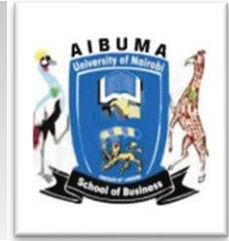




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ANALYSIS OF PUBLIC PROCUREMENT BID DISPUTES MANAGEMENT SYSTEM IN KENYA

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Abstract

Public procurement plays an important role in timely and quality service delivery for governments. However, the public procurement process is often disrupted by bid disputes. The frequency and time taken to resolve bid disputes is influenced by a number of factors. The objective of this paper was to establish the status and factors influencing public procurement bid disputes management in Kenya. Content analysis of all the bid dispute cases heard and determined by Public Procurement Administrative Review Board (PPARB) including those that escalated to the high court, the court of appeal and the supreme court between 2001 and 2020 were reviewed. Analysis of descriptive data and association testing was thereafter conducted. The paper has made contribution to body of knowledge regarding the state of and factors influencing public procurement bid disputes in Kenya. The findings of the paper were consistent with principal agent theory, stakeholder theory and theory of constraints and have offered propositions that could benefit policy makers and public procurement practitioners in the management of bid disputes in public procurement. The paper recommended that policy review be initiated to allow for Alternative Dispute Resolution (ADR) in bid disputes and facilitation of access to justice by vulnerable bidders.

Key Words: *Public Procurement, Bid Disputes, Public Procurement Administrative Review Board.*

Introduction

Public procurement plays an important role in timely and quality service delivery for governments and state owned enterprises. However, the public procurement process is often interrupted by bid disputes. Gordon (2006) explains that a bid dispute is a protest by a potential contractor relating to the pre-contract stages of a procurement or disposal process.

Problem of Research

Bid disputes in Kenya have been on an upward trend since 2001 when Public Procurement Complaints Review and Appeals Board (PPCRAB) first sat as was provided for in the Exchequer and Audit (Public Procurement) Regulations of 2001. This paper was motivated by the increasing number of bid disputes in Kenya, which have resulted in both aggrieved bidders and the government incurring a lot of expenses and critical government projects being delayed. In addition, there are bidders who are aggrieved by actions of procuring entities and their agents who do not get an opportunity to lodge requests for review. Besides, this paper was inspired by the limited research regarding public procurement bid disputes in Africa in general and Kenya in particular. Gordon (2013) noted that bid disputes had received serious attention in the last two decades in Europe. To date, most procurement research originates from European and North American regions (Flynn & Davis, 2014; Trammell et al., 2020).

Literature Review and Research Focus

This paper reviewed literature on theoretical underpinnings and on public procurement bid disputes resolution mechanisms in Kenya. According to Flynn and Davis (2014), management, economic, sociological and psychological theories are critical in shaping public procurement research. The authors

established that microeconomic theories dominate public procurement research. A similar observation was made by Halldorsson et al. (2007), who concluded that borrowing from complementary theories has become an essential part of theorizing supply chain management. Management theories such as principal-agent theory, stakeholder theory and theory of constraints have been used to explain bid disputes in public procurement (Flynn & Davis, 2014). Numerous factors that influence public procurement bid disputes revolve around principal-agent relationships, for example, corruption and independence of the review bodies (Canayaz et al., 2018; Nagle & Lasky, 2010; OECD, 2013; Kovacic, 1995). Principal-agent relationships in public procurement and how they contribute to bid disputes were studied.

Every public procurement and disposal process has stakeholders who include bidders, procuring entities, and their agents, regulators, and watchdogs (UNCITRAL, 2014). Public procurement systems in both developed and developing countries are known to be torn between competing principles of transparency, accountability, efficiency and effectiveness. This tension is evident throughout a complex procurement environment complete with competing stakeholder interests among them the management, community, political players and business, with all angling for lead roles (Schapper et al., 2006). Interests of various stakeholders in a public procurement process were studied in a bid to curb bid disputes.

