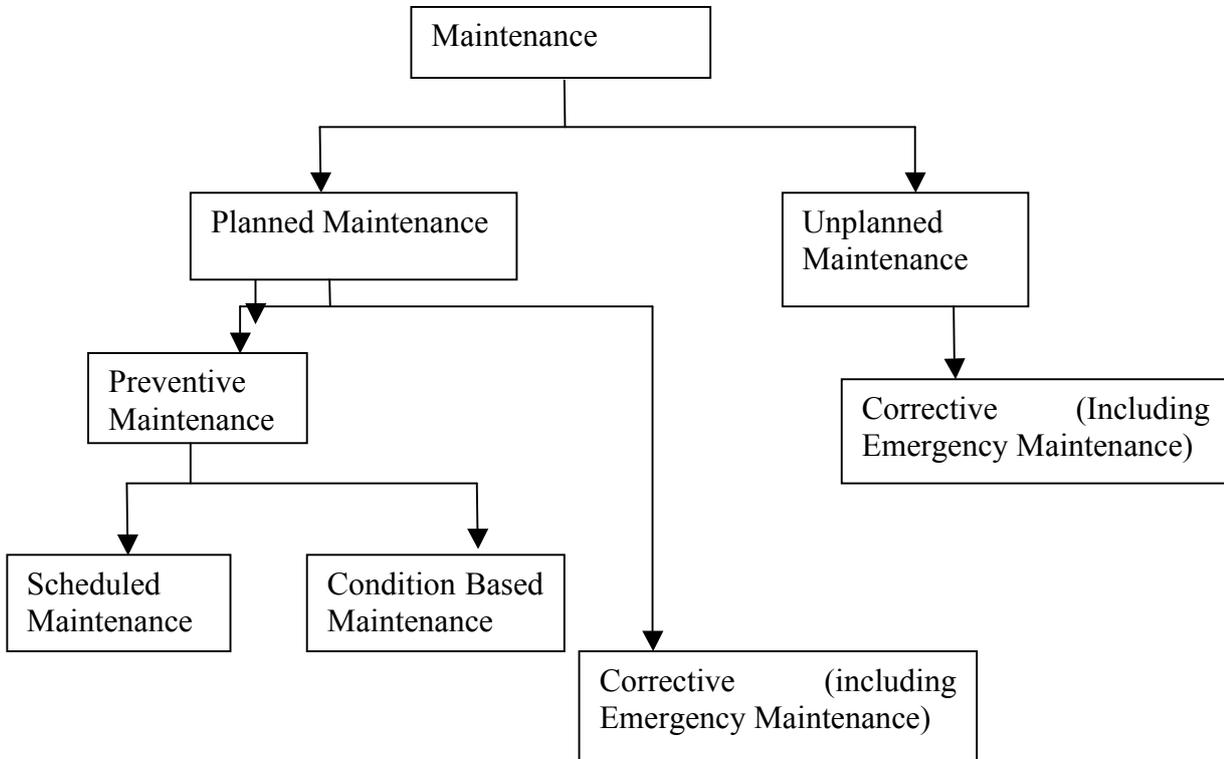
1. Strategic Repairs and Maintenance

This represents work required for the long term preservation of an asset, and includes planned maintenance of the building fabric. These are normally items that can be planned for because to some extent, they can be foreseen and budgeted for.

2. Tactical repairs and maintenance

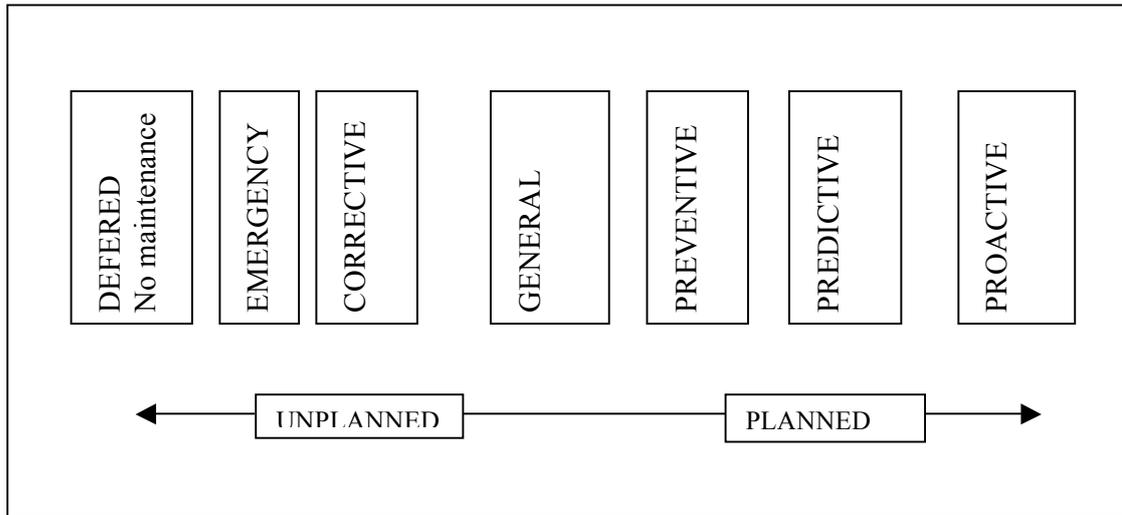
These items relate to day to day work of a minor nature, in response to immediate need.

Figure 3-1 Types of Maintenance



Source; BS 3811: 1984

Figure 3-2 Continuum of Maintenance for Buildings



Source; Office of the Legislative Auditor, Minnesota, U.S.A

At one end is **deferred maintenance**, which occurs when projects are identified as necessary but put off due to lack of resources. Next along the continuum are unplanned activities including emergency maintenance, such as restoring lost electrical power, and corrective maintenance, such as fixing a broken window. Emergency and corrective maintenance occur as the need arises; neither is planned far in advance.

