

**COMPARING LEVELS OF COMPLIANCE WITH PUBLIC PROCUREMENT ACT,
2007 IN PROJECT DELIVERY AMONG PUBLIC TERTIARY EDUCATIONAL
INSTITUTIONS IN SOUTHWEST, NIGERIA**

BY

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**BEING A PAPER PRESENTED AT THE 4TH NATIONAL CONFERENCE, SCHOOL
OF ENGINEERING, THE FEDERAL POLYTECHNIC, ILARO, OGUN STATE**

**HELD AT INTERNATIONAL CONFERENCE CENTRE (ICC), WEST CAMPUS,
THE FEDERAL POLYTECHNIC, ILARO, OGUN STATE**

25TH NOVEMBER – 28TH NOVEMBER, 2019

Abstract

Corruption and secrecy are known to be prominent features of contract practice in Nigeria; especially construction contracts of which Educational Institutions are not spared. Consequently, Public Procurement Act, (PPA) 2007 was enacted to curb corruption and promotes transparency in contract procurement. This study investigates the Levels of Compliance (LOC) with PPA 2007 by Public Higher Educational Institutions (PHEIs) in Southwest, Nigeria. The objectives are to evaluate and compare the LOC with the Act by PHEIs. A questionnaire survey research approach was adopted. The survey covered the entire 44 PHEIs, consisting of 17 Universities, 17 Polytechnics and 10 Colleges of Education (COE) in Southwest, Nigeria. Data were collected on the LOC with selected provisions of PPA 2007 relevant to construction procurement. Data collected were analysed using percentage and Analysis of Variance. The result revealed that PHEIs did not comply with one provision on public access to procurement records. They recorded low compliance in 12 provisions. Universities and Polytechnics recorded same LOC in 5 provisions. However, Polytechnics complied more than Universities and COE in 16 provisions. COE complied more than Universities and Polytechnics in 9 provisions. The study also discovered that LOC of the three categories of Institutions differ significantly in only two provisions. The study concludes that the LOC with majority of the provisions of the Act by the PHEIs is low. It is recommended that Management of PHEIs should endeavour to improve their LOC with all the provisions of the Act to ensure a transparent and corrupt free procurement practice.

Keywords: Compliance, Nigeria, project delivery, public procurement act, public higher educational institutions

Introduction

Public procurement refers to all the processes required in acquiring, purchasing or obtaining, goods, works and services, needed to run a government. It involves administrative processes in accordance with the country rules, regulations or laws. These processes cover acquisition of goods, works and services at the operational level. Developed and developing countries of the world in line with international standard on procurement operate different laws for the regulation of their procurement. In Nigeria all public procurement are governed by Public Procurement Act, PPA (2007).

The goal of public procurement is to ensure that timely and cost-effective contracts are awarded to qualified contractors, suppliers and service providers for the provision of goods, work and services to support government and public services operations in a manner that conform with the

principles and procedures contained in the public procurement rules (Lynch, 2013). Governments all over the world invest huge sums of money on project procurement of various types in the different sectors of their economies. Such procurement may be in form of construction works, goods, and services (PPDC, 2012). This construction project procurement involve a lot of money and is very important to the development of these nations and determine the success or failure of the country's public investments (Organisation for Economic Cooperation and Development OECD, 2007; Odhiambo and Theuri, 2015).

As a result of huge amount of money involved in public procurement which is derived from tax payer money, such money must be expended through a process that ensures accountability and transparency (Hui, Othman, Normah, Rahman, and Haron, 2011). Therefore, various nations globally instituted procurement reforms involving laws and regulations. The Nigerian government brought out a new procurement policy guideline in year 2001 for use in government Ministries, Departments and Agencies to ensure that public procurements are carried out in a manner that ensure value for money on projects procured without sacrificing quality or standards. These procuring entities such as Public Higher Educational Institutions (PHEIs) are expected to comply with the provisions of Public Procurement Act 2007 in the award and execution of construction projects. Public Higher Educational Institutions in Nigeria have Governing Councils that give them some autonomy. Each of the institutions as a result of their autonomy establishes structures for procurement of projects. Procurement are either funded by procuring entities through budgetary appropriation for public procurement as described in Section 16 subsection1(b) of PPA 2007 (FGN,2007), internally generated revenue by PHEIs or funds obtained through agencies like; Unesco, TETFund, World Bank among others in form of loans, grants or donations.