The theory of constraints can be applied in various operating systems, including public procurement subsystems, for improved performance. An organization is a system of interrelated components according to the theory (Blackstone et al., 2009). Similarly, a public procurement process is made up of interlinked processes, each with restrictive factors, all aimed at service delivery and

delay in one task may delay the subsequent ones. Delay in procurement, for example, may lead to delayed execution of a project. The delay in procurement could be prompted by bid disputes, for instance. Constraints to the effective and efficient management of public procurement bid disputes were studied and possible means of eliminating them proposed in this paper.

Public procurement reforms globally have in recent years been driven partly by the existing inefficiencies of the existing systems and partly by development partner's organizations who give conditions before engaging in development partnerships. A critical reform in public procurement has been the provision for bidders to challenge actions of procuring entities that are not compliant with set laws and regulations (UNCITRAL, 2014). Ochieng and Muehle (2012) traced the development of public procurement reforms in Kenya from pre-independence in 1955 when the Central Tender Board (CTB) was established to 2011. A key highlight of these procurement reforms were the anti-corruption and financial reforms from 2002.

These reforms supported essential concepts and values of public procurement like accountability, transparency, competition, responsiveness to citizens and rights to appeal for aggrieved bidders. The reforms led to enactment of the Public Procurement and Disposal Act (PPDA) of 2005, which was aimed at promoting efficiency, economy, competition, fair treatment of competitors, integrity, transparency, accountability, public confidence, local industry and economic development. Significant development brought about by PPDA was establishment of the Public Procurement Oversight Authority (PPOA) and the replacement of the Public Procurement Complaints Review and Appeals Board (PPCRAB) with PPARB.

Bid disputes in Kenya have been on an upward trend since 2001 when PPCRAB first sat as provided for in the Exchequer and Audit (Public Procurement Regulations of 2001). Tendering and asset disposal disputes in Kenya are currently heard and determined by PPARB while Public Private Partnerships (PPPs) Petition Committee addresses those of PPPs. An applicant can progressively challenge the decision of the review board in the high court and the court of appeal. Judicial reviews deal with the process of making decisions and not with the merits of the decision. Procurement and asset disposal proceedings complaints that are not subject to administrative review are dealt with by the Public Procurement Regulatory Authority (PPRA) (PPRA, 2019). As compared to other jurisdictions, a disgruntled bidder in Kenya is not required to submit complaints to the procuring entity first and can directly lodge their request for review with PPARB upon establishing the basis to do so according to the Public Procurement and Asset Disposal Act (PPADA) 2015.

Methodology of Research

General Background of Research Methodology

This paper adopted positivism research philosophy which best supports quantitative research (Alharahsheh & Pius, 2020). The paper applied cross-sectional research design, which provides snapshots of a population at a given point in time, because it is inexpensive and takes a shorter period to conduct.

Sample of Research

The paper targeted all published bid dispute cases heard and determined by PPARB including those that escalated to the high court, the court of appeal and the supreme court between 2001 and 2020. The PPARB had heard and determined 923 bid disputes between 2001 and 2020, of which had 171

escalated to the high court, 19 to the court of appeal and two to the supreme court. The decisions of PPRAB were obtained from PPRAB's website while the decisions of the high court, court of appeal and the supreme court were retrieved from the website of the National Council for Law Reporting.

Instrument and Procedures

Secondary data was collected using a coding scheme where all the appropriate data regarding all these cases was entered. Subsequently the data was analyzed using summative content analysis.

Data Analysis

Descriptive data analysis and association testing were used to explain the status of public procurement bid disputes management in Kenya. In addition, these analyses were aimed at helping establish factors influencing public procurement bid disputes.

Results of Research

Various categories and subcategories generated from data analysis are as shown in Table 1 below.

The paper established that majority of the firms that lodge requests for review were local firms at 87.57 percent with foreign firms being 12.13 percent. The paper further established that majority of requests for review were lodged by limited companies at 94.26 percent; sole proprietors lodged 3.25 percent; partnerships 2.06 percent; and industry associations 0.43 percent of all requests for the reviews analysed. It was established that 94.58 percent of the bidders were represented by a legal professional while the rest were not. Of all the firms that lodged requests for review, 2.60 percent were faulted by PPRAB for unlawful conduct while the rest were not. These firms were faulted for having accessed confidential information and using it to advance their case before the review boards. Regarding the number of bidders that had participated in any given disputed procurement or disposal, it was established that the transaction that had least bidders participating was a single bidder while the highest was 281.

