

RESEARCH REPORT  
ON THE INVOLVEMENT  
OF THE PUBLIC IN  
PUBLIC PROCUREMENT  
IN  
KENYA'S LOCAL AUTHORITIES





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# Kara

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Stephen Mutoro  
Chief Executive Officer

## ABSTRACT

Local Authorities are empowered to procure goods, services and works to execute their mandates provided they operate within the approved annual budgets by the parent Ministry of Local Government and comply with laws and regulations relating to procurement especially the Public Procurement and Disposal Act of 2005. This paper explores the extent of the involvement of residents in public procurement activities in four selected LAs (Nairobi, Mombasa, Nakuru and Machakos).

This baseline survey was limited to eliciting views from the members of the public about the public procurement system, their level of involvement and their views about what they thought could be done to improve public procurement practices in LAs. Participation of the public in public procurement is one of the key interventions being encouraged under the public procurement reform in Kenya and other countries.

Primary data for this survey was collected through use of a questionnaire designed by KARA and the researcher on critical issues about the knowledge and involvement of the public in public procurement in LAs. The questionnaire was administered in the four LAs which were seen to be representative of all Kenyan LAs in terms of public procurement practices. The author also benefited from the proceedings of a workshop organized by KARA for ProWAGS to discuss

public procurement issues and identify their possible role in the public procurement reform effort.

The Primary data was qualitative and mostly reflected the opinions of various respondents. The data was thus descriptive. Secondary data was mostly collected through review of the Public Procurement and Disposal Act, 2005; the Public Procurement and Disposal Regulations, of 2001 and 2006; published works on public procurement; the Supplies Guide 1978; draft policy papers and various policy documents. The key finding of the study is that most residents had not seen and read the legislation, were not involved in public procurement activities in their LAs and wished to be involved in various ways.

The key recommendation based on the findings is that the public should be involved in public procurement in LAs in a proactive manner through education and training, and creating opportunities for involvement such as the provision of social audits.

The public needs a greater say in public procurement matters in order to raise the profile of LAs in public procurement as per the expectations of the reform efforts. Development partners, CSOs, the Government and the private sector actors should invest more in the support of public procurement reform especially in supporting the engagement of the public in questioning and auditing public procurement activities at all levels.

Peter M. Lewa, *PhD*

# CHAPTER 1

## 1.0 INTRODUCTION

### 1.1 Background

Several bodies constitute the system of Local Government in Kenya. The system includes the Ministry of Local Government (MoLG), Municipal Councils (MCs), Town Councils (TCs) and County Councils (CCs). Nairobi city, Mombasa city and Kisumu city are included in the category of municipalities. Each of the various types of Local Authorities has certain delegated powers that facilitate execution of activities. Each LA is subject to control and supervision by the MoLG. The control and supervision touches on all aspects of operations. Local Authorities also have linkages with other Government Ministries, Departments and Parastatals.

They are expected to work closely with these bodies and cooperate with District Development Committees (DDCs). LAs are governed primarily by Cap 265, Laws of Kenya (Parent Law). Their mandates are set out in the parent law although they have to comply with other national laws and regulations in the execution of these roles. Some of the laws they have to comply with include:- the laws relating to the Environment, Public Health, Education, Transport, Public Finance and Public Procurement. In terms of public procurement they are expected to observe the provisions of the Public Procurement and Disposal Act of 2005, and the Public Procurement and Disposal Regulations of 2001 (Revised in 2006).

In Kenya public procurement consumes over 65 % of the budget, including Local Government procurement. The Kenya Government is estimated to spend about Ksh.100 billion annually in public procurement of goods, works and services. Public procurement is certainly an important function in Kenya since it has significant economic and political implications. Through public procurement citizens are able to realize developments in terms of rural access roads and other projects that

address the needs of the citizens. To have an effective and efficient system of public procurement demands great responsibility on the part of policy makers within the Government, particularly those in the procurement system to ensure public funds are spent to benefit citizens. What the Government spends is so huge that it has an important bearing on economic development. It is easy therefore to discern a close relationship between development and sound public procurement. It is now well established that citizens can monitor, evaluate and audit public procurement activities at all levels and that this has huge benefits for a country.

A good public procurement system must be **economical and efficient**. This means that purchases are not wasteful; they are based on market prices and they can generate savings. It also means that bad practices such as carelessness leading to wastage; wear and tear of stocks; over invoicing; unplanned expenditure; shortage of goods when needed; poor quality products, and similar factors are to be avoided. The expectation is that suppliers will be developed, will grow and consequently the citizens will see the benefits of public procurement through increased provision of quality goods and services.