Ewa (2013) and Uromi (2014) however discovered that majority of construction projects procured in Public Higher Educational Institutions in Nigeria like any other government establishments were abandoned due to compromise in the process adopted for the procurement of the contracts among other factors. This usually resulted into costly disputes, claims and abandonment of projects (Abdalla and Hussein, 2002; Kareem *et al.*, 2014).

After Nigeria obtained its independence in 1960, there were several military interventions in governance which affected constituted structures. In the course of military rule in the country, decency, transparency and accountability in public procurement were thrown overboard and pricing of goods and services bore no relationship with the actual value of many items. Award of contracts were done without following any specific order for public procurement by either the democratic government or the military government in place at any instant at the period (Kareem, Asa, and Lawal, 2014). The result of these was the beginning of diverse economic problems of various magnitudes as a result of corruption in the award and execution of contracts. These continue until when Olusegun Obasanjo was elected into power in 2001. In order to address this menace, government call for the enthronement of Due process as part of procurement reform in Public Sector. Ezekwesilli (2004) maintained that the essence of the Due Process was to ensure that government functions and the nation's economic procedures are done in a manner that gives room for openness, transparency and accountability. Several extant policies, and rules on procurement exist in the country before the establishment of PPA, 2007 however, implementation of such policies and rules suffered progressive deliberate inaction due to a number of lapses such as; poor competition and absence of transparency in contract awards

procedure, inadequate monitoring of project in order to achieve original target set among others (Wahab, 2014).

The earlier existing provisions give room for corruption of diverse magnitudes in public procurement process, subversion of due process and undue influence on existing rules, laws and regulations (Kareem *et al.*, 2014). Sequel to this is the establishment of Budget Monitoring and Price Intelligence Unit (BMPIU) in the year 2001 which was later renamed the Bureau of Public Procurement (BPP) in 2007 to ensure the implementation of the procurement regulations as one of the transparency body in the Nigerian government economic reform activities. The Public Procurement Act (PPA) was enacted in 2007 and it provided legal backing to BPP. The Act stipulates the procedures that must be followed, conditions that must be fulfilled, steps to be taken and conditions that must be met before public funds can be released from the treasury for payment to contractor in order to ensure probity in public procurement. These set of procedures and steps are referred to as due process (Anthony, 2015). Several years after the enactment of the Act, players in the procurement sector still lack the knowledge of the gains of the procurement reforms, regulations and guidelines. The inherent urge to compromise the principles of transparency, efficiency and value for money have been attributed as some of the causes of non-adherence with procurement rules in construction projects procured by Nigeria procurement entities especially in Public Higher Educational Institutions (Hyacinth and Yibis, 2017). It has been discovered that the Nigerian construction industry has the problem of non-compliance with the regulations and processes involved in procurement and that this is common especially in the building sector (Ayangade, Wahab and Alake, 2009).

Several studies exist on the implementation of PPA 2007 by government Ministries, Departments and Agencies. Such studies establish corruption and noncompliance with the process of implementation of the procedures specified in the Act by the public procurement entities. However, such studies failed to address the issue concerning the levels of compliance with the provisions of the Act by Public Higher Educational Institutions in Nigeria. It is against this backdrop that this study seeks to compare the levels of compliance with the provisions of the Act among Public Higher Educational Institutions in Southwest, Nigeria. The objectives are to evaluate and compare the LOC with the Act by PHEIs in Southwest, Nigeria. The achievement of this objective will be valuable to the Bureau of Public Procurement to know those provisions of the Act which each category of PHEIs comply with and those they do not comply with so as to know what measure to take for a better compliance.

Materials and Methods

Nigeria is made up of six geo- political zones, Southwest being one of the six geo political zones constitutes the coverage of this study. The zone is further divided into six states namely; Ekiti, Lagos, Ogun, Ondo, Osun and Oyo. The study population covers the entire 44 Public Higher Educational Institutions in the Southwest zone. These consist of 17 Universities, 17 Polytechnics and 10 Colleges of Education. In view of the population frame, the entire 44 PTIs were selected as the sampling frame and size for the study. For this reason, census sampling technique was adopted in selecting the study sample

Each institution's Procurement Officer with the responsibility of administration of the institution procurement department and ensuring compliance with and implementation of the provisions of

Public Procurement Act 2007 constituted the respondents for the study. The respondents were construction professionals with knowledge about construction procurement and the guiding regulations. They are either a Builder, Architect, Civil Engineer or Quantity Surveyor. The study adopted a field survey with the use of structured questionnaire as the instrument for the survey. The instruments were administered to the respondents by the use of two research assistants.