Table 1: Profiles of Applicants Who Filed Requests for Review

Feature	Category	Frequency	Percent
Country of registration/operation	Foreign	112	12.13
	Local	811	87.87
	Total	923	100
Structure of ownership	Industry association	4	0.43
	Limited companies	870	94.26
	Partnership	19	2.06
	Sole proprietor	30	3.25
	Total	923	100
Legal representation	No	50	5.42
	Yes	873	94.58
	Total	923	100

Instances where applicant was faulted	No	899	97.40
	Yes	24	2.60
	Total	923	100
Range of the number of bidders involved in disputed transactions	Lowest	1	
	Highest	281	

From Table 2 below, State Corporations and Semi-Autonomous Government Agencies (SAGAs) were the majority (57.20 percent) involved in bid disputes followed by national government or organs and department of the national government at 21.78 percent. County government, county assembly or organs or department of a county government or a local authority had a proportion of 8.34 percent; public university, a college or other educational institution at 6.07 percent and; commissions and independent offices established under the constitution at 3.79 percent. The rest had less than 1 percent with public schools at 0.98 percent, Central Bank

of Kenya (CBK) at 0.87 percent, the judiciary and the courts at 0.43 percent, pension funds and Savings and Credit Co-operative Societies (SACCOs) at 0.33 percent and constituencies at 0.22 percent. Regarding if the disputed transaction had been conducted on behalf of the procuring entity by any other party, it was established that 98.27 percent of the procurements and disposals had been conducted by the procuring entities themselves and 1.73 percent had been conducted on behalf by third parties.

Table 2: Profiles of Procuring Entities Involved in Bid Disputes

Feature	Category	Frequency	Percentage
Sector of procuring entity	National government and departments	201	21.78
	County government, county assembly, local authority and departments	77	8.34
	Judiciary and the courts	4	0.43
	Commissions and independent offices	35	3.79
	State corporations and semi-autonomous government agencies	528	57.20
	Central Bank of Kenya	8	0.87
	Public schools	9	0.98
	Public university, college or other educational institution	56	6.07
	Constituency	2	0.22

	Pension fund or savings and credit co-operative	3	0.33
Total		923	100
Disputed procurement or disposal was conducted on behalf	No	907	98.27
	Yes	16	1.73
Total		923	100

Regarding profiles of disputed decisions in the reviewed cases, the results revealed that tender awarding authorities were in agreement 84.72 percent of the time with evaluation committees and only differed 15.28 percent of the time regarding decisions leading to the request for reviews (see Table 3 below). In addition, the paper revealed that evaluation committees were responsible for 82.56 percent of the disputed procurement or disposal outcomes while 17.44 percent was influenced by other parties. Other parties that

were cited to have influenced the outcome of some of the disputed transactions were consultants, ministers, the national treasury, financiers, heads of procurement and the management. All the same, it was established that evaluation committees were responsible for most of the disputed decisions. Further, it was established from the results of the paper that 12.68 percent of the bidders had attempted reaching out to procuring entities before lodging a request for review with 87.32 percent opting not to.

Table 3: Profiles of Disputed Decisions in the Reviewed Cases

Feature	Category	Frequency	Percent
Agreement between tender awarding authorities and evaluation committees	No	141	15.28
	Yes	782	84.72
Total		923	100
Procuring entity was contacted by the bidder before lodging a request for review	No	806	87.32
	Yes	117	12.68
Total		923	100
The procurement/disposal outcome was influenced by another party other than the evaluation committee	No	762	82.56
	Yes	161	17.44
Total		923	100