A good public procurement system must also be **transparent**, meaning that the process is open to public scrutiny; processes are questioned and everything is above board.

The system must also be **participatory**. This means that suppliers, citizens and other stakeholders effectively contribute to the operations of public procurement and in the preparation of the requisite legislation as and when necessary. It also means that the stakeholders are involved in the making of decisions at all stages of the implementation of public procurement processes.

Other features of a good public procurement system include timeliness, a good information flow system and arbitration systems that work well. **Timeliness** means

that transactions are made and commitments are met within reasonable time frame since time is a resource that must be conserved like all other resources. **A good information flow system** means that adequate information is available and is effectively communicated and shared between various stakeholders while working **arbitration mechanisms** imply that they are adequate, representative, prompt and fair in receiving and adjudicating grievances.

## 1.2 The Internal Structure of Local Authorities

The existing internal structure of Local Authorities is based on a system of standing committees composed of elected and nominated councilors, Local Authorities' managers and various local authority departments. The Committee structure is standardized, but committee functions are not.

This results in overlaps between the functions of various committees and conflicts in the operations of committees. Departmental functions vary significantly across councils because they are not standardized. Apart from the Finance, Staff and General Purposes Committee, which is a statutory requirement of the Local Government Act, a council can decide on the number and types of committees and departments. The internal structure issues have a bearing on public procurement activities in Local Authorities. One of the key problems that were the target of public procurement reforms was kingdom building with each committee or department having a say in the procurement of goods and services. Under the circumstances there was a lot of wastage of resources. There were also apparent conflicts under the circumstances.

There was lack of synergy in operations and in procurement activities. There was also bid rigging, influence peddling and political interference in procurement in LAs (Lewa, 2006; IPAR 2006). Under the circumstances LAs could not be expected to discharge their mandate and hence play the various roles expected of them efficiently and effectively. Without a properly functioning public procurement system in their operating systems, LAs were a failure in this very important area of public life.

In order to place public procurement in LAs in its proper

context it suffices at this point to briefly outline the role of LAs in Kenya.

## 1.3 Role of Local Authorities

Local authorities have the legal mandate to provide and maintain a variety of public services, initiate infrastructure and other developments and to undertake basic administrative tasks at the local level. This engenders the need for public procurement in LAs. In order to play their roles and undertake the functions they are mandated to discharge, Local Authorities are regulated by the Local Government Act (Revised 1986), Chapter 265 of the Laws of Kenya and other applicable legislations.

To execute their legal mandates, LAs are empowered to generate their own local revenues by levying taxes and user charges for services provided. The Central Government also supplements the finances of LAs through some fiscal transfers. The principal sources of transfers include the Local Authority Transfer Fund (LATF) and the Road Maintenance Levy Fund (RMLF).

LAs are empowered to procure goods, services and works to execute their mandates provided they operate within the approved annual budgets by the parent Ministry of Local Government (MoLG) and comply with laws and regulations relating to public procurement and Cap 265, Laws of Kenya.

## 1.4 Public Procurement in Local Authorities

Procurement is an activity or function that involves the purchasing of goods, works and services to meet a specifically identified need such as the need or requirement to buy cement and building blocks for building a social hall. LAs are major buyers of goods and services and just like individuals they must always buy wisely. Buying wisely means getting good value for money and ensuring there is no wastage. LAs are expected to observe the objectives of public procurement which have been stated in the Public Procurement and Disposal Act, 2005 as:

- To maximize economy and efficiency;
- To promote fair competition;
- To promote integrity;
- To increase transparency and accountability and promote local industry

The Public Procurement and Disposal Act, 2005 and

the Public Procurement and Disposal Regulations of 2006 came into effect after a lot of pressure from Kenyan public, business community and development partners mainly because of serious concerns about the abuse of public procurement processes. All public entities including LAs are required to comply with the public procurement law which supersedes all the previous laws.

It is important at this point to give a brief on how procurement processes were carried out by LAs before the implementation of procurement reforms. This should shed light on the sorry state of public procurement in LAs before the reform efforts began.

