



## **CHALLENGES FACING THE IMPLEMENTATION OF THE LEGAL REQUIREMENT FOR WOMEN, YOUTH AND PERSONS WITH DISABILITIES TO ACCESS 30% OF GOVERNMENT PROCUREMENT OPPORTUNITIES**

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**Abstract:** Participation of Special Interest Groups in Public procurement has a great impact on the economy and needs to be well managed. The preference regulations allow government entities conducting procurement processes to allocate procurement opportunities to special groups like youth, women and persons with disability. Public institutions are supposed to institutionalize procurement plans which should have a total reservation of 30 per cent of the procurement budget to the special groups. However, in the year 2017, special categories were awarded 4.45 per cent of the total procurement spend against the required minimum of 30 per cent. Therefore, the Access to Government Procurement Opportunities program has failed to meet the anticipations set by the government whereby few groups have benefited from the plan. In order to realize sustainability of the programme, there is an urgent need to address challenges facing implementation of the policy. This study found that challenges facing the implementation of the legal requirement for women, youth and persons with disabilities to access 30% of government procurement opportunities include lack of information, lack of financial capacity and late payments, skills and competence, procurement procedures and enforcement and compliance. The study recommends that requirements for accessing credit from banks and other lending institutions should be efficient and effective to the youth, women and persons with disabilities so as to increase access to finances. In addition, penalties should be placed on public procurement officials who do not comply with the Public Procurement and Disposal (Preference and Reservations) Regulations 2011 to ensure that there is greater levels of compliance with the law. Various stakeholders should facilitate seminars and trainings that will ensure the groups are knowledgeable on regulations touching on submission, receipt and opening of tenders. This will ensure that the groups register their enterprises with the relevant government bodies and that there is open and fair competition. Also, procurement procedures should ensure that special groups have a level playing field with men in government tenders by building their capacity and capabilities.

**Key Words:** Special Groups, Government Procurement, Opportunities

### **Introduction**

Globally, there has been a growing pressure for inclusive development initiatives. Undoubtedly, this is due to the size of public procurement and the impact it might have on the economy. It is on record that public procurement accounts for 70 percent and 100 percent of the government's recurrent and capital expenditure respectively (Tukamuhabwa, 2012). Public procurement is known to be one of the most significant activities of governments besides salary payment. While developed countries spend about 12% of their Gross Domestic Product (GDP) on procurement, there seems to be limited data and therefore no consensus on the share that procurement accounts for against GDP in the developing and low-income countries. In Latin America, Sub-Saharan Africa and South Asia procurement account for 14.5 per cent, 14.9 per cent and 19.3 per cent of GDP respectively. However, there are isolated cases where the figures go as high as 26 per cent (Angola) and 33 per cent (Eritrea) signifying countries with

high dependency on development aid to finance government expenditure though again there are high income countries like the Netherlands and Finland where public procurement accounts for 20.2 per cent and 18.5 per cent respectively.

Enabling disadvantaged groups to access the public procurement markets by reserving for them a portion of the procurement opportunities enhances the groups' economic empowerment while creating employment throughout the government supply chain (Zubcic & Sims, 2011). It is from this understanding that the government introduced reservation schemes to channel the concept. Public procurement reservation schemes is a term derived from the broader subject of public procurement discriminatory practices which embrace restrictions from free and liberalized access to public procurement markets. Under reservation schemes, some quotas or share of the procurement business is reserved or set aside for certain targeted disadvantaged sections of the population or groups of people who for one reason or another would not be able to access the procurement proceedings and win a contract through the normal bidding procedures. These include women, youth, elderly and persons with disabilities (International Trade Centre, 2014).

Preferential treatment to the disadvantaged groups, among them the youth, women and persons with disabilities, is slowly taking shape in Africa through enactment of various procurement laws (Gachanja & Theuri, 2014). In South Africa, preferential treatment is given to the blacks in an attempt to accommodate group differences, encompass the right to reparation for past inequalities and to uplift vulnerable groups in society. Similarly, in Malawi, a reservation scheme is currently being applied to the ICT sector for procurement below BWP 300,000 (US\$ 46,000), where the opportunity to bid is reserved for 100% citizen-owned companies. In Ghana, the government in the year 2017 started implementing a policy to allocate 30 per cent of all procurement from local businesses to entities owned by women, persons with disability (PWDs) and those established under the Youth Enterprises Fund (YEF). This direct intervention was aimed at helping to reduce the unemployment rate among PWDs to provide them with a source of livelihood to break the cycle of poverty facing most PWDs in their communities (Zuckerman, 2017).