As Table 4 below shows, 98.70 percent of the disputed transactions were procurement proceedings while the rest were disposals. Regarding the type of procurement and or scope of advertising, the paper categorized

proceedings into open international, open national, reserved for Access to Government Procurement Opportunities (AGPO) and restricted. It was observed that open national proceedings were the majority at 79.74

percent followed by open international at 14.19 percent. Restricted proceedings were 4.33 percent while those reserved for AGPO were 1.73 percent. The paper categorized the nature of items under procurement or disposal as common user goods or items with 8.34 percent; specialized user goods, items or systems with 21.34 percent; works for buildings and other structures with 15.38 percent; road works with 4.12 percent; works for equipment and plant with 10.51 percent; professional, consultancy and technical services with 12.35 percent; and non-professional and commercial types of services with 27.95 percent. Combined, common user good or items, non-professional and commercial types of

services were 36.29 percent of all disputed proceedings. The rest of the categories which required specialization attracted a combined total of 63.71 percent.

In addition, most of the bidders who lodged requests for review, 77.36 percent, had submitted one envelope bids with combined technical and financial proposals. The rest, 22.64 percent had submitted two envelope bids with separate technical and financial proposals. The paper results further revealed that 4.33 percent of the disputed proceedings were funded by development partners while 95.67 percent were funded by the government.

Table 4: Profiles of Disputed Proceedings in the Reviewed Cases

Feature	Category	Frequency	Percent
Proceedings were for procurement or disposal	Disposal	12	1.30
	Procurement	911	98.70
Total		923	100
Scope of advertising	Open international	131	14.19
	Open national	736	79.74
	Reserved for access to government procurement opportunities	16	1.73
	Restricted	40	4.33
Total		923	100
Nature of procurement or disposal item	Common user goods/items	77	8.34
	Specialized user goods /items/systems	197	21.34
	Works - buildings and other structures	142	15.38
	Works – roads	38	4.12
	Works - equipment and plant	97	10.51
	Professional, consultancy and technical services	114	12.35
	Non-professional and commercial types of services	258	27.95
Total		923	100
Whether technical and financial proposals were combined	Combined (one envelope)	714	77.36
	Separate (two envelopes)	209	22.64
	Total	923	100
Disputed procurement was funded by development partners	No	883	95.67
	Yes	40	4.33
Total		923	100

With respect to features of the reviewed cases, Table 5 below shows that there were preliminary objections in 31.09 percent of all the requests for review meaning that objectors felt that the applications were not properly before PPARB and were therefore supposed to be dismissed. The preliminary objections revolved around late filing, jurisdiction of the review boards and defective applications; 32.75 percent of these preliminary objections were upheld and requests for review dismissed at this point while 67.25 percent were not dismissed and requests for review proceeded to full hearing. The grounds for request for review were

classified into unfair evaluation, shortcomings of the bidding documents, failure to comply with various aspects of the law, wrongful termination or refusal to sign contracts and failure to comply with orders of the review board. It was established that most of the disputed cases were about unfair evaluation at 77.03 percent followed by wrongful termination or refusal to sign contracts at 8.56 percent. Failure to comply with various aspects of the law was at 7.15 percent, shortcomings of the bidding documents was at 4.66 percent and failure to comply with orders of the review board was at 2.60 percent.

Table 5: Features of the Reviewed Cases

Feature	Category	Frequency	Percent
Presence of a preliminary objection/issue	No	636	68.91
	Yes	287	31.09
Total		923	100
Outcome of the preliminary objections/issues	Failed	193	67.25
	Succeeded	94	32.75
Total		287	100
Grounds for request for review	Unfair evaluation	711	77.03
	Shortcomings of the bidding document	43	4.66
	Failure to comply with some aspects of law	66	7.15
	Wrongful termination/refusal to sign contract	79	8.56
	Failure to comply with orders of the board	24	2.60
Total		923	100
Request for review lodged within the required timelines	No	132	14.30
	Yes	791	85.70
Total		923	100
	No	912	98.81