### 1.5 Pre-Reform Era

Local Authorities were guided by Cap.265 and procurement regulations issued by the Central Government from time to time. Whereas these laws set out very clear procedures, the same were flouted with abandon not only in LAs but also in all other public entities (Lewa, 2006; Waiganjo, 2006; Wanyande, 2006; Mwangi 2006; Nzai & Chitere, 2006; Oanda, 2006). LAs were preoccupied with the regularity and legality of the procurement process not value for money. Matters were aggravated by the fact that the politicians (councilors) were in charge of the tendering process from adjudication to award as members of the influential tender, finance and work committees. Conflicts of interest and influence peddling were rampant and in most cases council officials were willing accomplices in flouting the laws for own gains and serving of political interests.

It was common to award tenders to bidders other than the lowest priced ones. The minister for Local Government had the final say in procurement matters. Allegations abound on how councilors and businesspersons would lobby the minister to be awarded tenders. To circumvent the requirement of awarding tenders to the lowest quoted bidder, it was a very common practice for tenderers to under quote to win a tender and then immediately apply for tender variation. For as long as the minister supported them they would automatically get approval. In many situations the original intentions were simple theft of public funds. Other common malpractices included:-

- Poor tender documentation including sketch specifications

- Collusion between bidders and council officials
- Bid rigging
- Poor or skewed tender evaluation
- Poor stores management (suppliers paid for non-delivery/ under-delivery and poor quality goods)
- Improper disposal of stores including disposal of serviceable supplies such as equipment and motor vehicles

### 1.6 Post-Reform Era

The new law and regulations came into effect following a lot of pressure from development partners and the public. There were very serious concerns about the abuse of the procurement process that had been reduced to a process of enriching individuals at the expense of the public in terms of forgone services. Some of the objectives of the new law are to restore public confidence in public procurement, ensure value for money and transparency, encourage competition, and promote economic development. All public entities are required to comply with this law which supersedes all the previous laws. Some of the key provisions to address the weaknesses highlighted are:-

- The inclusion of the public in the public procurement process
- The exclusion of the politicians (councilors) from the procurement cycle
- The handing over of procurement function to council officers (staff)
- Prohibition of any public servant or anybody holding a public office/ their spouses/ relatives from participating in any public procurement.
- "Democratization of the procurement process" through various committees.
- The imposition of duty to comply with the law on third parties supplying goods/ services/ works to public entities.

The law provides options for outsourcing procurement function to authorized agents appointed by the authority responsible for implementing the new law. This is meant to help LAs that lack of capacity. LAs are also authorized to use procurement materials e.g. pre-qualification listing of suppliers from other competent public entities and human resources such as procurement officers or agents from government ministries and departments in case of inadequate capacity in the discharge of their procurement activities.

# CHAPTER 2

## 2.1 Theoretical and Conceptual Framework

Procurement is a common function in both the public and private sectors. It is part of the discipline of purchasing and supply. Purchasing is concerned with the acquisition of resources, including goods and services, for use in the productive process. The process of purchasing involves planning, determining requirements and specifications to meet needs, advertising for supplies, selection of suppliers, preparation of purchase orders, receipt and storage of goods, issuance of materials and goods to users and the movement and or disposal of materials. It also includes managing relationships between buyers and suppliers. Considering the total cost of purchased material can emphasize the importance of procurement, as a key function in the management of business. For instance, the average manufacturing company disposes of more than 50 % of its income on materials, supplies and services (Baily and Farmer, 1977; Lewa, 2006). The total cost of material includes the specification being purchased. In turn, this may involve marketing and the desire to have an acceptable product to sell, production and the need to ensure smooth operations without disruptions, disposal of waste, scrap and transportation.

Public procurement is different from private procurement. In public procurement the economic results must be measured against more complex and long-term criteria. The volume of government purchases and the complexity of products and services involved call for a considerable management task. Also the range of purchases is extremely wide, involving items from food and clothing to highly sophisticated construction works and equipment such as battleships and satellites. The management task in public procurement is complicated by influences that do not apply in the private sector. Public procurement must be transacted with other considerations in mind, besides the economy. These considerations include openness, accountability, non-discrimination among potential suppliers and respect for international obligations. For these reasons, public procurement is subjected, in all countries, to enacted regulations to protect the public interest. It is important to note that

unlike private procurement, public procurement is a business process within a political system engendering significant consideration of integrity, accountability, national interest and effectiveness (Wittig, 2002). The process of public procurement requires improved visibility of expenditure, more time afforded to planning, data and information management, staffing and controlling activity in order to make the process more effective and efficient.