In Tanzania, Public procurement reservation scheme is mandated through section 64 (2) (c) of the Public Procurement Act 2011 and Regulation 30 per cent of the Public Procurement Regulations 2013, both as amended in 2016. The law requires all public entities (PEs) to set aside 30 percent of their procurement volume for groups of women, youth, elderly and persons with disabilities hereinafter referred to as Special Groups (SGs) (Mtui & Mamiro, 2016).

In Kenya, the legal requirement for women, youth and persons with disabilities to access 30% of Government Procurement opportunities is being implemented within the context of the AGPO program which was officially launched in October, 2013. The Access to Government Procurement Opportunities (AGPO) program is founded on the Constitution of Kenya, 2010 Article 227 on the fair equitable, transparent and cost-effective public procurement of goods and services, the Constitution of Kenya, 2010 Article 55 on affirmative action and the Public Procurement and Asset Disposal Act, 2015. The aim of the AGPO program is to facilitate the enterprises owned by women, youth and persons with disability to be able to participate in Government opportunities. This is will be made possible through the implementation of the legal requirement that 30% of Government procurement opportunities be set aside specifically for enterprises owned by these groups. As a result, the program is aimed at empowering them by giving them more opportunities to do business with Government (Wamoto, 2017).

Studies conducted in different parts of the country have highlighted different challenges facing the implementation of the reservation policy. For instance, a research by Hivos East Africa (2018) indicates that lack of understanding of the bidding process, lack of invoice funding to fund tenders, late payments after delivery and most contracts being Nairobi-centric were negatively affecting women, youth and persons with disabilities in access to 30 per cent of government procurement opportunities. Additionally, most of the tenders over 5 million are for construction-related businesses, while most AGPO firms are registered in the service sector, specifically trade. Conflicts of interest between public officials and AGPO firm owners were established with exploitation of youth and persons with disabilities to win tenders (Hivos, 2018). The Institute of Social Accountability (TISA, 2017) reports that 35 per cent face problems with corruption in trying to access the opportunities, 22 per cent face delayed payments, while a further 10 per cent had challenges with market fluctuations. In addition, 9 per cent and 13 per cent respectively had issues with bureaucracy and lack of capital respectively. Financing capital and delayed payments were considerable challenges yet generally government business is perceived to be secure according to Polo (2008) who posited that “The best thing about getting a government contract is that you will get paid. The downside is it could take a while”. The Research found that funding is through bank loans, which sometime require collateral and in cases where collateral unavailable, the applicants are locked out.

### **Statement of the Problem**

The preference regulations allow government entities conducting procurement processes to allocate procurement opportunities to special groups that include youth, women and persons with disability. The public entities are supposed to institutionalize procurement plans which should have a total reservation of 30% of the procurement budget to the special groups. The regulations also give guidance to government entities on how to advertise and evaluate the bids submitted by the special groups (Wamoto, 2017).

The National Treasury reports that in the year 2017, all the Ministries had set aside Ksh. 21,382,976,758 to be awarded to Youth, Women and Persons with Disabilities enterprises. From this amount, a total of Ksh 9,553,656,259 worth of tenders was awarded to these categories representing 44.68% of the performance contract targets. Further, all the ministries, State Law Office, Judicial Service Commission and Parliamentary Service Commission spent Ksh 210,185,874,908 on procurement during the financial year. This means that the special categories were awarded 4.45% of the total procurement spend against the required minimum of 30%. Hivos East Africa reports that only 7.7 per cent of contracts over 5 million shillings are being awarded to AGPO registered firms. There has been a 71 per cent increase in the annual revenue of youth owned enterprises, a 70 per cent increase in job creation and 82 per cent increase in the number of youth owned enterprises as a result of the AGPO initiative.