Parties negotiated during request for review	Yes	11	1.19
Total		923	100
Outcome of those who negotiated	Succeeded	0	0
	Failed	0	0
	Withdrawn	11	100
Total		11	100
Outcome of request for review	Failed	413	44.75
	Succeeded	487	52.76
	Withdrawn	23	2.49
Total		923	100
Costs were awarded	No	883	95.67
	Yes	40	4.33
Total		923	100
To whom costs were awarded	Award to bidders	32	80
	Award to procuring entities	8	20
Total		40	100
Range of the costs awarded	Lowest	50,000	
	Highest	350,000	
Way forward as issued by review board	Decision of the procuring entity upheld	369	39.98
	Re-evaluation/termination annulled	185	20.04
	Re-tender	190	20.59
	Award to the applicant	101	10.94
	Comply with orders of board	26	2.82
	Issue new notifications/issue addendum/extend validity period	27	2.93
	Applicant withdrew appeal	25	2.71
Total		923	100
Issue of performance arose in the request for review	No	857	92.85
	Yes	66	7.15
Total		923	100

Regulatory gaps manifested in the request for review	No	868	94.04
	Yes	55	5.96
Total		923	100
Request for review escalated to high court	No	752	81.47
	Yes	171	18.53
Total		923	100
Party who appealed at high court	Procuring entity	59	34.50
	Bidder	110	64.33
	Public interest litigant	2	1.17
Total		171	100
Verdict at high court	Successful	80	46.78
	Dismissed	89	52.05
	Withdrawn	2	1.17
Total		171	100
Request for review escalated to court of appeal	No	152	88.89
	Yes	19	11.11
Total		171	100
Party who appealed at court of appeal	Procuring entity	8	42.11
	Bidder	11	57.89
	Public interest litigant	0	0
Total		19	100
Verdict at court of appeal	Successful	6	31.58
	Dismissed	13	68.42
	Withdrawn	0	0
Total		19	100
Request for review escalated to supreme court	No	2	10.53
	Yes	17	89.47
Total		19	100
Party who appealed at supreme court	Procuring entity	0	0
	Bidder	2	100
	Public interest litigant	0	0

Total		2	100
Verdict at supreme court	Successful	0	0
	Dismissed	2	100
	Withdrawn	0	0
Total		0	100

From Table 5 above, many of the requests for review; 85.70 percent were filed within the required timelines while the rest were filed late. Late receipt of feedback about the outcome of procurement and disposal proceedings was cited as one of the reasons for late filing. It was established that in 1.19 percent of the requests for review, both parties engaged in negotiations aimed at resolving the contentious issues before PPARB could give their verdict. In all the 11 cases where parties negotiated, the cases were withdrawn by the applicants. The paper was interested with the outcome of the cases at PPARB in order to establish if the applicants succeeded, failed or they withdrew their applications. It was discovered that 52.76 percent of the applicants succeeded, 44.75 percent failed while 2.49 percent withdrew their cases. Regarding awarding of costs, it was established that costs were only awarded in 4.33 percent of the cases while 95.67 percent were not. Eighty percent of these costs were awarded to bidders while 20 percent were awarded to procuring entities. The value of costs awarded was between KSh 50,000 to KSh 350,000.

The paper analyzed the specific directions issued by the review board while giving their verdict upon hearing the requests for review. It was established that decisions of procuring entities were upheld 39.98 percent of the time, re-tender ordered 20.59 percent of the time, re-evaluation or annulment of terminations ordered 20.04 percent the time and award to the applicant ordered 10.94 percent of the time. Compliance with orders

of the board; issuance of new notifications, issuance of tender addendum and extension of validity period 2.93 percent; and withdrawal by the applicant happened 2.71 percent of the time. The paper established that in 7.15 percent of the requests for review filed, issues of past performance had arisen while none arose in 92.85 percent of the requests for review – see Table 5 above.