There are certain generally established objectives of purchasing or procurement for that matter. A well-known definition of purchasing or procurement objectives is: To purchase the right quality of material, at the right time in the right quantity from the right source, at the right price (Baily and Farmer, 1977).

Right quality means what exactly it is that is required for the intended application (specification), ensuring that the chosen supplier has the capacity to comply with the specification, and the monitoring of physical supply.

Right time means goods and services are received at the time when they are expected to be ready for use as and when required. Right time could mean at the time of use (just in time), a few days or weeks or even months before the time of use in the productive process depending on their nature, determined lead times and other considerations.

Right quantity means the amount required at the time it is required. In most cases the right quantity is the amount or quantity of order that gives the least-cost result. The ordering policy in place largely determines the order quantities. For example, calculating the Economic Order Quantity (EOQ) gives the least-cost result while pursuing a Materials Requirements Planning (MRP) policy is particularly suitable for procurement of parts and material required for batch production of complicated manufactured goods.

The right source means a vendor or vendors with the capacity to meet the stated needs. According to Baily and Farmer (1977) sourcing may be said to comprise the identification or development of suitable sources of

supply; the systematic investigation and comparison of such sources; the sourcing decisions: which suppliers to patronize, how many to use for a given item, how to allocate available business, what terms to do business on; the continuing relationship, both with preferred sources which are actually supplying goods and services, and with potential sources which are still in the running although they have been passed over for the moment.

The right price is the value of what is offered by the vendor or what is negotiated between the buyer and the vendor.

According to Baily and Farmer (1977:13), the objectives of procurement can be summarized in a statement of objectives as follows: -

(i) To supply the organization with a steady flow of materials and services to meet its needs.

(ii) To ensure continuity of supply by maintaining effective relationships with existing sources and by developing other sources of supply either as alternatives or to meet emerging or planned needs.

- To buy efficiently and wisely, obtaining by any ethical means the best value for every pound spent.
- To manage inventory so as to give the best possible service to users at lowest cost.
- To maintain co-operative relationships with other departments, providing information and advice as necessary to ensure the effective operation of the organization as a whole.
- To develop staff, policies, procedures and organization to ensure the achievement of the foregoing objectives.

The reform of public procurement systems largely aims at ensuring the achievement of public procurement objectives in an efficient, economic and effective manner and in line with government's social, economic and political objectives. This can only occur if there is transparency in the process and the general public has a role in enforcing transparent processes in public procurement. Transparency implies that all parties in the procurement process are fully involved in the process and have all the information needed to make informed choices and decisions. There are four main parties in the public procurement process in this context: the government or public entity, the procurement agent, the tenderers/bidders and the general public represented by residents in the jurisdiction of a local authority.

In the private sector, procurement is a practical function which has little to do with the strict rules and regulations found in public procurement but has everything to do with the efficiency of purchasing and hence value for money (Trepte, 2004:26). On the other hand, public sector procurement is the subject of strict mandatory administrative rules and procedures due to the unique place of public bodies in the economic, political and social spheres. The concern in public procurement is why rather than how procurement is regulated. The issues, which arise in the public procurement, are complex and therefore invite a multidisciplinary approach.

To begin with procurement is primarily an economic activity involving the relationship between suppliers and purchasers of goods and services. The laws of the market determine their relationship. The sheer size of the government or local government for that matter, and its operating complexities mean that it cannot be treated like the other actors in the market. The Government and LAs have the potential to create distortions through their public procurement actions in the market and the local economy. Under the circumstances regulation of public procurement through legislation makes a lot of sense (IPAR, 2007).

Key provisions in the legislation include involvement of the public in public procurement decisions in LAs; the inclusion of council officers in the process and the exclusion of politicians. This baseline survey aimed at eliciting the views of the public in terms of basic matters regarding their involvement in public procurement in LAs. In order to obtain the required information a simple research methodology was used.

## 4.0 PRESENTATION AND DISCUSSION OF FINDINGS

### 4.1 Introduction

Quantitative and descriptive statistics were used to present, analyze and interpret data gathered from four LAs. The findings are presented on the basis of research questions formulated by the researcher and KARA following ProWAGS meetings involving stakeholders. Only pertinent public procurement issues relating to the involvement of the public were considered in the formulation of the research questions. The research did not consider it necessary to include questions on socio-demographic factors. What follows below is a presentation of the research findings.