AGPO project has failed to meet the anticipations set by the government whereby few groups have benefited from the plan. In addition, a number of problems have, been cited by the special groups. These include lack of access to information, lack of funding, poor tendering process and lack of training. The successfulness of AGPO is highly influenced by policies undertaken by the government. An inefficient regulatory and inappropriate institutional structure has also been a major constraint to AGPO. Further, the criterion for this allocation is centered on compliance with AGPO regulations. Although many enterprises owned by youth, women or persons with disabilities are legal entities, registered with the relevant government body; and have at least seventy percent membership failed to be prequalified. Many MSE owned by youth, women and persons with disability in Kenya have been applying to access government procurement opportunities. However, they lack the capacity, finances,

information and skills to complete the tenders documents and the tenders is given. In order to realize sustainability of the programme, there is an urgent need to address challenges facing implementation of the policy.

### **Theoretical framework**

The theoretical review gives an introduction of the theories that are used to express the reason for the existence of the research. In addition, a theoretical review provides the main variables that affect the phenomenon under study and points out the need to consider the effect of these variables under different circumstances. This study was anchored on three theories: These theories include the agency theory, institutional and the resource based view theory.

#### **Agency Theory**

The agency theory was developed by Jensen and Meckling (1976) in an effort to address the limitations that face relationships between principals and agents. The agency theory identifies the challenges that arise from the principal-agent relationship. Two major situations however arise from this relationship thus forming the basis of this theory. First, there is the problem that arises where the objectives or desires of the principal conflict with those of the agent. In this regard, it becomes a major challenge for the principal to verify or ascertain the activities of the agent. This is a classical scenario in the wake of implementation of regulatory framework. The limitation may be exploited by the agent, in this case the women, youth and PWDs, for his own advantage thus limiting the benefits accruing to the principal, in this case the government (Ngure & Simba, 2015).

Agency theory is a concept that explains why behavior or decisions vary when exhibited by members of a group. Specifically, it describes the relationship between one party called the principal, that delegates work to another, called the agent. It explains their differences in behavior or decisions by noting that the two parties often have different goals and, independent of their respective goals, may have different attitudes toward risk. The theory is relevant to the study as it explains the impact of the relationship between special groups and government procurement agencies. These agencies determine the extent to which youth groups will be motivated to access preferential procurement opportunities.

#### **Institutional Theory**

Institutional theory was founded in 1963 by two prominent Austrians: sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern. Institutional theory indicates that organization's structures are influenced by social values that are typically taken-for granted, widely accepted and resistant to change. One aspect of institutional theory suggests that organizations conform to external environmental pressures to demonstrate their legitimacy to key stakeholder groups (Munyu, 2016). Conforming to shared norms enhances the perceived legitimacy of organizations, protects them from external pressure and scrutiny, and enhances their potential for survival. Legitimate activities resonate with the shared understanding among stakeholder groups of acceptable standards of performance, and in regulated environments legitimacy can take a more dominant role than enhancing economic performance. The socially constructed patterns of practice, and the assumptions, beliefs and values that underpin the meaning of legitimate practices are referred to as institutional logics (Lagat, Namusonge & Berut, 2016). Institutional logics are important as they provide mechanisms to drive change, and crucially, also enable changes to be resisted through sustaining the legitimacy of current practice and shared values.

The basic concepts and premises of the institutional theory approach provide useful guidelines for analyzing organization-environment relationships with an emphasis on the social rules, expectations,

norms, and values as the sources of pressure on organizations. This theory is built on the concept of legitimacy rather than efficiency or effectiveness as the primary organizational goal. The environment is conceptualized as the organizational field, represented by institutions that may include regulatory structures, governmental agencies, courts, professionals, professional norms, interest groups, public opinion, laws, rules, and social values. Institutional theory assumes that an organization conforms to its environment (Korir, 2017).

There are, however, some fundamental aspects of organizational environments and activities not fully addressed by institutional theory that make the approach problematic for fully understanding credit reference bureaus and their environment: the organization being dependent on external resources and the organization's ability to adapt to or even change its environment (Wamoto, 2017). In this case youths, women and people with disabilities are considered as institutions which have different environment. The environment varies in terms of social and economic settings. The environment factors dictate the willingness and capacity of youth groups in accessing preferential procurement opportunities.

### **Resource based View Theory**

This theory was developed by Birger Wernerfelt in 1984. The resource-based view (RBV) as the key theory explaining the competitive advantage in a firm notes that an organization can only achieve competitive advantage by use of the available resources and capabilities in the firm. Colbert (2014) emphasize that the difference between resources and capabilities is that capabilities are a special form of resources that are part of the firm, they are also non transferrable and specific to an organization. The aim of these resources is the improvement of other resources that belong to the organization. While resources are the assets and items owned by an organization, capabilities is the ability of the organization to use these resources capabilities exist from the building of the firm's resources (Munyu, 2016). The success of a firm will depend on its resources. If the resources available are relevant to its operations and strategy then the firm is likely to succeed. In the RBV, the firm is defined in terms of the resources and knowledge it has. It is a means of adding an appreciation of the role of the firm to our understanding of the market.