The paper sought to establish if there were any legal or regulatory gaps that manifested in the requests for review. From Table 5 above, in 94.04 percent of the instances, no legal or regulatory gaps were raised while the same were raised in 5.96 percent of the instances. The legal and regulatory gaps manifested through grey areas in bid disputes involving procurement for PPPs and conflict between national public procurement laws and development partner's procurement regulations. Other areas where legal and regulatory gaps manifested were definition of who can file a request for review, failure by review boards to furnish parties with copies of decisions, how to accommodate public interest litigants, withdrawal of agency from state corporations by mother ministries mid proceedings, guidance to procuring entities on how to handle self-detected errors identified post award, enforcement of compliance of orders issued by the review board where there were multiple repeat non-compliance cases, guidance to procuring entities on correction of errors, challenges surrounding use of e-procurement and termination of a sub-contract procured by the procuring entities by the main contractor.

Regarding escalation of cases beyond the review board level, 171 cases translating to 18.53 percent of all requests for reviews escalated to the high court, 19 cases translating to 2.06 percent of all requests for reviews escalated to the court of appeal and only two cases escalated to the supreme court. Of the cases that escalated to the high court, 64.33 percent were filed by bidders, 34.50 percent by procuring entities and 1.17 percent by public interest litigants. Of these cases, 52.05 percent were dismissed, 46.78 percent were successful and 1.17 percent was withdrawn. Eleven percent of the cases that were heard and determined at the high court escalated to the court of appeal. Of the cases that escalated to the court of appeal, 57.89 percent were filed by bidders and 42.11

percent by procuring entities. Of these cases, 68.42 percent were dismissed and 31.58 percent were successful. Only two of the 19 cases heard and determined at the court of appeal translating to 10.53 percent escalated to the supreme court. Both cases were filed by bidders and both were dismissed – see Table 5 above.

The research also sought to establish if there was association between the outcome of the requests for review (succeeded, failed or withdrawn) and other categorical variables derived from descriptive statistics discussed above. To establish if there were relationships, the variables were cross tabulated and Pearson Chi-Square computed. The results are shown in Tables 6 below.

Table 6: Cross Tabulation of Outcome of Reviewed Cases Against Other Parameters

Parameters Cross Tabulated Against Outcome of Reviewed Cases	Chi square	P Value	df
Country of registration of the applicant	1.520	0.468	2
Structure and ownership of applicants	8.363	0.213	6
Sector of the procuring entity	39.606	0.002	18
Agreement between awarding authorities and evaluation committees	50.135	0.000	2
Nature of proceedings (procurement or disposal)	7.351	0.025	2
Scope of advertising	2.563	0.861	6
Nature of procurement/disposal item	12.954	0.372	12
Proceedings being conducted on behalf of procuring entities	2.272	0.321	2
Grounds of request for review	38.994	0.000	8
Communication between parties prior to request for review	6.461	0.400	2
Influence of third parties on procurement/disposal outcome	17.069	0.000	2
Combining technical and financial proposals	43.207	0.000	2
Legal representation of bidders	2.694	0.260	2
Parties' negotiations aimed at resolving the contentious issues before PPARB could give their verdict	123.315	0.000	2
Faulting of the applicants for unlawful conduct	9.342	0.009	2

Issue of past performance	2.746	0.253	2
Regulatory gaps	6.304	0.043	2
Development partners funding	29.616	0.000	2
Escalation of cases to high court	16.284	0.000	2

Source: Research Data, 2022

The research sought to determine if there was significant association between country of registration of the applicant and outcome of the request for review at five percent significance level. With a p-value of 0.468, the null hypothesis for the above test which was that there was no significant association between country of registration of the applicant and outcome of the request for review was supported, since p-value was greater than critical value (α) of 0.05 ($0.468 > 0.05$). This implied that both local and foreign firms that request for review are treated impartially by PPARB. However, it was observed that more requests for review filed by foreign firms failed than succeeded. This could be attributed to the challenges of coordinating representation and collection of evidence.

Regarding structure of ownership, the research hypothesised that there was no association between structure of ownership of the applicant and outcome of the request for review. The resulting p-value of 0.213 was greater than 0.05. This supported the null hypothesis, and it was concluded that there was no association between structure of ownership of the applicant and outcome of the request for review. Although most of the requests for review were filed by limited companies, it implied that PPARB treats applicants fairly regardless of the structure of their structure of ownership. The paper hypothesised that there was no association between sector of the procuring entity and outcome of the request for review. With a p-value of 0.002 the null hypothesis was not supported and it was concluded that there was

an association between sector of the procuring entity and outcome of the request for review. This implied that one of the factors that influence bid disputes is the sector of the procuring entity.