# CHAPTER 3

## 3.0 RESEARCH METHODOLOGY

### 3.1 Research Design, Sampling Procedures and Analysis

The study leading to the writing of this paper was undertaken by combining both secondary and primary data. Secondary data was mostly collected through review of the Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, of 2001 and 2006. Other sources of secondary data included the Supplies Guide 1978, draft policy papers and Gazette notices, policy documents and legislative laws of Kenya. The author also benefited from the proceedings of a workshop organized by KARA for ProWAGS to discuss public procurement issues and identify their possible role in the public procurement reform effort.

This baseline survey was limited to eliciting views from the members of the public about the public procurement system, their level of involvement and their views about what they thought could be done to improve it. Primary data was collected through use of a questionnaire designed by KARA and the researcher on critical issues about the knowledge and involvement of the public in public procurement in LAs. The questionnaire was administered in Nairobi, Mombasa, Nakuru and Machakos. The four LAs were seen to be representative of all Kenyan LAs in terms of public procurement practices. The Primary data was qualitative and mostly reflected the opinions of various respondents. The data was thus descriptive.

# CHAPTER 4

## 4.2 Pertinent Issues on The Participation of The Public in Public Procurement in Local Authorities (LAs)

The findings here are on the basis of each of the research questions that guided the research. The research questions were on very basic issues of knowledge and extent of involvement in public procurement in

LAs. A more detailed research would help deal with more detailed issues in public procurement in Local Authorities in Kenya. Such a research would provide a more rigorous and scientific treatment of the variables in question.

Q1. Have you seen a copy of the Public Procurement and Disposal Act 2005/Regulations of 2001/2006?

Table 1: Distribution of Responses

Local Authority	Yes	No	Total
Nairobi	10 (19.6%)	41 (80.3%)	51 (100.0%)
Mombasa	2 (2.5%)	78 (97.5%)	80 (100.0%)
Nakuru	38 (49.4%)	39 (50.6%)	77 (100.0%)
Machakos	18 (24.0%)	57 (76.0%)	75 (100.0%)
<b>TOTAL</b>	<b>68 (24.0%)</b>	<b>215 (76.0%)</b>	<b>283 (100.0%)</b>

The findings on Table 1 above show that the majority of members of the public in all the Local Authorities sampled had not seen a copy of the Public Procurement and Disposal Act 2005/Regulations of 2001/2006. Mombasa led in the number of those who had not seen a copy of the Public Procurement and Disposal Act 2005/Regulations of 2001/2006, followed by Nairobi, Machakos and Nakuru. Nakuru Municipality led in the number of those who had seen a copy of the Public Procurement and Disposal Act 2005/Regulations of 2001/2006. However, the results suggest that in all the LAs surveyed majority of the residents in the LAs areas of jurisdiction had not seen the Act and the Regulations. The implication of this finding is that there is need to avail and ensure dissemination of the legislation and regulations so that members of the public can understand and participate effectively in the public procurement processes.

Q2. Have you read the Public Procurement and Disposal Act of 2005?

Table 2: Distribution of Responses

Local Authority	Yes	No	Total
Nairobi	9 (17.6%)	42 (82.4%)	51 (100.0%)
Mombasa	1 (1.3%)	79 (98.7%)	80 (100.0%)
Nakuru	30 (39.0%)	47 (61.0%)	77 (100.0%)
Machakos	10 (13.3%)	65 (86.7%)	75 (100.0%)
<b>Total</b>	<b>50 (17.7%)</b>	<b>233 (82.3%)</b>	<b>283 (100.0%)</b>

The majority of the public in all the local authorities had not read the Public Procurement and Disposal Act 2005. Mombasa led in the number of those who had not read the document, followed by Machakos, Nairobi and then Nakuru. It was surprising that fewer people had read the document (17.7%) despite 24.0% of them having seen a copy of the same (see Table 1). This finding reinforces the need for availing and dissemination of the Act and the Regulations. There is need to encourage the public to create interest in reading and discussing policy documents. Consistent efforts are needed in disseminating the Act and the Regulations in all LAs.