The proponents of this theory argue that it is only those valuable resources are able to provide a firm with a sustainable competitive advantage. RBV emphasis is on the internal factors that can be controlled by the firm rather than the hard to control external factors. The firm's capabilities and resources are the basis upon which a form strategy is built. An organization's competitive position is defined by its unique relationships and resources. Organizations are not the same as they have distinct resources, capabilities and assets to utilize (Mtui & Mamiro, 2016).

This study used the resource based view theory to explain the effect of competences, skills, human resource capacity, experience and financial capacity in the implementation of the legal requirement for women, youth and persons with disabilities to access 30 per cent of government procurement opportunities. Competences, skills, human resource capacity, experience and financial capacity are part of the resources and capabilities required by special groups in executing their tenders. If they lack any of these they may not deliver as required or may even not get the tenders.

### **Challenges Facing Special Groups in Accessing 30% of Government Procurement**

There are several challenges faced in the implementation of the legal requirement for youth, women and persons with disability to access 30% of the government procurement opportunities. These challenges include lack of information, lack of financial capacity and late payments, skills and competence, procurement procedures and enforcement and compliance.

## **Lack of Information**

Most public procurement systems address in one way or another issue of how to provide information support for the domestic supplier base. Improved information techniques mostly through the internet for buying goods and services using modern quality standards and business practices in the government can help improve the efficiency of special group's suppliers as they compete for government contracts with big players. Such improvements in information access can enhance trade prospects by making these suppliers more acceptable vendors to global business partners (Mtui & Mamiro, 2016).

Since most of the enterprises owned by youth, women and persons with disability are startups they access to information on procurement opportunities in public procurement because majority of them are located in areas that we have limited access to newspapers and the internet. According to ITC (2014), a common complaint among women-owned businesses is that they are not aware of and do not know how to access public procurement opportunities. To address this, many countries have established web portals, or electronic gateways, to publish all public solicitations or tenders, or at least those above a certain monetary threshold. By making information more available to women-owned businesses and other interested parties, electronic gateways increase transparency and reduce the opportunity for corruption, which negatively affects women-owned businesses (ITC, 2014).

One of the findings by Fresh Minds in their study of United Kingdom SMEs was that, over three quarters of SMEs believed that there are barriers to awareness of government opportunities (FreshMinds, 2008). Even where there are preferential access programmes in government procurement, women entrepreneurs require more training to take advantage of the opportunities because of the unique and complex nature of public procurement systems and the historic lack of participation by women-owned businesses (ITC, 2014).

In India, the Government Tenders Information System is the central source for government and public sector procurement, tenders and notifications issued by the Central and State Governments and other public bodies for goods, services and works. It is an interactive database that allows users to search and sort tenders by location, agency, description and value, as well as download tender documentation (ITC, 2014). In South Africa, all national government solicitations are published in the Government Tender Bulletin, a weekly publication available online or by subscription (ITC, 2014). The appropriateness of web-based solutions however, depends on the level of Internet connectivity and use in a given country. Entrepreneurs in rural communities are less likely to have Internet access or benefit from electronic procurement gateways. Information about tender opportunities could be given directly to special groups' business organizations and other associations that support entrepreneurs, which can share the information with their members (ITC, 2014). Civil Society, Government, private sector and other relevant organs should step up awareness campaigns on rights and opportunities for women and policy interventions already in place targeting women. This would enhance their effective participation in the social, economic and political systems (IEA, 2008).

In Kenya, Lagat, Namusonge and Berut (2016) indicate that the county governments should consider advertising their tenders through local media channels such radio to improve coverage of the youth, women & persons with disabilities. In addition, Korir (2017) established that failure to access information has hindered most women entrepreneurs from participating in tenders. Moreover, the study concludes that most women are not well acquainted with procurement lingo and procedures. The study further concludes that the Government has not provided adequate access to information on tenders for special groups.