The null hypothesis for the test that concurrence between tender awarding authorities and evaluation committees and outcome of the request for review was that they were not related. With the p-value being less than 0.05, the null hypothesis was rejected and it was concluded that there was association between agreement between tender awarding authorities and evaluation committees and outcome of the request for review. This implied that differing opinion between tender awarding and evaluation committee is one of the factors that influence bid disputes. The research hypothesised that there was no association between nature of proceedings and outcome of the request for review. The resultant p-value was less than 0.05 at 0.025 leading to rejection of the null hypothesis. It was, therefore concluded that there was association between nature of proceedings and outcome of the request for review. This implied that bid disputes are influenced by a proceeding being either a procurement or disposal. Almost all requests for reviews regarding disposals failed.

The null hypothesis was that there was no association between scope of advertising and outcome of the request for review. The resulting p-value was 0.861 which supported the null hypothesis. It was concluded, therefore that the scope of advertising and outcome of the request for review were independent. It implied that the scope of

publicizing proceedings does not influence bid disputes. Regarding the association between nature of procurement or disposal item and verdict of the request for review, it was hypothesised that there was no association. The resulting p-value of 0.372 supported the null hypothesis and it was concluded that nature of procurement/disposal item and outcome of the request for review were independent. It implied that the nature of the item being procured or disposed does not influence bid disputes. On the relationship between proceedings being conducted on behalf of a procuring entity and outcome of the request for review, the research sought to know if there was any association. The resulting p-value of 0.321 supported the null hypothesis and it was concluded that there was no association between both parameters. It implied that delegating the procurement or disposal function to a third party by a procuring entity does not influence bid disputes.

With respect to association between grounds of the request for review and the outcome, the research hypothesised that there was no association. The resulting p-value was less than 0.05 leading to rejection of the null hypothesis. It was concluded that there was an association between grounds of the request for review and outcome of the request for review. It implied that bid disputes and their outcome are influenced by the grounds of the dispute. It was hypothesised that there was no association between communication between parties prior to the request for review and outcome of the request for review. The p-value was 0.40 thus supported the null hypothesis. It was concluded that there was no association between communication between the parties prior to the request for review and verdict of the request for review. It implied that bid disputes are not influenced by communication between the procuring

entities and aggrieved bidders prior to lodging a request for review. This could be an indicator that debriefing alone cannot solve bid disputes.

The paper hypothesised that there was no association between influence of third parties on procurement or disposal outcome and outcome of the request for review. The resulting p-value of 0.000 did not support the null hypothesis. It was therefore concluded there was an association between influence of third parties on procurement or disposal outcome and outcome of the request for review. This implied that interference in procurement and disposal proceedings by third parties is one of the factors that influence bid disputes. Further, it was hypothesised that there was no association between combining technical and financial proposals and outcome of the request for review. The p-value of 0.000 did not support this hypothesis, hence combining technical and financial proposals and verdict of the request for review were dependent. Bigger proportion of one envelope bids failed as compared to those that succeeded. This implied that one of the factors that influence bid disputes is whether financial proposals are opened prior to technical proposal evaluation.

It was hypothesised that there was no association between legal representation and outcome of the request for review. The p-value of 0.260 was greater than 0.05 thus supporting the null hypothesis. It was concluded that there was no association between legal representation and verdict of the request for review. It implied that PPARB was objective in its conduct and that all aggrieved bidders including the disadvantaged like those in the AGPO group have opportunities for fair hearing. Regarding association between parties' negotiations and verdict of the request for review, the null hypothesis was that there was

no association. The p-value of 0.000 did not support the null hypothesis and it was concluded that there was association between parties' negotiations and outcome of the request for review. It implied that ADR influences bid disputes positively because out of the 11 cases where parties negotiated in the course of the request for review, all of them were withdrawn.