### Q.3 Have you read the Public Procurement and Disposal Regulation of 2001/2006?

Table 3: Distribution of Responses

Local Authority	Yes	No	Total
Nairobi	8 (15.7%)	43 (84.3%)	51 (100.0%)
Mombasa	3 (3.8%)	77 (96.2%)	80 (100.0%)
Nakuru	25 (32.5%)	52 (67.5%)	77 (100.0%)
Machakos	8 (10.7%)	67 (89.3%)	75 (100.0%)
<b>Total</b>	<b>44 (15.5%)</b>	<b>239 (84.5%)</b>	<b>283 (100.0%)</b>

In all the local authorities surveyed, the majority of the public had not read the Public Procurement and Disposal Regulation of 2001/2006. One would have expected many members of the public to have read the Public Procurement and Disposal Regulations given the fact that the Act and the Regulations had been published when there was a lot of public outcry over gross public procurement abuse had been grossly abused in Kenya. The implication of this is that the public needs to be supported in terms of education and training in matters of public procurement and public policy.

#### Q4. If yes to 2 & 3 above, please state the purpose of the Act/Regulations.

The findings showed that in all the local authorities, the majority of the public did not know the purpose of the Act/Regulations and hence the reason many of those interviewed did not respond to the question. However, the few who responded, gave a number of purposes as shown below in order of prominence.

- To establish the methods, procedures and rules governing the procurement of goods and services and disposal of public assets.
- To promote integrity, transparency, accountability and increase efficiency in procurement as well as check corruption in the processes involved.
- To promote competition and/or fairness in procurement
- To create awareness among the public on the rules and regulations which local authorities are supposed to adhere to as part of increasing public confidence on public procurement processes.
- To create Public Procurement Authority office through an Act of Parliament.

The above findings imply that it is important to emphasize the need for educating the public on their important role in matters of public policy and especially in matters of public procurement.

**Q5. Has your Local Authority taken time to educate you on the reformed Public Procurement System?**

**Table 4: Distribution of Responses**

Local Authority	Yes	No	Total
Nairobi	0 (0.0%)	51 (100.0%)	51 (100.0%)
Mombasa	2 (2.5%)	78 (97.5%)	80 (100.0%)
Nakuru	13 (16.9%)	64 (83.1%)	77 (100.0%)
Machakos	2 (2.7%)	73 (97.3%)	75 (100.0%)
<b>Total</b>	<b>17 (6.0%)</b>	<b>266 (94.0%)</b>	<b>283 (100.0%)</b>

The findings above show that in all the LAs in question, the public had not been informed about the new public procurement regulations by their LAs. This means that the LAs had not taken time to educate their residents on the reformed public procurement system. This implies that the public cannot participate effectively in public procurement processes because of lack of capacity. This is a clear indication that the profile of public procurement in LAs is not rising as expected in the reform efforts. In order to realize real benefits in this sense LAs are expected to reassess the way they deliver services and consider how to involve the public in the procurement process.

**Q6. Do you think your Local Authority is transparent in terms of Procurement?**

**Table 5: Distribution of Responses**

Local Authority	Yes	No	Not sure	I don't know	Total
Nairobi	3 (5.9%)	48 (94.1%)	0 (0.0%)	0 (0.0%)	51 (100.0%)
Mombasa	2 (2.5%)	75 (93.8%)	2 (2.5%)	1 (1.2%)	80 (100.0%)
Nakuru	14 (18.2%)	63 (81.8%)	0 (0.0%)	0 (0.0%)	77 (100.0%)
Machakos	6 (8.0%)	69 (92.0%)	0 (0.0%)	0 (0.0%)	75 (100.0%)
<b>Total</b>	<b>25 (8.8%)</b>	<b>255 (90.1%)</b>	<b>2 (0.7%)</b>	<b>1 (0.4%)</b>	<b>283 (100.0%)</b>

As shown in Table 5 above, the majority of the members of the public in all the LAs surveyed (90.1%) believed that the local authorities were not transparent in terms of procurement. Nairobi City Council led with the majority (94.1%) of its residents believing that the council was not transparent, followed by Mombasa, Machakos and Nakuru. Under these circumstances residents could not be expected to trust the LAs in terms of fair treatment in the public procurement system. This would seem to imply that most residents would not dare seek business

opportunities through the public procurement system in LAs. The implication of this is that all LAs must launch aggressive campaigns to redeem public confidence through involvement in public procurement and improved delivery of goods and services as well as through customer outreach programmes.