Ngure and Simba (2015) indicate that the right information to the special groups on AGPO will be very helpful in enabling them secure government contracts. The study found that retrieving records for

review purposes was slow, time consuming and even for the files made available, some records pertaining to fulfillment of the procurement process were incomplete, limiting the review scope. The study also found that primary source of information for special groups on what is to be awarded is the tender notices placed in the newspapers only and improved operating ICT systems and applications will cover all aspects of procurement.

In Laikipia County, Wamoto (2017) found that improved information techniques can help improve the efficiency of special group's tenderers as they compete for government contracts with big players. Such improvements in information access can enhance trade prospects by making vulnerable suppliers more acceptable vendors to global business partners. Information and communication technology has been increasingly used by county governments in the acquisition of goods and services, allocation of contracts to bidders and in contract management. The benefits of information and communication technology are many and include improvements in market access and competition, promotion of integrity, reduced information costs; easier access to information, and increased transparency and accountability, among others.

### **Lack of Financial Capacity and Late Payments**

One of the main challenges facing youth, women & persons with disabilities in participating in public procurement is lack of financial capacity. These groups face a challenge in accessing credit from financial institutions. Kamau et al. (2014) conducted a study on access to credit facilities as a major factor hindering access to public procurement contracts by youth entrepreneurs in government ministries in OL Kalou Sub-County. The study found that access to credit is almost across the world indicated as a key problem for SMEs. In some cases, even where credit is obtainable, the startups may lack liberty of choice because the lending circumstances may force the acquisition of heavy, immovable equipment that can serve as guarantee for the loan. Furthermore, financing institutions often do not tackle the type of sectors or business fields of youth, women and persons with disabilities enterprises partly because those are not considered units with any growth potential and very risky to venture into.

Lagat, Namusonge and Berut (2016) indicates that the long disbursement of funds and delays in government tender payments dampens the youth, women & persons with disabilities from participating in public procurement activities. Given that financial access is critical for any enterprise, the youth, women & persons with disabilities are deeply affected as they lack the basic necessities for them to access credits from the banks which also affect their capacity to participate in public procurement.

Ngure and Simba (2015) indicate that the Kenyan government is very critical in funding the disadvantaged groups like people with disabilities, youth and women to play in the big-ticket leagues of public procurement as they may not have the financial wherewithal. The study also found that there are a host of financial instruments being offered by various institutions, including local purchase order (LPO) financing and invoice discounting, the Uwezo Fund and the youth and women enterprise fund.

Ndege (2018) found that financial capacity has a statistically significant influence on the accessibility of the preferential public procurement opportunities among youth groups in Nakuru West Constituency. Among the financial capacity metrics, it was concluded that affordability of terms of credit offered by financial institutions to access government procurement opportunities had greater influence on accessibility of the preferential public procurement opportunities among youth groups in Nakuru West Constituency. Further, Korir (2017) indicate that access to financing has a great impact on tendering participation by women. Further, gender imbalance and inequality in access to finance make it difficult for women to participate in government tenders. The study concludes that lack of financial capacity has made many women feel excluded from public procurement contracts.

Furthermore, government funding through women enterprise and Uwezo funds have empowered women to participate in government tenders. As well, women are disadvantaged when it comes to accessing startup capital or loans for tendering. Additionally, government tenders takes time before paying women bidders.

### **Skills and Competence**

Public procurement can help in the development of an effective and efficient SME sector by providing appropriate opportunities for SMEs which are mostly run by special groups to demonstrate their competency and capabilities, including the purchase of goods and services which allows SMEs to develop and demonstrate innovative goods and services.

Most of the women, youth and persons with disability (PWDs) are unable to interpret the standard bid documents when they participate in the tender process, or when they visit the Supply Chain Management Services Department to seek information of the available procurement opportunities. As a result, they get disqualified at the onset because they are unable to compile the bid documents as required of bidders. Further, a rare and startling challenge is that, those in special groups who participate in the tender process and succeed in being awarded the tenders, end up selling them (the tenders) to well established businesswomen or men at a throw-away-fee for lack of skills, competence and experience to service the tenders (Bokpe, 2017).

Namusonge and Berut (2016) highlight that inadequate training of procurement staff has negatively affected the youth, women & persons with disabilities in participating in public procurement and many youth, women & persons with disabilities who have little or no experience of tendering in the public sector feel that they do not have the appropriate capability in terms of knowledge and skills. Obanda (2011) agrees with the finding by acknowledging that competence in public procurement has a positive significant relationship with accessibility to public procurement opportunities.