From the literature reviewed it is worth noting there are weaknesses of PPDA against procurement for emergency or unplanned or corrective maintenance services.

The statutory limitations for each procurement procedure do not give room for emergencies. There is also need to urgently and critically deal with the challenge of provision of reliable, transparent and timely data and information. This would be used as a benchmark towards a successful system. The realisation of successful tender process and the inherent value for money in procurement is in the successful contract implementation. It should be accompanied with a capacity building in contract management for the users to improve the contract management. Public perception of tender evaluation confidentiality is low and need to be improved. Rotational use of prequalification across the board is poor you find that some prequalified providers never get invited at all to bid while others are repeatedly invited. Finally the dispute resolution mechanism is wanting, local purchase orders being used are not standardised with clear dispute resolution mechanism provisions.

3.3 Conceptual framework

Due to the special characteristics of maintenance and especially for corrective or emergency it is therefore necessary to choose the most responsive procurement procedure to address the situation. As seen in the various countries the most common public procurement procedures are open, restricted and the negotiated and may not address procurement for corrective maintenance appropriately. The emergency maintenance needs to be dealt with immediately since it can be a health hazard and posing various risks to the occupants or users of the

buildings. At least in all the jurisdictions the cost of maintenance is related to the mode of procurement depending on the threshold. In case of planned maintenance any procurement method can be applied comfortably unlike ad hoc maintenance

In summary after reviewing of procurement systems in other jurisdictions it is evident that their systems are responsive to all types of eventualities and situations thus accelerated or negotiated tendering and procurement procedures. In other situations, there are exemptions clearly put in the law governing public procurement and since this freedom can also be abused the emergencies projects are monitored and evaluated.

Accelerated procurement procedures establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability. Unplanned or emergency projects are some of the cases which demand enhanced flexibility on the procedures applied to arrest the situations. Where there is time pressure due to an occurrence of unforeseen events negotiation procedure can be used but the only challenge as provided by the PPDA is that some permissions should also be granted. This makes it inappropriate in cases of emergency.

4 Effects of PPDA on the Procurement of Maintenance Projects

The main effect of PPDA on the procurement and maintenance projects is the increase in maintenance cost. Even in times of serious occurrences e.g. broken drainage sewer funds are not always available and when the funds are availed more time is taken before the contractors are procured to carry out the various projects. What was an emergency in the first instance then ceases to be and it becomes a norm and does not change the situation from being a health hazard.

The major effect on procurement for emergencies is time which arises from the long documentation procedures and approvals. There are also too many players and the emergency cases that needed urgent attention aggravates further compromising the quality of the structures.

From the data obtained from the field survey, it's worth noting that the PPDA affects immensely the delivery of emergency maintenance projects in terms of time; for instance majority of emergency maintenance projects take 1 to 3 months before they are responded which aggravates the situation, eventually by the time of the procurement for maintenance of the emergency projects the available funds are not adequate to cater for the aggravated situation hence the problems are not solved or quality of the projects are compromised.

Due to the time overrun, the cost of maintenance for emergency projects has tended to increase due to the inflation affecting the cost of materials and labour which is not factored in at the delayed time of procurement.

5 Recommendations

The recommendations are drawn from insights from respondents as well as experiences from other countries where procurement for emergencies has been implemented with high level of success. **Procurement model** is a procurement model for emergency services which is easy

to administer, flexible and cost effective should be adopted which is accelerated and does not have to go through the whole procurement processes. This model should be incorporated in the PPDA and the Regulations as procurement and tendering procedure to ensure smooth response to emergencies. This model is geared towards overcoming the challenges posed PPDA and the effects of time, cost overruns and compromise of quality

Policy support, we note that the ideal procurement system should factor in cost of maintenance, time and quality for it to be successful. The results of the analyzed data a big percentage has advocated for review of the PPDA, therefore the government should review regulations and policies which impact on procurement to ensure they support emergency services. This should include;

- a) The regulations on public procurement to be expanded to cover all forms of procurement including procurement for emergencies which is not tied to some bureaucratic approvals through professional associations' in the **drafting or revision of procurement laws, regulations and guidelines.**
- b) Establish a feedback mechanism to monitor and evaluate the implementation of PPDA through the PPOA which will ensure that successes of public procurement are documented and shared and the emerging challenges are identified and appropriate measures taken to address them. This will enable the implementers of the act to constructively influence the implementation strategy

c) 'From procurement officer to "contract manager'

Public procurement systems in countries have moved increasingly from a situation where procurement officers are expected to comply with rules to a context where they are given more flexibility to achieve the wider goal value for money. As countries have developed flexible regulatory frameworks and simplified procedures, a trend is to develop uniform documentation to ensure consistent implementation of rules in order to raise awareness about evolving procurement standards.

The government should also reform its institutions to ensure efficiency in public procurement by improving management information through aggregation of demand, lowering prices through reduced production costs and transaction costs and enhancing the efficiency of the supply chain. It may also reinforce the integrity and neutrality of the public procurement system since:

- The central public procurement body often has a "firewall" position that avoids direct contact between the contractors and end-users;
- Promoting integrity and auditing actual practices is easier in a single entity than hundreds of government entities, and contributes to more uniform and professional working methods;
- Transparency and openness are often a key factor for the credibility of the public procurement body to achieve good results for end-users of the contract, in particular government agencies, in their negotiations with bidders.

Inadequate funding; A vote for emergency response should be set aside because with restrictions imposed by the PPDA, most of the prequalified contractors are not always ready to provide the services within a short notice owing to liquidity problems.

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