**Q7. Do you think corrupt practices occur in procurement in your local authority?**

**Table 6: Distribution of Responses**

Local Authority	Yes	No	Not sure	I don't know	Total
Nairobi	42 (82.4%)	8 (15.7%)	0 (0.0%)	1 (2.0%)	51 (100.0%)
Mombasa	72 (90.0%)	6 (7.5%)	1 (1.2%)	1 (1.2%)	80 (100.0%)
Nakuru	63 (81.8%)	14 (18.2%)	0 (0.0%)	0 (0.0%)	77 (100.0%)
Machakos	63 (84.0%)	12 (16.0%)	0 (0.0%)	0 (0.0%)	75 (100.0%)
<b>Total</b>	<b>240 (84.8%)</b>	<b>40 (14.1%)</b>	<b>1 (0.4%)</b>	<b>2 (0.7%)</b>	<b>283 (100.0%)</b>

The findings presented in Table 6 above show that most members of public believed that corrupt practices occurred in procurement in their local authorities. These findings are largely consistent through all the LAs surveyed and seem to explain why majority of the public believed that their local authorities were not transparent in their procurement activities as indicated earlier in Table 5.

**Q8. Does your local authority involve you in its procurement activities?**

**Table 7: Distribution of Responses**

Local Authority	Yes	No	Not sure	Not always	Total
Nairobi	3 (5.9%)	48 (94.1%)	0 (0.0%)	0 (0.0%)	51 (100.0%)
Mombasa	0 (0.0%)	77 (96.2%)	2 (2.5%)	1 (1.2%)	80 (100.0%)
Nakuru	20 (26.0%)	57 (74.0%)	0 (0.0%)	0 (0.0%)	77 (100.0%)
Machakos	5 (6.7%)	70 (93.3%)	0 (0.0%)	0 (0.0%)	75 (100.0%)
<b>Total</b>	<b>28 (9.9%)</b>	<b>252 (89.0%)</b>	<b>2 (0.7%)</b>	<b>1 (0.4%)</b>	<b>283 (100.0%)</b>

This study sought to establish whether or not local authorities involved their residents in their procurement activities. Community involvement is crucial for any successful initiation, planning, implementation, sustenance, monitoring and evaluation of a development activity. As shown in table 7 above, most local authorities appeared to function in isolation of their populations in terms of public procurement activities. Thus, they did not involve their residents in public procurement. This implies that only those who were well connected benefited from the public procurement function in LAs.

**Q9. If YES to 8 above, please indicate in what ways you are involved**

The few who said that they were involved reported that they were involved in the following ways:-

- Opportunity to provide goods and services
- Invitation through tenders to bid for the supply of goods and services, and purchase of public assets/ council assets.
- Employment in the council

What is clear is that LAs did not involve the public in public procurement activities in any substantial manner. This does not augur well for public procurement activities under a reformed regime as the public was expected to participate actively in public procurement activities. Lack of public participation meant that the public could not exercise the expected oversight role in public procurement matters such as conducting of social audits.

**Q10. In what ways would you like to see your local authority involve you in its procurement activities?**

This question generated a long list of proposals with the following being the most reported:-

- Creating awareness among the public on procurement Acts, Regulations and activities through public forums, trainings and seminars.
- Providing advice to young entrepreneurs to enable them participate in public procurement.
- Creating job opportunities for the youth in the public procurement sector.
- Advertising tenders in the mass media to ensure wide participation of residents.
- Promoting transparent procurement activities and reducing corruption at the tender box level.

- Engaging public participation/opinion and decision making in all procurement activities in the LAs.

- Rewarding hard working and transparent council employees involved in procurement.
- Sharing contacts of established suppliers
- Informing the public about procurement activities
- Making procurement documents accessible to the public
- Proper management of available Council resources
- Putting suggestion boxes within the community to help them on tendering activities
- Drawing procurement plans and disseminating them to the residents long before the tendering process
- Holding monthly consultations with stakeholders on procurement and other policy issue.

The above responses indicate the public is aware of how it can be involved in the public procurement process in a bid to make the process more transparent, effective and efficient. This seems to emphasize the conclusion that the public needs capacity through education and training on public procurement matters.

**Q11. Please suggest improvements you would wish to see in the entire procurement process in your local authority?**

The following were the key suggestions:-

- Educating the public on the Procurement Acts, Regulations and activities through seminars and exhibitions.
- Honest, transparent and accountable

procurement entities/activities devoid of corruption.