Ngure and Simba (2015) found that good training in procurement will raise the skills of the procurement staff and to familiarize suppliers with the requirements of the reformed system. The study concludes that training and capacity building to public entities will ensure compliance with the directive to be provided. From the findings a conclusion that training improves skills and ability of the persons with disabilities, women and youth to participate in AGPO.

In Laikipia County, Wamoto (2017) established that training the vulnerable groups on procurement procedures, including the importance of their participation in the public procurement market. Public procurement training can help in the development of an effective and efficient procurement sector by providing appropriate opportunities for vulnerable groups to demonstrate their skills and capabilities. In addition, Ndege (2018) reports that groups' competency have a positive influence on accessibility of the preferential public procurement opportunities among youth groups in Nakuru West Constituency.

### **Procurement Procedures**

The legal and regulatory framework establishes the rules within which all the financial institutions, instruments, and markets conduct procurement procedures in a given country. Further, in 2007 the PPDA came into force and established the Public Procurement Oversight Authority (PPOA) as regulatory body for development and oversight of the Kenyan Public Procurement System. The public procurement process should uphold integrity by mitigating all malpractices; inform decision-making, which requires public bodies to base decisions on accurate information and ensure that requirements are being met (Mwangi, 2017).

More still, the Procurement practice should be responsive to aspirations, expectations and needs of the target society. The World Bank (2003) emphasizes that there is need for transparency to enhance

openness and clarity on procurement policy and its delivery. Besides the PPDA, Public procurement in Kenya is governed by many other legislations like Public Procurement and Disposal Regulations (2006), Supplies Practitioners Management Act (2007), Public Procurement and Disposal (Public Private Partnerships) Regulations (2009), Constitution of Kenya (2010), Public Procurement and Disposal (Preference and Reservations) Regulations 2011, Public Private Partnerships Act (2012), and most recently Public Procurement and Disposal (County Government) Regulations 2013.

Most of these legislations are in support of the disadvantaged groups, under which category the women fall, for instance, one of the objectives of the PPDA is to facilitate the promotion of local industry and economic development. Sec. 39 of the Act stipulated provisions for Preference and Reservations for the groups. Section 227 of the Kenyan constitution also gave guidelines on the preference and reservation scheme. The Public Procurement and Disposal (Preference and Reservations) Regulations 2011 defines a target group as designated tenderer identified by the government to benefit from the preference and reservations schemes (Munyu, 2016).

However, bureaucratic procurement processes greatly affects youth participation to public procurement opportunities. The target groups perceive public procurement processes as complex, costly and time-consuming. Most SMEs usually lack formality in terms of business licenses, value-added tax (VAT) registration, formal business premises, operating permits and accounting procedures required by the Public Procurement and Disposal Act (2005) as well as the Public Procurement Regulations (2006). Tax avoidance and non-compliance with various business registration formalities could be attributed to their limited capital base and only rudimentary technical or business skills among their operators. According to Wangai (2014), most SMEs lack important documents and they end up being eliminated in the very first stages of public contracting. Additionally, there is no clear government policy in operation to guide SME development.

Ngure and Simba (2015) indicate that the tendering process has a duty to facilitate in the implementation of access to government procurement opportunities for Special Interest groups in Kenya. Tendering process can be seen to contribute to public good by defending, protecting and promoting human rights. In Laikipia County, Wamoto (2017) found that in an effort to enhance efficiency of procurement function, the county government of Laikipia makes use of the tendering system to reduce procurement cycle time and provision of quality management information. Tendering also enables the county government to identify reliable suppliers who are able to meet the products or services required according to the specifications of the public procurement policy.

Namusonge and Berut (2016) indicate that lack of transparency and accountability are considered as the major threats to integrity in public procurement and the existence of unethical behavior and corruption has affected the youth, women & persons with disabilities in participating in public procurement respectively. Mtui and Mamiro (2016) assert that small enterprises may offer value for money than larger suppliers by introducing competition which can lead fairness and reduction of costs. Ndege (2018) established that tendering regulation has a statistically significant influence on the accessibility of the preferential public procurement opportunities among youth groups in Nakuru West Constituency. Understanding of the regulations touching tender evaluation and award criteria among groups' members was concluded to have greater influence on accessibility of the preferential public procurement opportunities among youth groups in Nakuru West Constituency.