The study selected 39 provisions of PPA 2007 relevant to construction project procurement. Respondents were requested to indicate ‘Yes’ for the provisions of the PPA, 2007 which they complied with when procuring construction projects in their Institutions and ‘No’ for provisions they did not comply with.

Data collected were processed with the use of Statistical Package for Social Sciences Version 20 Software (SPSS 20). The levels of compliance with the selected provisions by each category of PHEIs was analysed as percentage of PHEIs that complied with the provision divided by the number of PHEIs while the hypotheses of the study was tested using ANOVA. The hypothesis of the study was tested using ANOVA at $p\text{-value} \leq 0.05$, the rule for the rejection of the hypothesis is that when the calculated $p\text{-value} \leq 0.05$, the test rejects the hypothesis but when the calculated $p\text{-value} > 0.05$, the test fails to reject the hypothesis.

In the attempt to compare the levels of compliance with PPA, 2007 by the three categories of Institutions and establish whether or not one Institution category comply more than the other, a research hypothesis was formulated. The hypothesis states that there is no significant difference in the levels of compliance with Public Procurement Act 2007 among Universities, Polytechnics and Colleges of Education. The results of the hypothesis are expected to reveal the significant similarities and differences in compliance with the Procurement Act among Universities, Polytechnics and Colleges of Education.

Results

The research hypothesis was formulated and tested to determine the difference in the levels of compliance with PPA, 2007 based on institutions’ categories. The institutions’ categories namely Universities, Polytechnics and Colleges of Education are used in the study. The result of the test of difference in the levels of compliance with the PPA, 2007 among Universities, Polytechnics and Colleges of Education are presented in Table 1 below;

Table 1: Levels of compliance with PPA, 2007 among Universities, Polytechnics and Colleges of Education

Institution Category	N	Mean	f-value	Df	p-value	Diff
Compliance with:						
Funding of capital projects						
University	17	0.47	1.152	42	0.326	Ns
Polytechnic	17	0.47				
College of Education	10	0.20				
Total	44	0.41				
Value of projects for certificate of “No Objection”						
University	17	0.29	1.481	42	0.239	Ns
Polytechnic	17	0.12				
College of Education	10	0.40				
Total	44	0.25				
Basis for the award of contract for construction projects						

University	17	0.88	2.130	42	0.132	Ns
Polytechnic	17	0.88				
College of Education	10	0.60				
Total	44	0.82				
Period when certificate of “No Objection to contract award” is obtained from BPP						
University	17	0.59	0.672	42	0.516	Ns
Polytechnic	17	0.47				
College of Education	10	0.70				
Total	44	0.57				
Procedure for procurement of capital projects						
University	17	0.82	0.159	42	0.854	Ns
Polytechnic	17	0.82				
College of Education	10	0.90				
Total	44	0.84				
Time allowed for bidding before award of contract						
University	17	0.12	0.680	42	0.512	Ns
Polytechnic	17	0.18				
College of Education	10	0.30				
Total	44	0.18				
Minimum number of bids to be received before award of contract						
University	17	0.65	0.335	42	0.717	Ns
Polytechnic	17	0.71				
College of Education	10	0.80				
Total	44	0.70				
Procedure for payment for contractors/suppliers that handled capital project						
University						
Polytechnic	17	0.94	1.350	42	0.271	Ns
College of Education	17	0.82				
Total	10	1.00				
	44	0.91				
Criteria used to select contractors for capital projects						
University	17	0.56	0.902	42	0.414	Ns
Polytechnic	17	0.58				
College of Education	10	0.46				
Total	44	0.55				
Process applicable to bids excluded from evaluation						
University	17	0.24	1.434	42	0.250	Ns
Polytechnic	17	0.24				
College of Education	10	0.00				
Total	44	0.18				

Table 1: Levels of compliance with PPA, 2007 among Universities, Polytechnics and Colleges of Education Cont'd