Regarding association between faulting of the applicant and outcome of the request for review, it was hypothesised that there was no association between the two. Since the p-value was 0.009, the null hypothesis was rejected. It was concluded, therefore that there was an association between faulting of the applicant and outcome of the request for review. It implied that bid disputes are influenced by improper conduct of an aggrieved bidder who applies for request for review. In addition, it was hypothesised that there was no association between issues of past performance and outcome of the request for review. The resulting p-value of 0.253 supported the null hypothesis. It was concluded that issues of past performance and outcome of the request for review are independent. It implied that bid disputes are not influenced by past performance of an aggrieved applicant.

On association between regulatory gaps and outcome of the request for review, it was hypothesised that there was no association. The p-value for the test was 0.043 and this led to rejection of null hypothesis leading to a conclusion that there was an association between regulatory gaps and verdict of the request for review. This implied that bid disputes were driven by procurement and disposal legal and regulatory gaps. With respect to association between development partners' funding and outcome of the request for review, it was hypothesised that there was no association. The resulting p-value was 0.000 leading to rejection of the null

hypothesis. It was concluded that development partner's funding and outcome of the request for review are related. This implied that bid disputes are influenced by whether procurement is funded by development partners or not. It was also hypothesised that there was no association between outcome of the request for review and escalation of disputes to the high court. The p-value was less than 0.05 leading to rejection of the null hypothesis. It was, therefore concluded that there was an association between verdict of the request for review and escalation to the high court. This implied that the verdict at PPARB influences escalation of bid disputes to the high court.

Conclusions and Recommendations

This paper revealed that only a handful AGPO firms lodged requests for review consequently, there is need for policy review to facilitate access to justice by vulnerable applicants. This is especially so because it was established that the fees and deposits currently required when filing a request for review hinder access to requests for review. It was further observed that procuring entities whose operations were out of Nairobi city, including county governments, were least involved in requests for review. There is need, therefore, to properly resource PPARB so that it can devolve its services and implement e-administrative review of tender disputes which will enhance access to justice.

Judging from the failure of some requests for review at preliminary stages, it is evident that there are issues that bidders need to be sensitized on so as to file applications properly before the review board. The PPARB was faulted on several occasions for failure to furnish applicants with signed decisions within reasonable time. In addition, not all judgements were uploaded on the PPRA's website and there is need, therefore

for PPRA to invest in a case management system.

Unfair evaluation was cited as the basis of most requests for reviews and thus evaluation committees were responsible for most of the disputed procurement and disposal outcomes. There is need to invest in improving skills in procurement and disposal cycles right from generation of requirements, preparation of bidding documents to the award stage. In addition, the results indicated that negotiations between parties to a request for review led to withdrawal of all cases, and where bidders went ahead to file requests for review even after contacting procuring entities, most of the requests for review ended up failing. Moreover, most of the requests for review that escalated beyond PPARB ended up being dismissed. This signals the importance of ADR in resolving public procurement bid disputes and the need to review the number of review tiers with bidders having to lodge complaints with procuring entities in the first instance and the dispute escalating up to the high court.

In a number of cases, legal and regulatory gaps manifested through grey areas involving bid disputes for procurement of PPPs that were presented before the review board and conflict between national public procurement laws and regulations and development partners' procurement regulations. There is need, therefore, to tie all the loose ends which will facilitate objective hearing and determination of bid disputes. It is proposed that an integrated model that explains how factors influencing public procurement bid disputes in Kenya interact and what needs to be addressed for successful management of bid disputes be developed in future studies.

This study made key contributions to the field of academia as well as theoretical, methodological, and practical implications for research. This study was anchored on

principal agent theory, stakeholder theory and theory of constraints; the findings of the study were consistent with all the three theories. The findings of this study offer suggestions that are useful to policy makers in the management of bid disputes in public procurement. In addition, the results of the study will assist public procurement practitioners to develop long term strategies aimed at preventing bid disputes and properly managing them when they arise.

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