- Recruitment, vetting and training of high integrity and professional procurement staff and procurement committee members.
- Equity in tender awards.
- Imposing stiff penalties and court action on corrupt council procurement staff and suppliers.
- Wider involvement of stakeholders and the public and especially religious leaders in procurement committees.
- Wider involvement of the youth in procurement activities.
- Allowing non-government organizations and/or private firms to handle procurement on behalf of councils where there is lack of capacity and involvement of self help groups and SACCOs In public procurement activities.
- Broad advertisement of tenders through the mass media and other easy community accessible channels.

- Effective and efficient use of information technology in procurement activities.
- Constant re-training of procurement staff in case of new changes in the procurement sector.
- Senior positions in the Public Procurement Authority and councils should be held by non-partisan and local individuals.
- Reduction of taxes on public procurement activities.
- Easy licensing of suppliers.
- Effective monitoring and evaluation of procurement processes through the establishment of a Procurement M & E Board.
- Provision of adequate resources to the procurement entities in the councils.
- Ensuring proper security of procurement personnel and sections.

The above findings clearly indicate that the public is

# CHAPTER 5

aware of what needs to be done and further imply that the public would be willing to be involved in the public procurement reform efforts in LAs.

## 5.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS

The purpose of this simple survey was to understand the extent of the involvement of citizens in the public procurement processes in Local Authorities (LAs). Four LAs considered to be representative of all LAs in procurement matters were selected for the survey. These were Nairobi, Mombasa, Nakuru and Machakos. A simple questionnaire was designed for use in eliciting views from the public.

The questionnaire contained simple questions relating to issues such as whether or not the residents in a given LA had seen and read copies of the Act and the Regulations, whether they thought their LA had corrupt procurement practices, whether their LA had taken time to educate them on the reformed public procurement systems and processes, whether they had been involved in the procurement activities of LAs, what needed to be done to bring about involvement of citizens and in what ways this could be achieved. Involvement of the citizens in public procurement at all levels of government and public service was a key part of the public procurement reform efforts.

Procurement reform measures were designed and implemented to fit the particular circumstances of Kenya. The Government has already made a good start towards reform by approving a key Act in 2005 and key Regulations in 2001 and 2006 that created the necessary legal and institutional framework for public sector procurement based on proven sound principles, policies and practices.

The key finding from this survey is that citizens in LAs have not been involved in the procurement process as expected and as laid down in the Act and the Regulations. The key change that appears to have been effected is the replacement of councilors with council officials in the procurement function of LAs without any efforts expended in involving the public in

the process in order to elevate the profile of LAs in procurement and to provide the basis for social audits by the citizens with a view to bringing about efficiency and effectiveness in the process. Involvement of citizens was expected to increase transparency in the procurement process. It would appear that the well recorded earlier mischief exhibited by councilors have now been embraced by officers who are solely in charge of the procurement cycle.

It would be interesting to find out through another survey how the politicians who were “prematurely weaned off from the gravy train” have reacted to this change and especially where there is a vacuum created since citizens cannot exercise oversight in the absence of their involvement in the procurement process. Before the reforms, council officials used to question the activities of the councilors in the process of procurement.

They provided some kind of oversight. Right now, it is not clear who is questioning the council officials given that councilors are barred from involvement in the procurement process in LAs and the citizens have not been involved in the process as expected.

The above findings seem to suggest a need to build the capacity of the citizens, council officials and the councilors in order for each group to play its expected roles. The capacity building for the citizens should concentrate on education and training aimed at exposing them to the policy provisions of the legislation and what role citizens have been assigned.

The capacity building for officers and councilors should concentrate on specific functions and activities where needs and deficiencies are most evident and where their correction will have the most impact on the overall success of public procurement in LAs. Perhaps, education and training aimed at changing the attitudes of these players about public procurement should be given priority. The Government, CSOs, the private sector and development partners need to organize a series of working sessions to collect information about the problems of public procurement in LAs and pinpoint the main perceived needs and opportunities for significant improvements. The assumption here is

that a successful public procurement system will be a major boost to all players in the various sectors of the country.

Several recommendations can be made based on the findings in this survey.

- Citizens must be involved in the process in order to exercise some oversight in the procurement activities
- There is need for education and training of citizens in procurement matters

- The Act and the Regulations need to be disseminated widely

- Development partners, the Government, private sector and the CSOs must play an increasingly important role in public procurement matters and especially in empowering citizens to question the processes of public procurement

- There is need for a more detailed and scientific research on public procurement in LAs

- There is need for a survey on how the reformed system is working in the absence of oversight on the activities of council officials in procurement matters

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