Institution Category	N	Mean	f-value	Df	p-value	Diff
Language of documentation of bids and contract agreement						
University	17	0.88	0.679	42	0.513	Ns
Polytechnic	17	0.94				
College of Education	10	1.00				
Total	44	0.93				
Time taken by the institutions to prepare and transmit records of procurement proceedings and contract awarded for each financial year to BPP						
University	17	0.29	1.481	42	0.239	Ns
Polytechnic	17	0.12				
College of Education	10	0.40				
Total	44	0.25				
Statement on institutions' unclassified procurement						

documents						
University	17	0.00	-	42	-	
Polytechnic	17	0.00				
College of Education	10	0.00				
Total	44	0.00				
Award of contract of capital projects by the institutions						
University	17	0.53	0.471	42	0.628	Ns
Polytechnic	17	0.41				
College of Education	10	0.60				
Total	44	0.50				
Person responsible for final selection of winning tender						
University	17	0.94	2.314	42	0.112	Ns
Polytechnic	17	0.94				
College of Education	10	0.70				
Total	44	0.89				
Powers of the tenders' board						
University	17	0.41	1.140	42	0.330	Ns
Polytechnic	17	0.41				
College of Education	10	0.13				
Total	44	0.36				
Requirements for participating in bidding						
University	17	0.76	0.389	42	0.680	Ns
Polytechnic	17	0.88				
College of Education	10	0.80				
Mode of primary form of dispute resolution in the procurement contract agreements						
University	17	0.29	1.468	42	0.242	Ns
Polytechnic	17	0.41				
College of Education	10	0.10				
Total	44	0.30				
Currency used in stating the values in the procurement agreements						
University	17	0.94	0.786	42	0.462	Ns
Polytechnic	17	1.00				
College of Education	10	1.00				
Total	44	0.98				
Content of the procurement contracts						
University	17	0.47	0.064	42	0.938	Ns
Polytechnic	17	0.49				
College of Education	10	0.50				
Total	44	0.48				

Table 1: Levels of compliance with PPA, 2007 among Universities, Polytechnics and Colleges of Education Cont'd

Institution Category	N	Mean	f-value	Df	p-value	Diff
Approving authority for the conduct of procurement						
University	17	0.47	2.329	42	0.110	Ns
Polytechnic	17	0.76				
College of Education	10	0.40				
Total	44	0.57				
Processes on the planning of procurement						
University	17	0.48	0.572	42	0.569	Ns
Polytechnic	17	0.53				
College of Education	10	0.42				
Total	44	0.49				
Processes carried out on implementation of the institutions' procurement plans						
University	17	0.60	0.140	42	0.870	Ns
Polytechnic	17	0.65				

College of Education	10	0.61				
Total	44	0.62				
Organs/committee in place and involved in the procurement of construction projects in your institution						
University	17	0.69	0.730	42	0.488	Ns
Polytechnic	17	0.72				
College of Education	10	0.58				
Total	44	0.68				
Composition of procurement planning committee						
University	17	0.56	0.004	42	0.996	Ns
Polytechnic	17	0.57				
College of Education	10	0.57				
Total	44	0.57				
Processes adopted in the procurement of construction projects						
University						
Polytechnic	17	0.77	1.593	42	0.216	Ns
College of Education	17	0.80				
Total	10	0.62				
	44	0.75				
Mode of bidding/tendering for construction projects						
University	17	0.47	0.413	42	0.665	Ns
Polytechnic	17	0.49				
College of Education	10	0.53				
Total	44	0.49				
Activities performed during bid opening						
University	17	0.60	1.920	42	0.160	Ns
Polytechnic	17	0.72				
College of Education	10	0.53				
Total	44	0.63				
Processes carried out during bid solicitation						
University	17	0.36				
Polytechnic	17	0.43	0.602	42	0.553	Ns
College of Education	10	0.34				
Total	44	0.38				
Margin of mobilization awarded to contractors/suppliers						
University	17	0.29	0.155	42	0.857	Ns
Polytechnic	17	0.24				
College of Education	10	0.20				
Total	44	0.25				

Table 1: Levels of compliance with PPA, 2007 among Universities, Polytechnics and Colleges of Education Cont'd