### **Enforcement and compliance**

Various countries both in developed and least developed countries have instituted procurement reforms involving laws and regulations. The major obstacle however, has been inadequate regulatory compliance. Ndege (2018) confirm that noncompliance problem affects not only the third world countries but also countries in the developed world. This position is further supported by Gelderman, Ghijsen and Brugman (2006) who contend that compliance in public procurement is still a major issue.

Public procurement is an integral function of governments in both developed and developing countries as the gigantic financial outflows has a great impact on their economies that needs prudent management. Thus, prudent handling of public procurement functions is fundamental to achieving economic, socio-political and other objectives of government.

According to Zubcic et al (2011), enforcement can generally be referred to as any act taken by implementers or a regulatory body to ensure compliance. The possibility of taking legal actions is essential to compliance and enforcement. Any legal action taken has cumulative effect on the consciousness of regulated entities and persons that violators will be punished in order to check their own compliance areas. They also argue that the outcomes of sustained enforcement actions instilled a culture of compliance and have a direct impact on compliance behavior.

The public procurement and Disposal Act of Kenya of 2005, provides the rules and regulations that should be adhered to in public procurement. Rules need to be clear, organized and easily understood. Munyu (2016) asserted that lack of familiarity with the procurement rules result into poor compliance levels and ambiguity in the public procurement procedures may provide a chance for dubious acts. Bokpe (2017) maintains that public procurement practitioners will comply with the rules and regulations if they perceive them logical.

Mwangi (2017) reports that despite statutory provisions and internal controls, public sector institutions have not fully complied with Access to Government Procurement Opportunities regulations for special groups. The study found that the prequalification criteria, selection procedures, contract management, internal processes contributed to level of compliance with Access to Government Procurement Opportunities regulations. The study concluded that higher threshold of prequalification criteria leads to a lower level of compliance with Access to Government Procurement Opportunities regulations for special groups while an elaborate selection procedure leads to a higher level of compliance with Access to Government Procurement Opportunities regulations for special groups. This study also concludes that the contracting management has significant influence level of compliance Access to Government Procurement Opportunities with regulations for special groups. The study also concludes that a higher threshold of internal controls leads to a higher level of compliance with regulations for special groups.

### **Conclusions and Recommendations**

The study concludes that even though the implementation of the AGPO program aimed at facilitating the enterprises owned by women, youth and persons with disability to be able to participate in Government opportunities, it has been facing numerous challenges in its implementation. The outcome of this has been failure to achieve the 30 per cent access of the youth, women and PWDs to government procurement opportunities and increase in unemployment. The study found that this can be attributed to challenges like lack of information, lack of financial capacity and late payments, skills and competence, procurement procedures and enforcement and compliance.

This study therefore recommends that;

- Financial ability of any supplier, which is a requirement for the suppliers in the public tenders; should be regulated to accommodate the youth, women & persons with disabilities who in most cases are left out due to lack of financial capability.
- Requirements for accessing credit from banks and other lending institutions should be efficient and effective to the youth, women & persons with disabilities so as to increase access to finances.
- Procurement practitioners should be registered with their professional body such as KISM and undergo professional training offered by KISM.
- The government should provide training to solve the inability to translate procurement law and regulations into everyday language, so that management sees and understands the impact to their compliance; inadequate records management and filing systems.

- Penalties should be placed on public procurement officials who do not comply with the Public Procurement and Disposal (Preference and Reservations) Regulations 2011 to ensure that there is greater levels of compliance with the law.
- Various stakeholders should facilitate seminars and trainings that will ensure the groups are knowledgeable on regulations touching on submission, receipt and opening of tenders. This will ensure that the groups register their enterprises with the relevant government bodies and that there is open and fair competition.
- Procurement procedures should ensure that special groups have a level playing field with men in government tenders by building their capacity and capabilities.

### Areas for Further Research

This study focused on critical review of literature and hence it was not possible to show the extent to which each of the factors affect implementation of the legal requirement for women, youth and persons with disabilities to access 30% of government procurement opportunities. This study therefore recommends empirical studies on the challenges facing the implementation of the legal requirement for women, youth and persons with disabilities to access 30% of government procurement opportunities in County governments, government ministries, and government parastatals in Kenya.

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