Institution Category	N	Mean	f-value	Df	p-value	Diff
Basis for granting mobilization to a contractor						
University	17	0.62	4.259	42	0.021	S
Polytechnic	17	0.76				
College of Education	10	0.45				
Total	44	0.64				
Procedure of payment for procurement of goods, works and services						
University	17	0.31	0.939	42	0.399	Ns
Polytechnic	17	0.33				
College of Education	10	0.33				
Total	44	0.32				
Procurement practices for construction projects						
University	17	0.54	1.294	42	0.285	Ns
Polytechnic	17	0.68				
College of Education	10	0.50				
Total	44	0.58				
Bidding method						
University	17	0.94	6.692	42	0.003	S

Polytechnic	17	1.00				
College of Education	10	0.60				
Total	44	0.89				
Approval procedure from BPP on restricted bidding						
University	17	0.59	0.266	42	0.768	Ns
Polytechnic	17	0.65				
College of Education	10	0.50				
Total	44	0.59				
Compliance with the value of consultancy services for which open bidding is solicited						
University	17	0.76	1.782	42	0.181	Ns
Polytechnic	17	0.82				
College of Education	10	0.50				
Total	44	0.73				
Procedure of procuring consultancy services for construction projects						
University	17	0.31	1.022	42	0.369	Ns
Polytechnic	17	0.44				
College of Education	10	0.40				
Total	44	0.38				
Procedure for evaluating bids						
University	17	0.59	0.413	42	0.664	Ns
Polytechnic	17	0.59				
College of Education	10	0.48				
Total	44	0.56				
Procedure for selecting bids						
University	17	0.36	1.916	42	0.160	Ns
Polytechnic	17	0.44				
College of Education	10	0.33				
Total	44	0.39				
Overall level of compliance with public Procurement Act, 2007						
University						
Polytechnic	17	0.55	1.230	42	0.303	Ns
College of Education	17	0.58				
Total	10	0.50				
	44	0.55				

N = No. of respondents; df = degree of freedom; diff = difference; Ns = not significant; S = significant.

Discussion of Findings

Levels of Compliance with Public Procurement Act, 2007 by Universities, Polytechnics and Colleges of Education in Southwest, Nigeria

Result in Table 1 shows that the mean compliance among the three categories of the Educational institutions with provision of the PPA 2007 on treatment of unclassified procurement records is (0.00). The implication of this result is that none of the three categories of PHEIs comply with this provision of the Act. The requirement of Section 16 subsection 14 of the Act concerning this provision is that; all unclassified procurement records shall be opened to inspection by the public at the cost of copying and certifying the documents plus an administrative charge as may be prescribed from time to time by the Bureau. Non-compliance with this provision of the Act as revealed in this result is suggestive of the institutions keeping information about their procurement records from scrutiny by the Public. This negates the principle of the Act on transparency, openness and elimination of corruption in Public Procurement in procurement process. The table equally reveals that, Colleges of Education recorded zero (0.00) mean compliance in one provision of the Act namely; processes applicable to bids excluded from evaluation.

Table 1 further reveals that the overall levels of compliance with the provisions of the PPA 2007 by all the three categories of Educational Institutions is 55% (0.55) and that they all recorded a very low compliance in thirteen (13) provisions of the Act namely; funding of capital projects, value of projects for certificate of no objection, minimum number of bids to be received before award of contract and processes applicable to bids excluded from evaluation. Others are; transmutation period of records of procurement proceedings and contract awarded for each financial year to BPP, mode of primary form of dispute resolution in the procurement contract agreements, Contents of the procurement contracts, approving authority for the conduct of procurement, procurement planning processes. Others include; mode of bidding for construction projects, bid solicitation process, margin of mobilization awarded to contractors, payment procedure for procurement, projects consultancy services procedures and bids selection procedures. The low compliance in thirteen out of the thirty nine provisions by the three categories of institutions implies poor performance generally

Universities recorded highest compliance above Polytechnics and Colleges of Education in only one provision of the Act namely; margin of mobilization awarded to contractors/suppliers. Table 1 shows that, Polytechnic recorded highest compliance above Universities and Colleges of Education in sixteen (16) provisions of the Act namely; capital projects contractors selection procedure, powers of Tenders Board, mode of primary form of dispute resolution procurement agreements, approving authority for the conduct of procurement, procurement planning process, implementation of institution procurement plans and institution procurement committee. Others include; process adopted in the procurement of construction projects, activities during bid opening, process of bid solicitation, basis for granting mobilization to contractors, procurement practices for construction projects, type of bidding method used, BPP approval procedure on restricted bidding, consultancy services for which bidding is solicited and bid selection procedure. The table further shows that Colleges of Education recorded higher levels of compliance than Universities and Polytechnics in eleven (11) provisions of the Act namely; period when certificate of no objection is obtained from BPP, capital projects procurement procedure, bidding time frame before award of contract, minimum bids to be received before award of contract, payment procedure for capital projects, bids documentation language. Others include; time required for transmitting procurement proceedings for each financial year to BPP, awards of capital projects, person to select final winning tender, contents of procurement contract and mode of bidding/tendering for construction projects.

The result in Table 1 further reveals that Universities and Polytechnics recorded same levels of compliance in seven (7) provisions of the Act namely; funding of capital projects, basis for award of capital projects, capital projects procurement procedure, processes in bids excluded from evaluation, person to select winning tender, powers of Tenders Board and bids evaluation procedure. Whereas, Polytechnics and Colleges of Education recorded same levels of compliance in only three provisions of the Act namely; currency used in stating the values of procurement, composition of procurement planning committee and payment procedure for procurement.

Difference in the Levels of Compliance with Public Procurement Act 2007 Among Universities, Polytechnics and Colleges of Education

Results in Table 1, reveals that the p-value for the test of difference in the levels of compliance with the basis of granting mobilization to contractor among the three categories of PHEIs (0.021)

is less than the critical p-value (0.05). Consequently, the test rejects the hypothesis that there is no significant difference in the levels of compliance with PPA, 2007 based on the three categories of PHEIs. The implication of the result is that there is a significant difference in the level of compliance with the basis of granting mobilization to contractor among the three categories of Universities, Polytechnics and colleges of Education. Hence categories of Public Tertiary Educational Institutions have effect on the levels of compliance with this provision of the Act.

Table 1 further depicts that the p-value for the test of difference in the levels of compliance with bidding method for procurement among the PHEIs (0.003) is less than the critical p-value (0.05). Hence this result rejects the hypothesis that there is no significant difference in the levels of compliance with PPA 2007 based on the three categories of PHEIs. The inference from this result is that there is a significant difference in the levels of compliance with bidding method for procurement among Universities, Polytechnics and Colleges of Education. Therefore the three categories of PHEIs have effect on the levels of compliance with this provision of PPA 2007.

Table 1 further shows that the p-values for the test of difference in the levels of compliance with 37 provisions among Universities, Polytechnics and Colleges of Education are greater than the critical p-value (0.05), therefore, the test fails to reject the hypothesis which states that there is no significant difference in the level of compliance with PPA, 2007 among the three categories of PHEIs. This indicates that the level of compliance with 37 provisions of the PPA, 2007 is the same among the institutions. Hence, categories of PHEIs have no effect on the levels of compliance with the remaining 37 provisions of PPA, 2007.

Conclusions

The study successfully compared the levels of compliance with Public Procurement Act 2007 among Universities, Polytechnics and Colleges of Education in Southwest, Nigeria. Results from the study have established that the three categories of institutions did not comply at all with one provision of the act namely; the statement applicable to procurement record. The three categories of institutions recorded very low compliance in several provisions of the act. the low compliance with the provisions of the act by the three categories of the institutions negate the purpose for which the act was enacted which centred at addressing corruption in public procurement and ensuring international standard practices in public procurement in Nigeria. This low compliance could lead to various sharp practices in procurement process in the institutions which was the practice in the country before the enactment of the Act. Universities and Polytechnics recorded same levels of compliance in seven (7) provisions of the Act, whereas, Polytechnics and Colleges of Education recorded same levels of compliance in only three provisions of the Act. However, the results reveal that Polytechnics recorded higher compliance than Universities and Colleges of Education in majority of the provisions of the Act. The results also reveal that the three categories of institutions recorded very low compliance in 16 provisions of the Act. The result of the test of the research hypothesis reveals that the difference in the levels of compliance among the three categories of PHEIs differs significantly only in two provisions of the Act namely; basis for granting mobilization to contractors and bidding method.

The study therefore concludes that compliance with the provisions of the Public Procurement Act among Universities, Polytechnics and Colleges of Education is the same except on two

provisions that relate to basis for granting mobilization to contractors and bidding method. The study recommended increased training should be given to the Management and staff of the procurement department of the three categories of PHEIs on those provisions of the Act where they have very low compliance so that they will have improved compliance in order to ensure transparency and corrupt free procurement process.

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